



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 16, 2019

CASE NUMBER: 2018OPA-0781

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Inconclusive)
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Sustained
# 3	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Sustained
# 4	16.090 - In-Car and Body-Worn Video 6. Employees Will Enter Data for Recorded Events	Not Sustained (Training Referral)
# 5	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Sustained
# 6	16.090 - In-Car and Body-Worn Video 3. All Employees Operating ICV and/or BWV Must be in Uniform	Not Sustained (Training Referral)
# 7	9.060 - Firearms 2. Officers Shall Carry Firearms Authorized by the Department While Acting in the Capacity of a Seattle Police Officer	Allegation Removed
# 8	9.020 - Uniform 4. All Outward Facing Uniform Items Include Proper Identifying Markings	Not Sustained (Training Referral)

**Imposed Discipline**

**Suspension without Pay – 1 day**

***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 the Named Employee violated multiple policies during an interaction with the Subject. Included among the alleged violations was that he engaged in biased policing, failed to notify a supervisor of a bias allegation, did not record Department video or document the reason for the failure to record, and violated Department policies concerning his uniform and equipment.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

On August 8, 2018, Named Employee #1 (NE#1) was in the Sergeants' office at the Southwest Precinct in order to submit an overtime slip. While in the office, NE#1 mentioned in the presence of a Sergeant and an Acting Sergeant that a community member – referred to here as the Subject – had accused him of biased policing. Specifically, NE#1 indicated that the Subject said: "You're only doing this because I'm Arab." NE#1 stated that he offered to call a supervisor to the scene but that the Subject declined. The supervisors discussed this matter together. They confirmed that NE#1 did not notify either of them of the allegation of biased policing at the time the allegation was made and that he did not call either to the scene to investigate the allegation.

The Sergeant then reviewed NE#1's Body Worn Video (BWV) to determine whether there was any additional information available concerning the nature of the incident and the identity of the Subject. The Sergeant determined that NE#1 did not record BWV of his initial contact with the Subject. This was the case even though he did record a later interaction with the Subject. This second video clearly indicated that a bias allegation had been made against NE#1. It also confirmed that NE#1 failed to call a supervisor to the scene to investigate the claim of bias as required by policy.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

OPA interviewed NE#1 and two other officers that were at the scene. The two witness officers both stated that they did not have first-hand knowledge of the bias complaint. NE#1 told OPA that there was a dispute among motorists waiting for the ferry and that he tried to resolve that dispute. He indicated that the male involved in the dispute – who was the Subject – was very upset. NE#1 denied that he engaged in biased policing. He stated that, instead, he believed that he handled this situation appropriately and consistent with policy.

As NE#1 failed to call a supervisor to the scene to investigate the claim of bias, the Subject was never identified. As such, OPA could not obtain a statement from him as to what occurred on that day and concerning how NE#1's actions were allegedly motivated by bias.

Ultimately, given the lack of video of the initial interaction between NE#1 and the Subject and because of the lack of a statement from the Subject, I cannot definitively prove the existence or absence of bias. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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



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**Named Employee #1 - Allegation #2**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

SPD Policy 5.140-POL-5 requires employees to call a supervisor to the scene in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.) This notification must occur as soon as possible after the allegation of bias occurs so as to allow a supervisor to get to the scene in sufficient time to fully investigate the claim and to interview both the subject and potential witnesses. (*See id.*)

It is undisputed that NE#1 failed to call a supervisor to the scene to investigate the Subject's allegation of bias. As such, the Subject left the scene, was never interviewed by a supervisor, and this matter was not fully investigated. The failure of NE#1 to do so violated policy.

At his OPA interview, NE#1 stated that, at the time of the incident, he misunderstood the policy to only require an offer to call a supervisor, not the mandate to actually make the call.

In OPA's opinion, NE#1's stated confusion is unreasonable. The policy is abundantly clear that a supervisor must be notified in order to enable the supervisor to come to the scene. NE#1 is expected to know this policy and ignorance of its terms is not an excuse for compliance. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

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

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(5)(b) sets forth the categories of activity that must be recorded, which include: on-view infractions and criminal activity; and questioning victims, suspects, or witnesses.

NE#1 was required to record his initial interaction with the Subject. However, he did not do so. NE#1 told OPA that he thought that he activated his BWV. He stated that he believed that this was the case because he remembered telling the Subject multiple times that he was being audio and video recorded.

The failure to record BWV constitutes a violation of policy. That being said, where officers self-report the absence of video, update the CAD Call Log, and document the reason for the lack of video in an appropriate report, OPA has recommended Training Referrals rather than Sustained findings. However, as discussed below, NE#1 took none of these steps. For these reasons, OPA recommends that NE#1 receive a Sustained finding.

Recommended Finding: **Sustained**



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**Named Employee #1 - Allegations #4**

***16.090 - In-Car and Body-Worn Video 6. Employees Will Enter Data for Recorded Events***

During his review of NE#1's BWV, the Sergeant determined that NE#1 failed to enter the required data for his videos into the system. The Sergeant was required to do so himself on NE#1's behalf.

At his OPA interview, NE#1 acknowledged that he failed to enter in the required information in this case. He stated, however, that since this incident he does so "every single time."

OPA reviewed NE#1's video entries on evidence.com and determined that, prior to this incident, NE#1 rarely, if ever, entered the appropriate information for his recordings. However, OPA also determined that, consistent with NE#1's representations at his OPA interview, he now does so in virtually every case that OPA audited.

NE#1 indisputably violated this policy during this case. Moreover, it is evident that NE#1 also did so on numerous prior occasions. That being said, given that NE#1 has demonstrated consistent compliance with the policy since this incident, OPA recommends that he receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should be reminded of his obligation to enter data for recorded events. NE#1 should be counseled for his failure to do so here and in numerous prior cases. NE#1 should be informed that any future non-compliance with this policy will result in a Sustained finding. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegation #5**

***16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video***

SPD Policy 16.090-POL-1(7) instructs employees to document the existence of video or the reason for the lack of video. The policy requires an officer who fails to record video to update the CAD Call Log to reflect that no video was recorded, as well as to document the absence of video in an appropriate report. (SPD Policy 16.090-POL-1(7).)

NE#1 did not comply with the requirements of this policy. He told OPA that he did not do so because he was unsure whether there was, in fact, a lack of video. NE#1 later completed a report concerning this incident. At that time, he would (or should) have been aware that he failed to record video. However, even at this point, he did not take the steps necessary to comply with this policy.

For the above reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



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**Named Employee #1 - Allegation #6**

***16.090 - In-Car and Body-Worn Video 3. All Employees Operating ICV and/or BWV Must be in Uniform***

SPD Policy 16.090-POL-1(3) requires that all SPD employees who operate Department video must be in uniform. As discussed below, at the time of his second interaction with the Subject, NE#1 was not in compliance with the Department's uniform policy. As such, he was also technically in violation of this policy.

The above being said, and consistent with OPA's recommended finding for Allegation #9, this is minor misconduct that is better dealt with by NE#1's chain of command. As such, I recommend that he receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should be reminded of the requirement set forth in this policy that he wear an appropriate uniform when he records Department video. NE#1 should be counseled concerning his failure to act consistent with this policy in this case and should be instructed to do more closely comply with its terms moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegations #7**

***9.060 - Firearms 2. Officers Shall Carry Firearms Authorized by the Department While Acting in the Capacity of a Seattle Police Officer***

Based on its initial review of this case, OPA believed that NE#1 may have been unarmed while acting in the capacity of a SPD officer. If so, this would have violated SPD Policy 9.060-POL-2.

However, OPA's investigation revealed that this was not, in fact, the case. As such, this allegation should not have been classified for investigation against NE#1 and I recommend that it be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #8**

***9.020 - Uniform 4. All Outward Facing Uniform Items Include Proper Identifying Markings***

SPD Policy 9.020-POL-4 requires that: "Any shirt, jacket, etc., worn as the outermost layer of the officer's uniform will contain a cloth nametag on the right-side chest of the uniform item."

A review of NE#1's BWV indicated that he was out of compliance with this policy during his second interaction with the Subject. At that time, he had a blue shirt on as the outermost layer of his uniform, but this shirt did not have a nametag on it.



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While NE#1's uniform was improper and while this constituted a violation of policy, this is a matter that should be dealt with by NE#1's chain of command rather than OPA. As such, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should be reminded of the requirement set forth in this policy that the outermost layer of his uniform must have a nametag on its right side. NE#1 should be counseled concerning his failure to act consistent with this policy in this case and should be instructed to do more closely comply with its terms moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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