



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 11, 2018

CASE NUMBER: 2017OPA-1275

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	15.260 - Collision Investigations 2. Officers Take Collision Reports for All Mandatory Reportable Collisions	Sustained
# 2	15.260 - Collision Investigations 4. Officers Take Enforcement Action in Reportable Non-Felony Collision Investigations	Sustained
# 3	16.090 – In-Car and Body Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	Sustained
# 4	5.001 - Standards and Duties 5. Employees May Use Discretion	Allegation Removed
# 5	5.001 - Standards and Duties 9. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)

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:

The Complainant alleged that the Named Employee failed to properly investigate and cite the other driver in a reportable accident. The Complainant further contended that the Named Employee was dishonest when he told a witness that he was going to generate a report and then failed to do so. Lastly, during its intake investigation, OPA determined that the Named Employee had potentially failed to timely activate his In-Car Video system.

STATEMENT OF FACTS:

The Complainant alleged to OPA that his vehicle was sideswiped by a truck, causing damage. He stated that a witness observed the accident and called 911. An officer responded and spoke to the witness. The officer told the witness that a report would be written and left his business card on the Complainant’s windshield. The Complainant returned to his vehicle later that morning and saw the substantial damage. He called SPD three times to get a copy of the report, but was informed that no report had been generated. The Complainant obtained a copy of the CAD report and saw that the call was closed with the notation: “430 k – other report made”; however, no report could be located. The Complainant provided photographs of the damage to his vehicle to OPA and these photographs are included in the case file. The Complainant stated that the damage to the vehicle was in the amount of \$3,900. Insurance paid out \$2,200 on the claim.

OPA also interviewed a civilian witness who observed the accident. The witness was working at a construction site when a truck that was making a delivery took a wide turn and hit the Complainant’s car. The witness recalled that he



facilitated contact between the truck driver, the Complainant, and the officer. He did not remember whether he did so by going through SPD or whether he located the Complainant at his apartment complex. He stated that an officer arrived at the scene approximately one hour after 911 was called. The witness could not remember if the Complainant was at the scene when the officer arrived, but recalled that the officer spoke with the truck driver. The witness spoke to the officer and told him what he saw. He did not know whether the truck driver got cited. The witness further did not know whether the officer provided any information to the Complainant. The witness told OPA that the Complainant came to his business on multiple occasions after the accident, trying to get help with pursuing an insurance claim.

At the time of the incident, Named Employee #1 (NE#1) was assigned to the Traffic Enforcement Unit. In that role, part of his job was to respond to collisions when available. NE#1 was in a marked vehicle equipped with In-Car Video (ICV). NE#1 stated that he did not recall responding to the collision in this case.

NE#1 told OPA that when he investigates collisions, he normally only generates an exchange of information form. He usually gives the involved parties the option for a report and, if either driver requests a report, he writes one. If they are satisfied with the exchange of information form, NE#1 will complete it for them. NE#1 explained that when he cleared this call as “430 k – other report made,” he was indicating that he closed the call by completing an exchange of information form and that there was no case number associated with the case.

NE#1 did not recall why he decided to do an exchange of information form here when only one driver was present. He stated that if he indicated to one of the involved parties that he was going to write a report, he would have done so. When he was asked whether he left his business card on the Complainant’s car instead of completing an exchange of information form, NE#1 stated that it was a possibility. He said that he could have just left the contact information of the truck driver given that, under the circumstances, that individual was clearly at fault.

At his OPA interview, the ICV of the incident was played for NE#1. On the video, NE#1 was captured instructing the truck driver that he had to have his license, proof of insurance, and “all the paperwork.” NE#1 was further recorded stating to the truck driver that he understood that “things happen.” NE#1 did not recall the context of these statements, but affirmed that, based on his review of the ICV, the driver did not have his license on his person at the time of the accident. NE#1 did not recall why he did not cite that individual. He further did not know how he could have provided accurate information concerning the truck driver’s identity to the Complainant given the truck driver’s potential lack of a driver’s license or insurance information. He assumed that the truck driver would have provided his personal information orally and that this was relayed on the business card that was left for the Complainant.

During its investigation, OPA determined that, while NE#1 was dispatched to the call at 7:56 a.m. and arrived at 8:09 a.m., his ICV was not activated until 8:44 a.m. NE#1 did not know why this was the case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

15.260 - Collision Investigations 2. Officers Take Collision Reports for All Mandatory Reportable Collisions

SPD Policy 15.260-POL-2 concerns those situations in which an officer must complete a collision report for a mandatory reportable collision. Among such cases are where there is “[d]amage to the property of any one person



to an apparent extent of \$1,000 or more” or where “[e]nforcement action is taken against one or more of the parties involved.” (SPD Policy 15.260-POL-2.)

First, based on the photographs provided to OPA by the Complainant and the amount of damage claimed and then paid out by the insurance company, the damage to the Complainant’s vehicle was clearly in excess of \$1,000. Based on his significant experience investigating collisions, a reasonable officer in NE#1’s position would have been aware of this and would have thus completed a collision report.

Second, even if the damage was not clearly over \$1,000, as discussed more fully below, NE#1 should have cited the truck driver. This would have also required that a collision report be generated.

Notably, not only did NE#1 not generate a report, he also apparently failed to create an exchange of information form. Instead, in lieu of the form, he left his business card on the Complainant’s windshield. This was clearly not contemplated by the plain language of the policy and was inconsistent with the Department’s and the community’s expectations. Moreover, it was substantially inconsistent with the documentation of his response to the incident on the CAD Call Report.

For these reasons, NE#1’s failure to complete a collision report in this case violated policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

15.260 - Collision Investigations 4. Officers Take Enforcement Action in Reportable Non-Felony Collision Investigations

SPD Policy 15.260-POL-4 requires officers to take enforcement action in reportable non-felony collisions. As discussed above, I find that this was a reportable non-felony collision. Based on the circumstances of this case, Department policy required that NE#1 issue a citation to the truck driver.

It was undisputed that the truck driver sideswiped a parked car. As such, he was indisputably at fault. Moreover, at the time of the accident, the truck driver apparently did not have either his driver’s license or proof of insurance (and potentially did not possess the truck’s registration). A reasonable officer in NE#1’s position, particularly one with NE#1’s experience, would have recognized that a citation in this instance was required. The failure to issue a citation here violated policy.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #3

16.090 – In-Car and Body Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity

SPD Policy 16.090-POL-5(b) sets forth when employees are required to record their police activity on ICV. Relevant to this case, officers must record ICV when responding to dispatched calls and when interviewing witnesses, victims, and suspects. (SPD Policy 16.090-POL-5(b).)

Here, it is undisputed that NE#1's ICV was not activated until nearly 50 minutes after he was dispatched to this incident. NE#1 had no explanation for this late activation. Notably, when responding to dispatched calls, Department policy requires that the ICV recording must be initiated "before the employee arrives on the call to ensure adequate time to turn on cameras." (*Id.*) That did not occur in this case.

Moreover, SPD Policy 16.090-POL-7 mandates that, where the start of a recording is delayed, Department employees "explain in writing...why the start of the recording was delayed." NE#1 did not do so here, nor did he notify a supervisor of this issue or otherwise self-report his failure to timely activate his ICV.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegations #4

5.001 - Standards and Duties 5. Employees May Use Discretion

As discussed more fully above, I find that the decision to not write a report in this case and to note cite the truck driver violated policy. In deciding to not take this action, NE#1 abused the discretion provided to him as a police officer. That being said, this conduct and decision-making is already captured by the Sustained findings in Allegation #1 and Allegation #2. I find it unnecessary to also sustain this allegation and, instead, recommend that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #5

5.001 - Standards and Duties 9. Employees Shall Be Truthful and Complete in All Communication

SPD Policy 5.001-POL-9 requires that Department employees be truthful and complete in all communications. This allegation was classified based on the Complainant's assertion that NE#1 stated that he was going to write a report but never did so. The Complainant told OPA that NE#1's statement was relayed to him by a witness to the accident.

NE#1 did not recall the specifics of this incident; however, he told OPA that he did not believe that he made this statement. He contended that had he said he was going to write a report, it would have been his practice to have done so.



Even had NE#1 actually made this statement and then failed to write a report, it does not mean that he was dishonest. He could have forgotten to write the report without any ill intent or that it was simply a miscommunication or misunderstanding between NE#1 and the witness to whom this statement was purportedly made. Moreover, this allegation is premised on hearsay in that the alleged statement was not made directly to the Complainant, but was instead conveyed to the Complainant by a third party. It is unclear who this third party was and, as such, OPA has been unable to independently verify that the statement was ever made.

Ultimately, and applying the elevated quantum of evidence required to prove this allegation, I find that there is insufficient information in the record to establish that NE#1 engaged in dishonesty. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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