



CLOSED CASE SUMMARY

ISSUED DATE: MAY 1, 2018

CASE NUMBER: 2017OPA-1143

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	15.260 - Collision Investigations I. Responding Officer Duties	Not Sustained (Timeliness)
# 2	15.260 - Collision Investigations III. Procedures when a Collision Report is Mandatory	Not Sustained (Timeliness)
# 3	15.260 – Collision Investigations IV. Taking Enforcement Action	Not Sustained (Timeliness)
# 4	16.090 – In-Car Video System 4. Employees Will Record Enforcement-Related Activity Which Occurs Within Camera Range	Not Sustained (Timeliness)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	15.260 - Collision Investigations I. Responding Officer Duties	Not Sustained (Timeliness)
# 2	15.260 - Collision Investigations III. Procedures when a Collision Report is Mandatory	Not Sustained (Timeliness)
# 3	15.260 – Collision Investigations IV. Taking Enforcement Action	Not Sustained (Timeliness)
# 4	16.090 – In-Car Video System 4. Employees Will Record Enforcement-Related Activity Which Occurs Within Camera Range	Not Sustained (Timeliness)

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 the Named Employees failed to properly investigate and take law enforcement action in a vehicle accident she was involved in.

ADMINISTRATIVE NOTE:

Article 3.6(G) of the Collective Bargaining Agreement (CBA) between the City of Seattle and the Seattle Police Officers’ Guild indicates that: “No disciplinary action will result from a complaint of misconduct where the complaint is made to [OPA] more than three years after the date of the incident which gave rise to the complaint...” There are three exceptions to this general rule: (1) “In cases of criminal allegations”; (2) “where the named employee conceals acts of misconduct”; and (3) “for a period of thirty (30) days following a final adverse disposition in civil litigation alleging intentional misconduct by an officer.” Moreover, an interpretive arbitration decision deemed a Sustained finding to be discipline.



Here, the Complainant filed this complaint with OPA on November 2, 2017, which was approximately three and a half years after the incident. Moreover, none of the exceptions set forth in Article 3.6(G) apply to this case. As such, even though I believe that the Named Employees violated Department policy in this instance and that these findings should be Sustained, neither a Sustained finding nor discipline may be imposed as a result of this investigation. As such, the findings for the allegations in this case are Not Sustained – Timeliness. It is important to note, however, that this matter is untimely and discipline cannot be imposed as a function of the late filing by the Complainant and the requirements of the CBA. It is not due to any failing of OPA.

I further note that the policies under which the Named Employees' conduct is evaluated are those policies that were in force at the time of the incident. The policies have undergone modifications since that time.

STATEMENT OF FACTS:

On November 2, 2017, the Complainant came to OPA's office and initiated a complaint. She alleged that on April 29, 2014, approximately three and a half years prior, she was involved in a collision. She reported that SPD officers responded to the collision but failed to complete a collision report and did not check on her medical condition, even when it was clear that she had injuries to her face. The Complainant stated that while the Named Employees updated the CAD Call Log to indicate that the involved motorists had exchanged insurance information, she complained that they did not note that this was only after the officers had arrived at the scene and after the other involved motorist had initially fled. Lastly, she stated that she asked one of the Named Employees for a ride home and he responded: "I could give you a ride to jail."

OPA conducted an investigation into the Complainant's allegations and determined that the involved officers were Named Employee #1 (NE#1) and Named Employee #2 (NE#2). Four days after she initiated her complaint, the Complainant contacted OPA and told the assigned investigator that one of the Named Employees had been criminally arraigned that day. OPA verified that she was referring to NE#2.

OPA searched for In-Car Video (ICV) recorded by the officers on that date, but could not locate any. As discussed more fully below, OPA conferred with SPD IT and determined that, in fact, the officers did not record any ICV relating to this incident. OPA also searched for a report relating to this case and the Named Employees' response and confirmed that none existed.

OPA interviewed the Complainant three times. OPA also interviewed NE#1. OPA attempted to interview NE#2 but, at all times during the investigation of this matter, NE#2 was on administrative leave due to the criminal proceedings pending against him. He did not respond to OPA's requests for him to be interviewed as part of this case.

At his OPA interview, NE#1 stated that he had no recollection of this incident. NE#1 stated that this was the case even though he reviewed documentation relating to this matter in order to refresh his recollection. NE#1 further told OPA that he had "no idea" why he and NE#2 did not record ICV and he detailed that he had looked into this matter by contacting SPD IT but was met with inconclusive results.

OPA interviewed an EMT that responded to the incident. The EMT told OPA that she checked on the medical condition of both the Complainant and the other involved driver. She stated that they were fine. The EMT recalled that the damage to the vehicles was minor. She remembered that there was damage to the car door but not



enough, in her opinion, to “cause neck or back pain.” The EMT recounted that neither car appeared to have been totaled. She said that the Complainant’s car could have been driven off the road. The EMT did not recall speaking with the other driver. She did not remember either individual complaining of injury and she stated that the Complainant was ambulatory. The EMT told OPA that, had the Complainant complained of injury, she would have called it in. Ultimately, the EMT stated that nothing “stood out” to her except that the Complainant was upset after the incident. After her interview, the EMT opined that this matter could be related to an insurance claim.

OPA interviewed another EMT who responded to the incident with the female EMT. The male EMT, however, did not have any additional information to add and did not leave the ambulance to observe the incident.

Lastly, OPA interviewed the other involved driver. He admitted that he was at fault during the accident. He stated that the damage to the vehicles was minor. He remembered hitting the Complainant’s rear passenger side door. He recalled that the Complainant seemed “nice,” but that he she was disheveled and her pants were undone when she got out of the car. He stated that he and the Complainant exchanged information. He stated that his vehicle had to be towed from the scene but was not totaled. He did not think the Complainant’s vehicle was totaled and he did not recall her vehicle being towed from the scene. He indicated that neither he nor the Complainant suffered any injuries. He noted that the Complainant did not report any injuries at the time.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

15.260 - Collision Investigations I. Responding Officer Duties

SPD Policy 15.260(I) sets forth the duties of officers responding to collisions. The policy generally requires that: “Officers must investigate, initiate the investigation of, or assist at each collision which is brought to their attention.” It further mandates that officers: identify and interview witnesses; investigate the collision and record evidence; take appropriate enforcement action; and assess whether drivers may exchange information or if a State of Washington Traffic Collision Report is required to be completed.

As discussed above, I find that the Named Employees did not take appropriate enforcement action and did not complete a Traffic Collision Report when required. As such, even if they completed all the other required actions - which is unclear given the lack of evidence presented by the Named Employees and the absence of ICV or any report – I still would find that this policy was violated. However, as the three-year statute of limitation has expired, I recommend that this allegation be Not Sustained – Timeliness as against both Named Employees.

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

Named Employee #1 - Allegation #2

15.260 - Collision Investigations III. Procedures when a Collision Report is Mandatory

SPD Policy 15.260(III) governs procedures when a collision report is mandatory. Officers “shall investigate and complete a State of Washington Police Traffic Collision Report whenever the collision occurs” on a “roadway” or “way open to the public” and one of six conditions are present, including: “Injury or death or any person”; “Damage



to the property of any one person appears to exceed \$700.00”; or “Enforcement action is taken against one or more of the parties involved.”

Based on my review of the record and applying a preponderance of the evidence standard, it appears that the damage to each of the vehicles – and particularly the Complainant’s vehicle was in excess of \$700. Moreover, it further appears that it would have been appropriate to take enforcement action against the other driver, given that he admitted responsibility. I do not find sufficient evidence to conclude that the Complainant was injured as a result of the accident, regardless of her contentions otherwise. Notably, the CAD Call Log indicated no injuries and both the female EMT and the other driver asserted that the Complainant appeared uninjured.

Regardless, based on the evidence before me, it appears evident that the Named Employees should have completed a Traffic Collision Report. They did not do so and that failure violated this policy. However, as the three-year statute of limitation has expired, I recommend that this allegation be Not Sustained – Timeliness as against both Named Employees.

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

Named Employee #1 - Allegation #3

15.260 – Collision Investigations IV. Taking Enforcement Action

SPD Policy 15.260(IV)(A) requires that officers take enforcement action where there is a traffic violation or misdemeanor incident. The policy requires that “enforcement action shall be taken in every non-felony case where the information is sufficient to warrant such enforcement action.” The policy further states that: “In those cases where an officer concludes that a citation is not possible, officers shall clearly articulate in the narrative portion of the State of Washington Police Traffic Collision Report why enforcement action would not be appropriate.”

It is unclear why the Named Employees did not cite the other motorist. He was admittedly at fault in the accident and certainly there was enough information to warrant enforcement action. Given that the other motorist was indisputably not cited, it is further unclear why the officers did not complete a Traffic Collision Report and indicate therein why enforcement action was not appropriate.

As discussed above, NE#1 has no memory of this incident and NE#2 did not respond to requests for him to be interviewed. The Named Employees thus provided no evidence or explanation as to why they did not comply with this section of the policy.

Accordingly, I find, applying a preponderance of the evidence standard, that there is sufficient information in the record to establish that the Named Employees violated this policy. However, as the three-year statute of limitation has expired, I recommend that this allegation be Not Sustained – Timeliness as against both Named Employees.

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



Named Employee #1 - Allegations #4

16.090 – In-Car Video System 4. Employees Will Record Enforcement-Related Activity Which Occurs Within Camera Range

As discussed above, during its investigation, OPA determined that there was no ICV relating to this incident. OPA contacted SPD IT to verify this fact. OPA was informed that, on the date in question, NE#1 and NE#2 conducted a pre-shift check and recorded one incident. However, in OPA's estimation, they were involved in at least seven other incidents for which ICV was required.

When interviewed by OPA, the Complainant alleged that she was informed by SPD IT that video did exist and was provided to her, but that she was unable to view it. Based on that assertion, OPA again contacted SPD IT to determine whether ICV relating to this case existed. SPD IT again told OPA that it did not.

During his OPA interview, NE#1 stated that he had "no idea" why there was no ICV related to this case. He told OPA that he attempted to determine what had happened with SPD IT and stated that they had provided him with some inconclusive results. OPA's conversations with SPD IT were significantly more conclusive. Indeed, SPD IT verified that there was no malfunction with NE#1's and NE#2's ICV system and that they recorded one other video that day.

SPD Policy 16.090-POL-1(4) requires that Department "employees will record enforcement-related activity which occurs within camera range." It further states that: "Employees will activate ICV to record enforcement-related activity, unless doing so would jeopardize officer safety." The policy itemizes a non-inclusive list of those actions that fall within the definition of "enforcement-related activity."

The information obtained by OPA clearly indicates that NE#1 and NE#2 failed to activate their ICV as required by Department policy. There were no malfunctions with their system on that date and, notably, they did not report any. Moreover, they conducted a system check at the beginning of their shift that indicated that their ICV system was working and they recorded one video.

Had this case been initiated by the Complainant within three years of the date of the incident, I would have recommended that this allegation be Sustained. However, as she did not do so, discipline cannot be imposed. As such, I recommend that this case be Not Sustained – Timeliness as against both Named Employees.

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

Named Employee #2 - Allegations #1

15.260 - Collision Investigations I. Responding Officer Duties

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

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



Named Employee #2 - Allegation #2

15.260 - Collision Investigations III. Procedures when a Collision Report is Mandatory

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

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

Named Employee #2 - Allegation #3

15.260 – Collision Investigations IV. Taking Enforcement Action

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Timeliness.

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

Named Employee #2 - Allegations #4

16.090 – In-Car Video System 4. Employees Will Record Enforcement-Related Activity Which Occurs Within Camera Range

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Timeliness.

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