



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 3, 2018

CASE NUMBER: 2018OPA-0156

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 d. Recording in Sensitive Areas	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

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 he was sexually assaulted by the Named Employee. The Named Employee also recorded Body Worn Video inside of a restroom while the Complainant was using the toilet, which was believed to be potentially in violation of policy.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity d. Recording in Sensitive Areas

During its investigation into the Complainant’s allegations concerning a purported sexual assault, OPA determined that Named Employee #1 (NE#1) maintained recording on Body Worn Video (BWV) while the Complainant was using the restroom at Harborview Medical Center (HMC). This was classified for investigation based on the belief that such action was potentially in violation of SPD policy.

The Complainant, who had been arrested, was transported to HMC because he claimed to be sick due to the fact that he had swallowed narcotics. While at HMC, the Complainant asked to use the restroom. He was escorted there by HMC security and NE#1. While inside the restroom, NE#1 activated his BWV. When the audio began recording (there is a one minute buffer with no audio once BWV is turned on), NE#1 stated that he had activated his BWV because the Complainant had been making false allegations concerning the behavior of officers. He further announced that he was facing away from the Complainant while he used the restroom and he did so. As such, even



though the Complainant could be heard urinating (and complaining about being videotaped) he was not actually visually recorded using the restroom. As discussed below, the Complainant later alleged to a Lieutenant that NE#1 had sexually assaulted him in the restroom.

SPD Policy 16.090-POL-5(d) concerns the recording of Department video in “sensitive areas.” In this regard, the policy states: “Employees will not record in restrooms, jails and the interiors of medical, mental health, counseling, or therapeutic facilities unless for a direct law enforcement purpose, such as a crime in progress.” (SPD Policy 16.090-POL-5(d).)

I find that activating BWV to document allegations of misconduct made by an arrestee, and particularly demonstrably false claims against an officer, is a “direct law enforcement purpose” as contemplated by the policy. Moreover, NE#1 appropriately turned away from the Complainant while he was urinating and clearly announced and explained why he had begun recording when the BWV turned on. As such, I believe that NE#1 acted consistent with policy in this instance.

Lastly, even if I disagreed with NE#1’s decision-making in this regard, SPD Policy 16.090-POL-5(c) provides that officers who reasonably exercise discretion to record or not record in situations like that faced by NE#1 “will not be subject to discipline.” Based on my review of the record, I find that NE#1 utilized reasonable discretion in this instance.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegations #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

As stated above, the Complainant alleged to a Lieutenant that NE#1 sexually assaulted him in the HMC restroom. Due to the fact that NE#1 recorded his BWV while inside the restroom, the evidence is clear that such a sexual assault never occurred. The Complainant’s allegation is both meritless and frivolous. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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