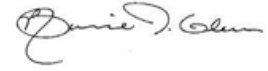

Issued Date: OCTOBER 4, 2024

From: Deputy Director Bonnie Glenn on Behalf Of Director Gino Betts, Jr.
Office of Police Accountability



Case Number: 2024OPA-0086

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.001 - Standards and Duties, 5.001-POL 10. Employees Will Strive to be Professional
Finding: Sustained

2. **Allegation #2:** 13.031 - 5.001-POL 11. Employees Will Be Truthful and Complete in All Communication
Finding: Sustained

- **Proposed Discipline:** Fifteen (15) to Thirty (30) Days Suspension
 - **Imposed Discipline:** Twenty (20) Days Suspension

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections may be written in the first person.

Administrative Note on Proposed Findings:

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

Executive Summary:

A civilian public records manager (Complainant) alleged their subordinate public disclosure officer (Named Employee #1 or NE#1) was dishonest with a public records requestor (Community Member #1 or CM#1).

Administrative Note:

On July 10, 2024, the Office of Inspector General certified this investigation as thorough, timely, and objective.

Summary of Investigation:

The Complainant emailed OPA alleging NE#1, “provided false information to a member of the public.”

OPA investigated the Complaint, reviewing a counseling memorandum for NE#1, GovQA message history and audit logs, and notes from Witness Employee #1 (WE#1). GovQA is the software the City of Seattle and SPD use to manage public records requests. OPA also interviewed the Complainant, WE#1, and NE#1.

Counseling Memorandum

The Complainant provided OPA with an April 3, 2024, counseling memorandum for NE#1. The memorandum documented a series of meetings between NE#1, the Complainant, and WE#1 concerning the number of “past due” public disclosure requests (PDRs) assigned to NE#1. The memorandum documented the following excerpt:

On February 14, 2024, I reviewed your assignment [REDACTED]. The requestor had messaged to file an appeal about the response you had provided. As part of the appeal process, I reviewed the message history with the requestor and the history page for the request. This review brought up several concerns:

1. The request was assigned on July 7, 2023, but you did not reach out to the records custodian until January 10, 2024. The standard process for the unit is to reach out for text messages as soon as possible because of retention schedules (deleted daily) and employee resignations.
2. You learned on January 11, 2024, that the records custodian had left the City. During our Office Hours meeting that day, you asked how to proceed. I instructed you to respond to the request immediately with no responsive records. You did not respond until February 14, 2024.
3. Per the request history page, between January 29, 2024, and February 7, 2024, you extended the PDR four times without sending an extension message to the requestor. This is against City policy and Unit process.
4. When you provided your response on February 14, 2024, you apologized to the requestor for the delayed response and said that your message on January 26, 2024 “did not go through”. There was no indication on the request history page that you attempted to send a message on January 26, 2024.

The Complainant also noted multiple occasions, in multiple cases where NE#1 extended her production deadline without sending a message to the requestor—a violation of unit standards. In one case, NE#1 extended her production deadline without notifying the requestor twenty-five times. Due to these concerns, the Complainant and WE#1 met with NE#1 on February 15, 2024. The memorandum documented the following about this meeting:

During the meeting on February 15, 2024, I asked you about the extensions without sending messages to the requestor. You indicated that you had done this at least eight previous times and that you were “just trying to do too much”. I asked you if you had actually attempted to send your response for the above PDR on January 26, 2024, and you indicated you had drafted it in a notepad (not GovQA) but must

have not saved it. I asked again if you had tried to send it in GovQA, and you confirmed you had not. I informed you that was dishonesty and that you had lied to the requestor. I explained that the extensions without messages to the requestors would very likely be considered an aggravating factor by the Court when deciding on penalties for our agency if a [Public Records Act] lawsuit was filed. I also informed you that I may need to refer the dishonesty allegation to OPA for further investigation.

NE#1 signed the memorandum on April 3, 2024, under a line that read: "By my signature below, I acknowledge that the above document has been discussed with me and I have received a copy of this same document." GovQA Message History and Audit Logs OPA reviewed GovQA message history between NE#1 and CM#1. These showed that CM#1 submitted a request on July 7, 2023. A GovQA automated message acknowledged receipt to CM#1 the same day. On July 14, 2023, NE#1 messaged CM#1 acknowledging receipt of the request and stating the records would be provided "by January 26, 2024." On February 12, 2024, CM#1 messaged NE#1, "January 26, 2024 has come and gone. No records have been provided." On February 14, 2024, NE#1 responded to CM#1. The first line of NE#1's message read, "Apologies. It seems the prior messages from January 26, 2024 did not go through." CM#1 then appealed NE#1's response.

OPA reviewed the GovQA audit logs for the relevant GovQA case. These showed that the system sent automated reminders to NE#1 on January 25 and 26, 2024, concerning the case due date. The logs corroborated that CM#1 emailed NE#1 on February 12, 2024, and NE#1 responded on February 14, 2024. The audit logs did not indicate that NE#1 drafted or sent any messages to CM#1 between July 14, 2023, and February 14, 2024. The audit logs did not indicate that there were any system issues with transmitting any messages from NE#1 to CM#1. Complainant's Interview OPA interviewed the Complainant. She stated all activity in GovQA is maintained in an audit log, which showed NE#1 did not attempt to send CM#1 any messages on January 26, 2024. The Complainant stated she and WE#1 met with NE#1, who admitted she did not send CM#1 the extension notification as required. The Complainant elaborated:

I asked her to explain to me what happened. [NE#1] said that she had been trying to do too much [work] that week, that she had drafted all of her extension messages, not directly in GovQA, but in a notepad. Then her plan had been to copy it over into GovQA. But she never did that. I point blank asked her, "Did you try to send this message?" And [NE#1] said, "No." [NE#1] said, she knew she didn't send it. And that was the end of it.

The Complainant explained that, on occasion, messages in GovQA fail to go through, but this is usually because the requestor's email address is not working. The Complainant stated if there had been an error in transmitting a message, the GovQA audit log would have noted it. Witness Employee #1's Interview OPA also interviewed WE#1, who was present at the February 15, 2024, meeting with NE#1. WE#1 recalled the Complainant questioning NE#1 as, "[The Complainant] said, 'so, you lied, or you didn't actually send the message.' [NE#1] just kind of did a little bit of like a sigh and said, 'yeah.'" WE#1 recalled the specific language as follows:

I remember [the Complainant] phrasing it as, “when you sent the message to the requester saying, ‘I guess the message didn't go through,’ that wasn't true. You never sent a message.” And [NE#1] saying, “yes.”

WE#1 also provided notes she took during the meeting. In relevant part, these read:

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Drafted messages in notepad, not GovQA
Tried to get all PDRs done at the same time
Was working in virtual machine
    - doing too much
    - never sent it out, never saved it
    - knew she didnt sent it
Cannot extend without sending messages
    - aggravating factor
    - possible silent withholding
Maybe 8 more extended without sending a message
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Named Employee #1's Interview

NE#1 recalled CM#1's request and explained she initially set the due date for January 26, 2024. NE#1 stated, after that date passed, she realized it was past-due and extended the date to February 1, then February 5, February 7, and finally, February 14. NE#1 stated she intended to send CM#1 an extension message and drafted the message while working on a “virtual machine” (used to upload video to GovQA). NE#1 said she drafted the message in Windows Notepad but forgot to copy the message into GovQA. NE#1 stated, “I responded with that message apologizing and telling [CM#1] that my draft message on that day did not go through.”

NE#1 denied being dishonest, describing her message as literally true, noting, “I did draft a message on January 26. That I drafted—that I had prepared it—I mean, I said it did not go through, which is true. It did not go through.” NE#1 described her meaning behind “it did not go through,” was to convey, “like I'd never sent it to him.” NE#1 acknowledged that her phrasing could be understood as dishonest. In one exchange, the OPA investigator and NE#1 discussed the following:

- OPA: as a layman it might read as if you had clicked “send” and just- the system did not process the email. And that could be seen as dishonest. Would you agree with that?
- NE#1: Not sending it? Yeah, I agree with that.
- OPA: It could be seen that way?
- NE#1: Yeah, it could be seen that way.
- OPA: That was not your intent?
- NE#1: That was not my intent, no.

NE#1 denied violating policy, explaining, “What I said to the requester I mean, it was true. Like I had a I had a message extension message prepared. And it did not go through because I didn't copy paste it into GovQA and send it to him.”

NE#1 also disagreed that she admitted to being dishonest. Instead, NE#1 described being “emotional,” elaborating “I never came out and said I agreed. I just nodded in acknowledgment that that I messed up on this.”

Analysis and Conclusions:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties, 5.001-POL 10. Employees Will Strive to be Professional

The Complainant alleged that NE#1’s response to CM#1 undermined public trust in the Department.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. SPD Policy 5.001-POL-10.

As discussed below at Named Employee #1, Allegation #2, NE#1’s message to CM#1 was not “truthful and complete.” For this reason alone, the professionalism allegation could be sustained as dishonest communication with the public necessarily undermines public trust in the Department.

However, even if NE#1’s communication with CM#1 did not rise to the level of “dishonesty”—which it did—it was still unprofessional. Like all Washington State government agencies, SPD has obligations under the Public Records Act (Chapter 42.56 RCW) to keep the public informed (“The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.” RCW 42.56.030 (Construction)) and provide prompt responses, including a “reasonable estimate of the time the agency . . . will require to respond to the request.” RCW 42.56.520(1)(c). Here, OPA finds that, more likely than not, NE#1’s message was intended to skirt responsibility for her failure to either timely provide the records or notify CM#1 that she was extending the request due date. To the extent NE#1 argued her message was literally true—which is, at a stretch, debatable—the clear intent and impact of NE#1’s message was to imply that she was not personally responsible for the failure and, instead, her “prior messages from January 26, 2024” inexplicably “did not go through.”

OPA recognizes the immense pressure public disclosure officers can face fulfilling the voluminous requests from the public. But public disclosure officers are still expected to engage with the public in a forthright manner. NE#1 failed to do so here.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001-POL 11. Employees Will Be Truthful and Complete in All Communication

The Complainant alleged that NE#1 was not truthful and complete in her communication with CM#1.

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

NE#1 was not truthful and complete when she wrote to the requestor: “It seems the prior messages from January 26, 2024 did not go through.”

First, OPA disagrees with NE#1’s characterization of this statement as literally true. Given the extensive evidence that NE#1 frequently failed to notify requestors when she extended her deadlines, OPA has significant reason to doubt NE#1’s uncorroborated explanation that she drafted a message to CM#1 in Notes but simply forgot to copy the message into GovQA. But even assuming that were the case, NE#1 never created a “prior message” because she never attempted to send or communicate the draft to CM#1—a fact she was aware of. A “message” is “a piece of information that is sent or given to someone.” The Britannica Dictionary, available at <https://www.britannica.com/dictionary/message> (emphasis added).

Second, the obvious implication of telling someone your “prior message” “did not go through,” is that the sender actually attempted to transmit a message but was unsuccessful because the method of communication failed. Here it was impossible for the method of communication to have failed because NE#1 never entered her draft into a software program capable of transmitting a message.

Finally, even viewing NE#1’s statement in the most generous light, it was not complete. In this context, it is relevant that the failure to communicate with the requestor was due to human error as opposed to a technical, machine, or software failure. “Acting in ‘good faith’ will not absolve an agency from the imposition of court costs, attorney fees, and potential penalties for erroneously withholding public records, but can be taken into consideration by a judge when determining the amount of penalties.” Public Records Act for Washington Cities, Counties, and Special Districts, Municipal Research and Services Center, p. 12 (March 2019), available at <https://mrsc.org/getmedia/796a2402-9ad4-4bde-a221-0d6814ef6edc/Public-Records-Act.pdf?ext=.pdf> RCW 42.56.550(4)). NE#1 omitted any reference to her own responsibility for failing to send a message and, instead, implied the failure was out of her control. Given the intense scrutiny NE#1 was under for failing to complete her requests in a timely manner—as thoroughly documented in the counseling memorandum—OPA finds this incomplete response was, more likely than not, an intentional attempt to downplay her own error.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**