



## **CLOSED CASE SUMMARY**

ISSUED DATE: FEBRUARY 18, 2019

CASE NUMBER: 2017OPA-0720

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	6.130 - Informant Management 3. Detectives Shall Follow the Procedures for Use of CIs	Not Sustained (Inconclusive)
# 3	6.130 - Informant Management 16. The Department Shall Regulate Payments to CIs	Not Sustained (Inconclusive)
# 4	5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain	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:**

In May 2017, a supervisor with the U.S. Drug Enforcement Agency (DEA) discovered a discrepancy in the paperwork associated with money paid to Confidential Sources (CS) who were cooperating with the Named Employee. At the time, the Named Employee was assigned to work with the DEA as part of a joint drug task force. Per DEA’s records, the Named Employee failed to submit twenty-four (24) receipts totaling \$20,500 in cash payments. Those receipts are required by the DEA as an internal control measure to confirm that the money was paid to the informants.

### **SUMMARY OF INVESTIGATION:**

Based on the discrepancy in the paperwork associated with the Named Employee #1’s (NE#1) payments to CS, the DEA Office of Inspector General (OIG) initiated an internal criminal investigation into this matter. The DEA did not inform SPD about the investigation they initiated in May 2017 until mid-July 2017. SPD promptly referred this matter to OPA, and this investigation ensued.

OPA opened its administrative investigation in July 2017 but stayed the contractual disciplinary timelines while the DEA OIG conducted its criminal investigation. The DEA OIG completed its investigation in August 2018. OPA later received a redacted copy of their Report of Investigation (ROI) on December 4, 2018.

The DEA OIG’s ROI included the following information: A supervisor from the DEA’s Tactical Diversion Squad discovered that 24 receipts for purported payments to CS, totaling \$20,500, were missing. The receipts were associated with reported payments made to CS of NE#1.



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Their investigation did not substantiate the allegations of the theft of the payments in question. They reported that through interviews and review of documents, they confirmed 80% of the payments in question were made to the CS. NE#1, who had retired by the time the DEA OIG requested an interview of him, voluntarily spoke to them about this matter and reportedly explained that there was always another law enforcement professional present to witness the payments he made and that it was nothing more than a paperwork issue.

The DEA OIG's investigation substantiated the allegations that NE#1 failed to provide the receipts and that he inappropriately removed and destroyed the forms. According to their report, NE#1 admitted that he failed to turn in the receipts according to policy and stated that he stored the receipts in his locked desk at work during busy times and when the DEA's supervisor was unavailable to receive them. NE#1 reportedly stated that he believed that the receipts in question were in his desk for over two years and no one ever asked him about them before. The DEA OIG also reported that NE#1 stated that when he left the DEA's offices in April 2017, he inexplicably packed the receipts with his other belongings that he removed and took them to his home. NE#1 also reportedly told them that when he prepared to sell his home in May 2017, he disposed of the receipts in his recycling container. Interestingly, the DEA OIG also included information in their report that suggested that someone other than NE#1 packed his belongings, which presumably included the receipts, in a box for him, when he left the DEA.

The DEA OIG also reported that the process of returning receipts to a supervisor used to happen immediately after paying a CS; however, the DEA's Seattle Division changed that procedure in 2015, prohibiting task force officers from doing so without simultaneously submitting an investigative report documenting the details associated with the payments. An individual, whose name was redacted by the DEA OIG, told them that a busy workload caused officers like NE#1 to fall behind in writing those investigative reports. As such, and according to this individual, they began locking the payment receipts in their desks until they had time to complete their investigative reports. The DEA OIG also included information in their report that another individual described NE#1 as the hardest working Task Force Officer assigned to the DEA and that he failed to provide the receipts in a timely manner because of how busy he was. The DEA OIG also stated that a top supervisor confirmed that the process described above was known to happen because of workloads.

The DEA OIG found that NE#1 violated three Federal policies as part of his failure to provide the receipts to his supervisors and his subsequent destruction of those records. They also reported that the U.S. Attorney's Office for the Western District of Washington declined criminal prosecution on this matter.

NE#1 retired from SPD on April 17, 2018 and moved out of state. OPA was unsuccessful in its attempts to locate him. Thus, NE#1 was not interviewed as part of this investigation.

NE#1 was a 28-year veteran of SPD. He worked as part of the DEA Task Force from January 2010 until April 2017. OPA is unaware of any performance issue he had during his career with SPD. The issues identified and investigated by the DEA OIG are the only known issues NE#1 had in his seven years on the Task Force.



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**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. As such, if NE#1, as alleged, failed to adhere to the Federal Law when he removed and destroyed the CS receipts or stole money from the DEA, it would be a violation of this policy.

From the information provided in the DEA OIG's report, it does not appear as if there is any evidence that NE#1 stole any of the CS payments. Yet, based on their report, it does appear that NE#1 admitted to removing and destroying government records, which they cited as a violation of 18 U.S.C. § 2017, a federal law that requires the government to prove that an individual willfully and unlawfully took those steps. The DEA OIG's report confirmed that the U.S. Attorney's Office declined to prosecute this case. That said, OPA believes that NE#1 may still have violated SPD policy if NE#1 failed to take appropriate action concerning the CS payment receipts. However, without obtaining more information from NE#1 and the DEA about how their CS payment system operated from 2015 to 2017, when it apparently changed, OPA has insufficient evidence to determine whether NE#1 acted in violation of this policy.

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

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

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

***6.130 - Informant Management 3. Detectives Shall Follow the Procedures for Use of CIs***

SPD Policy 6.130-POL 3 states that Detectives shall follow the procedures for use of Confidential Informants. This policy specifically notes that any deviation from the procedures outlined in the Confidential Informant Guidelines must be approved by the authorized Detective's supervisor at the level of Lieutenant or above.

Though NE#1 was working under the guidelines of the DEA, OPA expects that NE#1 was trained and understood what is required under Department policy when working with Confidential Informants and the importance of following defined procedures. However, without interviewing NE#1 and other witnesses within the DEA about how their procedures were trained and were enforced, OPA is unable to reach a determinative finding on this allegation.

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

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

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

***6.130 - Informant Management 16. The Department Shall Regulate Payments to CIs***

SPD Policy 6.130-POL-16 lists the types of payments that may be made to Confidential Informants along with information about the requirement to regulate those payments by properly recording and reporting them.



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The DOJ OIG's investigation determined that NE#1 completed the other documentation associated with the payments in question. They also reported that it was known that NE#1 and others who worked busy workloads were retaining and locking the CS receipts in their desk drawers following the 2015 change in their procedure that required them to be turned in with a report. However, for the same reasons as stated above in the context of Allegations #1 and #2, there is insufficient evidence in the record to allow OPA to conclusively determine whether NE#1 violated this policy.

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

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

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

***5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain***

SPD Policy 5.001-POL-13 states that employees shall not use their position or authority for personal gain.

The DEA OIG investigation corroborated 80% of the payments that were reported to have been made by NE#1 to his CS. They also reported that the U.S. Attorney's Office declined to prosecute this case against NE#1. Additionally, the DEA OIG's investigation exposed other issues in the DEA's Seattle office in terms of its management, workloads, and paperwork. However, given the limited evidence available to OPA in this case and given OPA's inability to locate and interview NE#1 concerning this matter, OPA cannot definitively find that he did not engage in the conduct alleged with regard to at least some of the CS payments.

For these reasons, and as with the allegations discussed above, I recommend that this allegation be Not Sustained – Inconclusive.

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