



CLOSED CASE SUMMARY

ISSUED DATE: MAY 18, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0430

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 b. When Employees Record Activity	Not Sustained - Training Referral
# 2	16.110 – Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis.	Not Sustained - Unfounded
# 3	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Unfounded

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:

On the morning of September 14, 2021, the Complainant called 911 to report that an individual, who appeared to be in crisis, was smashing out the windows to a motor vehicle. The Complainant also alleged that when Named Employee #1 (NE#1) arrived on scene, he did not properly investigate the incident or document his response. It is further alleged that while on scene, NE#1 failed to activate his in-car video (ICV) or body-worn video (BWV) devices.

SUMMARY OF INVESTIGATION:

On September 14, 2021, at approximately 2:50 AM, the Complainant called 911 to report that an individual appeared to be attempting to break into a motor vehicle in the area of Lenora and Blanchard. At approximately 3:02 AM, a second party called 911 to report that he had locked his keys inside of his vehicle. The vehicle owner advised 911 that as he could not afford roadside assistance, he would be breaking the window to his own vehicle. The CAD call was then updated with the vehicle owner's name, contact information, and vehicle information.

By approximately 3:04 AM, the Complainant called 911 back, this time to report that the individual was hitting the motor vehicle with a two-by-four. NE#1 was dispatched to the scene at this same time, after which point in time NE#1 updated that CAD call that he had confirmed the vehicle owner's identity, as well as that the owner did not want police assistance. The Complainant called 911 again at approximately 3:49 AM, reporting that the individual was now sitting inside of the vehicle and appeared to be high or in crisis. In addition, the Complainant stated that NE#1 did not appear to have taken the time to further investigate the situation.



During an interview with OPA, the Complainant provided a summary of her calls to 911, which corresponded with the aforementioned CAD records. The Complainant then described NE#1's interaction with the individual who she saw damaging the vehicle. According to the Complainant, NE#1 called the individual over to NE#1's vehicle, at which point the individual stated that he had been having trouble getting into his vehicle. The individual went on to state that he was now able to get inside and was planning to leave. Although the Complainant was unable to hear NE#1's commentary, she noted that NE#1 was only on scene for a few minutes and did not appear to ask for the individual's identification.

OPA also interviewed NE#1 during its investigation, wherein NE#1 recounted his involvement in this incident. NE#1 stated that on the date of the incident, he had been driving southbound on 1st Avenue, during which time he was flagged down by a man standing next to a vehicle. In response to this observation, NE#1 checked with dispatch to see if a call had already been made in that area, with dispatch responding that a vehicle owner had reported his keys locked in his car and that he would be breaking in to retrieve them. The vehicle owner's information and license plate were already attached to the call.

After receiving this information from dispatch, NE#1 drove up to the flagger, who had his ID out. The flagger stated that he had locked himself out of his vehicle and had been trying to get back inside, during which time he had broken his car window. NE#1 found that the flagger's ID matched the information for the registered owner of the vehicle, then asked the flagger whether he needed any assistance. The flagger stated that he did not, at which point NE#1 left the scene. When asked about the lack of ICV or BWV relating to the incident, NE#1 advised OPA that the entire interaction had happened so quickly that he forgot to activate the recording devices.

During his interview, NE#1 stated that he was aware that the Complainant had advised 911 that the flagger appeared to be in crisis, but that he did not find independent indications of an individual in crisis. NE#1 noted that the flagger was sweaty, but that this appeared to be due to his efforts to force entry into the vehicle. Additionally, NE#1 stated that the flagger's presentation of his ID, which matched the registered owner's information, as well as the flagger's explanation of the situation, did not appear to warrant any further investigation. NE#1 went on to state that any further detention of the flagger would have been unwarranted.

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 b. When Employees Record Activity

It was alleged that NE#1 failed to activate his ICV or BWV during the incident response.

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.*



During its Intake Investigation, OPA reviewed CAD records that showed NE#1 as being dispatched to the reported break-in incident. However, NE#1 stated in his interview that he first encountered the incident scene while driving along 1st Avenue, when he was flagged down by a bystander. After checking CAD to determine whether an incident had already been called in, NE#1 was dispatched to the Complainant's 911 call regarding the break-in. NE#1 went on to state that his encountering and processing of the incident had happened so quickly, he had neglected to activate his video systems.

While OPA notes that SPD Policy 16.090-POL-1(5)(b) does require the recording of police activity on "[d]ispatched calls, starting before the employee arrives on the call to ensure adequate time to turn on cameras," OPA acknowledges that NE#1 first encountered this call as a flag-down, rather than being dispatched by the 911 call center, which may have limited NE#1's ability to activate his video devices in a timely manner. The policy goes on to state that instances where "circumstances prevent recording at the start of an event, the employee will record as soon as practical." SPD Policy 16.090-POL-1(5)(b).

Considering that NE#1 was on scene long enough to speak with the flagger and verify his relationship with the vehicle, NE#1 should have activated his BWV device. While NE#1's failure to activate his BWV was a possible policy violation, given the unique factual circumstances here—specifically the nature of NE#1 being flagged down and the relatively short length of the interaction—OPA believes it was not a willful violation of policy. For these reasons, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 16.090 with NE#1, and provide any further retraining and counseling that it deems appropriate. Specifically, NE#1 should be reminded of the expectations under SPD Policy 16.090 regarding the recording of police activity, especially in instances where the Named Employee is on scene long enough to speak with individuals associated with a 911 call. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 - Allegation #2

16.110 – Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis.

It was alleged that NE#1 failed to fully investigate and document an incident involving a suspected individual in crisis.

SPD Policy 16.110-POL-5 provides for how officers are expected to respond to subjects who are in behavioral crisis. SPD Policy 16.110-POL-5(9) specifically instructs that: "Officers will complete a Behavioral Crisis Report for all Crisis related incidents."

In this case, the Complainant advised 911 and OPA that she believed an individual in crisis to have been damaging a vehicle outside of her residence. However, NE#1 stated in his interview that upon engaging with the individual, NE#1 found the individual to be the registered vehicle owner and not to be exhibiting outward signs of crisis. While OPA recognizes that what the Complainant observed could have amounted to a crisis situation, OPA finds that NE#1's investigation was sufficient to determine that the individual was not displaying signs of behavioral crisis, and that a crisis report would not be necessary.



For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #3

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

The Complainant alleged that NE #1 failed to fully investigate the incident that she reported to 911.

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. (SPD Policy 15.180-POL-1.) Such evidence should be photographed. (Id.)

Here, the Complainant advised 911 that she believed an individual was attempting to break into a vehicle. However, once on scene, NE#1 determined that the individual was the registered vehicle owner, that the individual had locked his keys inside of the vehicle, and that the individual was breaking the window to his vehicle so as to extract the keys. After determining this to be the situation, NE#1 asked the individual whether he needed assistance, to which the individual stated he did not. While OPA acknowledges that the breaking of a car window would have been disruptive during the early morning hours, OPA did not find evidence to suggest that NE#1's investigation into the situation was insufficient.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**