



## CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 28, 2024

FROM: DIRECTOR GINO BETTS, JR.   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2024OPA-0159

### Allegations of Misconduct & Director's Findings

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional	Not Sustained - Lawful and Proper (Expedited)
# 2	1.110 - Public Information 1.110-POL-1 General Policy 2. Except as May Otherwise Be Authorized by the Chief of Police or His or Her Designee, Employees Shall Not Release Information to the Media	Not Sustained - Management Action (Expedited)

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

#### EXECUTIVE SUMMARY:

The Complainants alleged Named Employee #1 (NE#1) made unauthorized comments to a media reporter.

#### ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview the named employee.

On July 24, 2024, OIG certified OPA's investigation as thorough, timely, and objective.

#### SUMMARY OF INVESTIGATION:

Following an interview for a separate OPA investigation, Complainant #1 emailed an OPA investigator on April 1, 2024. Among other allegations,<sup>1</sup> Complainant #1 wrote that NE#1 and two other officers (Witness Officers #1 and #2) mischaracterized him as a misogynist, "using local media against policy to accomplish this." OPA opened an intake. On April 10, 2024, a news outlet published an article attributing comments to NE#1 that alleged that women at SPD were being "marginalized and dismissed" and arguing for "a change in leadership." The next day, Complainant #2 sent OPA an anonymous complaint alleging NE#1 violated SPD policy by speaking with the media and a web link to the April 10<sup>th</sup> article.

OPA investigated the complaints, reviewing news articles, email correspondence, and an EEO interview. Based on NE#1 being quoted in the April 10<sup>th</sup> article, OPA classified potential policy violations against her: SPD Policies 5.001-POL-10 ("Employees Will Strive to be Professional") and 1.110-POL-1(2) (prohibiting employees from releasing

<sup>1</sup> OPA referred Complainant #1's other allegations to the Seattle Department of Human Resources for investigation.



information to the media without authorization from the police chief or designee). OPA found insufficient evidence to classify potential policy violations against the witness officers for speaking with the press.

OPA reviewed multiple news articles. The first was dated February 26, 2024, and outlined complaints generally suggesting that SPD discriminated against female officers. The article stated, “SPD is openly struggling to recruit and retain women,” and that “female officers are speaking out about what they describe as an environment of casual misogyny, discrimination, and harassment.” It also discussed a report commissioned by SPD, noting, “women in the department described it as a hyper-masculine, misogynistic environment.” The article also referenced the witness officers but indicated that one declined to speak on the record, and the other did not comment.

The April 10, 2024, article covered NE#1’s allegations that the Complainant closely advised the former chief of police and that “sexual harassment and discrimination came from the top.” It discussed past complaints and included links to four other articles covering inquiries into the former police chief, a sexual discrimination lawsuit against SPD, a report concerning women in SPD, and allegations by current and former female officers about sexism and harassment at the department.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

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

The Complainants alleged that NE#1’s media comments undermined public trust in the department.

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers,” whether on or off duty. *Id.*

The First Amendment protected NE#1’s statements to the media.

As covered below, NE#1 spoke with a reporter without authorization. Moreover, the content of NE#1’s statement—characterizing SPD as misogynistic—arguably undermined public trust in the Department. But that does not end the matter.

While public employers—like SPD—may limit employee speech, civil servants—including police officers—do not forfeit their First Amendment rights. *See Pickering v. Board of Ed.*, 391 U.S. 563 (1968). Instead, a public employee’s free speech protections are evaluated under the *Pickering/Connick* test: (1) whether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff’s protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently than other members of the public; and (5) whether the state would have taken the adverse action absent the protected speech. *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir. 2009).

Without question, NE#1 was discussing an issue of significant public concern. An issue is going to be a “matter of public concern” where—looking at content, form, and context, looking to the whole record—the speech seeks to bring to light potential wrongdoing or breach of public trust, as opposed to being animated by dissatisfaction with one’s employment situation. *See Desrochers v. City of San Bernardino*, 572 F.3d 703 (9th Cir. 2009). Allegations of sexual discrimination within public employment concern “potential wrongdoing” and a “breach of public trust.” Moreover,



the issues raised by NE#1 significantly overlapped with the subjects in multiple newspaper articles, lawsuits, internal complaints, and an entire SPD-commissioned report.

Additionally, NE#1 spoke as a private citizen rather than in her official capacity. Whether an individual speaks as a private citizen versus a public employee is guided by three principles: (1) whether the employee confined their communications to the chain of command; (2) whether the employee spoke about routine issues or raised broad concerns, such as systemic abuse; and (3) whether the employee spoke in contravention of orders. *See Dahlia v. Rodriguez*, 735 F.3d 1060, 1074-75 (9th Cir. 2023) (en banc). The first two factors suggest NE#1 spoke as a private citizen, not in her capacity as an SPD employee. NE#1 neither sought permission nor violated prior orders by speaking to the media.

If NE#1 were disciplined, her protected speech would be a “substantial or motivating factor” for it. The only remaining issue is balancing the interest of NE#1 in commenting upon public concern against the public employer's interest in promoting its public service. *Pickering*, 391 U.S. at 568. Here, NE#1 commented about alleged discrimination against women at SPD. SPD and the City encourage employees to report discriminatory conduct. Before bringing this concern to the media, NE#1 made an internal complaint and raised concerns that it was mishandled. A blanket prohibition against speaking with the press, including raising concerns about matters of high public interest, would discourage others from speaking out and possibly have constitutional implications.

Accordingly, OPA recommends that this allegation be Not Sustained—Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

#### **Named Employee #1 - Allegation #2**

##### ***1.110 - Public Information 1.110-POL-1 General Policy 2. Except as May Otherwise Be Authorized by the Chief of Police or His or Her Designee, Employees Shall Not Release Information to the Media***

The Complainants alleged that NE#1 violated SPD's public information policy.

SPD policy prohibits employees from releasing “information” to the media or related outlets other than as authorized by the Chief, the Chief's designee, or specifically allowed under the policy. SPD Policy 1.110-POL-1(2).

As discussed above at Allegation #1, NE#1's statements to the media were protected by the First Amendment and, for that reason, were lawful and proper.

However, in reviewing this case, OPA observed that SPD's current public information policy appears to prohibit employees from releasing “information” to the media, SPD Policy 1.110-POL-1(2), or providing “substantive information,” SPD Policy 1.110-POL-1(4), without authorization by the Chief or policy. However, SPD's policy does not appear to limit these prohibitions to department-related business or situations where employees speak in their professional capacity. Nor does it offer guidance concerning First Amendment protections. *Compare* SPD Policy 5.001-POL (“It is not the Department's intent to interfere with or constrain the freedoms, privacy, and liberties of employees.”). Without such language, SPD's public information policy risks chilling employee speech and failing to guide employees about what speech is unprotected.

Accordingly, OPA recommends that this allegation be not sustained – Management Action (Expedited).



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- **Management Action:** SPD should review its Public Information policy to provide more explicit guidance to employees concerning their First Amendment rights and limitations when interacting with the media.

Recommended Finding: **Not Sustained – Management Action (Expedited)**