



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 11, 2017

CASE NUMBER: 2017OPA-0270

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 5. Employees May Use Discretion	Sustained
# 2	16.090 - In-Car Video System 8. Once Recording Has Begun, Employees Shall Not Stop Recording Until the Event Has Concluded	Not Sustained (Management Action)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Training Referral)

Imposed Discipline

1 Day Suspension

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 Complainants (six different passengers on the Metro #2 bus) allege that Named Employee #1 (NE#1) misused his authority by pulling the bus driver over in the middle of traffic without proper cause, causing an unsafe situation. Some Complainants also alleged that NE#1 was unprofessional towards the bus driver, aggressive towards the driver and passengers, and unlawfully detained passengers including a woman in a wheelchair. During OPA’s intake it was discovered that NE#1 stopped his ICV to show it to the Metro supervisors in violation of SPD’s ICV Policy.

STATEMENT OF FACTS

On the date in question, NE#1 made a traffic stop of a Metro bus in the vicinity of the 500 block of Spring Street. The Complainants were six occupants of that bus (three of whom made anonymous complaints) who asserted that NE#1 abused his discretion when he made the stop and acted unprofessionally in violation of SPD policy.

In his General Offense Report relating to the incident, NE#1 stated that he was stopped in the left lane of the 400 block of Spring Street. (NE#1 General Offense Report.) The bus, with hazard lights on, was stopped in the right lane. (*Id.*) NE#1 reported that the bus pulled abruptly towards NE#1’s lane, causing him to make a “quick left turn to avoid a collision” and to move into the lane next to him. (*Id.*) NE#1 indicated that the bus driver then rolled down her window and “began yelling” at him. (*Id.*) The bus’s exact movements are not captured by ICV. The ICV does show, however, NE#1 pulling his car to the left. (*See NE#1 Front ICV, Video #1.*) The ICV also does not capture the initial conversation between NE#1 and the driver, which NE#1 described as “yelling.”

NE#1 stated that he then made the decision to stop the bus and he turned on his ICV. (NE#1 General Offense Report.) He allowed the bus to pass him so that he could read the bus number and license plate and then activated



his emergency equipment. (*Id.*) NE#1 stopped the bus and, prior to exiting his vehicle, notified a Metro supervisor. (*Id.*)

NE#1 then walked up to the bus and contacted the bus driver. (*Id.*) NE#1 stated that when he approached the bus, the driver was “on her phone with management.” (*Id.*) She then opened the door and continued to speak with her supervisor. (*Id.*) At his OPA interview, NE#1 indicated that the driver did not open the bus for “several seconds.” (NE#1 OPA Interview, at p. 3.) Based on the video, however, NE#1 stood outside the bus for only a second and the driver opened the bus door virtually instantaneously after NE#1 knocked. (See NE#1 Front ICV, Video #1.)

Once the driver opened the door, NE#1 asked her for her license, registration and proof of insurance. (NE#1 General Offense Report.) NE#1 reported that the driver first ignored him and then told him that she “can’t get to it right now.” (*Id.*) The bus was full of passengers, with some standing in the aisles. (*Id.*) NE#1 reported that several of the passengers “directed irate comments” towards him. (*Id.*) From my review of the ICV, these comments were not audible. (See NE#1 Front ICV, Video #1.) NE#1 again asked the driver to provide her license. (NE#1 General Offense Report.) The driver requested that she be allowed to move her bus to the 600 block of Spring Street, but NE#1 told her that she could not. (*Id.*)

The driver then provided her license to NE#1 but not her registration and proof of insurance. (*Id.*) NE#1 then told the driver that she could move the bus and stepped out of the bus. (*Id.*) The driver moved the bus and most of the passengers then exited. (*Id.*)

NE#1 returned to his patrol vehicle and remained there until a Metro supervisor responded to the scene. (*Id.*) The supervisor sat in NE#1’s patrol car and was informed that ICV was activated. (*Id.*) NE#1 stopped and saved the ICV recording and then re-activated his ICV. (*Id.*) NE#1 then showed the Metro supervisor the ICV of his interaction with the driver. (*Id.*) Another Metro supervisor arrived at the scene and was also advised that ICV was activated. (*Id.*) She was also shown the video. (*Id.*)

NE#1, with the two Metro supervisors, then returned to the bus. (*Id.*) There remained a few passengers on the bus who had not exited. (*Id.*) At that time, NE#1 was informed by one of the supervisors that the driver was new and was still under probation. (*Id.*) NE#1 advised the supervisor that the driver was free to leave and provided the driver her identification back. (*Id.*)

The driver attempted to apologize to NE#1, but NE#1 told her that he did not want any further contact with her. (*Id.*) NE#1 reported that he said this “due to her easily agitated state” and based on his belief that advising her about potential infractions that might possibly jeopardize her employment could “further aggravate her.” (*Id.*) NE#1 then returned to his vehicle and the driver pulled away. (*Id.*)

The Complainants tell a different story. One of the Complainants stated that the bus was picking up passengers in the right lane on Spring Street and sought to move to the left and back into the flow of traffic. He recounted that NE#1’s patrol vehicle pulled up next to the bus and blocked the bus from doing so. The driver honked her horn and opened her window to ask NE#1 if he would let her pull ahead of him. The Complainant stated that NE#1 “shouted something back and then proceeded to move forward in traffic.” The Complainant described that “as the police car moved forward the bus driver moved forward slightly in its ‘bus parking’ lane.”



A number of the Complainants stated that NE#1 was immediately aggressive upon entering the bus towards both the driver and passengers. The Complainants described NE#1's demeanor as angry, rude and hostile. Two of the Complainants indicated their belief that this event was "road rage" by officer. The Complainants asserted that NE#1 overreacted and that, even if the driver had committed a minor traffic violation, it was unreasonable for NE#1 to detain the bus and its passengers, which included a woman in a wheelchair and parents with children in strollers, for over 40 minutes. Lastly, the Complainants asserted that NE#1 stopped the bus in an unsafe location – obstructing access on to the I-5. The aforementioned Complainant indicated that he informed NE#1 that, due to the location of the bus, a pedestrian was almost struck by a vehicle. The Complainant stated that NE#1 responded that "he is not dealing with me at this time."

The total duration of the stop was approximately 42 minutes. (See NE#1 Front ICV, Video #1, at 17:12:32 – NE#1 Front ICV, Video #2, at 17:54:15.)

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 5. Employees May Use Discretion

Manual Policy 5.001(5) provides that "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (5.001(5).)

Based on his account, NE#1 had a legal right to stop the bus. That does not mean, however, that NE#1 was required to do so. NE#1 chose to make the stop in his discretion. Notably, at the time that he carried out that decision, NE#1 appeared to have a number of other viable options. For example, instead of stopping the bus, NE#1 could have written down the license plate of the bus and the bus number and later reported the driver's conduct and demeanor to a Metro supervisor. Alternatively, NE#1 could have stopped the bus but, after obtaining the driver's identification and investigating her demeanor and fitness to operate the bus, detained the bus for a shorter period of time.

Here, however, NE#1 decided to stop the bus during rush hour. He quickly learned that the bus was running behind schedule (the driver said by 33 minutes). He observed that the bus was full of passengers (some standing in the aisles), many of whom had presumably worked full days and were now late going to their next destinations. Once NE#1 entered the bus he then engaged in conversation with the driver and requested her license, proof of insurance and registration. At that point, the driver attempted to explain what had occurred. While her voice was amplified, I find that she was not disrespectful or dismissive of NE#1. Indeed, she repeatedly tried to explain herself and called him "sir." She appeared instead to be a harried driver who was already well behind schedule and was now in the stressful situation of being stopped by a police officer. It is abundantly clear that, even at that early stage of the stop, the driver was not impaired, was not unstable or in crisis, and was not a safety hazard. However, NE#1 made the decision to continue the stop for almost 40 additional minutes after that initial interaction. As a result, many of the passengers disembarked the bus. Some passengers did not, however, including an individual in a wheelchair. The bus remained in its location until two supervisors came to the scene, reviewed video in NE#1's car, and engaged in conversation with NE#1. Had NE#1 had legitimate concerns about the state the driver was in, it follows that he would have removed her from the vehicle and taken her out of the position of being able to drive away or otherwise



harm her passengers. He did not do so. Instead he then returned to the vehicle, would not engage with the driver to accept her attempted apology, and allowed her to drive away.

NE#1's decision to detain the bus for over forty minutes was an unreasonable use of his discretion. The crime at issue – failure to show identification and/or making a lane change without a signal – were not severe. Nor was the public safety issue being addressed particularly significant. Ultimately it appears that NE#1's conduct was more motivated by his annoyance at the driver's conduct and demeanor, rather than by a concern of further criminality and/or a danger to the public.

Police officers have significant authority and with that authority comes the responsibility to use it judiciously and with discretion. NE#1 failed to do so on that day.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

16.090 - In-Car Video System 8. Once Recording Has Begun, Employees Shall Not Stop Recording Until the Event Has Concluded

Manual Policy 16.090-POL-1(8), which concerns ICV usage, states that "once recording has begun, employees shall not stop recording until the event has ended." The policy further states that, as general matter, an event has concluded when: (1) "the employee has conducted his or her part of the active investigation"; (2) "there is little possibility that the employee will have further contact with any person involved in the event"; and (3) "the employee is leaving the area of the event." (16.090-POL-1(8).)

Here, NE#1 made the decision to stop his ICV once it had already been recording. (NE#1 OPA Interview, at p. 5.) He did so in order to review the video and to show the video to the driver's supervisor. (*See id.*) The decision to shut off the ICV, show the video, and then restart the ICV did not result in an appreciable loss of ICV video or audio (due to the built-in buffer). NE#1 stated that he was stopping the recording and the reason why prior to shutting off his ICV. (NE#1 Front ICV, Video #1, at 17:20:37 – 17:20:43.) NE#1 also documented this in his General Offense Report. (NE#1 General Offense Report, at p. 7; NE#1 OPA Interview, at p. 5.)

The policy is clear that officers are not permitted to shut off their ICVs once recording has begun for any reason or for any purpose. Accordingly, NE#1's conduct, regardless of the rationale behind it, was in violation of policy.

Moreover, I find that the event had not concluded at the time of the stopping of the video. First, NE#1's contention that his "active investigation" had concluded at that time is undercut by his OPA interview. NE#1 stated that he stopped his ICV to review the video with a supervisor and try to understand a comment made by the driver that he may have "missed...[during] the traffic stop." (NE#1 OPA Interview, at p. 5.) Moreover, NE#1 stated that, during his watching of the video, he was informed by the supervisor that the driver was new and NE#1 realized that she may have been under significant stress. (*Id.*) This, in turn, informed his ultimate decision to conclude his investigation by documenting the incident in a report as opposed to citing the driver. (*See id.*)



Second, NE#1 did, in fact, interact with the driver after he reactivated his video, as well as interacted with passengers on the bus. (See General Offense Report, at pp. 7-8; see generally NE#1 Front ICV, Video #2.) As such, it cannot be said that there was “little possibility” that he would have further contact with those involved in the incident.

Third, and last, NE#1 was not leaving the area at the time he de-activated his ICV. (See *id.*)

At his OPA interview, NE#1 asserted that the policy was flawed in this regard. (NE#1 OPA Interview, at p. 5.) I do not necessarily disagree. I note that officers are permitted by policy to stop recording on a Body Worn Camera (BWC) as long as the employees “state on the recording their intention to stop recording and explain the basis for that decision.” (16.090-POL-1(5)(h).) Officers who stop their BWCs must also document the reasons for doing so in the General Offense Report and/or CAD update. (*Id.*) It is unclear to me why a similar exception is not built into the ICV policy. There are certainly numerous foreseeable scenarios in which it would be reasonable, if not advantageous, to allow this.

While I find that NE#1 technically violated policy by turning off and then re-activating his ICV, I request that the Department evaluate whether an exception should be built into the ICV policy to permit such conduct. To the extent that the Department believes that an exception is not warranted, I respectfully request that the reasons for this conclusion be provided in writing to OPA.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

Manual Policy 5.001(9) requires SPD employees to be professional at all times and prohibits the unnecessary escalation of events, even where those events do not result in a use of force. The policy further proscribes officers from “engag[ing] in behavior that undermines trust in the Department, the officer, or other officers.” (5.001(9).)

When NE#1 entered the bus, the driver was on the telephone with a supervisor. From the audio of the ICV, it appears as if she was simultaneously trying to explain her actions. NE#1 did not respond to her attempted explanations and instead asked for the driver’s license, registration and proof of insurance. The driver, via telephone, informed her supervisor of this request. At that point, NE#1 again asked for these documents and stated “I’m not going to ask for it again.” The driver then asked to pull “to the next zone,” and NE#1, who at that point raised his voice, said “no, you’re not free to leave.” A passenger (presumably the aforementioned Complainant) then spoke with NE#1 and also suggested that the driver be allowed to move the bus. NE#1 dismissed this request. The driver indicated that she was going to wait for a supervisor prior to providing her identification, after which NE#1 referenced the law surrounding failure to provide identification, intimating that she could be arrested for failing to do so. A passenger (again presumably the aforementioned Complainant) tried to talk to NE#1 but did not receive an appreciable response. The driver then explained that she was 33 minutes late, and NE#1 engaged with her. At this point, both NE#1 and the driver raised their voices. After a back and forth and after receiving her driver’s license, NE#1 stated that the driver could move the bus and exited the vehicle.



NE#1 and the driver did not interact again until approximately 40 minutes later. Prior to that time, during his conversation with one of the Metro supervisors, NE#1 was clearly annoyed at the driver and her conduct. After he finished his conversations with the supervisors, NE#1 returned to the bus. At that point, the driver attempted to apologize. NE#1, in response, indicated that he did not want to speak with her. Instead, NE#1 told the supervisors to talk with the driver in the back of the bus. NE#1 then spoke to a supervisor to get the driver's perspective. Unsatisfied with that account, NE#1 asked if any passengers saw anything. The first passenger supported the driver's account. NE#1 interacted with a number of other passengers, none of whom provided information that buttressed his recounting of the incident. NE#1 also learned that a passenger had initiated a complaint concerning his "unlawful detention" on the bus. After that point, NE#1 agreed to allow the driver to leave and did not cite her at that time.

To NE#1's credit, he engaged with passengers on the bus and attempted to explain his actions. He also spoke with the supervisors at length after the incident. Notably, at this later stage, NE#1 was significantly calmer.

As indicated above, from my review of the evidence, it appears that NE#1 was annoyed at the driver and at her demeanor and because of that annoyance he turned what should have been a short stop into a drawn-out event. I find that both NE#1 and the driver were at times aggressive and could have handled the interaction better. While it was a stressful situation, it was a situation premised on overreactions by all involved and that continued to escalate unnecessarily. I do not find that NE#1's conduct was as egregious as how it was described by the Complainant passengers, but there was no video of the interior of the bus depicting that interaction so I am limited to what was captured by the audio of the ICV.

Ultimately, NE#1 could have been more professional. However, based on his attempt to engage with and explain himself to the passengers after the incident and his later interaction with the supervisors where he empathized with the driver, I do not feel that sustaining this allegation is warranted.

That being said, I believe that NE#1's handling of this incident warrants further training and accordingly recommend that this allegation be Not Sustained – Training Referral.

Recommended Training: I recommend that NE#1 receive additional training on the Department's expectations of professionalism and how he should interact with those that he comes into contact with in his professional capacity.

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



City of Seattle

Office of Police Accountability

March 9, 2018

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

RE: MANAGEMENT ACTION RECOMMENDATION (2017OPA-0270)

Dear Chief Best:

OPA investigated an allegation that an officer improperly shut off his In-Car Video (ICV) prior to concluding his law enforcement activity. When interviewed by OPA, the officer explained that he turned off his ICV in order to show supervisors of a King County Metro employee the video of an interaction he had just had. Regardless of his reasons, however, his actions in shutting off the video were inconsistent with policy. The officer raised the concern that the ICV policy was flawed in that it failed to allow for such conduct.

After considering the facts and circumstances of this case and evaluating the officer's reasoning for why he believed it to be necessary to turn off his ICV, I believe he raises a compelling argument. Under the current iteration of the ICV policy, officers are not permitted to turn off their ICV systems until the conclusion of their law enforcement activities related to an incident. No exception exists to this policy directive. As such, an officer would not be permitted to turn off ICV to, for example, review a statement or to determine whether conduct rose to the level of a criminal violation before making an arrest. Notably, such an exception exists for Body Worn Cameras (BWC). Officers are permitted to stop recording on a BWC as long as the employees "state on the recording their intention to stop recording and explain the basis for that decision." (SPD Policy 16.090-POL-1(5)(h).) Officers who stop their BWCs must also document the reasons for doing so in the General Offense Report and/or CAD update. (*Id.*)

It is unclear to me why a similar exception is not built into the ICV policy. There are certainly numerous foreseeable scenarios in which it would be reasonable, if not advantageous, to allow this. Practically, an officer can shut off the ICV system, upload a previously recorded video, and then restart the system virtually immediately thereafter. Because of the built-in recording buffer, no video and only seconds of audio would be lost. Officers could be instructed, as with BWC, to provide the reasons for why the video is being turned off while the ICV system is still recording, as well as to later document their reasoning and actions in a report.

I recognize that this proposal, like any exception to policy, could be subject to abuse. However, I believe that with the right language and with clear training this could potentially be avoided. I further recognize that the Department may have reasons why this exception was not already memorialized in policy. As such, I only ask that the Department consider this suggestion and, to

the extent the Department chooses *not* to move forward, provide OPA with the reasons underlying its decision.

Thank you very much for your prompt attention to this matter. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

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

Sincerely,



Andrew Myerberg
Director, Office of Police Accountability

cc: 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
Tito Rodriguez, OPA Auditor
Josh Johnson, Assistant City Attorney, Seattle City Attorney's Office
Tonia Winchester, Deputy Director, Office of Police Accountability