



INTRODUCTION

Pursuant to § 18-11 of the Charter of the City of Rochester, and in the interest of public accountability, the Police Accountability Board has made the following investigative report public. It has been redacted so as not to disclose the identities of the officers and civilians involved.

Pursuant to *Rochester Police Locust Club, Inc. v. City of Rochester*, 41 N.Y.3d 156 (2023), Rochester Police Officers can only be disciplined by the Rochester Police Department. Accordingly, where a finding of police misconduct has been sustained by the Board, the PAB issues disciplinary recommendations to the Chief based on our Disciplinary Matrix.

The final Board decision as to the PAB determination of misconduct and recommended discipline are followed by the investigatory report prepared by PAB staff.

BOARD DECISION

Public Tracking Number (PTN): 2022-0065

Date of Panel Review: 17-Jul-2024 1:00 PM (EDT)

Board Members Present: [REDACTED]

Case Findings: Sustained

Disciplinary Recommendation:

1. Officer [REDACTED] Retraining on investigations into cause of death, and the reopening of the investigation into the death of [REDACTED]

Dissenting Opinion/Comment: N/A.



DEFINITIONS

Exonerated: A finding at the conclusion of an investigation that either the alleged act did not occur, or that although the act at issue occurred, the subject officer's actions were lawful and proper and within the scope of the subject officer's authority under police department guidelines.

Not Sustained: A finding at the conclusion of an investigation that there is insufficient evidence to establish whether an act of misconduct occurred.

Sustained: A finding at the conclusion of an investigation by a preponderance of the evidence that the subject officer committed the act charged in the allegation and that it amounted to misconduct.

Closed: Vote to close the case.



Officer Name- Allegation # 1:

Officer [REDACTED] General Order 401 (Investigation Process): Officer [REDACTED] did not complete a thorough investigation into the death of [REDACTED]

- **Does the Board Agree with the Findings of Fact? Yes**
 - **Does the Board Agree with the Substantiated Evidence of Misconduct? Yes**
 - **Does the Board Agree with the Proposed Disciplinary Action? Yes**
-

Officer Name- Allegation # 2:

Officer [REDACTED] General Order 535 (Notification of Next of Kin): Officer [REDACTED] did not notify [REDACTED] next of kin according to department policy.

- **Does the Board Agree with the Findings of Fact? Yes**
- **Does the Board Agree with the Substantiated Evidence of Misconduct? N/A**
- **Does the Board Agree with the Proposed Disciplinary Action? N/A**



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CLOSING REPORT

STATEMENT OF AUTHORITY

Article XVIII of the Rochester City Charter defines the authority and duties of the Police Accountability Board. Pursuant to § 18-1, "The Police Accountability Board shall be the mechanism to investigate such complaints of police misconduct and to review and assess Rochester Police Department patterns, practices, policies, and procedure...The Police Accountability Board shall provide a nonexclusive alternative to civil litigation."

EXECUTIVE SUMMARY

[REDACTED] was found deceased on July 13, 2022, at or near the railroad tracks located near [REDACTED] Rochester, New York, 14606. Officer [REDACTED] responded to the scene and determined that [REDACTED] died from a drug overdose.

Also on July 13, 2022, [REDACTED] [REDACTED] sister, contacted 911 to inquire into the whereabouts of her brother [REDACTED]. [REDACTED] stated that she had not seen [REDACTED] since July 12, 2022, and she was unable to get in contact with him. [REDACTED] spoke with Officer [REDACTED] and was informed that [REDACTED] was not in police custody and no information was available as to his whereabouts.

On July 14, 2022, Officer [REDACTED] entered a Missing Person(s) Report into the law enforcement system documenting the call with [REDACTED] which occurred the previous day.

Also on July 14, 2022, Officer [REDACTED] went to the home of [REDACTED] to inform his family that he had been found deceased the day prior. Officer [REDACTED] informed [REDACTED] family that he died as the result of a drug overdose.

[REDACTED] [REDACTED] daughter, then contacted the Police Accountability Board on July 18, 2022. [REDACTED] complained of the twenty four hours it took for the next of kin to be notified of [REDACTED] death. [REDACTED] also stated that she did not believe her father died from a drug overdose and she criticized Officer [REDACTED] investigation which led to such conclusion.

INVOLVED OFFICERS

Officer Name	Officer Rank	Badge/Employee #	Date of Appointment	Sex	Race/Ethnicity
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



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INVOLVED INDIVIDUALS

Name	Age	Sex	Race/ Ethnicity
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ALLEGATIONS

1	Officer [REDACTED]	General Order 401 (Investigation Process): Officer [REDACTED] did not complete a thorough investigation into the death of [REDACTED].
2	Officer [REDACTED]	General Order 535 (Notification of Next of Kin): Officer [REDACTED] did not notify [REDACTED] next of kin according to department policy.

INVESTIGATION

Reporter [REDACTED] filed a complaint with the Police Accountability Board on July 18, 2022.

The Police Accountability Board notified the Rochester Police Department of its investigation and requested corresponding documents on December 1, 2022.

On December 28, 2022, the Rochester Police Department provided the Police Accountability Board with two computer aided dispatch reports and one body camera footage. The computer aided dispatch reports contained information relating to a missing person(s) report filed by [REDACTED] sister. The body camera footage showed when Officer [REDACTED] notified [REDACTED] family that [REDACTED] was deceased and that his body was found the day prior.

On January 3, 2024, the Rochester Police Department provided the Police Accountability Board with one investigative action report case update, one incident report, four computer aided dispatch reports, and two photographs. The investigative action report notated that [REDACTED] daughter and wife expressed their belief that [REDACTED] did not die from a drug overdose. The incident report detailed the manner in which [REDACTED] was found and included details such as he “was overdosing on the railroad track overpass” and that the time of death was determined to be 11:00 am. The computer aided dispatch reports also stated that an individual overdosed on the railroad tracks. The photographs are of [REDACTED] lying on the ground post mortem.



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On January 8, 2024, the Police Accountability Board submitted a second request for information to the Rochester Police Department requesting additional information.

On January 9, 2024, the Rochester Police Department provided the Police Accountability Board with one Rochester Police Department General Order detailing the procedure for the notification of the next of kin and one training directive regarding the medical examiner procedure relating to death investigations.

On May 2, 2024, the Police Accountability Board conducted an audio interview with [REDACTED] daughter of [REDACTED]. During this interview, [REDACTED] stated that [REDACTED] was found with his identification on his person, and therefore, there should have been no delay in informing his next of kin of his passing.

Also on May 2, 2024, the Police Accountability Board conducted an audio interview with [REDACTED] wife of [REDACTED]. During this interview, [REDACTED] stated that she was told by a medical professional that [REDACTED] did not have enough drugs in his system to result in a drug overdose. Furthermore, [REDACTED] stated that [REDACTED] drug of choice differed from the drug that he purportedly overdosed on.

EVIDENCE PROVIDED

Evidence	Description	Provided by	Filename
Intake Report	[REDACTED] initial report	[REDACTED]	i-Sight Case 2022-0065 Details Overview
Request for Information	Source of Information Request Form and Response	Rochester Police Department	S-SharePoint File Transfer - SOI - 2022-065-01 RPD response.pdf - All Documents
Request for Information	Second Source of Information Request Form and Response	Rochester Police Department	S-SharePoint File Transfer - SOI 2022-0065-02 RPD response 1-9-24.pdf - All Documents
Request for Information Response	Documents provided on December 28, 2022	Rochester Police Department	S-SharePoint File Transfer - Case Package - All Documents
Request for Information Response	Documents provided on January 3, 2024	Rochester Police Department	S-SharePoint File Transfer - Sent 1-3-24 - All Documents
Request for Information Response	Documents provided on January 9, 2024	Rochester Police Department	S-SharePoint File Transfer - Sent 1-9-24 - All Documents



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Evidence	Description	Provided by	Filename
Audio Interview	Interview of [REDACTED]	Police Accountability Board	2022-0065-Reporter export.mp3 (sharepoint.com)
Audio Interview	Interview of [REDACTED]	Police Accountability Board	2022-0065-Witness export.mp3 (sharepoint.com)

EVIDENCE DENIED

Evidence	Description	Reason declined
911 calls	Request from the Police Accountability Board to the Rochester Police Department	The Rochester Police Department does not have access to these files and they would be best requested from the Department of Emergency Communications.
Formal Officer Statement	Request from the Police Accountability Board to the Rochester Police Department	Officers refused to speak with the Police Accountability Board, citing their Collective Bargaining Agreement.

APPLICABLE RULES & LAWS

Rochester Police Department General Orders

401 INVESTIGATIONS PROCESS¹

B. Members of the Rochester Police Department (RPD) will:

1. Comply with all legal and constitutional requirements applicable during criminal investigations.
2. Conduct vigorous and thorough investigations of all offenses observed or brought to their attention.
3. Employ the procedures of Preliminary Investigation and Continued Investigations, as applicable.

C. The RPD Crime/Incident Scene Log, RPD 1237 (Attachment A) will be used to document who has entered a crime/incident scene that has been cordoned off, to include the time in and out, the reason for entering and the person's signature. RPD 1237 will become a part of the investigative case package.

D. The Law Enforcement Records Management System (LERMS) is the official Records Management System of the RPD. All merging will occur in the Technical Services Section (TSS) or by any other

¹ The Investigations Process policy has been condensed for the purposes of this document. The entirety of which may be found at [GO 401 Investigation Process | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#).



authorized personnel.

E. Special Investigation Section (SIS) – The SIS Standard Operating Procedure (SOP) Manual will govern their investigative filing system regarding reports and records relating to active intelligence information, and vice, drug and organized crime investigations. The system is maintained in a secure area separate from the Department's Records Management System. The SIS SOP Manual will outline procedures for:

1. Receiving and processing complaints;
2. Maintaining a record of complaints received;
3. Maintaining a record of information conveyed to, and received from, outside agencies, and
4. Safeguarding of intelligence information.

III. PRELIMINARY PROCEDURES

A. Members will:

1. Proceed to the incident scene immediately, but cautiously, being alert for possible suspect(s), suspect vehicle(s) or witnesses;
2. Upon arrival, provide aid and comfort to the victim(s), observe all conditions, events and remarks, and secure the scene to maintain and protect physical evidence, utilizing yellow crime scene tape, as applicable;
3. When possible, use an issued camera to photograph a major scene prior to the arrival of an Evidence Technician, Fire Department, EMT, etc.;
4. Locate, identify and separate witnesses;
5. Remove everyone from a scene once it has been stabilized and requires processing by an Evidence Technician;
6. When utilizing crime scene tape, secure the inner perimeter of the scene or access to the scene by attaching two strands (approximately three feet apart) of red crime scene tape to the yellow crime scene tape;
7. Utilize the Crime/Incident Scene Log, RPD 1237, when assigned to the entrance/exit point of a scene, which has been established by a supervisor or technician; Note: Only an Evidence Technician will escort essential personnel to gain access within a cordoned off scene which has not been completely processed.
8. Interview the complainant, witness(es) and suspects;
9. Transmit to other police units information of immediate relevance directed at intercepting the suspect(s) or suspect(s) vehicle;
10. Perform a thorough crime scene search for evidence and arrange for the preservation and collection of evidence, utilizing an issued camera when possible; Note: Inform Evidence Technicians of what items were handled for elimination purposes.
11. Focus investigative efforts on the search for solvability factors as outlined in Section IV. of this Order;
12. Obtain and record a complete description (serial numbers, model, colors, etc.) of the crime and property taken or damaged;
13. Expand the amount of time necessary to conduct a thorough preliminary investigation, bounded by the character of inquiry appropriate in each case and supervisory approval;
14. Continue the preliminary investigation until:
 - a) All useful information has been obtained from the complainant, victim(s), witness(es), neighbors and other people present in the area;



- b) Supporting depositions are taken from all victim(s) and witness(es) on arrest cases, field follow-up cases or any case of a stolen vehicle or firearm;
 - c) All useful evidence has been identified and preserved at the crime scene and in the immediate area.
15. At the conclusion of the preliminary investigation:
- a) Complete an Incident Report (IR) carefully recording in the narrative a complete summary of what took place during the alleged crime being reported and record all of the investigative steps taken, along with the outcome of those steps;

535 NOTIFICATION OF NEXT OF KIN (NON-EMPLOYEES)

I. DEFINITIONS

- A. Next of Kin – A person's next of kin is that person's spouse, or if the person is not married, the closest living blood relative or relatives. For purposes of this Order, if a person has no known spouse or living blood relatives, members may notify a legal guardian or other person or entity responsible for the care of the person.

II. POLICY

- A. Members may be requested to deliver a message pertaining to a death, serious injury, or serious incident involving a person to that person's next of kin.
- B. Notification to that person's the next of kin will be made promptly and in a dignified and respectful manner.
- C. Members will divulge information to the media only according to G.O. 360.
- D. Notification of the immediate family of an employee involved in a serious personal incident will be made according to G.O. 280.

III. PROCEDURES

- A. Notifying next of kin where there is a death, serious injury, or serious incident can place members in a delicate and uncomfortable situation. The following procedures should be used whenever possible and practical.
 - 1. Notification will be made in person, and as promptly as possible.
 - 2. Members will ascertain the identity of the next of kin contacted and verify their relationship to victim. Do not assume that the person answering door is the person to whom you want to speak.
 - 3. As a matter of support for the next of kin, the presence of a clergy member or relative/close friend (if known) should be obtained whenever possible before the notification. FACIT can also be used for this type of service.
 - 4. If notification must be made when the next of kin is alone, the member should offer assistance to the next of kin by contacting a relative, close friend, or clergy member.
 - 5. Members delivering emergency notifications shall tell the next of kin the source of information.

STANDARD OF PROOF



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The Police Accountability Board is tasked with determining whether or not sworn Rochester Police Department Officers have committed any actions in violation of department policies, orders, or training. In order for a finding of misconduct to be considered sustained, the Police Accountability Board is authorized to use a “substantial evidence” standard of proof. See City of Rochester Charter § 18-5(l)(10).

Substantial evidence “is that which a reasonable mind might accept as adequate to support a conclusion”. NLRB v. Int’l Bhd. of Elec. Workers, Local 48, 345 F.3d 1049, 1054 (9th Cir. 2003). This standard is met when there is enough relevant and credible evidence in the record as a whole that a reasonable person could support the conclusion made. See 4 CFR § 28.61(d).

Even though authorized, the Police Accountability Board of Rochester, New York, utilizes a much higher standard of proof, which is a preponderance of evidence. When utilizing the standard of a preponderance of the evidence “the relevant facts must be shown to be more likely true than not” [true]. United States v. Montano, 250 F.3d 709 (9th Cir. 2001). This is commonly understood to mean that there is at least a 51% chance that the allegations made are in fact true.

ANALYSIS

The following findings are made based on the above standards:

Allegation 1: Officer [REDACTED] did not complete a thorough investigation into the death of [REDACTED]

The Rochester Police Department’s General Order 401 states that Officers will conduct vigorous and thorough investigations of all offenses observed or brought to their attention. The General Order also states that “at the conclusion of the preliminary investigation [officers will] complete an incident report carefully recording in the narrative a complete summary of what took place during the alleged crime being reported and record all investigative steps taken, along with the outcome of those steps”.

On July 13, 2022, an individual, only identified as “female” contacted 911 to report that a man was “overdosing on the railroad track overpass”. Officer [REDACTED] responded to the scene and documented his preliminary investigation on a Rochester Police Department Incident Report Form. See [S-SharePoint File Transfer - Incident Report, Officer cor \[REDACTED\], Supervisor cor \[REDACTED\], Merged By COR \[REDACTED\].pdf - All Documents](#).

Officer [REDACTED] Incident Report details specific actions that were taken on July 13, 2022. Officer [REDACTED] notated that upon arrival, he found [REDACTED] lying unconscious on the railroad tracks and the first course of action was the administration of medication and the application of CPR. He then states that an attempt was made to identify the person who made the 911 call reporting the suspected overdose. The next course of action was a neighborhood check in which contact was made with one individual who stated that they saw [REDACTED] vehicle parked on the sidewalk. In addition, Officer [REDACTED] notated that [REDACTED] social security card was found in his wallet, on his person and turned into evidence. It is also noted that photographs were taken via body worn camera.

The Rochester Police Department’s General Order mandates a *complete* summary and documentation of *all* investigative steps taken; therefore one must assume that any omission is attributed to an action not taken. Officer’s [REDACTED] Incident Report makes three major omissions that would deem his investigation as cursory. First, Officer [REDACTED] did not make any mention of securing the area surrounding [REDACTED]



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body. This should be done as a means of evidence preservation and also to prevent contamination of the scene. Second, Officer [REDACTED] did not make any mention of either him or any other personnel canvassing the immediate vicinity in which [REDACTED] was found. Third, although Officer [REDACTED] states that [REDACTED] social security card was found, his Incident Report does not include any details or mention that that information was used to further identify either [REDACTED] or his immediate family. Although it may be viewed as an oversight, it must be noted that Officer [REDACTED] documented the specific attempts to try and locate the 911 caller and the attempts to locate an eye witness via a neighborhood check. However, such efforts were not conducted regarding attempting to further identify [REDACTED] or his next of kin.

It must also be noted that while [REDACTED] family was told that he died from a drug overdose, there is no independent documentation included in the file, such as a medical examiner's report or other documentation, notes of a visual inspection, or picture or video proof that would corroborate a drug overdose.

Officer [REDACTED] did not complete a thorough investigation into the death of [REDACTED]

Allegation 1 against Officer [REDACTED] is sustained.

Allegation 2: Officer [REDACTED] did not notify [REDACTED] next of kin according to department policy.

The Rochester Police Department's General Order 535 states that Officers may be requested to deliver a message pertaining to a death of an individual to their next of kin and such notification will be made promptly and in a dignified and respectful manner.

Officer [REDACTED] went to the home of [REDACTED] on July 14, 2022, to deliver the message to his family that [REDACTED] was found deceased the day prior. Officer [REDACTED] began by asking [REDACTED] daughter and wife if they had been contacted by anyone. Officer [REDACTED] then said "Unfortunately, he was found yesterday over on the west side. I'm very sorry to tell you, that he is dead". Officer [REDACTED] then stayed with the family for the next seventeen minutes and answered any questions that they had and provided additional resources such as the number to the medical examiner and information regarding the arrival of the Person in Crisis (PIC) Team.

The Rochester Police Department's General Order stated that the next of kin must be notified promptly. However, the General Order does not seek to define what "promptly" means. The General Order also states that the next of kin must be notified in a dignified and respectful manner. Officer [REDACTED] notified [REDACTED] next of kin within twenty four hours of [REDACTED] body being discovered. Also, Officer [REDACTED] treated [REDACTED] family with respect and care. Officer [REDACTED] notified [REDACTED] next of kin according to department policy.

Allegation 2 against Officer [REDACTED] is exonerated.

RECOMMENDED FINDINGS



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#	Officer	Allegation	Finding
1	Officer [REDACTED]	General Order 401 (Investigation Process): Officer [REDACTED] did not complete a thorough investigation into the death of [REDACTED]	Sustained
2	Officer [REDACTED]	General Order 535 (Notification of Next of Kin): Officer [REDACTED] did not notify [REDACTED] next of kin according to department policy.	Exonerated

RECOMMENDED DISCIPLINARY ACTION

AUTHORITY

Article XVIII of the Rochester City Charter further requires that the Police Accountability Board create a “written, consistent, progressive and transparent tool or rubric” that “shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior sustained complaints.” This disciplinary matrix is a non-binding set of guidelines for the Police Accountability Board’s own recommendations regarding officer misconduct.

According to the matrix, the disciplinary history of an officer will be considered when assessing an appropriate penalty resulting from the current investigation. Prior discipline changes the presumptive penalties according to the matrix. Mitigating and aggravating factors related to the misconduct may be considered when determining the level of discipline, so long as an explanation is provided.

The Recommended Disciplinary Action based on the above Recommended Findings is as follows:

Sustained Allegation 1 against Officer [REDACTED]

Disciplinary Matrix Appendix

Misconduct	Level
General Order § III (A)(14) Members will continue the preliminary investigation until: a) all useful information has been obtained from the complainant, victim(s), witness(es), neighbors and other people present in the area; b) supporting depositions are taken from all victim(s) and witness(es) on arrest cases, field follow-up cases or any case of a stolen vehicle or firearm; c) all useful evidence has been identified and preserved at the crime scene and in the immediate area.	3

- Recommended Level: 3 (“Pronounced negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 prior sustained violations): **Training and the reopening of the investigation into the death of [REDACTED]**
- Explanation of deviation from presumptive penalty: No deviation.