



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 5, 2018

CASE NUMBER: 2018OPA-0020

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 (Training Referral)
# 2	16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Inconclusive)
# 2	16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions	Not Sustained (Inconclusive)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)
# 2	16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Lawful and Proper)
# 2	16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions	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:

It was alleged that the Named Employees may have failed to activate their In-Car Video systems in potential violation of policy.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

This case stemmed from the Named Employees' response to calls concerning an officer-involved shooting that had occurred in the vicinity of the Eastlake neighborhood of Seattle. During its investigation into that incident, the Department's Force Investigation Team (FIT) determined that the Named Employees potentially failed to log into the COBAN system and did not record In-Car Video (ICV). Consistent with SPD policy, FIT referred this matter to OPA and this investigation was initiated.

OPA interviewed Named Employee #1 (NE#1), Named Employee #3 (NE#3), and Named Employee #4 (NE#4) during its investigation. OPA did not interview Named Employee #2 as he had already left the employment of the Department.

NE#1 stated that he is a Department trainer for the use of Body Worn Video (BWV). He is further very familiar with the ICV policy. He told OPA that he understands the process for logging into COBAN and synching his wireless microphone, and that he is aware of those situations in which he is required to record ICV. Here, he recalled that he was at roll call when he heard over the radio shots fired and help the officer calls. He reported that he immediately left the precinct and grabbed his BWV before he did so. He stated that he did not have his wireless microphone with him at that time and did not grab it before leaving due to the exigency of the call. NE#1 told OPA that, due to call updates that eliminated the exigency of their response, he and NE#2, who was riding in the same patrol vehicle, did not go to the scene and instead conducted an area check. Neither NE#1 nor NE#2 activated their patrol vehicle's ICV and NE#1 further did not activate his BWV.

SPD Policy 16.090-POL-5(b) sets forth when officers are required to record law enforcement activity. The policy governs both ICV and BWV. (*See* 16.090-POL-5(b).) The policy further delineates the activity that must be recorded, which includes the response to dispatched calls. (*Id.*) The policy provides that this activity will be recorded unless "circumstances prevent recording at the start of an event"; however, even in those situations, "the employee will record as soon as possible." (*Id.*) Lastly, SPD Policy 16.090-POL-7 requires that, where there is a lack of video, SPD employees provide a reason for the absence of video in a call update and an appropriate report.

NE#1 admittedly did not record ICV; however, given the exigency of this situation, I do not necessarily fault NE#1 for this failure. Moreover, given that NE#1 indicated that he and NE#2 only conducted an area check, he may not have been required to record regardless.

While I do not feel that NE#1's conduct violated policy under the circumstances, he should have documented his failure to record in this instance. NE#1 told OPA that he simply forgot to do so. As a Department BWV trainer and given his familiarity with the policy, he should have known better. For these reasons, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** While NE#1's failure to record ICV in this case was excusable, he should have documented it in a call update and an appropriate report. NE#1 should be reminded of the requirement that he to do so,



which is set forth in SPD Policy 16.090-POL-7. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #1 - Allegation #2

16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions

SPD Policy 16.090-POL-4 generally requires that officers address and note malfunctions with their In-Car Video (ICV) and Body Worn Video (BWV) systems. This policy further requires that: "At the start of the shift, employees will prepare ICV and BWV systems as outlined in the training and 16.090 TSK-1." (SPD Policy 16.090-POL-4.) This includes synchronizing the wireless microphone. (See SPD Policy 16.090-TSK-1.) The policy also directs that: "Both employees in two-officer cars must log into the ICV system and sync their ICV microphones." (SPD Policy 16.090-POL-4.) Lastly, where there are system malfunctions, officers are required to "contact ITS for troubleshooting (if applicable), note the issue in a CAD update, and notify a supervisor as soon as practicable." (*Id.*)

Here, NE#1 admittedly did not log in to COBAN or synch his wireless microphone. This was again due to the immediacy of his response to the scene. Moreover, as there was no malfunction or system error, NE#1 did not troubleshoot with SPD ITS, note the issue in a CAD update, or notify a supervisor. Given this, I find that NE#1's failure to comply with this policy was understandable and excusable in this case, and I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

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

As discussed above, NE#2 left the employment of SPD prior to the conclusion of this investigation. He was not interviewed prior to that time, even though it would have been optimal to have done so in this investigation.

Given that he was not interviewed, it is unclear what his explanation was for failing to record. It could very well be that he, like the other Named Employees, did not have his wireless microphone on his person due to exigent circumstances and that he did not activate his ICV because he did not engage in any law enforcement activity that was required to be recorded. It could also be that he violated policy. Ultimately, I cannot make a conclusive determination as to this question. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #2

16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions

Similar to the above allegation, as NE#2 was not interviewed in this manner, OPA does not know whether he perceived there to be a malfunction or system error with his ICV. While OPA determined that NE#2 did not do a system check or synch his wireless microphone, OPA does not have his explanation for why he did not do.



As such, OPA cannot reach a conclusive finding concerning this allegation and recommends that it be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #1

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

NE#3 told OPA that he also responded to the shots fired call. He reported that, before leaving the precinct, he grabbed his wireless microphone. He was still driving to the scene when he was cleared from the call. He further heard dispatch indicate that everyone at the scene was to deactivate ICV and BWV. He stated that he confirmed at the scene that recording devices should remain off and he helped direct traffic. NE#3 told OPA that he did not activate his ICV because he did not “anticipate exercising police activity.”

I find NE#3’s failure to activate his ICV to have been excusable. This is particularly the case as, during his transport to the scene, he heard a radio transmission indicating that such systems should be deactivated and he double checked that direction when he arrived. As such, his decision not to turn either system on was reasonable. That being said, as with NE#1, NE#3 should have documented this failure to record in a call update and then later in an appropriate report. The failure to do so was inconsistent with policy; however, based on the circumstances of this case, I recommend that NE#3 receive a Training Referral.

- **Training Referral:** While NE#3’s failure to record ICV in this case was excusable, he should have documented it in a call update and an appropriate report. NE#3 should be reminded of the requirement that he to do so, which is set forth in SPD Policy 16.090-POL-7. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #3 - Allegation #2

16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions

NE#3 did not conduct any pre-shift system checks before responding to the call. However, as with NE#1, given the exigency of this call and given that NE#3 left the precinct immediately after roll call, I find this failure to have been both reasonable and excusable.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #4 - Allegation #1

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

NE#4, who was assigned as a bicycle officer on that date, also immediately responded to the incident. He was not equipped with ICV, but did have BWV. He activated his BWV on his way to the scene and deactivated it once he was told to do so by a supervisor. NE#4 further rode to the scene in a patrol vehicle operated by another officer, and that officer activated their vehicle's ICV system.

As NE#4 properly recorded video during his response to this call, I recommend that this allegation be Not Sustained – Lawful and Proper as against him.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #4 - Allegation #2

16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions

Given that he was not equipped with ICV, NE#4 was not required to log into COBAN or synch his wireless microphone. Moreover, he suffered no malfunction or system error. As such, this policy is inapplicable to his conduct and I recommend that this allegation be Not Sustained – Unfounded.

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