



CLOSED CASE SUMMARY

ISSUED DATE: JULY 25, 2018

CASE NUMBER: 2018OPA-0165

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Management Action)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Management Action)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Management Action)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	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:

It was alleged that the Named Employees may have failed to activate Department video in potential violation of policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

At issue in this case is SPD Policy 16.090-POL-5, which governs when Department employees are required to record In-Car Video (ICV) and Body Worn Video (BWV), and SPD Policy 16.090-POL-5(d), which concerns recording Department video in “sensitive areas.” Also at issue, but less directly so, is SPD Policy 16.090-POL-7, which provides guidance for what officers must do when no video is recorded or where a video was started late and/or ended early.

The Named Employees all responded to assist officers dealing with a resistive arrestee at Harborview Medical Center (HMC). When they did so, none of them activated their ICV. Moreover, even though they failed to record video, none of the Named Employees informed a supervisor of that failure, noted it in an update to the call log, or documented it in an appropriate report. While conducting a review of a use of force that stemmed from the



response to HMC, a Department Administrative Lieutenant noted that none of the Named Employees had activated ICV or provided any explanation for the absence of video.

Consistent with SPD Policy 16.090-POL-7, the Administrative Lieutenant asked the Named Employees to satisfy their reporting requirements in this regard. The Named Employees all submitted memos in response. In those memos, the Named Employees collectively articulated that they did not activate their ICV because they believed that they were prohibited from recording inside HMC, which they believed was a “sensitive” area as defined in SPD Policy 16.090-POL-5(d).

This policy, which is entitled “recording in sensitive areas,” states the following: “Employees will not record in restrooms, jails and the interiors of medical, mental health, counseling, or therapeutic facilities unless for a direct law enforcement purpose, such as a crime in progress.” (SPD Policy 16.090-POL-5(d).)

As discussed above, all of the Named Employees believed that SPD policy prohibited them from recording in HMC as it was a “sensitive” area. While one of the Named Employees explained that he would have recorded had he known that there was going to be a use of force in the hospital, two others contended that they were only allowed to record in HMC if there was an active crime. OPA believes that this is too narrow of an interpretation and is inconsistent with the plain language of the policy. The policy provides that officers may record in a “sensitive” area where there is a “direct law enforcement purpose” for doing so. The policy provides “a crime in progress” as an example (“such as”) of such a direct law enforcement purpose, but does not state, either implicitly or explicitly, that this is the only scenario in which it would be appropriate. Certainly, an officer response to an ongoing use of force or a situation in which a use of force could very likely occur – such as what took place in this case, is also a “direct law enforcement purpose.” As such, I read the policy to have required the officers to record Department video in this instance.

Interestingly, OPA interviewed the Training Sergeant who is responsible for overseeing BWV instruction. He told OPA that officers are trained to activate their BWV in “sensitive areas” when there is potential criminal activity. While he was not asked this question directly, the Training Sergeant did not mention responding to a use of force as a direct law enforcement purpose contemplated by the policy or, for that matter, any other scenario other than ongoing criminal activity in which recording would have been appropriate.

The fact that OPA, the Named Employees, the Administrative Lieutenant, and the Training Sergeant all have conflicting interpretations of this policy causes me concern. It also convinces me that this is a training issue rather than misconduct. As such, I issue the below Management Action Recommendation.

- **Management Action Recommendation:** The Department should amplify its training on this policy to provide additional guidance on when officers may record in “sensitive areas.” The Department should further consider including more examples of what else could constitute a “direct law enforcement purpose.” The Department should evaluate whether responses to resistant arrestees, ongoing or impending uses of force, and other like activity constitutes such a “direct law enforcement purpose.” Regardless, the Department should clarify this question for its officers and OPA.

Lastly, and while not necessarily germane to my findings, any argument that the statements requested of the Named Employees by the Administrative Lieutenant were some sort of administrative investigatory interviews is, in



my opinion, meritless. Officers are required to complete such a report any time they fail to record video. It is a reporting requirement no different than documenting when officers make an arrest, use force, or inventory property. There is no question that if an officer failed to complete any of those reports, a supervisor would be completely justified in requesting that they do so after the fact to provide an explanation for their acts or omissions. This policy is no different. Moreover, the Administrative Lieutenant would have been entirely justified in simply referring the Named Employees to OPA for failure to comply with SPD Policy; however, he instead gave the officers the opportunity to explain their actions. This should be recognized and appreciated by the Named Employees.

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

Named Employee #2 - Allegations #1

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

I refer to the above Management Action Recommendation. (See Named Employee #1, Allegation #1.)

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

Named Employee #3 - Allegations #1

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

I refer to the above Management Action Recommendation. (See Named Employee #1, Allegation #1.)

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

Named Employee #4 - Allegations #1

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

I refer to the above Management Action Recommendation. (See Named Employee #1, Allegation #1.)

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