



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 9, 2018

CASE NUMBER: 2017OPA-1324

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions	Not Sustained (Lawful and Proper)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions	Not Sustained (Lawful and Proper)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Lawful and Proper)

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 failed to record Department video during a Vice operation. It was further alleged that neither logged into their In-Car Video systems as required by Department policy.

ADMINISTRATIVE NOTE:

Due to high caseloads and staffing shortages, the Director’s Certification Memo in this case was not completed within the 180-day timeline set forth in the Collective Bargaining Agreement between the City of Seattle and SPOG.

STATEMENT OF FACTS:

The facts of this case were more fully addressed in a related OPA case – 2018OPA-0282. As a brief overview, the Named Employees were involved in a Vice operation. The Named Employees were assigned as transport officers. They were ordered by their Sergeant to not record In-Car Video (ICV) as part of that operation. As a result of this order, the Named Employees, who were riding in the same vehicle, did not activate their ICV.

Both of the Named Employees were interviewed by OPA. They confirmed that they received a direct order to not record any on-scene activity, as well as any transports. As such, the Named Employees did not log into the COBAN system prior to beginning the operation. They further did not log to any of the transports over the air. The Named



Employees explained that their Sergeant provided two justifications for not recording. First, as they were dealing with undercover officers, the recording could compromise those officers' identities and assignments. Second, they were treating the sex workers implicated by the operation as victims of crimes and focused on limiting recordings of them.

At his OPA interview in the prior case, the Named Employees' Sergeant recounted that, in 2006, he wrote a memorandum to his chain of command requesting that Vice operations be exempt from Department rules concerning ICV activation. The memorandum was reviewed by his Lieutenant, Captain, and the then Assistant Chief for the Investigations Bureau. The Sergeant stated that he did not hear whether it had been approved and he then emailed the Assistant Chief to check on the status of the request. The Assistant Chief responded that it had been approved and that the unit would receive confirmation in writing. The Sergeant stated that he never saw that written confirmation. He further stated that, when he received notice of this OPA complaint, he searched for the memorandum he had written but could not find it.

The Sergeant stated that, as he was operating under the belief that his unit had an exemption, he ordered the Named Employees not to use ICV during the Vice operation. He stated that he did not inform the Named Employees that they should not record during transports and believed that this was a miscommunication between him and the Named Employees.

During its investigation into this prior case, OPA searched for any documentation memorializing an exemption specifically for the Vice Unit. OPA could not find any such exemption. OPA did locate an exemption for Special Investigations, which is attached to OPA's case file. However, by its terms, this exemption would not have covered the two officers from recording given their assignment during the Vice operation.

Based on its investigation into the prior case, OPA recommended that the Sergeant receive a Training Referral. The referral, itself, specifically directed the Sergeant to review the ICV exemption for Special Investigations and determine whether it applied to the Vice/Human Trafficking Unit. OPA further directed that, if the Sergeant determined that it was not applicable and he believed that an exemption for his unit was warranted, the Sergeant should seek another exemption from the Department. Until that exemption was provided, OPA advised the Sergeant to refrain from ordering officers under his command to not record.

This investigation, however, concerns the failures of the Named Employees to record during this incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions

SPD Policy 16.090-POL-4 requires Department employees to address and note malfunctions with their ICV and Body Worn Video systems. The policy further states that: "Both employees in two-officer cars must log into the ICV system and sync their ICV microphones."



Here, the Named Employees admittedly did not log into their ICV systems prior to beginning their work on the Vice operation. While, as discussed more fully below, there was no exception from the policy that permitted their failure to do so, they were justified in relying on their direction from their Sergeant that it was unnecessary in this instance.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #1 - Allegation #2

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

SPD Policy 16.090-POL-5 sets forth when Department employees are required to record police activity.

As discussed above, it appears that the Named Employees were required to record their law enforcement activity during this incident and that there was no official exemption excusing them from doing so. However, based a review of all of the OPA interviews relating to this case, it is clear that they believed that they did not have to do so here. Even if this was based on a miscommunication between the Named Employees and their Sergeant, as well as based on the Sergeant's misunderstanding of the scope of any existing ICV exemptions, I find that the Named Employees' reasonable reliance on their supervisor's direction was appropriate.

Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #2 - Allegation #1

16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions

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

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

Named Employee #2 - Allegation #2

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

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

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