



## 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):** 2023-0207

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

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

### Case Findings:

- 1 - Uninvestigable
- 2- Uninvestigable
- 3- Sustained
- 4- Sustained

**Disciplinary Recommendation:** 20 day suspension for both officers. Leadership training for Officer [REDACTED] De-escalation training for Officer [REDACTED]

**Dissenting Opinion/Comment:** Board President [REDACTED] agreed with the PAB recommendation of exoneration for Allegation 2. The majority voted to change it to "uninvestigatable." The evidence was not conclusive as to whether Officer [REDACTED] called a Sergeant.



## **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 502 (Equitable Policing): Officer [REDACTED] did not have a legitimate reason for conducting a traffic stop upon [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
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**Officer Name- Allegation # 2:**

Officer [REDACTED] General Order 310 (Citizen Complaints): Officer [REDACTED] incorrectly handled [REDACTED] request to speak to a police sergeant.

- 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 # 3:**

Officer [REDACTED] General Order 585 (Arrests): Officer [REDACTED] did not have a legitimate reason for the arrest 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? No
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**Officer Name- Allegation # 4:**

Officer [REDACTED] General Order 585 (Arrests): Officer [REDACTED] did not have a legitimate reason for the arrest 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? No



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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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The following events took place on November 25, 2023, at approximately 8:54 pm, at or near the corner of Dewey Avenue and Glenwood Avenue, Rochester, New York, 14613.

On the above mentioned date and time, Officer [REDACTED] and Officer [REDACTED] conducted a traffic stop on the vehicle being driven by [REDACTED]. Officer [REDACTED] informed [REDACTED] that [REDACTED] was being stopped for running a red light. [REDACTED] immediately refuted Officer [REDACTED] claims.

After a brief interaction, Officer [REDACTED] returned to his vehicle to issue a ticket to [REDACTED] for running a red light. When Officer [REDACTED] returned to [REDACTED] vehicle, [REDACTED] requested to speak to a sergeant regarding the matter. Officer [REDACTED] advised [REDACTED] to call 911 in order to request a call back from a police sergeant.

Officer [REDACTED] then left the scene. After Officer [REDACTED] left the scene, [REDACTED] exited [REDACTED] vehicle and walked over to Officer [REDACTED] vehicle to ask him for his name and badge number. Officer [REDACTED] sees this interaction and turns his vehicle around. Officer [REDACTED] then approaches [REDACTED] as [REDACTED] is returning to [REDACTED] vehicle. Officer [REDACTED] proceeds to tell [REDACTED] to put [REDACTED] hands behind [REDACTED] back and that [REDACTED] is not going to stand in front of Officer [REDACTED] police vehicle.

Officer [REDACTED] and Officer [REDACTED] then proceed to put [REDACTED] in handcuffs. [REDACTED] is then escorted to and put in the back of Officer [REDACTED] police vehicle. [REDACTED] then asks if [REDACTED] is under arrest to which Officer [REDACTED] confirms. [REDACTED] then states that [REDACTED] was never read his rights to which Officer [REDACTED] also confirms.

After approximately fifteen minutes, [REDACTED] is let out of Officer [REDACTED] vehicle, removed from hand cuffs, and given an appearance ticket.

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



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### INVOLVED OFFICERS

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

### INVOLVED INDIVIDUALS

Name	Age	Sex	Race/ Ethnicity

### ALLEGATIONS

1	Officer	General Order 502 (Equitable Policing): Officer did not have a legitimate reason for conducting a traffic stop upon
2	Officer	General Order 310 (Citizen Complaints): Officer incorrectly handled request to speak to a police sergeant.
3	Officer	General Order 585 (Arrests): Officer did not have a legitimate reason for the arrest of
4	Officer	General Order 585 (Arrests): Officer did not have a legitimate reason for the arrest of



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## INVESTIGATION

Reporter [REDACTED] filed a complaint with the Police Accountability Board on December 6, 2023.

The Police Accountability Board notified the Rochester Police Department of its investigation and requested corresponding documents on December 11, 2023.

The Rochester Police Department responded to the request on December 12, 2023, and provided the Police Accountability Board with sixteen reports relating to traffic infractions, one incident report, one prisoner data report, four computer aided dispatch reports, and eight body camera videos.

The Police Accountability Board sent a Request for Officer Statement to the Rochester Police Department to which they have not responded. In addition, the Police Accountability Board left voicemails for [REDACTED] on March 18, 2024, March 20, 2024, and March 22, 2024 and sent an email to [REDACTED] on March 22, 2024, to which he has not responded. This investigation concluded after a thorough review of all available evidence.

## EVIDENCE PROVIDED

Evidence	Description	Provided by	Filename
Intake Report	[REDACTED] initial report	[REDACTED]	<a href="#">i-Sight   Case 2023-0207   Details   Overview</a>
Information Request	First Source of Information Request to the Rochester Police Department and response	Police Accountability Board	<a href="#">S-SharePoint File Transfer - InitialNotification 2023-0207 RPD response 12-12-23.pdf - All Documents</a>
Information Request Response	Traffic infraction reports	Rochester Police Department	<a href="#">S-SharePoint File Transfer - Tracs - All Documents</a>
Information Request Response	Incident report	Rochester Police Department	<a href="#">S-SharePoint File Transfer - Incident Report, Officer [REDACTED], Supervisor [REDACTED], Merged By COR [REDACTED].pdf - All Documents</a>
Information Request Response	Prisoner data report	Rochester Police Department	<a href="#">S-SharePoint File Transfer - PDR, Officer [REDACTED], Supervisor [REDACTED]</a>



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Evidence	Description	Provided by	Filename
			██████████, Merged By ██████████ ██████████.pdf - All Documents
Information Request Response	Computer assisted dispatch reports	Rochester Police Department	<a href="#">S-SharePoint File Transfer - CAD - All Documents</a>
Information Request Response	Body worn camera footage	Rochester Police Department	<a href="#">Genetec Clearance   Collaborative investigation management</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.
Blue Light Camera Footage.	Request from the Police Accountability Board to the Rochester Police Department	None exists.

### APPLICABLE RULES & LAWS

#### Rochester Police Department General Orders

##### 310 (Citizen Complaints)<sup>1</sup>

#### III. DUTIES AND RESPONSIBILITIES OF EMPLOYEES

- A. Members below the rank of Sergeant, or non-sworn employees who are made aware of a personnel complaint or Quality of Service Inquiry (QSI) alleging employee misconduct, will immediately notify a supervisor.

##### 506 (Equitable Policing)<sup>2</sup>

<sup>1</sup> The citizen complaints policy has been condensed for purposes of this document. The entirety of which may be viewed using the following link. [GO 310 Citizen Complaints | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#).

<sup>2</sup> The equitable policing policy has been condensed for purposes of this document. The entirety of which may be viewed using the following link. [GO 502 Equitable Policing | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#).



### III. POLICY

- A. The Rochester Police Department (RPD) neither condones nor permits the use of any bias-based profiling in arrests, traffic contacts, field contacts, investigations, or asset seizure and forfeiture efforts, and is committed to equitable policing and equal rights for all.
- B. In all activities members are subject to and will comply with the Constitutions of the United States and the State of New York, and all applicable Federal, New York State, and local laws.
- C. Members shall not perform the functions of a federal immigration officer or otherwise engage in the enforcement of federal immigration law under 8 U.S.C. § 1357(g) or any other law, regulation, or policy. Members will not be assigned to a CBP or ICE task force.
- D. Persons in RPD custody will be subject to the standard policies and procedures regarding the issuance of appearance tickets and prearrest bail regardless of actual or suspected citizenship or immigration status. See G.O.s 520, Prisoner Transporting & Processing, and 532, Appearance Tickets.

### IV. CRIMINAL PROFILING PROCEDURES

- A. Members may use criminal profiling as an investigative method.
- B. All vehicle and individual stops, investigative detentions, arrests, search and seizures (to include asset forfeiture procedures) by members of the RPD will be based on a standard of reasonable suspicion, probable cause, or as otherwise required by the U.S. Constitution and the New York State Constitution. Members must be able to articulate specific facts, circumstances, and conclusions which provide objective, credible evidence to support probable cause or reasonable suspicion for a stop, investigative detention, or arrest.

### 585 (Arrests)<sup>3</sup>

### II. POLICY

- A. The authority to arrest, granted by the people of the State of New York to a police officer, carries with it the responsibility to exercise discretion, but that discretion is necessarily limited. A variety of circumstances (e.g., seriousness of conduct, willingness of the victim to prosecute with exception of domestic violence mandatory arrests, age of the suspect, recidivism), as well as various options (e.g., resolution, warning, referral, summons, appearance ticket, physical arrest), warrant due consideration prior to any action.
- B. It is the policy of the Rochester Police Department (RPD) that no person will be arrested without reasonable cause to believe that an offense has been committed. Authority to arrest is strictly limited to those situations where the Criminal Procedure Law (CPL) of the State of New York authorizes an arrest.

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<sup>3</sup> The arrest policy has been condensed for purposes of this document. The entirety of which may be viewed using the following link. [GO 585 Arrests | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](https://arcgis.com)





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- C. The RPD neither condones nor permits the use of any bias-based profiling as defined in G.O. 502, Equitable Policing, in arrests, traffic contacts, field contacts, investigations, or asset seizure and forfeiture efforts, and is committed to equitable policing and equal rights for all.
- D. Members will effect an arrest in all cases of domestic violence where reasonable cause exists (as directed in G.O. 442), except for violations as directed in III.F.6.b of this order.
- E. Mediation will not be used as a substitute for appropriate criminal proceedings when the victim desires prosecution and there is reasonable cause to believe that an offense has been committed.
- F. Upon deciding to arrest, the member will follow such procedures as outlined herein and under other current directives, such as those regarding appearance tickets, juvenile procedures, uniform traffic summons/tickets (UTS/UTT), domestic offenses, etc, which may be applicable.
- G. Members will monitor the physical and mental health of any arrestee or individual in their custody. Should the need arise, members will seek appropriate medical treatment for the arrestee or individual. Members will request transport via ambulance or transport via a police vehicle, if necessary

I. PROCEDURES

A. On View Arrests Without A Warrant

- 1. Members may make arrests for offenses (violations, misdemeanors, or felonies) that are committed in their presence in accordance with the CPL of the State of New York.

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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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The following findings are made based on the above standards:

Allegation 1: Officer [REDACTED] did not have a legitimate reason for conducting a traffic stop upon [REDACTED]

The Rochester Police Department's General Order 506 states that the Department does not condone or permit the use of bias-based profiling in traffic contacts.

Officer [REDACTED] made initial contact with [REDACTED] stating that [REDACTED] ran a red light at the intersection of Dewey Avenue and Glenwood Avenue. [REDACTED] denied running a red light and stated that [REDACTED] was actually stopped because [REDACTED] vehicle has tinted windows and [REDACTED] was driving through a high crime neighborhood at night.

After an inquiry into multiple databases, there is no blue light camera footage reflecting the incident, nor is there any officer footage such as body camera reflecting the incident. Without any evidence to either prove or disprove this particular claim, this investigator is unable to reach a finding.

*Allegation 1 is uninvestigable.*

Allegation 2: Officer [REDACTED] incorrectly handled [REDACTED] request to speak to a police sergeant.

The Rochester Police Department's General Order 310 states that Officers who are made aware of a personnel complaint alleging employee misconduct will immediately notify a supervisor.

After Officer [REDACTED] returned to [REDACTED] vehicle to give [REDACTED] the traffic citation, [REDACTED] immediately informed Officer [REDACTED] that [REDACTED] wanted to speak to a sergeant. Officer [REDACTED] responded by informing [REDACTED] that [REDACTED] will have to call 911 himself in order to request a call back from a sergeant. Officer [REDACTED] then told [REDACTED] that he would call for a sergeant but that the sergeant would then tell [REDACTED] to call 911.

Officer [REDACTED] then returns to his car for a period of approximately 90 seconds and his body camera footage appears to capture him disconnecting a call, however audio is not captured. When Officer [REDACTED] returns to [REDACTED] vehicle however, he informs [REDACTED] that he just got off of the phone with his supervisor. Although Officer [REDACTED] incorrectly informed [REDACTED] at first, his actions of placing a phone call to his supervisor were in line with policy.

*Allegation 2 is exonerated as to Officer [REDACTED]*

Allegation 3: Officer [REDACTED] did not have a legitimate reason for the arrest of [REDACTED]

The Rochester Police Department's General Order 585 states that Officers may make arrests for offenses that are committed in their presence. [REDACTED] was arrested for obstructing governmental administration in the second degree. "A person is guilty of obstructing governmental administration in the



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second degree when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference. . .". N.Y. Penal Law § 195.05.

Officer [REDACTED] conducted a traffic stop and gave [REDACTED] multiple tickets. After Officer [REDACTED] left, [REDACTED] exited [REDACTED] vehicle and approached the vehicle of Officer [REDACTED] who was parked approximately twenty five feet away from [REDACTED] vehicle. [REDACTED] approached Officer [REDACTED] in an attempt to obtain his name and badge number. Officer [REDACTED] observed this interaction in his rear view mirror. Officer [REDACTED] then, turned his vehicle around and returned to the scene. When Officer [REDACTED] returned to the scene and exits his vehicle, [REDACTED] is on [REDACTED] way back to [REDACTED] own vehicle and is no longer standing in front of Officer [REDACTED] vehicle. Officer [REDACTED] meets [REDACTED] near his vehicle and tells [REDACTED] that he cannot stand in front of a police vehicle. Officer [REDACTED] then tells [REDACTED] to place [REDACTED] hands behind [REDACTED] back and placed [REDACTED] under arrest for obstructing governmental administration in the second degree.

[REDACTED] approached Officer [REDACTED] with the sole intention of obtaining his identification- information to which Officer [REDACTED] in fact provided [REDACTED]. [REDACTED] did not attempt to block Officer [REDACTED] direction of travel- as Officer [REDACTED] could have easily driven around [REDACTED] if he so chose. Furthermore, only 32 seconds elapses between the time Officer [REDACTED] leaves the scene the first time and when he returns and arrests [REDACTED]. Because [REDACTED] did not intentionally impair the administration of law, nor did [REDACTED] prevent Officer [REDACTED] from performing an official function, [REDACTED] did not obstruct governmental administration. Due to the fact that [REDACTED] did not obstruct governmental administration, [REDACTED] should not have been arrested for such.

*Allegation 3 against Officer [REDACTED] is sustained.*

Allegation 4: Officer [REDACTED] did not have a legitimate reason for the arrest of [REDACTED]

The Rochester Police Department's General Order 585 states that Officers may make arrests for offenses that are committed in their presence. [REDACTED] was arrested for obstructing governmental administration in the second degree. "A person is guilty of obstructing governmental administration in the second degree when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference. . .". N.Y. Penal Law § 195.05.

When Officer [REDACTED] placed [REDACTED] under arrest for obstructing, Officer [REDACTED] exited his police vehicle and assisted in putting [REDACTED] in handcuffs. For the reasons stated above, [REDACTED] should not have been placed under arrest for obstructing governmental administration in the second degree. Furthermore, review of Officer [REDACTED] body camera footage shows [REDACTED] and Officer [REDACTED] conversing for a few moments and then [REDACTED] walking away. Due to the fact that [REDACTED] did not obstruct governmental administration, [REDACTED] should not have been arrested for such.

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



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## RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	Officer [REDACTED]	General Order 502 (Equitable Policing): Officer [REDACTED] did not have a legitimate reason for conducting a traffic stop [REDACTED]	Uninvestigable
2	Officer [REDACTED]	General Order 310 (Citizen Complaints): Officer [REDACTED] incorrectly handled [REDACTED] request to speak to a police sergeant.	Exonerated
3	Officer [REDACTED]	General Order 585 (Arrests): Officer [REDACTED] did not have a legitimate reason for the arrest of [REDACTED]	Sustained
4	Officer [REDACTED]	General Order 585 (Arrests): Officer [REDACTED] did not have a legitimate reason for the arrest of [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:



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Sustained Allegation 3 against Officer [REDACTED]

Disciplinary Matrix Appendix

Misconduct	Level
General Order 585: Members may make arrests for offenses that are committed in their presence in accordance with the CPL of the State of New York,	4

- Recommended Level: 4 ("Significant 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): **30 day suspension**
- Explanation of deviation from presumptive penalty: This is the first time Officer [REDACTED] [REDACTED] has been the subject of an investigation closed by the Police Accountability Board.

Sustained Allegation 4 against Officer [REDACTED]

Disciplinary Matrix Appendix

Misconduct	Level
General Order 585: Members may make arrests for offenses that are committed in their presence in accordance with the CPL of the State of New York,	4

- Recommended Level: 4 ("Significant 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): **30 day suspension**
- Explanation of deviation from presumptive penalty: This is the first time Officer [REDACTED] [REDACTED] has been the subject of an investigation closed by the Police Accountability Board.