



## CLOSED CASE SUMMARY

ISSUED DATE:     APRIL 13, 2018

CASE NUMBER:     2017OPA-1123

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 8.400-TSK-2 Use of Force -RESPONSIBILITIES OF THE SERGEANT DURING A TYPE I INVESTIGATION	Sustained

**Imposed Discipline**

2 Day Suspension
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***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:

The Complainant, a Department Lieutenant, alleged that Named Employee #1 failed to photograph the area of an alleged complaint of pain during a Type I use of force investigation that occurred at the North Precinct.

### ANALYSIS AND CONCLUSIONS:

**Named Employee #1 - Allegation #1**

***8.400 - Use of Force Reporting and Investigation 8.400-TSK-2 Use of Force -RESPONSIBILITIES OF THE SERGEANT DURING A TYPE I INVESTIGATION***

Officers effectuated the arrest of an individual. The individual was handcuffed, transported to the North Precinct, and placed into a holding cell. While inside of the holding cell, the individual complained of pain from his handcuffs. Named Employee #1 (NE#1), who was a sergeant on that date, responded to the holding cell to investigate the complaint of pain, which constituted a Type I use of force. NE#1 conducted a Type I use of force investigation and ordered the officer who heard the complaint of pain to write a Type I use of force report. However, NE#1 did not take photographs of the alleged area of pain. The Department Lieutenant who received NE#1’s force review, referred NE#1’s failure to take photographs to OPA, noting that NE#1 had been counseled previously concerning his failure to do so in other Type I force investigations.

SPD Policy 8.400-TSK-2 sets forth the responsibilities of a sergeant during a Type I force investigation. Among these responsibilities is the requirement that the sergeant “screens the incident in-person with the involved officer.” (SPD Policy 8.400-TSK-2(1).) In this regard the policy provides that: “If the sergeant responds to a scene in which there is [an] allegation of injury of pain, the will photograph the bodily area of the alleged injury or pain and an overall photo of the subject.” (*Id.*) Lastly, the policy states that: “When a subject is in custody, the sergeant will take photographs unless the subject refuses and safety dictates, after voluntary and non-coercive attempts fail.” (*Id.*)



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At his OPA interview, NE#1 contended that because he did not go to the location of the arrest, he was not required by policy to take photographs of the area of injury. He further stated that the requirement to take photographs unless “the subject refuses and safety dictates” was inapplicable to this case as it modified the portion of the policy that referenced the sergeant going to the “scene” and was not a stand-alone directive. He made a similar statement in the section of Type I use of force review titled “INJURIES and PHOTOGRAPHS,” wherein he contended that: “I inspected the suspect to confirm there were no visible injuries. I did not find any visible injury. I did not respond to the arrest location, and therefore I did not take photographs.”

I disagree with NE#1’s interpretation of the policy. It is unclear why NE#1 believes that the “scene” necessarily means the location of arrest or a location outside of a precinct. In the policy, the term “scene” refers to the location where the complaint of pain is made or the injury in suffered. That could occur either outside or inside a precinct, or anywhere else. There is no definition of the term “scene” in this policy or, for that matter, any Department policy as solely the location of arrest. Moreover, following NE#1’s reading of the policy to its logical conclusion would mean that any time an individual was subjected to Type I force or complained of pain in any place other than the exact location where that individual was arrested, then no photographs would need to be taken by the sergeant. This is not what is contemplated by the policy. Lastly, I note that SPD sergeants virtually universally appropriately document and photograph such complaints of pain, regardless of where they occur.

Here, the individual complained of pain while in the North Precinct holding cell. As such, that was the scene for the purpose of this Type I investigation. NE#1 responded to the holding cell and, thus, responded to the scene. He was accordingly required to take photographs unless the individual refused to allow him to do so and there were safety concerns present. Neither of these exceptions were supported by the facts in this case. When NE#1 failed to take photographs in this case, he violated policy.

For these reasons, I recommend that this allegation be Sustained.

Lastly, I note that this is the second OPA investigation and second recommended Sustained finding concerning a failure to take photographs. I further note that NE#1 has also been counseled separately on multiple occasions by his chain of command regarding this matter. I strongly encourage NE#1 to take photographs of injuries or areas of alleged pain in the future no matter where the injuries occur or where the complaint of pain is made.

Recommended Finding: **Sustained**