



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 1, 2017

CASE NUMBER: 2017OPA-0568

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	16.110-POL-5 Responding to Subjects in Behavioral Crisis 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis	Not Sustained (Inconclusive)
# 2	15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)	Not Sustained (Training Referral)
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)
# 4	15.400-Domestic Violence Court Orders 3. Officers Make Mandatory Arrests for Court Order Violations	Not Sustained (Training Referral)
# 5	15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents (See 15.180-Primary Investigations)	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	16.110-POL-5 Responding to Subjects in Behavioral Crisis 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis	Not Sustained (Inconclusive)
# 2	15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)	Not Sustained (Training Referral)
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Sustained
# 4	15.400-Domestic Violence Court Orders 3. Officers Make Mandatory Arrests for Court Order Violations	Sustained
# 5	15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents (See 15.180-Primary Investigations)	Sustained

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	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 Employees did not handle a call involving an individual in crisis properly and failed to take that individual to the hospital. During OPA's intake, it was discovered that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) failed to document this incident and may have failed to take appropriate law enforcement action. Additionally, Named Employee #3 (NE#3) was alleged by the Complainant to have been unprofessional in his interaction with her.

STATEMENT OF FACTS:

As a general matter, this case concerns the Named Employees' response to a call concerning an individual possibly in behavioral crisis. The caller, who was later identified as the Complainant, detailed that she was afraid for her safety and that she had a protection order against the subject. In the 911 call made by the Complainant, she indicated that the subject was her ex-boyfriend, that he suffered from mental illness, and that she did not feel safe around him.

OPA verified that there was an open order of protection at the time of the incident. The order that was in place prohibited the subject, who lived in the same building as the Complainant, from coming within 20 feet of the Complainant's residence, but it did not necessarily prevent contact between the two. This order was reviewed by the Named Employees prior to the commencement of their investigation.

The Named Employees, as well as other officers, responded to the call. They arrived at 21:27 hours and cleared the call twenty minutes later, at 21:47 hours. During their response to the call, NE#1 made the decision to take no law enforcement action, and this decision was screened with and supported by his field training officer, NE#2. This decision was noted in a call update to the CAD ("TALKED TO SUBJECT AND RP. NO POLICE ACTION NEEDED").

The interaction between the Named Employees and the subject and Complainant (primarily the audio of their conversation), as well as the extent of the Named Employees' investigation was captured on In-Car Video (ICV). A description of the substance of the interaction and investigation is set forth more fully in the Case Summary.

The Complainant provided a recorded statement to OPA. While containing some inconsistencies, the gravamen of her statement was that she requested that the officers take law enforcement action by taking the subject into custody and getting him medical care, but they failed to do so. She further stated that she told the officers that the subject had grabbed her and had come onto her floor, both of which she indicated were in violation of the protection order. However, the officers did not arrest the subject. The Complainant described this incident as a negative interaction with police and she was extremely disappointed in the response by the Named Employees and the inaction by other officers.

OPA interviewed the Named Employees, as well as Officer Fine. These interviews are included in OPA's file, and are summarized in the Case Summary.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

16.110-POL-5 Responding to Subjects in Behavioral Crisis 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis

SPD Policy 16.110-POL-5(9) requires that officers document all contacts with subjects who are in any type of behavioral crisis. The policy includes under its ambit “people exhibiting signs of mental illness, as well as people suffering from substance abuse and personal crises.” (SPD Policy 16.110-POL-5.) A behavior crisis is defined as “an episode of mental and/or emotional distress in a person that is creating significant or repeated disturbances and is considered disruptive by the community, friends, family or the person themselves.” (*Id.*) Officers must document these contacts in either a General Offense Report or a street check. (*Id.*) The policy further states that: “Officers shall use the crisis template for every incident involving a person in behavioral crisis.” (*Id.*)

Here, the Complainant reported that the subject suffered from mental illness, was behaving erratically, and that he was causing her to feel unsafe. Notably, when she called 911, the Complainant told the dispatcher that the subject was “melting down” and “raving,” as well as the fact that she had called a hospital and had been referred, in turn, to the police. NE#1 contacted the subject at the scene and later related to fellow officers that he was “not getting much from him.” When NE#1 spoke to the Complainant, she told him that the subject had been “all over the place,” was reporting hearing voices, and was “yelling at people.”

Based on the above, even if the Named Employees did not have a sufficient basis for Emergent Detention, there was no justification for not documenting the contact with the subject in a general offense report. I find the question of whether a crisis template should have been completed to be a closer call. While the statement made by the Complainant suggested that the subject was in crisis, the officers did not observe behavior indicating crisis when they interacted with the subject. From my review of the ICV, I see no evidence indicating that the subject was obviously in crisis. As such, I cannot conclusively find that the officers’ decision to not complete a crisis template was outside of policy. That being said, given the nature of this case and the information conveyed to the officers by the Complainant, it may have been advisable to complete a crisis template. At the very least, the officers should have generated a general offense report and should have noted therein why they did not believe that the subject was in crisis and explain why they did not fill out a crisis template.

For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)

SPD policy mandates the arrest of the perpetrator where an officer has probable cause to believe: that an assault occurred; that the assault resulted in bodily injury to the victim; and that the victim and the perpetrator are currently or were in a “dating relationship.” (SPD Policy 15.410-POL-2.) As referenced above, this section of the policy further requires that officers conduct a thorough investigation into such incidents.



Here, the evidence indicated that there was a possible assault; namely the subject grabbing the Complainant's arm. Moreover, the officers knew, or should have known, that the Complainant and the subject had previously been in a dating relationship. However, the officers did not fully investigate this matter to determine whether there had been an injury, thus preventing a determination of probable cause to arrest.

At his first OPA interview, NE#2 claimed to have not known that the subject and the Complainant were previously in a relationship. However, this information was present in the CAD, which the Named Employees were required to be aware of. Moreover, in the Daily Observation Report (DOR) that NE#2 completed for NE#1, he indicated: "You met with the complainant and she wanted you to invol her boyfriend." This established that NE#2 did, in fact, know of the dating relationship at the time of the incident. OPA later re-interviewed NE#2 to ask him about this inconsistency. At that second interview, NE#2 stayed firm to his contention that he did not know that the subject and the Complainant were previously in a relationship, and opined that the language within the DOR was potentially a typographical error from copying and pasting information from another DOR. As a result of this inconsistency and based on NE#2's unconvincing explanation, a separate allegation was classified against NE#2 for dishonesty. This allegation will be evaluated in a subsequent OPA investigation.

While NE#1 accepted that he knew about the relationship between the Complainant and the subject, he believed that he did not have probable cause indicating that an assault had occurred. NE#1 stated that he learned from another officer that the Complainant was in the subject's apartment when the assault occurred. She had been repeatedly ringing the subject's doorbell until she was granted access – presumably because she was worried about the subject's welfare – and that the subject grabbed the Complainant's arm in order to get her to leave his apartment. NE#1 reported his belief that the subject "had a right to, to defend himself and, and, and his, and his apartment unit, his property, by having her leave."

NE#1 did not remember asking the Complainant if she was injured or felt pain from the grabbing of her arm. NE#1 also did not remember whether the Complainant explained what she meant when she said she felt fearful of the subject. NE#1 did recall, however, that he looked at the Complainant's arm and did not see any visible injuries.

At his OPA interview, NE#2 claimed that the officers had no idea when the grabbing of the arm occurred and that this lack of knowledge played into the decision to not arrest the subject. However, NE#2 reported never speaking with the Complainant and NE#1 indicated that he never asked the Complainant when the alleged assault occurred.

NE#2 told OPA that when NE#1 screened the incident with him and outlined his planned course of action, NE#2's understanding was that NE#1 was going to conduct additional investigation to determine whether probable cause existed for arrest by speaking again with both the Complainant and the subject. However, NE#1 took no further law enforcement action. I note that NE#2's understanding is contradicted by NE#1's statements to him at the time of the screening. As captured by the ICV, NE#1 told him: "so, I am going to tell her and cut her loose and tell him and cut him loose." This undercuts any claim by NE#2 that he truly believed that NE#1 was going to re-interview the parties and is another inaccuracy in NE#2's statements that will, like the inaccuracy detailed above, be investigated by OPA.

The investigation conducted by NE#1 and approved by NE#2 was simply inadequate. They knew that the subject was reported to be suffering from mental illness, NE#1's conversations with him were unfruitful, and they had information that he had grabbed the Complainant's arm. Whether or not the grabbing occurred when the Complainant was inside the subject's apartment is not dispositive on the issue of probable cause existed for the



assault. I disagree that the fact that the Complainant may have been insistent in her attempts to enter the subject's apartment would have necessarily provided a justification for the subject to later use physical coercion against her to remove her from the apartment.

Based on my review of the record, however, I cannot conclusively find that there was probable cause to arrest the subject and that, accordingly, his arrest was mandated. I note that the reason I cannot reach this finding is because of the officers' failure to conduct a thorough and complete investigation, most notably the failure to ask the Complainant whether she had suffered an injury or had been caused pain by the grabbing of her arm.

For these reasons, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should receive additional training as to the elements of this policy and, specifically, the requirement that an arrest is mandatory where probable cause exists to believe that domestic violence has occurred and the investigatory steps that he is expected to take in such cases. NE#1 should further receive counseling from his chain of command concerning the importance of this policy and the Department's expectations that he will comply with its requirements and conduct adequate investigations. This training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #3

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

I conclude that the Named Employees were required to document their investigation on a general offense report, but that they failed to do so. As explained below, I recommend that this allegation be sustained as against NE#2; however, I believe that, based on his relative inexperience and status as a student officer, a training referral is the appropriate disposition for NE#1.

- **Training Referral:** NE#1 should receive additional training as to the requirement that he document his primary investigations on a general offense report. NE#1 should be reminded by his chain of command that this requirement is especially important in the context of domestic violence investigations. NE#1's chain of command should further counsel him regarding the Department's expectations in this regard. This training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #4

15.400-Domestic Violence Court Orders 3. Officers Make Mandatory Arrests for Court Order Violations

Based on the available evidence, I cannot conclusively determine that probable cause existed to arrest the subject for violation of a protection order. My inability to do so, however, is due to the cursory and inadequate investigation conducted by the Named Employees. I recommend that this allegation be Sustained against NE#2 given his status as NE#1's field training officer. With regard to NE#1, I believe that a Training Referral is the appropriate disposition.



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- **Training Referral:** NE#1 should be re-trained on SPD's policy on mandatory arrests for violations of protection orders. NE#1 should further receive counseling from his chain of command concerning the importance of this policy and the Department's expectations that he will comply with its requirements. This training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #5

15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents (See 15.180-Primary Investigations)

As noted throughout this memorandum, I find that the investigation conducted by the Named Employees was not thorough or complete. Given his status as NE#1's field training officer, NE#2 is ultimately responsible for the inadequacy of this investigation. Accordingly, I recommend that this allegation be sustained as against him. With regard to NE#1, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should receive additional training on the policy governing the requirements for primary investigations of domestic violence incidents. NE#1 should further receive counseling from his chain of command concerning the importance of this policy and the Department's expectations that he will comply with it fully. This training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #1

16.110-POL-5 Responding to Subjects in Behavioral Crisis 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis

For the same reasons as stated above (see NE#1, Allegation #1), I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #2

15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)

For the same reasons as stated above (see NE#1, Allegation #2), I recommend that this finding be Not Sustained Training Referral.

- **Training Referral:** NE#2 should receive additional training as to the elements of this policy and, specifically, the requirement that an arrest is mandatory where probable cause exists to believe that domestic violence has occurred and the investigatory steps that he is expected to take in such cases. NE#2 should further receive counseling from his chain of command concerning the importance of this policy and the Department's expectations that he will comply with its requirements and conduct adequate investigations. This training and associated counseling should be memorialized in a PAS entry.



Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #3

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

SPD Policy 15.180-POL-5 provides that “officers shall document all primary investigations on a general offense report.” As indicated above, the Named Employees failed to complete any documentation relating to this incident, including a general offense report. At his OPA interview, NE#1 recognized that he should have completed a general offense report. NE#2 explained to OPA that he believed no crime occurred and, thus, no general offense report was required. However, whether a crime occurred does not determine when a general offense report must be completed. A primary investigation is defined as “when police action is initiated.” (SPD Policy 15.180-POL-5.)

Here, police action was initiated by the Named Employees’ response to the scene. They took a number of investigative steps and ultimately decided that an arrest was not appropriate. The substance of their investigation and the reasoning underlying their ultimate determination should have been documented in a general offense report. This is particularly the case given the Department’s priority in properly investigating and taking appropriate law enforcement action in domestic violence incidents.

As with the other allegations, I find that NE#2 is responsible for the failure to complete a general offense report. For this reason, I recommend that this allegation be Sustained as against him.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #4

15.400-Domestic Violence Court Orders 3. Officers Make Mandatory Arrests for Court Order Violations

SPD Policy 15.400-POL-3 requires that “officers make mandatory arrests for court order violations.” The policy further instructs that, as part of this requirement, “officers will attempt to gather evidence when investigating the violation of a court order.” (SPD Policy 15.400-POL-3.)

It is unclear what investigation, if any, the officers engaged in to determine whether or not the subject came within 20 feet of the Complainant’s residence, as prohibited by the protection order. The Named Employees reported that prior to contacting the Complainant and subject, they reviewed and were familiar with the content of the protection order. NE#1 spoke with the Complainant, who, according to NE#1, indicated that the subject did not violate the order. However, from my review of the record and specifically the ICV of the incident, I cannot find any evidence that she made such a statement. Indeed, it appears from my review that she stated the opposite. She clearly indicated that the subject was on her floor as she could hear him calling her name. NE#1 remembered this fact after reviewing his ICV. This suggested that the subject very well may have been within 20 feet of the apartment when he did so. While NE#1 had all of this information, he conducted only a limited investigation and did not take any tangible steps to determine whether a violation of the protection order had occurred. Notably, there is no evidence that he went to the Complainant’s floor to observe the distance from the stairwell or elevator to her apartment or that he even asked the subject whether he did, in fact, come within 20 feet of the Complainant’s apartment.



NE#1 reported his findings and relayed his plan to take no law enforcement action to NE#2. NE#2 approved this decision. During their conversation, NE#1 told NE#2 that he believed that whether the subject violated the protection order was a “gray area.” NE#2 reported to OPA that he did not direct NE#1 to conduct further investigation because he believed that NE#1’s statement that it was a “gray area” meant that the violation did not occur. I note that NE#2 also indicated to OPA that he did not ask what NE#1 meant by “gray area.”

I find it problematic that, based on what was relayed to him, NE#2, as the field training officer, did not request that NE#1 conduct further investigation. NE#2’s job on that day to provide training and on-the-job guidance to NE#1. This should have particularly been the case during this incident, which was a complex case involving mental illness and a domestic dispute. However, it appears that NE#2 instead simply approved an incomplete investigation. Moreover, the Department’s expectation was that NE#2 would fully observe and monitor his student officer’s actions, which included listening to NE#1’s conversations with the Complainant and the subject. While NE#2 may argue that he did not do so because he was acting as the “cover” officer, that simply was not his job and there were two other officers, NE#3 and Officer Fine, who could have acted in that role.

Not only does SPD policy mandate an arrest for violation of a protection order, but it also requires its officers to fully investigate such cases to determine whether probable cause exists. Here, based on my review of the ICV and the statements made by the Complainant, I believe that there was probable cause to find that the subject violated the protection order. Moreover, the Named Employees failed to engage in a thorough investigation into the subject’s conduct. This was their responsibility and, as the field training officer, it was NE#2’s obligation to ensure that the investigation was thorough and complete and that appropriate law enforcement action was taken. As such, I recommend that this allegation be Sustained as against NE#2.

Recommended Finding: **Sustained**

Named Employee #2 – Allegation #5

15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents (See 15.180-Primary Investigations)

As explained herein, I find that the Named Employees’ investigation into this incident was cursory and inadequate. While NE#1’s failures are somewhat mitigated by his status as a very new officer, NE#2 does not have such an excuse. Moreover, as noted throughout this memorandum, NE#2 bears ultimate responsibility for his student officer’s actions. Accordingly, I recommend that this allegation be Sustained as against NE#2.

Recommended Finding: **Sustained**

Named Employee #3 - Allegations #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

The Complainant alleged that NE#3 “talked down” to her when he “launched into a lecture on how important it was to take it seriously when you take someone’s rights.” The Complainant stated that she was “appalled” and “disgusted” by NE#3’s conduct.



During the investigation, NE#3 explained the requirements for Emergent Detention to the Complainant. This was discussed in the context of her request that the subject be taken into custody. From my review of the ICV, I find no evidence that NE#3's behavior was unprofessional. He spoke politely, and did not raise his voice or appear to me to treat the Complainant dismissively. NE#3 accurately described the requirements for Emergent Detention that are set forth in SPD policy and law. While I do not discount the Complainant's belief that NE#3's manner of speaking to her was inappropriate, there is no evidence in the record establishing that a violation of policy occurred.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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