



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 9, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0252

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	16.090 – In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity h. Employees Stating the Reasons for Stopping BWV	Not Sustained (Training Referral)
# 2	16.090 – In-Car and Body-Worn Video POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity b. When Employees Record Activity “Employees will record the entire event...	Sustained

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 the Named Employee intentionally turned off his Body Worn Video when he was not permitted to do so.

SUMMARY OF INVESTIGATION:

During a review of the Body Worn Video (BWV) for Named Employee #1 (NE#1), OPA identified that he turned his BWV off while still actively involved with an incident.

Prior to the BWV being turned off, NE#1 approached another lieutenant and stated the following: “I appreciate you guys’ support, um, here’s the problem...come over here for a sec, I’m going to turn this off, we need to talk.” The BWV was then deactivated. Around a minute later, NE#1 turned his BWV back on and it captured him walking away from the other lieutenant. NE#1 did not provide any explanation on the video concerning what was discussed off camera or give details concerning why he turned the BWV off. NE#1 further did not discuss the decision to turn off his BWV in a supplemental report.

As part of its investigation, OPA interviewed NE#1. He said that, at the time, he wanted to discuss how arrestees would be transported to the East Precinct, but he was concerned that demonstrators were eavesdropping on his conversations. He thought that if he did not turn his BWV off while he had the conversation with the other lieutenant, the demonstrators could request the BWV through public disclosure and learn the information. However, later in his



interview, NE#1 recognized that this rationale did not make sense because, even were a public disclosure request made, the video would not be obtained for a significant period of time.

NE#1 told OPA that, at the time of this incident, he thought that there was possibly an exception from recording for tactical planning. However, he later learned that this was not the case. Ultimately, he stated that, in hindsight, he would not have turned off his BWV and that he should have documented the reason for doing so.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

16.090 – In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity h. Employees Stating the Reasons for Stopping BWV

SPD Policy 16.090-POL-1(h) states that, when employees stop recording BWV, they must state the reason why.

As discussed above, NE#1 turned off his BWV without authorization to do so and then failed to either contemporaneously explain or document why. This was contrary to policy. However, as the most significant aspect of his conduct is already captured by the finding in Allegation #2, OPA declines to also sustain this allegation and, instead, issues the below Training Referral.

- **Training Referral:** NE#1 should be retrained on when he is permitted to turn off his BWV and the requirements of contemporaneous documentation when he does so. The retraining and counseling provided to NE#1 should be documented in Blue Team.

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

Named Employee #1 - Allegation #2

16.090 – In-Car and Body-Worn Video POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity b. When Employees Record Activity “Employees will record the entire event...”

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, it is undisputed that NE#1 turned his BWV off and that he did so purposefully. His stated reason for this was to keep a conversation between himself and another lieutenant that concerned how detainees would be transported to the precinct private and to ensure that it could not be obtained in public disclosure. However, as NE#1 himself recognized, this rationale did not make sense as, even if the videos were sought and obtained in public disclosure, this would have not occurred until well after the incident. Moreover, this rationale is not one that is permitted as an exception under policy.



In other similar cases (see 2020OPA-0056 and 2019OPA-0834), OPA has consistently found that the intentional decision to turn off BWV without a legitimate exception applying violates policy and warrants a sustained finding. This is the case here. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**