

DECEMBER 2020

REPORT ON INVESTIGATIONS OF SEXUAL MISCONDUCT ALLEGATIONS AGAINST CHICAGO POLICE DEPARTMENT MEMBERS 2019

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VIA ELECTRONIC MAIL

December 7, 2020

Margaret A. Hickey
Independent Monitor
233 South Wacker Drive, Suite 7100
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Re: Consent Decree Paragraph 444

Dear Independent Monitor Hickey:

Pursuant to Paragraph 444 of the consent decree entered in *Illinois v. Chicago*, the Office of Inspector General's (OIG) Public Safety section is required to "review and analyze" closed sexual misconduct investigations involving complaints "against a CPD member alleging conduct against a non-CPD member."¹ The consent decree requires OIG to publish an annual report "assessing the quality of sexual misconduct administrative investigations reviewed," "recommending changes in policies and practices to better prevent, detect, or investigate sexual misconduct," and "providing aggregate data on the administrative investigations reviewed" by OIG.²

Paragraph 444 of the consent decree requires "the City" provide OIG with the complete administrative file for each complaint of sexual misconduct against a CPD member alleging conduct against a non-CPD member within ten days of the final disciplinary decision. Neither CPD's Bureau of Internal Affairs (BIA) nor the Civilian Office of Police Accountability (COPA) complied with this provision by directly providing investigative files for sexual misconduct investigations to OIG within ten days of their closure in either 2019 or 2020. The Independent Monitoring Team (IMT) overseeing compliance with the consent decree found that BIA and COPA were not in compliance with their obligations under this paragraph in Independent Monitoring Report 1, issued in November 2019.³

¹ Consent Decree ¶ 444, *State of Ill. v. City of Chi.*, No. 17-cv-6260 (N.D. Ill. Jan. 31, 2019) (Dkt. 703-1) ["consent decree"].

² Paragraphs 444 (a)-(c).

³ Independent Monitoring Report 1 at 137, *State of Ill. v. City of Chi.*, No. 17-cv-6260 (N.D. Ill. Nov. 18, 2019) (Dkt. 798).

Without compliance by BIA and COPA, OIG is not positioned to conduct comprehensive analysis and reporting as contemplated by Paragraph 444. In an effort to comply as fully as possible with its own obligations, under the circumstances, OIG provides the information and analysis contained herein.

Paragraph 782 of the consent decree defines sexual misconduct as:

- “any behavior by a CPD member that takes advantage of the member’s position in law enforcement to misuse authority and power (including force) in order to commit a sexual act, initiate sexual contact with another person, or respond to a perceived sexually motivated cue (from a subtle suggestion to an overt action) from another person;”
- “any sexual communication or behavior by a CPD member that would likely be construed as lewd, lascivious, inappropriate, or conduct unbecoming of a member;”
- “any attempted or completed act by a CPD member of nonconsensual sexual conduct or nonconsensual sexual penetration, as defined in Section 11-0.1 of the Illinois Criminal Code of 2012;”
- “any attempted or completed act by a CPD member of criminal sexual assault, as defined in Sections 11-1.20 through 11-1.40 of the Illinois Criminal Code;”
- “any attempted or completed act by a CPD member of criminal sexual abuse, as defined in Sections 11-1.50 and 11-1.60 of the Illinois Criminal Code of 2012.”

Paragraph 743 defines “CPD member” as “any sworn or civilian employee of CPD.”

I. IDENTIFICATION OF QUALIFYING INVESTIGATIONS

The imprecise and inconsistent manner in which disciplinary investigations are classified by “category code” in the case management systems used by BIA and COPA makes the post hoc identification of investigations falling within the definitional parameters of Paragraph 444 difficult and almost necessarily incomplete; it is not practically feasible to identify qualifying—or even potentially qualifying—investigations by category code. This underscores the importance of BIA and COPA’s reporting of qualifying investigations to OIG upon closure as required by the consent decree, rather than attempting to identify them retrospectively.

BIA and COPA investigations are assigned an incident category code, characterized by a numerical code and a brief description, upon intake, with certain categories and

subcategories explicitly relating to sexual or gender-based misconduct or harassment (e.g. “Criminal Sexual Assault,” “Verbal Abuse – Sexual Orientation,” etc.).⁴

However, incidents which rise to the level of sexual misconduct might be contained within investigations associated with any category code, as a category code is assigned based on the first or most serious allegation received at intake by the investigating agency. Of the 20 cases reported in this analysis, 17 of them had category codes which explicitly denoted allegations related to sexual or gender-based misconduct. However, certain incidents may give rise to multiple allegations, resulting in the category code not reflecting the allegation of sexual misconduct. Alternatively, the nature of the allegations may fit the parameters of Paragraph 444 but may not fit into any of the category codes that explicitly denote sexual misconduct. For example, one BIA case categorized as “10BB – Conduct Unbecoming” involved allegations that a CPD member made sexually suggestive remarks to a woman on the street. This behavior falls within the definitional parameters of Paragraph 444, but this is not signaled by its category code.

Even the category codes that explicitly relate to sexual or gender-based misconduct or harassment are applied inconsistently. For example, some cases provided by BIA that were categorized as “08R – Sex Offense Other” clearly involve allegations of sexual assault, for which there is a separate category code of “08C – Criminal Sexual Assault.” There is no indication why these cases were not categorized as such. One COPA investigation coded as “08C – Criminal Sexual Assault” involved allegations of sexual misconduct, but not of sexual assault. Conversely, another COPA case was coded as “09F – Sexual Misconduct,” but the allegations clearly comprised an act of sexual assault.

For these reasons, qualifying cases for reporting pursuant to Paragraph 444 cannot be reliably identified by category code where the investigating agency might miscategorize some sexual misconduct cases, and where certain cases never receive a category code indicative of sexual misconduct.

A. BIA INVESTIGATIONS

During 2019, BIA did not report any qualifying investigations to OIG within 10 days of closure as required. In February 2020, OIG requested from BIA a list of investigations closed in 2019 which met the criteria set out in Paragraph 444. BIA provided OIG with a list of 15 cases, all of which were categorized in BIA’s case management system by

⁴ Not every case coded with such category codes is necessarily qualifying under Paragraph 444. For example, allegations of sexual harassment by a CPD member against another CPD member would likely be categorized under these codes but do not fall within the definitional parameters of Paragraph 444.

codes corresponding to “Sexual Harassment”⁵ or “Sexual Misconduct.” All 15 of these cases—the majority of which involved conduct committed by CPD members against CPD members—fell outside of the definitional parameters of Paragraph 444. Several of these cases, in fact, had nothing at all to do with sexual harassment, despite their category codes, and instead involved allegations of other types of discrimination. OIG brought to BIA’s attention the fact that the supplied list was non-responsive to Paragraph 444, and in May 2020, BIA identified nine cases closed in 2019 which fell within the definitional parameters of Paragraph 444. In September 2020, BIA provided an updated list of sexual misconduct cases closed in 2019 and 2020, which included cases investigated by both BIA and COPA. This list included three additional cases closed in 2019 that fall within the definitional parameters of Paragraph 444 and had not yet been provided to OIG.⁶ In addition, in the course of its review of individual closed disciplinary cases mandated by the Municipal Code of Chicago (MCC) §2-56-230(c), OIG identified two additional qualifying sexual misconduct investigations closed during 2019 which were not among those reported by BIA.

B. COPA INVESTIGATIONS

During 2019, COPA did not report any qualifying investigations to OIG within 10 days of closure as required. In December 2019, COPA provided OIG with a list of investigations it believed to fall within the definitional parameters of Paragraph 444.⁷ The list provided by COPA contained three qualifying investigations closed in 2019, and one investigation which involved sexual misconduct against a CPD member and therefore fell outside the definitional parameters of Paragraph 444. Additionally, OIG identified three qualifying investigations closed in 2019 during its regular review of closed disciplinary investigations which were not identified by COPA.

II. ADMINISTRATIVE INVESTIGATIONS REVIEWED

In an effort to comply as fully as possible with its own reporting obligations pursuant to Paragraph 444 without compliance by BIA and COPA, OIG analyzed all known qualifying investigations.

⁵ These cases were coded “10S – Sexual Harassment” on the list BIA provided to OIG. In the CLEAR database, these cases were coded “10S – EEO Investigations.”

⁶ BIA generated the lists it provided in May and September using a combination of category codes and keyword searching in the two case management systems it shares with COPA—AutoCR and CMS—using an approach it discussed with OIG. OIG appreciates BIA’s diligence in attempting post hoc identification of all qualifying investigations.

⁷ COPA has not provided any information in response to Paragraph 444 to OIG since December 2019.

FIGURE 1 – ADMINISTRATIVE INVESTIGATIONS REVIEWED⁸

OIG Case #	Agency	Category Code	Disposition ⁹	Sustained Investigative Findings	Recommended Discipline	Referred for Criminal Review	Criminally Prosecuted
19-0442	COPA	01B – Racial/ Ethnic, Etc.	Not Sustained	N/A	N/A	No	No
19-0484	BIA	08C – Criminal Sexual Assault	Closed/No Affidavit	N/A	N/A	No	No
19-0485	BIA	08R – Sex Offense Other	Sustained	The Cook County Sheriff's Police and Lansing Police conducted an organized prostitution enforcement operation in which an ad was posted via an online classified web site. The accused responded to the ad and offered to pay a female police officer \$40.00 for sex.	30-day suspension	No ¹⁰	No
19-0587	BIA	08R – Sex Offense Other	Unfounded	N/A	N/A	No	No

⁸ See Paragraphs 444(c)(i), (ii), (iii), and (vi).

⁹ A misconduct investigation may be disposed of in several different ways. The investigating agency may reach investigative findings or may dispose of an investigation short of a finding. Such non-finding dispositions include closure for lack of a sworn affidavit in support of the allegations. The dispositions listed here and below correspond to the sexual misconduct allegation or allegations in the qualifying investigation; other allegations contained within those investigations may have reached different dispositions not reflected in this table.

¹⁰ The Lansing Police Department issued an Administrative Notice of Violation (ANOV) to the accused CPD member, which was dismissed at an administrative hearing.

OIG Case #	Agency	Category Code	Disposition ⁹	Sustained Investigative Findings	Recommended Discipline	Referred for Criminal Review	Criminally Prosecuted
19-1080	COPA	08B – Assault/ Battery, Etc.	Not Sustained	N/A	N/A	No	No
19-1081	COPA	08C- Criminal Sexual Assault	Administratively Terminated	N/A	N/A	No	No
19-1136	COPA	09F – Sexual Misconduct	Sustained	The reporting party alleged that the accused officer sexually assaulted her in Las Vegas. The officer was arrested by LVPD, but ultimately not charged after the victim became uncooperative.	Separation	No ¹¹	No
19-1409	BIA	08C – Criminal Sexual Assault	Not Sustained	N/A	N/A	Yes	Yes ¹²
20-0965	BIA	08C - Criminal Sexual Assault	Closed/No Affidavit	N/A	N/A	No	No
20-0967	BIA	08C – Criminal Sexual Assault	Sustained	The reporting party alleged that the accused CPD member made vulgar remarks, pinned her against the wall, tried to touch her crotch area, and kissed her neck when she	Separation	Yes	Yes

¹¹ By the time COPA learned of these allegations, the accused CPD member had already been arrested by LVPD. COPA made no further referrals for criminal review.

¹² The reporting party alleged that the accused CPD member digitally penetrated his foster daughter, a ward of the State. BIA reached a finding of Not Sustained, based on the member's having retired before the investigation was complete. The case was referred for criminal review and charges were filed, but the case was dismissed before trial when "credibility issues" arose regarding the victim.

OIG Case #	Agency	Category Code	Disposition ⁹	Sustained Investigative Findings	Recommended Discipline	Referred for Criminal Review	Criminally Prosecuted
				encountered him in his professional capacity. The allegations were sustained.			
20-0968	BIA	08R – Sex Offense Other	Not Sustained	N/A	N/A	No	No
20-0969	BIA	08R – Sex Offense Other	Closed/No Affidavit	N/A	N/A	No	No
20-1037	BIA	10BB – Conduct Unbecoming	Not Sustained	N/A	N/A	No	No
20-1080 ¹³	BIA	08R – Sex Offense Other	Administratively Closed	N/A	N/A	No	No
20-1081	BIA	08R – Sex Offense Other	Closed/No Affidavit	N/A	N/A	No	No
20-1109	COPA	08C – Crime Misconduct Sexual Misconduct Sexual Assault Aggravated	Close/Hold	N/A	N/A	No	No
20-1110	COPA	08C – Crime Misconduct Sexual Misconduct Sexual Assault	Administratively Closed	N/A	N/A	Yes ¹⁴	Yes

¹³ The accused CPD member in case #20-180 is the same as the accused member in case #20-0967, which resulted in the member's separation. Case #20-1080 was administratively closed because the accused member had been separated.

¹⁴ The reporting party alleged that an unknown CPD member attempted to force her to perform oral sex to avoid arrest. This case was administratively closed when the offender was identified and determined not to be a CPD member. He was arrested and charged.

OIG Case #	Agency	Category Code	Disposition ⁹	Sustained Investigative Findings	Recommended Discipline	Referred for Criminal Review	Criminally Prosecuted
		Non-Aggravated					
20-1315	BIA	08C – Criminal Sexual Assault	Closed/No Affidavit	N/A	N/A	No	No
20-1316	BIA	10BB – Conduct Unbecoming	Closed/No Affidavit	N/A	N/A	No	No
20-1317	BIA	01E – Verbal Abuse/ Unwelcome Sexual Advances	Administratively Closed	N/A	N/A	No	No

A. BIA INVESTIGATIONS

Based on information available to OIG, in 2019, BIA closed 14 qualifying sexual misconduct investigations. Eight of those cases (57%) were closed after a preliminary investigation, short of an investigative finding.¹⁵ Six of those cases (43%) were closed for lack of a signed complainant affidavit.¹⁶ However, five of those six cases involved allegations of criminal misconduct, which may not require an affidavit for the investigation to proceed.¹⁷ Of the remaining cases closed after a preliminary investigation, one was closed when BIA could not determine whether the subject of the investigation was, in fact, a CPD member. The other was closed after the accused CPD member was separated from the Department due to a different disciplinary investigation involving sexual misconduct.

B. COPA INVESTIGATIONS

Based on information available to OIG, in 2019, COPA closed six qualifying sexual misconduct investigations. Three of the six (50%) were closed after a preliminary investigation. Of those:

- One was closed after COPA discovered that the offender was not, in fact, a CPD member.
- One was closed after the accused CPD member retired.
- One was closed when the victim was uncooperative with the investigation, as the initial complaint was filed by a third party who was not a witness to the incident.

No cases were closed for lack of a signed affidavit in support of the allegations.

¹⁵ See Paragraph 444(c)(iv). For the purpose of this analysis, OIG considered cases closed after a preliminary investigation to mean cases that were closed short of an investigative finding.

¹⁶ See Paragraph 444(c)(v).

¹⁷ Generally, a signed affidavit in support of the allegations is required for a police misconduct investigation to proceed, pursuant to 50 ILCS 725/3.8(b). However, under certain circumstances, allegations of criminal misconduct are exempt from this requirement. See Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7, Effective July 1, 2012 through June 30, 2017. Section 6.1-D, Appendix L, accessed November 20, 2020. http://directives.chicagopolice.org/contracts/FOP_Contract.pdf. See also Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Sergeants, Effective July 1, 2012 through June 30, 2016. Section 6.1-E. Accessed November 20, 2020. http://directives.chicagopolice.org/contracts/PBPA_SgtContract.pdf. While the Policeman's Benevolent & Protective Association of Illinois entered into a new collective bargaining agreement in 2020, the 2012 contract remained in effect during the period of OIG's analysis.

C. CRIMINAL PROSECUTIONS¹⁸

Of the 20 cases reviewed, OIG was able to verify that BIA and COPA, combined, referred three to the Cook County State's Attorney's Office (CCSAO) to be reviewed for criminal charges. Referral information was not easily discernable from many of the investigative files; the files lack documentation of whether a criminal referral was considered but not ultimately pursued by the investigating agency. OIG notes that not every allegation of sexual misconduct captured in this analysis rises to the level of a criminal offense. For example, allegations involving the use of sexually inappropriate language qualify as sexual misconduct for the purposes of Paragraph 444, but those allegations would be unlikely to provide a good faith basis to seek criminal charges.

Statistics regarding criminal referrals and criminal prosecutions for qualifying investigations known to OIG are contained in Figure 2. All three cases referred for review by a prosecuting agency resulted in the filing of criminal charges.

FIGURE 2 – CRIMINAL REFERRALS AND PROSECUTIONS

Investigating Agency	Cases Referred to CCSAO (% of known qualifying cases)	Cases Criminally Prosecuted (% of known qualifying cases) ¹⁹
BIA	2 (14%)	2 (14%)
COPA	1 (17%)	1 (17%)

III. QUALITY ASSESSMENT OF ADMINISTRATIVE INVESTIGATIONS REVIEWS²⁰

Incomplete records contained in the files for qualifying investigations known to OIG provide an insufficient basis upon which to make a comprehensive assessment of the overall quality of qualifying sexual misconduct investigations or to make meaningful, substantive recommendations for the handling of those investigations.

Both BIA and COPA investigations into allegations of sexual misconduct lack investigative file documentation of the steps taken and pursued. It was not possible to determine from the investigative file in many cases whether there was any referral for criminal prosecution, nor was it readily apparent whether such a referral had even been contemplated by an investigator or a supervisor. As noted above, many of these investigations involve allegations that do not rise to the level of a criminal act. In the

¹⁸ See Paragraphs 444(c)(ii) and (iii).

¹⁹ Included here are cases in which OIG has determined that criminal charges were filed, regardless of the ultimate outcome of the criminal case.

²⁰ See Paragraph 444(a).

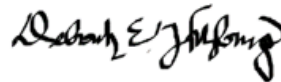
investigations in which the allegations might constitute a criminal act, however, it was difficult to discern from the investigative files whether there was a simultaneous ongoing criminal investigation.

In one COPA case, it was unclear from the file how COPA identified the accused CPD member. Documents in the investigative file go from discussing an “unidentified sergeant” to referring to a specific sergeant by name, with no documentation of how COPA arrived at that identification. That CPD member retired during the course of the investigation, depriving COPA of jurisdiction to recommend any disciplinary action, and it is unclear whether a criminal investigation was conducted or criminal charges were ever contemplated against the member.²¹

OIG notes that, pursuant to MCC §2-56-230(c), it has made a number of recommendations to “inform and improve” BIA and COPA investigations relevant to these shortcomings, specifically including the documentation of investigative decision-making, supervisory review, and the existence or status of any related legal proceedings.²² These recommendations addressed all misconduct investigations, not only sexual misconduct investigations.

OIG looks forward to working with BIA and COPA toward the meaningful analysis and substantive improvement of sexual misconduct investigations going forward.

Respectfully,



Deborah Witzburg
Deputy Inspector General for Public Safety
Office of Inspector General

cc: Tyeesha Dixon, Deputy Corporation Counsel, Department of Law
Dana O'Malley, General Counsel, CPD
Karen Konow, BIA Chief, CPD
Sydney Roberts, Chief Administrator, COPA

²¹ OIG was unable to locate any record of this CPD member ever being charged criminally.

²² See <https://igchicago.org/wp-content/uploads/2020/06/Recommendations-to-Improve-COPA-Disciplinary-Investigations-1.pdf>, and <https://igchicago.org/wp-content/uploads/2019/02/Recommendations-to-Inform-and-Improve-CPDs-Internal-Affairs-Investigations.pdf>.