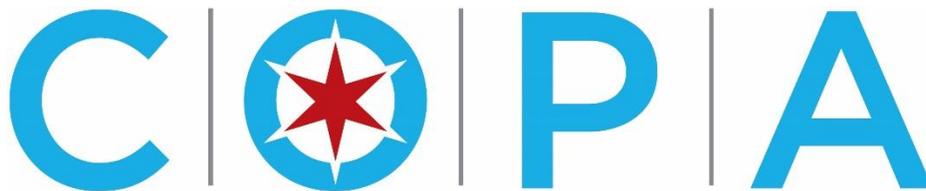


City of Chicago
Civilian Office of Police
Accountability



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

INTEGRITY • TRANSPARENCY • INDEPENDENCE • TIMELINESS

Report on Advisory Letter Regarding
Log Number 1081642

April 12, 2018

I. Introduction

Pursuant to the Municipal Code of Chicago Section 2-78-120(m), the Chief Administrator of the Civilian Office of Police Accountability (COPA) is empowered and has the duty to make recommendations to the Superintendent of the Chicago Police Department (the Department) concerning Department policies. To fulfill the mission, as outlined in Section 4.4.1 of COPA's Rules and Regulations (effective September 15, 2017), the Chief Administrator may issue an Advisory Letter to the Superintendent if an investigation uncovered a problem that hinders the effectiveness of Department operations and programs or if the investigation has identified a verifiable potential liability or risk that warrants attention by the Department.

On December 21, 2017, COPA sent an Advisory Letter concerning to the Department's policy and procedure regarding firing at or into a moving vehicle as they related to its investigation into Log Number 1081642.¹ The Department provided COPA with its response on February 21, 2017, with a supplement to the original letter delivered on March 20, 2018.² This report summarizes COPA's recommendations regarding firing at or into a moving vehicle, the Department's responses to those recommendations, and the status of COPA's recommendations.

II. COPA's Recommendations

COPA investigated an officer-involved shooting under Log Number 1081642. During its investigation, COPA reviewed the Department's use of force policy and noted that the policy *in effect at the time of the incident* differed slightly from the *current* use of force policy. The use of force policy that was in effect *at the time of the incident* prohibited firing at or into a moving vehicle "when the vehicle is the only force used against the sworn member or another person." COPA noted that this language is similar to language promulgated by the International Association of Chiefs of Police (IACP) and many other police departments, and reflects experts' findings that firing at or into a moving vehicle is extremely dangerous and usually ineffective at stopping the vehicle and the threat posed by the occupant(s).

¹ See Appendix A for a redacted copy of COPA's Advisory Letter. Redactions to the Advisory Letter have been made because the Summary Report of Investigation for Log Number 1081642 is under review by the Department.

² See Appendices B and C for copies of the Department's Response Letters to COPA's Advisory Letter.

However, the Department's *current* use of force policy (promulgated in 2017 after public comment and debate) deviates from this bright-line standard. In its Advisory Letter, COPA stated,

The Department's *current* use of force policy prohibits "[f]iring at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person, **unless such force is reasonably necessary to prevent death or great bodily harm to the sworn member or to another person.**" The exception could be construed to subsume the general prohibition on firing at or into a moving vehicle. Under the *current* use of force policy, an officer may not use deadly force—in any circumstance—unless the force is reasonably necessary to prevent death or great bodily harm. Therefore, other than the general restrictions on using deadly force, there is essentially no "prohibition" on firing at or into a moving vehicle because in almost any situation where the use of deadly force is permitted, an officer could assert that firing at or into the moving vehicle is "reasonably necessary to prevent death or great bodily harm to the sworn member or to another person" (emphasis added).

In its letter, COPA set forth that "firing at or into a moving vehicle is ineffective, extremely dangerous, and inconsistent with the central goal and value placed on the sanctity of human life." Therefore, COPA recommended that that the Department change its use of force policy as follows:

The use of firearms in the following ways is prohibited . . . firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person unless complying with this prohibition would *unreasonably* endanger the sworn member or another person.

Though subtle in its phrasing, we believe that this language provides better guidance to Department members on when such force is permitted and prohibited. In recommending this change, COPA also noted that the Department should retain the language in its current use of force policy that requires that members "not place themselves in the path of the moving vehicle and make every effort to move out of the path of the vehicle."

III. The Department's Response

In response to COPA's recommendations regarding firing at or into a moving vehicle, the Department believes that its current use of force policies "incorporate best practices, provide clear direction for officers, and prioritize the sanctity of human life."³ Further, the Department believes that their current policy accomplishes their goal of "protecting the sanctity of human life." Lastly, the Department noted its commitment to continue the evaluation of COPA's recommendations in light of its ongoing discussions with the Illinois Office of Attorney General over its pending consent decree litigation

IV. Recommendation Status

Based on the Department's response to its Advisory Letter, COPA assessed the Department's response to the recommendations contained therein. COPA classifies the status of recommendations into three categories:

- **Agrees:** The Department agrees with COPA's policy recommendation and indicated that they have taken steps to implement or plan to implement such recommendation in full.
- **Agrees In Part:** The Department partially agrees with COPA's policy recommendation and may or may not have indicated that they have taken steps to implement such recommendation
- **Does Not Agree:** The Department does not agree with COPA's policy recommendation and has not taken steps to implement such recommendation.

Recommendation: *Change the use of force policy as follows: "The use of firearms in the following ways is prohibited . . . firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person unless complying with this prohibition would unreasonably endanger the sworn member or another person."*

Status: **Does Not Agree.** The Department's March 20, 2018 response states that the Department, "believes that the current policy

³ See Appendix C.

accomplishes [their] goal protecting the sanctity of human life.” In its response, the Department described two opportunities for public comment concerning its policies, which date back to 2016 and 2017. We commend the Department for providing the public with opportunities to provide comment. However, the Department has an ongoing obligation to review and, as appropriate, revise its policies to align the Department with best practices. Though the Department has recently updated its suite of use of force policies, we feel we would be remiss in our statutory duty of providing recommendations to strengthen the Department’s policies were we to not provide additional recommendations on one of the Department’s most important (and certainly, impactful) policies. Thus, while the Department stated their belief that the current policy accomplishes the Department’s goals of incorporating best practices, providing clear direction for offices and prioritizing the sanctity of life, the Department did not provide a specific reason for disagreeing with the above recommendation.

Finally, COPA understands the importance of, and the impact that, the ongoing consent decree discussions between the Department, the City, the Illinois Office of Attorney General, and certain community groups will have on the recommendation provided herein. We look forward to reviewing the terms of the consent decree and whether they incorporate or touch upon COPA’s recommendation set forth herein.

Appendix A



Eddie T. Johnson
Superintendent
Chicago Police Department
3510 S. Michigan Avenue
Chicago, Illinois 60653

December 21, 2017

Re: Advisory Letter Regarding Log Number 1081642

Dear Superintendent Johnson:

Pursuant to the Municipal Code of Chicago Section 2-78-130, the Chief Administrator of the Civilian Office of Police Accountability (COPA) is empowered and has a duty to make recommendations to the Superintendent of the Chicago Police Department (the Department). To fulfill the mission, as outlined in Section 4.4.1 of COPA's Rules and Regulations (effective September 15, 2017), the Chief Administrator may issue an Advisory Letter to the Superintendent if an investigation uncovered a problem that hinders the effectiveness of Department operations and programs or if the investigation has identified a verifiable potential liability or risk that warrants attention by the Department.

Firing at or into a Moving Vehicle

[REDACTED]

The Department's use of force policy *in effect at the time of the incident* provided that the use of firearms was prohibited in the following ways: "(E) Firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person." This language closely mirrored the 2006 model use of force policy promulgated by the International Association of Chiefs of Police (IACP) and many other police departments

in clearly prohibiting the use of firearms against a moving vehicle when the vehicle is the only force used against the member or another person.¹

These policies reflected experts' findings that firing at or into a moving vehicle is extremely dangerous and usually ineffective.² First, bullets fired from handguns are unlikely to be effective against an automobile.³ Second, if the driver is hit by gunfire, the vehicle is likely to crash in an uncontrolled manner.⁴ Third, it is extremely difficult to hit a driver in a moving vehicle with a bullet and there is a significant risk of accidentally striking a passenger or bystander with gunfire.⁵ Fourth, as illustrated in this case, if the driver is not hit by gunfire, he or she is likely to drive even more recklessly to escape, thereby increasing the danger the vehicle itself poses to officers, other occupants, and bystanders.⁶ Finally, as again illustrated in this case, firing at a moving vehicle may lead other officers in the area to mistakenly believe that the gunfire is coming from occupants within the vehicle itself which increases the risk that another officer will use deadly force on an unarmed subject.

The Department's *current* use of force policy prohibits "[f]iring at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person, unless such force is reasonably necessary to prevent death or great bodily harm to the sworn member or to another person." The exception could be construed to subsume the general prohibition on firing at or into a moving vehicle. Under the *current* use of force policy, an officer may not use deadly force—in any circumstance—unless the force is reasonably necessary to prevent death or great bodily harm. Therefore, other than the general restrictions on using deadly force, there is essentially no "prohibition" on firing at or into a moving vehicle because in almost any situation where the use of deadly force is permitted, an officer could assert that firing at or into the moving vehicle is "reasonably necessary to prevent death or great bodily harm to the sworn member or to another person."

¹ International Association of Chiefs of Police, Model Policy: Use of Force 1 (Feb. 2006), *available at* <https://www.documentcloud.org/documents/2303826-useofforcepolicy.html>.

² See IACP National Law Enforcement Policy Center, Use of Force: Concepts and Issues Paper 7 (updated Feb. 2006), *available at* <https://www.documentcloud.org/documents/2303827-useofforcepaper.html>; John A. Grosst, *Essay: Unguided Missiles: Why The Supreme Court Should Prohibit Police Officers From Shooting at Moving Vehicles*, 163 U. PA. L. REV. ONLINE 135 (2016).

³ See IACP National Law Enforcement Policy Center, Use of Force: Concepts and Issues Paper 7 (updated Feb. 2006), *available at* <https://www.documentcloud.org/documents/2303827-useofforcepaper.html>.

⁴ *Id.*

⁵ *Id.*

⁶ Department of Justice Report Issued on January 13, 2017, *available at* <https://www.justice.gov/opa/file/925846/download> at 27.

While the current policy requires members to “not place themselves in the path of the moving vehicle and . . . make every effort to move out of the path of the vehicle,” this policy may cause confusion and result in members firing at or into moving vehicles more often than they would under the clear prohibition in the previous policy. The Department of Justice (DOJ) investigation specifically included firing at vehicles without justification in CPD’s pattern or practice of unreasonable force. As outlined above and in the DOJ report, firing at or into a moving vehicle is ineffective, extremely dangerous, and inconsistent with the central goal and value placed on the sanctity of human life.

Recommendation

COPA recommends that the Department change its use of force policy as follows: “The use of firearms in the following ways is prohibited . . . firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person unless complying with this prohibition would *unreasonably* endanger the sworn member or another person.” This language clearly conveys the prohibition on firing at or into a moving vehicle while still permitting members to fire at or into moving vehicle when failing to do so would unreasonably endanger a sworn member or another person. This language also clearly differentiates firing at or into moving vehicles from the use of deadly force more broadly. Additionally, the Department should retain the language in its current use of force policy that requires that members “not place themselves in the path of the moving vehicle and make every effort to move out of the path of the vehicle.”

Thank you for your time and consideration of these issues. We respectfully request a response to these recommendations within 60 days. COPA will publish this letter and the Department’s response, if any, on the COPA website after the 60-day response time has passed.

Respectfully,



Patricia Banks
Interim Chief Administrator

1615 WEST CHICAGO AVENUE, 4TH FLOOR, CHICAGO, ILLINOIS 60622
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Appendix B



Rahm Emanuel
Mayor

Department of Police · City of Chicago
3510 South Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

February 21, 2018

Patricia Banks
Interim Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

Re: Advisory Letter Regarding Log Number 1081642

Dear Chief Administrator:

The Chicago Police Department (CPD) received an Advisory Letter regarding Log Number 1081642 in which COPA recommended that the CPD changes its use of force when firing at or into a moving vehicle. However, the use of force guidelines in effect at the time COPA investigated the incident were revised in 2017 and at present include the recommended changes.

In 2016, CPD completed a comprehensive review and revision of its use of force policies in an effort to incorporate best practices, provide clear direction for officers, and prioritize the sanctity of human life. In the second half of 2016, CPD released a draft of use of force policies for public comment. After gather and considering both community and CPD officer input, CPD worked with the community and other constituencies to strengthen its use of force policies. In 2017, CPD finalized and trained all members of CPD on its revised use of force policies.

The current/revised policy, General Order G03-02, USE OF FORCE, provides, "Firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person, unless such force is reasonably necessary to prevent death or great bodily harm to the sworn member or to another person. **NOTE:** When a vehicle is the only force used against a member, the member will not place themselves in the path of the moving vehicle and will make every effort to move out of the path of the vehicle."

Thank you for your recommendation.


Eddie T. Johnson
Superintendent of Police
Chicago Police Department

ETJ/jjb

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Appendix C



Rahm Emanuel
Mayor

Department of Police · City of Chicago
3510 South Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

March 20, 2018

Patricia Banks
Interim Chief Administrator
Civilian Office of Police Accountability (COPA)
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

Re: Advisory Letter Regarding Log Number 1081642

Dear Interim Chief Administrator,

Thank you for your opportunity to clarify and supplement my letter regarding the above captioned log number.

As I stated in my letter dated February 21, 2018, the Chicago Police Department (CPD) believes that the current policy accomplishes our goal protecting the sanctity of human life. *See Attached letter dated February 21, 2018.* That principle is critically important to constitutional, effective policing and public safety. CPD's use of force policies incorporate best practices, provides clear direction for officers, and prioritizes the sanctity of human life. In keeping with those priorities, the use of force training that members of CPD receive emphasizes that the use of deadly force is a last resort permissible only when necessary to protect against an imminent threat to life or prevent great bodily harm to the member or another person.

In 2017, CPD revised our use of force policies after two opportunities for the public to provide suggestions and comments. As of 2017, training based on the new use of force policies, emphasizes the importance of avoiding firing into moving vehicles. In fact, one of the prohibitions on the use of a firearm by a CPD member is firing at or into moving vehicles, unless reasonably necessary to prevent death or great bodily harm. Further, the training based on the current Use of Force directive (*General Order G03-02*) explicitly instructs officers to make every effort to move out of the path of a moving vehicle. Not only are officers instructed that getting out of the way helps to avoid injury or death, but officers are also taught that shooting at or into a moving vehicle is often ineffective: even if the driver is hit, the vehicle can keep going for a long time and cause death or serious injury to CPD members and others before it stops.

We do however, thank you for your recommendations. CPD will continue to evaluate the recommendations further in light of the consent decree litigation involving the Office of the Attorney General. CPD remains committed to ongoing reform process and we look forward to your additional input on the above matters.


Eddie T. Johnson
Superintendent of Police
Chicago Police Department

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