



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0401

Issued Date: 10/24/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 16.030 (VI. C.) Citizen Rider Program: Assigned Officer's Responsibility (Policy that was issued November 15, 2007)
OPA Finding	Not Sustained (Training Referral)
Allegation #2	<u>Seattle Police Department Manual</u> 13.030 (2) Emergency Vehicle Operations: Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk (Policy that was issued November 21, 2012)
OPA Finding	Not Sustained (Training Referral)
Allegation #3	<u>Seattle Police Department Manual</u> 13.030 (3) Emergency Vehicle Operations: Officers Shall Use Emergency Lights and Siren for Emergency Response (Policy that was issued November 21, 2012)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #4	<u>Seattle Police Department Manual</u> 13.030 (4) Emergency Vehicle Operations: Officers Are Responsible for the Safe Operation of Their Police Vehicle (Policy that was issued November 21, 2012)
OPA Finding	Not Sustained (Training Referral)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employee engaged in emergency vehicle operations in response to a report of an altercation that involved an assault on an officer.

COMPLAINT

The complainant, a supervisor within the Department, alleged that the Named Employee engaged in emergency driving while he had a citizen rider aboard his patrol vehicle, contrary to Seattle Police Manual Section. During review, OPA added allegations that the Named Employee did not properly utilize his emergency equipment, continued his emergency response after the incident was stabilized, and reached speeds in excess of 100 MPH over the course of driving to the scene.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Video (ICV)
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

On the date and time in question, Named Employee #1 engaged in emergency vehicle operations in response to a report of an altercation that involved an assault on an officer. In doing so, Named Employee #1 drove his vehicle at sustained high speeds up to 106 mph. (See GPS Reports.) On that date, Named Employee #1 had a female civilian passenger in his vehicle. (See NE#1 OPA Interview, at p. 2; see Fincken OPA Interview, at p. 2.) This individual was a student officer. (Fincken OPA Interview, at p. 1.) At that time, the Student Officer was undergoing her background investigation and went on a ride-along with Named Employee #1 pursuant to a suggestion from the background detective. (Id. at p. 2.) Based on Named Employee #1's OPA interview, however, it was unclear whether he was aware of that on the date in question. (See NE#1 OPA Interview.)

SPD Policy 16.030(VI)(C) states that "the officer will not engage in vehicle pursuits or emergency driving while a citizen is in their patrol vehicle." The policy further instructs that: "If it becomes necessary to drop off the citizen rider in an emergency situation, the officer will try to leave the citizen in a public place near a pay phone and inform radio so that the citizen may be picked up as soon as possible..." (SPD Policy 16.030(VI)(C).)

While Named Employee #1 recognized the requirements of the policy, he contended that he did not believe it was safe to leave the Student Officer in Lincoln Sector at that time of night. (NE#1

OPA Interview, at p. 3.) Named Employee #1 asserted that there were not many businesses open and he believed it could be dangerous for her. (Id.) Accordingly, Named Employee #1 made the decision to keep her in his vehicle when he commenced emergency vehicle operations. (Id.)

SPD policy is clear that officers “will not” engage in such emergency vehicle operations with a civilian in the vehicle. While not explicitly stated in the policy, the presumption appears to be that if it is too unsafe to drop off the civilian the officer should not engage in the emergency vehicle operations. The purpose of the policy is to prevent civilians from being placed in harm’s way during emergency vehicle operations and pursuits.

Here, however, Named Employee #1 was presented with a difficult choice. On one hand he believed that a fellow officer was at risk of potential harm, and on the other he had a civilian in his car that he did not want to leave in a dangerous location. While the course of conduct most consistent with policy would have been to simply not respond to the officer-involved altercation, the OPA Director understood why Named Employee #1 chose to do what he did. The OPA Director also understood why he was reluctant to leave his passenger in an area that he believed to be dangerous.

The OPA Director further noted that Named Employee #1 was counseled by his supervisor concerning his actions in this matter, including his engaging in emergency vehicle operations with a civilian rider in his car.

Named Employee #1 engaged in emergency vehicle operations two distinct times. When he first did so, it was in response to a report from an officer describing an on-viewed fight. Named Employee #1 stated that, from his perception, the disturbance sounded very “loud” and “rowdy,” and that the officer sounded “in distress.” (NE#1 OPA Interview, at p. 3.) For a period of time, the officer did not answer his radio. (Id.) Named Employee #1 indicated that he believed it to be an emergency situation because he was concerned that the officer and his partner were in danger, particularly because of his past experience with similar disturbances and the fact that the officer was not actively responding to radio communications. (See id.) Accordingly, Named Employee #1 activated his emergency lights and siren and engaged in emergency vehicle operations for approximately twelve seconds until he received a notification over the radio that while an officer had been assaulted, the situation was currently under control. (See id.)

Approximately 30 seconds after that time, however, a Lieutenant came over the radio and requested that several additional units respond to the scene. (See Radio Transmissions.) Named Employee #1 then made the decision to again dispatch to the scene and to re-engage in emergency vehicle operations. (See NE#1 OPA Interview, at p. 3.) When asked at his OPA interview whether there was an ongoing emergency that justified this decision, Named Employee #1 stated that in his experience these types of disturbances could flare up even when an officer believed that the situation may be under control. (See id.) Named Employee #1 further opined that when the involved officer again did not answer his radio, Named Employee #1 was concerned that it could possibly be a “life or death situation.” (Id.)

While, based on Named Employee #1's stated reasoning, the initial emergency vehicle operations could plausibly have been justified, the OPA Director did not believe that there was sufficient justification to re-engage once Named Employee #1 was notified that the situation was under control. Notably, there was never a help the officer call and the Lieutenant did not indicate that it was an emergency when he requested that other units respond to the scene. (See Radio Transmissions.) Indeed, from the OPA Director's review of the radio transmissions from that day, the Director did not hear the same urgency that Named Employee #1 described. (See, e.g., id.)

At the time of the incident, Named Employee #1 had been employed by the Department for less than two years. (NE#1 OPA Interview, at p. 2.) While Named Employee #1 was EVOC trained (see id. at p. 4), some of his decision-making on this day may have been based on his relative inexperience. Named Employee #1 admitted as much at his OPA interview. (See id. at p. 3.) Named Employee #1 further indicated that he had a less than full grasp of the applicable policy at that time and had since developed a better understanding. (See id. at pp. 5-6.) He stated that knowing what he knows now, he would not have engaged in the same behavior and, instead, would have driven at "brisk" but "safe" speeds. (See id. at p. 6.)

Were this recognition absent from Named Employee #1's at his OPA interview, the OPA Director would have recommended that this allegation be Sustained. However, the OPA Director credited Named Employee #1 for owning up to his mistakes and learning from them.

Here, Named Employee #1 used his lights and siren for the entirety of the time in which he was actively engaging in emergency vehicle operations. (See NE#1 Front ICV.) As captured by Named Employee #1's ICV, his emergency equipment was activated from 01:39:06 hours until 01:39:18 hours. (Id.) At that point, Named Employee #1 terminated his emergency equipment based on a radio transmission indicating that the incident was under control. (Id.) He then re-activated his emergency equipment at approximately 01:39:51 hours and re-engaged in emergency vehicle operations after a Lieutenant requested over radio that units continue in. (Id.) Named Employee #1 did not deactivate his emergency equipment until he arrived at the scene at 01:45:25 hours. (Id.)

As discussed above, at various portions of the emergency vehicle operations, Named Employee #1 drove his vehicle at speeds up to 106 mph.

At his OPA interview, Named Employee #1 stated that he drove at approximately 50 to 60 mph on normal thoroughfares while in transit to the highway and that his speeds averaged in the 90s while on the highway. (NE#1 OPA Interview, at p. 4.) Named Employee #1 stated that traffic was "very light" on the highway. (Id.) Named Employee #1 noted that had there been more traffic, he would not have driven as quickly due to the potential risk to other drivers. (Id.) Named Employee #1 explained that he was EVOC trained at the time of the incident, and that he believed that he was in control of his vehicle for the entirety of the time he engaged in emergency vehicle operations. (Id.)

At her OPA interview, the Student Officer indicated that she never felt that Named Employee #1 was driving too fast or believed that Named Employee #1 ever lost control of his vehicle. (Fincken OPA Interview, at p. 2.) The Student Officer stated that she did not notice the vehicle's speeds ever exceeding around 90 mph. (Id. at p. 3.) She asserted her belief that Named Employee #1 was cautious during the incident. (Id.) Overall, the Student Officer stated that Named Employee #1's driving did not cause her concern. (Id. at p. 2.)

A review of Named Employee #1's In-Car Video indicated that traffic was relatively light on both the local thoroughfares and the highway. (See NE#1 Front ICV.) Named Employee #1 appeared to be in control of his vehicle, even though it was clear that he was, at times, driving at high speeds. (See id.) Named Employee #1 was observed driving through three intersections with red lights against him and on each occasion slowed to ensure that other motorists could see him and had time to stop prior to Named Employee #1 driving through the intersections. (See id.)

That being said, Named Employee #1 had borderline justification for the emergency vehicle operations in the first place, and engaged in such operations knowing that he had a civilian rider in his vehicle.

FINDINGS

Named Employee #1

Allegation #1

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Citizen Rider Program: Assigned Officer's Responsibility*.

Training Referral: Named Employee #1 should be required to attend additional training from the Training Unit on the requirements of SPD Policies 16.030 and SPD 13.030. Specifically, Named Employee #1 should receive additional training on when it is appropriate to engage in emergency vehicle operations and the requirements surrounding his expected conduct when a civilian rider is in his vehicle.

Allegation #2

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Emergency Vehicle Operations: Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk*.

Training Referral: Refer to the training referral set forth in Allegation #1 above.

Allegation #3

A preponderance of the evidence showed that Named Employee #1 used his lights and siren for the entirety of the time in which he was actively engaging in emergency vehicle operations. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Emergency Vehicle Operations: Officers Shall Use Emergency Lights and Siren for Emergency Response*.

Allegation #4

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Emergency Vehicle Operations: Officers Are Responsible for the Safe Operation of Their Police Vehicle*.

Training Referral: Refer to the training referral set forth in Allegation #1 above.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.