



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 14, 2018

CASE NUMBER: 2017OPA-0520

ALLEGATIONS OF MISCONDUCT & DIRECTOR’S FINDINGS:

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Inconclusive)
# 2	16.090 - In-Car Video System 6. Employees Will Record Police Activity	Sustained
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)
# 4	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Unfounded)
Discipline Imposed: Written Reprimand		

Named Employee #2

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car Video System 6. Employees Will Record Police Activity	Not Sustained (Training Referral)
Discipline Imposed: N/A		

Named Employee #3

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car Video System 6. Employees Will Record Police Activity	Not Sustained (Training Referral)
Discipline Imposed: N/A		

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 Complainant alleged that Named Employee #1 (NE #1) violated the Department's Bias Free Policing policy when issuing him a littering citation. It was also alleged that, during that same incident, NE #1 may have violated SPD’s professionalism policy by potentially unduly escalating the situation, and may have also abused his discretion. Lastly, during its intake, OPA discovered that all of the Named Employees may have violated the Department’s In-Car Video (ICV) policy by failing to activate their ICVs when they responded to the scene and instead doing so after their interaction with the Complainant had already commenced.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing, 2. Officers Will Not Engage in Bias-Based Policing

The Complainant alleged that NE#1 engaged in biased policing when NE#1 cited him for littering. On the date in question, NE#1 observed the Complainant throw a cigarette on the ground. NE#1 reported approaching the Complainant and contacting him. NE#1 stated that he asked the Complainant to throw the cigarette away so that he would not have to cite him, and reported that, in response, the Complainant told NE#1 that he was going to have to cite him. NE#1 then made the decision to cite the Complainant. NE#1 asked the Complainant to walk over to his patrol vehicle, where he had left his ticket book. The Complainant kept saying that he would walk with NE#1 to the patrol vehicle, but did not do so. At one point, a woman who NE#1 believed to be the Complainant's girlfriend snatched the cigarette out of NE#1's hand. NE#1 grabbed it back. There was, at that point, a group of people around them, and NE#1 believed it to be important to get the Complainant away from that group and towards his car. He thus made the decision to walk the Complainant over to the vehicle using an escort hold. NE#1 had to pull him over to the vehicle. NE#1 asked the Complainant for his name and date of birth and was given information that did not match the Complainant's license. While NE#1 believed that he had probable cause to arrest the Complainant for various infractions at that time, he did not do so. Instead, he issued a citation for littering. NE#1 tried to explain his actions to the Complainant, but the Complainant would not listen. The Complainant asked for NE#1's card and it was provided. At that point, their interaction concluded.

OPA attempted to contact the Complainant to obtain a statement on a number of occasions, but received no response. As such, OPA was unable to interview the Complainant to determine his perception of the incident.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Based on the available evidence, I see no basis for concluding that the stop in question was based on bias. While the Complainant alleged to a Department supervisor that, while he was cited, other individuals of a different race were not cited, there is no evidence establishing that fact. Here, the Complainant was cited for littering, which he admitted to doing. However, as explained more fully below, given that NE#1 failed to activate his ICV to record the beginning of his interaction with the Complainant, I cannot conclusively determine what occurred at that time and cannot definitely say that there was no bias involved in this case.

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

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



Named Employee #1 - Allegation #2

16.090 - In-Car Video System 6. Employees Will Record Police Activity

SPD Policy 16.090-POL-1(6) requires that employees record specified activity, including Terry stops, on-view infractions and criminal activity, and arrests and seizures. The policy instructs that: "If circumstances prevent recording with ICV at the beginning of an event, the employee shall begin recording as soon as practical." (SPD Policy 16.090-POL-1(6).)

During its investigation, OPA discovered that all three Named Employees failed to activate their ICVs until after they began interacting with the subject. As a result, the littering by the subject and the initiation of the interaction between the subject and the Named Employees was not captured by ICV.

When asked about the delay in initiating the recording at his OPA interview, NE#1 admitted that he did not activate his ICV for a period of time after he contacted the subject. He later clarified his belief that approximately 10-15 seconds elapsed between the time when he made the initial contact and then activated his ICV. NE#1 explained that he "just didn't think of [turning on his ICV] for a couple of seconds," and that as soon as he did think of doing so, he turned his ICV on. From OPA's review of the record and the ICV, the lapse between the on-viewing of the littering to the point that the ICV was activated was longer than NE#1's estimate.

Based on my review of the record, I see no exigent circumstances that would have prevented NE#1 from activating his ICV at the time he observed the littering and prior to his initial contact with the subject. Certainly, at the time of the littering he knew that he was going to take some type of law enforcement action. As such, he was required to activate his ICV at that point. Notably, NE#1 had his portable mic on his person at the time he on-viewed the incident and all he needed to do to timely record the incident was to push a button on the mic. This could have been done virtually instantaneously. His failure to do so was inconsistent with SPD policy. While this could be construed to be a technical violation, the failure to record all of the interaction between NE#1 and the subject prevents me from reaching a conclusive determination as to the basis for the stop and whether it was premised on impermissible bias. The expectation of the Department and the community is that ICV will be properly used to record the entirety of such an interaction.

In addition, I find no evidence in the record that NE#1 reported his failure to timely record to a supervisor, which he was required to do. (See SPD Policy 16.090-POL-1(6).)

Ultimately, NE#1 had sufficient time prior to contacting the subject to activate his ICV and failed to do so. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 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-9.)



From the portion of the interaction that was captured by ICV, I find no evidence suggesting that NE#1 behavior violated SPD's professionalism policy. I note, however, that the inception of the contact was not captured by ICV as NE#1 failed to timely activate his system. Notably, during the latter part of his interaction with the Complainant, NE#1 apologized for the manner in which he initiated the stop. As the Complainant did not participate in an OPA interview, OPA does not know what happened to warrant this apology. It is certainly possible, however, that NE#1's behavior at that moment was unprofessional.

That being said, based on the limited evidence available, I cannot conclusively determine whether NE#1's conduct violated SPD policy. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #4

5.001 - Standards and Duties 5. Employees May Use Discretion

SPD Policy 5.001-POL-5 states that: "Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the Department and duties of their office and assignment." The policy further instructs that: "The scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (See SPD Policy 5.001-POL-5.)

Here, it is undisputed that the Complainant threw a cigarette on the ground in violation of law. At his OPA interview, NE#1 indicated that had the Complainant simply properly disposed of the cigarette when asked to do so, this incident and the later issued citation would have been avoided. NE#1 further explained that he exercised his discretion to not arrest the complainant, even though he believed he had probable cause to do so for several minor offenses.

Perhaps it would have been a better use of SPD resources to not contact the Complainant for the minor offense at issue in this case; however, I cannot say that the decision by NE#1 to do so was in violation of policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

16.090 - In-Car Video System 6. Employees Will Record Police Activity

Named Employee #2 (NE#2) also failed to immediately activate his ICV. In explaining why he did not do so, NE#2 stated that at the time the contact was made with the Complainant he was conducting a foot patrol. The policy did not require that NE#2 activate his ICV for the entirety of that foot patrol. NE#2 was only required to activate his ICV when was taking law enforcement action, as set forth in SPD Policy 16.090-POL-1(6). NE#2 further explained to OPA that as soon as he realized that NE#1 was contacting someone, he activated his ICV.

I distinguish NE#2's conduct from that of NE#1. NE#1 observed the littering, knew he was going to make the contact, and had the opportunity to then immediately activate his ICV, but did not do so until after the interaction with the Complainant commenced. NE#2, to the contrary, reacted to NE#1 making contact and represented that he activated



his ICV when he realized the nature of what was happening. Perhaps NE#2 could have acted more promptly, but I do not find that his conduct rises to the level of a policy violation. That being said, I believe NE#2 could benefit from additional training and counseling on this issue.

- **Training Referral:** NE#2 should receive additional training and counseling from his chain of command concerning the Department's ICV policy and, specifically, for what purposes and at what time ICV must be activated. NE#2's chain of command should memorialize this training and counseling in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #3 - Allegation #1

16.090 - In-Car Video System 6. Employees Will Record Police Activity

Named Employee #3 (NE#3), like NE#2, asserted that he activated his camera after NE#1 observed the littering and made the decision to approach the subject.

For the same reasons as discussed with regard to NE#2, I do not find that NE#3 violated policy in this instance. However, I believe NE#3 could benefit from additional training and counseling from his chain of command.

- **Training Referral:** NE#3 should receive additional training and counseling from his chain of command concerning the Department's ICV policy and, specifically, for what purposes and at what time ICV must be activated. NE#3's chain of command should memorialize this training and counseling in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**