



## 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.

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## BOARD DECISION

**Public Tracking Number (PTN):** 2023-0069

**Date of Panel Review:** 04-Apr-2024 8:15 PM (EDT)

**Board Members Present:** [REDACTED]

**Case Findings:** Sustained

**Disciplinary Recommendation:** 10 Days Suspension

**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] -Rules and Regulations 1.2 (Familiarity with Laws, Ordinances, and Rules): Officer [REDACTED] incorrectly advised [REDACTED] regarding the violation of her order of protection. The Police Accountability Board sustained this allegation. The Board agrees with the finding. The Police Accountability Board recommended 10 days suspension. The Board also agrees with the disciplinary recommendation.

- **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? No**
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**Officer Name- Allegation # 2:**

Officer [REDACTED] Rules and Regulations 2.2 (Identification): Officer [REDACTED] failed to provide [REDACTED] with his name and badge number. The Police Accountability Board exonerated this allegation. The Board agrees with the finding.

- **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**
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**Officer Name- Allegation # 3:**

Officer [REDACTED] -Rules and Regulations 2.11 (Attitude and Impartiality): Officer [REDACTED] exhibited bias in his interaction with [REDACTED]. The Police Accountability Board sustained this allegation. The Board agrees with the finding. The Police Accountability Board recommended 5 days suspension. The Board also agrees with the disciplinary recommendation.

- **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**
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**Officer Name- Allegation # 4:**

Officer [REDACTED] Rules and Regulations 2.13 (Assistance to Citizens): Officer [REDACTED] did not assist [REDACTED] in reporting threatening text messages. The Police Accountability Board sustained this allegation. The Board agrees with the finding. The Police Accountability Board recommended 10 days suspension. The Board also agrees with the disciplinary recommendation.

- **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 # 5:**

Officer [REDACTED] Body Worn Camera Policy (Recording Requirements and Restrictions):

Officer [REDACTED] did not activate his body worn camera during his interaction with [REDACTED]. The Police Accountability Board sustained this allegation. The Board agrees with the finding. The Police Accountability Board recommended 10 days suspension. The Board also agrees with the disciplinary recommendation.

- **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**


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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

The following events took place on April 27, 2023 at approximately 12:30 pm, at [REDACTED] 14613.

On the above mentioned date and time, Officer [REDACTED] responded to the above location in response to a 911 call placed by [REDACTED]. [REDACTED] called to report that [REDACTED] roommate, who is also [REDACTED] ex-[REDACTED] brother, had received threatening text messages from [REDACTED] ex-[REDACTED] and concerning [REDACTED], [REDACTED] children, and [REDACTED] place of employment. [REDACTED] stated that this was in violation of the current no contact order that was issued by the Monroe County Family Court.

Upon arriving at [REDACTED], Officer [REDACTED] reviewed the text messages and determined that the messages were not in violation of the current no contact order. [REDACTED] disagreed and asked if Officer [REDACTED] would like to speak with her lawyer. [REDACTED] agreed and spoke briefly, via phone to [REDACTED] lawyer. After speaking to [REDACTED] lawyer, Officer [REDACTED] left without providing [REDACTED] with any information regarding following up on [REDACTED] concerns.

### INVOLVED OFFICER(S)

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

### INVOLVED INDIVIDUALS



City of Rochester  
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245 E. Main Street  
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Name	Age	Sex	Race/ Ethnicity
██████████	██	██████	██████████

## ALLEGATIONS

1	Officer ██████████	Rules and Regulations 1.2 (Familiarity with Laws, Ordinances, and Rules): Officer ██████████ incorrectly advised ██████████ regarding the violation of her order of protection.
2	Officer ██████████	Rules and Regulations 2.2 (Identification): Officer ██████████ failed to provide ██████████ with his name and badge number.
3	Officer ██████████	Rules and Regulations 2.11 (Attitude and Impartiality): Officer ██████████ exhibited bias in his interaction with ██████████
4	Officer ██████████	Rules and Regulations 2.13 (Assistance to Citizens): Officer ██████████ did not assist ██████████ in reporting threatening text messages.
5	Officer ██████████	Body Worn Camera Policy (Recording Requirements and Restrictions): Officer ██████████ did not activate his body worn camera during his interaction with ██████████

## INVESTIGATION

Reporter ██████████ filed a complaint with the Police Accountability Board on May 1, 2023.

The Police Accountability Board notified the Rochester Police Department of its investigation and requested corresponding documents on November 28, 2023.

██████████ provided text messages to the Police Accountability Board, via email, on November 29, 2023.

The Rochester Police Department responded to the Police Accountability Board's request on November 30, 2023, and provided the Police Accountability Board with six computer aided dispatch reports.



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245 E. Main Street  
 Rochester, NY 14604

██████ met with the Police Accountability Board on March 4, 2024, for an in-person interview.

### EVIDENCE PROVIDED

Evidence	Description	Provided by	Filename
Intake Report	██████ initial report	██████	<a href="#">i-Sight   Case 2023-0069   Details   Overview</a>
Electronic Communication	Text messages from ██████ ex ██████ to ██████ roommate.	██████	<a href="#">i-Sight   File 12</a>
Information Request	Source of Information Request to the Rochester Police Department	Police Accountability Board	<a href="#">S-SharePoint File Transfer - InitialNotification_2023-0069 RPD response 11-30-23.pdf - All Documents</a>
Information Request Response	Six computer aided dispatch reports	Rochester Police Department	<a href="#">S-SharePoint File Transfer - CAD - All Documents</a>
Video Interview	Police Accountability Board interview of ██████	Police Accountability Board	<a href="#">IMG_0013.MOV (sharepoint.com)</a>

### 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.
Body Camera Footage	Request from the Police Accountability Board to the Rochester Police Department	None available.



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**Police Accountability Board**  
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245 E. Main Street  
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Formal Officer Statement	Request from the Police Accountability Board to the Rochester Police Department	Compelled police officer statements are in direct conflict with the collective bargaining agreement.
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## **APPLICABLE RULES & LAWS**

### **Rochester Police Department Rules and Regulations**

#### 1.2 FAMILIARITY WITH LAWS, ORDINANCES, RULES

Employees shall be held personally responsible for knowing and adhering to the Rules and Regulations, orders, current directives, procedures and policies of the Department, City Ordinances, and State and Federal Laws affecting their duties.

- a) Returning from Absence: Employees returning to duty from any absence shall acquaint themselves with all directives or amendments of the Department, which have been issued in their absence.
- b) Unfamiliarity No Defense: Unfamiliarity with or ignorance of laws, ordinances, Rules and Regulations, current directives, procedures, policies or General Orders shall not constitute a defense.
- c) Making Changes as Directed: It shall be the personal responsibility of every employee to promptly make all directed changes in any manual, text, or reference book issued to them by the Department.

#### 2.2 IDENTIFICATION

- a) Officers shall respectfully furnish their name and badge number to any person requesting that information when they are on duty or presenting themselves as police officers. Exceptions may be made for person on special duties and assignments (e.g., undercover, vice assignments) with permission of their supervisor.
- b) Non-sworn employees shall respectfully furnish their names to any person requesting that information when they are on duty or presenting themselves as Rochester Police Department employees.

#### 2.11 ATTITUDE AND IMPARTIALITY

Employees must exhibit and maintain an impartial attitude toward complainants, violators, witnesses, suspects, or any other person.

#### 2.13 ASSISTANCE TO CITIZENS





City of Rochester  
**Police Accountability Board**  
Established 2019

245 E. Main Street  
Rochester, NY 14604

Employees shall, in accordance with policies and procedures of the Department, render all possible police service to any citizen seeking information or assistance.

## **Rochester Police Department Body Worn Camera Manual**

### **IV. Recording Requirements and Restrictions<sup>1</sup>**

- A. Members assigned a BWC will activate it and record all activities, and all contact with persons, in the course of performing police duties as soon as it is safe and practical to do so, as set forth in this Manual.
  - 1. Members will activate and record with the BWC preferably upon being dispatched and prior to exiting their police vehicle, or prior to commencing any activity if on foot patrol, as set forth below.
  - 2. Members will immediately activate the BWC when required unless it is not safe and practical, i.e., the member cannot immediately activate the BWC due to an imminent threat to the member's safety, physical resistance, flight, or other factors rendering immediate activation impractical. In such cases, the member will activate the BWC as soon as possible.
- B. Mandatory BWC Recordings. Members assigned a BWC will activate it and record all activities, and contact with persons, in the course of performing or when present at any enforcement activity, or upon direction of a supervisor. There are no exceptions to the requirement to record mandatory events.
  - 1. "Enforcement activities" are:
    - a. arrests and prisoner transports (including issuance of appearance tickets and mental hygiene arrests);
    - b. pursuits (pursuit driving as defined by G.O. 530, Pursuit Driving, and foot pursuits);
      - i. Members will activate the BWC and record any involvement or assistance with a vehicle or foot pursuit, including direct involvement in the pursuit, deploying a tire deflation device, blocking traffic or taking a traffic point, paralleling, following from a distance, responding to the general area to provide assistance

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<sup>1</sup> The body worn camera policy has been condensed for purposes of this document. The entirety of which may be viewed using the following link. [Body Worn Camera \(BWC\) Manual | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#)



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City of Rochester  
**Police Accountability Board**  
Established 2019

245 E. Main Street  
Rochester, NY 14604

if needed, and responding to and while present at the apprehension/arrest site.

- c. detentions/stops of persons and vehicles;
  - d. force.
- C. Standard BWC Recordings. Unless a specific exception exists, members assigned a BWC will activate it and record all activities, and contact with persons, in the course of performing police duties. This includes all calls for service and self-initiated police activity unless listed as Optional below.
- D. Optional BWC Recording. Unless a mandatory or standard event arises which must be recorded, members are not required to record the following activities with a BWC, but may do so if the member believes it serves a legitimate law enforcement purpose:
- 1. While driving or a passenger during routine vehicle patrol.
  - 2. Traffic control and traffic points.
  - 3. Walking beats, directed patrol, corner posts, and special attention checks.
  - 4. Completing reports when no longer in the presence of civilians (e.g., in a police car or in a police facility).
  - 5. Interviewing cooperative victims, witnesses, and persons with knowledge in a private residence or a police facility.
  - 6. Conducting general photo queries, photo arrays, and physical line-ups.
  - 7. While conducting parking enforcement if no civilians are present.
  - 8. Completing security surveys.
  - 9. Conducting a neighborhood canvass.
  - 10. During community or neighborhood meetings; or meetings of government bodies or agencies.
  - 11. Routine walk-up requests for information or assistance (e.g., giving directions).
  - 12. Civilian transports.



City of Rochester  
**Police Accountability Board**  
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245 E. Main Street  
 Rochester, NY 14604

## 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: Officer [REDACTED] incorrectly advised [REDACTED] regarding the violation of her order of protection.

The Rochester Police Department’s Rules and Regulations 1.2 states that Officers are personally responsible for knowing and adhering to the State and Federal Laws affecting their duties.

Officer [REDACTED] responded to the home of [REDACTED] after [REDACTED] placed a call to 911 with the goal of reporting threatening text messages that were directed to [REDACTED]. Once at [REDACTED], Officer [REDACTED] proceeded to tell [REDACTED] that [REDACTED] was incorrect in [REDACTED] assessment and that the messages were not of a threatening nature due to their content and also because the messages were sent to [REDACTED] ex-[REDACTED] brother.

The text messages that were received contained statements such as “[REDACTED] wanted war tell [REDACTED] its fu\*\*\*\*g on” and “Hey [REDACTED] this is [REDACTED] your [REDACTED] ex-[REDACTED]. I’m just messaging you to inform you that you should really be concerned about [REDACTED] ... due to [REDACTED] ongoing crack cocaine addiction...”. While these statements are not overtly threatening, they are harassing in nature- which would render the transmission of such to be a violation of [REDACTED] order of protection.

New York Penal Law § 240.26 defines harassment in the second degree as “with the intent to harass, annoy or alarm another person, he engages in a course of conduct which alarm or seriously annoy such other person and which serve no legitimate purpose”. N.Y. Penal Law § 240.26. Here, it is clear that the messages were sent with the intention of alarming [REDACTED] and to put [REDACTED] on notice that [REDACTED]





City of Rochester  
Police Accountability Board  
Established 2019

245 E. Main Street  
Rochester, NY 14604

██████████ was willing to retaliate because he felt as if ██████ set him up and provided him with an incorrect court date.

*Allegation 1 against Officer ██████ is sustained.*

Allegation 2: Officer ██████ failed to provide ██████ with his name and badge number.

The Rochester Police Department's Rules and Regulations 2.2. states that Officers shall respectfully furnish their name and badge number to any person requesting that information when they are on duty or presenting themselves as police officers.

Officer ██████ responded to the ██████ of ██████ regarding a call that ██████ placed to 911. Officer ██████ was on duty and in uniform during all relevant contact with ██████. Officer ██████ did not provide ██████ with his name and badge number; however, during ██████ in-person interview with the Police Accountability Board, ██████ stated that ██████ did not verbally ask Officer ██████ for such identifying information.

Because Officer ██████ was not explicitly asked for his name and badge number, his failure to provide such is not in violation of the Rochester Police Department's rules and regulations.

*Allegation 2 against Officer ██████ is exonerated.*

Allegation 3: Officer ██████ exhibited bias in his interaction with ██████

The Rochester Police Department's Rules and Regulations 2.11 states that Officers must exhibit and maintain an impartial attitude toward complainants, violators, witnesses, suspects, or any other person. Impartiality is defined as "the terms used for something unbiased, fair, and neutral". [IMPARTIAL Definition & Meaning - Black's Law Dictionary \(thelawdictionary.org\)](https://www.thelawdictionary.org/impartial-definition-meaning/). It is also commonly understood to mean objective and unprejudiced.

During his interaction with ██████, Officer ██████ repeatedly asked ██████ questions regarding ██████ living arrangements. After ██████ explained that ██████ as well as, her ex-██████████ brother, and her ex-██████████ brother's girlfriend have all lived together for several years, Officer ██████ expressed shock and began to inappropriately question the nature of ██████ relationship with ██████ roommates. Officer ██████ then went on to question the gender of ██████ attorney by asking whether or not he was a man.

Officer ██████ outward expression of skepticism/intrigue surrounding ██████ living arrangements gave the appearance that he began to assess her case from a biased, not neutral perspective. Furthermore, the direct questions regarding the gender of ██████ attorney further illustrate that Officer ██████ had already developed an opinion regarding ██████ and ██████ relationships with members of the opposite sex. These blatant displays of impartiality are in direct violation of the Rochester Police Department's rules and regulations.

*Allegation 3 against Officer ██████ is sustained.*


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City of Rochester  
**Police Accountability Board**  
 Established 2019

245 E. Main Street  
 Rochester, NY 14604

Allegation 4: Officer [REDACTED] did not assist [REDACTED] in reporting threatening text messages.

The Rochester Police Department's Rules and Regulations 2.13 states that Officers shall, in accordance with policies and procedures of the Department, render all possible police service to any citizen seeking information or assistance.

Officer [REDACTED] did not generate any reports with the Rochester Police Department to document [REDACTED] concerns. Officer [REDACTED] also failed to provide [REDACTED] with any information or directions as to how [REDACTED] could independently follow up on [REDACTED] claims. Officer [REDACTED] did not provide any information or assistance to [REDACTED] regarding the documentation/ follow up procedures regarding the threatening text messages that [REDACTED] called 911 to report.

*Allegation 4 against Officer [REDACTED] is sustained.*

Allegation 5: Officer [REDACTED] did not activate his body worn camera during his interaction with [REDACTED].

The Rochester Police Department's Body Worn Camera Policy states that Officers are to activate their body worn camera and record all activities and all contact with persons unless an enumerated exception applies. Some exceptions which may override the necessity of standard body camera recording are: during routine traffic patrols, when completing reports and outside of the presence of civilians, and when interviewing cooperative victims in a private residence or police facility.

The entirety of Officer [REDACTED] and [REDACTED] interaction occurred on the front sidewalk outside of [REDACTED]. After a thorough search of the Rochester Police Department's database, there is no video evidence of the interaction between Officer [REDACTED] and [REDACTED]. Officer [REDACTED] did not activate his body worn camera during this interaction. Due to the location of the interaction, no RPD exception applies and the interaction between Officer [REDACTED] and [REDACTED] should have been captured on his body worn camera.

*Allegation 5 against Officer [REDACTED] is sustained.*

### RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	Officer [REDACTED]	Rules and Regulations 1.2 (Familiarity with Laws, Ordinances, and Rules): Officer [REDACTED] incorrectly advised [REDACTED] regarding the violation of [REDACTED] order of protection.	Sustained
2	Officer [REDACTED]	Rules and Regulations 2.2 (Identification): Officer [REDACTED] failed to provide [REDACTED] with his name and badge number.	Exonerated



City of Rochester  
**Police Accountability Board**  
 Established 2019

245 E. Main Street  
 Rochester, NY 14604

3	Officer [REDACTED]	Rules and Regulations 2.11 (Attitude and Impartiality): Officer [REDACTED] exhibited bias in his interaction with [REDACTED]	Sustained
4	Officer [REDACTED]	Rules and Regulations 2.13 (Assistance to Citizens): Officer [REDACTED] did not assist [REDACTED] in reporting threatening text messages.	Sustained
5	Officer [REDACTED]	Body Worn Camera Policy (Recording Requirements and Restrictions): Officer [REDACTED] did not activate his body worn camera during his interaction with [REDACTED]	Sustained

## 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
Rules and Regulations 1.2: Employees shall be held personally responsible for knowing and adhering to the Rules and Regulations, orders, current directives, procedures and policies of the Department, City Ordinances, and State and Federal Laws affecting their duties	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): **10 day suspension**





City of Rochester  
**Police Accountability Board**  
 Established 2019

245 E. Main Street  
 Rochester, NY 14604

- Explanation of deviation from presumptive penalty: No deviation.

Sustained Allegation 3 against Officer [REDACTED]

**Disciplinary Matrix Appendix**

Misconduct	Level
Rules and Regulations 2.11: Employees must exhibit and maintain an impartial attitude toward complainants, violators, witnesses, suspects, or any other person.	2

- Recommended Level: 2 ("More than minimal negative impact to individuals, community, or public perception of the agency or relationships with other officers or agencies.")
- Recommended Discipline (based on 0 prior sustained violations): **5 day suspension**
- Explanation of deviation from presumptive penalty: No. Deviation

Sustained Allegation 4 against Officer [REDACTED]

**Disciplinary Matrix Appendix**

Misconduct	Level
Rules and Regulations 2.13: Employees shall render all possible service to any citizen seeking information or assistance.	3

- Recommended Level: 3 ("More than minimal negative impact to individuals, community, or public perception of the agency or relationships with other officers or agencies.")
- Recommended Discipline (based on 0 prior sustained violations): **10 day suspension**
- Explanation of deviation from presumptive penalty: No. deviation.

Sustained Allegation 5 against Officer [REDACTED]

**Disciplinary Matrix Appendix**

Misconduct	Level
Body Worn Camera Policy: Officers shall activate their body worn camera and record all activities and all contact with persons unless an enumerated exception applies.	3

- Recommended Level: 3 ("More than minimal negative impact to individuals, community, or public perception of the agency or relationships with other officers or agencies.")
- Recommended Discipline (based on 0 prior sustained violations): **10 day suspension**
- Explanation of deviation from presumptive penalty: No deviation.