



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 29, 2018

CASE NUMBER: 2018OPA-0259

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 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Training Referral)

Named Employee #2

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 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Training Referral)

Named Employee #3

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 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Inconclusive)

Named Employee #4

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 record Department video, as well as that they also failed to report the lack of video and document the reason why no video existed.

STATEMENT OF FACTS:

On the date in question, officers assigned to the North Precinct Anti-Crime Team (ACT) were conducting law enforcement operations at a motel in North Seattle. The officers were looking for the suspect in a burglary and had reason to believe that he was at the motel. The suspect was also being sought on a VUFA warrant. Named Employee



#2 (NE#2) and Named Employee #3 (NE#3) were riding together in an unmarked vehicle. This vehicle was equipped with both emergency equipment and an In-Car Video (ICV) system.

NE#2 and NE#3 reported that when they pulled into the motel, they saw Named Employee #1 (NE#1) and another officer involved in a physical altercation with the suspect. The seizure of the suspect and the force used to effectuate that seizure were investigated by the Department's Force Investigation Team (FIT) due to the suspect incurring a fairly significant laceration to his face. OPA is also evaluating whether the seizure and force were consistent with policy in a separate OPA investigation (see 2018OPA-0210). During FIT's investigation, it identified that the ICV for NE#2's and NE#3's unmarked vehicle was not timely activated. It further determined that NE#1 did not timely activate his BWV. These apparent failures were referred to OPA. After conducting its intake investigation, OPA added additional allegations concerning the potential failure of all of the Named Employees to properly report and document that their Department video was not timely activated.

As part of its investigation, OPA interviewed the Named Employees. NE#2 stated that he activated the unmarked vehicle's ICV, but that he failed to do so until approximately two and a half minutes after he initially responded to the incident. NE#3, who was driving the vehicle, stated that she normally drove North ACT's other vehicle, which was also unmarked but did not have ICV. She stated that, while the officers virtually always used their BWV, they used ICV much less frequently. Both NE#2 and NE#3 contended that they failed to immediately activate their ICV due to the exigency of the situation – namely, the fact that two other officers were in a physical struggle with a suspect who was believed to be possibly armed. Both NE#2 and NE#3 timely activated their BWV and recorded the entirety of their law enforcement activity on those devices. NE#2 reported the failure to timely record ICV in his officer statement for the incident; however, he failed to provide any explanation for why he failed to do so. NE#3 did not report or document the failure to timely record. She told OPA that she did not know of the failure until she received notice of this OPA investigation.

As discussed above, NE#1 was one of the officers involved in the seizure of the subject. At that time, he and another officer used force to take the suspect down to the ground. It was later determined that NE#1 failed to timely activate his BWV (he was not equipped with ICV). He stated that he was not aware of the failure to timely record until he received notice of this OPA complaint and stated that he was not informed of or asked about his failure by FIT during his interview (a review of NE#1's FIT interview transcript confirms this); however, NE#1 also acknowledged that he did not affirmatively disclose this matter to FIT.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

NE#1 stated that, when he initially responded to the motel, he was speaking with motel staff and did not believe he needed to turn his BWV on at that time. He told OPA that he did not think that he was engaging in any law enforcement activity that needed to be recorded. NE#1 recounted that, when he left the motel office, he began walking behind another officer. He then saw the subject leave his hotel room and quickly pursued him. NE#1 and the other officer went hands-on with the subject. NE#1 reported that, once the subject was under control and in custody, he activated his BWV. He presumed that the pre-record on the BWV would capture his conduct; however, it only recorded from the moment he went hands-on with the subject and not what occurred previous to that point.



SPD Policy 16.090-POL-5 concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-5(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; traffic and Terry stops; on-view infractions and criminal activity; arrests and seizures; searches and inventories of vehicles, persons, or premises; and questioning victims, suspects, or witnesses.

When NE#1 was in the motel office, he was speaking to a witness. As such, he was required to record that law enforcement activity. Moreover, he knew that he was likely to interact with a warrant suspect when he arrived at the motel, which was more reason for him to turn his BWV on at the earliest possible time. Notably, the other officer involved in the take down of the subject did turn his BWV on at an appropriate time and recorded the officers' interaction with motel staff and the entirety of their pursuit of the subject and use of force.

While I find that NE#1's failure to timely activate his BWV was inconsistent with policy, this conduct occurred during the grace period that has been put in place by OPA. Under the grace period, which lasts for one year from the date that officers began receiving training on the BWV technology, failures to record, such as this one, will not result in Sustained findings. Instead, and consistent with OPA's approach in other similar cases, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning SPD Policy 16.090-POL-5, as well as on the requirement that he record the law enforcement activity delineated within the policy. He should be counseled to more closely comply with this policy moving forward. 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 #2

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 requires that Department employees document the existence of video or the reason for the lack of video. Officers are required to note the failure to record in an update to the CAD Call Report, as well as to provide an explanation for the lack of a recording in an appropriate report. (SPD Policy 16.090-POL-7.)

NE#1 told OPA that he did not document the fact that he belatedly activated his BWV. Accordingly, he also did not explain why he failed to timely activate in an appropriate report. NE#1 stated that he did not believe that FIT asked him about the failure to record during his interview in the aftermath of the use of force; however, he also confirmed that he did not affirmatively raise this issue to FIT and self-report. NE#1 also noted that, at the time of his FIT interview, he had been awake for approximately 22 straight hours.

As with Allegation #1 above, while NE#1 was required by policy to document his failure to timely record and to provide a written explanation, this conduct fell within the one year grace period for BWV. As such, instead of a Sustained finding, I recommend that NE#1 receive a Training Referral.



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- **Training Referral:** NE#2 should receive retraining on SPD Policy 16.090-POL-7, and, specifically, on the requirements that he document when Department video was not recorded or recorded late and also provide a written explanation for why this occurred. This retraining and any associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegation #1

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

As discussed above, NE#2 stated that he did not timely activate the unmarked vehicle's ICV system. He explained that he did not immediately do so because he believed there were exigent circumstances that prevented it – specifically, that he perceived NE#1 to be involved in a physical fight and potentially one that NE#1 was losing and thought it necessary to quickly respond and provide assistance.

At the outset, I note that I agree that there were exigent circumstances here and I do not believe that NE#2 and NE#3 violated this policy by failing to timely activate. I also credit NE#3's statement that she was unfamiliar with the unmarked vehicle that she used during this incident and that she more commonly used the ACT vehicle not equipped with ICV. Given, however, that both NE#2 and NE#3 activated their BWV for the entirety of the incident, I am unsure why they did not turn on their ICV at the same time. This would have obviated this issue and no OPA complaint would have been filed. Regardless, I find that their conduct in this case was excusable and I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#2 and NE#3.

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

Named Employee #2 - Allegation #2

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

NE#2 documented that ICV was activated belatedly in his officer statement. He did not, however, provide an explanation for why that was the case. This explanation is explicitly required by SPD Policy 16.090-POL-7, which 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." When NE#2 did not do so here, he technically violated policy. However, I do not feel that this warrants a sustained finding, particularly given that NE#2 did self-report the late activation. Instead, I recommend that NE#2 receive a Training Referral.

- **Training Referral:** NE#2 should receive retraining on SPD Policy 16.090-POL-7, and, specifically, on the requirement that he provide an explanation for why Department video was not recorded or recorded late. This retraining and any associated counseling should be documented and this documentation should be maintained in an appropriate database.

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



Named Employee #3 - Allegation #1

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

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #2

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

NE#3 told OPA that she had no idea that the ICV had been belatedly activated (or, for that matter, activated at all), until she received notice of this OPA investigation. Ultimately, I cannot prove or disprove whether she knew this information at the time. Had she been aware of the untimely activation, she would have been required to report it under SPD Policy 16.090-POL-7, particularly given that she was operating the vehicle on that day. If she was not aware of this, however, she could not be required to report what she did not know about. Given this uncertainty, I recommend that this allegation be Not Sustained – Inconclusive.

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