

**Issued Date:** DECEMBER 20, 2023

**From:** Director Gino Betts, Office of Police Accountability



**Case Number:** 2021OPA-0307

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

### **Named Employee #1**

1. **Allegation:** 5.001 – Standards and Duties, 5.001-POL-2. Employees Must Adhere to Laws, City Policy and Department Policy (Effective March 1, 2018)
  - a. **Finding:** Not Sustained - Unfounded
2. **Allegation:** 5.001 – Standards and Duties, 5.001-POL-10. Employees Shall Strive to be Professional (Effective March 1, 2018)
  - a. **Finding:** Not Sustained - Unfounded
3. **Allegation:** 5.001 – Standards and Duties, 5.001-POL-11. Employees Shall **Be Truthful and Complete in All Communication** (Effective March 1, 2018)
  - a. **Finding:** Not Sustained - Unfounded

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**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 Named Employee #1 (NE#1)—a captain who is now retired—knowingly misled SPD employees concerning a positive COVID-19 diagnosis and their potential exposure.

### **Administrative Note:**

On December 7, 2023, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

### **Summary of the Investigation:**

OPA received a complaint and opened an investigation. During its investigation, OPA reviewed the OPA complaint and email correspondence. OPA also interviewed two detectives—Witness

Employee #1 (WE#1) and Witness Employee #2 (WE#2). NE#1 declined to be interviewed. OPA requested an interview with the Complainant, but declined to remain anonymous and was fearful of retaliation. The Complainant wanted OPA to solely rely on the written complaint.

## **A. OPA Complaint**

The Complainant—an anonymous person who identified themselves as a sworn officer—emailed a complaint to OPA on June 28, 2021. The Complainant wrote the following:

- On March 16, 2020, Park 90/5 Building A employees were notified of a COVID-19 exposure. Custodian #1 received positive test results on or around March 15. Custodian #1 was known to most employees because she was the primary custodian for Building A. Custodian #1's employer notified SPD and named Custodian #1. A sergeant notified Park 90/5 employees. Many employees believed they were exposed by being around Custodian #1.
- In the afternoon of March 16, 2020, NE#1 arrived at the office and told detectives that Custodian #1 was awaiting test results, so he could not confirm any exposure. The Complainant wrote, "That information was fabricated" because the chain of command did not disseminate any information.
- In the evening of March 16, 2020, NE#1 called WE#1 and told her that Custodian #1 was not diagnosed and that inaccurate information was disseminated. NE#1 said Custodian #2—a temporary custodian who did not regularly clean Park 90/5 Building A—was diagnosed and that WE#1 had no physical contact with Custodian #2. Additionally, NE#1 texted WE#2 the same information he provided to WE#1. NE#1 also texted WE#2 that Custodian #2's diagnosis was confirmed, the building would be cleaned tomorrow, SPD was contact tracing, and everyone should stay home. The Complainant wrote, "This, again, was fabricated" because SPD employees were not provided information about Custodian #2.
- On March 17, 2020, at 12:08 AM, SPD disseminated information about the COVID-19 exposure and named Custodian #1, not Custodian #2. At 7:53 AM, NE#1 emailed employees that there was a confirmed COVID-19 exposure and referenced Custodian #2 ("individual is a janitorial employee but not one of the regular cleaners for building A"). The Complainant wrote that Custodian #2 did not exist. At 10:09 AM, NE#1 emailed that a second custodian was diagnosed with COVID-19, but the diagnosis was not yet confirmed. The Complainant wrote, "In this email, [NE#1] admits the existence of [Custodian #1], while covering for the fabrication of [Custodian #2]." The Complainant wrote that no one mentioned Custodian #2 before.
- On March 17, 2020, at 3:17 PM, NE#1 wrote an email to law enforcement partners saying that no one from his section was under a mandatory 14-day quarantine nor was one anticipated at that time.

The Complainant wrote, “SPD employees were provided with fabricated and dishonest information.” The Complainant wrote that exposed employees would have quarantined if given the correct information, but they were told that Custodian #1 was not diagnosed. The Complainant wrote that Custodian #1 exposed SPD employees to COVID-19, which was later confirmed in SPD’s medical screening, and were sent home to quarantine. The Complainant wrote, “What matters most is the dishonest fabrications of [NE#1] provided false information to SPD employees that they either were not, or were less likely to have been, exposed to the Coronavirus. Their choices beyond that either did place or could have placed numerous others in danger of the virus.”

## **B. Email Correspondence**

OPA requested SPD’s Records Unit produce March 2020 emails sent to and from NE#1 regarding COVID-19. Responsive records are summarized, in pertinent part, as follows:

- On March 16, 2020, at 12:10 PM, an email, written by a lieutenant, was forwarded to NE#1. The lieutenant wrote that he heard a regular custodian tested positive for COVID-19 and that he emailed someone “to try to confirm this.”
- On March 16, 2020, at 12:36 PM, an email, written by a captain, was forwarded to NE#1. The captain wrote that a custodian, responsible for cleaning Building A [presumably Custodian #1], reported feeling unwell and tested positive for COVID-19, but her manager did not receive any medical documentation. At 3:10 PM, an email, written by an employee, was forwarded to NE#1. The employee wrote that Custodian #1’s manager “requested [Custodian #1] have her Dr. send him a note confirming this diagnosis.”
- On March 16, 2020, at 4:51 PM, NE#1 sent an email to multiple employees. NE#1 wrote, “I still do not have confirmation that the initial information provided in regard to the employee has been independently corroborated.”
- On March 17, 2020, at 7:53 AM, NE#1 sent an email to multiple employees. NE#1 wrote, “We now have a confirmed case of COVID-19 for an employee who has been in the Park 90/5 complex. The individual is a janitorial employee but not one of the regular cleaners for building A [presumably Custodian #2].” NE#1 wrote that SPD confirmed the diagnosis.
- On March 17, 2020, at 10:09 AM, NE#1 sent an email to multiple employees. NE#1 wrote, “The Department is aware that there is a second janitorial employee [presumably Custodian #1] who has advised that they were diagnosed with COVID-19. The information is being confirmed but we are responding as if it is confirmed.”

- On March 17, 2020, at 3:52 PM, NE#1 sent an email to law enforcement partners. NE#1 wrote, “As a point of clarification, no one from our section is under a mandatory 14-day quarantine nor is one anticipated at this time.”

## C. OPA Interviews

OPA interviewed WE#1 on August 18, 2021. WE#1 said she had an extended conversation with Custodian #1, who was primarily responsible for cleaning Building A. WE#1 said on March 16, she heard a custodian contracted COVID-19, but “nobody knew for sure, and nothing was confirmed. It was basically just a rumor mill.” WE#1 said Custodian #1 was rumored to be the person, but no one confirmed. WE#1 said she went home to prevent further exposure. WE#1 said NE#1 called that evening and told her that he was unsure who was exposed or tested positive. WE#1 said NE#1 told her that he heard a custodian who was Hispanic tested positive but was unsure about that and was aware of rumors spreading about the custodian’s identity. WE#1 stated Custodian #1 was African American. WE#1 said NE#1 advised her to stay home due to her potential exposure. WE#1 said NE#1 called again and told her that Custodian #1 tested positive.

WE#1 said NE#1’s emails were consistent with what he told her. WE#1 said NE#1 was unsure who tested positive, rumors centered around a Hispanic custodian, but Custodian #1 was later confirmed to be positive. WE#1 described the confusion at Park 90/5 as “chaotic” and that everyone had a “freak out” reaction. WE#1 believed NE#1 did not intentionally mislead anyone but was forthcoming with information about COVID-19 exposure.

OPA interviewed WE#2 on August 25, 2021. WE#2 said a supervisor told her that a custodian contracted COVID-19, but the custodian’s identity was unclear. WE#2 recalled that there were two African American women who cleaned her building. WE#2 said she received a text from NE#1 saying that a temporary custodian tested positive. WE#2 said that whether the custodian was temporary or permanent was immaterial. WE#2 said NE#1’s emails were consistent with what she knew at the time and did not seem strange. WE#2 believed NE#1 did not intentionally mislead anyone but only disseminated information that he knew at the time.

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## **Analysis and Conclusions:**

### **Named Employee #1 – Allegation #1**

#### **5.001 – Standards and Duties, 5.001-POL-2. Employees Must Adhere to Laws, City Policy and Department Policy (Effective March 1, 2018)**

The Complainant alleged NE#1 violated SPD’s COVID-19 protocols.

Employees must adhere to laws, City policy, and Department policy. SPD Policy 5.001-POL-2 (effective March 1, 2018).

Here, NE#1 sent an email to SPD employees regarding SPD's COVID-19 notification, testing, and quarantine protocols. NE#1 also attached a flowchart illustrating these protocols. Notably, certain procedures are triggered once there is contact with someone "confirmed" as positive, such as isolation or testing. Emails indicated that there was an unconfirmed COVID-19 diagnosis on March 16, but the person's identity was not ascertained. Emails also indicated that there was a confirmed COVID-19 diagnosis on March 17. WE#1 said that NE#1 advised her to get tested. WE#2 said that NE#1 advised her to get screened. Additionally, both witness employees said that NE#1 told them to stay home due to their possible exposure to COVID-19. NE#1 sent multiple emails to SPD employees indicating that the building would be cleaned and that employees could not reenter unless they were screened. NE#1 also emailed SPD employees, "In the meantime, if you feel that you were exposed the best things to do are, not in any particular order, 1) report it, both to your supervisor and via the online Department application; 2) self-isolate until the Department has fully explored the factors associated with your exposure; 3) contact your medical professional to determine if there is anything else that you should do; 4) don't panic, we will get through this."

Based on the evidence provided, by a preponderance of the evidence, OPA finds NE#1's emails and texts to SPD employees were consistent with SPD's notification, testing, and quarantine protocols. At the very least, the evidence showed a good faith attempt to comply with complicated, evolving, and unfamiliar protocols with imperfect information.

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

Recommended Finding: **Not Sustained - Unfounded**

## **Named Employee #1 – Allegation #2**

### **5.001 – Standards and Duties, 5.001-POL-10. Employees Shall Strive to be Professional (Effective March 1, 2018)**

The Complainant alleged NE#1 was unprofessional by exposing SPD employees to COVID-19.

SPD employees shall "strive to be professional." SPD Policy 5.001-POL-10 (effective March 1, 2018). Employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. *Id.*

Here, NE#1 grappled with a rapidly evolving situation beginning on March 16. There is ample evidence that NE#1 kept SPD employees apprised of the situation as he learned new information and attempted to confirm that information.

The witness employees said that NE#1 notified them that they were possibly exposed to COVID-19 and advised them to stay home. NE#1 provided employees with SPD's COVID-19 protocols, a flowchart, and a cleaning schedule. In fact, in his March 17 email, NE#1 wrote, "As I get additional information I will update you, until then be safe, take care of yourselves and your families and remember at this time you have been ordered to remain at home and not go into work." There is

insufficient evidence suggesting NE#1 exposed SPD employees to COVID-19. Based on the evidence provided, by a preponderance of the evidence, OPA finds NE#1 was professional in carrying out his duties and was not unprofessional by exposing SPD employees to Covid-19.

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

Recommended Finding: **Not Sustained - Unfounded**

### **Named Employee #1 – Allegation #3**

#### **5.001 – Standards and Duties, 5.001-POL-11. Employees Shall Be Truthful and Complete in All Communication (Effective March 1, 2018)**

The Complainant alleged NE#1 was intentionally untruthful with his COVID-19 communications to SPD employees.

Department employees shall be truthful and complete in all communication. SPD Policy 5.001-POL-11 (effective March 1, 2018).

Here, the Complainant identified several of NE#1's statements that the Complainant alleged were intentionally dishonest. First, the Complainant alleged NE#1 falsely told SPD employees that Custodian #1 was not positive, exposing them to COVID-19. This allegation is disproven by two emails NE#1 received on March 16, indicating that Custodian #1 did not provide medical documentation confirming a COVID-19 diagnosis. In the first email, on March 16, an SPD lieutenant requested someone "to try to confirm this." In the second email, on March 16, an SPD employee wrote that Custodian #1's manager "requested [Custodian #1] have her Dr. send him a note confirming this diagnosis." These emails were forwarded to NE#1. Later that day, NE#1 emailed, "I still do not have confirmation that the initial information provided in regard to the employee has been independently corroborated." NE#1's communication was consistent with the information he had at the time.

Second, the Complainant alleged NE#1 made up Custodian #2. However, the witness employees said that no one knew who was positive because nothing was confirmed. WE#1 said rumors were spreading and identified at least two different custodians who could have been positive. WE#2 identified at least two different custodians who could have been positive. WE#1 described the confusion as "chaotic." Perhaps more importantly, WE#2 said the custodian's employment status—whether permanent or temporary—was immaterial. Based on these statements, there is insufficient evidence suggesting NE#1 "made up" Custodian #2. OPA finds that it is more likely Custodian #2 referred to one of the other custodians identified by the witness employees.

The Complainant believed NE#1 provided SPD employees with "fabricated and dishonest information," exposing them to COVID-19. Emails indicate that NE#1 did not initially receive a confirmed COVID-19 diagnosis on March 16, but he received confirmation sometime before March 17 at 7:53 AM when he emailed, "We now have a confirmed case of COVID-19 for an

employee who has been in the Park 90/5 complex.” NE#1’s subsequent emails indicated NE#1’s intent to mitigate the exposure by instructing employees to stay home and notifying them of scheduled cleaning and testing. Lastly, two subordinates—the witness employees—described NE#1 as forthcoming with information he had at the time. Therefore, based on the evidence provided, by a preponderance of the evidence, OPA finds there is insufficient evidence suggesting NE#1 was intentionally dishonest with Covid-19 communication to SPD employees.

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

Recommended Finding: **Not Sustained - Unfounded**