



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): 2022-0204

Date of Panel Review: 14-May-2024 6:00 PM (EDT)

Board Members Present: [REDACTED]

Case Findings: Not Sustained

Disciplinary Recommendation: N/A.

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 337 (Use of Force): Investigator [REDACTED] used an inappropriate amount of force when she head butted [REDACTED]

- **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**



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

The following events took place on October 23, 2022, at approximately 2:00 am, in the vicinity of Lexington Avenue and Kay Terrace, Rochester, New York, 14613.

A citizen contacted 911 and stated that someone pulled a gun on them. The citizen described that person as wearing a black hat, a gray sweatshirt, and light colored pants. Investigator [REDACTED] made contact with someone fitting that description. Investigator [REDACTED] asked the individual, later identified as [REDACTED], if they were in possession a gun, to which they responded in the negative. Investigator [REDACTED] then attempted to perform a pat down search of [REDACTED]. Investigator [REDACTED] checked [REDACTED]' left side and did not feel any evidence of a weapon. Investigator [REDACTED] then attempted to check [REDACTED]' right side and [REDACTED] responded by running away.

After a short foot pursuit, [REDACTED] fell to the ground and can be heard gurgling and exhibiting signs that are consistent with a seizure. [REDACTED] alleges that [REDACTED] was head butted which is what led to his seizure. [REDACTED] can also be heard via body camera footage screaming “my head”. A handgun was later retrieved from the area of the chase and Investigator [REDACTED] alleges that [REDACTED] discarded it while running away.

[REDACTED]' mother, then reported this incident to the Police Accountability Board.

It must also be noted, that Investigator [REDACTED] Officer [REDACTED] Officer [REDACTED] Sergeant [REDACTED] Officer [REDACTED] and Officer [REDACTED] arrived on the scene after [REDACTED] was placed in handcuffs and did not have any physical contact with him. No allegations of policy violations have been made against these officers and they are not being investigated regarding this matter.

In addition, Officer [REDACTED] arrived on the scene after [REDACTED] was placed in handcuffs and engaged in a verbal conversation with [REDACTED] and helped [REDACTED] onto the medical gurney; Officer [REDACTED] arrived on the scene after [REDACTED] was placed in handcuffs and conducted a pat down search of [REDACTED] while [REDACTED] was in handcuffs and retrieved his identification card from [REDACTED] wallet; and Officer [REDACTED] arrived on the scene after [REDACTED] was placed in handcuffs and helped [REDACTED] to [REDACTED] feet and also checked [REDACTED] identification card. No allegations of policy violations have been made against these officers and they are not being investigated regarding this matter.



Also, Officer [REDACTED] and Officer [REDACTED] transported [REDACTED] to the hospital, police headquarters, and then back to the hospital. Although an extensive amount of time was spent between these particular parties, no allegations of policy violations have been made against these officers and they are not being investigated regarding this matter.

INVESTIGATED OFFICER

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

OTHER OFFICERS PRESENT

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

INVOLVED INDIVIDUALS

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

ALLEGATIONS

1	Investigator [REDACTED]	General Order 337 (Use of Force): Investigator [REDACTED] used an inappropriate amount of force when she head butted [REDACTED]
---	-------------------------	---



INVESTIGATION

Reporter [REDACTED] filed a complaint with the Police Accountability Board on October 25, 2022.

On July 28, 2023, the Police Accountability Board notified the Rochester Police Department of its investigation and requested corresponding documents.

The Rochester Police Department responded on July 29, 2023 seeking additional information.

On September 19, 2023, the Police Accountability Board sent a second request for documents as well as the previously requested information.

On September 20, 2023, the Rochester Police Department responded to the request and provided the Police Accountability Board with two computer aided dispatch reports, one use of force report, six law enforcement records management system reports, and twenty eight body camera videos.

The Police Accountability Board attempted to contact the reporter via phone on April 15, 2024, April 26, 2024, and May 1, 2024 and via email on April 15, 2024, to no avail. An interview was not conducted and this investigation concluded after a thorough review of all available evidence.

EVIDENCE PROVIDED

Evidence	Description	Provided by	Filename
Intake Report	[REDACTED] initial report	[REDACTED]	i-Sight Case 2022-0204 Details Overview
Notification of Investigation	Notification and source of information request	Police Accountability Board	S-SharePoint File Transfer - InitialNotification 2022-0204-Resubmission Sent 9-20-23.pdf - All Documents
Source of Information Request Response	Computer aided dispatch reports	Rochester Police Department	S-SharePoint File Transfer - CAD - All Documents
Source of Information Request Response	Use of force report	Rochester Police Department	S-SharePoint File Transfer - Printable Report Rochester PD BlueTeam 6.pdf - All Documents



Evidence	Description	Provided by	Filename
Source of Information Request Response	Law enforcement records management system reports	Rochester Police Department	S-SharePoint File Transfer - LERMS - All Documents
Source of Information Request Response	Body Camera Video	Rochester Police Department	S-SharePoint File Transfer - BWC - All Documents

EVIDENCE DENIED

Evidence	Description	Reason declined
Personnel Records of the Officers involved	Request from the Police Accountability Board to the Rochester Police Department	No response given.

APPLICABLE RULES & LAWS

Rochester Police Department General Orders

337(USE OF FORCE)¹

I. PURPOSE

The purpose of this General Order is to set forth the Rochester Police Department’s (RPD) policy on use of force, which establishes when and how a Member may respond to a person exhibiting resistance to commands and/or threatening a Member or another. This policy provides further guidance as to when certain force options may or may not be used. Regardless of the type of force or weapon used, a Member’s use of force must be reasonable, necessary, and proportionate.

III. POLICY

A. RPD recognizes and respects the value and sanctity of all human life. Members are expected to carry out their duties and act with the highest regard for the preservation of human life and the safety of all persons involved.

B. RPD’s goal is to gain voluntary compliance of persons without resorting to the use of force. Though Members are authorized to use reasonable force when necessary, Members should attempt to resolve situations without using force whenever possible.

¹ The use of force policy has been condensed for purposes of this document. The entirety of which may be viewed using the following link. [GO 337 Use of Force | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#).



C. Members are only authorized to use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to effect a lawful purpose, including to ensure the safety of a Member or third person, stop an attack, make an arrest, control a person evading a Member's lawful commands, or prevent escape.

D. Members shall use the least amount of force necessary based on the totality of circumstances and shall cease using any force once a person becomes compliant.

E. Members using force must continually assess the situation and adjust the use of force as necessary. As a person's resistance decreases, Members shall decrease their use of force accordingly.

F. Whenever safe and feasible to do so, prior to using force, Members should provide verbal commands. Members should defer using force for an objectively reasonable amount of time to allow the person to comply with the command.

G. Members must act with due regard for the safety of all persons during any use of force.

H. Members shall use de-escalation techniques and tactics, when it is safe and feasible to do so, to prevent and minimize the need to use force and to increase the likelihood of securing a person's voluntary compliance with police instructions. Members should refer to RPD's De-Escalation policy, G.O. 575.

I. Members have an affirmative duty to intervene to prevent or stop any Member from using unreasonable force or otherwise acting contrary to law or RPD policy. Members should refer to RPD's Duty to Intervene policy, G.O. 336.

J. After a use of force, Members shall render medical assistance consistent with their training as follows:

1. When safe and feasible to do so, Members shall immediately evaluate the need for medical attention for the person upon whom force was used. Members shall request medical assistance without delay for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, is suicidal or encountering a mental health crisis, or who was rendered unconscious.
2. Any person who is exposed to a Conducted Electrical Weapon ("CEW") application and has apparent injuries or complains of injury, or is unconscious or semi-conscious due to alcohol or drug consumption must be transported to a hospital to be seen by a medical professional for treatment.
3. Members are expected to document whether they render aid to any individual in a Subject Resistance Report. Members are required to follow RPD's Subject Resistance Report policy, G.O. 335.

IV. PROHIBITED USES OF FORCE

Members will not use force in any of the following situations:



- A. Against persons who are handcuffed or restrained except to prevent injury; escape; or otherwise overcome resistance posed by the person;
 - 1. Members shall not position a restrained person face-down for a prolonged period of time as it may cause positional asphyxia, or on their back as it may cause radial nerve damage to the wrist and forearm area. Restrained persons should be seated or placed on their side, as soon as safe and practical.
- B. To coerce a confession;
- C. As punishment or retaliation (e.g., force used to punish or retaliate against an individual for fleeing, resisting arrest or insulting a Member);
- D. To respond to those engaged in the lawful exercise of First Amendment protected activity, including peaceful protest, the right to assemble, and recording police activity (unless a person's doing so impedes a Member's legitimate law enforcement function);
- E. Based on bias against the person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, immigration status, or any other protected characteristic;
- F. To obtain blood, saliva, urine or other bodily fluid or cells, from an individual for the purpose of scientific testing in lieu of a court order where required; or
- G. To extract an item from inside the body of a person, except where exigent circumstances are present;
- H. To stop a person from swallowing a substance that is already in their mouth. A Member may, however, use reasonable force to prevent a suspect from putting a substance in their mouth.

STANDARD OF PROOF

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, order, 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 the 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: Investigator [REDACTED] used an inappropriate amount of force when she head butted [REDACTED].

The Rochester Police Department’s General Order 337 states that an Officer’s use of force must be objectively reasonable, necessary and proportionate. Officers are further instructed to use the least amount of force necessary and to cease the use of force in its entirety once the subject becomes compliant. Furthermore, Officers are instructed to use verbal commands prior to using force in all situations which are safe and feasible to do so.

On October 23, 2022, Investigator [REDACTED] came into contact with [REDACTED] after receiving information that [REDACTED] was in possession of a hand gun. After a brief interaction, [REDACTED] fled on foot and was soon after apprehended by Investigator [REDACTED]. There were no other officers present during their interaction. In addition, there were no other officers present for the entirety of the foot pursuit and all other officers arrived on scene after [REDACTED] taken to the ground by Investigator [REDACTED]. It was during this time that [REDACTED] alleges that [REDACTED] was head butted by Investigator [REDACTED] and subsequently suffered a seizure.

With the absence of medical documentation detailing a head injury or abrasion, or an interview from the reporter or [REDACTED] the only evidence that may be reviewed is the body camera footage of Investigator [REDACTED] and any supporting documentation. The body camera footage does not capture when [REDACTED] is taken to the ground. Due to the movement of both parties as well as the darkness of it being 2:00 am, the footage does not contain any visuals of the pertinent moment. However, audio continues and there does not appear to be any gaps in filming. Due to the lack of specific information regarding the specific moment in which [REDACTED] alleges [REDACTED] was head butted, this matter may not be sustained.

Allegation 1 against Investigator [REDACTED] is not sustained.

RECOMMENDED FINDINGS

#	Officer	Allegation	Finding
1	Investigator [REDACTED]	General Order 337 (Use of Force): Investigator [REDACTED] used an inappropriate amount of force when she head butted [REDACTED]	Not Sustained