



CLOSED CASE SUMMARY

ISSUED DATE: MAY 3, 2018

CASE NUMBER: 2018OPA-0011

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Inconclusive)

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 violated the Department’s In-Car Video policy.

STATEMENT OF FACTS:

During a review of Body Worn Video (BWV) and In-Car Video (ICV) in the course of a Type II force investigation, the Complainant, a Department Administrative Lieutenant, determined that Named Employee #1 (NE#1) failed to record ICV during the incident. As NE#1 did not note the failure to record ICV and the reason for that failure in an appropriate report, he was asked to submit a memorandum providing that explanation pursuant to SPD Policy 16.090-POL-7. NE#1 did so. In that memorandum, he indicated that he was initially dispatched to the call and activated his ICV, but slowed his response when he was informed over the radio that the situation was under control. At that time, he stopped his emergency driving, pulled off of his route, and de-activated his ICV. He then heard over the radio that a Taser had been used during the incident. As one of the few Taser experts and master instructors at the Department, he decided to respond to the scene to see if his assistance was needed.

When he arrived at the vicinity of the scene, NE#1 activated his BWV. As he explained in his memorandum, he also intended to activate his ICV at that time. However, no ICV was ultimately recorded. NE#1 stated the following: “I do not know if that was operator-error (missing the button on the remote on my vest) or equipment issue (the signal not registering in the car).” This matter was ultimately referred to OPA and this investigation ensued.

NE#1 provided the same explanation that was set forth in his memorandum to OPA. He contended that his clear intent was to record as was established by his proper activation of his BWV, as well as his appropriate usage of ICV both prior to and after the incident. NE#1 opined that he could have tried to press the wireless microphone located on the lower right side of his load-bearing vest and mistakenly failed to properly do so. Notably, from a review of another officer’s ICV, when NE#1 arrived at the scene, he did move his right hand to his lower right side. However, OPA could not conclusively determine whether he actually attempted to activate this ICV at that time.

OPA confirmed with SPD IT that no recording was triggered by NE#1 around the date and time in question. SPD IT further explained that, even had NE#1 attempted to do so: “The logs indicated [that NE#1] was having RF [range frequency] issues with his microphone during this time as indicated by the ‘wireless mic1 is out of range’” notations



on the COBAN log. SPD IT further indicated that: “This may be caused by low charged battery, malfunctioning microphone or long range between the microphone and receiver in the car.” SPD IT concluded that: “If [NE#1] used his microphone to trigger [a] recording around 1615 hours it is possible that his mic might not have worked properly due to” these causes.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

SPD Policy 16.090-POL-5 requires that officers record delineated law enforcement activity. As discussed above, SPD Policy 16.090-POL-7 further requires that, where officers do not record, they memorialize the failure to record and the reason for that failure in an appropriate report.

Here, it is undisputed that NE#1 was required to record video in this instance and that he failed to do so. It is also undisputed that he did not initially memorialize this failure. This was likely due to the fact that he did not know at the time that he had not activated ICV. He rectified this, however, when he submitted the memorandum requested by the Administrative Lieutenant.

The question here is whether NE#1 failed to take the required actions to record ICV or, instead, whether the admitted failure to record was simply a mistake or due to a system malfunction. With regard to whether NE#1 failed to take the actions required by policy, NE#1 told OPA and indicated in his memorandum that he intended to record. Moreover, another officer’s ICV showed that when NE#1 arrived at the scene he moved his hand towards the location of his wireless microphone, which was consistent with NE#1’s belief that he at least attempted to activate his ICV. Lastly, NE#1 recorded BWV. Had he intended to not record video, he would have failed to activate both systems. As such, I find it possible that NE#1 attempted to initiate his ICV but mistakenly failed to do so. With regard to the question of whether the failure to record was due to a system malfunction, I find this issue has not been proved or disproved by the evidence. Certainly, based on the information received from SPD IT, a malfunction was possible.

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

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