



## 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):** 2023-0203

**Date of Panel Review:** 26-Apr-2024 12:30 PM (EDT)

**Board Members Present:** [REDACTED], [REDACTED], [REDACTED]

**Case Findings:** Exonerated

**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] Rules and Regulations 1.2 (Familiarity with Laws, Ordinances, and Rules):

Officer [REDACTED] incorrectly completed [REDACTED] domestic violence report detailing allegations of harassment instead of assault.

- **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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**Officer Name- Allegation # 2:**

Officer [REDACTED] General Order 401 (Investigative Process): Officer [REDACTED] incompetently investigated [REDACTED] domestic violence allegations.

- **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

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### STATEMENT OF AUTHORITY

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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."

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### EXECUTIVE SUMMARY

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██████████ was the victim of a domestic violence incident that occurred on November 3, 2022. ██████████ contacted 911 the next day with the intention of documenting ██████████ experience. On November 4, 2022, at approximately 11:00 pm, Officer ██████████ responded to ██████████ home located at ██████████ 14619. Once there, ██████████ relayed the events that took place on the evening prior. More specifically, ██████████ informed Officer ██████████ that ██████████ ex-boyfriend reached behind ██████████ back and grabbed ██████████ arm, grabbed ██████████ by sweater, and squeezed ██████████ other arm, which was previously injured, to the point of causing pain.

At the time of Officer ██████████ and ██████████ meeting, ██████████ did not have any visible bruising on ██████████ body. Officer ██████████ then informed ██████████ that he would be writing a report for harassment. Officer ██████████ also informed ██████████ of the details he would be including in his report. ██████████ stated that ██████████ understood.

Once ██████████ received Officer ██████████ report, ██████████ decided that ██████████ would rather have the report written for assault instead of harassment due to the pain ██████████ endured as well as subsequent forming bruising. ██████████ attempted to contact Officer ██████████ on more than one occasion to request that he return to ██████████ and amend his report. Officer ██████████ did not return ██████████ calls.

██████████ then contacted Officer ██████████ supervisor to inform him of the situation and request that ██████████ report be amended. Officer ██████████ supervisor informed ██████████ that Officer ██████████ was correct in completing the report for harassment given the information that was available to Officer ██████████ at that time. ██████████ then informed the supervisor that since ██████████ initial meeting with Officer ██████████ ██████████ has seen a physician who diagnosed ██████████ with a rotator cuff injury. The supervisor informed ██████████ that based on this new information, he would send an officer out to ██████████ to amend the report. The supervisor also informed ██████████ that Officer ██████████ would not be the officer handling this matter as he was currently out from work due to a serious injury.

██████████ report was subsequently amended to assault on November 14, 2022. On November 20, 2022, ██████████ contacted the Rochester Police Department's Professional Standards Section to report that Officer ██████████ inaccurately completed ██████████ domestic violence report.



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

245 E. Main Street  
Rochester, NY 14604

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### INVOLVED OFFICERS

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Officer Name	Officer Rank	Badge/Employee #	Date of Appointment	Sex	Race/Ethnicity
██████████	██████	██████	██████████	████	██████████

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### INVOLVED INDIVIDUALS

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Name	Age	Sex	Race/ Ethnicity
██████████	██	██████	██████████

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### ALLEGATIONS

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1	Officer ██████████	Rules and Regulations 1.2 (Familiarity with Laws, Ordinances, and Rules): Officer ██████████ incorrectly completed ██████████ domestic violence report detailing allegations of harassment instead of assault.
2	Officer ██████████	General Order 401 (Investigative Process): Officer ██████████ incompetently investigated ██████████ domestic violence allegations.



## INVESTIGATION

The Rochester Police Department informed the Police Accountability Board of its Professional Standards Section investigation on November 21, 2023.

On November 22, 2023, the Rochester Police Department provided the Police Accountability Board with an email complaint, a complaint form, and several photographs of [REDACTED] injuries.

On November 24, 2023, the Rochester Police Department provided the Police Accountability Board with one computer aided dispatch report.

On December 6, 2023, the Rochester Police Department provided the Police Accountability Board with a transcript of [REDACTED] interview with the Professional Standards Section as well as four body camera videos.

On March 5, 2024, the Rochester Police Department provided the Police Accountability Board with a transcript of Officer [REDACTED] interview with the Professional Standards Section.

## EVIDENCE PROVIDED

Evidence	Description	Provided by	Filename
Notification of Investigation	Rochester Police Department's notification of a Professional Standards Section investigation	Rochester Police Department	<a href="#">S-SharePoint File Transfer - Inv. Notification PSS to PAB 21Nov23 IA # 2023-0764.pdf - All Documents</a>
Email Complaint	Email Complaint provided on November 22, 2023	Rochester Police Department	<a href="#">S-SharePoint File Transfer - Initial Email Complaint.pdf - All Documents</a>
Complaint Form	Complaint Form provided on November 22, 2023	Rochester Police Department	<a href="#">S-SharePoint File Transfer - Complaint Form Signed.pdf - All Documents</a>
Photographs	Photographs of [REDACTED] injuries	Rochester Police Department	<a href="#">S-SharePoint File Transfer - Photos Provided by [REDACTED].pdf - All Documents</a>



Evidence	Description	Provided by	Filename
Computer Aided Dispatch Report	Computer Aided Dispatch Report	Rochester Police Department	<a href="#">S-SharePoint File Transfer - Job Cards sent 11-24-23 to PAB.pdf - All Documents</a>
Interview Transcript	██████████ interview with the Office of Professional Standards	Rochester Police Department	<a href="#">S-SharePoint File Transfer - 23-0764 ██████████.pdf - All Documents</a>
Body Camera Videos	Body camera recordings of all officers involved	Rochester Police Department	<a href="#">Genetec Clearance   Collaborative investigation management</a>
Interview Transcript	Officer ██████████ interview with the Office of Professional Standards	Rochester Police Department	<a href="#">S-SharePoint File Transfer - 23-0764 ██████████.pdf - All Documents</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.
911 calls	Request from the Police Accountability Board to the Rochester Police Department	The Rochester Police Department has stated that this information must be obtained from the Emergency Communications Department.
Officer Statement Request	Request from the Police Accountability Board to the Rochester Police Department	A compelled officer statement is in contradiction with the collective bargaining agreement.

**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.

### **Rochester Police Department General Orders**

#### 401(INVESTIGATIVE PROCESS)<sup>1</sup>

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.

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## **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, 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.

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## **ANALYSIS**

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<sup>1</sup> The investigative process policy has been condensed for purposes of this document. The entirety of which may be viewed using the following link. [GO 401 Investigation Process | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#).





The following findings are made based on the above standards:

Allegation 1: Officer [REDACTED] incorrectly completed [REDACTED] domestic violence report detailing allegations of harassment instead of assault.

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. Two of those laws being harassment and assault.

A physical act of violence against an individual may be considered either harassment or assault with the primary distinction being the presence of an ascertainable injury. Explicitly, a harassment (in the second degree) occurs when an individual "strikes, shoves, kicks or otherwise subjects [another] person to physical contact". N.Y. Penal Law § 240.26. On the other hand, an assault (in the third degree) occurs when "with the intent to cause physical injury to another person, [an individual] causes such injury..." N.Y. Penal Law § 120.00.

Officer [REDACTED] responded to [REDACTED] [REDACTED] in an effort to document events that [REDACTED] suffered at the hands of [REDACTED] ex-boyfriend. [REDACTED] informed Officer [REDACTED] that [REDACTED] ex-boyfriend reached behind [REDACTED] back and grabbed [REDACTED] arm, grabbed [REDACTED] by sweater, and squeezed [REDACTED] other arm, which was previously injured, to the point of causing pain. [REDACTED] also stated that [REDACTED] experienced swelling on [REDACTED] arm as a result of the incident, but the swelling has since subsided. [REDACTED] did not inform of Officer [REDACTED] of any other physical injuries. It must also be noted that [REDACTED] was wearing a long sleeved sweater for the duration of [REDACTED] meeting with Officer [REDACTED] and no bruising is visible.

Based on a review of Officer [REDACTED] body worn camera as well as the body worn camera of Officer [REDACTED] supervisor, it can be determined that at the time of [REDACTED] and Officer [REDACTED] meeting, [REDACTED] did not have any pronounced injuries or marks about [REDACTED] body. Due to the lack of physical marks or reported injuries, Officer [REDACTED] was correct in writing [REDACTED] report detailing allegations of harassment. Officer [REDACTED] accurately reported [REDACTED] domestic violence incident.

*Allegation 1 against Officer [REDACTED] is exonerated.*

Allegation 2: Officer [REDACTED] incompetently investigated [REDACTED] domestic violence allegations.

The Rochester Police Department's General Order 401 states that Officers shall conduct vigorous and thorough investigations of all offenses observed or brought to their attention.

Officer [REDACTED] was made aware of a domestic violence incident involving [REDACTED] Officer [REDACTED] subsequently interviewed [REDACTED] where he obtained details regarding the allegations and details regarding [REDACTED] injuries. [REDACTED] specifically informed Officer [REDACTED] that injurious contact was made with [REDACTED] arms and with [REDACTED] clothing near [REDACTED] neck area. [REDACTED] then informed Officer [REDACTED] that [REDACTED] suffered from arm swelling. Officer [REDACTED] responded by moving closer to [REDACTED] and physically inspecting [REDACTED] arms. [REDACTED] then acknowledged that the swelling had subsided. [REDACTED] does not inform Officer [REDACTED] of any bruising around [REDACTED] neck area nor does [REDACTED] ask him to inspect the area. Officer [REDACTED] competently investigated [REDACTED] domestic violence allegations as he conducted a thorough interview and a brief physical inventory of the injuries reported.

*Allegation 2 against Officer [REDACTED] is exonerated.*



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**RECOMMENDED FINDINGS**

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#	Officer	Allegation	Finding/Recommendation
1	Officer [REDACTED]	Rules and Regulations 1.2 (Familiarity with Laws, Ordinances, and Rules): Officer [REDACTED] incorrectly completed [REDACTED] domestic violence report detailing allegations of harassment instead of assault.	Exonerated
2	Officer [REDACTED]	General Order 401 (Investigative Process): Officer [REDACTED] incompetently investigated [REDACTED] domestic violence allegations.	Exonerated