




## CLOSED CASE SUMMARY

ISSUED DATE: MAY 22, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0405

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.150 - Advising Persons of Right to Counsel and Miranda POL 1. Officers Shall Advise All Arrestees of Their Full Miranda Rights (eff. 11/1/20)	Not Sustained - Unfounded
# 2	6.150 - Advising Persons of Right to Counsel and Miranda POL 3. Officers Must Include All Elements of Miranda and Establish Understanding (eff. 11/1/20)	Sustained
# 3	6.150 - Advising Persons of Right to Counsel and Miranda POL 12. Officers Shall Stop Questioning Once an Arrestee Invokes the Right to a Lawyer (eff. 11/1/20)	Sustained
# 4	6.150 - Advising Persons of Right to Counsel and Miranda POL 13. Should an Arrestee Clearly Invoke the Right to Remain Silent... (eff. 11/1/20)	Sustained
# 5	6.150 - Advising Persons of Right to Counsel and Miranda POL 2. Miranda Warnings Must Precede Custodial Interview (eff. 11/1/20)	Not Sustained - Unfounded
# 6	6.150 - Advising Persons of Right to Counsel and Miranda POL 11. Officers Shall Document the Advising of Miranda (eff. 11/1/20)	Not Sustained - Training Referral

**Imposed Discipline**

Written Reprimand

***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 (NE#1) violated *Miranda* while questioning Community Member #1 (CM#1).

**ADMINISTRATIVE NOTE:**

OPA notes that NE#1’s chain of command spent considerable effort determining whether NE#1’s alleged misconduct constituted “serious” versus “minor” misconduct. See SPD Policy 5.002-POL-5 (defining both levels of misconduct and providing examples). Serious policy violations must be referred to OPA, whereas the chain of command may



---

investigate minor ones. *Id.* However, the distinction does not impact OPA’s investigative authority. See SPD Policy 5.002-POL-10 (“OPA may choose to investigate any alleged policy violation”); SPD Policy 5.002-POL-5(b) (OPA is consulted where the severity of a violation is unclear, and noting the severity is contingent on “specific facts of an incident” and “some minor violations may raise concerns of public trust” warranting OPA referral). See also SPOG CBA, Appx. E(12), 3.29.400(A) (to avoid conflict or doubt, obligations for referring allegations to OPA are “interpreted in a manner consistent with Section 5.002 of the [SPD] Manual”).

NE#1’s lieutenant and captain disagreed about whether the allegations against NE#1 constituted serious misconduct. Specifically, their disagreement turned on whether a *Miranda* violation—which is not explicitly listed in SPD policy as a serious policy violation—could violate “a suspect/person’s constitutional rights to freedom of speech, to the free exercise of religion, to peaceably assemble, to due process of law, and to be secure against unreasonable search and seizure.” SPD Policy 5.002-POL-5(a). NE#1’s Captain relied on a recent United States Supreme Court case, holding *Miranda* violations did not necessarily violate the Fifth Amendment.<sup>1</sup>

While not all Constitutional violations constitute serious misconduct, a custodial interrogation after an arrestee affirmatively invokes their right to either silence or counsel is within that realm. Particularly where NE#1 has decades of law enforcement experience, including investigating serious crimes over the past five years. Moreover, the complaint was initiated by a seasoned prosecutor who represented that she repeatedly counseled NE#1 on *Miranda* concerns before the case at hand. Under those circumstances, an OPA investigation was warranted.

SPD Policy 6.150, covering *Miranda* concerns, was revised on November 15, 2022, about two months after the incident, subject to this investigation. Therefore, OPA applied the policy as it existed before the revision, effective November 1, 2020, to November 15, 2022.

**SUMMARY OF INVESTIGATION:**

NE#1—a detective—led an Internet Crimes Against Children (ICAC) investigation. The investigation led to CM#1’s arrest for possessing and dealing child pornography. The case was assigned to King County Deputy Prosecuting Attorney #1 (DPA#1). In November 2022, DPA#1 contacted NE#1’s chain of command to voice concerns that NE#1 “violate[d] the suspect’s *Miranda* rights no less than 9 times.” NE#1’s chain of command reviewed DPA#1’s concerns and consulted with OPA. OPA opened this investigation.

During its investigation, OPA reviewed a memorandum written by NE#1’s lieutenant (Lieutenant #1) concerning the alleged policy violations, a memorandum written by NE#1’s captain (Captain #1) analyzing the allegations, body-worn video (BWV), CM#1’s recorded statement, DPA#1’s email correspondence, and NE#1’s training records. OPA also interviewed DPA#1 and NE#1.

*a. Lieutenant’s Memorandum*

Lieutenant #1 commanded NE#1’s unit. In a memorandum, Lieutenant #1 documented NE#1’s alleged *Miranda* violations.

---

<sup>1</sup> *Vega v. Tekoh*, 142 S.Ct. 2095 (2022).



Lieutenant #1 noted that on November 2, 2022, NE#1's sergeant mentioned DPA#1's concerns about NE#1's *Miranda* compliance. Lieutenant #1 wrote that DPA#1 called him to convey her concerns later the same day and arranged a meeting between SPD and the King County Prosecuting Attorney's Office (KCPAO) representatives.

Lieutenant #1 documented that the meeting occurred on November 4, 2022. Lieutenant #1 wrote that it included himself, NE#1's sergeant, DPA#1, and two other KCPAO employees (one participated virtually). Lieutenant #1 noted during that meeting, DPA#1 expressed concerns about NE#1 and her opinion that NE#1 should not be an ICAC investigator. Lieutenant #1 wrote that DPA#1 alleged NE#1 "violated the suspect's *Miranda* rights no less than 9 times" during CM#1's arrest. Other performance issues were also discussed, and KCPAO members suggested additional training for ICAC investigators. Lieutenant #1 also directed additional counseling and training for NE#1. Lieutenant #1 wrote that he advised those at the meeting that he interpreted the alleged *Miranda* violations as a serious policy violation, see SPD Manual 5.002-POL-5 (defining serious policy violations), and he would submit to OPA.

Lieutenant #1 wrote that he advised Captain #1 of the allegation later that day. Lieutenant #1 also viewed NE#1's custodial interrogation of CM#1 (discussed below in subsection c., Body-Worn Video) and email correspondence provided by DPA#1. The email correspondence was from DPA#1 to the two other KCPAO members at the November 4<sup>th</sup> meeting. The email was dated October 21, 2022, and stated, in relevant part:

*When the suspect was detained at that search warrant, [NE#1] violated his Miranda rights in several ways. In the video recording of that contact, she does not read him his Miranda rights and instead asks, "Do I need to read any part of your rights to you?" He said he "has it." She then says she is willing to tell them why they are there, but only if he is willing to talk to her. He says he is going to "invoke the fifth." He says you can tell me what is going on and he will not respond. She says it does not work that way, and rather he needs to request a lawyer OR they can talk and she can tell him why they are there (leaving out the right to silence which he has already invoked). She then hands him a copy of the warrant. She then asks him again if he wants to talk to her and he invokes his right to a lawyer. She immediately asks what his address is and he tells her. She says if he wants to talk, he has to tell her. He starts to ask a clarifying question about the search warrant and says he does not have a computer. She tells him the case is about "uploads in 2021" (a statement intended to illicit a response), and he responds that he had been on chat rooms and meaning to call law enforcement about what he observed. She again asks if he wants to talk to her about that, and he again invokes his right to a lawyer.*

*I'll note here that I have spoken to her at least three times this year about violating Miranda. She continues to ask suspects questions after they invoke despite my clear instructions to her on the law. She is a veteran police officer and knows better.*



---

Later that day, Lieutenant #1 met with NE#1, NE#1's sergeant, and a representative of the Seattle Police Officers Guild. Lieutenant #1 informed NE#1 of the allegations at the meeting. Lieutenant #1 also documented his assessment that NE#1 may have committed two serious policy violations under SPD Policies 6.150-POL-11 and 5.002-POL-5.

Lieutenant #1 also requested additional documentation from DPA#1 and submitted his memorandum to Captain #1 in Blue Team.

*b. Captain's Memorandum*

Captain #1 commanded NE#1's section. Captain #1 reviewed Lieutenant #1's memorandum and his assessment of the allegations. Captain #1's analysis focused on whether the allegations against NE#1 constituted a serious policy violation.

Captain #1 disagreed with Lieutenant #1's conclusion that a *Miranda* violation constituted a "serious policy violation." Instead, he suggested addressing the issue as a work performance concern through training and mentoring. Captain #1 also believed it was unclear whether NE#1's "conversation with the suspect constituted 'interrogation.'"

*c. Body-Worn Video (BWV)*

BWV recorded CM#1's arrest and post-arrest interview with NE#1.<sup>2</sup> In relevant part, it showed:

A detective (Detective #1) advised CM#1 he was under arrest and searched CM#1. Less than two minutes later, Detective #1 read CM#1 his *Miranda* rights from a printed card and confirmed that CM#1 understood his rights. As Detective #1 finished reading CM#1 his *Miranda* rights, NE#1 approached. Her BWV recorded Detective #1 asking CM#1, "Do you understand these rights I just read to you?" CM#1 responded he understood, and Detective #1 introduced NE#1 to CM#1. NE#1 said, "Go ahead and place him in cuffs and I'll bring him over to the car." While Detective #1 handcuffed CM#1, NE#1 asked CM#1, "Do you understand your rights that were read to you?" CM#1 responded that he did. NE#1 walked away to retrieve CM#1's shoes. While away from CM#1, NE#1 told another officer, "He's already been read his rights, so, uh, we'll put him in the car, and then I'll start getting information from him."

About fifteen minutes later, NE#1 interviewed CM#1 in the back seat of an SPD vehicle. CM#1 was unhandcuffed throughout the interview. NE#1 and CM#1 sat in the back seat less than three feet apart. The tone of the interview shifted between conversational and severe. Neither NE#1 nor CM#1 raised their voices, nor did NE#1 make threats or promises. NE#1 and CM#1 engaged in the following exchange for nearly four minutes and forty seconds:

**NE#1:** So, uh, just so you know, I am [NE#1] with the Seattle Police Department. I am with the, uh...

**CM#1:** thirty times...I think they told me thirty times.



**NE#1:** I know, I know, man. So, here's the deal, I am with the Internet Crimes Against Children Task Force. Are you familiar with that?

**CM#1:** Uh. I have no idea, honestly.

**NE#1:** You have no idea? OK.

**CM#1:** Sorry.

**NE#1:** I will provide you with the search warrant here in just a second. Do I need to read any part of your rights to you?

**CM#1:** Uh, I pretty much got everything.

**NE#1:** You pretty much got everything, okay? And then, uhm, you want to talk to me about what's going on today?

**CM#1:** I have no idea.

**NE#1:** Okay. So, you gonna talk to me?

**CM#1:** I'm assuming...that there is...uh, I'm assuming there's something going on with a parenting plan that my friend has, uh, that her dad is, uh, calling the police about.

**NE#1:** I'll tell ya that that's not it.

**CM#1:** Okay.

**NE#1:** So, I'm willing to discuss everything with you, but you have to let me know if you want to discuss it with me.

**CM#1:** OK.

**NE#1:** Yes or no?

**CM#1:** I...I will invoke the Fifth, then.

**NE#1:** Okay, so you don't want to talk to me about anything.

**CM#1:** You can tell me, I won't respond.

**NE#1:** No, it doesn't work that way. Either you request a lawyer, and I am done, I don't talk to you about anything. Okay? Or, you don't request a lawyer right now, and you just talk to me about what's going on. I will tell you why, I'll tell you why I'm stopping you.

**CM#1:** Okay.

**NE#1:** Okay? Here's a search warrant.

*[NE#1 hands CM#1 a copy of the warrant]*

*[CM#1 says "Okay" and "Cool" while appearing to read the warrant]*



**NE#1:** That's yours to keep, and this is my card. [*NE#1 hands the warrant back to CM#1 along with a business card*]. Okay, so I am going to ask you again, do you want to discuss this with me?

**CM#1:** I will discuss it with a lawyer.

**NE#1:** Okay. That's fine. And [*CM#1*], is your address still current at [*address*]?

**CM#1:** Uh, I have no idea. I moved. So, [*address*]? Something, let's see. Yes.

**NE#1:** That is your address?

**CM#1:** Should be, yeah.

**NE#1:** Okay. So, I'm going to keep everything rolling here for right now, so I will be right back. If you do want to talk with me about this, you're the one that has to let me know...

**CM#1:** ...uhm...

**NE#1:** ...and recant what you want as far as the lawyer.

**CM#1:** So, basically what this search warrant is is that you are going to [*eighteen-second pause as CM#1 appears to flip through the warrant*] okay, basically data mine my computer, or my phone because I don't have a computer whatsoever.

**NE#1:** Okay.

**CM#1:** Cool. Uhm. Okay.

**NE#1:** It's about uploads that occurred in February of 2021.

**CM#1:** Okay. Uh, I have been digging. There have been rooms that I have been finding to call the police. I have a numerous amount of rooms that I have been digging for to call you guys about.

**NE#1:** What do you mean rooms?

**CM#1:** There's a bunch of rooms on, on, all over the place.

**NE#1:** Okay.

**CM#1:** There's like rooms all over the place.

**NE#1:** Okay, so do you want to discuss this with me? Or do you still want a lawyer?

**CM#1:** I will discuss it with a lawyer.

**NE#1:** Okay. Alright. Okay. I'll be right, Okay?

**CM#1:** No worries.



---

**NE#1:** If you need anything, uh, ask Officer [name], Okay?  
[NE#1 exited the vehicle]

d. OPA Interview – Deputy Prosecuting Attorney #1

OPA interviewed DPA#1.

DPA#1 stated she viewed NE#1's interviewing with CM#1 and noted multiple *Miranda* violations. DPA#1 indicated that NE#1 did not read CM#1 his *Miranda* rights. Instead, DPA#1 stated NE#1 only asked CM#1 if he needed his rights read to him, and CM#1 replied that he already had them. DPA#1 said that it violated a Washington State court rule.

DPA#1 said she was also concerned about NE#1, saying, "That she's willing to tell [CM#1] why they're there, but only if he's willing to talk to her. This is concerning because it's coercive. It's, 'I'm only willing to give you information about the case if you're willing to waive your constitutional rights,' and it shouldn't be that much of a binary, there should be things that she has to tell them, like why, what the probable cause is for the crimes that are there, or what he's under arrest for. And then, as opposed to it being a *quid pro quo*, which is how [NE#1] framed it."

DPA#1 noted that CM#1 "invoke[d] his Fifth [Amendment rights]." DPA#1 said, at that point, investigative questioning needed to stop. DPA#1 noted, "[CM#1] also says, 'You can tell me what's going on, and I won't respond, but I'm invoking the Fifth.' And [NE#1] says, 'It doesn't work that way,' which is false. And rather, he has to request a lawyer, or they can talk, and she can tell him. So now, she's basically said there is no invocation for the right to silence. You have to request [an] attorney, or you have to talk to me, which, neither of those things are true."

DPA#1 also said the circumstances in which NE#1 provided the warrant to CM#1 appeared to be a tactic to elicit a response, and NE#1 again asked CM#1 if he wanted to talk with her. DPA#1 also said asking CM#1 to confirm his address violated *Miranda*.

DPA#1 also said:

*[NE#1] says if he wants to talk, he has to tell her. And he starts asking some clarifying questions about search warrant, and says he doesn't have a computer, all of which would be excluded at this point. They're all violations. She tells him the case is about uploads that he did in 2021, which is also I believe, a statement intended to elicit a response, right, she's trying to spark a memory for him so that he'll start talking about whatever he remembers doing online in 2021. And he responds, he's been on chat rooms, and then need to call law enforcement about what he observed, meaning her statements to elicit a response worked, but was also a *Miranda* violation. And then she could ask, if you want to talk to me about that, and he again, invokes his right for an attorney.*

Finally, DPA#1 noted she warned NE#1 about similar behavior "multiple times before."



---

e. *OPA Interview – Named Employee #1*

OPA interviewed NE#1. NE#1 said she worked at SPD for over twenty-six years and was assigned to ICAC for over five years. NE#1 said she was previously assigned to the Training Unit for five years and the Patrol Unit before that. NE#1 said she completed detective school and received training after her ICAC assignment. NE#1 said she received in-house observational training and in-class training concerning interviewing techniques. NE#1 said she has only received specific training about *Miranda* when SPD has updated policies.

NE#1 said after CM#1's arrest, another detective issued CM#1's *Miranda* warnings. NE#1 said she contacted CM#1 as that detective finished reading CM#1's *Miranda* warnings. NE#1 said BWV captured the detective reading the *Miranda* warnings.

NE#1 noted CM#1 was not handcuffed during her interview, although CM#1 was previously handcuffed when he was taken into custody. NE#1 said another detective sat in the front seat of the SPD vehicle where CM#1 was detained. NE#1 also stated that, although CM#1 was detained during the interview, she had not determined whether he would be arrested. NE#1 said she was in uniform when interviewing CM#1.

NE#1 stated she did not read CM#1 his *Miranda* warnings again as she knew CM#1 had already been read *Miranda*, and that reading was memorialized on BWV.

OPA asked NE#1 why she did not tell CM#1 why he was arrested after he mistakenly said it was related to a parenting plan. NE#1 stated she provided CM#1 with a copy of the search warrant as an explanation.

NE#1 stated that when CM#1 invoked his Fifth Amendment right, she was concerned he might not know exactly what that meant, so she told him it did not work that way, and she needed to know if he wanted a lawyer. NE#1 stated she gave CM#1 a copy of the search warrant to explain why he was under arrest.

NE#1 said after CM#1 said he would speak with a lawyer, she asked CM#1 for his address for administrative and not investigatory purposes. However, NE#1 also stated she asked his address because CM#1 had recently moved, and NE#1 was "going there afterward with officers."

NE#1 stated that after CM#1 read the warrant, she prepared to leave the vehicle and asked CM#1 if he wanted to talk to her. NE#1 stated this was to explain that if CM#1 wanted to speak to her, he would have to initiate contact with her, and she would ask him again later if he wanted an attorney. In response, NE#1 stated that CM#1 started talking about owning a phone instead of a computer. NE#1 denied telling CM#1 about the dates of the uploads to elicit a response but said it was to provide CM#1 with a little more information about the material covered by the warrant.

NE#1 stated that when CM#1 mentioned "digging" through rooms, she thought he meant physical rooms and asked a follow-up question for officer safety reasons because a search warrant was about to be executed. NE#1 stated when she realized he was talking about online chat rooms, she asked him again if he wanted an attorney and stopped questioning.





---

**ANALYSIS AND CONCLUSIONS:**

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

***6.150 - Advising Persons of Right to Counsel and Miranda POL 1. Officers Shall Advise All Arrestees of Their Full Miranda Rights (eff. 11/1/20)***

It was alleged that NE#1 failed to advise CM#1 of his *Miranda* rights.

On the date of this incident, SPD policy required officers to advise all arrestees of their full *Miranda* rights, “regardless of interview, as soon as practical.” SPD Policy 6.150-POL-1 (eff. 11/01/2020).

Here, CM#1 was read his *Miranda* warnings by a detective almost immediately after his arrest. NE#1 was aware that CM#1 was issued *Miranda* warnings and followed up with him to confirm he understood.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

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

***6.150 - Advising Persons of Right to Counsel and Miranda POL 3. Officers Must Include All Elements of Miranda and Establish Understanding (eff. 11/1/20)***

It was alleged that NE#1 failed to confirm with a “yes” or “no” whether CM#1 requested an attorney.

On the date of this incident, SPD policy required officers to advise arrestees of each element of *Miranda* and establish the arrestee understood the warnings. SPD Policy 6.150-POL-3 (eff. 11/01/2020). If an arrestee indicated they might be requesting an attorney, officers were required to confirm with a “yes” or “no” answer whether the arrestee wanted an attorney. *See id.*

As discussed at Named Employee #1 - Allegation #3, had NE#1 found CM#1’s statements ambiguous invocations of the right to counsel, she was required to confirm his intent. NE#1 told OPA she thought CM#1 may not have understood what “invoking the Fifth” meant, so she provided an—inaccurate—explanation. Ultimately, OPA did not find CM#1’s invocations ambiguous, but to the extent NE#1 did, she did not follow protocol.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

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

***6.150 - Advising Persons of Right to Counsel and Miranda POL 12. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer (eff. 11/1/20)***

It was alleged that NE #1 did not stop questioning CM#1 after he invoked his right to an attorney.



On the date of this incident, SPD policy required, with limited exceptions, officers to stop questioning an arrestee if the arrestee invoked their right to a lawyer. See SPD Policy 6.150-POL-12 (eff. 11/01/2020). However, officers could continue questioning if the arrestee reinitiated contact and were permitted to document any unsolicited statements made by the arrestee. See *id.*

CM#1 invoked his constitutional rights three times.

First, CM#1 invoked his right to counsel when he stated, “I will invoke the Fifth then.” While “invoking the Fifth” protects against self-incrimination, the *pretrial* right to counsel is protected by the *Miranda* rule under the Fifth Amendment, not the Sixth. See *Davis v. United States*, 512 U.S. 452, 457 (1994). To the extent NE#1 thought CM#1’s request to “invoke the Fifth” was ambiguous—that is, that CM#1 “might” be requesting an attorney—she was obligated under SPD Policy 6.150-POL-3 to confirm whether CM#1 was requesting an attorney with a “yes” or “no” answer. NE#1 did not do that. Instead, NE#1 told CM#1 it “doesn’t work that way” and that CM#1 had two options: “Request a lawyer, and I am done, I don’t talk to you about anything,” or “You don’t request a lawyer right now, and you just talk to me about what’s going on.” As DPA#1 noted, that information was not only legally incorrect, it was also coercive. Moreover, to the extent NE#1 thought CM#1 was confused about the Fifth Amendment, as she stated in her interview with OPA, she neither accurately explained it to CM#1 nor confirmed his intent by soliciting a “yes” or “no” answer. Contrarily, NE#1 offered to tell CM#1 why she stopped him and handed CM#1 a copy of the search warrant. OPA agrees with DPA#1 that this appeared to be a tactic purposed—effectively—to continue engaging with CM#1 for him to reconsider his previous decision to “invoke the Fifth.” NE#1 clarified this when she said, “Okay, so I am going to ask you again. Do you want to discuss this with me?” The course of conduct leading to this question, and the question itself, violated policy. There was no reason for NE#1 to ask “again” other than to determine whether her intervening efforts convinced CM#1 to change his mind about whether to “invoke the Fifth.”

Second, CM#1 invoked his right to a lawyer by stating, “I will discuss it with a lawyer.” As with the first invocation, if NE#1 found that statement ambiguous, she was obligated to confirm whether CM#1 wanted an attorney with a “yes” or “no” answer. Instead, NE#1 asked CM#1 for his address, which she told OPA was a pedigree or booking question. Despite NE#1 and SPOG’s assertions that such questions are categorically exempt from *Miranda*, that is not the case. See, e.g., *United States v. Disla*, 805 F.2d 1340, 1347 (9th Cir. 1986) (after finding cocaine in an apartment, receiving a description of the apartment resident from neighbors, and arresting someone near the apartment matching that description, investigating officer subjected arrestee to interrogation by confirming arrestee’s address). At this point, NE#1 had already shown CM#1 a search warrant for his address. As in *Disla*, NE#1 did not ask CM#1 to confirm his address in a routine booking setting, and the information was highly relevant to an element of the crime (possession). Moreover, in her OPA interview, NE#1 stated that she asked this question to “clarify” CM#1’s address because she was “going there afterward with officers” for the investigatory purpose of executing a search warrant. NE#1 was not asking this question for an administrative purpose. She asked it to confirm that any contraband discovered during the execution of the search warrant “there afterward” would be attributable to CM#1.

NE#1 told CM#1 she would “keep everything rolling” and advised CM#1, “If you do want to talk to me about this, you’re the one that has to let me know and recant what you want as far as the lawyer.” CM#1 then initiated communication by stating the warrant was to “basically data mine my computer or my phone.” NE#1 responded—without re-reading *Miranda*, reminding NE#1 that he invoked, or confirming whether NE#1 wanted an attorney—by stating, “It’s about uploads that occurred in February of 2021.” Although NE#1 was not *per se* required by either law or policy to re-read *Miranda* warning to CM#1 before making that statement without, at a bare minimum, confirming whether CM#1 was “recanting” his request for an attorney, this statement more likely than not violated *Miranda* as



---

well. See *Oregon v. Bradshaw*, 462 U.S. 1039, 1044 (1983) (where the suspect re-initiates contact with law enforcement after invoking the right to counsel, the burden remains on the prosecution to show that the suspect waived his Fifth Amendment right to counsel).

Finally, CM#1 made a third invocation to “discuss it with a lawyer,” which NE#1 honored by ending the conversation.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #4**

**6.150 - Advising Persons of Right to Counsel and Miranda POL 13. Should an Arrestee Clearly Invoke the Right to Remain Silent... (eff. 11/1/20)**

It was alleged that NE#1 failed to re-read *Miranda* after CM#1 invoked his right to silence.

On the date of this incident, if an arrestee invoked their right to silence, SPD policy required officers to re-issue *Miranda* warnings if the arrestee later re-initiated contact. See SPD Policy 6.150-POL-13 (eff. 11/01/2020).

CM#1 invoked his right to silence by stating, “I will invoke the Fifth then.” Having asserted his right to silence, NE#1 was required to honor that request and cease the custodial interrogation. See *Michigan v. Mosley*, 423 U.S. 96, 104 (1975). As discussed above at Named Employee #1 - Allegation #3, NE#1 did not honor CM#1’s invocation of his right to remain silent. Moreover, after CM#1 invoked his right to silence, under the policy, even if CM#1 re-initiated contact, NE#1 was required to read the *Miranda* warnings to CM#1 again. NE#1 did not do that.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #5**

**6.150 - Advising Persons of Right to Counsel and Miranda POL 2. Miranda Warnings Must Precede Custodial Interview (eff. 11/1/20)**

It was alleged that NE#1 failed to provide CM#1 with his full *Miranda* warnings before a custodial interrogation.

On the date of this incident, SPD policy required officers to give full *Miranda* warnings before questioning a person in custody. See SPD Policy 6.150-POL-2 (eff. 11/01/2020).

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**



---

**Named Employee #1 - Allegation #6**

**6.150 - Advising Persons of Right to Counsel and Miranda POL 11. Officers Shall Document the Advising of Miranda (eff. 11/1/20)**

It was alleged that NE#1 failed to provide or properly document CM#1's *Miranda* advisement.

On the date of this incident, SPD policy required officers to document *Miranda* advisements. See SPD Policy 6.150-POL-11 (eff. 11/01/2020). Documentation could be done on a form, in the officer's statement, or on an SPD-approved recording device. See *id.* If an officer recorded a custodial interview, the warnings were also required to be recorded, even if the warnings were previously given to the suspect. See *id.*

NE#1 conducted a custodial interview with CM#1. Although Captain #1 questioned whether CM#1 was in custody for *Miranda* purposes, OPA found, more likely than not, CM#1 was in custody. Even though CM#1 was unhandcuffed, he was previously contacted by multiple officers, informed he was under arrest, handcuffed, placed in the back of an SPD vehicle from which he was not free to leave, and questioned by NE#1, who was in full uniform, and another detective sat in the front seat. In this situation, NE#1 was required to re-read CM#1's *Miranda* advisements on the recording of the custodial interview, even though Detective #1 previously read the warnings to CM#1. NE#1 did not do that.

However, Detective #1 had recently read CM#1 his *Miranda* rights, and they were recorded on Detective #1's BWV. NE#1 knew this and stated in her OPA interview that she did not separately read *Miranda* to CM#1 for that reason. Although this possibly violated policy, OPA finds that this was a minor, technical violation and was not a willful violation rising to the level of serious misconduct.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 6.150 with NE#1, and provide any further retraining and counseling deemed appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**