



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 17, 2018

CASE NUMBER: 2018OPA-0169

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Inconclusive)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)

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 alleged that Named Employee #1 engaged in biased policing towards him. It was further alleged that Named Employee #1 failed to record In-Car Video and that Named Employee #2, who was aware of this failure to record, did not report this matter to OPA as required by policy.

ADMINISTRATIVE NOTE:

The 180-day deadline in this case was July 12, 2018. On July 2, 2018, this case was sent to the OPA Auditor for his review and certification. The Auditor did not certify the case until August 6, 2018, approximately three weeks after it was sent to him and after the 180-day deadline expired. In his review memorandum, the Auditor provided the following explanation for the late date of his certification: “My review was delayed as I awaited a response from OPA to my inquiries regarding whether OPA intended to open a separate intake to address the Terry Template issue...” Ultimately, this late certification and, for that matter, the late submittal of the case to the Auditor for review, caused OPA to miss this disciplinary deadline. As discussed more fully below, even if the deadline had been met, OPA would not have recommended Sustained findings in this case.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

On the date in question, Named Employee #1 (NE#1) reported that he viewed an individual who appeared to be drinking alcohol in a parked car. There were two other individuals in the car. NE#1 stated that, at the time he observed this conduct, it was dark outside and he could not determine what the races of the individuals were. NE#1 approached the vehicle on foot and ran the license plate of the car. He determined that the title of the vehicle had not been transferred within 45 days of a recent sale (nine months prior) as was required by law. NE#1 then made contact with the individuals that were occupying the car. The two passengers stepped outside of the vehicle, but the driver remained seated inside of the car. One of the passengers had been sitting in the front seat of the vehicle and the other passenger was sitting alone in the backseat. The backseat passenger – who was later identified as the Complainant – was the individual who NE#1 had observed drinking from an open container.

While speaking with the driver, NE#1 noticed a handgun on the floor of the backseat. This handgun was situated directly where the Complainant had been seated. NE#1 called for more officers, ordered the driver to exit the vehicle, and detained all three of the individuals. In response to NE#1's questions, the driver revealed that he had a handgun in his pocket. NE#1 identified all three individuals and determined that they had all been previously arrested for felonies. The Complainant, as well as the other individuals, were placed under arrest for felony possession of a firearm.

While he was being held at the precinct, the Complainant told Named Employee #2 (NE#2) that he believed his detention and arrest (as well as that of the other two individuals with him) was premised on bias – specifically, because of his status as an African-American male. Based on that allegation, NE#2 referred this matter to OPA and this investigation ensued.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Based on my review of the evidence, including the Body Worn Video (BWV), there is no indication that NE#1 engaged in biased policing or that the Complainant's race and/or membership in a protected class had any impact on the law enforcement action taken towards him. Indeed, I find the opposite and conclude that NE#1 treated the Complainant and the other occupants of the car appropriately and respectfully. I note that NE#1 took a potentially dangerous situation and handled it incredibly calmly and proficiently. At the end of the day, through effective police work, NE#1 removed two guns from circulation. I commend him for a truly excellent job in this case and for behaving in a highly professional manner.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**



Named Employee #1 - Allegation #2

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

While NE#1 recorded Body Worn Video (BWV) during this incident, he failed to properly activate his ICV. NE#1 told OPA that he learned of the absence of ICV shortly after the incident. As required by policy, he properly reported the failure to record in his General Offense Report. He also documented why there was no recording; namely, because he believed that he was too far from his vehicle at the time he activated his ICV via his wireless microphone.

SPD Policy 16.090-POL-5 concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-5(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; traffic and Terry stops; on-view infractions and criminal activity; arrests and seizures; searches and inventories of vehicles, persons, or premises; and questioning victims, suspects, or witnesses.

It is undisputed that NE#1 failed to record video and that he was required to do so in this instance. During its investigation, OPA contacted SPD IT to determine whether NE#1's explanation for why his ICV failed to record was plausible. SPD IT reviewed the log for NE#1's system. SPD confirmed that while it was possible that NE#1 tried to remotely activate his ICV but it failed to start recording, this could not definitively be established. Based on these findings, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires that Department supervisors either investigate or refer allegations of policy violations depending on the severity of the violation. The policy further states that minor policy violations may be investigated by the supervisor, while serious policy violations must be referred to OPA. (SPD Policy 5.002-POL-5.)

In the bias review that she generated, NE#2 noted that she could not locate ICV for NE#1. She documented that she spoke to NE#1 concerning the absence of ICV and that he told her that he believed he had activated it via his wireless microphone. NE#1 further told NE#2 that he thought his ICV might not have turned on because of the location where he parked his vehicle and the distance from that parking spot (including no line of sight) to where the call occurred.

NE#2 recognized that, under Department policy, NE#1's failure to activate his ICV was considered a serious policy violation. This was the case even though he asserted an explanation for the failure to record. As such, NE#2 was required to refer this matter to OPA, which she did not do.

However, NE#2 informed OPA that the reason she did not refer this matter was because she screened it with her supervisor, a Department Lieutenant, who told her that the referral to OPA was not needed. She stated to OPA that the Lieutenant told her to simply note this issue and NE#1's explanation in her bias review. She did so.



As a result of NE#2's disclosure of this information, OPA also interviewed the Lieutenant. The Lieutenant confirmed that he told NE#2 that she did not need to make an OPA referral.

Even though the failure to make an OPA referral was expressly contrary to policy, NE#2 reliance on the guidance of her supervisor was excusable, even if the Lieutenant was incorrect. Indeed, the Lieutenant should have been added to this case as a Named Employee in lieu of NE#2 given that he was ultimately responsible for her violation of policy. Had the contractual deadlines for doing so not passed, OPA would have added him to this case and I would have recommended that this allegation be Sustained as against him. However, that did not occur here and the only named employee on this allegation is NE#2. With regard to her conduct, I recommend that she receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#2 should receive retraining concerning SPD Policy 5.002-POL-5 and, specifically, the requirement that she refer all serious misconduct to OPA. NE#2 should be counseled concerning her failure to do so in this case. She should also be informed by her chain of command that she is expected to know and follow Department policy, regardless of any erroneous advice she is given by a supervisor. Moreover, where a supervisor gives her direction that is clearly contrary to policy, she should elevate that matter to another superior officer. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

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