



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 26, 2018

CASE NUMBER: 2017OPA-1128

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car Video System 6. Employees Will Record Police Activity	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 4	5.001 - Standards and Duties 13. Retaliation is prohibited	Not Sustained (Unfounded)

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 the Named Employee was unprofessional towards him, may have retaliated against him, and may have violated law by his actions. During its intake investigation, OPA further determined that the Named Employee may have failed to activate his In-Car Video system in accordance with Department policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

SPD Policy 16.090-POL-6 requires that officers record policy activity. It specifically sets forth categories of such activity that must be recorded. (See SPD Policy 16.090-POL-6.)

During its investigation, OPA determined that Named Employee #1 (NE#1) may have failed to activate his In-Car Video (ICV). NE#1 told OPA that he had an issue with his ICV earlier that shift that he reported to a supervisor. As a result, he restarted his vehicle to try to reactivate his ICV. He believed that his ICV had been turned on prior to his contact with the Complainant.

Here, NE#1 responded to a call for service at an authorized encampment. The call was concerning the fact that the Complainant was parking his vehicle in front of the encampment dumpsters, which was preventing trash from being picked up. The caller also conveyed the fear that the Complainant could be assaultive. NE#1 told OPA that he did not believe that this was law enforcement activity that was required to be recorded. Based on my review of the policy, I disagree as this was a dispatched response to a call for service.



This issue is largely academic, however, because there was an anomaly with NE#1's ICV on the date in question that prevented him from recording. OPA verified this with SPD IT. OPA was provided the following information:

There are different reasons the recording could have failed; a power board malfunction, long distance between his mic and the receiver in the car, defective microphone or low charged [sic] on the mic battery. The system in {NE#1's} vehicle was malfunctioning during his entire shift on 10/30/17. A recording failure is not uncommon when this type of anomaly occurs.

For these reasons and given that OPA established that NE#1's ICV malfunctioned on the date in question, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy and Department policy. It further mandates that employees comply with the SPD Manual. (SPD Policy 5.001-POL-2.)

The Complainant alleged that NE#1 engaged in the following conduct on the date in question: he told people at the encampment that the Complainant was a "troublemaker" and a "criminal"; he repeatedly told truck drivers that they could take items from the encampment; he walked around with a "night stick" to intimidate and harass homeless individuals; and he threatened to tow the Complainant's RV from a public space that did not have any signage prohibiting parking. The Complainant further contended that NE#1's actions constituted violations of law.

NE#1 explained that he responded to the encampment based on complaints that the Complainant was parking in front of the dumpsters, which prevented garbage from being picked up. There were also complaints that the Complainant was acting in a disruptive fashion. NE#1 had previous negative interactions with the Complainant. Moreover, NE#1 was aware that the Complainant either was at the time or had been barred from the encampment.

NE#1 stated that he knows many of the residents of the encampment and has positive relationships with them. He noted, however, that the encampment can be dangerous. The dangers come from people armed with weapons, as well as from dogs that are kept unleashed in the encampment. As such, he stated that he carries a baton in his hand when walking in the encampment. He denied carrying or using the baton in a manner to intimidate or threaten people.

NE#1 was asked whether he told truck drivers that they could take items from RVs parked at the encampment. NE#1 denied that he told anyone, including tow truck drivers that might tow illegally parked vehicles, that they could remove items from the vehicles.

NE#1 denied threatening to tow the Complainant's vehicle. He stated that he observed the vehicle parked in front of the dumpsters and saw that the vehicle had expired plates. However, he did not have the vehicle towed at that time.



Lastly, NE#1 denied engaging in actions that constituted retaliation against the Complainant. While NE#1 believed that he had previously towed one of NE#1's vehicles, he said that he did so because it had been parked illegally. NE#1 indicated that he had never towed a RV belonging to the Complainant and that he did not do so in this instance.

From my review of the record, I find no evidence that NE#1's actions violated SPD policy, let alone that they rose to the level of criminal behavior. I do not find that NE#1 threatened the Complainant or others with a baton, that he told tow truck drivers that they could remove items from the vehicles they towed, that he threatened to have Complainant's vehicle towed, or that he acted in a retaliatory manner towards the Complainant. Notably, the Complainant refused to participate in an OPA interview and provided no evidence aside from his emailed complaint to prove his allegations. OPA was unable to locate on its own any evidence supporting the Complainant's contentions.

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

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

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.)

NE#1 explained that he had five or six previous interactions with the Complainant. He characterized those interactions as negative and stated that the Complainant would be verbally confrontational and would interfere with law enforcement activities. However, NE#1 denied acting unprofessionally towards the Complainant in this instance. To the contrary, he contended that he was "very professional."

NE#1 told OPA that he did not refer to the Complainant as a "criminal" or a "bad person." He would, however, describe the Complainant as a "troublemaker," but NE#1 did not remember whether he ever actually used that term.

OPA tried to interview the Complainant concerning the claims he alleged in his OPA complaint. He referred the OPA investigator back to his complaint and refused to participate in an interview to further expound on and explain his allegations.

Based on the record before me, I conclude that there is insufficient evidence to establish that NE#1 engaged in unprofessionalism towards the Complainant in this instance. In my opinion, NE#1 was able to provide a reasonable basis for all of the actions that he took and the Complainant failed to provide evidence to the contrary aside from his cursory complaint. Moreover, I find that even if NE#1 called the Complainant a "troublemaker," which has not been conclusively established, this would not, standing alone, constitute unprofessional conduct.

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



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

Named Employee #1 - Allegations #4

5.001 - Standards and Duties 13. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-13.) SPD employees are specifically prohibited from retaliating against a person who engages in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

The Complainant alleged that NE#1 engaged in retaliatory conduct towards him. NE#1 denied doing so. As discussed above, I find no evidence supporting this allegation. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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