



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 20, 2018

CASE NUMBER: 2016OPA-1460

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct	Not Sustained (Unfounded)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct	Not Sustained (Unfounded)

***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:**

An Anonymous Complainant alleged that the Named Employees failed to act when notified of another SPD employee's inappropriate behavior.

**ADMINISTRATIVE NOTE:**

Named Employee #2 is presently assigned to OPA as a Lieutenant. In order to ensure that there were no conflicts of interest or the appearance of favoritism or impartiality in OPA’s investigation, Named Employee #2 was walled off from OPA’s work on this matter. In addition, OPA’s analysis, deliberations, and these recommended findings were not shared with him. Moreover, given that Named Employee #2 is within my chain of command at OPA, I have forwarded my recommended findings to the Chief of Police to determine whether the chain concurs.

Lastly, I note at the outset that OPA did not conduct any interviews in this case. This was due to OPA’s review of both the EEO investigation and the criminal investigation, including the more than 50 interviews conducted over both investigations. Both myself and the investigator assigned to this case believed that these investigations and the associated interviews were commendably thorough and, based on the facts illuminated therein, provided sufficient information to make a determination concerning the allegations made against the Named Employees. For these reasons, while I understand the OPA Auditor’s concerns regarding the thoroughness and objectivity of OPA’s investigation, I respectfully disagree with him.



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**ANALYSIS AND CONCLUSIONS:**

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

***5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct***

An Anonymous Complainant submitted a letter to OPA in which it was alleged that the Named Employees were aware of ongoing serious misconduct engaged in by a former SPD employee assigned to the Training Unit (referred to herein as the “subject employee”). The Anonymous Complainant asserted that this purported failure to supervise and to report serious misconduct violated policy.

In 2016, the Named Employees were supervisors in SPD’s Training Unit. They were the direct supervisors of the subject employee, who was alleged to have engaged in ongoing misconduct, much of it serious. The allegation against the Named Employees was that they were aware of this misconduct but that they failed to report it as required by policy.

The subject employee, who is no longer employed by the Department, was alleged to have engaged in the following conduct: unconsented or unwelcomed physical and sexual touching; inappropriate sexual comments; inappropriate comments about sexual orientation; inappropriate racial comments; intimidation; and abuse of his position. Several SPD employees notified the Department of this conduct. These allegations were criminally referred and investigated, and the subject employee was charged in October of 2016 with three counts of assault in the fourth degree against three of his coworkers, two of which carried a sexual motivation enhancement. In October of 2017, the subject employee pleaded guilty to one count of assault in the fourth degree, naming all victims in this count, and he admitted that he touched three of his coworkers “in an offensive manner and [that] the touching was unwanted.” Further, in his plea, the subject employee recognized that his actions were unlawful. The Department also initiated an internal EEO investigation into this matter. The subject employee, as well as the Named Employees, were investigated by EEO. The EEO investigation was extremely thorough and included interviews of thirty-six victims and witnesses – including the subject employee and the Named Employees, some of whom were interviewed multiple times. The investigation resulted in a 126-page report that clearly and comprehensively set forth the inappropriate conduct engaged in by NE#1. The conclusions of the EEO investigation were signed off by the chain of command and the recommendation of the chain was that the subject employee should have been terminated. This recommendation was made by the chain in January of 2018, after NE#1 had already resigned from the Department. OPA also investigated the subject’s conduct under case number 2016OPA-1016 and recommended sustaining all of the allegations against him in that matter.

With regard to the Named Employees, EEO investigated the question of whether they were aware of the subject employee’s ongoing misconduct. EEO determined that the Named Employees were joint supervisors of the subject employee during the time period in question. Named Employee #1 (NE#1) supervised him around one third of the time and Named Employee #2 (NE#2) supervised him for the other two thirds of the time.

NE#1 told EEO that he was unaware of reportable misconduct engaged in by the subject employee. NE#1 did know that the subject employee hugged other employees and NE#1 was generally aware that hugging and “butt slapping” occurred in the Training Unit. NE#1 was also aware that the subject employee cursed in the office; however, NE#1 stated that he did not hear NE#1 make any “off color” (presumably racist and/or sexually oriented) comments. NE#1



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explained that he did counsel the subject employee about some unprofessional behavior. Specifically, NE#1 discussed with him his cursing in the office and counseled him to be more professional in the “check-in” process (when entering the Training Annex for training, officers are submitted to a pat-down).

NE#2 explained that when the subject employee returned to the Training Unit after an administrative reassignment, NE#2 spoke with him to set clear expectations for the subject employee’s conduct. NE#2 stated that he told the subject employee that his past EEO case (from 2009) was “not relevant” given that it was not sustained, but that the expectation was that the subject employee would conduct himself appropriately. NE#2 further advised him that “work was not a place to find people to date.” NE#2 stated that he was aware at some point prior to 2013 that several Training Unit employees, including the subject employee, had engaged in some unprofessional conduct. Specifically, these officers told NE#2 that “they had been a little unprofessional dealing with some students, a little too much horseplay, joking around, wise-cracking during setting up for training or something.” NE#2 stated that he did not recall the comments made by the officers being racial or sexual in nature. NE#2 counseled them on this behavior and instructed them to be more professional in the future. While NE#2 recognized that it was normal to joke around in the workplace, he told the officers to not do so in front of student officers and to stay within SPD policies. NE#2 indicated that he likely told the officers to inform a Lieutenant of their conduct. When the subject employee was asked about this conversation by the EEO investigator, he relayed a similar version of events to that described by NE#2. None of the officers (all of whom were interviewed during the EEO investigation) recalled speaking with the Lieutenant and there was no documentation of this conversation.

NE#2 recounted one occasion when he heard the subject employee and another employee loudly joking around and he directed them to knock it off. He did not remember what they were joking about. NE#2 also stated that the subject told him that another Training Unit employee was “being very friendly with him, had sent him some pictures and wanted to have sex with him.” NE#2 told the subject employee that he had previously conveyed his view of this type of relationship, but he recognized that both individuals were consenting adults and there was no policy precluding a sexual relationship between them. NE#2 stated that he was never aware that the subject employee had shown photographs of the female employee to co-workers. NE#2 also indicated that he observed the subject employee once hug this female employee, but he stated that this did not concern him at that time.

NE#2 told the EEO investigator that he was aware that “butt slapping” and “cup checking” occurred in the Defensive Tactics group in the Training Unit, but did not believe that to be a routine practice. He also stated that the subject employee was not part of this group. NE#2 stated that he told the officers in that group to “dial back” this activity.

Lastly, NE#2 explained that, at one point, he heard the subject employee joke about “what a big penis he had” and NE#2 told him to “knock it off.” NE#2 said that he did not hear from any source that this type of joking continued after that conversation. NE#2 also heard the subject employee refer to himself as a “predator” and told him that this was not an appropriate thing to say in the Training Unit. NE#2 told the EEO investigator that he did not play a part in the creation of this nickname as the subject had contended.

With regard to the allegations that the Named Employees failed to report serious misconduct – specifically, “continuing activity inappropriate for the workplace and in violation of SPD harassment policy,” the EEO report concluded that the evidence was insufficient to establish these violations.



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SPD Policy 5.002-POL-6 requires that SPD employees who learn of possible misconduct report that misconduct. Minor misconduct must be reported to a supervisor, while serious misconduct must be referred to both a supervisor and OPA. SPD Policy 5.002-POL-5 defines minor and serious misconduct. Under this policy, the subject employee's conduct that was administratively and criminally investigated constituted serious misconduct. As such, if the Named Employees were aware of this misconduct, their failure to report it would have been in violation of policy.

From my review of the EEO investigation outcome and the associated interviews, as well as criminal investigation and the associated interviews, I find no evidence indicating that the Named Employees were aware that the subject employee had engaged in serious misconduct. At most, the Named Employees were aware that the subject employee had engaged in unprofessional conduct, which they were permitted to handle as supervisors and were not necessarily required to report to OPA. The three employees who were the victims for the purpose of the criminal investigation and prosecution were not interviewed by either EEO or OPA; however, they were interviewed during the criminal investigation and, in reaching my determination, I reviewed those interviews. These interviews similarly provided no information suggesting that either NE#1 or NE#2 was aware of the subject employee engaging in serious misconduct. Given the above, I agree with the Not Sustained findings issued as a result of the EEO investigation that were approved by the chain of command. I similarly recommend here that the allegations against the Named Employees be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

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

***5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct***

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**