



To: Andrew Myerberg, OPA Director
CC: Grainne Perkins, OPA Assistant Director
From: Lynn Erickson, OIG Public Safety Auditor/Investigator
Date: August 31, 2021
Re: 2021OPA-0128

PARTIAL CERTIFICATION:

OIG has reviewed the Investigation for Case Number 2021OPA-0128 and is certifying the investigation as timely and objective. OIG is not certifying the investigation as thorough.

On 8/10/2021, this case was routed by OPA to OIG requesting certification. On 8/19/2021, after finding the case was not yet ready to be certified, OIG directed additional investigation pursuant to 3.29.260.D. OPA was thus provided with the opportunity to remedy identified deficiencies with the investigation and was also notified of the potential impact on full certification if not remedied.

On 8/25/2021, OPA routed the investigation back to OIG noting that the additional information requested had been provided. However, based upon a review of the OPA response, it appears only some additional information had been provided. A partial certification is being issued because upon further review, OIG has determined that OPA did not remedy the underlying deficiencies related to the potential policy violations referred to them by EEO for investigation.

Investigative Deficiencies

On 3/5/2021, a Blue Team intake submitted to OPA by the EEO Investigator included the following list of “potential non-EEO rule violations” against a Named Employee (NE), which had been brought to their attention during an EEO investigation:

1. Speaking openly in the unit about the personnel issues of subordinates including that he will file an OPA complaint for insubordination.
2. Sending emails and speaking openly in the unit about the health conditions of employees and/or their family members:
3. Making unprofessional, inappropriate and/or sexually charged comments to subordinates.
4. Several incidents of erratic behavior including berating and shouting at subordinates and intimidating them.
5. Failure to perform the assigned duties of the Background Unit Sergeant.
6. Sending inappropriate text messages to SPD employees.
7. Making untruthful statements
8. Harassment of female subordinates.
9. Harassment of male subordinates of color



10. Making threat to subordinates to file OPA complaints and/or transfer employees

Reported to the EEO Office by phone was an incident of unprofessional behavior by [NE] which occurred at a Background Unit meeting 02/26/21 . It was alleged that during this meeting [NE]:

1. [NE] stated hat [sic] he is going to be involuntarily transferred. HR confirmed that no transfer notice had been issued.
2. Announced that [WE6] would be the new unit Sergeant. HR and [WE6] confirmed they had no knowledge of this.
3. Displayed unprofessional behavior including shouting at the threatening employees during the meeting which was a cause of concern for those who reported his actions to me and HR."

The EEO Investigator also submitted a three-page document of notes from an intake interview conducted on 3/3/2021 with an EEO Complainant.

On 4/2/2021, OPA issued a classification notice with the following summary of the issues under investigation:

"On 03/05/21 a complaint was received by the Office of Police Accountability which alleged that Named Employee [NE] may have engaged in behavior deemed to be unprofessional. This alleged behavior included, but is not limited to: making unprofessional and inappropriate comments to subordinates; and several incidents of erratic behavior involving berating and shouting at subordinates and intimidating them. If the actions and behavior as alleged are determined to be true, the NE may have violated SPD's Standards and Duties Policies 5.001 POL 10 Employees Shall Strive to be Professional. It was further alleged that [NE] may also have made threats that he would file an OPA complaint for insubordination against individuals as well as that he would transfer them to other unit. These statements were alleged to have been made for an improper purpose. If the actions and behavior as alleged are determined to be true, the NE may have violated SPD's 5.001 - Standards and Duties 14. Retaliation is prohibited. It is lastly alleged that the NE may have sent inappropriate text messages to other SPD employees. If the If the [sic] actions and behavior as alleged are determined to be true the NE may have violated 12.040 - POL-3-Using Department Devices 2. Employees Use Devices in a Professional Manner.

Based upon the above, there are other potential policy violations referenced in the EEO intake information that are not addressed by the OPA classification notice. These include but are not limited to untruthful statements, failure to perform duties, speaking openly in the unit about the health conditions of employees or their family members, harassment of employees, etc. The witness statements in the OPA investigation provided supporting information regarding those other allegations. However, no clarity could be found in the IAPro file as to why they were not included in the OPA investigation, or how they were resolved.

Additionally, there are specific incidents referenced in the intake information, and which witnesses also provided supporting information regarding, that should have been covered under the description of potential policy violations included in the OPA summary in the



classification notice. However, OIG could not find full areas of questioning in the interviews with witness employees or with the Named Employee. These include but are not limited to multiple incidents of additional unprofessional statements made by the NE, inappropriate comments to subordinates, retaliation, threatening to transfer employees to other units, an additional inappropriate text message, etc.

Insight could not be gained to explain these gaps from the interviews OPA conducted because the investigator asked overly broad questions during interviews and did not refer to specific allegations or incidents, even after witnesses requested such. Below are two such examples, with emphasis added in bold.

Example 1 – WE Interview:

OPA: So the reason we are here today, because of a complaint that was received by the Office of Police Accountability from EEO alleging that [NE] may have engaged in behavior deemed to be unprofessional. The focus of today's interview will be regarding this issue. Do you have an independent recollection of what occurred?

WE: Yes.....

OPA: And what can you tell me about what has occurred within the Background Unit?

WE: Specifically?

OPA: Uh, relating to this -- to the allegation against [NE].

Guild Rep: This particular date?

OPA: According to the -- the complaint that's come through the office, it has spanned back since -- there's no specific date. It's occurred over multiple dates.

Guild Rep: Oh, okay.

WE: Uh-huh.

OPA: So it's just from what you recall --

WE: Uh-huh.

OPA: -- that has occurred within the Background Unit.

Example 2 – WE Interview:

OPA: So the reason we are here today is because of a complaint that was received by the OPA from EEO alleging that [NE] may have engaged in behavior deemed to be unprofessional. The focus of today's interview will be regarding this issue. Do you have an independent recollection of what occurred?

WE: Not specifically. You will have to give me specific --

OPA: Have you reviewed anything to refresh your memory?

WE: I have not. I received the initial complaint, but -- you had sent me, but I don't have that in front of me right now.



OPA: Okay. Then going off your memory, can you tell me what was going on within the background unit?

WE: It was -- are you looking for a specific time frame?

OPA: Regarding the allegations of unprofessionalism that you might have witnessed by [NE].

WE: That's kind of a difficult thing. I mean, if -- if you ask a -- I'm not trying to be confrontational, but if you ask a specific question, it would -- it would be helpful for me. I mean, it's -- it's kind of subjective to say, well --

OPA: Absolutely.

Guild Rep: Pardon -- pardon me. I would like to just interject. If you ask specific questions, it would be helpful for him to --

OPA: Yeah. It's okay if we just try to get a broad overview as to what you might have witnessed within that time, but -- so have you overheard any talk about OPA investigations by [NE]?

WE: As far as OPA investigations, I mean, he didn't bring up any specific investigations with me.

Yeah, I -- are you -- again -- again, I'm not -- I'm trying to find clarification regarding this? I mean, an incident? Or --

Guild Rep: [OPA], I know that [NE] used to work up in OPA, so that's a pretty broad question. Be more specific.

OPA: Has [NE] talked about any OPA investigations or employees that had worked for the department?

WE: Gosh, I -- I don't recall any specific investigations that he's brought up.

Insight could also not be gained to explain these gaps from the NE interview, or why they were not fully questioned on the allegations made against them, and which fall under the policy violations listed in the classification notice, because again, the investigator asked overly broad questions and did not refer to specific allegations or incidents. Below is but one example, with emphasis added in bold.

Example 2 – NE Interview:

OPA: So we are here today because of a complaint that was received by the OPA from EEO, which alleges that you may have engaged in behavior deemed to be unprofessional.

NE: Uh-huh.

OPA: So before we start, do you have an independent recollection of what occurred?

NE: With regard to what instance?

OPA: To the allegations listed in the complaint?

NE: With regard to the computer? With regard to -- I need -- can you ask me a specific question?



Because of the lack of specificity with the interviews and scope of the investigation, the 8/19/2021 OIG memo asked OPA to provide additional information to help explain and clarify the scope of the OPA investigation. Since there are multiple incidents in this complaint that occurred over a period of time, OIG also followed up on the OPA supervisor's direction to the investigator to "ensure that the timeline of events is mapped out succinctly" (this priority request is documented in the OPA Investigation Plan). Upon resubmission by OPA of the IAPro file to OIG, no answer to these requests were found. The 8/23/2021 OPA memo written in response to the directed additional investigation states that "OPA strived to sort out the alleged complaints" but does not otherwise point to where clarifying information is located or if it exists. Regarding the timeline of events, the Investigator did not explain why one was not used or created for the investigation and instead wrote "Due to the issues of alleged professionalism complaints that happened with the year that the NE was assigned to the Background unit, no particular complaint stands out as a higher priority than the other." Similarly, email correspondence with the OPA supervisor on 8/30/2021 did not shed light on how OPA resolved or addressed all allegations made at intake, or why the allegations classified for investigation were not fully investigated.

As previously indicated, understanding with clarity why certain incidents were not investigated by OPA after they were referred by EEO, as well as why certain incidents that did fall under the policy violations identified in OPA classification were not fully addressed during the investigation, is essential to assessing whether this investigation was thorough. At this time, because it does not appear that a full investigation was conducted into the allegations, the investigation cannot be certified on the element of thoroughness.

Therefore, based on the totality of the information provided in IAPro, the information missing from the record, and the reasons articulated above, this investigation is not being certified on the element of thoroughness.

Respectfully,

Lynn Erickson

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