



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 30, 2019

CASE NUMBER: 2018OPA-1062

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 (Training Referral)
# 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)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

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:

An anonymous Complainant alleged that an unknown SPD employee was unprofessional when the Complainant was crossing the street. It was further alleged that the Named Employee failed to record Body Worn Video and also failed to document the lack of a recording as required by policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

An anonymous Complainant alleged that an officer acted unprofessionally towards the Complainant when the Complainant was crossing the street. Specifically, the Complainant contended that the officer yelled at Complainant and made Complainant turn around, return to the crosswalk, and wait for the light to change.

OPA searched GPS records to determine whether there were any SPD officers in the vicinity of the alleged negative interaction. OPA found that a unit with two officers, one of whom was Named Employee #1 (NE#1), drove through that location at or around the time of the incident. OPA reviewed the available Department video for those officers and determined that neither interacted within anyone at that location and, thus, conclusively determined that neither was the unidentified employee.



However, OPA found that NE#1's Body Worn Video (BWV) had failed to record his law enforcement activity. His BWV stopped operating as soon as he left the West Precinct. At his OPA interview, NE#1 acknowledged that he was required to record his BWV during this incident. He stated that he realized that his BWV was not recording during his shift and that he checked with his partner to ensure that the In-Car Video (ICV) for their vehicle had been activated.

NE#1 confirmed that he did not create a HEAT ticket to determine whether there were any malfunctions with his BWV system that caused it to stop recording. Moreover, there is no indication in the record that NE#1 self-reported his failure to record BWV, updated the CAD Call Log to reflect the lack of a recording, or documented the failure to record and the reason for that failure in an appropriate report.

SPD Policy 16.090-POL-1(5) requires that SPD employees record police activity in certain delineated circumstances using both (or either, in some cases) their ICV and BWV systems. SPD Policy 16.090-POL-1(7) requires that, where there is a failure to record, officers note the failure to record in an update to the CAD Call Report, as well as provide an explanation for the lack of a recording in an appropriate report.

Here, it is undisputed that NE#1 was required to record BWV and that he failed to do so. Moreover, it is undisputed that NE#1 was aware, at the time, that he did not record. While there is no evidence indicating that NE#1 intended not to record – and, to be clear, NE#1's OPA interview suggests the contrary – NE#1 failed to comply with the reporting requirements of this policy. OPA has been transparent that, if officers fail to record and if they self-report and document the failure, OPA will not investigate those allegations and will instead send the cases back to the chain of command as Supervisor Actions. However, where, as here, an officer knows that he did not record but takes no action to self-report and document, OPA's options are limited and an investigation is required. Moreover, when an officer fails to comply with SPD Policy 16.090-POL-1(7) and has no explanation for why this is the case, OPA's options are similarly limited. OPA does not know how it can make it any clearer that officers are required to report and document in these types of situations; however, OPA stills repeatedly sees officers, such as NE#1 here, failing to do so.

Based the above, OPA has more than ample evidence to find that NE#1 knowingly violated the policy concerning reporting a failure to record and would be justified in recommending that this allegation be Sustained. However, OPA chooses not to do so. Instead, OPA issues NE#1 a Training Referral and again requests that officers document failures to record when they occur. To the extent this is not done in the future, whether by NE#1 or any other officer, OPA provides notice herein that it will recommend that such allegations be Sustained.

- **Training Referral:** NE#1 should be retrained concerning the requirement that he record BWV and that, when he fails to do so, he documents the absence of video and the reason for the lack of a recording. NE#1 should be counseled concerning his failure to do either here. He should further be informed that future non-compliance with SPD Policy 16.090-POL-1(7) will result in a recommended Sustained finding. 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 #1 - Allegation #2

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

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

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

Named Employee #2 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

Despite its best efforts, OPA was unable to locate any evidence proving that there was a negative interaction between a community member and an unidentified employee in the location and at the date and time identified by the Complainant. Indeed, relevant video showed that the only SPD officers in the vicinity of the location did not interact with any community members. Unfortunately, given that the Complainant was anonymous, OPA was unable to obtain additional information that could have proved this allegation.

As there is an absence of evidence supporting the allegation of unprofessionalism, I recommend that this allegation be Not Sustained – Unfounded.

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