



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): 2022-0245

Date of Panel Review: 03- Mar- 2024

Board Members Present: [REDACTED]

Case Findings:

Exonerated as to Allegation 1

Unfounded as to allegation 2

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 [REDACTED] Allegation # 1:

Duty to Intervene G.O 336 §II (A) When Members observe using unreasonable force or otherwise acting contrary to law or RPD policy, they shall intervene when it is safe and feasible to do so.

- **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.**
-

Officer [REDACTED] Allegation # 2:

Rule and Regulation 4.2(a) Discourtesy: Officer [REDACTED] did not perform his duties in a courteous, civil, and tactful manner.

- **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.”

The Rochester City Charter §18-11 subsection C reads:

The Board shall publish on its website for the public and deliver hard copy to the Office of the City Council and Office of the Mayor public quarterly and annual reports that shall document:

- 1) The total number and type of complaints and the City districts in which they happened;
- 2) The categories of each complaint as defined in Section Three of the local law;
- 3) The public tracking number of each complaint;
- 4) Detailing information that is legal available to the Board, including but not limited to: the date, time, and location of each incident, whether there is video of the incident or not, age, race, and gender of the adult complainant(s), rank(s), gender(s), section(s), and race(s) of the RPD officer(s) and if there were witnesses, how many, and whether they are employed by any local, state, or federal law enforcement agency and which agency: the Board shall comply with local, state, and federal law and redact any information that may not be disclosed publicly. The number of previous complaints against the RPD officer(s) within 10 years of the incident and whether or not those complaints were sustained.

EXECUTIVE SUMMARY

The following event took place at [REDACTED] Rochester NY, 14605 on December 7, 2022, in which [REDACTED]. Officer [REDACTED] and Officer [REDACTED] arrived at [REDACTED] at 3:58 PM. Officer [REDACTED] and Officer [REDACTED] [REDACTED] explained to the officers that [REDACTED] had an argument and [REDACTED] be removed [REDACTED]. Officer [REDACTED] asked [REDACTED] would be willing to sign paperwork alleging trespassing to have [REDACTED] removed [REDACTED], to which the



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██████████ agreed. ██████████ provided the name of the individual ██████████.

██████████ is the reporter in this complaint and will be referred to as 'reporter' going forward.

Officer ██████████ and Officer ██████████ were given directions to a room upstairs. The Officers ascended the stairs, proceeded to the room to their right, and knocked on the door. Officer ██████████ stated hello (and stated) the name given to him by ██████████. The - reporter replied and stated they are not identifying themselves. Officer ██████████ requested the reporter open the door and explained ██████████. The reporter continued to decline to identify ██████████ and refused to open the door.

From outside the door, Officer ██████████ announces that he has asked, told, and will now make ██████████ leave ██████████. Upon opening the door to the bathroom, Officer ██████████ grabbed the reporter's arms, placed them behind ██████████ back, and began securing them with handcuffs. Officer ██████████ entered the bathroom behind Officer ██████████ and began to assist in securing the handcuffs on the reporter. During the assist, Officer ██████████ initiated a search by running his hand along the bottom seam of the reporter's sweatshirt and pulling the bottom section of the sweatshirt away from the reporter's body.

Then, Officer ██████████ initiated a search by lifting the hair off the back of the reporter's neck to check the sweatshirt collar; this is done twice. After Officer ██████████ initially lifts the individual's hair, the individual requests Officer ██████████ not touch ██████████ hair. For the second time, Officer ██████████ reaches for the individual's hair, removing the head scarf that was tied to ██████████ head. The reporter is then led by Officer ██████████ to the patrol car and placed in the backseat.

The PAB acknowledges the Notice of Resignation of Officer ██████████. However, the actions of Officer ██████████ are included in order to explain the circumstances around the misconduct alleged against Officer ██████████.


PAB

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INVOLVED OFFICERS

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

INVOLVED INDIVIDUALS

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

ALLEGATIONS

1	Officer [REDACTED]	Duty to Intervene G.O 336 §II (A) When Members observe using unreasonable force or otherwise acting contrary to law or RPD policy, they shall intervene when it is safe and feasible to do so.
2	Officer [REDACTED]	Rule and Regulation 4.2(a) Discourtesy: Officer [REDACTED] did not perform his duties in a courteous, civil, and tactful manner.

INVESTIGATION

The reporter filed a complaint with Rochester's Police Accountability Board on December 19, 2022. The RPD was notified of the PAB's investigation on January 25, 2023; this submission included the Notification of Investigation as well as a Source of Information Request. RPD



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responded to the PAB on February 3, 2023, providing a cover letter to the PAB, two Body Worn Camera videos for Officer [REDACTED] two Body Worn Camera videos for Officer [REDACTED] along with the Export Log for the BWC videos, two CAD information documents, one Domestic Incident Report (DIR), one document named “Info’s”, and one Prisoner Data Report (PDR). Additional documentation was provided by RPD on June 14, 2023. This additional information included a document named Notes 6-14-23 and RPD Personnel Order.

The PAB contacted the reporter via a phone call to gather additional information on February 2, 2023. The reporter informed the PAB the “inappropriate touching” as alleged in the original complaint refers to the male officers conducting the search and frisk of her person. As well as Officer [REDACTED] removal of their head covering which [REDACTED] alleged was done in a forceful and aggressive manner. The reporter also told the PAB that at no point was a female officer called to the scene. The reporter also stated that once [REDACTED] arrived at the Monroe County Jail, a female officer was instructed by Officer [REDACTED] to perform a strip search. The PAB acknowledges any alleged misconduct against officers at the Monroe County Jail falls outside of our jurisdiction.

An Officer Statement Request letter for Officer [REDACTED] was sent to RPD Chief of Police [REDACTED] on January 8, 2023. The officer was given five business days to schedule an interview or provide a statement to PAB regarding the alleged misconduct. A blanket denial for all officer statements by City of Rochester Deputy Corporation Counsel [REDACTED] on 11/30/2023.

The PAB submitted a Secondary Source of Information Request on January 19, 2024, requesting the disciplinary records including all training memorandums for Officer [REDACTED] On January 23, 2024, the PAB received a response from Captain [REDACTED] denying the request stating guidance from Corporation Counsel indicated in a response to a subpoena on January 22, 2024, these records will not be released.



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EVIDENCE REQUESTED

Evidence	Description	Provided by	Reason declined	Filename
NetViewer Sheet-Event Information	Shows the call from dispatch from the reporter	Capt. [REDACTED] Rochester Police Department	N/A	I_NetViewer...-255657.pdf
NetViewer Sheet-Event Unit	Shows the call from dispatch from the reporter	Capt. [REDACTED] Rochester Police Department	N/A	I_NetViewer...-255657.pdf
Body-worn camera video	Body-worn camera footage from Officer [REDACTED]	Capt. [REDACTED] Rochester Police Department	N/A	B4729 [REDACTED] ...9_0002A.MP4
Body-worn camera video	Body-worn camera footage from Officer [REDACTED]	Capt. [REDACTED] Rochester Police Department	N/A	B4729 [REDACTED] ...8_0003A.MP4
Body-worn camera video	Body-worn camera footage from Officer [REDACTED]	Capt. [REDACTED] Rochester Police Department	N/A	B9924 [REDACTED] ...30_0039.MP4
Body-worn camera video	Body-worn camera footage from Officer [REDACTED]	Capt. [REDACTED] Rochester Police Department	N/A	B9924 [REDACTED] ...30_0039.MP4
Export log	Body-worn camera footage export log	Capt. [REDACTED] Rochester	N/A	ExportLog 2... 152738.txt



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		Police Department		
DIR (Domestic Incident Report)	New York State Domestic Incident Report completed by Officer [REDACTED]	Capt. [REDACTED] Rochester Police Department	N/A	DIR.pdf
PDR (Prisoner Data Report)	Rochester Police Department Prisoner Data Report detailing information pertaining to the arrestee completed by Officer [REDACTED]	Capt. [REDACTED] Rochester Police Department	N/A	PDR.pdf
Info's	Rochester Police Department Discovery Checklist indicating the Accusatory Instrument, Domestic Incident Report and Prisoner Data Report were completed and sent to the District Attorney (indicated by a check mark or "x" in the appropriate box. Also includes the Accusatory Instrument beginning on page 2, listed are the details surrounding a complaint of Criminal Trespass in the Second Degree and Harassment in the Second Degree	Capt. [REDACTED] Rochester Police Department	N/A	Info's.pdf



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23-138 Resignation- Officer [REDACTED]	Rochester Police Department Personnel Order signed by Chief [REDACTED] noting the resignation of Officer [REDACTED] effective May 23, 2023	Capt. [REDACTED] Rochester Police Department	N/A	23-138 Resi... [REDACTED].pdf
Notes 6-14-23	Word document completed by Captain [REDACTED] on 6-14-23 to alert the PAB of Officer [REDACTED] resignation on 5-23-23.	Capt. [REDACTED] Rochester Police Department	N/A	Notes 6-14-23.docx
Cover Letter to PAB from Captain [REDACTED]	Captain [REDACTED] response to the SOI request sent on 1/25/23, addressing the documents and information found relevant to the incident and acknowledging a possible severe allegation.	Capt. [REDACTED] Rochester Police Department	N/A	Cover Lette.. [REDACTED].pdf
SOI RPD Response	Captain [REDACTED] response to the SOI request sent on 1/25/23, addressing the documents and information found relevant to the incident and acknowledging a possible severe allegation.	Capt. [REDACTED] Rochester Police Department	N/A	SOI 2022 02...esponse.pdf
SOI RPD Response	Captain [REDACTED] response to the SOI request sent on 1/19/2024, stating RPD received your request on 1-19-24 at 1122hrs. Based on the recent guidance from Corporation Counsel indicated in a response to a subpoena on 1-22-24, the records will not be released.	Capt. [REDACTED] Rochester Police Department	N/A	SOI_2022-02...1-23-24.pdf

A Request to interview Officer [REDACTED] was sent to RPD on January 8, 2024. In response, RPD referenced a letter from Corporation Counsel denying any officer interviews.



APPLICABLE RULES & LAWS

General Order 336: Duty to Intervene

§II. Procedure

- A) When Members observe using unreasonable force or otherwise acting contrary to law or RPD policy, they shall intervene when it is safe and feasible to do so.

Rochester Police Department Rules & Regulations: General Conduct Discourtesy 4.2A

- A) Employees shall be courteous, civil, and tactful in the performance of their duties.

Rochester Police Department General Orders: Warrantless Searches 415

§VIII (E)(1)b

Conduct this type of search with the least number of members necessary, but in the presence of at least two members, and only by members of the same gender as the person to be searched. If it is determined the subject is a transgender person, members will search consistent with the gender expression of the prisoner, unless otherwise requested by the subject. If the gender expression is unclear, the member will respectfully ask how the person would like to be referred to, and by which gender officer by which gender officer the person would prefer to be searched.

Note: § VIII of General Order 415 is titled “Strip and Body Cavity Searches.”

ANALYSIS

STANDARD OF PROOF

For the purpose of PAB’s investigations, findings must be made pursuant to a “substantial evidence” standard of proof. City Charter 18-5(I)(10). 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)).

Substantial evidence means more than a mere scintilla but less than a preponderance; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *See NLRB v. Int’l Bhd. of Elec. Workers, Local 48*, 345 F.3d 1049, 1054 (9th Cir. 2003); *De la Fuente II v. FDIC*, 332 F.3d 1208, 1220 (9th Cir. 2003). However, for the purposes of this case, the higher standard of by a preponderance of evidence is applied. Merriam Webster defines preponderance of evidence as, “The standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party, or which shows that the fact to be proven is more probable than not.” (<https://www.merriam-webster.com/legal/preponderance%20of%20the%20evidence>). This



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is understood to be a greater than 50% chance that the claim is true
 (https://www.law.cornell.edu/wex/preponderance_of_the_evidence#:~:text=Preponderance%20of%20the%20evidence%20is,that%20the%20claim%20is%20true).

Note: Officer [REDACTED] is no longer with RPD; however, the Duty to Intervene stems from the reporter's allegation that Officer [REDACTED] violated RPD Rule and Regulation 415 §VIII (E)(1)b (*supra*).

Allegation 1: Duty to Intervene (General Order 336): Officer [REDACTED] failed to intervene when a fellow member of the Rochester Police Department conducted a frisk of an individual of the opposite gender.

Because a frisk of the opposite gender does not require a member of the same gender unless it constitutes a strip search or cavity search, *the allegation that Officer [REDACTED] violated G.O. 336 (Duty to Intervene) is recommended as exonerated.*

The PAB notes that during the 2014-2014 regular NY Senate session, Bill No. 3916 was introduced to prohibit an officer frisking a community member of the opposite gender. This Bill was either tabled or not voted on. Currently, the NY Criminal Procedure Law does not prohibit opposite gender frisks that do not fall under § VIII of the RPD General Orders (strip searches and cavity searches).

Allegation 3: Rochester Police Department Rules & Regulations: General Conduct (Discourtesy 4.2 a): Officer [REDACTED] failed to perform in a courteous, civil, and tactful manner during his duties when he removed the individuals head scarf in an aggressive and forceful manner.

There were no discernable instances of discourtesy, as demonstrated by Officer [REDACTED] BWC. The BWC manual was followed in that the unit was on at all times in which officer [REDACTED] engaged with the community member with the exception of 26 minutes (from 16:06 to 16:32) in which the reporter was secured in the patrol vehicle and Officer [REDACTED] was speaking with Officer [REDACTED] RPD BWC manual Section IV F1 states:

Members will not record with BWCs internal police conversations either openly or surreptitiously, including conversations among members or other RPD employees, conversations between supervisors and subordinates, or conversations relating to personnel matters including but not limited to performance evaluations, selection interviews, discipline, or counseling.

Therefore, *the allegation that Officer [REDACTED] violated RPD Rules & Regulations 4.2a (Discourtesy) is recommended as unfounded.*



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RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	Officer [REDACTED]	Duty to Intervene (G.O.336): Officer [REDACTED] failed to intervene when a fellow member of the Rochester Police Department conducted a frisk of an individual of the opposite gender.	Exonerated
1	Officer [REDACTED]	Discourtesy 4.2a: Officer [REDACTED] failed to perform in a courteous, civil, and tactful manner during his duties when he removed the individuals head scarf in an aggressive and forceful manner	Unfounded