



## CLOSED CASE SUMMARY

ISSUED DATE:      OCTOBER 19, 2018

CASE NUMBER:     2018OPA-0065

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
# 2	5.001 - Standards and Duties 18. Employees Must Disclose Conflicts	Not Sustained (Unfounded)

**Imposed Discipline**

1 Day Suspension & Retraining
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**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	10.020 - Physical Security of Police Facilities III. Visitors	Not Sustained (Inconclusive)

***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 Named Employee #1 engaged in unprofessional behavior during a meeting he held at the Mounted Unit. It was further alleged that Named Employee #1 may have had a conflict of interest that he did not report. Lastly, it was alleged that an Unknown Employee, who was not assigned to the Mounted Unit, had improperly ridden and injured one of the unit’s horses.

### STATEMENT OF FACTS:

A Department lieutenant was informed by an officer in SPD’s Mounted Unit that one of their horses had suffered an injury and was unable to be deployed. The officer told the lieutenant that the horse did not appear to be injured when placed in the stable the previous evening. The officer asserted that someone who had been previously assigned to the Mounted Unit was riding the horses after hours and had caused the injury. The officer also had reported these beliefs to a sergeant. The lieutenant interviewed two officers formerly assigned to the Mounted Unit and both asserted that they had not been at the unit in months. During his inquiry into this matter, an officer informed the lieutenant that Named Employee #1 (NE#1) had made inappropriate comments during a meeting held at the Mounted Unit. Three other officers also assigned to the unit later confirmed to the Lieutenant that NE#1 had openly spoken about an open EEO investigation (in which one of those officers was the complainant) and that NE#1 told them that their conversation was covered by a “code of silence” and that the meeting should not be mentioned to anyone.

The officer who initially reported this matter to the lieutenant also submitted a memorandum to EEO detailing what occurred. He wrote that NE#1 came to the Mounted Unit and held an impromptu meeting. The officer recalled that, prior to the meeting, NE#1 told him that if he spoke about the meeting NE#1 would “kill the horses.” The officer



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reported that he told NE#1 to: “kill [him] and leave the horses alone.” However, NE#1 responded: “No, I’ll kill the horses.” During that meeting, NE#1 discussed an ongoing EEO matter that had been brought by a female officer assigned to the Mounted Unit. Notably, during that conversation, the female officer was sitting right there. NE#1 made statements that suggested that he knew the outcome of the investigation, including that nothing would come of some elements of the case but that a sergeant would be reassigned for failing to supervise and take action. The officer indicated that NE#1 then began reminiscing about his time as the Mounted Unit’s sergeant and that he stated that this role gave him a “hard on.” The officer wrote that, when he said this, NE#1 was looking directly at the female officer, as if to gauge how she would react to his comment. NE#1 then began talking about the hiring of the new barn manager. He reportedly asserted his belief that he would be involved in the hiring process. He also stated that he did not understand why they simply did not bring back a previous civilian employee of the unit who had worked at the barn.

Another officer also submitted a memorandum to EEO. That officer wrote that, when he called the meeting with the Mounted Unit officers, NE#1 stated that they were all in a “cone of silence” and that no one could talk about what was discussed. NE#1 raised the EEO case and indicated that it was based on the former unit sergeant’s shortcomings. This officer corroborated that NE#1 stated that working as the Mounted Unit sergeant gave him a “hard on,” which this officer found inappropriate given the female officer’s presence. Lastly, this officer recalled that NE#1 brought up the issue of re-hiring the former civilian employee.

Lastly, the female officer additionally submitted a memorandum to EEO. Her account of the meeting was very similar to that relayed by the other two officers. She wrote that NE#1 brought up and openly discussed an ongoing EEO investigation that involved her and that he further opined as to what the results of that investigation would be. She further confirmed that NE#1 stated that his time as the Mounted Unit sergeant gave him a “hard on” and, when he said that, he looked directly at her. She wrote that this made her feel uncomfortable and that it placed her in a difficult situation. She also wrote that NE#1 instructed them not to discuss this meeting with anyone. Lastly, the female officer recalled that NE#1 mentioned that the Mounted Unit should re-hire the former civilian employee. She described that NE#1 told them that: “he was asked to be on the hiring committee for this position and they would probably need to interview 5 people. He said that he would tell [the lieutenant] to pick out [the former civilian employee’s] application, then pick out 4 other random applications to interview, as required, and hire [the former civilian employee].”

Ultimately, the lieutenant reported this matter to EEO. In turn, OPA received a referral from the Department’s EEO sergeant concerning NE#1’s conduct. The former civilian employee was not hired for the open position in the Mounted Unit.

During its investigation, OPA interviewed all of the officers that had submitted memoranda concerning this issue to EEO. All provided testimony consistent with those memoranda. OPA also interviewed one other officer assigned to the unit and the lieutenant. OPA interviewed one additional officer who was on long term medical leave. OPA tried to interview another officer who had retired from the Department, but was unable to locate and interview him. OPA further tried to interview the applicant for the civilian barn manager position, but she refused to be interviewed. Lastly, OPA interviewed NE#1.



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**ANALYSIS AND CONCLUSIONS:**

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

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

A number of NE#1's statements to Mounted Unit employees were alleged to have been unprofessional. Included among these were the following: when NE#1 stated that he would kill the horses if the officers told anyone about the meeting; NE#1's discussion of an open EEO investigation – especially when the complainant was in the room, statements to the officers to not disclose what he said, and his direction to the officers that they were operating under a “cone of silence”; his statement that being the Mounted Unit's sergeant gave him a “hard on” when looking directly at the female officer; and his discussion of a Department hiring process and his contention that he could and would influence that process to cause his favored candidate to be hired.

With regard to the statement concerning the killing of the horses, NE#1 stated that, if he made this statement, it was in jest. He confirmed that he “could have” made this statement. NE#1 claimed that he did not call a meeting of the Mounted Unit, but that a conversation with him and officers assigned to the unit did occur. NE#1 confirmed that he did use the term “cone of silence,” but said that he was not directing the officers to not talk about what was discussed. NE#1 stated that he instead meant that this was a discussion that concerned the Mounted Unit and was not necessarily appropriate for a broader discussion throughout the Department.

NE#1 told OPA that he did discuss the hiring of the former civilian employee. He stated that he had originally been asked to be part of the hiring panel, but that, when he learned that the former civilian employee was an applicant, he recused himself from the process because of a conflict of interest. NE#1 indicated that he disclosed this conflict to the Assistant Chief of Patrol. He told OPA that he did say to the unit officers that: “the department should just hire, or just should interview three random candidates and hire [the former civilian employee] because she could step into the role the next day and run that barn the way it needed to be ran.” He thought that the officers could have interpreted his statements as suggesting that he had influence over the process, but this was not what he meant.

NE#1 confirmed that he raised the open EEO investigation during the discussion. NE#1 recognized that it was inappropriate to speak about an open EEO investigation involving members of the Mounted Unit with other unit employees present. He further recognized that the EEO investigation was confidential, which was further complicated by the fact that he was technically a named employee.

Lastly, NE#1 stated that, while he did not recall using the exact term “hard on,” but he did refer to the “pleasure and pride and satisfaction [he] took in being the Mounted Patrol sergeant.”

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.)

After reviewing the record, including all of the memoranda generated by officers and the OPA interviews, I do not find NE#1's explanations convincing. I find that all of his statements detailed above were unprofessional. It cannot be disputed that it was inappropriate to discuss NE#1's influence over hiring decisions when the applicant was



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someone he knew or to discuss an open EEO investigation with the employees it involved and impacted. Moreover, his statement that the officers should not discuss his statements with anyone and that they were operating under a “cone of silence” were similarly inappropriate and, for that matter, troubling coming from a Department supervisor speaking with subordinate employees. Even if a joke, the same goes for his comment that he would kill the horses if officers discussed the contents of the meeting. Lastly, NE#1’s assertion that being the Mounted Unit sergeant gave him a “hard on” was clearly unprofessional, particularly if it was made, as multiple witness officers contended, while looking directly at a female officer. Notably, while NE#1 tried to give context to this statement, he did not deny it.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***5.001 - Standards and Duties 18. Employees Must Disclose Conflicts***

SPD Policy 5.001-POL-18 requires that: “Employees shall immediately disclose to the Chief of Police, via their supervisor, any activities or relationships that may present an actual, potential, or apparent conflict of interest for themselves or other Department employees.”

OPA interviewed the lieutenant responsible for the hiring of the civilian barn manager. The lieutenant explained that there was an application process for the position that was open through to public through SPD Human Resources (SPD HR). SPD HR sent the lieutenant approximately seven applications that he reviewed. The lieutenant stated that he, as well as other individuals, were part of the hiring process. However, the lieutenant confirmed that NE#1 was not involved. The lieutenant further stated that he recalled that NE#1 mentioned the former civilian employee and that he thought she would be a good choice for the position. The lieutenant also believed that NE#1 disclosed that he had a pre-existing relationship with the former civilian employee. The lieutenant confirmed that NE#1 did not influence his decision making. The lieutenant further told OPA that the former civilian employee was interviewed but was not ultimately selected for the position.

OPA attempted to interview the applicant for the civilian barn manager and one retired officer concerning this allegation. The civilian refused to be interviewed and OPA could not ultimately locate the retired officer.

While NE#1’s statements concerning his role in the hiring process and how he would influence that process during the meeting at the Mounted Unit were unprofessional, that issue is addressed in the context of Allegation #1. With regard to this specific allegation, NE#1 apparently had no actual influence in the decision making of the hiring committee. This is reflected both by the lieutenant’s statement to OPA and by the fact that the person he supported was not ultimately hired. Even though he vouched for the former civilian employee, the lieutenant recalled that NE#1 disclosed that he knew her and had a previously existing relationship with her. Moreover, NE#1 contended that when he was asked to be on the hiring committee, he expressly said that he did not want to be because he knew the former civilian employee was an applicant and that he had this conversation with the Assistant Chief of Patrol.

Given these circumstances, and while his statements were inappropriate, I recommend that this allegation be Not Sustained – Unfounded.



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

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

***10.020 - Physical Security of Police Facilities III. Visitors***

SPD Policy 10.020(III)(A) states that: “Visitors must be able to articulate a specific need to enter a restricted area. Department employees are authorized to courteously inquire as to that need.” The policy further states that visitors must be accompanied by an escort at all times; display an approved visitor’s pass on their clothing at all times; and complete a visitor log. (SPD Policy 10.020(III)(A).)

This allegation was classified based on the suspicion of Mounted Unit officers that unauthorized visitors were accessing the unit after hours and were inappropriately riding horses. The officers believed that this conduct resulted in one of the horses being injured.

The Mounted Unit officers indicated that while former officers would sometimes visit the unit, those former employees were not allowed to ride the horses because of liability issues. Notably, the unit was a secure facility that locked after hours and could only be accessed with a key. As such, had an individual accessed the unit without permission to do so, this would have constituted a violation of policy. This would be even more egregious if that individual rode and injured a horse.

The Mounted Unit officers had theories as to who they believed had accessed the barn and injured the horse; however, there was no evidence conclusively establishing this. OPA interviewed nearly all of the individuals who worked at the Mounted Unit at the time, but came no closer to identifying the perpetrator. As discussed above, OPA repeatedly attempted to interview a retired officer who OPA believed had information relevant to this allegation. However, OPA was ultimately unable to locate and interview this individual.

Ultimately, I cannot determine who the unknown named employee was that engaged in this behavior. As such, while I have significant concerns about the alleged conduct, I cannot recommend that this allegation be Sustained. Instead, I recommend that it be Not Sustained – Inconclusive.

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