



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-0013

Issued Date: 10/04/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 16.090 (6) In Car Video System: Employees Will Record Police Activity (Policy that was issued 02/01/15)
OPA Finding	Not Sustained (Training Referral)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (6) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct (Policy that was issued 01/01/15)
OPA Finding	Allegation #1 removed
Allegation #2	<u>Seattle Police Department Manual</u> 8.500 (6) Reviewing Use of Force: Reviewers Shall Refer Misconduct, Other Than Minor Misconduct (see POL 5.002.5), as well as Potential Criminal Conduct to the OPA (Policy that was issued 09/01/15)
OPA Finding	Not Sustained (Training Referral)
Allegation #3	<u>Seattle Police Department Manual</u> 8.400-TSK-6 (7) Use of Force Reporting and Investigation: Responsibilities of the Sergeant During a

	Type II Investigation – Interviews of the subject, or the subject’s refusal to be interviewed, will be audio or ICV recorded, if feasible (Policy that was issued 09/01/15)
OPA Finding	Not Sustained (Training Referral)
Final Discipline	N/A

Named Employee #3	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (6) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct (Policy that was issued 01/01/15)
OPA Finding	Not Sustained (Training Referral)
Allegation #2	<u>Seattle Police Department Manual</u> 8.500 (6) Reviewing Use of Force: Reviewers Shall Refer Misconduct, Other Than Minor Misconduct (see POL 5.002.5), as well as Potential Criminal Conduct to the OPA (Policy that was issued 09/01/15)
OPA Finding	Not Sustained (Training Referral)
Final Discipline	N/A

Named Employee #4	
Allegation #1	<u>Seattle Police Department Manual</u> 16.090 (6) In Car Video System: Employees Will Record Police Activity (Policy that was issued 02/01/15)
OPA Finding	Not Sustained (Training Referral)
Final Discipline	N/A

INCIDENT SYNOPSIS

Named Employee #1 and #4 were working a two-officer car and observed two males loitering in a park after park closing hours, one male was a known narcotics user. Upon seeing the patrol vehicle, the two males started walking away from each other. Named Employee #1 followed

one male on foot and Named Employee #2 drove around to the other side of the park. One of the males ran and after a brief struggle, force was used to take the suspect into custody. Named Employee #2, in an acting sergeant capacity, arrived and conducted the Use of Force investigation.

COMPLAINT

The complainant, the Force Review Unit, alleged that Named Employee #1 and #4 did not start In-Car Video (ICV) recording at the beginning of an incident as required by policy. OPA added allegations for Named Employee #2 for failure to record or attempt to record his interview with the subject of the force and failing to refer the ICV violations to OPA. OPA also added allegations for Named Employee #3 for not referring Named Employee #2's failure to record the interview to OPA.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Review of Holding Cell Video
3. Review of Use of Force Statements
4. Search for and review of all relevant records and other evidence
5. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The complainant alleged Named Employee #1 and #4 failed to activate the in-car video system as required at the beginning of an on-view infraction or criminal activity event. Named Employee #1 and #4 were on emphasis patrol and driving together in a police car near a park where there is a substantial amount of narcotics-related activity. At this point, the two officers were engaged in patrol activity and had not been either dispatched to a call for service or responding to an on-view violation. As such, activation of the record function of the In-Car Video (ICV) system was not required by policy at that time. The two officers saw some individuals in the park and Named Employee #1 got out of the police car to get a closer look at what the people were doing; Named Employee #4, the driver, remained with the police car. Named Employee #1 told OPA that one of the persons began to jog away from him as soon as he (Named Employee #1) got out of the police car. Named Employee #1 said he immediately began to pursue the person on foot and did not have time to activate the record button on his portable microphone. Based on the preponderance of the evidence, it appears the two officers, and Named Employee #1 in particular, could have anticipated the potential for a foot pursuit and activated the ICV before Named Employee #1 exited the police car. Named Employee #1 and #4 should be trained to activate ICV when they are about to do something that might lead to an activity that must be recorded.

The complainant alleged Named Employee #2 may have failed to report to OPA or his sworn supervisor the failure of Named Employee #1 and #4 to record their entire police activity related to this on-view event. Named Employee #2, who was an acting sergeant at the time, became

aware of this ICV omission while conducting a use of force investigation. As such, the allegation against Named Employee #2 of failure to report the potential misconduct to OPA is more properly addressed under the requirements of SPD Policy §8.500(6). This allegation (#1) has been removed.

It is clear that Named Employee #2 knew of and noted the failure of Named Employee #1 and #4 to record the entire event from its beginning. Named Employee #2 counseled both officers and made some effort to ask their regular sergeant to put this into their personnel files. Named Employee #2 told OPA he was operating on the belief that he had the authority as a supervisor to handle the matter himself and was not obligated to refer a potential ICV violation to OPA. Given Named Employee #2's relative inexperience as an acting sergeant and the obvious misinformation under which he was operating, the OPA Director recommended a finding of Not Sustained (Training Referral) for this allegation.

The complainant alleged Named Employee #2 failed to audio record the subject's refusal to be interviewed. Named Employee #2 told OPA he had the means and opportunity to record this refusal. He went into the holding cell where the subject was waiting and began the process of asking for an interview. Named Employee #2 did not turn on the recorder before he introduced himself and asked the subject if he would be willing to be interviewed. As a result, the subject's immediate refusal was not recorded. Named Employee #2 acknowledged this error and realizes now he should turn the recorder on before beginning the conversation, thus enabling him to capture any refusal.

The complainant alleged that Named Employee #3 may have failed to forward to OPA the allegation that Named Employee #2, the acting sergeant who conducted a Type II use of force investigation, failed to record the subject's refusal to provide an interview as required by SPD Policy §8.400-TSK-6(7). Named Employee #3 told OPA he viewed this as a minor failure on the part of Named Employee #2 that was mostly due to the acting sergeant's lack of experience. Named Employee #3 said he believed he had the authority to address this through training. The OPA Director agreed with Named Employee #3's assessment that Named Employee #2's relative inexperience conducting use of force investigations was the root cause of this error and that the error, in itself, was relatively minor. Named Employee #3, however, is not an inexperienced supervisor and should have known which policy violations can be addressed by a supervisor and which cannot (see SPD Policy §5.002(5)). Named Employee #3 also told OPA that he forwarded the use of force investigation, including his review, to his supervisor and that this may have fulfilled his responsibility under SPD Policy §5.002(6) to report misconduct, "to a supervisor or directly to OPA." It needs to be made very clear to Named Employee #3 that it is his obligation as a command level officer to ensure that all potential misconduct or allegations of misconduct, other than those listed in §5.002(5), are reported to OPA.

The complainant alleged Named Employee #3 may have failed to report to OPA the failure of Named Employee #1 and #4 to record their entire police activity related to this on-view event. It is clear that Named Employee #3 knew of and noted the failure of Named Employee #1 and Named Employee #4 to record the entire event from its beginning. Named Employee #3 told

OPA he was operating on the belief that Named Employee #2 had the authority as an acting sergeant to handle the matter himself and neither he (Named Employee #3) nor Named Employee #2 were obligated to refer a potential ICV violation to OPA.

FINDINGS

Named Employee #1

Allegation #1

The evidence showed that Named Employee #1 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *In Car Video System: Employees Will Record Police Activity*.

Required Training: Named Employee #1 should be given a copy of the current ICV policy (16.090) by his supervisor and counseled to begin recording prior to or at the beginning of an on-view event. It should be made clear to Named Employee #1 that not activating the ICV record function prior to making contact with a person in an on-view situation must be the exception rather than the rule. True exigent circumstances preventing ICV activation must be present to excuse the late activation of ICV. A wise course of action would be to activate the ICV prior to beginning an action likely to lead to a situation that must be recorded.

Named Employee #2

Allegation #1 REMOVED

Allegation #2

The evidence showed that Named Employee #2 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Reviewing Use of Force: Reviewers Shall Refer Misconduct, Other Than Minor Misconduct (see POL 5.002.5), as well as Potential Criminal Conduct to the OPA*.

Required Training: Named Employee #2 should be counseled by his chain of command regarding the importance of reporting all allegations of misconduct not specifically listed in SPD Policy §5.002(5) to his supervisor or OPA. If Named Employee #2 decides to report an allegation of misconduct to his supervisor rather than to OPA, Named Employee #2 should check with his supervisor and verify the supervisor's acceptance of responsibility to report the allegation to OPA. This will assist the Department in its commitment to transparent accountability, as well as help himself and his supervisor comply with the requirements of SPD policy.

Allegation #3

The evidence showed that Named Employee #2 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Use of Force Reporting and Investigation: Responsibilities of the Sergeant During a Type II Investigation – Interviews of the subject, or the subject's refusal to be interviewed, will be audio or ICV recorded, if feasible*.

Required Training: Named Employee #2 should be counseled by his chain of command regarding the importance of recording all subject interviews or refusals when conducting a use of force investigation.

Named Employee #3

Allegation #1

The evidence showed that Named Employee #3 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Must Otherwise Report Misconduct*.

Allegation #2

The evidence showed that Named Employee #3 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Reviewing Use of Force: Reviewers Shall Refer Misconduct, Other Than Minor Misconduct (see POL 5.002.5), as well as Potential Criminal Conduct to the OPA*.

Required Training: Named Employee #3 should be counseled by his chain of command regarding the importance of reporting all allegations of misconduct or evidence of potential misconduct not specifically listed in SPD Policy §5.002(5) to his supervisor or OPA. If Named Employee #3 decides to report an allegation of misconduct to his supervisor rather than to OPA, Named Employee #3 should check with his supervisor and verify the supervisor's acceptance of responsibility to report the allegation to OPA. This will assist the Department in its commitment to transparent accountability, as well as help himself and his supervisor comply with the requirements of SPD policy.

Named Employee #4

Allegation #1

The evidence showed that Named Employee #4 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *In Car Video System: Employees Will Record Police Activity*.

Required Training: Named Employee #4 should be given a copy of the current ICV policy (16.090) by his supervisor and counseled to begin recording prior to or at the beginning of an on-view event. It should be made clear to Named Employee #4 that not activating the ICV record function prior to making contact with a person in an on-view situation must be the exception rather than the rule. True exigent circumstances preventing ICV activation must be present to excuse the late activation of ICV. A wise course of action would be to activate the ICV prior to beginning an action likely to lead to a situation that must be recorded.

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.