



CITY OF CHICAGO
OFFICE OF INSPECTOR GENERAL

20
23

Recommendation to Inform and Improve Police Board Decisions

October 3, 2023

DEBORAH WITZBURG | INSPECTOR GENERAL FOR THE CITY OF CHICAGO
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October 3, 2023

Pursuant to the Municipal Code of Chicago § 2-56-230(b)(f), the Public Safety section of the City of Chicago Office of Inspector General (OIG) conducts reviews of policies, procedures, and practices of the Chicago Police Board's (Police Board) disciplinary hearings and decisions to determine whether discipline is "consistently and fairly applied" and to make recommendations to inform and improve its work.

During its review of decisions made by the Police Board, OIG identified an inconsistency concerning the Police Board's Findings and Decisions in 21 PB 2994. At issue in that matter were allegations involving the use of a chokehold by a Chicago Police Department (CPD) member and the failure to report the chokehold by two CPD supervisors.

The Police Board found a CPD member guilty of seven rule violations stemming from their unjustified use of a chokehold. Two CPD supervisors faced allegations that they failed to report that the CPD member used excessive force and that they failed to adequately address the CPD member's incomplete Tactical Response Report. Both supervisors were charged with violating Rule 3 of CPD's Rules of Conduct, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals, and Rule 22, which prohibits failure to report misconduct.

In the Police Board's decision, the Police Board acknowledged that both supervisors reviewed video footage of the incident on more than one occasion; however, neither CPD supervisor identified the misconduct that the Police Board itself identified in its review of that same video. The Police Board wrote in its decision that the two CPD supervisors had "no reason to suspect an illegal chokehold"—despite themselves finding evidence of an illegal chokehold—and found the two CPD supervisors Not Guilty of all charges.

OIG found the Police Board's decision as related to the CPD supervisor's alleged misconduct to be inconsistent with its decision related to the misconduct of the CPD member based on its review of the same video.

To inform and improve future decisions, OIG recommended that the Police Board ensure internal factual consistency across findings in a case, and that it thoroughly enforces CPD's rules and policies requiring its members to report misconduct.

In response to OIG's recommendation, the Police Board agreed generally that it should strive 'to ensure internal factual consistency across findings in a case, and ensure that it thoroughly enforces CPD's rules and policies requiring its members to report misconduct,' but noted that the Police Board's decision was its "best and final reasoning."

OIG's letter to the Police Board containing its recommendation is attached in Appendix A, and the Police Board's response is attached in Appendix B.

Appendix A | OIG's Letter to the Police Board



Deborah Witzburg | Inspector General
City of Chicago
Office of Inspector General
740 N. Sedgwick St., Ste 200
Chicago, IL 60654
Phone: (773) 478-7799

Via Electronic Mail

August 4, 2023

GHIAN FOREMAN
PRESIDENT
CHICAGO POLICE BOARD
2 NORTH LASALLE STREET, SUITE M800
CHICAGO, ILLINOIS 60602

Dear Mr. Foreman:

Pursuant to the Municipal Code of Chicago §§ 2-56-030 and -230, the Public Safety section of the City of Chicago's Office of Inspector General (OIG) writes to recommend measures to inform and improve outcomes in future Police Board matters.

During its review of decisions made by the Police Board, OIG identified an inconsistency concerning the Police Board's Findings and Decisions in 21 PB 2994. At issue in that matter were allegations involving the use of a chokehold by Chicago Police Department (CPD) Officer Louis Garcia, Star #16093 and the failure to report the chokehold by Sergeant Kevin Rake, Star #2015 and Lieutenant Charles Daly, Star #494.¹

The Police Board found Officer Garcia guilty of seven rule violations stemming from his unjustified use of a chokehold.² Sergeant Rake and Lieutenant Daly faced allegations that they "failed to report that Officer Louis Garcia used excessive force" and that they "failed to adequately review and/or failed to resolve Officer Garcia's incomplete Tactical Response Report."³ "Sergeant Rake reviewed the video" and "Lieutenant Daly reviewed the video twice" and neither supervisor identified the misconduct the Police Board identified in its review of that same video.⁴ The specific rules that Sergeant Rake and Lieutenant Daly allegedly violated included Rule 22 of CPD's Rules of Conduct, which prohibits failure to report misconduct, and "Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals."⁵ The Police Board found Sergeant Rake and Lieutenant Daly not guilty of all charges.⁶

¹ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), August 18, 2022, 3, accessed December 29, 2022, <https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/21PB2994.pdf>.

² Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 4-5. The Police Board found Officer Garcia guilty of violating Rules 1, 2, 3, 6, 8, 9, and 22.

³ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 10-11.

⁴ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 11-12, 21.

⁵ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 10-11

⁶ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 10-11

The Police Board wrote that it “saw and heard the BWC [body worn camera] video and has determined that Officer Garcia did use an illegal chokehold when he placed his hand on the [sic] Mr. Cazares’s airway and applied direct pressure, blocking his airway.”⁷ This finding is inconsistent with the Police Board’s determination that Sergeant Rake and Lieutenant Daly were not in violation of CPD rules by failing to report the excessive force used by Officer Garcia after previously viewing the same BWC.

CPD General Orders required Sergeant Rake and Lieutenant Daly to review the incident.⁸ The General Orders require that supervisors determine whether a use of force by a member under their supervision may constitute misconduct and therefore require notification to the Civilian Office of Police Accountability (COPA).⁹ CPD’s Rule 22, one of the rules Sergeant Rake and Lieutenant Daly were alleged to have violated, prohibits the “failure to report to the Department any violation of Rules and Regulations, or any other improper conduct which is contrary to the policy, orders or directives of the Department.”¹⁰ Sergeant Rake and Lieutenant Daly reviewed the same video as the Police Board; however, they failed to identify and/or report the use of excessive force that the Police Board identified.¹¹ In its decision, the Police Board wrote that Sergeant Rake and Lieutenant Daly “had no reason to suspect an illegal chokehold.”¹² OIG finds this statement from the Police Board inconsistent with the Police Board’s finding that there was an illegal chokehold by Officer Garcia. The Police Board’s decision notes,

The Board saw and heard the BWC video and has determined that Officer Garcia did use an illegal chokehold when he placed his hand on the [sic] Mr. Cazares’s airway and applied direct pressure, blocking his airway. The Board finds Officer Garcia did so intentionally for the purpose of restricting the [sic] Mr. Cazares’s airflow. Officer Garcia’s uncontrolled anger is apparent. Mr. Cazares was lying on his back with his hands cuffed behind him and Officer Garcia on top of him. Officer Garcia used a chokehold without justification, in clear violation of CPD rules outlining proper use of force. There was no justification whatsoever for using this force.¹³

If the Police Board’s review of the video revealed a “clear violation” of CPD’s use of force policies, then Sergeant Rake’s and Lieutenant Daly’s review of the same video should have revealed the same, resulting in their obligation to report the chokehold as potential misconduct.¹⁴ It strains credulity to assert that the Police Board was able to determine that this was a “clear violation” from watching the BWC video, but the trained supervisory law enforcement members tasked with reviewing BWC footage for the explicit purpose of identifying improper uses of force were unable to do so. In its decision, the Police Board states,

⁷ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 6.

⁸ Chicago Police Department, “General Order G03-02-08: Department Review of Use of Force,” June 28, 2023, accessed August 3, 2023, <http://directives.chicagopolice.org/#directive/public/6577>. Chicago Police Department, “General Order G03-02-02: Incidents Requiring the Completion of a Tactical Response Report,” June 28, 2023, accessed August 3, 2023, <http://directives.chicagopolice.org/#directive/public/6610>.

⁹ Chicago Police Department, “General Order G03-02-02: Incidents Requiring the Completion of a Tactical Response Report.”

¹⁰ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 10-12.

¹¹ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 21.

¹² Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 11-12.

¹³ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 6.

¹⁴ Chicago Police Department, “General Order G03-02-02: Incidents Requiring the Completion of a Tactical Response Report.”

Now, knowing that the video may be difficult to analyze, reviewing officers are reminded always to be on the sharpest lookout for wrongful conduct. Reviewing officers are to use their most determined efforts to root out and report any use of excessive or illegal force.¹⁵

This admonishment that Sergeant Rake and Lieutenant Daly should try harder to comply with CPD directives in the future directly implicates their culpability under CPD Rule 3, another of the rules Sergeant Rake and Lieutenant Daly were alleged to have violated, which prohibits “failure to promote the Department’s efforts to implement its policy or accomplish its goals.”¹⁶ The Police Board found both Sergeant Rake and Lieutenant Daly not guilty of violating Rule 3.¹⁷ CPD’s comment to Rule 3 in its Rules and Regulations notes,

This Rule prohibits any omission or failure to act by any member of the Department [. . .] It applies to supervisory and other members who, through carelessness, inefficiency or design fail to implement all policy goals, rules, regulations, orders and directives of the Department or fail to report to the Department any and all known violations of same, or who through carelessness, inefficiency or design fail to become aware of any such violation, when their assigned duty or supervisory responsibility would require them to become so aware.¹⁸

Here, where the Police Board found that BWC footage clearly shows Officer Garcia used an unjustified chokehold, the supervisory CPD members were *already* obligated to use their “most determined efforts” to identify and report Officer Garcia’s misconduct. The Police Board’s findings that the supervisors did not fail to report the illegal chokehold and that the failure to identify and report the chokehold did not impede Department policy or goals are inconsistent with its finding that there was an illegal chokehold.

Enforcement of CPD’s rules requiring its members to report misconduct is not a new public policy concern.¹⁹ Samuel K. Skinner, a former Assistant United States Attorney for the Northern District of Illinois, wrote in 1977 that “the problem of corruption within the Chicago Police Department had grown to alarming proportions because of a practice known as the ‘code of silence.’”²⁰ In 1988, CPD Superintendent LeRoy Martin acknowledged “the code of silence” within CPD.²¹ In 1991, Police Board President Albert Maule wrote of “the need to punish officers who adhere to the ‘Blue Code of Silence’ by failing to report wrongdoing of fellow officers.”²² Former Mayor Rahm Emanuel stated there was a problem within CPD that he identified as the “tendency to ignore, deny or in some cases cover-up the bad actions of a colleague.”²³ Former Interim Superintendent Charlie Beck publicly acknowledged the existence of a code of silence within CPD, stating that “of course

¹⁵ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 12.

¹⁶ Chicago Police Department, “Rules and Regulations of the Chicago Police Department” April 16, 2015, accessed August 3, 2023, <http://directives.chicagopolice.org/#directive/public/6412>.

¹⁷ Chicago Police Board, Case No. 21 PB 2994 (CR No. 2019-3104), 10-11.

¹⁸ Chicago Police Department, “Rules and Regulations of the Chicago Police Department.”

¹⁹ For more information, see OIG’s report on CPD’s enforcement of its rules requiring members to report misconduct. City of Chicago Office of Inspector General, “Enforcement of the Chicago Police Department’s Rules Requiring Members to Report Misconduct,” August 3, 2023, accessed August 3, 2023, <https://icgchicago.org/2023/08/03/oig-finds-inconsistent-rules-for-and-underenforcement-of-cpd-members-duty-to-report-misconduct-failures-risk-perpetuation-of-code-of-silence/>.

²⁰ Samuel K. Skinner, “Against the code of silence,” *Chicago Tribune*, October 4, 1977.

²¹ John Gorman, “‘Code of silence’ kept cop mum, bribery trial told,” *Chicago Tribune*, October 17, 1988.

²² Albert C. Maule, “The lessons from the L.A. disgrace,” *Chicago Tribune*, April 5, 1991.

²³ Paris Schutz, “Mayor Emanuel’s address to City Council stresses trust, respect,” *WTTW*, December 9, 2015, accessed August 3, 2023, <https://news.wttw.com/2015/12/09/mayor-emanuels-address-city-council-stresses-trust-respect>.

there's such a thing" and adding that the "code of silence is the antithesis of professionalism in policing" and "when you find it, you have to act on it."²⁴

In its 2016 investigation into CPD, the Department of Justice (DOJ) found that supervisors were not held accountable for failing to report misconduct.²⁵ The DOJ wrote that "more changes are necessary to ensure that supervisors hold their subordinates accountable for misconduct, and if they fail to do so, that they will be held accountable themselves."²⁶ Here, the Police Board failed to hold supervisory members accountable for violating their duty to report misconduct.

In order to inform and improve future Police Board hearings and decisions, OIG recommends that the Police Board ensure internal factual consistency across findings in a case, and ensure that it thoroughly enforces CPD's rules and policies requiring its members to report misconduct.

Please provide written responses to these recommendations by September 5, 2023. You may contact Chief Investigative Analyst LaDonna Candia-Flanagan at lcandia-flanagan@igchicago.org or (773) 478-5614 with any questions. OIG looks forward to your agency's response, which will be published in accordance with MCC § 2-56-250.

Respectfully,



Tobara Richardson
Deputy Inspector General for Public Safety
Office of Inspector General
City of Chicago

cc: Deborah Witzburg, Inspector General, OIG
Megan Carlson, Associate General Counsel for Public Safety, OIG
LaDonna Candia-Flanagan, Chief Investigative Analyst for Public Safety, OIG
Max Caproni, Executive Director, Chicago Police Board

²⁴ A.D. Quig, "CPD's Beck: 'Of course' there's a code of silence," *Crain's Chicago Business*, January 13, 2020, accessed August 3, 2023, <https://www.chicagobusiness.com/government/cpds-beck-course-theres-code-silence>.

²⁵ United States Department of Justice Civil Rights Division and United States Attorney's Office Northern District of Illinois, "Investigation of the Chicago Police Department," January 13, 2017, 110, accessed August 3, 2023, <https://www.justice.gov/opa/file/925846/download>.

²⁶ U.S. DOJ, "Investigation of the Chicago Police Department," 111.

Appendix B | Police Board Management Response



CITY OF CHICAGO



CHICAGO POLICE BOARD

VIA E-MAIL

September 1, 2023

Tobara Richardson
Deputy Inspector General for Public Safety
Office of Inspector General
City of Chicago
trichardson@igchicago.org

Deputy Inspector General Richardson:

Thank you for your letter of August 4, 2023, regarding Police Board Case No. 21 PB 2994, which the Board decided in August of 2022.

We function as a Board, making decisions based on the evidence included in fulsome materials that are provided in each case. In every case, the Board issues a written decision which reflects the conclusion of rigorous deliberation and explains why the Board members voted as they did. While not all members agree with the outcome of every case, we all agree that the written decisions must stand on their own. For the deliberative process to work for the Board, it must not be undercut by after-the-fact comments from any Board member or staff about the decisions. For this reason, while we agree with the general proposition that the Board should strive “to ensure internal factual consistency across findings in a case, and ensure that it thoroughly enforces CPD’s rules and policies requiring its members to report misconduct,” we respectfully decline to comment on the specific findings of the OIG regarding Case No. 21 PB 2994 and reiterate that the written decision includes the Board’s best and final reasoning.

We understand that—in spite of the concerns we raise—you may continue to wish to review Police Board decisions. If you do, we offer two recommendations:

1. We recommend an initial conversation between OIG and the Police Board leadership that will provide an opportunity to discuss the broad goals of the review and the rules and general process for the Board’s handling of police disciplinary cases (this conversation would be similar to the entrance conference noted in Section 14.3.A. of the OIG Rules).
2. We recommend that OIG request from the Police Board the record of proceedings (transcripts and video recording of the evidentiary hearing, exhibits made part of the record, and the hearing officer’s report) so that OIG can review the same material on which the Board bases its decisions.

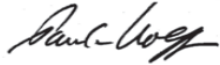
September 1, 2023
Tobara Richardson
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Thank you for your continued vigilance and for the opportunity to review and respond to your letter and recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ghian Foreman'.

Ghian Foreman
President

A handwritten signature in black ink, appearing to read 'Paula Wolff'.

Paula Wolff
Vice President



Daniel Tardy
Senior Performance Analyst

LaDonna Candia-Flanagan
Chief Investigative Analyst

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OIG's authority to produce reports of its findings and recommendations is established in the City of Chicago Municipal Code §§ 2-56-030(d), -035(c), -110, -230, and -240.

For further information about this report, please contact the City of Chicago Office of Inspector General, 740 N. Sedgwick St., Suite 200, Chicago, IL 60654, or visit our website at igchicago.org.

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