



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 14, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0056

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Sustained

**Imposed Discipline**

Written Reprimand
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**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Sustained

**Imposed Discipline**

Resigned Prior to Proposed DAR
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***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 intentionally prevented their Body Worn Video systems from recording, which was inconsistent with policy.

**ANALYSIS AND CONCLUSIONS:**

Officers, including the Named Employees, responded to a help the officer” call. The call indicated that an officer was involved in an altercation outside of a bar in the Madison Park neighborhood. When they arrived, it was determined that an officer – referred to here as Witness Officer #1 (WO#1) – had been involved in a physical struggle with another individual – referred to here as the “Subject.”

WO#1, who was off-duty and in plainclothes, initially told the responding officers that he and the Subject had an interaction outside of the bar and that, during the interaction, the Subject allowed WO#1 to feel his waistband. WO#1 determined that the Subject had a firearm and an altercation ensued. The officers determined that WO#1 was intoxicated, and doubts began to arise concerning WO#1’s account of the incident. The officers summoned a Sergeant to the scene. In addition, WO#1 quickly requested both a Guild representative and an attorney, which



raised additional questions concerning the propriety of his underlying conduct. The Sergeant's preliminary investigation into this incident yielded the conclusion that there was potential misconduct at play. Given that WO#1 used force as part of the incident to subdue the Subject, the Department's Force Investigation Team (FIT) was notified. An OPA referral was also made. OPA later investigated this case under 2019OPA-0813 and issued multiple Sustained findings against WO#1. Discipline was ultimately imposed by the Chief of Police.

During its investigation, FIT reviewed the Body Worn Video (BWV) recorded by the responding officers. FIT determined that, at one point, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were involved in a discussion concerning the incident and, specifically, concerning their questions surrounding WO#1's behavior. FIT identified that, at this time, NE#1 covered his BWV camera with his hand, while NE#2 repeatedly tapped his camera with his hand. Both actions prevented the BWV from fully recording. Given the Named Employees' apparently purposeful interference with their BWV, the FIT Captain made a referral alleging potential misconduct. OPA's investigation into this matter ensued.

As part of its investigation, OPA reviewed the BWV and confirmed, as FIT asserted, that the Named Employees either repeatedly tapped or covered up their BWV. OPA also confirmed that this compromised the clarity and quality of the recording and prevented their exact statements from being heard and understood.

OPA interviewed NE#1. He stated that he was aware that he was required to record his law enforcement activity during this incident and that he did not terminate his recording until he left the scene. He acknowledged that he covered up his BWV, but he did not recall what prompted him to do so at the time. NE#1 explained that he covered his BWV and whispered to NE#2 because he did not want WO#1 or WO#1's mother, who was acting as WO#1's attorney, to overhear them. NE#1 did not believe that this violated policy or constituted an abuse of his discretion. He opined that, when he covered up his BWV, he did not hinder the investigation or undermine any later criminal or administrative proceedings against WO#1.

OPA attempted to interview NE#2, but, at the time of this investigation, he had left the employ of SPD and lateralled to another law enforcement agency. NE#2 ultimately did not respond to OPA and, as a result, he was not interviewed.

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

##### ***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.) OPA alleged this allegation here as the deliberate failure to record would not only violate SPD's BWV policy, but would also be an unreasonable decision inconsistent with the Department's expectations.

However, as OPA already recommends that Allegation #2 be Sustained against NE#1 and NE#2, OPA finds it unnecessary to also sustained this allegation. As such and given that this allegation is duplicative, OPA recommends that it be removed as against both Named Employees.

Recommended Finding: **Allegation Removed**



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**Named Employee #1 - Allegation #2**

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

SPD Policy 16.090-POL-1(5)(b) states that when safe and practical, employees will record “arrests and seizures”, as well as “questioning [of] victims, suspects, or witnesses.” Officers are permitted to exercise reasonable discretion in not recording under certain situations. (SPD Policy 16.090-POL-1(5)(c).) Among the permissible exceptions is “when the respect for an individual’s privacy or dignity outweighs the need to record an event.” (SPD Policy 16.090-POL-1(5)(f).) That exception provides examples of where it is applicable, including “natural death scenes, death notifications, child or sexual assault victim interviews, cultural or religious objections to being recorded, and when the use of BWV would impede or limit the cooperation of a victim or witness.” (*Id.*)

Here, NE#1 did not argue that his preventing his BWV from recording fell within an exception itemized by the policy. NE#1 asserted, instead, that it was purposed to prevent WO#1 and his mother (the attorney) from hearing what NE#1 was saying to NE#2. However, this does not provide a justification for undermining the recording. Moreover, it is unclear to OPA what covering the BWV would have added to preventing what he was saying from being heard in real-time. If anything, he should have covered his mouth, not his BWV, or walked away to have the conversation in another more private place. Regardless, there is no exception in the policy for deactivating video to secrete information from a suspect or the suspect’s attorney. Moreover, this result does not change even if the covering of the BWV did not negatively affect the arrest or prosecution of WO#1. It still represented conduct that, as the FIT Captain indicated, can be construed to “reflect poorly on the Department” and to have the “effect of degrading the public’s trust in the Department’s ability to perform its function.”

That OPA finds that the Named Employees’ decision to cover their cameras was improper and violated policy is not meant to cast aspersions on the character or quality either officer. OPA knows both to be hard working, honest, and committed to their profession. However, OPA’s decision is not only informed by a plain language reading of the policy, but also by past precedent. Indeed, the only other case in recent memory in which an officer purposely turned off BWV when it should have been recording – 2019OPA-0834 – also resulted in a Sustained finding and discipline. The same result must follow here.

As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Allegation Removed**

**Named Employee #2 - Allegation #1**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #2 - Allegation #2**

***5.001 - Standards and Duties 6. Employees May Use Discretion***



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As discussed herein, OPA offered NE#2 the opportunity to participate in an interview and to provide his account of and explanation for his actions. However, he declined to do so. As such, and consistent with past precedent, OPA decides this case based on the available evidence. When doing so and when applying the same analysis set forth above (see Named Employee #1 – Allegation #2), OPA also recommends that this allegation be Sustained against NE#2.

Recommended Finding: **Sustained**