



## CLOSED CASE SUMMARY

ISSUED DATE:      OCTOBER 10, 2018

CASE NUMBER:     2018OPA-0468

### 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	Sustained
# 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)

**Imposed Discipline**

Oral 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 record In-Car Video and did not report that failure as required by Department policy.

### ANALYSIS AND CONCLUSIONS:

**Named Employee #1 - Allegation #1**

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

At approximately 2:06 a.m. on April 15, 2018, Named Employee #1 (NE#1) made contact with an intoxicated individual who was causing a disturbance. NE#1 and another officer detained the individual for a period of time and then let him go. After that point, the officers heard a car horn repeatedly going off in another location. The other officer drove his vehicle to that location and NE#1 got his car to follow him there. When NE#1 arrived at that location, at approximately 2:13 a.m., he observed the other officer holding the subject down on the ground and trying to handcuff him. NE#1 saw that the subject was resisting and NE#1 perceived the subject to be reaching for the other officer’s duty belt. NE#1 assisted in getting the subject under control and handcuffing him. NE#1 learned that the subject had been physically fighting with his friends and that he had assaulted the other officer when the other officer attempted to take the subject into custody.

During a later review of the incident, NE#1’s Lieutenant determined that NE#1 did not activate his In-Car Video (ICV) and belatedly activated his Body Worn Video (BWV). The Lieutenant made an OPA referral and this investigation ensued.

SPD Policy 16.090-POL-5 requires that officers record their law enforcement activity and specifies what activity must be recorded. It is clearly established that, under this policy, NE#1 was required to record the law enforcement activity that he engaged in on this date.



---

During its investigation, OPA determined that NE#1 did not activate his ICV for either his first or second interaction with the subject. OPA further determined, as referenced by the Lieutenant, that NE#1 belatedly activated his BWV. OPA contacted Seattle IT to discern whether there were any malfunctions with NE#1's system that would have prevented him from recording and OPA was informed that there were none. OPA also learned that NE#1 initiated multiple other successful recordings via his ICV both before and after this incident.

In the initial OPA referral, the Lieutenant wrote the following: "Given the exigency of the initial phase of the incident, it was reasonable that [NE#1] did not activate his ICV; however, once the incident stabilized and backup arrived he should have done so. [NE#1] did activate his BWV shortly after arriving." NE#1 similarly contended at his OPA interview that he did not timely activate his ICV due to exigent circumstances.

NE#1 did not report either his failure to record ICV or the late activation of his BWV. I note that, had he known that he failed to record due to exigent circumstances, as he asserted at his OPA interview, he would have been required to report that fact. However, he did not do so here. Regardless, exigent circumstances were only relevant to his second interaction with the subject.

The failure to turn on ICV when required is contrary to policy. Moreover, it is contrary to the expectation of both the Department and the community that officers will record their law enforcement activity when appropriate and necessary. Here, NE#1 failed to record ICV and belatedly activated BWV. While this failure may have been excusable in the second part of this incident when he observed the other officer struggling with the subject, there was no such excuse justifying his failure to activate ICV during his initial interaction with the subject. Had NE#1 reported this failure, as discussed both above and in the context of Allegation #2, I would have recommended that he receive a Training Referral. As he did not do so here, and based on the circumstances of this case and the evidentiary record, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**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 lack of video or the late activation of video. They are required to both note this in an update to the CAD Call Report and to explain why there was no video in an appropriate report. (SPD Policy 16.090-POL-7.)

NE#1 did not comply with this policy. He stated that he did not do so because he was not aware that he failed to activate his ICV until he received notice of this OPA complaint. However, it is unclear how this is consistent with his assertion at his OPA interview that he failed to activate his ICV due to exigent circumstances. If this is true, then he should have known that he failed to activate and he should have reported it. Moreover, he did know that he did not timely turn on his BWV, but also did not report this.

Further, in the section of his General Offense Report concerning video, NE#1 failed to indicate that he recorded video, did not note that he uploaded the video, and did not provide a reason for why no video was uploaded. The



---

completion of this portion of the report was not optional. Indeed, had he done so, it would have been abundantly clear that he had failed to record ICV and failed to timely record BWV.

As I already recommend that Allegation #1 be Sustained, I do not feel that it is necessary to also sustain this allegation. Instead, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning the requirements of SPD Policy 16.090-POL-7. NE#1 should be counseled that he is required to document and explain whenever he fails to record video or does not timely activate video. NE#1 should be informed that his failure to do so here constitutes a violation of policy. NE#1's chain of command should ensure that he more closely complies with this policy in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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