



CLOSED CASE SUMMARY

ISSUED DATE: JULY 16, 2018

CASE NUMBER: 2018OPA-0072

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|--------------------|--|-----------------------------------|
| # 1 | 5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations | Sustained |
| # 2 | 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity | Not Sustained (Training Referral) |
| # 3 | 16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video | Not Sustained (Training Referral) |
| Imposed Discipline | | |
| Written Reprimand | | |

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 Named Employee #1 failed to report an allegation of excessive force. It was also alleged that Named Employee #1 failed to timely activate his Body Worn Video, as well as that he failed to notify a supervisor or document this in an appropriate report.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

Named Employee #1 (NE#1) and other officers responded to an incident at a DESC building. During that response, an individual made two allegations of excessive force. The first allegation was made outside of the DESC building. The second allegation was made upstairs several minutes later while the subject was being placed into custody.

NE#1 and another officer were in the immediate vicinity when the first allegation of excessive force was made. The individual told the officers that he had witnessed “police brutality in action.” This was captured by the other officer’s Body Worn Video (BWV). As discussed below, NE#1 failed to timely activate his BWV. Notably, the other officer, who was standing next to NE#1 repeated the allegation of excessive force to the individual who made it. He also did not report the allegation to a supervisor. That other officer’s failure to report the allegation of misconduct was investigated in another OPA case (2017OPA-1030) and resulted in a Sustained finding against him. As part of OPA’s review of video during that investigation, OPA determined that NE#1 had also been present for and heard the allegation of excessive and he, like the other officer, failed to report it.



NE#1 was interviewed by OPA as part of this investigation. He stated that he did not recall the allegation of excessive force being made even though he agreed that it occurred after watching the Department video. He confirmed that he did not report the allegation to a supervisor. In response to questions from his Guild representative, NE#1 contended that he may have been focused on assisting the other officers who were upstairs, and, thus, did not pay attention to the allegation.

An allegation of excessive force and, specifically, of “police brutality,” is a complaint of serious misconduct that was required to be reported. Even if he was focused on assisting other officers, he heard, or, given his proximity at the time, should have heard this allegation. However, NE#1 did not report this allegation and his failure to do so constituted a violation of policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

SPD Policy 16.090-POL-5(b) requires that Department employees record specified law enforcement activity. Included among this is officers’ responses to dispatched calls. The policy instructs that officers must begin recording: “starting before the employee arrives on the call to ensure adequate time to turn on cameras.” (SPD Policy 16.090-POL-5(b).) This policy applies to both In-Car Video and BWV.

NE#1 was equipped with BWV on the date in question. He did not, however, initiate his BWV prior to or upon his response to the call. Indeed, the allegation of excessive force, which was made near the beginning of the officers’ response, was not recorded by NE#1 due to his failure to properly activate his BWV.

While NE#1 acted contrary to policy in this instance, OPA has instituted a grace period for BWV. This was done as a matter of fairness given the newness of this technology and the reality that failures to activate and other mistakes will occur as officers familiarize themselves with BWV. The grace period was also instituted to allow officers to learn how to properly and proficiently use their BWV without the concern of a possible OPA investigation into their conduct. NE#1’s failure to activate his BWV fell within this grace period.

As such, instead of a Sustained finding, I recommend that NE#1 receive the following Training Referral.

- **Training Referral:** NE#1 should be retrained on the elements of SPD Policy 16.090-POL-5(b) and 16.090-POL-7. Specifically, NE#1 should be reminded as to his obligation to record his response to dispatched calls and that this recording should begin prior to him arriving on the scene. He should be counseled concerning his failure to do so in this case, as well as concerning his failure to notify a supervisor of this failure and to document it in a report. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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



Named Employee #1 - Allegation #3

16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

SPD Policy 16.090-POL-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."

NE#1, who indisputably failed to timely activate his BWV, did not report this failure to a supervisor or document the lack of video in an appropriate report. This conduct violated policy. However, given the pending grace period for BWV, I recommend that NE#1 receive a Training Referral rather than a Sustained finding and I refer to the Training Referral above.

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