

INVESTIGATIVE REPORT

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COMPLAINT: RACIALLY DEROGATORY COMMENT

COMPLAINANT: TPR. [REDACTED]
TROOP L

ALLEGED OFFENDER: TPR. [REDACTED]

DATE RECEIVED: SEPTEMBER 15, 2017

REPORT DATED: NOVEMBER 16, 2017

EEO CASE # 2017-08

The EEO Investigators have concluded their investigation into an allegation that Tpr. [REDACTED] white male, Troop L, sent a racially derogatory voice message to Tpr. [REDACTED] black male. The complaint was received in this office on September 11, 2017.

Specifically, on September 10, 2017, Lt. [REDACTED] Troop L, was notified by Tpr. [REDACTED] that he had received a recorded voice message from Tpr. [REDACTED] wherein Tpr. [REDACTED] can be heard saying, “[REDACTED] (pause) fucking nigger what’d you expect.” Lt. [REDACTED] listened to the recorded text and reported the incident up his chain of command. According to Lt. [REDACTED] statement, Tpr. [REDACTED] told him that he had been speaking with his wife and that his Apple watch recorded the conversation and sent the voice text to Tpr. [REDACTED] (See Attachment A)

INVESTIGATION

The following individuals were interviewed during the course of the investigation:

Tpr. [REDACTED] (black/male), Troop B

Tpr. [REDACTED] (white/male), Troop L

Allegation Number 1: On September 10, 2017, Tpr. [REDACTED] received a recorded voice message from Tpr. [REDACTED] wherein Tpr. [REDACTED] can be heard saying, “[REDACTED] (pause) fucking nigger what’d you expect.”

Tpr. [REDACTED] was interviewed by EEO Investigators Carol Tillman and Byron Sam on October 4, 2017, in the Office of Legal Affairs conference room. Tpr. [REDACTED] works at Troop B. His chain of command is Sgt. Robert [REDACTED] Sgt. [REDACTED] and Lt. [REDACTED]. Tpr. [REDACTED] has approximately six months with the Department. He recently transferred from Troop L to Troop B on September 11, 2017.

Tpr. [REDACTED] was asked about the allegation that he received a racially derogatory voice message on September 10, 2017. Tpr. [REDACTED] advised that he was sitting down eating dinner with Lt. [REDACTED] and Tpr. [REDACTED]. He said he was on the night shift. Tpr. [REDACTED] advised that after a crash went out over the radio, they were waiting on someone to answer to the crash call when Tpr. [REDACTED] answered for the crash over the radio. Tpr. [REDACTED] advised that he had his cell phone inside of his vehicle. He said after they finished eating he went out to his car and he saw he had two missed phone calls from Tpr. [REDACTED] and two voice messages. Tpr. [REDACTED] said with technology today, you can text someone or you can send a voice message through your text message.

Tpr. [REDACTED] said the first voice message was just a couple of seconds and it did not say anything, so he thinks it may have been a pocket dial, explaining that Tpr. [REDACTED] may not have even known he had called. Tpr. [REDACTED] said the second message he heard was, “Because he is a fucking nigger, what do you expect?” Tpr. [REDACTED] was asked if Tpr. [REDACTED] called him by name. Tpr. [REDACTED] said, “I did not hear him call me by name.” Tpr. [REDACTED] was asked if he heard anything else. He said, “No, that was it.” Tpr. [REDACTED] was asked if he heard Tpr. [REDACTED] wife or anyone else talking in the background. He said he knew there were other people there because he spoke with Tpr. [REDACTED] about it, and he (Tpr. [REDACTED] told him the whole entire picture. Tpr. [REDACTED] said Tpr. [REDACTED] told him he was at the dinner table with his wife and grandfather. Tpr. [REDACTED] said he could hear the voices in the background, but could not understand what they said.

Tpr. [REDACTED] was asked to recall what Tpr. [REDACTED] told him. Tpr. [REDACTED] said Tpr. [REDACTED] as far as he knew was a good guy and he liked him a lot. Tpr. [REDACTED] said Tpr. [REDACTED] called and said it was important for them to catch up and talk about the voice messages. Tpr. [REDACTED] said he contacted Tpr. [REDACTED] that same night and they got together and spoke man to man. Tpr. [REDACTED]

said Tpr. ██████ told him his wife's sister is dating some guy that works off shore, he makes a lot of money and he comes home and blows his money on strange things. Tpr. ██████ said Tpr. ██████ also told him he was talking to his wife about the other guy and was not talking about him. Tpr. ██████ said they had this discussion, advising "I did not hear Tpr. ██████ say my name and cannot say this guy was specifically talking about him either." He said, "I had the voice message and that was what was said on the voice message." Tpr. ██████ further stated "To say he was specifically talking about me, I have no proof of that." Tpr. ██████ was asked if Tpr. ██████ told him the name of the guy that was dating his sister. Tpr. ██████ said, "He did not tell me the name of the guy, but he was very adamant that he was not talking about me whatsoever." Investigators asked where he and Tpr. ██████ met to discuss this, Tpr. ██████ replied, "We were like in the middle of the interstate."

Tpr. ██████ said the crash had happened and Tpr. ██████ was trying to contact him. Tpr. ██████ said he thinks Tpr. ██████ was tied up doing something. He said we will call each other as a buddy system and say, "Hey dude, I'm getting into this, can you go grab that crash." He said, "I thoroughly believe that is what the phone call was for." He continued, "Eight times out of ten that is what the phone call is for, the buddy system that we work." Tpr. ██████ said after that, he thinks it was more of a butt dial and that Tpr. ██████ did not know he was recording himself or being recorded as far as voice messages go.

Tpr. ██████ was asked if he contacted Lt. ██████ after he heard the voice message. Tpr. ██████ said, "I did." When asked if he let Lt. ██████ listen to the message, he replied, "Right." Tpr. ██████ said he still had the message in his phone and said he could play it for the EEO Investigators. When Tpr. ██████ played the voice message, a male voice could be heard saying, "██████ (pause) fucking nigger what did you expect." Tpr. ██████ said, "I guess he did say my name." Tpr. ██████ showed investigators that he went to his text messages to obtain the voice message. He explained that he can physically send a text message or hold the icon down at the bottom of the screen and talk into the phone and send a voice message. He said he got two text messages that were voice messages. Tpr. ██████ provided investigators with a copy of the voice message.

Tpr. ██████ said he and Tpr. ██████ were both in service at that time to work, but they were in separate units at that time. Tpr. ██████ said the voice message came through after they went 10-8, but that he could not give a definite time. Tpr. ██████ said it was a work night, they had gone to dinner that night and they started working at 1700. Tpr. ██████ later advised that the voice message was sent out at 8:14 p.m. on September 10, 2017.

When Tpr. ██████ was asked if Tpr. ██████ admitted that he said the derogatory word (nigger), Tpr. ██████ said, "He did." Tpr. ██████ was asked how the conversation went. Tpr. ██████ said now that he listened to the voice message it was coming back to him. He said, "I told him, well my name is inside of that voice message." Tpr. ██████ told him that he was trying to call him which seemed accurate since there were two missed calls. He said Tpr. ██████ said, "I was calling you to let you know I had something going on, simultaneously." Tpr. ██████ said, "In

speaking with him, I did not try to investigate and I did not go outside of what he was telling me - that he was talking about somebody else because I didn't want to make a bad relationship out of what he was telling me and I didn't want to go investigate and not believe him."

Tpr. [REDACTED] was asked if he told Tpr. [REDACTED] that it bothered him. He said, "I told him what bothered me was that he was sitting around with his wife and with his grandfather and actually talking like that." Tpr. [REDACTED] said he told Tpr. [REDACTED] that it was not so much that he was sitting around talking about him and said, "because I don't know if he was - he was telling me one thing and I hear the voice message and like I said, I didn't get into the weeds, I just went and met with him man to man and he told me he was talking about somebody else, so I just left it as that." He continued, "I didn't get on this soapbox about, 'I don't believe you,' or this or that so I just left it where it was." When asked if Tpr. [REDACTED] apologized, he said, "Oh yeah he did." When asked if he appeared to be upset, Tpr. [REDACTED] said, "He did, he did - he appeared to be upset."

Tpr. [REDACTED] was asked if he was offended by Tpr. [REDACTED] either saying his name or talking about someone else using the "N" word. He said, "Yes, I was more offended that you were sitting around with your family and talking in that manner. The week prior to that we all went to the restaurant and we were sitting around eating dinner with each other. So after that, fast forward, you are sitting around having this conversation, it's like, darn! Why is she (the wife) accepting you talking like this; and why is she not mad at you using the word." Tpr. [REDACTED] said, "I was just mad about that in itself, not whether he was talking about this other guy, because I kind of left that at the door."

Tpr. [REDACTED] was asked if he contacted Lt. [REDACTED] after he heard the voice message. Tpr. [REDACTED] said, "I did." Tpr. [REDACTED] was told that Lt. [REDACTED] said he was clearly upset and said that Tpr. [REDACTED] was asked if he was offended because of the negative context in which it was said, to which he replied, "Yes."

Investigators asked Tpr. [REDACTED] what Lt. [REDACTED] said he was going to do. Tpr. [REDACTED] said, "I'm going to be honest with you, he pretty much told me, what do you want to do? I was like what do you mean, what do I want to do?" He said Lt. [REDACTED] asked, "Do you want to push forward with this or not push forward?" Tpr. [REDACTED] told investigators that he told Lt. [REDACTED] "I'm like this is bad, maybe he was talking about me, maybe he wasn't, but this is bad - I don't want to get in the middle of a man possibly losing his job or possibly even being suspended. I don't want any part ... I don't want to be that guy." Tpr. [REDACTED] said Lt. [REDACTED] told him, "Well, as far as chain of command goes, I heard this and we have to do something about it." Tpr. [REDACTED] continued, "We went through the process because it is between Tpr. [REDACTED] and myself, and my boss (Lt. [REDACTED] heard it and you know if that stuff starts getting around and gets to his (Lt. [REDACTED] boss and he did not do anything about it,...he was like - 'we can't do that.'"

Tpr. [REDACTED] was asked if Tpr. [REDACTED] had his buddy, Tpr. [REDACTED], talk to him. He replied, "[REDACTED], yes." Tpr. [REDACTED] said that Tpr. [REDACTED] had been trying to contact

him and that, "[REDACTED] had called me and I spoke with him probably right after it happened - right before me and Tpr. [REDACTED] had met up and talked." Tpr. [REDACTED] said that Tpr. [REDACTED] was telling him that he has known Tpr. [REDACTED] for a long time and that he is not a racist and he is a cool guy. Tpr. [REDACTED] was asked if Tpr. [REDACTED] said that Tpr. [REDACTED] told him the same story that he told Tpr. [REDACTED]. Tpr. [REDACTED] said, "Yes." Tpr. [REDACTED] told him that Tpr. [REDACTED] said he was not talking about him (Tpr. [REDACTED]). He said, "That's what he told me." Tpr. [REDACTED] said he and Tpr. [REDACTED] talked over the phone, he did not meet up with him.

Tpr. [REDACTED] was asked if he ever heard Tpr. [REDACTED] make a racially derogatory comment prior to this. Tpr. [REDACTED] said "I haven't, but when I spoke to him he said he does it all the time, and as crazy as this sounds, he ([REDACTED] said when he is around his friends they use the (word) 'nigga,' rather than 'nigger.' He continued, "Believe it or not people distinguish the two – they go back and forth." He said, "If you say nigger, that is coming from somewhere that is a little bit different." He said, "nigga, believe it or not, they ([REDACTED] and his friends) just sit around and it rolls off their tongue and they just shooting the stuff with their buddies because that happened." Tpr. [REDACTED] said "He (Tpr. [REDACTED] did admit to that part that he constantly uses it and said, 'everybody does it in the context of just talking with my friends.'" Tpr. [REDACTED] said the context of "nigger," that is something different and he (Tpr. [REDACTED] didn't admit to sitting around talking like that. EEO Investigators pointed out that he (Tpr. [REDACTED] clearly said "nigger" on the message. Tpr. [REDACTED] replied, "That was clear as day."

Tpr. [REDACTED] was interviewed by EEO Investigators Byron Sam and Carol Tillman on October 4, 2017, in the Office of Legal Affairs Conference Room. Tpr. [REDACTED] works at Troop L and his immediate supervisors are Sergeants [REDACTED] and [REDACTED], Lieutenant [REDACTED] and Captain [REDACTED]. Tpr. [REDACTED] started working with the Department on April 11, 2008.

Tpr. [REDACTED] was asked to explain what occurred during the incident in question. He said, "This was an errant comical, accidently taken from my watch (Apple) to my phone a five second clip sent unbeknownst from me accidently. There was no malice or malfeasance. It was inadvertently hit when I tried to voice call [REDACTED]. He said, "I said his name (into my Apple watch) and with the voice call it errantly took a 5 second snippet of what I was talking about in closed doors at dinner with other people around. It was an accident conversation errantly sent, misconstrued and taken out of context and he and I laughed about it after I was with him that night. The stars couldn't have lined up any worse than it was. I was trying to voice call him to see where he was because I was getting ready to work a crash and to see if he wanted to meet me to eat. I didn't know he was eating already."

Tpr. [REDACTED] advised, "I was talking about my cousin who was my other roommate in college, he's the only family I had, we're the same age, went to school together, played ball together. He works offshore as a crane operator; he makes good money and puts me on all his credit applications. He comes home and spends money like water, and I get phone calls at night constantly for him. He makes good money but doesn't pay his bills. I'm sitting with my

grandfather and I say (into my Apple watch) call [REDACTED] and I'm calling [REDACTED] to talk with him. My grandfather asked, 'why can't that boy pay his bills?' and I shouldn't have said it, and said, 'nigger what do you expect.' I meant that derogatory toward him as a white person not toward a black person." Tpr. [REDACTED] said, "I immediately apologized for it, I didn't even know that the message got sent, but, it was a third party communication and wasn't meant to be sent to anybody. It was a literal five second snippet of a conversation I was having, it had nothing to do with anything work related; I told [REDACTED] it would be like me accidentally sending a picture of my naked wife to someone. I didn't mean for this to happen. I didn't do it for any malicious or malfeasance intent or anything like that. I shouldn't have said it. It was accidental and it wasn't supposed to get out."

Tpr. [REDACTED] told investigators that he played ball all through high school and that he had black roommates. He said, "I'm the least person to ever get caught up in this, because it means nothing to me. I say it with them and they call me things as a white dude. I lived with them in dorms, playing baseball and football in college. It's gone back and forth for so long, now for this to happen. It hurt me on the inside because it wasn't supposed to be like this."

Tpr. [REDACTED] stated, "I was saying 'call [REDACTED] and it (my Apple watch) picked up in the middle of my conversation." He said, "My wife asked 'Who are you working with tonight?' The conversation happens over dinner and starts well before it leads up to that. I had my hand over my watch. My wife and grandfather were sitting there." Tpr. [REDACTED] said, "Thirty minutes before (this) I had a call from a collection agency and my grandfather asked why he (cousin) doesn't pay his bills. I didn't mean for that to be directed toward him (Tpr. [REDACTED] I'm trying to call him and then I'm having a conversation that's not related to him; it's poor phrasing, but it wasn't about a black guy." When asked where they were at when they had the conversation, Tpr. [REDACTED] stated at his grandparents' house. Tpr. [REDACTED] advised that he was on duty. He stated he never had been any problems at work, never have been accused of anything. He said, "Never had a blemish of any kind before, I apologized for it, and I said I was sorry; I shouldn't have used it, even behind closed doors, but, it was behind closed doors and it wasn't supposed to get out. It wasn't me talking about (it) and not that it matters because I still used the word but, it wasn't me talking about a black person, it was a terrible thing to say and I apologized for it."

Investigators asked Tpr. [REDACTED] about his conversation with Lt. [REDACTED] Tpr. [REDACTED] said Lt. [REDACTED] told him, "Look man, it happens, but being it was brought to my attention I need to tell somebody with the way things are now days." Tpr. [REDACTED] said that Lt. [REDACTED] told him that Tpr. [REDACTED] did not want to pursue it. Tpr. [REDACTED] said Lt. [REDACTED] told him, "We know you're not a racist, we're friends and we have been friends a long time." Tpr. [REDACTED] said Lt. [REDACTED] talked with Tpr. [REDACTED] about it and then he and Tpr. [REDACTED] talked about it too. He said that Tpr. [REDACTED] told him he understood; it (nigga) is on his phone in text messages fifty times between his friends. Tpr. [REDACTED] also said that does not give him permission to do (use the word) it. Tpr. [REDACTED] said Tpr. [REDACTED] told him that it is 2017; people say things and it is in every rap song. Tpr. [REDACTED] stated that Tpr. [REDACTED] told him that if he looked in his (Tpr. [REDACTED] text messages he would see him (Tpr. [REDACTED] saying it. Tpr. [REDACTED] advised that Tpr. [REDACTED] told him he just wanted

to get it from him (Tpr. ██████ on how it went. Tpr. ██████ said he and Tpr. ██████ are friends, saying, "I like him a lot, that's why it hurt me so much. I told him that it was errant and wasn't supposed to get out, it's like you and your wife talking or your friends talking, it wasn't supposed to get out. It wasn't me being derogatory toward somebody, it was toward a family member, but it wasn't supposed to leave. It was a bit message. I didn't mean for any of this to happen. I didn't mean for any of this to come to light."

Tpr. ██████ was asked if he spoke with Tpr. ██████ about the incident. Tpr. ██████ advised that they are all friends and they both 'FTO'd' Tpr. ██████ advising that they are very close. Tpr. ██████ said that Tpr. ██████ asked him, "Dude, did you mean to send me that message?" Tpr. ██████ said he replied, "No, I didn't know you got sent the message. I am sorry." Tpr. ██████ also advised that he told Tpr. ██████, "I dated a black girl in college, I am not that person. I told ██████ to find out if ██████ is mad at me." Tpr. ██████ advised that Tpr. ██████ called him and said he was not mad. Tpr. ██████ stated that they both called each other, but that Tpr. ██████ called him first. He said, "I called him and then he called me back." Tpr. ██████ was advised that investigators were told that he said he always uses the word, "nigga," and that everybody uses it. Tpr. ██████ replied, "That doesn't make it right, I never said I was right and that I was wrong and I apologized for it. I said I was sorry and I'm not hiding the fact that I said it. I'm saying the context in which it was interpreted is completely different than the one it is like when someone cuts you off in traffic and you call them a dumb mf and get caught on, it's not meant for anyone to hear. It wasn't meant to be derogatory to anyone; it was an accident. I said I'm sorry."

Tpr. ██████ said, "I said dude, I played ball in college, they make fun of me." Tpr. ██████ said, "We say it to each other. It's in my phone 20 times in one text message." Tpr. ██████ said, "I said it's different because you can say it and it's okay, but he understood." Tpr. ██████ said three days ago he and a black trooper on his shift were talking about a spot that opened up and Tpr. ██████ said he asked him if he did a resume' and the trooper looked at him and said, "nigga please." Tpr. ██████ said, "Now I feel like people are looking at me like I'm Mark Furhman or something; but I'm not, I didn't mean for this to happen. It was me talking about a white guy and I shouldn't have said it."

Tpr. ██████ was asked if he was angry at the guy he was talking about. He stated "yes," it was his first cousin. He said, "It was an accidental slippage of the tongue, accidentally taped and sent and that's all it was to it." Tpr. ██████ was asked if the word "nigga" is used in the workplace. Tpr. ██████ said it was not used in the workplace. He said Tpr. ██████ wanted to make sure it was the "nigga" and not the "nigger" word because it has a different connotation. Tpr. ██████ said he told Tpr. ██████ "Anyway I say it, it sounds terrible because I'm a white red neck from north Mississippi." Tpr. ██████ said he apologized for it and they hugged afterwards. Tpr. ██████ said Tpr. ██████ last words to him as he was leaving were, "This will never come up again, you don't have to ever hear about this again from me ever." Tpr. ██████ said he told Tpr. ██████ several times they could go talk to the captain and tell the captain he was wrong. Tpr. ██████ said Tpr.

█████ replied, “You will never hear about this from me again, don’t worry about, don’t leave here feeling bad.”

Investigators’ Impression:

On September 10, 2017, Tpr. █████ received a recorded voice message from Tpr. █████ wherein Tpr. █████ can be heard saying, “█████ (pause) fucking nigger what’d you expect.” Tpr. █████ admitted to sending the voice message to Tpr. █████ There is sufficient evidence to support a determination that Tpr. █████ sent the racially derogatory voice message as alleged and that Tpr. █████ who was working at the time he received the message, was offended.

CONCLUSION

The Department has adopted a Discrimination and Harassment Compliant Procedure that provides in pertinent part as follows:

C. Prohibited Conduct

1. To ensure that all Department employees enjoy a work environment free from harassment and discrimination, no employee shall harass or discriminate against any employee or other worker because of race, color . . . or any other basis prohibited by law. Prohibited conduct includes but is not limited to:
 - a. . . .
 - b. Making offensive or derogatory statements, comments, slurs or gestures because of a person’s race, color, . . .national origin, . . .or any other basis prohibited by law. . .

Tpr. █████ admitted to investigators that while on duty he sent to Tpr. █████ an African American co-worker, a voice message with language that is racially derogatory towards African Americans. Tpr. █████ maintains however that the derogatory language was spoken during a private conversation with his wife and grandfather that was recorded and sent without his knowledge. Tpr. █████ maintains that when he used the derogatory word, he was not using it in reference to a black man, but using it with reference to his white cousin, who despite earning a good salary does not pay his bills. He admitted, however, that he was angry at his cousin when he used the word, and that it was meant to be derogatory albeit “derogatory toward him (his cousin) as a white person not toward a black person.” He also admitted to investigators that he always uses the word “nigga,” attempting to draw a distinction between that word and the word “nigger.” The voice message clearly reflects that Tpr. █████ used the second version of the word, which by Tpr. █████ own admission is derogatory.

Even adopting Tpr. ██████ statements as true, that he did not intentionally direct racially derogatory language specifically toward Tpr. ██████ it is uncontested that during his tour of duty Tpr. ██████ caused a voice message to be sent to Tpr. ██████ that included language that is derogatory towards African Americans. Whether Tpr. ██████ used the word to refer to a white person or an African American is of no consequence and at the time he spoke the word, Tpr. ██████ intended for it to be derogatory. Tpr. ██████ was subjected to derogatory language at his workplace and he was offended.