




## CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 3, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0155

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

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 Standards and duties section 10. Employees will strive to be professional	Not Sustained - Unfounded
# 2	7.060 - Releasing Evidence, 7.060-TSK-1 Employee Releasing Evidence, 6. Releases the property to the owner using Mark43 Evidence/Property Disposition Instructions and ...	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:**

Community Member #1 (CM#1)—the Complainant's son—was seriously injured in a shooting. The Complainant consented to SPD processing CM#1's vehicle (Vehicle #1) for evidence. The Complainant alleged that Named Employee #1 (NE#1) inadequately communicated with CM#1's family and gave them insufficient notice to retrieve Vehicle #1, resulting in its sale at auction.

### **ADMINISTRATIVE NOTE:**

On August 23, 2023, the Office of Inspector General (OIG) certified this case as timely and objective but declined to certify it as thorough.

First, OIG noted the complaint referenced the release of Vehicle #1 and the failure to return CM#1's cell phone. As did NE#1 in his OPA interview, OIG noted that SPD's policy for the release of cars falls under a different SPD policy than that covering other evidence. *Compare* SPD Policy 6.120-TSK-9<sup>1</sup> (concerning releasing vehicles to a city-contracted tow lot) with 7.060-TSK-1 (concerning releasing all evidence and property). OIG noted the "policy relating to the release of the impounded vehicle should also have been included in the case."

Second, OIG noted that OPA's investigation showed another SPD employee, Witness Officer #1 (WO#1), "handled releasing the vehicle from SPD to the towing company's possession." OIG believed WO#1 should have been a named employee in the investigation.

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<sup>1</sup> OIG listed 6.120-TSK-8. OPA acknowledges OIG's primary concern—not including 6.120 and 7.060—but believes this case was best analyzed under 6.120-TSK-9 instead of 6.120-TSK-8.



OPA agrees that SPD Policies 6.120 and 7.060 were appropriate classifications. However, OPA disagrees that the oversight rendered the investigation unthorough. As discussed below, neither policy would have required NE#1 to notify the Complainant or provide additional notice to CM#1 or his family. While the Department should correct this policy gap, including both would not have yielded a different result. Moreover, OPA classified SPD Policy 7.060, as this broader policy covered CM#1's cell phone.

Similarly, OPA recognizes that allegations could have been classified against WO#1 since he released Vehicle #1. However, during OPA's intake investigation, it appeared that WO#1 had processed Vehicle #1's release at NE#1's direction, which OPA's full investigation later confirmed.

Overall, OPA believes OIG's concerns speak to SPD's need to clearly identify the party responsible for notifying property owners about the release of their property. An updated policy should also consider where property is stored, which staff would be available to release it, and whether the property owner is incapable—due to death or injury—of protecting their property rights.

OPA appreciates OIG's continued partnership to elevate the standard of OPA's investigations and increase accountability within SPD.

#### **SUMMARY OF INVESTIGATION:**

During this investigation, OPA reviewed the OPA complaint, the criminal investigation, and documents related to Vehicle #1's impoundment and release. OPA also reviewed SPD's policies, instructions, and forms for general property release. OPA interviewed the Complainant and NE#1.

##### ***a. Underlying Criminal Case Documents***

In August 2022, SPD officers responded to a "shots fired" call and found CM#1 and another person with gunshot wounds. Both were found near Vehicle #1. CM#1, critically injured, was transported to a hospital. The other victim died.

NE#1 was the primary detective for the homicide investigation. Vehicle #1 was impounded with a hold for CSI.

##### ***b. OPA Complaint & Complainant Interview***

The Complainant filed an online OPA complaint against NE#1. The Complainant wrote that the family "signed a sheet" for the police to search Vehicle #1 and then awaited the car's release. The Complainant said they called later and were told Vehicle #1 was sold at auction. The Complainant also wrote the police took CM#1's cell phone, but the cell phone and "other belongings" were not returned.

OPA interviewed the Complainant. The Complainant explained his son, CM#1, owned Vehicle #1. The Complainant said he met NE#1 at the hospital after CM#1 was shot. The Complainant stated NE#1 asked for CM#1's cell phone because the police had not found it. The Complainant said he signed paperwork at NE#1's request to allow officers to search Vehicle #1. The Complainant said NE#1 indicated that Vehicle #1 would be released to the Complainant immediately after the search.



The Complainant said he did not hear back from the police, so around December 2022, he called and texted NE#1. The Complainant said NE#1 explained he had been sick and gave the Complainant the phone number for the tow company. The Complainant stated the tow company told him they only held Vehicle #1 for two weeks and then auctioned it. The Complainant said he followed up with NE#1, who confirmed that Vehicle #1 was sold. The Complainant said NE#1 stated there was nothing he could do.

The Complainant told OPA he would provide texts and emails from NE#1, but OPA has yet to receive them.

The Complainant wanted justice for CM#1 and compensation for Vehicle #1. The Complainant's attorney said that although NE#1 did not act maliciously, the lack of communication was unacceptable.

***c. Impound and Release Documents***

OPA reviewed several documents related to Vehicle #1's impoundment and subsequent release.

An "Impound Notification with Hold Attachments" was completed by an officer at the crime scene. The document showed Vehicle #1 was transported to the secure Vehicle Processing Room (VPR). It also showed CM#1 was the sole registered owner of Vehicle #1.

The "Vehicle Hold Release Packet" showed Vehicle #1 was released to a tow company on October 18, 2022. The forms indicated that CM#1 was the registered owner of Vehicle #1. WO#1 signed the release. The packet also included a letter dated October 19, 2022, addressed to CM#1. The letter was titled "NOTICE OF POLICE HOLD STATUS – Investigation Release." The letter advised that Vehicle #1 had been released to the tow company and provided instructions for obtaining the vehicle.

OPA also reviewed a CSI document from the homicide investigation, which noted:

On 10/18/22 at approximately 1300 hours, [WO#1] released [Vehicle #1] to the registered owner at the request of [NE#1]. [Tow Company] responded to the VPR at about 1330 hours and towed the vehicle to their lot, pending release to the registered owner.

***d. OPA Interview – NE#***

OPA interviewed NE#1 on June 27, 2023.

NE#1 stated he has worked for SPD for about eighteen years and is currently assigned as a detective in the Homicide/Assault Unit.

NE#1 recalled his involvement in the homicide investigation and stated he has communicated with the Complainant in person and over the phone, including text messages. NE#1 recalled meeting with the Complainant at the hospital, discussing the case, and requesting consent to search the vehicle, as CM#1 was unable to communicate. NE#1 recalled that the Complainant consented to search Vehicle #1 and CM#1's cell phone. NE#1 said he did not have CM#1's cell



phone and did not believe police recovered it. NE#1 stated he had a “distant memory” of speaking about Vehicle #1 with the Complainant. NE#1 stated he probably discussed this with the Complainant when he signed the consent form and that the conversation was, in sum and substance, “[t]hat we were going to search [Vehicle #1] and that when we’re finished with it, we’ll release it.” NE#1 did not believe he discussed how the vehicle would be released with the Complainant.

NE#1 stated he did not personally release Vehicle #1 but discussed its release with the prosecutor, who decided it no longer needed to be held. NE#1 recalled communicating to CSI that the vehicle did not need to be retained and that the CSI Unit could release it. NE#1 recalled CSI informing him they would take care of the release.

NE#1 also stated that he tells all victims that he cannot communicate with them every day but would provide updates as things in the case changed. NE#1 stated he did not believe he would have promised to release Vehicle #1 directly to the Complainant. NE#1 described an issue in a previous case where he learned a vehicle could not be released directly to a family but had to be released to a tow company first. NE#1 speculated that the Complainant may have misunderstood him.

NE#1 also showed OPA his text messages with the Complainant. There were text messages between NE#1 and the Complainant in late September 2022 and more in late December 2022. The December 2022 messages were the first to reference Vehicle #1’s release. In the messages, the Complainant stated the tow company auctioned the car on November 22 (thirty-six days after it was released). NE#1 texted an explanation that vehicles are released to tow companies and that a letter should have been sent to notify them. NE#1 texted a suggestion that the Complainant reach out to the tow company concerning their notifications policies. The Complainant responded, “Okay, thank you, I will go there.”

NE#1 noted in his interview that he did not believe SPD Policy 7.060 related to the release of a vehicle. Instead, NE#1 noted he felt the correct policy to classify this complaint would have been SPD Policy 6.120, as that policy guides how vehicles are released. NE#1 acknowledged multiple policies covering releasing property, but vehicles are stored in a different location and have a specific policy governing their release. NE#1 also noted that to the extent SPD Policy 7.060 applied, it specifically stated that a letter be sent to the owner when the property is released—which was done here—but that Policy 6.120 contained no such requirement. NE#1 also noted that neither policy required notification to the family of the registered owner.

NE#1 expressed sympathy for the Complainant due to the situation and recalled apologizing to the Complainant directly. NE#1 recalled saying something like, “I should have called you. I wish I would have called you, and I didn’t. So, I apologize for that, but I followed the procedure that we are supposed to, and someone should have contacted you by some method.”

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.001 Standards and Duties section 10 Employees will strive to be professional***

The Complainant alleged NE#1 failed to communicate with them concerning Vehicle #1.



SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers,” whether on or off duty. *Id.*

The Complainant and his legal representatives alleged NE#1’s lack of communication regarding Vehicle #1 was unprofessional. Specifically, the Complainant recalled NE#1 telling him he would call when Vehicle #1 was released. NE#1 did not recall saying this to the Complainant. To the contrary, NE#1 described a previous experience where he learned vehicles could *not* be released directly to the family and, instead, needed to be released first to a tow company, which would contact the family. Additionally, NE#1 provided text messages that showed he was available and willing to communicate with the Complainant, but that the first inquiry he received concerning Vehicle #1 was in December, about a month after Vehicle #1 was auctioned and two months after it was released. NE#1 speculated the Complainant may have misunderstood his description of the process for releasing the vehicle.

As discussed at Named Employee #1 - Allegation #2, the Department should consider updating policy, procedures, and training to notify the family or estate of a crime victim whose condition may not allow them to claim their personal property promptly. NE#1 himself expressed remorse for not calling the Complainant. This situation could have been avoided if NE#1 thought to make a courtesy call. That said, no policy required NE#1 to do so, and NE#1’s belief that the tow company would provide appropriate notice was not unreasonable. Had NE#1 thought to make a courtesy call, it would have been going above and beyond. His failure to do so, while unfortunate, was not misconduct. The property release system should have a minimum safeguard to provide notice when the Department knows the property owner would not respond to a mailed letter.

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

Recommended Finding: **Not Sustained - Unfounded**

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

***7.060 - Releasing Evidence, 7.060-TSK-1 Employee Releasing Evidence, 6. Releases the property to the owner using Mark43 Evidence/Property Disposition Instructions and ...***

The Complainant alleged NE#1 failed to provide notice regarding Vehicle #1’s release.

SPD Policy 7.060-TSK-1 guides sworn employees releasing evidence or property that the Department no longer needs. SPD Policy 7.060-TSK-1. Among other things, it requires an officer releasing property to mail a hard copy of an “Evidence and Property Release Letter [Form 13.9(A)]” to the property owner when releasing the property. *Id.*

In this case, NE#1 and SPD knew that CM#1 was the registered owner of Vehicle #1 and was not in a condition to vindicate his property rights, especially through written mail. That is why NE#1 had the Complainant—and not CM#1—sign the consent to search Vehicle #1. However, OPA found no requirement in either SPD Policy (See SPD Policy 6.120 or 7.060), procedures, or training for that knowledge to be incorporated into the vehicle release process. Instead, SPD and the Tow Company sent written letters to the registered owner, CM#1—a person SPD knew suffered a catastrophic injury and did not even sign the search consent form.

This problem was compounded by policies that presume the follow-up unit detective would perform the administrative process of releasing the vehicle. See SPD Policy 6.120-TSK-9 (referencing the “follow-up unit



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detective”). Instead, in practice, this administrative duty appears to fall most often to CSI Unit detectives who work near the VPR and are available to sign vehicles over to tow companies.

OPA recommends SPD consider updating their evidence release policies, procedures, and training. Consideration should be given to flag situations where property owners are known to be either deceased or incapable of retrieving their property. A possibility could be requesting that individuals signing a consent to search a vehicle provide contact information that travels with the vehicle as it is processed. The Department should also consider policy, procedure, or training changes for CSI detectives releasing vehicles for follow-up detectives from other units.

Accordingly, OPA recommends this allegation be Not Sustained – Management Action Recommendation.

Recommended Finding: **Not Sustained - Management Action Recommendation**