



## CLOSED CASE SUMMARY

ISSUED DATE: APRIL 21, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0621

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

Named Employee #1

Allegation(s):		Director's Findings
# 1	12.110 Use of Department E-mail & Internet Systems.4. All Email and Internet Communications Must be Professional, Appropriate, and Lawful	Not Sustained (Management Action)

***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 sent an email that violated the Department's professionalism policy.

### **ANALYSIS AND CONCLUSIONS:**

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

***12.110 Use of Department E-mail & Internet Systems.4. All Email and Internet Communications Must be Professional, Appropriate, and Lawful***

Named Employee #1 (NE#1) retired from SPD on September 30, 2020. On that day, he received an email from the Legal Unit providing him third party notice of documents that were going to be released pursuant to the Public Records Act. The Legal Unit notified him of what was being requested and that he would have an opportunity to review the documents, if he wanted to do so, prior to any release. The Legal Unit sent him a second email shortly thereafter providing the number of one additional case that would be released. The written notice attached to both emails listed a disclosure date of September 7, 2020; however, as later clarified by the Legal Unit in a subsequent email, the disclosure date was actually October 7, 2020.

On October 1, 2020, NE#1 responded to the first two emails from the Legal Unit via his SPD email account. He wrote the following:

So if I read the email and disclosure correct you gave me a suspense date of the first week of Sept to reply or the info would be sent out. I was just emailed this info yesterday and was given no time to respond. If this is correct, why are you notifying me of something you have already done? This once again shows what a bunch of fucktards the leadership of SPD has become. Maybe it would be better if all of the leadership would just crawl



under the rocks they came from and continue down the path of destroying what was once a great department. Feel free to share this with the so called leadership of SPD. I use this term "leadership" with hesitation due to the word not giving a true clear definition. Have a great day and watch out when the city crumbles around you.

A Legal Unit supervisor notified NE#1's most recent chain of command about the email. The chain of command referred the matter to OPA based on the belief that NE#1's statements in the email violated SPD's professionalism policy. This investigation ensued.

As part of its investigation, OPA verified with SPD Human Resources that NE#1 was not employed by SPD on October 1, 2020. He apparently retained access to his SPD email account because his separation date was not entered into SPD's systems until October 9, 2020.

OPA contacted NE#1 twice in an attempt to obtain a statement from him. In the first email, he affirmed that he was not employed by SPD at the time he responded to the Legal Unit. He further wrote:

I am insulted that you would even ask me for a statement on this matter. Have I been out of the loop so long to be unaware of a policy change that the Seattle Police department generates complaints against past employees? I don't mean to be rude but once again I am not an employee of the Seattle Police department and left the department for reasons just like this. Good luck on your career and get out while you can. The city is falling to pieces and will only get worse. end my best to the real cops that are just trying to survive.

In his second email response to OPA, NE#1 again refused to be interviewed and stated the following:

For the last time...STOP BOTHERING ME WITH YOUR EMAILS. I don't work for SPD anymore and did not at the time of what you refer to me being the named employee. You as an employee are subject to complaints from private citizens and I will file a complaint if contacted again. I know that the crooked OPA would flush it but I will continue to make complaints if contacted for information as a private citizen.

SPD Policy 12.110-POL-4 governs email communications sent from SPD email addresses. Relevant to this case, such communications must be professional.

It is clearly established that NE#1 sent an email to Department employees using his SPD email address. It is also not in dispute that the message was profane, rude, and juvenile. This was particularly the case as it was directed to Legal Unit employees who work around the clock to process public records request while being overwhelmed and with little to no fanfare. This added insult to injury to those already working incredibly taxing jobs.

At the time NE#1 sent the email, he was not employed by SPD, even if he was so employed when he initially accessed the email. As a general matter, OPA has and regularly asserts investigative jurisdiction over former SPD employees; however, the caveat is that these individuals must have been employed by SPD at the time of the alleged misconduct. OPA does not have jurisdiction over former SPD employees who engage in inappropriate acts after their employment ends. As such, this prevents OPA from issuing a Sustained finding, despite that conclusion being clearly justified here.



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However, OPA believes that this case raises the concern that Human Resources may not be restricting email access quickly enough for employees that have separated from the Department. Here, NE#1 had access to his email nine days after he resigned from SPD. This should not have been the case and OPA issues a Management Action Recommendation to Human Resources requesting that it take steps to ensure timely restriction of email access. In addition, to the extent NE#1 later seeks a special commission from SPD, Human Resources should deny that request based on this decision and NE#1's obvious disdain for the Department and its command staff.

Recommended Finding: **Not Sustained (Management Action)**