



## **CLOSED CASE SUMMARY**

ISSUED DATE: FEBRUARY 22, 2018

CASE NUMBER: 2017OPA-0875

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	11.010 - Detainee Management in Department Facilities, 11.010-TSK-1 Securing a Detainee in a Department Holding Cell	Sustained
# 2	5.001 - Standards and Duties, 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)
# 3	5.001 - Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer	Not Sustained (Unfounded)

**Named Employee #2**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	11.010 - Detainee Management in Department Facilities, 11.010-TSK-1 Securing a Detainee in a Department Holding Cell	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties, 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Inconclusive)

***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:**

The Named Employees failed to properly conduct checks on their arrestees as required by policy and were notified of their failure to do so by their supervisor. The Named Employees subsequently improperly changed the time of their 30 minute checks on a holding cell log sheet in order to presumably make it appear that checks had been done in conformance to policy. This matter was reported to OPA by a Department supervisor.

**ANALYSIS AND CONCLUSIONS:**

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

***11.010 - Detainee Management in Department Facilities, 11.010-TSK-1 Securing a Detainee in a Department Holding Cell***

SPD Policy 11.010-TSK-1 concerns the securing of a detainee in a Department holding cell. Germane to this case, is the requirement that an officer responsible for the detainee “visually checks the detainee every 30 minutes and records the check on the appropriate log sheet.” (SPD Policy 11.010-TSK-1.)



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In this case, Named Employee #2 (NE#2), who was a student officer, was the arresting officer for two individuals. On the date in question, NE#2, by function of the fact that he was a student, was being supervised by a Field Training Officer (FTO), Named Employee #1 (NE#1). The arrested suspects were placed into a Department holding cell. As such, NE#2, as the primary officer, was required to conduct a visual check of these individuals every 30 minutes and to record the check on a log sheet.

An Acting Sergeant screened the arrest of the two individuals. He noted that the individuals were placed in the holding cells at approximately 21:30 hours and noticed that the individuals were still in the holding cells when he checked again at 23:00 hours. At that same time, NE#2 was still writing up the arrest paperwork with NE#1. The Acting Sergeant examined the holding cell log sheet and noticed that, per the entries on the log sheet, the first visual check of the individuals was not conducted until 22:40 hours, more than 60 minutes after the individuals had been placed in the holding cells, which was in violation of policy.

The Acting Sergeant spoke with NE#1 and NE#2 and informed them that they had failed to conduct their 30-minute checks and, thus, had violated policy. He counseled them to make their checks properly. The Acting Sergeant later sent NE#1 a MDT (mobile data terminal) message ordering him to write on the back of the log sheet the reason for why he missed the 30 minute checks – presumably, in the Acting Sergeant’s mind, because NE#1 was working with NE#2 on his paperwork.

Approximately five days later, the Acting Sergeant checked the log sheet to determine whether NE#1 had complied with his instruction and realized that the log sheet, which had already been approved by the chain of command, had been improperly altered. Specifically, two of the times had been whited out and modified in order to ensure that the checks were consistent with policy. Based on his belief that NE#1, who he had ordered to include his reasoning for missing the checks on the back of the log sheet, had potentially falsified the entries, the Acting Sergeant informed his supervisor, a Lieutenant. The Acting Sergeant was directed by the Lieutenant to initiate an OPA complaint, which he did. This OPA investigation followed.

As a starting point, it is undisputed that NE#1 and NE#2 failed to conduct the 30-minute checks on detainees that were required by policy. On the date in question, NE#2 was working the first day of his second student rotation. As such, he was still a very new officer. NE#2 stated at his OPA interview (in response to his Guild representative’s question) that he was largely unfamiliar with holding cell logs. NE#1, however, has no such excuse. As a FTO, he knew that he and his student officer were required to conduct 30 minute checks and to record those checks in the holding cell log book. They did not do so. As NE#1 was the FTO for a very new student officer, he bears the responsibility for this failure. Accordingly, I recommend that this allegation be sustained as against NE#1.

Recommended Finding: **Sustained**

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

***5.001 - Standards and Duties, 10. Employees Shall Be Truthful and Complete In All Communication***

As indicated more fully herein, NE#1 claimed that he told NE#2 to write a note on the back of the holding cell log sheet indicating why the officers missed their mandatory 30-minute checks. NE#1 denied telling NE#2 to alter the times to make it look like they did, in fact, perform the checks as required by policy. NE#2 admitted modifying the



entries and writing in times that were incorrect; however, he claimed that he did so at NE#1's direction. NE#2 denied that NE#1 ever told him that he should leave a note on the back of the holding cell log and he stated that he was unaware that the Acting Sergeant had even made that request of NE#1. I note that, while ultimately irrelevant to my recommended findings, NE#2 also denied using whiteout to alter the log sheet.

It is possible that the officers' actions were the result of a miscommunication. It is also possible that one of the officers' accounts was untruthful. I hope it is the former, but I cannot conclusively make that determination. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer***

Based on a review of the MDT message sent by the Acting Sergeant to NE#1, NE#1, not NE#2, was directed to make a note on the back of the log sheet explaining why he and NE#2 had missed the 30-minute checks. NE#1 responded that he would do so. However, instead of taking care of this matter as he had indicated to the Acting Sergeant, he delegated this task to NE#2. As discussed more fully herein, NE#2 claimed that NE#1 told him to alter the times but said nothing about leaving an explanatory note. NE#1, to the contrary, asserted that he told NE#2 to leave a note but never told him to alter the times. Ultimately, there is a dispute of fact here. As discussed above, it could have been, and hopefully was, the result of a miscommunication. However, this all could have been avoided had NE#1 actually just done what he told the Acting Sergeant he was going to do and himself made the notation on the back of the holding cell log. It is unclear to me why he did not do and, instead, abdicated his responsibility to NE#2.

SPD Policy 5.001-POL-14 requires that employees obey any lawful order issued by a superior officer. Here, it is inarguable that the Acting Sergeant's order that an explanatory note be left on the back of the log sheet was a lawful order that the officers were required to comply with but that ultimately was not completed. That being said, neither NE#1 or NE#2 deliberately refused to comply with the Acting Sergeant's order, which would have established insubordination and a violation of this section of the policy. As such, while the officers did not actually do what the Acting Sergeant ordered them to do, I do not find that NE#1, or for that matter NE#2, violated this policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

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

***11.010 - Detainee Management in Department Facilities, 11.010-TSK-1 Securing a Detainee in a Department Holding Cell***

While NE#2, like NE#1, failed to properly check on the prisoners that he was responsible for and while he did not accurately fill out the holding cell log, I recognize that he was very inexperienced at the time of the incident and had little to no training, either classroom or on the job, concerning how to fill out holding cell logs. Even though I recommended sustaining the violation of this allegation against NE#1, given NE#2's status as a student officer, I recommend that NE#2 instead receive a training referral.



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- **Training Referral:** NE#2 should be re-trained concerning the requirements of this policy and his obligation to check on the prisoners in his custody every thirty minutes. He should moreover receive additional training concerning how to complete holding cell logs. NE#2 should also be counseled by his chain of command concerning his decision to alter the times on the holding cell logs. Even if he was directed by his supervisor to do so, he should have sought clarification and should have taken steps to not include inaccurate information, even if in good faith, on the holding cell log. This re-training and associated counseling should be memorialized in a PAS entry.

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

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

***5.001 - Standards and Duties, 10. Employees Shall Be Truthful and Complete In All Communication***

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

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

**Named Employee #2 - Allegation #3**

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

At his OPA interview, NE#2 stated that he altered the holding cell log sheet entries and, by doing so, arguably falsified times, at the direction of NE#1. (NE#2 OPA Interview, at p. 8.) For his part, NE#1 denied telling NE#2 to alter the times and, instead, contended that he simply told NE#2 to indicate on the back of the log sheet why they failed to check on the detainees. NE#2, however, expressly denied receiving that direction from NE#1.

NE#2 knew that he and NE#1 did not check on the detainees when they were supposed to, but he changed the log to suggest that they had. He stated that he mirrored the times of checks that he believed were conducted by another officer who properly monitored the prisoners that he was responsible for. Perhaps this was done entirely in good faith and NE#2 did as he believed that he had been instructed to do by his supervisor. However, another interpretation is that NE#2 deliberately falsified times on the holding cell logs in order to cover up his failure to monitor the prisoners.

SPD Policy 5.002-POL-6 requires SPD employees to report alleged violations. The question here is whether NE#2 should have reported his supervisor's direction that he, as recounted by NE#2, modified the time entries on the holding cell log sheet. As explained above, I cannot determine whether or not such direction was actually given by NE#1 and, even if so, whether NE#1 instructed NE#2 to engage in dishonesty. As such, I cannot conclusively determine whether this was potential misconduct that NE#2 was required to report. For this reason, I recommend that this allegation be Not Sustained – Inconclusive.

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