



CLOSED CASE SUMMARY

ISSUED DATE: MAY 14, 2018

CASE NUMBER: 2017OPA-1196

Allegations of Misconduct & Director’s Findings

Named Employee #1		Director’s Findings
Allegation(s):		
# 1	5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision 5. Check the personal appearance of assigned officers and ensure officers' equipment is in good condition	Not Sustained (Management Action)

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:

In reviewing a failure of an officer to carry a Taser during an officer-involved shooting, OPA evaluated whether or not the officer’s supervisor failed to ensure that the officer was carrying a Taser and/or that the Taser was in working condition.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision 5. Check the personal appearance of assigned officers and ensure officers' equipment is in good condition

On June 18, 2017, two officers responded to a burglary call. When they arrived at the location, events transpired that resulted in the fatal shooting of a female. When the officers’ In-Car Video was reviewed in the aftermath of the incident (the officers were not assigned with Body-Worn Video), one officer was heard yelling “Taser” to another officer. The other officer responded that he did not have a Taser on him. It was determined that this officer was assigned a Taser but was not carrying that Taser on the date in question, which was potentially in violation of policy. This matter was referred to OPA.

During its investigation into that matter, OPA obtained the roll call sheet for North Precinct First Watch for the date in question. The roll call sheet indicated that Named Employee #1 (NE#1) was the direct supervisor of the officer. Further review of the roll call sheet also verified that the officer was, in fact, assigned a Taser on that date. There was no indication from the roll call sheet that there was any ongoing problem with the officer’s Taser or that he was not carrying it.

During its investigation, OPA was informed that the officer’s Taser was non-operational on the date in question and had not been working for several weeks prior. The officer told OPA that he told some of his squad mates that he was no longer carrying a Taser, but he could not recall with specificity who he had those discussions with. He further told



OPA that he did not tell either a supervisor or the Taser coordinator about his defective Taser and his decision to no longer carry it.

OPA found the officer's failure to carry a Taser to have been outside of policy. The officer's chain of command agreed and the Chief of Police sustained the finding and imposed discipline.

Based on OPA's review, it was abundantly clear that no supervisor, including NE#1 and the First Watch Lieutenant, knew that the officer's Taser was not operational and that he was not carrying it. The question that arose for OPA was how it was possible that none of the officer's supervisors were aware of this fact.

SPD Policy 5.100(III) sets forth the general responsibilities of patrol sergeants. Among those responsibilities is the duty of a patrol sergeant to: "Check the personal appearance of assigned officers and ensure officers' equipment is in good condition." (SPD Policy 5.100(III)(B)(5).) The policy does not state how often such checks are required; however, from reading the other responsibilities set forth under "Field Supervision," it appears that such checks are part of the patrol sergeant's daily duties.

After reviewing the roll call sheet, OPA determined that NE#1 was not working at the beginning of his shift on the date in question. He took the first two hours of his shift off and came to work after roll call was finished. As such, he did not perform any inspection of his squad prior to them going out into the field. However, even though he was not present at roll call on June 18, NE#1 did work roll calls during the prior weeks that the officer failed to carry his Taser.

At his OPA interview, NE#1 told OPA that he had been a supervisor (as an Acting Sergeant) for approximately two and a half years. Over that two and a half years, NE#1 was involved in daily roll calls, a majority of which he led. NE#1 described that, during these roll calls, supervisors: "take the ICV mic numbers that each officer's issued and then we go over attendance, who was there, and then we go over any pressing matters that – from the days before and then we end roll call."

NE#1 told OPA that he had only been part of two line inspections. Moreover, both of those inspections were conducted by a lieutenant, not a sergeant. He stated that one of the inspections occurred during roll call and the other occurred after roll call had been completed. NE#1 explained that he had never seen a sergeant conduct a line inspection, been taught how to do so, or been instructed to do so. NE#1 told OPA that he visually inspects officers during roll call to ensure that they are properly in uniform and that "their personal appearance is good, professional." He stated, however, that he does not inspect the officers' gear.

NE#1 was asked about the provision of SPD Policy 5.100 that required him to "ensure officers' equipment is in good condition." NE#1 stated that he interpreted this language as simply visually examining them to make sure that they, and their equipment, appears "professional."

NE#1 was asked whether and how he would verify that an officer's equipment and, particularly, less-lethal devices were working appropriately. He responded that he did not do so and that, in his opinion, it was the officer's responsibility to ensure this.



NE#1 was showed the roll call sheet and agreed that it indicated that, on the date in question, the officer at issue was a Taser officer. NE#1 recognized that this meant that the officer was required to have his Taser on his person. NE#1 told OPA that while he verifies that officers are present at work when they are supposed to be, he does not "go through and nitpick what [equipment] they have." NE#1 again asserted that he did not do so because that officer was ultimately individually responsible for having the appropriate functioning equipment prior to the beginning of a shift. At the conclusion of his OPA interview, NE#1 Guild representative asked him whether he was ever taught in sergeants' school how to conduct a formal line inspection at roll call. NE#1 said that he was not taught that.

I have no doubt that NE#1 was, as he said, neither taught nor instructed to conduct a line inspection at roll calls. However, SPD policy explicitly instructs that patrol sergeants, including NE#1, "ensure officers' equipment is in good condition." Had NE#1 done so in this case, he would have determined that his subordinate, who was assigned a Taser and was, thus, mandated to carry it with him, did not have a Taser on the date in question. He would have further learned that this was the case because the officer's Taser was non-operational. I further have no doubt that NE#1 is not the only sergeant Department-wide who does not conduct inspections at role call and who is not verifying that supervisees' gear is in good working order. As such, this appears to be a Department failing, rather than individual misconduct on the part of NE#1. From all reports, NE#1 is a very competent and hardworking supervisor. Based on this, I believe that had such inspections been a clear expectation of the Department, he would have performed them.

The issue remains that there is a policy in place that it appears no SPD supervisors are consistently complying with. If it is the Department's expectation that supervisors will conduct such inspections and that during these inspections deficiencies in equipment, such as faulty Tasers or the failure to carry Tasers, will be identified, this should be communicated to those supervisors and they should be trained to do so. If it is not, then SPD should change the policy to make it clear what responsibilities patrol sergeants are truly tasked with and required to perform.

- **Management Action Recommendation:** The Department should clarify whether one of the daily or regular responsibilities of a patrol sergeant is to ensure that their officers' equipment is in good working condition. The Department should also provide additional guidance as to what this means and what is expected from patrol sergeants in this regard. For example, the Department should specifically define whether patrol sergeants are responsible for verifying that officers are carrying the appropriate less-lethal devices and for determining whether those less-lethal devices are operational. If patrol sergeants are, as the policy suggests, supposed to perform such consistent inspections, this should be communicated during the annual sergeants' training. If this is not the Department's intention and if the Department does not want this to be an ongoing responsibility of patrol sergeants, then it should modify the policy to make this abundantly clear.

Recommended Finding: **Not Sustained (Management Action)**



City of Seattle

Office of Police Accountability

July 2, 2018

Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATIONS – SECOND QUARTER 2018

Dear Chief Best:

I write to inform you of the Management Action Recommendations (MAR) that have been recently issued by OPA. The MARs contained herein are for the following cases: 2017OPA-0511, 2017OPA-0980, 2017OPA-1008, 2017OPA-1091, 2017OPA-1132, 2017OPA-1196, 2017OPA-1301, 2017OPA-1289, 2018OPA-0553, and 2018OPA-0101.

Case Number

- 2017OPA-0511

Summary

- The Named Employee allegedly violated SPD policy when he posted a message on his personal Facebook account that concerned an open investigation, included confidential criminal information, and identified a minor.

Analysis

- Policy *1.110 - Public Information* addresses the release of information to the media and specifically prohibits the release of much of what was contained in the Named Employee's Facebook post.
- Although the Named Employee had Facebook friends that he knew were active members of the media and who had access to his page, it is unclear whether his posting of sensitive and confidential material constituted a "release" to the media as contemplated by the policy.

Recommendation

- Modify policy *1.110 - Public Information – POL-1 General Policy (2)* to define "release" as it pertains to SPD employees disseminating information to the media via social media. The definition should clarify that a "release" includes posting law enforcement information on social media.
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Case Number

- 2017OPA-1301
- 2018OPA-0101

Summary

- In both cases, the Named Employee allegedly failed to properly activate/log-in to both his In-Car Video (ICV) and Body Worn Video (BWV) systems when responding to incidents.

Analysis

- The Named Employee felt he met the requirements of the BWV policy because he interpreted it as requiring an officer to record on ICV or BWV, but not necessarily on both.
- OPA interprets the policy as requiring that, when equipped with both ICV and BWV, both systems must be activated for each call response. The Named Employee's understanding of this policy is inconsistent with the reasoning behind equipping officers with BWV in addition to ICV, which is to have a second mechanism to more fully record law enforcement activity, not to have discretion to choose which camera to utilize.

Recommended Action

- Modify *16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity* to clarify that if officers are equipped with both ICV and BWV, they shall record on both systems. The new policy subsection could read: "Officers equipped with both ICV and BWV shall utilize both systems simultaneously when recording is required under 16.090-POL-1(5)(b). The failure to activate one or both systems constitutes a violation of policy and must be documented and reported consistent with 16.090-POL-1(4) and 16.090-POL-1(7)."
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Case Number

- 2017OPA-1132
- 2018OPA-0053

Summary

- In the first case, prior to searching a residence for a suspect, the Named Employees failed to provide the subject with--and have her execute--a Consent to Search form. They also did not provide Ferrier warnings.
- In the second case, the Named Employees may have violated the Complainant's constitutional right to be secure against an unlawful search and seizure when they arrested him while he was still within the threshold of his residence.

Analysis

- Officers receive little training in search and seizure law and consent to search after the post-Basic Law Enforcement Academy phase of their employment. The failure to understand how to obtain consent and what constitutes consent can result in violations of the constitutional rights of individuals and the sanctity of their homes. OPA believes the officers' errors in these cases constitute ignorance of the law and mistakes rather than misconduct.

Recommended Action

- Provide Department-wide training on search and seizure law and policy *6.180 - Searches-General*. The training should specifically discuss the requirement that subjects be completely outside of the thresholds of their residences before arrests can be properly effectuated.
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Case Number

- 2017OPA-1091

Summary

- The Named Employees conducted a Terry stop, but failed to document it using a Terry Template, as is required by SPD policy.

Analysis

- The Named Employees said a Terry Template was unnecessary because they had probable cause to arrest based on open warrants.
- Law, policy, and the Consent Decree state that officers must document each time they stop and detain someone, regardless of whether they believe they have probable cause to make an arrest.

Recommended Action

- Modify policy 6.220 - *Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops* to state that when officers perform a Terry stop, a Terry template is always required (SMC 14.11.060(C)), regardless of whether the officers had probable cause to arrest at the time of the Terry stop.
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Case Number

- 2017OPA-1196

Summary

- In reviewing a failure of an officer to carry a Taser during an incident, OPA evaluated whether the officer's supervisor failed to ensure the officer was carrying a Taser and/or that the Taser was in working condition.

Analysis

- SPD policy 5.100(III) sets forth the general responsibilities of patrol sergeants, including: "Check the personal appearance of assigned officers and ensure officers' equipment is in good condition." OPA's investigation of this case found that such inspections are rarely carried out, and sergeants are not held accountable for not doing so.

Recommended Action

- Modify policy 5.100 - *Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision* to clarify the frequency with which a patrol sergeant shall perform inspections to ensure that their officers are carrying the appropriate equipment and determine that the equipment is functioning properly.
 - Train patrol sergeants on their responsibility to perform inspections, including how to conduct an inspection and the frequency with which to conduct them.
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Case Number

- 2017OPA-1008
- 2017OPA-0980

Summary

- The Named Employees failed to properly enter a firearm into evidence as required by Department policy and the unit manual.
- Another Named Employee failed to properly supervise the previously mentioned Named Employee.

Analysis

- SPD policy 7.010-POL-1 requires that employees secure collected evidence and place it into the Evidence Unit or an authorized evidence storage area before they end their shift. During their OPA

interview, one of the Named Employees contended that SPD policy did not define what an “authorized evidence storage area” was.

- Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy and Department Policy. Although it instructs officers to comply with the SPD Manual, published directives/special orders, and Department training, it does not state that non-compliance with a unit manual, such as the FIT Manual, constitutes a violation of SPD Policy.
- The FIT Manual lacks clarity regarding the requirements for FIT Sergeants to actively monitor the investigations conducted by Detectives and to ensure that evidence is timely placed into evidence.
- FIT previously did not take custody of rifles or shotguns; rather, such weapons were processed by CSI. OPA suggested that FIT institute this same process for handguns, as it may result in more consistent treatment of and processing standards for all firearms. FIT has since made this change.

Recommended Action

- Modify policy 7.010 - *Submitting Evidence* to define what an authorized evidence storage location is and clarify that personal offices are not such authorized locations.
 - Modify the *FIT Manual* to:
 - Clarify that officers will, as soon as feasible, take case evidence to the Evidence Unit.
 - Indicate what, if any, other authorized evidence storage locations exist in the FIT unit, noting that evidence should never be stored in personal offices.
 - Provide more detail on expectations for evidence handling.
 - More clearly define the expectations for the FIT Sergeant (such as memorializing the requirement that the FIT Sergeant check-in with Detectives to determine the location and status of evidence and firearms)
 - Train FIT Detectives and supervisors in evidence handling.
 - Modify policy 5.001 - *Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy* to include unit manuals as one of the types of regulations to which officers are responsible for adhering.
 - Reevaluate the current FIT practice of taking possession and maintaining custody of handguns. (OPA recognizes that this has been implemented since initial conversations about this case occurred, but is noting it here nonetheless.)
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Case Number

- 2017OPA-1289

Summary

- The Named Employee failed to conduct a preliminary inquiry into a bias allegation and to generate a Bias Review.

Analysis

- SPD policy 5.140-POL-7 requires that Department supervisors conduct preliminary inquiries into biased policing. The Named Employee told OPA he did not know how to do a Bias Review and was not familiar with the Bias policy, even though he had served as an acting sergeant for about 20 to 25 days per year over several years. He further told OPA that he was not familiar with the policies concerning the investigation and reporting of force, as well as the policy concerning the reporting of misconduct. Lastly, the Named Employee told OPA that he had not attended SPD’s First Line Supervisor Training nor any other type of supervisor training during his over 25 years with the Department.
- The Named Employee was placed in a position where he was expected to supervise his fellow employees without any training on how to do so, per policy 4.020, which states that “Captains will

send officers to Department sergeant training for acting sergeant assignments over 60 consecutive days.” Since the Named Employee’s assignment as acting sergeant was for less than 60 consecutive days, training was not mandated.

Recommended Action

- Modify policy 4.020 – *Reporting and Recording Overtime/Out of Classification Pay 17. Officers Assigned as Acting Sergeants Receive Training* to require that Captains send officers to sergeant training prior to any acting sergeant assignment.

Thank you very much for your prompt attention to these matters. I look forward to receiving your written responses to these recommendations and, should you decide to act as a result, the progress of these actions. Alternatively, to the extent that the above recommendations are not feasible, or a different policy modification may be more fitting, OPA would appreciate the opportunity to help you find a workable solution through an in-person discussion.

Please feel free to contact me with any questions or concerns.

Sincerely,

Andrew Myerberg

Andrew Myerberg
Director, Office of Police Accountability

cc: Deputy Chief Chris Fowler, Seattle Police Department
Assistant Chief Lesley Cordner, Standards and Compliance, Seattle Police Department
Rebecca Boatright, Senior Police Counsel, Seattle Police Department
Fe Lopez, Executive Director, Community Police Commission
Lisa Judge, Inspector General for Public Safety
Tito Rodriquez, Office of Police Accountability Interim Auditor
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