



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 13, 2017

CASE NUMBER: 2016OPA-1016

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
# 3	5.001 - Standards and Duties 12. Employees Shall Not Use Their Position or Authority for Personal Gain	Sustained
Imposed Discipline		
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:**

The Complainant alleged that the Named Employee may have violated the law and engaged in unprofessional and unlawful conduct with various other SPD employees while a trainer in the Training Unit. It was also alleged that the Named Employee used his position for personal gain as it appeared that the Named Employee used his role as a supervisor to gain compliance with his inappropriate behavior and to ensure that no one would report his misconduct.

**ANALYSIS AND CONCLUSIONS:**

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

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

The facts of this case are set forth more fully in the Case Summary, the EEO investigation conducted by the Department, and the criminal investigation into Named Employee #1’s (NE#1) actions and the resulting prosecution. However, by way of background, in August 2016, four SPD employees came forward and alleged that NE#1 had “engaged in unconsented or unwelcomed physical and sexual touching, made inappropriate sexual comments, made inappropriate comments about sexual orientation, made inappropriate racial comments, engaged in intimidating conduct, abused his position, and bypassed security measures.” (EEO Investigation Outcome, at p. 1.)

These allegations were investigated by the Department’s Sexual Assault Unit and were subsequently referred to the King County Prosecuting Attorney’s Office (KCPAO). In October 2016, the KCPAO filed charges that NE#1 had “assaulted three of the complainant employees...in the fourth degree. Two of the counts were charged with the aggravating factor that [NE#1] committed the crimes with sexual motivation.” (*Id.*) In October 2017, NE#1 “pled guilty to one count of assault in the fourth degree naming all victims in one count.” (*Id.*) Moreover, during his plea colloquy, NE#1 admitted touching all three of the employee complainants “in an offensive manner and



[that] the touching was unwanted.” (*Id.*) During his plea colloquy, NE#1 “told the court he understood these actions were unlawful.” (*Id.*) NE#1 was sentenced in November 2017 and received 12 months of suspended jail time and 12 months of probation. (*Id.*)

After NE#1’s plea was entered, the Department conducted an EEO investigation into this matter. (*See id.*) The EEO investigation was extremely thorough and included interviews of thirty-six victims and witnesses, some of whom were interviewed multiple times. (*See id.*) The investigation resulted in a 126-page report that clearly and comprehensively set forth the inappropriate conduct engaged in by NE#1. (*See id.*) The conclusions of the EEO investigation were signed off by the chain of command and the recommendation of the chain was that NE#1 should be terminated. (*See EEO Investigation Supervisory Review and Approval.*) This recommendation was made by the chain in January 2018, after NE#1 had already resigned. (*See id.*)

After these proceedings were completed, OPA conducted and finalized its investigation into this matter. OPA reviewed the documentation amassed in both the EEO and criminal investigations. OPA attempted to interview NE#1 and tried to contact him on multiple occasions in order to set up this interview. NE#1 did not respond to OPA and was thus not interviewed as part of this case.

SPD Policy 5.001-POL-2 requires that Department employees comply with laws, City policies and Department policies. Based on my review of the Case Summary generated by the OPA investigator assigned to this case, as well as the EEO and criminal investigations, I find that NE#1 engaged in a long course of conduct that was unlawful and that violated a number of Department policies. I concur with the findings issued by the Department in the EEO investigation. As such, I find that he violated this policy. NE#1’s plea agreement and colloquy, which he claimed were untruthful during his EEO investigation, are conclusive proof that he violated this policy by engaging in unlawful and inappropriate conduct. I note, however, that even had NE#1 not pleaded guilty, I still would have found that there was sufficient information to conclude, by a preponderance of the evidence, that NE#1’s conduct was contrary to policy. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

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

SPD Policy 5.001-POL-9 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-9.)

As discussed above, the EEO Investigation detailed ongoing inappropriate and unlawful conduct by NE#1. Even apart from the unconsented and unwanted physical and sexual touching engaging in by NE#1, the EEO investigation further proved that NE#1 made: “inappropriate sexual comments”; “unwelcome or other inappropriate racial comments”; “unwelcome or otherwise inappropriate sexual orientation comments”; and other myriad inappropriate conduct. (*See EEO Investigation Outcome*, pp. 64-97.)



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The unwanted and unconsented to physical and sexual touching alone would establish a lack of professionalism on NE#1's part. The incontrovertible documentation of his inappropriate comments further proves such a finding well beyond a preponderance of the evidence. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**