



Case Summary for Appeal Hearing
2018-C-0061/2018-X-0005
December 5, 2018

INVESTIGATION OVERVIEW

Involved persons

Appellant
Sergeant A

Allegations

No.	Allegation summary	Category	Finding
1	Sergeant A was untruthful when he told Appellant that he could be arrested for filming the police.	Conduct	Not Sustained w/ Debrief

Incident/Complaint Summary

This case arose out of IPR Case 2016-C-0407 which was heard by the Citizen Review Committee (CRC) as an appeal. Following that appeal, Chief Outlaw agreed with the recommendation made by the CRC and asked that a new case be opened to address whether the statement made by the officer was in violation of the Portland Police Bureau truthfulness Directives. This case was reviewed by the Police Review Board (PRB) after multiple factfinders reached differing conclusions in making their recommendations. The PRB, made up of those factfinders as well as a community member and a peer member, reached a unanimous conclusion. The PRB found this allegation to be Not Sustained with a Debrief, based on an understanding that the officer did not knowingly violate the Directive, including the exceptions contained in the Directive. The PRB recommended that a Debrief include counsel to the officer that lying is not a good way to de-escalate a situation or gain trust with the community. Further, the PRB recommended that the Directive be reviewed and revised to be more clear regarding the allowed exceptions.

This is the summary of the underlying incident: Appellant received a citation on November 30, 2016 while at a protest against Phillips 66. While Witness Officer B was issuing the citation, Appellant began filming an interaction with Sergeant A. Sergeant A advised Appellant that he needed to inform officers prior to filming them. Appellant told Sergeant A that he did not notify officers that he was filming them and that it was legal to film them. Appellant alleged that later in the protest he interacted with Sergeant A again and attempted to film the interaction. Appellant alleged that Sergeant A threatened to arrest him for filming him during this second interaction. Appellant indicated that he recorded this interaction but did not have the footage.



Summary of Appellant and Officer Interviews

Appellant

Appellant was not re-interviewed for this case. This is the summary of his interviews from the underlying case:

On November 30, 2016, Appellant stated that he had a second encounter with Sergeant A. During this second interaction, Sergeant A told him he would be arrested if he continued to film him or his officers. Appellant stated that he told Sergeant A that Portland Police is “well aware” filming officers is not a crime. Appellant stated that he told the Sergeant A that “threatening to take me to jail is not okay”.

An IPR investigator conducted a second interview of Appellant to clarify whether Appellant had video footage of the Sergeant A threatening him with arrest. In response, Appellant stated that Sergeant A stated:

“if I continued to film him I would be arrested, and so I don’t know what happened to the film for that because I was filming that as well and taking photographs, but I don’t have film of that”.

Appellant said that this interaction occurred while he was filming the Railroad Police.

Sergeant A

Sergeant A was interviewed again for this case. He stated that he did make statements that were untrue regarding whether it is illegal to film. He further stated that he made those statements in an effort to get Appellant to back away from the officer who was issuing a citation to Appellant, as he perceived a risk to that officer.

Investigation Timeline:

Complaint Received from IA:	2/26/2018
Investigation Completed:	5/10/2018
Findings Completed:	5/14/2018
Appeal Request Received:	9/21/2018

Findings and Definition of Findings

Finding: A determination of whether an allegation against a member is unfounded, exonerated, not sustained or sustained. These findings have the following meanings:

Unfounded: The allegation was false or devoid of fact or there was not a credible basis for a possible violation of policy or procedure.

Exonerated: The act occurred, but was lawful and within policy.

Not Sustained: The evidence was insufficient to prove a violation of policy or procedure.

Sustained: The evidence was sufficient to prove a violation of policy or procedure.

Any of these findings could be accompanied by a debriefing, which would involve the superiors of an involved officer talking about the incident and providing instruction as to how the situation might have been handled better.

Options Available to the CRC

At the appeal, the CRC has the following options available to it:

1. The CRC can affirm the finding, meaning that it believes that a reasonable person can make the same decision based on the available information, whether or not the committee agrees with the decision; or
2. It can challenge the finding; meaning that the committee believes a reasonable person would have reached a different finding based on the available information. The CRC can recommend a debriefing as part of any challenged finding; or
3. It can refer the case to the Independent Police Review or Internal Affairs for further investigation.

Directive in Effect on November 30, 2016

310.50, Truthfulness

Enacted

Policy:

1. The integrity of police service is based on honesty and truthfulness. No member shall knowingly or willfully be dishonest or untruthful in giving testimony, in rendering a report, in any official oral or written communication, or in giving any statement about actions taken that relate to the member's own or another member's employment or position. Being dishonest or untruthful includes knowingly or willfully making false statements, knowingly or willfully falsifying work-related records or official documents, omitting material facts or material information, or answering questions or providing information in a manner that is evasive, deceptive, or misleading.
2. These requirements apply to any report or communication concerning Bureau business, including, but not limited to, oral communications, written reports, transmissions to the Bureau of Emergency Communications, and communications to members via radio, telephone, pager, e-mail, text, or mobile data computer (MDC).
3. Members will not make any false statements to justify a criminal or traffic charge, or seek to unlawfully influence the outcome of any investigation.
4. Members are obligated under this directive to respond fully and truthfully to questions about any action taken that relates to the member's employment or position, or to the employment or position of another member, regardless of whether such information is requested during a formal investigation or during the daily course of business.
5. A limited exception to the standards in this directive is when deception is necessary due to the nature of a member's assignment, such as an undercover assignment, when necessary to acquire information for a criminal investigation or for public safety, or when necessary to protect the physical safety of the member or others. The use of deception in these circumstances must be for a specific and lawful purpose and must be temporary in nature.