



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0223

Issued Date: 09/08/2017

| Named Employee #1 | |
|-------------------|---|
| Allegation #1 | <u>Seattle Police Department Manual</u> 16.090 (6) In-Car Video System: Employees Will Record Police Activity (Policy that was issued March 1, 2016) |
| OPA Finding | Sustained |
| Allegation #2 | <u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Allegation #3 | <u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Allegation #4 | <u>Seattle Police Department Manual</u> 6.180 (2. b.) Searches-General: There are Specific Exceptions to the Search Warrant Requirement: Exigent Circumstances (Policy that was issued January 1, 2015) |
| OPA Finding | Not Sustained (Lawful and Proper) |
| Final Discipline | Written Reprimand |

| Named Employee #2 | |
|--------------------------|---|
| Allegation #1 | <u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Allegation #2 | <u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Allegation #3 | <u>Seattle Police Department Manual</u> 6.180 (2. b.) Searches-General: There are Specific Exceptions to the Search Warrant Requirement: Exigent Circumstances (Policy that was issued January 1, 2015) |
| OPA Finding | Not Sustained (Lawful and Proper) |
| Final Discipline | N/A |

| Named Employee #3 | |
|--------------------------|---|
| Allegation #1 | <u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Allegation #2 | <u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Allegation #3 | <u>Seattle Police Department Manual</u> 6.180 (2. b.) Searches-General: There are Specific Exceptions to the Search Warrant Requirement: Exigent Circumstances (Policy that was issued January 1, 2015) |
| OPA Finding | Not Sustained (Lawful and Proper) |
| Final Discipline | N/A |

| Named Employee #4 | |
|--------------------------|---|
| Allegation #1 | <u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Allegation #2 | <u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Allegation #3 | <u>Seattle Police Department Manual</u> 6.180 (2. b.) Searches-General: There are Specific Exceptions to the Search Warrant Requirement: Exigent Circumstances (Policy that was issued January 1, 2015) |
| OPA Finding | Not Sustained (Lawful and Proper) |
| Final Discipline | N/A |

INCIDENT SYNOPSIS

The Named Employees responded to a Domestic Violence Call, and a subsequent disturbance call at the same location.

COMPLAINT

The complainants alleged that the contact by the Named Employees was based on bias and that the Named Employees inappropriately touched the female complainant during the contact. During the intake process, OPA discovered that Named Employee #1 was missing In-Car Video (ICV) for the majority of the incident. Additionally, it appeared that Officers stated exigent circumstances to enter the home without a warrant despite both subjects being at the door and denying entry into their home.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complainant memo
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Video (ICV)
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

Named Employee #1 violated Manual Policy 16.090 by failing to activate his ICV during police activity, namely an incident to which he responded.

As detailed below, Named Employee #1 was among the officers who responded to domestic violence call. It was undisputed that Named Employee #1's ICV did not begin recording until over 30 minutes after he arrived on scene. At his OPA interview, Named Employee #1 stated that he thought he turned on his ICV, but when he exited the apartment building, he realized that it was not on. Named Employee #1 opined that the camera had possibly turned off when he entered the apartment building and went up seven flights. Named Employee #1 indicated that he then pushed the button activating the ICV. Named Employee #1 stated that when he watched his video at the conclusion of the incident, he realized that it had not been recording. An examination of Named Employee #1's ICV system provided no indication that he initiated a recording at any time between 06:57 and 07:51 hours on that date.

In addition, Manual Policy 16.090-POL-1(7) states that: "If this policy requires that an event be recorded, and the employee is aware that there is no recording or there was a delay in recording, employees must explain in writing why it was not recorded or why the start of the recording was delayed." Here, Named Employee #1 was required to activate his ICV and after he realized that he had failed to do so he was required to explain the lack of a recording in writing. There was no indication that Named Employee #1 ever did so.

On the date in question, Named Employee #2, Named Employee #3 and Named Employee #4 responded to a call concerning a domestic incident, possibly involving physical violence. A caller reported arguing between a male and female and the slamming of doors.

Named Employee #2, Named Employee #3 and Named Employee #4 were the first officers to arrive at the apartment building from which the incident was reported. Named Employee #3 spoke with the individuals who had called 911, while Named Employee #2 and Named Employee #4 proceeded to the complainants' apartment. Named Employee #2 and Named Employee #4 waited outside of the apartment until Named Employee #3 was able to speak with the caller. During this time, the officers heard a loud banging and someone yelling. In his OPA interview, Named Employee #4 indicated that this caused him to believe that there was a high probability of an ongoing domestic violation situation within the apartment. When Named Employee #3 arrived at the apartment, he also heard loud banging noises.

At that point, based on information reported to them, their own observations, and their concerns of possible ongoing domestic violence within the apartment, the officers believed that they had exigent circumstances to enter the apartment without a warrant.

The officers first knocked on the apartment door and announced themselves as police. At that point the door was cracked open and the complainants looked out. The officers informed them that they needed to enter the apartment to ensure the safety of all occupants. In response, the

complainants indicated that they were nude and that the officers could not enter. The officers instructed them to put on clothing; however, the complainants did not do so and were argumentative with the officers. The officers then entered the apartment.

Once the officers entered the apartment, both the complainants retreated to the bedroom. The officers followed them, based on the concern that they could be retrieving weapons and/or barricading themselves. At that point, the officers did not know how many individuals, other than the two complainants, were in the apartment. The complainants were nude and covering themselves, and the officers instructed them to put on clothing. The female complainant put on a bathrobe and she was let out of the bedroom into the kitchen so that she could be separated from the male complainant. Named Employee #2 accompanied her into the kitchen. Named Employee #3 and Named Employee #4 remained with the male complainant, who also put on clothing, in the bedroom.

The officers then spoke with both the complainants to determine what was going on and to verify that there were no ongoing domestic violence concerns. The male complainant was extremely agitated, yelling and incoherent at times. He was further making rapid arm movements. These behaviors concerned the officers. The male complainant indicated to the officers that he suffered from Tourette's Syndrome; however, Named Employee #3 stated that, based on his experience, it appeared more likely that the male complainant was suffering from a manic episode.

The officers indicated to the complainants that they needed to conduct an investigation to ensure that there was no criminal activity. Around this time, the male complainant made allegations of inappropriate contact between the officers and the female complainant, as well as asserted his belief that they had been targeted based on the fact that they were Jewish. In response, the officers contacted their supervisor to screen the incident in person and investigate these allegations.

An Acting Sergeant arrived on the scene and attempted to speak with the complainants. The male complainant stated to the Acting Sergeant that the incident began when, earlier that day, an individual touched the female complainant inappropriately and the male complainant threatened to go to the police. In return, the individual responded that he was going to make sure the police "fucked with" the complainants. This presumably preceded the officers' arrival at the apartment. The male complainant stated to the Acting Sergeant that the officers who responded to the apartment did not let him and the female complainant get dressed and sexually assaulted the female complainant. The Acting Sergeant attempted to obtain more details as to what had occurred. The complainants were both extremely agitated and the Acting Sergeant was ultimately not successful.

Several hours later, the Named Employees, this time including Named Employee #1, all responded to a subsequent call for service at that same location. Additional calls had come in indicating that the male complainant was on his balcony yelling incoherently and banging on something metal and that cups were being thrown in the apartment. Shortly thereafter, another

call came in wherein the caller reported hearing the male complainant say, "I'm going to kill someone." Lastly, a caller further reported that the male complainant was walking throughout the building and that the caller overheard him yelling, "your [sic] going to die." During this second interaction, the male complainant was informed that he was under arrest. However, he would not exit his apartment. The officers did not enter the apartment and made the determination to charge by officer.

In a video found on Youtube, the male complainant stated that the officers sexually and physically assaulted the female complainant. He further stated that the officers' actions were motivated by bias. In his interview with OPA, the male complainant reiterated his belief that the officers were biased and that the bias was based on the male complainant's religion and the female complainant's ethnicity. He again stated that the female complainant was sexually assaulted by the officers.

Based on videos depicting the complainants during and directly after the incident, the male complainant's interview with OPA, and the audio from the Named Employees' ICV systems, the OPA Director did not find the complainants to be credible. Notably, there was no evidence suggesting that any of the conduct alleged by the complainants actually occurred. For example, based on a review of video, the female complainant had no visible injuries, which would have likely resulted from being grabbed by the throat and slammed against a washing machine. Despite OPA's best efforts, the female complainant did not respond to requests for her interview.

The OPA Director further found nothing in the record indicating that there was bias on the part of any of the officers. As explained below, the OPA Director found that the officers had exigent circumstances to make a warrantless entry into the apartment. All of the officers stated in their OPA interviews that they did not know at the time of their entry what the subjects' religions were and that their conduct was not based, in any part, on any bias. The OPA Director credited those statements over the at best unsubstantiated and at worst frivolous assertions of the complainants.

The Named Employees responded to what they believed to be a serious situation with the potential of ongoing domestic violence. As confirmed by the audio from the officers' ICVs, at all times prior to entering the apartment and while inside of the apartment, the officers were polite, respectful, and professional. This was despite the fact that they were placed in an extremely difficult situation, in large part based on the conduct and demeanor of the complainants.

As articulated above, the Named Employees made the decision to perform a warrantless entry into the apartment. While, as a general matter, a search warrant is required to enter a private residence, SPD policy provides exceptions to this rule. These exceptions, which are consistent with law, include where there are exigent circumstances that require immediate entry. Exigent circumstances exist where officers believe that the failure to enter the home could result in harm to a person. Where, as here, officers are responding to a domestic violence call, SPD policy explicitly permits warrantless entry "if a person's health, welfare, or safety is concerned."

Here, based on information reported to them, their own observations, and their concerns of possible ongoing domestic violence within the apartment, the Named Employees reasonably believed that there was a threat to an unknown person's safety. As such, the Named Employees had exigent circumstances to enter the apartment without a warrant.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that Named Employee #1 violated policy by failing to activate his ICV during police activity. Therefore a **Sustained** finding was issued for *In-Car Video System: Employees Will Record Police Activity*.

Allegation #2

There was nothing in the record indicating that there was bias on the part of Named Employee #1. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias Based Policing*.

Allegation #3

A preponderance of the evidence showed that Named Employee #1 was polite, respectful, and professional. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times*.

Allegation #4

The weight of the evidence showed that the Named Employee had exigent circumstances to enter the apartment without a warrant. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Searches-General: There are Specific Exceptions to the Search Warrant Requirement: Exigent Circumstances*.

Named Employees #2, #3, and #4

Allegation #1

There was nothing in the record indicating that there was bias on the part of any of the Named Employees. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias Based Policing*.

Allegation #2

A preponderance of the evidence showed that the Named Employees were polite, respectful, and professional. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times*.

Allegation #3

The weight of the evidence showed that the Named Employees had exigent circumstances to enter the apartment without a warrant. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Searches-General: There are Specific Exceptions to the Search Warrant Requirement: Exigent Circumstances*.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.