



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER

CASE NUMBER: 2018OPA-0237

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	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Inconclusive)
# 2	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Training Referral)
# 3	16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Inconclusive)
# 2	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Training Referral)
# 3	16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions	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 he was subjected to biased policing and that he was arrested without probable cause. OPA further added allegations concerning the apparent failure of Named Employee #2 and Named Employee #3 to activate Department video.

ADMINISTRATIVE NOTE:

This case was submitted to the OPA Auditor for review approximately 12 days prior the 180-day deadline. The Auditor then twice requested more investigation and that additional work was not completed until after the expiration of the



180-day deadline due to heavy workloads. As such, the Director's Certification Memo in this case was not completed within the 180-day timeline set forth in the Collective Bargaining Agreement between the City of Seattle and SPOG.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Officers responded to a report of a suspicious person. The officers encountered a female victim who stated that she had been assaulted by the Complainant. The officers contacted the Complainant, who did not dispute that a physical altercation occurred but who stated that he was defending himself. After conducting further investigation, the officers developed probable cause to arrest the Complainant and Named Employee #1 (NE#1) took him into custody. The follow-up investigation of the incident determined that the victim suffered broken ribs as part of the assault. The investigators also determined that the Complainant had a history of paranoia and had ongoing issues with other residents in the building.

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.*)

The Complainant's interaction with the officers and his arrest were captured on Department video. Based on a review of that video and the other evidence in the record, there is no indication that NE#1 engaged in biased policing. Indeed, the evidence indicates the contrary – that NE#1 conducted himself appropriately and consistent with policy during this incident. OPA deems the Complainant's allegation to be completely unsupported by the clear facts of this case.

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

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

Named Employee #1 - Allegation #2

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

As discussed above, the Complainant was identified as the perpetrator in an assault by the victim. The officers also obtained corroborating information from another witness and the building manager. Accordingly, there was abundant probable cause to arrest him for assault. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.



Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

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

During its investigation, OPA's review of the CAD Call Report indicated that both Named Employee #2 (NE#2) and Named Employee #3 (NE#3) responded to this call; however, neither recorded In-Car Video (ICV). Moreover, there was no reference to the missing video either in the CAD Call Report or the General Offense Report.

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(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.

When they responded to the scene, NE#2 and NE#3 activated their emergency lights and siren. As such, their ICV should have activated. However, it did not and they did not record. NE#3 indicated that, due to the fact that they activated their patrol vehicle's emergency equipment, he presumed that the ICV would have recorded.

Both NE#2 and NE#3 referenced the fact that their ICV system may have malfunctioned. NE#3 stated that, after they responded to the incident, they returned to their vehicle and determined that the MDT system had shut down. NE#3 believed that this shut down may have caused the failure to record ICV. NE#3 stated that they then rebooted the MDT and it appeared to be working properly at that time. NE#2 told OPA that, prior to leaving for the call, their system crashed. NE#2 recalled that NE#3 told him that they would go to the scene anyway. In this respect, NE#2's description was inconsistent with NE#3's recounting.

Regardless of this discrepancy, it appears possible that there was a malfunction with the officers' ICV system. Ultimately, however, it cannot be established by a preponderance of the evidence whether this potential malfunction, rather than an act of omission on the part of NE#2 and NE#3, caused the failure to record. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #2

16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

SPD Policy 16.090-POL-1(7) requires that Department employees document the existence of video or the reason for the lack of video. Officers are required to note the failure to record in an update to the CAD Call Report, as well as to provide an explanation for the lack of a recording in an appropriate report. (SPD Policy 16.090-POL-1(7).)

Both NE#2 and NE#3 asserted that NE#3 notified radio of the officers' failure to record ICV. However, this notification was not reflected on the CAD Call Log.



Even if he had done so, which OPA believes based on the officers' statements, both NE#2 and NE#3 still failed to comply with this policy as they did not document the failure in an appropriate report and include therein the reason for the lack of video.

While this lack of reporting constituted a technical violation of policy, I recommend that NE#2 and NE#3 receive Training Referrals rather than Sustained findings.

- **Training Referral:** NE#2 and NE#3 should be retrained on SPD Policy 16.090-POL-1(7). Specifically, they should be reminded of their obligation to note the failure to record Department video in an update to the CAD Call Log, as well as reminded of their further obligation to provide an explanation for the lack of a recording in an appropriate report. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegation #3

16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions

SPD Policy 16.090-POL-1(4) provides the following instruction: "If an employee discovers an operational issue with ICV or BWV at any time during the shift, the employee will contact ITS for troubleshooting (if applicable), note the issue in a CAD update, and notify a supervisor as soon as practicable."

As discussed above, OPA credits the officers' account that NE#3 notified radio of the failure to record. However, they failed to contact ITS and to notify a supervisor. This was the case even though both officers opined that the failure to record was based on a malfunction with the ICV system.

While I find that the failure to take these steps represented a technical violation of policy, I believe that Training Referrals rather than Sustained findings are more appropriate here.

- **Training Referral:** NE#2 and NE#3 should be retrained on SPD Policy 16.090-POL-1(4). Specifically, they should be reminded that when a Department video system malfunctions, they are requiring to contact ITS and notify a supervisor. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #3 - Allegation #1

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

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Inconclusive.

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



Named Employee #3 - Allegation #2

16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

I recommend that this allegation be Not Sustained and refer to the Training Referral above. (See Named Employee #2, Allegation #2.)

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

Named Employee #3 - Allegation #3

16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions

I recommend that this allegation be Not Sustained and refer to the Training Referral above. (See Named Employee #2, Allegation #3.)

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