



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0504

Issued Date: 12/08/2017

Named Employee #1	
Allegation #1	Seattle Police Department Manual 16.090 (8) In-Car Video System: Once Recording Has Begun, Employees Shall Not Stop Recording Until the Event Has Concluded (Policy that was issued March 1, 2016)
OPA Finding	Not Sustained (Management Action)
Final Discipline	N/A

Named Employee #2	
Allegation #1	Seattle Police Department Manual 16.090 (8) In-Car Video System: Once Recording Has Begun, Employees Shall Not Stop Recording Until the Event Has Concluded (Policy that was issued March 1, 2016)
OPA Finding	Not Sustained (Management Action)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees were following an ambulance, which was transporting a suspect to the jail.

COMPLAINT

The complainant alleges that while following the ambulance, the Named Employees turned off their In-Car Video (ICV) recording prior to arriving at the jail.

INVESTIGATION

The OPA investigation included the following actions:

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

ANALYSIS AND CONCLUSION

The Named Employees were involved in the arrest of the subject. During his arrest, the subject resisted officers and was believed to be potentially under the influence of narcotics. The decision was made to transport the subject to the jail via ambulance. An ambulance responded to the scene and the subject was secured on a gurney, placed inside of the ambulance, and the rear door was closed. He was then transported to the jail.

Prior to the transport, the Named Employees, who were working together in the same patrol vehicle, had activated their ICV. They initiated their ICV at 12:45:30 hours. At approximately 13:07:23 hours, the ICV recorded the Named Employees stating that they were going to follow the ambulance to the jail. The Named Employees did so, and, at approximately 13:16:21 hours, the Named Employees again stated that they were following the ambulance to the jail and then turned off their ICV.

The Named Employees' decision to turn off their ICV was discovered by an Acting Lieutenant, who then referred this matter to OPA. OPA initiated this investigation.

SPD Policy 16.090-POL-1(6) requires that employees record police activity including transports. SPD Policy 16.090-1(8) further states that "once a recording has begun, employees shall not stop recording until the event has concluded." The policy defines an event as concluding when: (1) "the employee has completed his or her part of the active investigation"; (2) "there is little possibility that the employee will have further contact with any person involved in the event"; and (3) "the employee is leaving the area of the event." (SPD Policy 16.090-POL-1(8).)

The Named Employees provided several reasons why they believed it to have been appropriate to turn off their ICV.

First, they argued that they were not actually transporting anyone at that time but were instead only following the ambulance while it transported the subject. The officers' argument in this

regard made some sense. The policy was unclear as to what constituted a "transport." An officer could plausibly read this term to define those instances when officers are transporting an individual in their own vehicle, not when they are following another vehicle that is transporting an individual.

Second, the Named Employees contended that they had completed their portions of the active investigation and had left the scene of the incident. They further asserted that while there was a likelihood that they were going to interact with the subject again, given that he was secured on a gurney in the back of the ambulance, it would not have occurred until they were inside the closed sally port and after they would have been required by policy to turn off their ICV. Thus, the Named Employees believed it permissible to deactivate their ICV prior to that time. While the OPA Director did not endorse the Named Employees' decision to de-activate their ICV and did not believe that decision to have been consistent with best practice, he understood their stated rationale.

While the Named Employees' conduct could be construed as a technical violation of policy, the OPA Director viewed the policy in this regard to be unclear. The OPA Director further found that, based on this policy, reasonable officers could believe that shutting off their ICV was permissible, even if not best practice.

Management Action Recommendation: The Department should consider whether it is the intent of the ICV policy to require officers who are not themselves transporting a subject, but who are following another vehicle that is transporting the subject, to record that law enforcement activity on ICV. The Department should specifically consider this question in the context of officers following ambulances when they are assured that they will almost certainly not have subsequent recordable contact with the subject.

FINDINGS

Named Employees #1 and #2

Allegation #1

The evidence showed that the policy was unclear, and based on this policy, reasonable officers could believe that shutting off their ICV was permissible, even if not best practice. Therefore a finding of **Not Sustained** (Management Action) was issued for *In-Car Video System: Once Recording Has Begun, Employees Shall Not Stop Recording Until the Event Has Concluded*.

The OPA Director's letter of Management Action recommendation to the Chief of Police is attached to this report.

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.



City of Seattle

Office of Police Accountability

December 5, 2017

Chief Kathleen M. O'Toole
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2017OPA-0504)

Dear Chief O'Toole:

OPA investigated an allegation that two officers failed to activate their ICV in violation of Department policy. The officers were involved in the arrest of a subject who, after being arrested, was secured on a gurney and transported to the King County Jail. The officers, who were working together in the same patrol vehicle, followed the ambulance. At that time, the officers indicated on their ICV that they were following the ambulance to the jail and then made the decision to turn their system off.

At their OPA interviews, both employees argued that, at the time that they turned off their ICV, they were not engaging in law enforcement activity that was required to be recorded. Specifically, the officers contended that while the transport of subjects needed to be recorded generally, they themselves were not actually transporting the subject, but were only following the ambulance.

I believe that an officer could plausibly read the ICV policy as only requiring recording when officers are transporting a subject in their own vehicle, as opposed to when they are following another vehicle that is transporting the subject.

I ask the Department to consider whether it is the intent of the policy to require officers who are not themselves transporting a subject, but who are following another vehicle that is doing so, to record that law enforcement activity on ICV. I suggest that the Department also evaluate the current policy's list of law enforcement activity that must be recorded to determine whether that list should be amplified or clarified to eliminate such confusion in the future.

Thank you very much for your prompt attention to this matter. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Please also feel free to contact me with any questions or concerns.

Sincerely,

Andrew Myerberg
Director, Office of Police Accountability

cc: Deputy Chief Carmen Best, Seattle Police Department
Assistant Chief Lesley Cordner, Standards and Compliance, Seattle Police Department
Rebecca Boatright, Senior Police Counsel, Seattle Police Department
Fe Lopez, Executive Director, Community Police Commission
Tito Rodriquez, OPA Auditor
Josh Johnson, Assistant City Attorney, Seattle City Attorney's Office
Tonia Winchester, Deputy Director, Office of Police Accountability