



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 27, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0398

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 2	6.150 – Advising Persons of Right to Counsel and Miranda 8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer	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:

The Complainant alleged that the Named Employee may have been unprofessional and may have not taken needed steps to ensure that the Subject was not interviewed without her attorney present.

ADMINISTRATIVE NOTE:

As discussed more fully below, OPA’s investigation indicated that NE#1 took affirmative steps to try to locate the Subject and to ensure that she was not interviewed without her counsel present. However, OPA was unable to foreclose that an unknown SPD employee was aware that the Subject requested her attorney and was told that she was not at the West Precinct, when the Complainant was, in fact, there, but that this unknown SPD employee failed to ensure that the Subject was not interviewed. OPA’s investigation concerning this unknown SPD employee continues.

In addition, given the Complainant’s assertion that the Subject was interviewed by the FBI even despite her request for counsel, OPA made a referral to that agency’s internal oversight entity.

SUMMARY OF INVESTIGATION:

The Subject was arrested during a demonstration and was transported to the West Precinct where she was held in custody. This arrest occurred at approximately 6:15 a.m. on July 1, 2020. After the Subject arrived at the precinct, her attorney, the Complainant in this case, called the precinct front desk. She was connected with Named Employee #1 (NE#1), who was assigned as the desk officer.

The Complainant told OPA that, during this phone conversation, she informed NE#1 that she was the Subject’s attorney. She said that NE#1 confirmed that the Subject was at the West Precinct. She further recalled that NE#1 told her that the Subject was “in line to be interviewed by the FBI.” The Complainant said that she relayed to NE#1 that



the Subject had invoked her right to counsel and was not to be interviewed without an attorney present. She further told NE#1 that she was coming to the precinct.

The Complainant said that, when she arrived, she tried to access the West Precinct but was not permitted to do so. She spoke to several SPD employees, including a supervisor who she knew and characterized as helpful, but she could not get in contact with the Subject. She stated that she again called the precinct and spoke with NE#1. She reiterated that she wanted to speak with her client before any FBI interview. She said that NE#1 put her on hold for 10 minutes. Once NE#1 came back on the line, he told the Complainant that the Subject had already been interviewed “informally” by the FBI. The Complainant relayed that the Subject later confirmed that she was never told that the Complainant was at the precinct. The Subject also affirmed that the FBI interviewed her despite her request for counsel. As a result of the Complainant’s allegations, OPA commenced this investigation.

OPA interviewed NE#1. He recalled speaking with the Complainant on the phone. He confirmed that she stated that she was the Subject’s attorney, that she was on her way to the West Precinct, and that she did not want her client interviewed without her being present. NE#1 told the Complainant that he was not involved in prisoner processing and that he did not know whether the Subject was at the precinct. However, based on a request from the Complainant, he agreed to go speak to officers who were assigned to prisoner processing. He said that he talked to a Detective who professed no knowledge of the Subject. He looked at the prisoner log and saw the Subject’s name; however, he could not find her in any of the holding cells. He again spoke to the Detective and asked about the Subject. The Detective stated that he did not know where the Subject was but noted that the FBI was conducting interviews. NE#1 asked where these interviews were being conducted and the Detective said that he did not know. He returned to the front desk and continued his call with the Complainant. He told the Complainant that he was unable to locate the Subject. NE#1 had no recollection of telling the Complainant that the Subject was “in line” to be interviewed or stating that the Subject had already been interviewed “informally.”

NE#1 spoke with the Complainant a second time when she again called the West Precinct. She stated that she was outside. NE#1 asked a supervisor to go speak with her and a Sergeant did so. NE#1 did not see or speak in-person with the Complainant. He also did not keep her on hold at that time.

The Sergeant’s Body Worn Video (BWV) showed his conversation with the Complainant. He initially told her that he had just arrived at the West Precinct and did not know anything about the Subject. He went inside of the precinct and spoke with NE#1. He asked NE#1 if the Subject was interviewed by the FBI and NE#1 responded: “No, they were just determining whether they were going federal or local. She was read her rights...” The remainder of NE#1’s statement to the Sergeant was cut off as the Sergeant walked away. The Sergeant walked outside and conveyed to the Complainant that, based on what he learned, the Subject was not interviewed by the FBI. The Complainant replied that, if this was the case, why was she told by NE#1 that the Subject was “in line” to be interviewed. The Sergeant said that he did not know and that the Complainant could speak with the Subject at the jail.

Given his role as the desk officer, NE#1 was not assigned with BWV and, as such, he did not record his conversations with the Complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication



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.)

In assessing NE#1’s professionalism and as indicated below, OPA finds that NE#1 did not engage in actions that contributed to the Subject being interviewed without her counsel present, to the extent this occurred. To the contrary, OPA concludes that he took steps to ensure that this would not occur, even if he was ultimately unsuccessful in locating the Subject. Moreover, OPA found insufficient evidence to determine that NE#1 was dismissive of the Complainant or that he purposefully obstructed her attempts to locate the Subject in any respects.

However, one area of concern for OPA is whether NE#1 provided the Complainant and/or the Sergeant with inaccurate information. Specifically, the Complainant asserted, both while outside of the West Precinct and again when she filed this complaint, that she was told by NE#1 that the Subject was “in line” to be interviewed by the FBI. She also claimed that NE#1 told her that the Subject had already been “informally” interviewed by the FBI. During his OPA interview, NE#1 had no recollection of making either statement to the Complainant. If he did say this, which OPA cannot determine based on the lack of a recording of the phone conversation between NE#1 and the Complainant, this may have been in conflict with his later statement to the Sergeant that no interview was conducted. Providing misleading and/or confusing information to either the Complainant or the Sergeant could, under certain circumstances, constitute a professionalism violation; however, the evidence here is inconclusive.

For these reasons, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

6.150 – Advising Persons of Right to Counsel and Miranda 8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer

SPD Policy 6.150-POL-8 states that officers shall stop questioning an arrestee once that individual has invoked the right to an attorney. This allegation was classified for investigation against NE#1 based on the possibility that he failed to take steps to inform other officers that the Complainant had expressly stated that the Subject should not be questioned without an attorney present and that she was on her way to the West Precinct. While NE#1 did not question the Subject, if he failed to pass the information on and she was subsequently interviewed, he would bear at least partial responsibility for this.

At his OPA interview, NE#1 explained that, after speaking with the Complainant, he spoke to a Detective who was handling prisoner processing and passed on what he learned from the Complainant. He stated that he further examined the prisoner log, tried to find the Subject, and again spoke to the Detective. Despite his best efforts, he was unable to locate the Subject or to determine whether she was going to be interviewed or had already been interviewed at that time.

From OPA’s review of the record, there was no evidence contradicting NE#1’s assertion that he took affirmative steps to provide notification that the Subject’s right to counsel had been invoked. Indeed, the Complainant proffered no such evidence. As such, there is no basis to conclude that NE#1 personally violated this policy.

The above being said, the possibility remains that a yet to be identified SPD employee was aware that the Complainant was coming to the precinct and that the Subject’s right to counsel had been invoked and did not take



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necessary action to prevent the Subject's interview. As discussed above, OPA will be continuing to investigate this aspect of the case.

However, with regard to NE#1, OPA recommends that this allegation be Not Sustained – Unfounded.

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