



**CLOSED CASE SUMMARY & SUPPLEMENTAL
INVESTIGATION MEMO**

ISSUED DATE: AUGUST 3, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0103

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete In All Communication	Sustained
# 2	5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain	Sustained
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional at all Times	Sustained
# 4	12.040 - Department Owned Computers, Device and Software 13. Employees Will Retain Public Records...	Not Sustained (Inconclusive)

Imposed Discipline

Retired in lieu of termination

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 Named Employee was alleged to have abused her position and acted unprofessionally by arranging for the Navigation Team to pick up trash at her home. It was further alleged that she was dishonest and destroyed records when asked about the conduct.

SUMMARY OF INVESTIGATION:

On February 9, 2020, two individuals working for Cascadia Cleaning and Removal, a private contractor that does trash cleanup for the SPD Navigation team, received a directive from an Area Coordinator at the Seattle Human Services Department (HSD) to remove garbage from a private residence. The Area Coordinator informed them that no photographs were needed. Typically, Cascadia employees photograph the site of a trash pickup before and after completing work.

The Cascadia employees removed the garbage from the residence, which was located in the area served by the Southwest Precinct. Later, one of the employees mentioned in passing to another HSD employee that he had been dispatched to West Seattle. That HSD employee told the Cascadia employee that he believed Named Employee #1 (NE#1), an SPD lieutenant, lived at the address in question.



The Cascadia employee discussed the issue with Witness Officer #1 (WO#1), a Navigation Team officer. WO#1 and another officer “Googled” the address and determined that it was NE#1’s residence. They alerted their supervisor, an Acting Sergeant. The Acting Sergeant contacted NE#1 the next day. He explained to her that he was investigating a trash pickup by the Navigation Team that occurred at a private residence. NE#1 speculated that he may have been referring to an incident that occurred in the North Precinct. She also told the Acting Sergeant that she would also investigate the incident.

Two days later, on February 12, 2020, NE#1 met with the Acting Sergeant and WO#1. In the meeting, she told them that she asked the Area Coordinator, a personal friend, to arrange to remove the trash. She alleged that, prior to doing so, she had made a request for a trash pickup to Seattle Public Utilities (SPU), but that the request had not been fulfilled. She also said that her message to the Area Coordinator requested that the Navigation Team not be dispatched specifically for her, but rather that they pick up the trash “if they were in the area.” She said she realized she “jumped the line” but that, due to her seven day a week work schedule, she had not been able to remove the trash herself. Finally, she apologized for her lapse in judgment for putting the Acting Sergeant and WO#1 in an uncomfortable position.

On February 13, 2020, the Navigation Team Director was informed by an employee that there was a media request about the alleged incident. The Director spoke to the Area Coordinator, who said that NE#1 made the request to remove trash from her home. The Director then contacted NE#1, who confirmed that she had made the request and apologized. NE#1 again stated her reasoning that the Navigation Team contractors were already in the area doing other work. The Navigation Team Director also spoke to the owner of Cascadia, who told her that he would not bill the City for the cost of the trash removal. NE#1 further spoke with the Navigation Team Operations Manager. NE#1 told her that she had made a mistake by having trash outside of her home picked up. NE#1 indicated to the Operations Manager that she did so because the crew was already in the area and that she did not know that she could not do this. She told the Operations Manager that she had called SPU to have them pick up the trash, but they had not responded to her.

The Acting Sergeant also contacted an SPD Captain who directed that this matter be documented. The Acting Sergeant drafted a memo concerning this incident and provided it to the Captain. The matter was then referred to OPA by the Captain and this investigation ensued.

OPA interviewed the involved HSD and Cascadia personnel. The Area Coordinator who ordered the trash pickup from NE#1’s home stated that NE#1 contacted him to request the pickup. The Area Coordinator confirmed that she made the request and that he did not unilaterally offer to pick up the items. He stated that NE#1 sent him two photographs by text message, which he deleted after receiving them. He then sent the photos to the Cascadia employees, and told them they did not need to document the pickup in the usual manner. He estimated the cost to the city of the trash pickup to be approximately \$200. He told OPA that, after the incident, he and NE#1 spoke and that they both agreed that it had been a mistake. He said that NE#1 urged him to tell the truth should he be contacted by OPA.

The Operations Manager recalled her conversation with NE#1 about the pickup, which is detailed more fully above. She told OPA that she believed that NE#1 made a mistake. In explaining her opinion, the Operation Manager cited to the fact that, according to NE#1, the crew was already in the area making other trash pickups.

OPA interviewed The Cascadia employee who conducted the pickup. He said he was dispatched by the HSD supervisor specifically to conduct this pickup. He confirmed that he had no other jobs or pickups in West Seattle that day. He



further felt that it was unusual not to take photographs and he never received an explanation from the Area Coordinator concerning why photographs were not taken.

OPA contacted Seattle Public Utilities (SPU), which handles bulky item pickups. SPU confirmed that it had no record of any phone requests for a person matching NE#1's name and address but could not immediately determine whether NE#1 had made an online request. According to SPU, bulky item pickups occur on the next scheduled trash pickup day after the request is made. Later, SPU contacted OPA to state that there were two bulky item pickup requests from NE#1 that were made in 2019, but none on record for the period around February 9, 2020.

OPA obtained NE#1's department cell phone on February 26, 2020. After inspecting the phone, OPA determined that all text messages prior to February 26 had been deleted and the call log had been cleared. The internet history of the phone was also empty. There were three photos on the phone, two of which matched the ones the Area Coordinator sent to the Cascadia employees. Timestamps on the phone indicated that the photos were taken the morning of the trash pickup. There was also an email on the phone to the Navigation Team Director in which NE#1 apologized for her actions. Subsequent investigation of the phone and associated account showed that NE#1 made three calls to the Area Coordinator on February 9, the day the pickup occurred. OPA was also able to confirm that NE#1 sent texts that she then deleted.

OPA interviewed NE#1. NE#1 stated that she did not at first realize what she had done was improper. She said that she had attempted to secure services from SPU and 1-800 Junk, a private removal service, but was unable to. NE#1 said that, when initially approached by the Acting Sergeant on February 10, she did not immediately realize he was referring to the trash pickup at her residence. She said that she delayed clarifying to the Acting Sergeant that she requested the pickup because she was embarrassed and did not intend to deceive him or SPD.

When questioned as to why she deleted text messages from her phone, NE#1 said that she did so pursuant to a directive from SPD Legal. NE#1 said it was her understanding that because of the "sensitive nature" of communications she potentially received from members of the public due to her work, it was permissible for her to delete her text messages on a regular basis. NE#1 identified the former SPD Director of Transparency and privacy as the source of this directive. She said that it was her practice to regularly delete text messages from her work phone, and that she did not do so to conceal wrongdoing. To the extent that her conduct violated Department policies, NE#1 said she was mistaken.

When asked, NE#1 denied ever having told the Navigation Team Director or other colleagues that she believed the Cascadia trash removal employees were already in the area when they made the pickup, despite the fact that multiple individuals, including the Director and the Operations Manager, stated that NE#1 had told them this. NE#1 could offer no explanation why these individuals attested to a statement that she denied making.

NE#1 stated that her conduct likely violated the professionalism policy, as well as policies relating to using her position for personal gain and failing to retain Department records. She denied being intentionally dishonest and stated that she wanted to be accountable for her actions.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete In All Communication

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

When evaluating the totality of NE#1's statements coupled with her actions OPA finds that she acted contrary to this policy.

First, while NE#1 said that she contacted SPU to obtain trash removal services and proceeded to ask HSD for the pickup because of SPU's lack of responsiveness, OPA's investigation revealed that no such request was made.

Second, multiple witnesses told OPA that NE#1 initially explained her actions by stating her belief that, when she requested the pickup, HSD/Cascadia personnel were already in the area of her residence making other pickups. However, this was conclusively not the case. NE#1 denied that she made this statement; however, she had no explanation for why numerous other witnesses recalled the opposite.

Third, the Acting Sergeant reported that, when he called NE#1 on February 10 and asked her about an out of the ordinary pickup that may have occurred at an SPD employee's residence the day before, she did not acknowledge what she had done and instead opined that it could have been a pickup that occurred in the North Precinct. However, she knew at that time that the property had been picked up from her residence. She further had no evidence to believe that there had been any pickups in the North Precinct on that day and, indeed, there were not any. She told the Acting Sergeant that she would do her own investigation into what occurred. It was not until two days later that she admitted that the items were picked up from her home. This indicates an intent to deceive the Acting Sergeant at the time.

Fourth, NE#1 told OPA that the HSD Area Coordinator contacted her and asked whether she still needed her property to be picked up. However, the HSD supervisor told OPA that NE#1 sent him photographs of her property via text and told him that there was a "litter pickup." According to the Area Coordinator, NE#1 gave him cross streets but not her address and did not tell him that the pickup was from her address.

Fifth, NE#1 claimed that she deleted her texts relating to this incident because of her belief that she was permitted to do so. She pointed to an email from SPD's former Director of Transparency and Privacy. However, that email concerned texts relating to placements of unsheltered individuals, not general communications engaged in by Navigation Team employees. OPA further determined, based on information provided by HSD personnel, that NE#1 confirmed her understanding of this limitation in writing. This indicates to OPA that the texts were deleted not in the normal course of business but, instead, to hide evidence of misconduct. Not only does OPA believe this to be dishonest, but it also constitutes a stand-alone violation of policy (see Allegation #4).

Sixth, multiple witnesses told OPA that before and after pictures are virtually always taken of pickup sites and are then retained. Here, however, there was explicit instruction to the Cascadia crew not to take after photographs. When viewed in concert with the above information, this suggests NE#1's intent to cover up her actions.



Ultimately, the great weight of the evidence indicates that NE#1 was dishonest during this incident. While OPA does not reach this finding lightly, the evidence is compelling. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

SPD employees are prohibited from using their position or authority for personal gain. (SPD Policy 5.001-POL-13.)

OPA finds that NE#1's conduct violated this policy. As a senior SPD supervisor, NE#1 knew or should have known that she was not allowed to access City services intended to clean up homeless encampments. She further knew or should have known that, by requesting such a pickup of her personal items, she was accruing a personal benefit – namely, not having to pay out of her own pocket to have the items picked up and disposed of.

While NE#1 claimed to have sought assistance from SPU to make the pickup, there is no evidence indicating that she ever did so. Moreover, even had she done so, the failure of SPU to respond to her would not have justified her use of City resources for personal gain.

Lastly, even had NE#1 legitimately been concerned that, had the items not been picked up, they could have been taken to an encampment, this did not permit her to utilize City resources in this manner. There were a number of other steps that she could have taken, including storing the items in her residence or another secure area until the pickup could occur.

For the above reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

OPA finds that NE#1 behaved unprofessionally when she misappropriated City resources and took advantage of a personal friendship with the Area Coordinator to do so. While NE#1 stated that she did not at first realize what she had done was improper, the record suggests that, at minimum, both she and the Area Coordinator were concerned with the appearance it would create. Moreover, misappropriating resources in this way would make a reasonable person less certain that City taxpayer funds are being used to further the public good. OPA finds that NE#1's conduct undermined public trust in her judgment and in the Department as a whole.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #4

12.040 - Department Owned Computers, Device and Software 13. Employees Will Retain Public Records According to the City Records Management Program.

SPD Policy 12.040-POL-3(13) requires that SPD employees retain public records according to the City's records management policies. This includes but is not limited to text messages and photographs from City cell phones.

OPA finds that NE#1's conduct violated the Department's records retention policies. While NE#1 claimed to be following the direction of SPD Legal, her understanding of the record retention policies is, at best, mistaken. No policy at SPD supports the mass deletion of public records, including texts from Department phones. Moreover, as indicated by HSD staff and email communication, NE#1 was well aware that the texts she was permitted to delete were only those relating to placement of homeless individuals.

Given that NE#1 failed to comply with the Department's retention requirements, OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

SUPPLEMENTAL INVESTIGATION MEMO

EXECUTIVE SUMMARY:

It was alleged that the Named Employee violated Department policies when she arranged for a pickup of personal trash at her home through SPD's Navigation Team. OPA ultimately concluded that the Named Employee violated the policies concerning dishonesty, use of position for personal gain, professionalism, and the improper deletion of texts from a Department cell phone. OPA commenced additional investigation based on a request from the Chief of Police after the Named Employee's Loudermill hearing.

SECOND SUPPLEMENTAL INVESTIGATION:

A. Factual Background

On February 9, 2020, two individuals working for Cascadia Cleaning and Removal, a private contractor that does trash cleanup for the SPD Navigation team, received a directive from an Area Coordinator at the Seattle Human Services Department (HSD) to remove garbage from a private residence. The Area Coordinator informed them that no photographs were needed. Typically, Cascadia employees photograph the site of a trash pickup before and after completing work. It was later determined that Named Employee #1 (NE#1), the then Lieutenant over the Navigation Team, lived at that residence. The trash pickup occurred.

Officers assigned to the Navigation Team, including an Acting Sergeant, ultimately determined that the pickup may have occurred at NE#1's residence and, if so, that may have been misconduct. The Acting Sergeant questioned NE#1 about the pickup and, according to him, she opined that it could be related to an incident that occurred in the North Precinct.



Two days later, NE#1 met with the Acting Sergeant and another officer. At that meeting, she acknowledged that the pickup was at her personal residence. She told them that she had asked the Area Coordinator to make the pickup. She said that she tried to schedule a pickup with Seattle Public Utilities (SPU) but had no success. She stated that she did not ask the Area Coordinator to specifically schedule the pickup for her, but that they would only come by to pick up the items if they were already in the vicinity. She said that they were, so the pickup was effectuated.

Over the following days, the Navigation Team Director was informed by an employee that there was a media request about the alleged incident. The Director spoke to the Area Coordinator, who said that NE#1 made the request to remove trash from her home. The Director then contacted NE#1, who confirmed that she had made the request and apologized. NE#1 again stated her reasoning that the Navigation Team contractors were already in the area doing other work. NE#1 further spoke with the Navigation Team Operations Manager. NE#1 told her that she had made a mistake by having trash outside of her home picked up. NE#1 indicated to the Operations Manager that she did so because the crew was already in the area and that she did not know that she could not do this. She told the Operations Manager that she had called SPU to have them pick up the trash, but they had not responded to her.

OPA contacted SPU and received confirmation that it had no record of any phone requests from a person matching NE#1's name and address; however, SPU could not immediately determine whether NE#1 had made an online request. According to SPU, bulky item pickups occur on the next scheduled trash pickup day after the request is made. Later, SPU contacted OPA to state that there were two bulky item pickup requests from NE#1 that were made in 2019, but none on record for the period around February 9, 2020.

OPA obtained NE#1's department cell phone on February 26, 2020. After inspecting the phone, OPA determined that all text messages prior to February 26 had been deleted and the call log had been cleared. The internet history of the phone was also empty. There were three photos on the phone, two of which matched the ones the Area Coordinator sent to the Cascadia employees. Timestamps on the phone indicated that the photos were taken the morning of the trash pickup. There was also an email on the phone to the Navigation Team Director in which NE#1 apologized for her actions. Subsequent investigation of the phone and associated account showed that NE#1 made three calls to the Area Coordinator on February 9, the day the pickup occurred. OPA was also able to confirm that NE#1 sent texts that she then deleted.

B. Prior OPA Interviews

OPA interviewed SPD officers and Navigation Team personnel. The interviews particularly relevant NE#1's dishonesty or lack thereof are outlined below.

- The Area Coordinator who ordered the trash pickup from NE#1's home stated that NE#1 contacted him to request the pickup. The Area Coordinator confirmed that she made the request and that he did not unilaterally offer to pick up the items. He stated that NE#1 sent him two photographs by text message, which he deleted after receiving them. He then sent the photos to the Cascadia employees, and told them they did not need to document the pickup in the usual manner.
- The Operations Manager recalled her conversation with NE#1 about the pickup. She told OPA that she believed that NE#1 made a mistake. In explaining her opinion, the Operation Manager cited to the fact that, according to NE#1, the crew was already in the area making other trash pickups.



- The Cascadia employee who conducted the pickup said that he was dispatched by the HSD supervisor specifically to conduct this pickup. He confirmed that he had no other jobs or pickups in West Seattle that day. He further felt that it was unusual not to take photographs and he never received an explanation from the Area Coordinator concerning why photographs were not taken.

OPA further interviewed NE#1. NE#1 stated that she did not at first realize what she had done was improper. She said that she had attempted to secure services from SPU and 1-800-JUNK, a private removal service, but was unable to. NE#1 said that, when initially approached by the Acting Sergeant on February 10, she did not immediately realize he was referring to the trash pickup at her residence. She said that she delayed clarifying to the Acting Sergeant that she requested the pickup because she was embarrassed and did not intend to deceive him or SPD.

When questioned as to why she deleted text messages from her phone, NE#1 said that she did so pursuant to a directive from SPD Legal. NE#1 said it was her understanding that because of the “sensitive nature” of communications she potentially received from members of the public due to her work, it was permissible for her to delete her text messages on a regular basis. NE#1 identified the former SPD Director of Transparency and Privacy as the source of this directive. She said that it was her practice to regularly delete text messages from her work phone, and that she did not do so to conceal wrongdoing. To the extent that her conduct violated Department policies, NE#1 said she was mistaken.

When asked, NE#1 denied ever having told the Navigation Team Director or other colleagues that she believed the Cascadia trash removal employees were already in the area when they made the pickup, despite the fact that multiple individuals, including the Director and the Operations Manager, stated that NE#1 had told them this. NE#1 could offer no explanation why these individuals attested to a statement that she denied making.

NE#1 stated that her conduct likely violated the professionalism policy, as well as policies relating to using her position for personal gain and failing to retain Department records. She denied being intentionally dishonest and stated that she wanted to be accountable for her actions.

C. Additional Investigation Conducted

At her Loudermill, NE#1 accepted responsibility for her conduct in arranging for the trash pickup at her home. She recognized that it was improper and a lapse of judgment. She denied, however, that she was dishonest or that she intentionally deleted emails.

Given this information, the Chief of Police requested that OPA conduct further investigation, including re-interviewing the Complainant, in order to determine whether it changed any of OPA’s previously recommended findings.

During NE#2’s second interview, OPA focused primarily on whether there was additional evidence that undercut the initial conclusion on NE#2’s dishonesty, as well as whether she reasonably relied on legal advice when deleting the texts from her cell phone.

NE#1 told OPA that, prior to the pickup, she had a conversation with the Area Coordinator in which she asked whether anyone would be interested in her lawnmower. She said that she wanted to get rid of it. She stated that the Area Coordinator then volunteered to come pick it up. When asked why did not disclose this information in her initial OPA interview, she said that she did not want to get the Area Coordinator in trouble, and she wanted to take



responsibility. However, NE#1 did not provide an explanation for why the Area Coordinator, the Director, and the Operations Manager all provided accounts that contradicted NE#1's but were consistent with each other.

NE#1 presented new evidence in the form of an email regarding a pickup of trash at the North Precinct. She stated that this email was what she was referring to when she originally spoke with the Acting Sergeant. That email, which was sent by a North Precinct patrol officer, referenced several shopping carts of items that were outside of a vacant building and requested a pickup. When pressed by OPA concerning the lack of any information in the email about a pickup from a residence, NE#1 stated that she did not fully review the entirety of the email at the time.

NE#1 continued to assert that she tried to coordinate the pickup through SPU. She opined that this may have been unsuccessful because the SPU website was down for maintenance; however, OPA confirmed that the maintenance occurred in May. NE#1 also stated that he believed that SPU was no longer accepting large items for pickups in February 2020. When asked what she based this belief on, she replied that it was "word of mouth." She could not explain why SPU would have records of her pickup requests from September 2019 but no such records from February 2020. NE#1 confirmed that she did not utilize 1-800-JUNK but opined that she should have.

NE#1 denied that she told the Navigation Team Director that the pickup occurred because the Cascadia team was already in the vicinity. She said that she did tell the Director that there were unsheltered individuals with large items living in the vicinity of her residence. She opined that the Director could have misinterpreted this. She also denied telling the Operations Manager that she gave the Area Coordinator an order to pick up the items from her residence. She stated that it was possible that it was perceived by the Area Coordinator to be an order, but that she never directed that anyone be sent to her home to do the pickup.

Lastly, OPA reaffirmed that she believed that, based on the emailed guidance from the then Director of Transparency and Privacy, she was permitted to delete texts from her cell phone. NE#1 said that, based on the advice she was given, she felt that she was "good to go."

D. Analysis

At the outset, OPA notes that NE#1 presented no evidence at her Loudermill hearing that undermined or called into question OPA's findings that she used her position for personal gain and was unprofessional. As such, OPA does not reconsider these findings.

The purpose of the supplemental investigation was to determine whether there was sufficient evidence in the record to maintain the findings on NE#1's dishonesty and her deletion of texts.

1. SPD Policy 5.001-POL-11 – Dishonesty

With regard to dishonesty, OPA finds no evidence that supports changing this finding. At her second OPA interview, NE#1 was not able to provide any more compelling explanations for why she did what she did and why the largely consistent statements by the witnesses should be discounted. To the contrary, she presented additional evidence in support of her prior testimony. However, that new evidence is equally, if not more, unconvincing. The following are examples of this:

- NE#1 newly asserted that she asked the Area Coordinator whether anyone wanted her lawnmower and he then offered to perform the pickup. However, this is not only contrary to NE#1's initial account, but is inconsistent with all of the other evidence, including the contemporaneous statements and explanations NE#1 provided to the various witnesses and to OPA.



-
- NE#1 pointed to an email as the explanation for why she initially told the Acting Sergeant about a potential pickup at the North Precinct. However, that email clearly had nothing to do with a residential pickup and NE#2 could not have in good faith conflated the email with the question that the Acting Sergeant was asking.
 - NE#1 opined that the SPU website was down at the time she submitted her requests. However, the website was down in May, not February. She could provide no explanation, either at her first or second OPA interviews, why there was no documentation of any requests for service from her in February 2020, even though such requests existed for prior SPU pickups that she had arranged.

Even after the supplemental investigation, OPA has more, not less concerns regarding the multiple accounts conveyed by NE#1. OPA continues to believe that NE#1 made intentional and knowing misstatements regarding material facts. Accordingly, OPA maintains its conclusion that this allegation be Sustained.

2. SPD Policy 12.040-POL-13 – Deletion of Texts

OPA reaches a different conclusion with regard to the reconsideration of its finding on this allegation. From both of NE#1's interviews, it is clear that she was confused as to the scope and nature of the advice provided by the Director of Transparency and Privacy. From listening to the audio of her interviews and after hearing her address these matters at her Loudermill hearing, OPA does not believe that she was being deliberately misleading and, instead, concludes that she evinced an actual misunderstanding of what was required of her.

Based on OPA's reading of the email sent by the Director of Transparency and Privacy, OPA agrees that it was not particularly clear. While OPA is concerned about the deletion of the texts, OPA recognizes that NE#1 is a layperson with no legal background. As such, OPA finds it plausible, even if errant, that she misconstrued the direction provided to her.

Accordingly, OPA now reverses its prior Sustained finding on this allegation and recommends that this allegation be Not Sustained – Inconclusive.