



## **CLOSED CASE SUMMARY**

ISSUED DATE:      AUGUST 1, 2019

CASE NUMBER:     2018OPA-1006

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 3	5.001 - Standards and Duties 14. Retaliation is prohibited	Sustained
# 4	5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Sustained

**Imposed Discipline**

Resigned Prior to Proposed DAR - Termination
--

***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:**

It was alleged that the Named Employee violated a number of SPD and City policies when he anonymously sent a harassing communication to the Complainant.

**SUMMARY OF INVESTIGATION:**

The Complainant, an officer employed by SPD, stated that he received a sealed large envelope at his place of work. The envelope was addressed to the Complainant and referred to him as the “SJC Receptionist.” The Complainant’s name and the reference to him as the receptionist was typewritten on a label that was taped to the envelope. Tape had also been used to seal the envelope. Inside of the envelope was a job posting for the Department’s Telephone Reporting Unit (TRU). That job posting had previously been sent out via a Department-wide email. However, the recipient of the emailed posting that was mailed to the Complainant had been apparently purposefully removed.

In a memorandum submitted to his supervisor, the Complainant alleged that he believed that this mailing was insulting for two main reasons. First, it referred to him as a receptionist. While the Complainant did, at times, work at the front desk of the Seattle Justice Center (SJC), he stated that he was not a receptionist and that this was universally understood. Second, he believed that the inclusion of the TRU posting was pejorative towards him as, in his opinion, this suggested that he was not a competent police officer. The Complainant wrote to his supervisor that he believed that the mailing of this posting to him was “part of a larger pattern of harassment.” Notably, prior to his receipt of the envelope, the Complainant reported to his chain of command that he had been harassed by Named Employee #1 (NE#1). The Complainant informed his supervisor that he retained the original envelope and that he believed that it might be of evidentiary value. The Complainant specifically asserted that there might be latent fingerprints on the tape used on the envelope that could be used to identify the sender.

This matter was forwarded to OPA by the Complainant's supervisor. OPA then initiated this investigation. As part of its investigation, OPA reviewed the OPA complaints and Frontline Investigations concerning the Complainant and NE#1. In the first OPA complaint – 2017OPA-0681, NE#1 initiated an OPA referral based on his belief that the Complainant left work two and a half hours early on July 7, 2017. Moreover, NE#1 filed the complaint after raising the issue with the Complainant's supervisor, instead of letting the supervisor investigate and address the matter and then make a referral if the supervisor deemed it necessary. This referral was returned by OPA to the chain of command to be handled as a Frontline Investigation. In the second OPA complaint – 2017OPA-0717, NE#1 initiated another OPA referral in which he alleged that the Complainant threatened him. The threat occurred more than a month before the complaint was filed. Purportedly, the Complainant turned to face NE#1 while holding scissors in his hand when NE#1 was approaching him to discuss his work attendance. Similar to the other complaint, NE#1 discussed this matter with another supervisor but then decided to make a referral. OPA also referred this matter back as a Frontline Investigation. The assigned supervisor deemed the allegations of the threat and the theft of time to be unfounded.

After these two cases were resolved, the Complainant initiated his own OPA complaint – 2017OPA-1282, in which he alleged that he was being harassed, bullied, and subjected to undue scrutiny by NE#1. He further alleged that NE#1 had been dishonest in the prior cases. OPA again sent this matter back to the chain of command for the involved parties' unit. The unit supervisor counseled NE#1 concerning this matter and documented the counseling in a PAS entry. The PAS entry set forth several expectations, including that NE#1: "Treats others professionally and with respect at all times"; "Focus[es] supervision on those within his span of control..."; "Be equitable in addressing similar conduct issues involving personnel he is supervising, and consider perceptions of his supervisory actions"; and "Make[s] sure statements and documents are accurate." The PAS entry also directed NE#1 to exhaust other non-disciplinary remedies for performance issues prior to making an OPA referral, to counsel subordinate employees in private, and to "[s]et the example for professionalism in the workplace." After this matter was resolved, NE#1 left the unit. He was later promoted to Lieutenant and was assigned to a Patrol position in the North Precinct at the time when the anonymous envelope was sent to the Complainant at the SJC. At that point, he and the Complainant had not worked together in the same unit for over a year.

As part of its investigation, OPA had the envelope subjected to a fingerprint analysis. OPA was informed by an employee of the Latent Print Unit (LPU) that latent prints were identified that belonged to NE#1. The employee, who is referred to here as LPU Employee #1, stated that latent prints were found on the underside of the tape that had been used on the envelope. Given this discovery, OPA identified NE#1 as a named employee in this case and sent him the requisite contractual notices. In response to one of those notices, NE#1 sent an email to the assigned OPA investigator. In that email, NE#1 referred to the prior complaint that was made against him by the Complainant. He asserted that the complaint had already been resolved by the chain of command. NE#1 further wrote the following: "The allegation that I sent [the Complainant] a letter suggesting he apply to TRU is frivolous and illogical. I have nothing to gain by him working at TRU or leaving APRS. I would like to request an expedited review."

NE#1 was sent an interview notice by OPA on December 21, 2018, at approximately 09:52 hours. NE#1 called OPA at approximately 12:48 hours that same day concerning his scheduled interview. Approximately 30 minutes later, at 13:15 hours, the LPU received a call on its main line from a phone number with a Seattle area code. The male caller, who did not identify himself, asked the following: "Hey, for OPA investigations do you guys do a latent print evaluation?" The employee who answered the phone, who is referred to here as LPU Employee #2, stated in response: "Yes, in certain occasions." LPU Employee #2 stated that the caller then hung up the phone without saying anything else. LPU Employee #2 did not think anything of the call at the time, but then remembered the open OPA investigation into the envelope and reported the conversation to his supervisor who then contacted OPA.

OPA contacted Seattle IT to obtain records of the incoming calls received by the LPU during the timeframe provided by LPU Employee #2. OPA was provided with the records and determined that, at approximately 13:04 hours, the LPU main line received a call from a Seattle cell phone number that lasted 54 seconds.

OPA then interviewed NE#1. NE#1 stated that he worked in the Audit, Policy, and Research Section (APRS) with the Complainant for around five and a half years. NE#1 indicated that he was assigned to the policy team and the Complainant was assigned to the audit team. NE#1 and the Complainant were both officers in that unit for two years,

but NE#1 was later promoted to Sergeant and began supervising the policy team. He stayed in that role for his remaining three and a half years in the unit. The Complainant did not become his direct report at that time, but NE#1 occasionally had supervisory responsibility over the Complainant. NE#1 said that his relationship with the Complainant was “cordial” when they were peers.

When asked whether he sent the anonymous envelope to the Complainant, NE#1 denied doing so. He further stated that he had never seen the envelope in question. NE#1 was then asked by OPA how his latent prints got on an envelope that he did not send and never saw. NE#1 told OPA that his prints were all over the APRS office. OPA then told NE#1 that his prints were found on the tape used on the envelope. NE#1 stated that he shared an office with the Complainant for two years and that the Complainant was “always doing things like messing with, moving stuff around and messing desks.” NE#1 further stated concerning the Complainant: “If he has tape that my fingerprints are on, that totally doesn’t surprise me.” OPA began to ask a follow-up question of NE#1, but NE#1’s Guild representative requested a break.

NE#1 was asked whether he ever filed an anonymous OPA complaint against the Complainant for time theft. OPA noted to NE#1 that the allegations in that complaint – investigated under 2018OPA-0997 – were very similar to the allegations he previously made against the Complainant. In response to OPA’s question concerning whether he filed that complaint, NE#1 responded: “Not that I recall, no.” Notably, this complaint was made just over three months prior to NE#1’s OPA interview and NE#1 could not conclusively foreclose that he was the anonymous complainant.

NE#1 was also asked about the email he sent stating that the Complainant’s allegations against him were frivolous. He asserted that his intent in writing that email was to explain his belief that he thought this OPA investigation was duplicative to the prior Frontline Investigation.

NE#1 was further asked whether he called the LPU to ask about this case. NE#1 stated that he did not. He was then questioned about the phone number that called the LPU at 13:04 hours on December 21 and which was associated with the questions from a male caller concerning the LPU’s conducting fingerprint analysis for OPA investigations. NE#1 acknowledged that this was his personal cell phone number. When asked why there was a call from his personal cell phone to the LPU, NE#1 stated: “I don’t know. Honestly. I don’t recall.” When pressed on this issue, he told OPA that he had no explanation why there was a call to the LPU from his personal cell phone. NE#1 confirmed that he had both a desk phone and a work-issued cell phone at the time.

After the investigation concluded, OPA sent NE#1 a contractual notice concerning a new investigation into his potential dishonesty to OPA. OPA further sent NE#1 a notice to interview him in this new case. This interview was postponed by NE#1’s Guild representative on February 19, 2019. On March 8, 2019, OPA was informed by SPD Human Resources that NE#1 had resigned from the Department. NE#1 did not appear for an interview concerning the dishonesty allegation prior to his resignation.

OPA made several further attempts to contact NE#1 to schedule him for an interview. In a March 31, 2019 email, which was responsive to a March 29, 2019 request for his interview availability, NE#1 wrote to OPA: “I will follow-up with you when I have availability to schedule an interview.” When pressed as to what he meant by that, NE#1 stated in a subsequent email sent that same day: “I am sorry about the ambiguity; that was not my intention. Due to the rigors of my new occupation and the needs of my family, I am currently unavailable to schedule an interview. I will let you know as soon as that changes.” On April 4, 2019, OPA sent another email to NE#1 asking him to clarify whether he would make himself available for an interview. NE#1 responded: “I remain unavailable for an interview. I will simply decline to participate.”

OPA lastly interviewed both LPU Employee #1 and LPU Employee #2. LPU Employee #1 explained how she retrieved prints from the tape on the envelope and what steps she took to ensure that the evidence was not damaged. LPU Employee #1 explained that when she ran the prints, she received a hit for NE#1 in the King County Regional AFIS Database. She stated that she documented her findings in a report that she sent to OPA. LPU Employee #1 opined that it would have been “difficult” for the prints to have been left over from when NE#1 worked in APRS a year prior to the sending of the envelope. LPU Employee #1 explained the following:

What I can say is, and you can see from that report, it's separate sections of tape, and it's the index fingers, as if you would pull tape off, hold it, and put it down. Two separate pieces of tape have both index fingers on each side, so you would have had to break off the tape and leave your prints there, and then break off the tape again and leave your prints there to record that, and then for that to not get stuck to something else and damage the prints over time...It's difficult.

When asked about the potential that the Complainant removed the tape from another surface and applied it to the envelope, LPU Employee #1 responded: "there's always a potential that you could remove tape from an item and place it on another item. I would expect, if that were the case, to see fibers from another item stuck in the adhesive of that tape." However, LPU Employee #1 confirmed that she did not see evidence of such fibers on the tape that she examined. She further indicated that she did not see "bumps" in the tape suggesting that it had been reapplied.

LPU Employee #2 told OPA that it was abnormal for him to receive a call from a Lieutenant who was not his supervisor. He stated that the sole exception was when a Lieutenant would call to approve the LPU to respond to a crime scene. LPU Employee #2 told OPA that he had never received a call similar to the one that occurred in this case. He stated that, shortly after getting off the phone, "red flags" started to "go off" for him. He specifically referenced that receiving the call shortly after conducting a fingerprint analysis for OPA, which was in and of itself rare, was "too weird to be a coincidence." He also stated that the caller's failure to identify himself was a red flag. However, LPU Employee #2 could not identify NE#1's voice as belonging to the male caller.

## **ANALYSIS AND CONCLUSIONS:**

### **Named Employee #1 - Allegations #1**

#### ***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

Based on OPA's review of the totality of the evidence in this case, OPA finds it abundantly clear that NE#1 was the anonymous sender of the envelope containing the job posting. OPA further concludes that NE#1 did so to harass and retaliate against the Complainant.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. Even though OPA finds that NE#1 sent the envelope to the Complainant and that this conduct was improper, this did not constitute a criminal act.

However, this act was in violation of multiple SPD policies, as well as contrary to City of Seattle Personnel Rule 1.13. That anti-harassment rule states the following: "Harassment of an individual is illegal conduct and a violation of this Rule. The City of Seattle will not tolerate harassment of its employees by co-workers, supervisors, managers, officers of the City or from non-employees conducting business with the City." For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

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

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

As discussed above, OPA concludes that NE#1 printed out a job posting from a Department email, anonymized it, wrote a disparaging message on the posting, created an insulting address block, and then taped the address to the envelope and taped the envelope shut. He then sent the envelope through Department mail to the Complainant. He did so with the express purpose of harassing and retaliating against the Complainant.

Indeed, this appears to be part of an ongoing course of conduct, which included two unfounded OPA complaints, the targeting of the Complainant who NE#1 did not supervise, and potentially the filing of the anonymous OPA complaint in 2018OPA-0997.

When faced with this investigation, NE#1 did not immediately accept responsibility for his actions. Instead, he sent an email to OPA denying that he engaged in the conduct alleged. Moreover, even after he called the LPU from his personal cell phone – which he at first refuted and then could not explain – he still did not accept responsibility for his actions. He continued to deny that he sent the envelope.

Even when OPA informed him that his fingerprints were on the tape used on the envelope, he still did not accept responsibility. Instead, he continued the charade of denying that he was the sender and proffered the ridiculous defense that the Complainant kept tape with NE#1's fingerprints for over one year, used it to seal the envelope, and then mailed the envelope to himself, all for the purpose of framing NE#1. However, this theory is not only inconsistent with the forensic evidence and the opinion of LPU Employee #1, but also defies logic.

Lastly, when confronted with totality of the evidence in this case, which conclusively proved his inappropriate behavior, he still failed to accept responsibility. Instead, he resigned and declined to participate in any further OPA interviews. This is not the behavior of someone who is innocent of the allegations against him. Indeed, it is further evidence that NE#1 engaged in serious misconduct.

Due to some unknown reason, NE#1 threw away a career at SPD. While he couched his departure as a resignation, make no mistake, NE#1 left the employment of the Department due to this case and the subsequent pending investigation into his dishonesty. And for what? To get back at the Complainant for some unknown slight or personality conflict? Not only was this act childish and unprofessional, but it was also unbecoming of a sworn officer and the oath of office NE#1 took. Indeed, this one thoughtless act serves to undermine NE#1's years of service at SPD. It further undermines the trust placed in him not only by the Complainant, but also by the community and the Department.

For the reasons set forth above, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

### **Named Employee #1 - Allegation #3**

#### ***5.001 - Standards and Duties 14. Retaliation is prohibited***

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

At his OPA interview, NE#1 acknowledged that, had he anonymously sent the envelope and the insulting message therein to the Complainant, it would have constituted retaliation under SPD policy. OPA agrees. OPA further notes that, at his OPA interview, NE#1 stated that he believed that he had been passed over for promotion based, in part, of his ongoing conflicts with the Complainant. In OPA's perspective, this provides more evidence of NE#1's motive to retaliate against the Complainant.

As OPA determined that NE#1 did, in fact, do so, OPA finds that he acted contrary to this policy when he engaged in retaliation against the Complainant. Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegations #4**

***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

SPD Policy 5.001-POL-15 requires that Department employees obey any lawful order issued by a superior officer. The failure to do so constitutes insubordination.

As outlined in the Summary of Investigation, NE#1 received a PAS entry and counseling from a supervisor concerning his prior conduct towards the Complainant. The supervisor told him to treat others – most notably the Complainant, with respect and professionalism.

When asked about this counseling and whether, if true, his sending of the anonymous envelope would have violated this lawful order from the supervisor, NE#1 opined that, as he no longer worked for the supervisor, he was no longer bound by that order.

I disagree with NE#1's assertion in this regard. I do not believe that, just nine months after this counseling and direction was given, the order that NE#1 not engage in inappropriate and unprofessional conduct was null and void simply because NE#1 no longer worked for his prior supervisor. Moreover, that prior supervisor is a Captain, NE#1, at the time of his resignation, was a Lieutenant. As such, NE#1 was still subordinate to the supervisor even if not directly assigned to him.

As such, I find that when NE#1 sent the anonymous envelope to the Complainant with the intent of harassing him, NE#1 acted contrary to a lawful order given by a supervisor. He, thus, engaged in insubordination in violation of policy. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**