



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 18, 2018

CASE NUMBER: 2017OPA-1259

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions	Not Sustained (Lawful and Proper)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 4. Employees Address and Note System Malfunctions	Sustained
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)

Imposed Discipline

Oral Reprimand

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, a Department supervisor, alleged that the Named Employees may not have logged into their In-Car Video systems and may not have synched their wireless microphones in potential violation of policy.

STATEMENT OF FACTS:

During a Force Investigation Team (FIT) review of a use of force, the Complainant – who is the FIT Lieutenant, discovered that the Named Employees may have failed to log into the COBAN system and may not have synched their wireless microphones. As required by policy, the FIT Lieutenant forwarded this matter to OPA and OPA commenced this investigation.

On the date in question, the Named Employees were working together in the same patrol vehicle. The Named Employees responded to a call, but described that, at the time they arrived at the scene, a number of patrol officers had already arrived. As such, the Named Employees reported conducting an area check. During that check, the Named Employees located and spoke with a witness, who told them that the suspects boarded a Metro bus.

OPA searched the COBAN system and located no ICV recordings generated by Named Employee #2 (NE#2) on the date in question; however, OPA did find one ICV recording that was generated by Named Employee #1 (NE#1). The recording was approximately 13 minutes long. At around 11 minutes into the recording, a 22 second conversation



between the Named Employees and a witness was recorded. The Named Employees did not inform the witness that the interview was being audio and video recorded.

OPA was also able to determine that NE#1 had both logged into the COBAN system on the date in question and that she synched her wireless microphone. OPA's investigation revealed that NE#2 did not do either.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.*)

As discussed above, NE#1 complied with this policy when she logged into the COBAN system and synched her wireless microphone. Moreover, as there were no malfunctions with NE#1's ICV system, she was not required to complete the troubleshooting, documentation, and reporting contemplated by this policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #2

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

As discussed above, NE#1 did generate an ICV recording relating to her law enforcement activity in this incident and her and NE#2's interview of the witness.

However, both she and NE#2 failed to inform the witness that their conversation was being recorded as required by SPD Policy 16.090-POL-5(a). While this constituted only a technical violation of policy, it is important for officers to let people know when they are being recorded, particularly given that virtually every ICV recording is subject to public release with limited protections on disclosure. That being said, given that this is a technical violation and appeared to be an oversight rather than intentional misconduct, I recommend that NE#1 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should be re-training concerning the elements of SPD Policy 16.090-POL-5 and specifically reminded of the requirement to notify people of the fact that they are being recorded. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained – Training Referral**



Named Employee #2 - Allegation #1

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

As discussed above, while NE#1 logged into the COBAN system and synched her wireless microphone, NE#2 did not. Accordingly, NE#2 did not personally record ICV during this incident. NE#2 was clear that this was not the result of a malfunction or ICV system error, so he accordingly did not troubleshoot this matter with SPD ITS, note the issue in a CAD update, or report any malfunction to a supervisor.

During his OPA interview, NE#2 stated that he was used to working with a partner and when his partner was the driver of their patrol vehicle, his practice was to rely on his partner to log in him to COBAN. NE#2 stated that he and NE#1 were not accustomed to working together and, due to that fact, she did not know to log him in. However, the policy explicitly instructs that each officer in a two officer patrol vehicle has the independent obligation to log into COBAN and synch the officer's wireless microphone.

I give NE#2 credit for accepting responsibility for failing to do either; however, I am concerned that he did not self-report his actions to a supervisor or document the lack of a recording in an appropriate report consistent with SPD Policy 16.090-POL-7. This was the case even though he knew that he had failed to activate his ICV virtually instantly after the incident. Had he self-reported and documented his failure to record, I would have recommended that he receive a Training Referral. As he did not do so here, and given that he violated this policy in several respects, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #2

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

As discussed above, it is undisputed that NE#2 failed to record ICV. This was the case even though he was required to do so pursuant to SPD policy. Like NE#1, he further failed to provide notification to the witness that they interviewed that their conversation was being recorded. This was also a violation of policy.

However, I do not believe it warranted to sustain this finding against him for several reasons. First, I already recommended that Allegation #1 be sustained as against him. Second, I do not believe that he intended to violate policy in this instance. Third, his failure to activate his ICV was mitigated by NE#1's appropriate actions, which caused the entirety of their collective law enforcement activity to be recorded. Fourth and last, NE#2 accepted responsibility at his OPA interview for his failure to record ICV. For these reasons, I instead recommend that NE#2 receive a Training Referral.

- **Training Referral:** NE#2 should be re-training concerning the elements of SPD Policy 16.090-POL-5. Specifically, NE#2 should be reminded of his individual responsibility to record ICV when he engages in the law enforcement activity delineated in the policy, as well as the requirement that, when necessary, he notify people he interacts with of the fact that they are being recorded. This re-training and associated counseling should be memorialized in a PAS entry.

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