



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 4, 2018

CASE NUMBER: 2017OPA-1301

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 (Management Action)
# 2	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:

It was alleged that Named Employee #1 failed to activate his In-Car Video in possible violation of policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) failed to activate his In-Car Video (ICV) during his response to a situation concerning a suicidal subject. He did, however, activate his Body Worn Video (BWV). NE#1 self-reported his failure to activate ICV to his chain of command and memorialized his lack of ICV in his supervisory use of force review. In that use of force review, NE#1 wrote the following:

I did not activate my ICV, for I believed the call was concluded. I responded to the scene to de-brief the incident. I did not have an active part in the investigation and I felt I had little possibility of contact with any person involved. When I arrived, and learned officers were still upstairs with the suicidal subject, I did activate my BWV. My entire time on scene was captured on BWV.

At his OPA interview, NE#1 stated that his expectation was that the officers under his supervision would log in to their ICV systems and synch their wireless microphones before going into service. He explained that, at times, he would not do so if he had ongoing administrative duties or was not likely to go into the field on a given day. NE#1 stated that he generally activated his ICV and BWV when he responded to calls. He further stated that, prior to doing so, he would verify that his systems were working.

NE#1 recounted that, in this case, he responded to a report of a suicidal subject. He told OPA that he logged into COBAN and left for the scene. During his drive to the location, he heard information over the radio that suggested that the situation was under control; however, he continued to the scene to de-brief the incident. At that time,



given his understanding of the status of the incident, he did not activate his ICV. He parked his vehicle approximately half a block from the scene and, while walking towards the location, saw an ambulance situated in front. Prior to this observation, NE#1 believed that the subject had already been transported from the scene. He then activated his BWV. He did not recall whether he also activated the wireless microphone for his ICV system, but intimated at his OPA interview that it was possible that he did so.

At his OPA interview, NE#1 further argued that, while he did not utilize his ICV, he did activate his BWV and, as such, complied with the letter of the policy. To this end, he pointed to the language of the policy that states: "When safe and practical, employees will record the following police activity, even if the event is out of view of the camera..." He contended that this language simply stated that he was required to record the incident, which he did. NE#1 posited that the policy did not specify which system he was required to record with or mandate that he needed to record on both systems.

I read the policy as requiring officers to record whenever applicable on the appropriate system. I further interpret the policy as requiring officers to record on both systems if equipped and feasible. That being said, I do not believe that NE#1's stated interpretation of the policy is necessarily unreasonable. I agree that it would be helpful to clarify the policy and, as such, I issue the below Management Action Recommendation.

I further note that, even had NE#1 not raised this question concerning the language of the policy, I still would have likely issued a Training Referral instead of a Sustained finding due to his recording of the entirety of his law enforcement activity on BWV and his documenting and reporting of his failure to record ICV.

- **Management Action Recommendation:** The Department should clarify the language of SPD Policy 16.090-POL-5 to make clear that where officers are equipped with both ICV and BWV, it is the intent of the policy that they will record on both systems. The Department should further clarify that simply recording on one and failing to record on the other is improper when the secondary system is required to be activated under this policy.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #2

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

SPD Policy 16.090-POL-4 generally requires that officers address and note malfunctions with their In-Car Video (ICV) and Body Worn Video (BWV) systems. This policy further requires that: "At the start of the shift, employees will prepare ICV and BWV systems as outlined in the training and 16.090 TSK-1." (SPD Policy 16.090-POL-4.) This includes synchronizing the wireless microphone. (See SPD Policy 16.090-TSK-1.) The policy also directs that: "Both employees in two-officer cars must log into the ICV system and sync their ICV microphones." (SPD Policy 16.090-POL-4.) Lastly, where there are system malfunctions, officers are required to "contact ITS for troubleshooting (if applicable), note the issue in a CAD update, and notify a supervisor as soon as practicable." (*Id.*)

NE#1 stated that he logged into COBAN at the beginning of his shift but, based on his OPA interview, it does not appear that he synched his wireless microphone. He told OPA that he believed that he may have activated his wireless microphone when he arrived on the scene. He opined that it was possible that he was "dropped out of the



system” and stated that ICV was sometimes unreliable. However, to the extent he believed that there was a malfunction or system error with his ICV, this section of the policy required NE#1 to troubleshoot this matter with SPD ITS, report the issue in a CAD update, and notify a supervisor as soon as practicable. While NE#1 informed a supervisor that he did not record on ICV, he did not do so until early December, several weeks after the incident. He also did not troubleshoot this matter with SPD ITS or report the issue in a CAD update.

While these were technical violations of policy and while NE#1 failed to record any ICV in this case, I do not believe that this warrants a Sustained finding. Moreover, I commend NE#1 for self-reporting and documenting the fact that he did not record. Accordingly, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning the requirements of SPD Policies 16.090-POL-5 and 16.090-POL-4. NE#1 should be counseled concerning the Department’s expectation that he, as a patrol supervisor, will comply with both of these policies. This re-training and associated counseling should be memorialized in a PAS entry.

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



City of Seattle

Office of Police Accountability

July 2, 2018

Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATIONS – SECOND QUARTER 2018

Dear Chief Best:

I write to inform you of the Management Action Recommendations (MAR) that have been recently issued by OPA. The MARs contained herein are for the following cases: 2017OPA-0511, 2017OPA-0980, 2017OPA-1008, 2017OPA-1091, 2017OPA-1132, 2017OPA-1196, 2017OPA-1301, 2017OPA-1289, 2018OPA-0553, and 2018OPA-0101.

Case Number

- 2017OPA-0511

Summary

- The Named Employee allegedly violated SPD policy when he posted a message on his personal Facebook account that concerned an open investigation, included confidential criminal information, and identified a minor.

Analysis

- Policy *1.110 - Public Information* addresses the release of information to the media and specifically prohibits the release of much of what was contained in the Named Employee's Facebook post.
- Although the Named Employee had Facebook friends that he knew were active members of the media and who had access to his page, it is unclear whether his posting of sensitive and confidential material constituted a "release" to the media as contemplated by the policy.

Recommendation

- Modify policy *1.110 - Public Information – POL-1 General Policy (2)* to define "release" as it pertains to SPD employees disseminating information to the media via social media. The definition should clarify that a "release" includes posting law enforcement information on social media.
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Case Number

- 2017OPA-1301
- 2018OPA-0101

Summary

- In both cases, the Named Employee allegedly failed to properly activate/log-in to both his In-Car Video (ICV) and Body Worn Video (BWV) systems when responding to incidents.
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Analysis

- The Named Employee felt he met the requirements of the BWV policy because he interpreted it as requiring an officer to record on ICV or BWV, but not necessarily on both.
- OPA interprets the policy as requiring that, when equipped with both ICV and BWV, both systems must be activated for each call response. The Named Employee's understanding of this policy is inconsistent with the reasoning behind equipping officers with BWV in addition to ICV, which is to have a second mechanism to more fully record law enforcement activity, not to have discretion to choose which camera to utilize.

Recommended Action

- Modify 16.090 - *In-Car and Body-Worn Video 5. Employees Recording Police Activity* to clarify that if officers are equipped with both ICV and BWV, they shall record on both systems. The new policy subsection could read: "Officers equipped with both ICV and BWV shall utilize both systems simultaneously when recording is required under 16.090-POL-1(5)(b). The failure to activate one or both systems constitutes a violation of policy and must be documented and reported consistent with 16.090-POL-1(4) and 16.090-POL-1(7)."
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Case Number

- 2017OPA-1132
- 2018OPA-0053

Summary

- In the first case, prior to searching a residence for a suspect, the Named Employees failed to provide the subject with--and have her execute--a Consent to Search form. They also did not provide Ferrier warnings.
- In the second case, the Named Employees may have violated the Complainant's constitutional right to be secure against an unlawful search and seizure when they arrested him while he was still within the threshold of his residence.

Analysis

- Officers receive little training in search and seizure law and consent to search after the post-Basic Law Enforcement Academy phase of their employment. The failure to understand how to obtain consent and what constitutes consent can result in violations of the constitutional rights of individuals and the sanctity of their homes. OPA believes the officers' errors in these cases constitute ignorance of the law and mistakes rather than misconduct.

Recommended Action

- Provide Department-wide training on search and seizure law and policy 6.180 - *Searches-General*. The training should specifically discuss the requirement that subjects be completely outside of the thresholds of their residences before arrests can be properly effectuated.
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Case Number

- 2017OPA-1091

Summary

- The Named Employees conducted a Terry stop, but failed to document it using a Terry Template, as is required by SPD policy.

Analysis

- The Named Employees said a Terry Template was unnecessary because they had probable cause to arrest based on open warrants.
- Law, policy, and the Consent Decree state that officers must document each time they stop and detain someone, regardless of whether they believe they have probable cause to make an arrest.

Recommended Action

- Modify policy 6.220 - *Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops* to state that when officers perform a Terry stop, a Terry template is always required (SMC 14.11.060(C)), regardless of whether the officers had probable cause to arrest at the time of the Terry stop.
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Case Number

- 2017OPA-1196

Summary

- In reviewing a failure of an officer to carry a Taser during an incident, OPA evaluated whether the officer's supervisor failed to ensure the officer was carrying a Taser and/or that the Taser was in working condition.

Analysis

- SPD policy 5.100(III) sets forth the general responsibilities of patrol sergeants, including: "Check the personal appearance of assigned officers and ensure officers' equipment is in good condition." OPA's investigation of this case found that such inspections are rarely carried out, and sergeants are not held accountable for not doing so.

Recommended Action

- Modify policy 5.100 - *Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision* to clarify the frequency with which a patrol sergeant shall perform inspections to ensure that their officers are carrying the appropriate equipment and determine that the equipment is functioning properly.
 - Train patrol sergeants on their responsibility to perform inspections, including how to conduct an inspection and the frequency with which to conduct them.
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Case Number

- 2017OPA-1008
- 2017OPA-0980

Summary

- The Named Employees failed to properly enter a firearm into evidence as required by Department policy and the unit manual.
- Another Named Employee failed to properly supervise the previously mentioned Named Employee.

Analysis

- SPD policy 7.010-POL-1 requires that employees secure collected evidence and place it into the Evidence Unit or an authorized evidence storage area before they end their shift. During their OPA

interview, one of the Named Employees contended that SPD policy did not define what an “authorized evidence storage area” was.

- Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy and Department Policy. Although it instructs officers to comply with the SPD Manual, published directives/special orders, and Department training, it does not state that non-compliance with a unit manual, such as the FIT Manual, constitutes a violation of SPD Policy.
- The FIT Manual lacks clarity regarding the requirements for FIT Sergeants to actively monitor the investigations conducted by Detectives and to ensure that evidence is timely placed into evidence.
- FIT previously did not take custody of rifles or shotguns; rather, such weapons were processed by CSI. OPA suggested that FIT institute this same process for handguns, as it may result in more consistent treatment of and processing standards for all firearms. FIT has since made this change.

Recommended Action

- Modify policy 7.010 - *Submitting Evidence* to define what an authorized evidence storage location is and clarify that personal offices are not such authorized locations.
 - Modify the *FIT Manual* to:
 - Clarify that officers will, as soon as feasible, take case evidence to the Evidence Unit.
 - Indicate what, if any, other authorized evidence storage locations exist in the FIT unit, noting that evidence should never be stored in personal offices.
 - Provide more detail on expectations for evidence handling.
 - More clearly define the expectations for the FIT Sergeant (such as memorializing the requirement that the FIT Sergeant check-in with Detectives to determine the location and status of evidence and firearms)
 - Train FIT Detectives and supervisors in evidence handling.
 - Modify policy 5.001 - *Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy* to include unit manuals as one of the types of regulations to which officers are responsible for adhering.
 - Reevaluate the current FIT practice of taking possession and maintaining custody of handguns. (OPA recognizes that this has been implemented since initial conversations about this case occurred, but is noting it here nonetheless.)
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Case Number

- 2017OPA-1289

Summary

- The Named Employee failed to conduct a preliminary inquiry into a bias allegation and to generate a Bias Review.

Analysis

- SPD policy 5.140-POL-7 requires that Department supervisors conduct preliminary inquiries into biased policing. The Named Employee told OPA he did not know how to do a Bias Review and was not familiar with the Bias policy, even though he had served as an acting sergeant for about 20 to 25 days per year over several years. He further told OPA that he was not familiar with the policies concerning the investigation and reporting of force, as well as the policy concerning the reporting of misconduct. Lastly, the Named Employee told OPA that he had not attended SPD’s First Line Supervisor Training nor any other type of supervisor training during his over 25 years with the Department.
- The Named Employee was placed in a position where he was expected to supervise his fellow employees without any training on how to do so, per policy 4.020, which states that “Captains will

send officers to Department sergeant training for acting sergeant assignments over 60 consecutive days.” Since the Named Employee’s assignment as acting sergeant was for less than 60 consecutive days, training was not mandated.

Recommended Action

- Modify policy 4.020 – *Reporting and Recording Overtime/Out of Classification Pay 17. Officers Assigned as Acting Sergeants Receive Training* to require that Captains send officers to sergeant training prior to any acting sergeant assignment.

Thank you very much for your prompt attention to these matters. I look forward to receiving your written responses to these recommendations and, should you decide to act as a result, the progress of these actions. Alternatively, to the extent that the above recommendations are not feasible, or a different policy modification may be more fitting, OPA would appreciate the opportunity to help you find a workable solution through an in-person discussion.

Please feel free to contact me with any questions or concerns.

Sincerely,

Andrew Myerberg

Andrew Myerberg
Director, Office of Police Accountability

cc: Deputy Chief Chris Fowler, Seattle Police Department
Assistant Chief Lesley Cordner, Standards and Compliance, Seattle Police Department
Rebecca Boatright, Senior Police Counsel, Seattle Police Department
Fe Lopez, Executive Director, Community Police Commission
Lisa Judge, Inspector General for Public Safety
Tito Rodriquez, Office of Police Accountability Interim Auditor
Josh Johnson, Assistant City Attorney, Seattle City Attorney’s Office
Anne Bettesworth, Senior Policy Advisor, Office of Police Accountability