

Sean T. Brandenburg
Chief of Police



Key West **POLICE DEPARTMENT**

TO: Citizen's Review Board

FROM: Sergeant Jeffrey Dean

DATE: 11/04/2020

RE: Paolucci Complaint - CRB # 20-005

On October 14, 2020, I (Sergeant Dean) received a complaint from Jamie Paolucci in reference to an allegation that body-worn camera video she had requested through the freedom of information act had been edited before being sent to her. The incident she was requesting video for involved her nephew, Caleb Surrace.

The following is the basic premise of that incident:

On October 3, 2020, Officers Morris and Malak made contact with Caleb on his boat in reference to an allegation of a violation of an injunction. The allegation was that Caleb had violated a domestic violence injunction by calling the subject of the injunction by phone. Caleb was placed into handcuffs and escorted to Officer Malak's patrol vehicle. While escorting Caleb to the patrol vehicle, Caleb advised officers that the call was made unintentionally when he was attempting to delete an old message. Caleb said he hung up immediately. Caleb was placed in Officer Malak's patrol vehicle. Approximately two minutes later, Officer Malak removed Caleb from the rear of the patrol vehicle and took him out of handcuffs. Officers Malak and Morris accompany Caleb back to his boat where they verify the length of the phone call to be consistent with Caleb's explanation. Caleb was released from police custody without incident. Due to the fact that the incident was determined not to be a crime, and the city's recent IT issues, no report or field interview card was completed.

I spoke to our public information officer, Alyson Crean, who assured me the videos were not edited and Paolucci had been given all BWC videos that existed. Crean provided me with the videos which I reviewed. After watching the videos, based on my knowledge of how the BWC system works, I determined that the videos had not been edited, and that they had been simply turned off by the officers involved (Officers Morris and Malak).

I emailed Paolucci back and explained to her how our BWC system works. I also advised Paolucci that Officer Morris turned off his BWC when he placed her nephew, Caleb, in the back of a patrol vehicle. At that time, he was not in direct contact with Caleb and therefore was not violating policy by ending his recording. Officer Malak's BWC video turns on as he gets Caleb out of the patrol vehicle and remains on until he removes Caleb from handcuffs. At that time, I believed that to be the end of Officers Morris and Malak's criminal



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investigation, therefore Officer Malak turning off his BWC was not against KWPD policy. I advised Paolucci of my position and directed her back to Crean for any requests for audio/video recordings.

Paolucci emailed me back later that same day and pointed out that Officer Malak's BWC and Officer Morris's BWC had not been recording at the same time even though they were both present for each other's encounters. Paolucci also alleged that the officers continued their criminal investigations after shutting off their BWCs and questioned Caleb while he was in the back of the patrol car. Paolucci requested I provide her with any footage of Caleb being questioned in the patrol car. Paolucci then alleged that Caleb was further questioned by officers after the BWC video was shut off. Paolucci advised that she had video proof this occurred (not provided by Paolucci) and again asks for "extended" BWC footage (does not exist).

At that time, I realized Paolucci was technically correct, and that even though both officers are present and accounted for during the entirety of both BWC videos, they both should have been recording. On October 15, 2020, I sent an email to all KWPD road patrol sergeants requesting that they remind officers under their command that all officers on a scene must be utilizing their BWCs even if the entirety of an investigation is captured on the primary officer's BWC.

I re-watched Officer Malak's and Morris' BWC video to see if there was any indication that they questioned Caleb in the back of the patrol vehicle. Although I could find no indication that any questioning of Caleb took place in the rear of the patrol vehicle, re-watching the video I did hear Officer Malak saying he wanted to confirm something on Caleb's phone before leaving the scene indicating that his investigation did continue after the BWC was turned off which would be a violation of policy. I forwarded the videos and complaint to Officers Malak and Morris' immediate supervisors to take appropriate action on the violation of the BWC policy.

In the time since this incident has occurred, Officer Morris has left the Key West Police Department and is no longer subject to corrective action or discipline. Officer Malak has received a verbal counselling from his supervisors, Sergeants Kouri and Vazquez, with the expectation that if he is found in violation of the mandatory recording section of the BWC policy again, he could face progressive discipline. Officer Malak did not have any prior documented history of violating that policy.

That same day, I emailed Paolucci back and once again advised her to make any requests for video to Crean. I also told her that I agreed with her and that the officers were technically in violation of the BWC policy. I told Paolucci that the violations would be addressed. I also advised Paolucci that if she had evidence of any wrong-doing by either officer, I would be happy to review it.

A short time later, Paolucci emailed me back. Paolucci alleged in this email that Officer Malak had made "threatening statements" to Caleb after the BWC video was turned off. Paolucci speculated that one of the officers had a personal vendetta against Caleb, but did not offer any evidence or reasoning behind this allegation. Paolucci then demanded a written statement of explanation from Officer Morris and Malak.



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I emailed Paolucci back a final time, explaining that the policy violations would be addressed by the officer's supervisors.

On October 16, 2020, Paolucci emailed me again reiterating that she would be making a request for written documentation of why the officers turned off their BWCs.

No such documentation exists. The policy she seems to be referring to in her emails, is Body Worn Camera – Approved Uses 06.28.01.02(D): *"If an officer fails to activate the BWC, fails to record the entire contact, or interrupts the recording, the officer shall document why a recording was not made, was interrupted, or terminated."*

This policy does not specify that said documentation must be in writing, but just requires some type of documentation as to why a recording was terminated. This documentation can be a written documentation, but is also regularly done verbally on the BWC video itself. An example of this would be the officer will say on recording "Turning off by BWC for discussion with supervisor/end of investigation/discussion with other officer etc...". It has already been established that Officers Malak and Morris were in violation of that policy. The violation of that policy has already been addressed by the Key West Police Department. At this time, there is no Key West Police Department policy or Florida statute requiring that an officer must provide a **written** explanation of why a body worn camera was turned off.

There is no video evidence of Caleb in the rear of the patrol vehicle. The Mandatory Recording section of the Key West Police Department's Mobile Video Recorder requires recording only if the subject in the rear of the patrol vehicle is being transported. Since Caleb was never transported in the patrol vehicle, there was no violation of that policy.

While researching this incident, I was able to locate radio traffic of officers on the call. I have forwarded said radio traffic to the Public Information Officer so that she may send it to Paolucci.

On November 4, 2020, I spoke to Caleb on the phone and inquired about the alleged threats. Caleb advised that upon returning to his boat with Officers Morris and Malak, Officer Malak sent Caleb inside of his boat to retrieve his cellphone. Caleb said that upon sending him into his boat, Officer Malek told him not to do anything stupid because he did not want to have to shoot him. Sending a subject unaccompanied into their dwelling is a well known officer safety risk. Based on the context of the situation, although Officer Malak's direction could have been more eloquently worded, it is clear that Officer Malek did not threaten Caleb, but had been warning him not to retrieve a weapon while going unaccompanied into his boat.



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FINDINGS

- Paolucci was provided with the only three videos known to exist in reference to this incident. The videos are unedited and in their entirety.
- The Key West Police Department acknowledged that a violation of policy did occur. Officer Malak has been counselled on his violations of the Mandatory Recording section of the Key West Police Department's Body Worn Camera policy. Officer Morris is no longer a member of the Key West Police Department.
- There is no Florida statute or Key West Police Department policy requiring Officer Morris or Malak to complete a written statement as to why they turned off their body worn camera. No such statement exists, therefore it could not be provided to Paolucci.
- Officer Malak was clearly concerned for his own safety and warned Caleb not to do anything that would cause him to have to engage in the use of deadly force.

Email Correspondence between Sergeant Dean and Sergeants D. Kouri and B. Vazquez (Officers Malak and Morris' Supervisors) to address the policy violations:

From: Jeffrey Dean <jdean@cityofkeywest-fl.gov>
Sent: Thursday, October 15, 2020 5:23 PM
To: Billy Vazquez <b vazquez@cityofkeywest-fl.gov>; David Kouri <dkouri@cityofkeywest-fl.gov>
Cc: Hollis Wood <hwood@cityofkeywest-fl.gov>; Randall Smith <rsmith@cityofkeywest-fl.gov>
Subject: BWC complaint

Sergeants Kouri and Vazquez,

Officers Malak and Morris received a complaint (attached) in reference to body cam usage for a call they were on the night of October 3, 2020. I have placed their bwc footage in the Bravo Nights folder in the Sergeants Shared Drive. Based on the video, they did technically commit policy violations (they both were not using their BWCs for the entirety of the incident and based on the second video, they continued conducting an investigation after Officer Malak turned his bwc off). Please address this issue and take appropriate action. Please get back to me on how you handle this.

Sergeant Jeffrey Dean



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Key West Police Department
(305) 809-1035

From: Billy Vazquez <bvazquez@cityofkeywest-fl.gov>
Sent: Tuesday, October 27, 2020 1:07 AM
To: Jeffrey Dean <jdean@cityofkeywest-fl.gov>; David Kouri <dkouri@cityofkeywest-fl.gov>
Cc: Hollis Wood <hwood@cityofkeywest-fl.gov>; Randall Smith <rsmith@cityofkeywest-fl.gov>
Subject: Re: BWC complaint

Sgt. Dean,

Sgt. Kouri and I met with Ofc. Malak in reference to this incident. We expressed the importance of adhering to GO 06.28 (BWC), and any further incidents will be considered progressive discipline and will be handled accordingly.

As you know Ofc. Morris is no longer employed by the Key West Police Department.

Sergeant Billy Vazquez
Bravo Nights' Supervisor
KWPD Patrol Division
305-809-1009

Email from Sergeant Dean to all road patrol sergeants requesting reminders of BWC Policy to officers:

From: Jeffrey Dean <jdean@cityofkeywest-fl.gov>
Sent: Thursday, October 15, 2020 9:24 AM
To: David Kouri <dkouri@cityofkeywest-fl.gov>; Billy Vazquez <bvazquez@cityofkeywest-fl.gov>; Mark Siracuse <msiracuse@cityofkeywest-fl.gov>; Frank Blasberg <fblasberg@cityofkeywest-fl.gov>; Frank Duponty <fduponty@cityofkeywest-fl.gov>; Pablo Rodriguez <prodriguez@cityofkeywest-fl.gov>; Carter Sims <csims@cityofkeywest-fl.gov>; Alexander Rodriguez <arodriguez@cityofkeywest-fl.gov>
Subject: BWC Reminder for Briefing



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Please remind your officers that by policy, BWCs should be recording during any type of citizen confrontation regardless of whether or not it is criminal. Additionally, all officers on scene need to be recording, not just the primary officer. When people make a request for all videos related to a certain event, and only get one video but see two other officers on camera, they believe we are hiding something and are quick to point out we are in violation of our BWC policy. Thank you.

Sergeant Jeffrey Dean
Professional Standards
Key West Police Department
(305) 809-1035

Email Correspondence between Jamie Paolucci and Sergeant Jeffrey Dean:

From: Jamie Paolucci <jamiempaolucci@gmail.com>
Sent: Wednesday, October 14, 2020 2:11 PM
To: Jeffrey Dean <jdean@cityofkeywest-fl.gov>
Subject: FOIA Request discrepancies

To the office of the Chief of Police and Officer J. dean,

Good afternoon,

I recently put in a FOIA request for records involving a Caleb J. Surace for the date of October 3rd, 2020. The requested BWC media files were for the hours of 8pm-12am. I also FOIA requested the community call in for contact in addition to any and all incoming or outgoing dispatch audio in relation to Caleb J. Surace for that same day and with in the hours of 2pm-11pm.

I did receive 3 short BWC video files this week. First one was a negative contact earlier that evening of the 3rd. The second video was a 2 min 28 second video when positive contact was first made, however the audio was delayed in that video. Then the video is cut short and it picks back up approximately 2 minutes later. The 2 minutes of footage that is missing, in the middle of the two video files happen to be the recordings/video that I was most interested in reviewing. The administrator that handles the distribution of FOIA requested material has responded to me and has stated that "It is not edited. According to our policy, there was no mandatory reason to continue filming."

The 3rd video file picks back up and ends shortly after.



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From my understanding, of the General Order/BWC policy terms, is that all non consensual community contact is to be recorded and retained? Also, it seems as though the times and dates are off with in your administrative office as well.

The accurate times of media files are below, listing out the missing footage.

First video

T02:47.32 thru T02:49.59 (MORRIS, CLEYTON (3926) Oct 3, 2020 7:48 PM -07:00)

Missing video: T02:50.00 thru T02:52.03 (2 minutes missing)

Last Video: T02:52.04-T02:54.00 (Malak, Timothy (4045) Oct 3, 2020 7:52 PM -07:00)

If you can please advise as to how I can go about retrieving the missing audio/video recordings.

Thanks in Advance,
Jamie M. Paoluccir

On Wed, Oct 14, 2020, 3:06 PM Jeffrey Dean <jdean@cityofkeywest-fl.gov> wrote:

Ms. Paolucci,

I have spoken with our Public Information Officer, Alyson Crean, and reviewed the videos she sent you. Hopefully I will be able to clarify some of your questions.

Audio Delay - Our body worn cameras have to states of rest:

1. The power is completely off. Nothing is being recorded until the power is turned on and the recording button is activated. Audio and Video start immediately upon activation of the recording button (this is what you are seeing in Officer Malak's video).
2. Power On – Recording on a Loop: In this state, the body worn camera is on and always recording (video only/no audio). If the record button is not activated, that video recording will erase itself to save memory every thirty seconds. When the record button is activated, everything that happened 30 seconds prior to the activation will be saved and captured on the recording. Again that 30 seconds will be video only (this is what you are seeing on Officer Morris' video).



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Time/Date Discrepancies: The date and time displayed on our body worn cameras is Greenwich Mean Time. Here is a link explaining what that is in case you are unfamiliar: [https://www.bbc.com/news/world-radio-and-tv-12764012#:~:text=Greenwich%20Mean%20Time%20\(GMT\)%20is,the%20London%20suburb%20of%20Greenwich](https://www.bbc.com/news/world-radio-and-tv-12764012#:~:text=Greenwich%20Mean%20Time%20(GMT)%20is,the%20London%20suburb%20of%20Greenwich).

Additionally, I believe your times to be off. Officer Morris's video started at 10:48pm EST. Officer Malak's video started at 10:52pm EST.

Violation of BWC Policy: I agree with Ms. Crean's assessment that there was no mandatory reason to continue filming. Officer Morris's video ends (turned off) when the male subject is placed in the back of the patrol vehicle. Officer Malak's video begins when that same subject is being removed from the patrol vehicle. Since the male subject was not interacting with either officer they were not violating policy by not recording.

Ms Crean, who I have CCed in this email, is the only person authorize to release bwc videos to the public. Please continue to make any additional requests for such materials through her. She will release everything she is legally mandated to release, assuming what you are asking for exists. Those two minutes you are looking for do not seem to exist.

Sergeant Jeffrey Dean
Professional Standards
Key West Police Department
(305) 809-1035

From: Jamie Paolucci <jamiempaolucci@gmail.com>
Sent: Wednesday, October 14, 2020 4:23 PM
To: Jeffrey Dean <jdean@cityofkeywest-fl.gov>
Cc: Steve Surace <ssurace@ailoh.com>; Jim Surace <jsurace@ailoh.com>
Subject: Re: FOIA Request discrepancies

I very much appreciate your quick response, very much.

That clears up my question in regards to the audio being muted in the first video, and that makes sense.



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As to the times; you probably see the times differently from your system than what I have been given access to, and your times stated below I feel are correct. You can see on my attachment below as to how I was misled through the evidence center.

In regards to the BWC, being stopped by one officer and started back up by the assisting officer, I believe we have a difference of opinion and I am going to further review this at this point.

Reason being is that from what I understand there was about 2-10 minutes more questioning and interaction with in the vehicle that is cut out. That is what I am most concerned about. It is very important that the officers do not go beyond their duties/jurisdiction in means of allegations, threats or harassment.

I know that the general order/BWC policies and procedures clearly state that the body camera footage is not to be interrupted until the contact is ceased.

See 06.28.01.02 Approved Uses

D. It shall be deemed a violation of this policy for an officer to fail to activate the BWC or intentionally terminate a recording in order to commit a violation of law or department policy. If an officer fails to activate the BWC, fails to record the entire contact, or interrupts the recording, the officer shall document why a recording was not made, was interrupted, or terminated.

So to me this is concerning of course, and is damaging to public trust. Public trust is largely the reason these devices were adopted and put into practice.

A couple additional questions:

1. Is there a reason I was not provided with both officers BWC media files from the first video and then the second video when they again turned them back on? Why only one officer at a time if they are both required to activate their BWC?

Am right in thinking that it is policy for all officers on scene to initiate their BWC?

2. Why did the officers feel that during interrogation/questioning, while Caleb J. Surace was in the squad car, that it was not pertinent to record seeing as though contact had just begun? It states until the entire contact is complete the BWC must be activated.

3. Since they turned off the BWC can I request the squad car cam audio/video footage? That should clear up and quickly resolve this issue.

4. Can you please have your administrator send me the last BWC video but the extended version. There were about 3 mins after the video stops that they continued to speak with Caleb. We have our own footage showing extended communication beyond what was provided, just not the BWC recordings.



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Again, Thank you for your quick reply!
Jamie M. Paolucci

On Thu, Oct 15, 2020, 9:09 AM Jeffrey Dean <jdean@cityofkeywest-fl.gov> wrote:

1. You have been provided with all BWC video that is known to exist. No you are not wrong, technically they both should have been recording. It will be addressed with their supervisors.
2. I'm not sure why/if the officers did that. If so that would technically be a policy violation and can be addressed with their supervisors.
3. If it exists you can request it. Again I refer you to the PIO acrean@cityofkeywest-fl.gov.
4. There is no "extended" version to what Ms Crean has sent you. IF the officers continued a conversation then it was not recorded on BWC. If you have evidence of any wrong doing, I would be happy look at it.

Sergeant Jeffrey Dean
Professional Standards
Key West Police Department
(305) 809-1035

On Thu, Oct 15, 2020, 3:41 PM Jamie Paolucci <jamiempaolucci@gmail.com> wrote:
This is a synopsis so that you are informed in regards to this situation.

Caleb was sleeping on his boat at the time of the officers arrival. They knocked and Caleb pushed open the door (that is the only way you can open the door on his boat as it is a homemade door) The officer pushed the door closed and told Caleb to try that again. No harm, no foul. It's just a good indicator right off the bat that I will revisit later.

The audio then turns on, Caleb opened his boat door back up, stepped up and out of his boat, asked the officers how they are doing. The officer replied " I would be better if you didn't call the girl today at 2:30pm that you "beat up" a couple months ago" Again is this what they are to do procedurally for a breach of no-contact order? How does a patrol officer know that kind of information or that this is even what happened? Truthfully none of us really know what truly occurred until discovery and when court case is resolute. They then cuffed Caleb and start walking him to the cruiser. In the video Caleb is heard explaining that he has that "person" blocked on his phone and that while he was deleting/clearing his full voicemail box that he pressed the "phone" instead of the "trash" button on the voicemail app. He stated that he immediatly hung up and he did not think that it even



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rang. He immediately reached out to his attorney to notify him. At that point they arrived at the squad car and put him into the back, all while him still being questioned. The first video cuts off right at that moment.

The second video starts as they are taking him out of the squad car and with the intent that both officers are walking him back to his boat to retrieve his phone for further review. Further review of what they were "discussing" in the back of the cruiser (part of the missing footage).

So here is the important part for you to review. The part that proves that this contact was not in anyway in its entirety complete. This proves to us that they did not submit full and complete BWC recordings, or that they deactivated their BWC's. Please review the second video from minute 1:35 until the end of that video. Right at about the time stamp of 1:35 you will hear the officer state that " once he sees Caleb's phone he will be able to determine" (Go to the second video that is labled T02.52.04-T02:54.00 Malak, Timothy (4045) Oct 3, 2020 7:52 PM - 07:00)

We also have video footage from the City of Key West Garrison Bight Marina showing that the officers took caleb back to his boat for a period of time, that will also collaborate what the officer says in the video about going to review Caleb's phone. However the officer still did not document, activate, upload, or provide any of that non-consensual civilian contact.

My understanding is at that point Officer Malak made a few threatening statements that do not seem warranted in any form of speech that is condoned by a Law Enforcement Department. Besides that, these officers seem to have the power to conceal what they do. That is extremely concerning to all citizens and to my family as well now abd in the future.

In my opinion and in the legal terms of BWC Order and Procedure, these officers are in absolute violation. I would like to see the required written and documented statement from those officers explaining why they failed to activate, terminated, paused or tampered with the body camera footage. Why they both did not have activated BwCs , and specifically the reason why they deactivated the BWCs in the middle of the contact and deactivated the BWCs or tampered with the files near the end of the contact.

What was said during the time spent off camera was very concerning to me. Not only am I concerned about the well being of Caleb J. Surace, but I am very concerned by this lacksidasial approach on this procedural process with in the entire department. The fact that I am having to convince the administrator that this is a breach of policy and to have the administor reply that " there was no mandatory reason to keep filming" I then press it further showing the administrator the BWC General Order, which inturn she sends me you. I then communicate this to you and at first you say you have to agree with the administrator. Once again I have to take the time out to spell out the BWC General Order. Ultimately you agree with me that it seems to be a violation of policy, maybe, if it actually happened the way I am proposing it did. Which now I am spending additional time breaking



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down the video minutes (only 4 minutes and 30 seconds of footage to watch and review) for you to see that it was a clear violation.

This is concerning on multiple levels. First and foremost I believe there is a personal vendetta on the one officers behalf towards Caleb J. Surace. I have no speculation as to why there would be a personal vendetta, but on a personal note, from law educated adult to another law educated adult, I do not think I need to spell this out to you. There should be no reason the whole contact was not provided, and I understand that in email you can not fully say that. I understand. However, I think this needs to be addressed with the entire department. In today's world accountability, over stepping jurisdiction, and remaining a professional in a Law Enforcement position is critical and ultimately crucial at this time. Without speaking of this specific situation, I myself knowing how this was handled, do not feel comfortable with the level of professionalism and education with in your department at this time.

In a theoretical situation, if I was pulled over and put in the back of a squad car and if i was inappropriately harrassed or violated, the level importance put forth to the BWC General Order or of procedural value and awareness within the department is a failure. How could you expect to protect the citizens from a bad cop or protect a good cop from a bad citizen if these procedures are so aloof That is why these procedures have to be held up with the utmost of pertinence. Especially now. It would no doubt be of great regret in the future if this small situation is brushed under the rug and in turn not handled and corrected. Small, easily corrected problems can turn very quickly into large consiquencial problems.

At this point, I do not trust the proffessionalism of Officer Malak, Timothy (4045) who I am moved to believe he might be a little more personally vested in this than he is professionally vested. I know Key West is a small town and easily officers become personally involved instead of professionally, but that is not acceptable. I know the amount that we pay our officers and what we expect in return is for thier skill level, proffessionalism, education, maturity and we require them to take oaths that protect our people. That is what is required. If there is rogue officers within the department I am sure you would want to swiftly handle, remediate and correct that.

I do truly appreciate your time and I will feel as though this is handled once i receive the written statement of explanation from the two officers involved.

Thanks,
Jamie M. Paolucci

From: Jeffrey Dean
Sent: Thursday, October 15, 2020 5:12 PM
To: Jamie Paolucci <jamiempaolucci@gmail.com>



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Chief of Police



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Cc: Randall Smith <rsmith@cityofkeywest-fl.gov>

Subject: RE: This email bounced back so I resent FOIA Request discrepancies

Ms Paolucci,

Thank you for bringing to our attention the policy violations. The matter will be turned over to Officer Malak's and Officer Morris' immediate supervisors to take appropriate action on. Again, please direct any requests for video to our Public Information Officer Alyson Crean (acrean@cityofkeywest-fl.gov).

Sergeant Jeffrey Dean
Professional Standards
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(305) 809-1035

On Thu, Oct 16, 2020, 12:15 PM Jamie Paolucci <jamiempaolucci@gmail.com> wrote:

Thank you for your response, I will submit the request for the officers required statement as to why the cameras were disabled and or why the cams were deactivated.

Thank you,
Jamie Paolucci



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