



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 22, 2017

CASE NUMBER: 2017OPA-0511

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.125-POL 2 - Employee Personal Use of Social Media 1. Employees Shall Not Post Speech That Negatively Impacts the Department's Ability to Serve the Public	Sustained
# 2	5.125-POL 2 - Employee Personal Use of Social Media 2. Employees May Not Post Privileged Information or Represent the Department	Sustained
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
# 4	1.110 - Media Relations VII. Release of information to the media 5. Juveniles	Not Sustained (Management Action)

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 Complainant alleged that Named Employee #1 (NE#1) may have violated SPD policies when he posted a message on his personal Facebook page on March 31, 2017, which concerned an open investigation, included confidential criminal information, and identified a minor.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.125-POL 2 - Employee Personal Use of Social Media 1. Employees Shall Not Post Speech That Negatively Impacts the Department's Ability to Serve the Public

On May 16, 2017, an anonymous individual placed screenshots of NE#1’s personal Facebook page under a Lieutenant’s door. (See Captain Note to OPA, dated May 17, 2017.) These screenshots contained Facebook posts made by NE#1 on his personal Facebook page on March 31, 2017. (See Captain Note.) The posts concerned the juvenile child of the subject of an arrest warrant that had recently been executed by SPD personnel. (See Facebook Posts.) The posts specifically indicated that a warrant had been served at a private residence and that two SPD teams were present in the residence to execute the warrant. (See *id.*) The posts referenced the juvenile child of the subject of the warrant by name and age, described the items seized from the residence, conveyed information concerning the criminal history and character of the subject, and described specifics of the juvenile’s familial relationships. (See *id.*) The posts further asked those reading to keep the juvenile child “in your prayers.” (*id.*)



The Captain referred these posts to OPA. (*See* Captain Note.) In a note to OPA, dated May 17, 2017, the Captain indicated that these posts referenced a case that the Major Crimes Task Force was working and had served warrants on. (*See id.*) The Captain further stated that the investigation was “open” and the information at issue was “confidential criminal information.” (*Id.*) The Captain indicated that the posting “identified a minor.” (*Id.*)

OPA interviewed NE#1 concerning these posts on June 30, 2017. NE#1 indicated that, at that time, he had approximately 1,000 Facebook friends with access to his posts. (NE#1 OPA Interview, at p. 2.) Included among these individuals were other law enforcement officers (both from Seattle and from other jurisdictions), civilians, and at least two members of the media (both reporters). (*Id.* at pp. 2-3.) NE#1 admitted that he only knew of the juvenile and only had access to information concerning the juvenile and his background based on NE#1’s employment with SPD. (*Id.* at pp. 3-4.) NE#1 further agreed that the information associated with the warrant and the case were confidential. (*See id.* at pp. 3-8.) NE#1 made the Facebook posts on the night that the warrant was executed (on March 31). (*Id.* at p. 5.) NE#1 asserted that he believed the investigation was “closed with the service of the search warrant,” but stated that he did not book the subject and file the case until the next day. (*Id.*)

NE#1 recognized that the information he disclosed was confidential and should not have been disclosed. (*See id.* at pp. 3-8.) NE#1 stated, however, that he made the postings in an effort to have people pray for the juvenile. (*Id.* at p. 5.) Moreover, while this is not substantiated by evidence in OPA’s investigation file, NE#1 stated that he believed that his conduct was permissible based on the fact that the Deputy Chief commented on the post and indicated that she was also praying for the juvenile. (*Id.* at pp. 9-10.)

As a starting point, I do not believe that NE#1 was necessarily acting in bad faith here. I credit his assertion that he was troubled by the challenges that this juvenile faced and that he was sincerely seeking prayers for this individual. Moreover, I commend NE#1 for recognizing, even if after the fact, that his conduct was inappropriate. However, that does not excuse this conduct, which caused a violation of policy and the undermining of public trust.

Manual Policy 5.125-POL-2(1), which concerns SPD employees’ personal use of social media, provides that “[e]mployees may express themselves as private citizens on social media sites as long as employees do not...[o]therwise violate any law or SPD policy.” As explained more fully below, in these posts NE#1 divulged confidential information that he was prohibited from disclosing both under law (predominantly the juvenile information) and SPD policy. Accordingly, the substance of these posts violated SPD policy.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.125-POL 2 - Employee Personal Use of Social Media 2. Employees May Not Post Privileged Information or Represent the Department

Manual Policy 5.125-POL-2(2) provides that “[e]mployees shall not post or otherwise disseminate any confidential information they have access to as a result of their employment with the Department.” OPA’s investigation yielded the conclusions that the information posted by NE#1 was confidential (based both on the content of the information and Captain Clark’s assertion) and was available to NE#1 solely due to his employment by SPD. NE#1 acknowledged



this at his OPA interview. (See NE#1 OPA Interview, at pp. 3-8.) Accordingly, the disclosure of this information violated SPD policy.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

Manual Policy 5.001(9) states that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” This includes making statements that undermine “the effectiveness of the Department...” (5.001(9).)

By disclosing confidential information that NE#1 had access to solely based on his employment as an SPD employee, NE#1 engaged in behavior that undermined the public trust. The public should be secure in the knowledge that such sensitive information will not be disclosed unless legally required and, in such cases, will be disclosed through official channels and in accordance with law. This is particularly the case where the information concerns a juvenile. Here, however, NE#1 unilaterally decided what information should be released and how and when to release it. This was in violation of SPD policy.

Moreover, the release of this information could have further undermined the effectiveness of the Department by potentially negatively impacting the ongoing criminal case. The information was released prior to the subject being booked and prior to the case being filed. As such, some of the details of the case were made public prior to it being referred to the prosecutor. This could have resulted in harm including, but not limited to: a danger to the subject’s family; an impact on investigations concerning possible co-conspirators; impeachment evidence against NE#1 and other officers involved in the execution of the warrant; and/or the tainting of a jury pool. Again, these are the potential harms that the policy is purposed to protect against.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

1.110 - Media Relations VII. Release of information to the media 5. Juveniles

At his OPA interview, NE#1 noted that two reporters were Facebook friends and had access to the posts in question. (NE#1 OPA Interview, at pp. 2-3.) OPA was unable to determine whether these individuals did, in fact, review these posts.

Manual Policy 1.110(VII) concerns the release of information to the media. This policy specifically prohibits the release of much of the information contained in the Facebook posts, including, but not limited to, information concerning the juvenile, his parents and his legal guardian (see 1.110(VII)(4)), statements about a suspect’s criminal record, character and guilt or innocence. (See 1.110(VII)(5).)



Even though NE#1 has Facebook friends that he knows are active members of the media and who he knows have access to his page, it is unclear whether his posting of sensitive and confidential material constituted a “release” to the media as contemplated by the policy. This is the case even though he clearly failed to safeguard this information and was, at the very least, negligent in his dissemination of it. The media had ready access to this information and it would have been simple for a member of the media to do a public records request for warrants executed at or around the time of the posting and, thus, conclusively determine the identity of the juvenile and his family and the specifics of the case.

However, given that this conduct is not explicitly captured by the policy, I cannot recommend that this finding be Sustained. That being said, I believe that a Management Action recommendation is appropriate.

- **Management Action Recommendation:** I recommend that SPD consider whether this policy is intended to capture the posting of law enforcement information on social media where that information is then readily available to the media. If this is the intent of the policy, the policy should be clarified so that it explicitly captures this conduct and provides notice to officers that such behavior is inappropriate. If the Department does not believe that such conduct need be captured by this policy or believes that it is already captured by another policy, the Department should indicate that in writing to OPA along with its reasoning for that determination.

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