

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

| | |
|----------------------------|------------------|
| Date of Incident: | January 13, 2017 |
| Time of Incident: | Unspecified |
| Location of Incident: | Unspecified |
| Date of COPA Notification: | January 26, 2018 |
| Time of COPA Notification: | 2:30pm |

Complainant, Subject 1, is an independent candidate for Cook County Sheriff for the 2018 election. A Facebook group was formed in the summer of 2017, entitled “Anyone But Subject 1 for Cook County Sheriff 2018.” Chicago Police Officers A, and B were members of this group.

On January 13, 2018, Officer A sent an email to a private company called XXX, attempting to persuade the company from endorsing Subject 1. Officer A represented herself as an active police officer from a large police department.

II. INVOLVED PARTIES

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|----------------------|--|
| Involved Officer #1: | Officer A, star # XXX, employee ID# XXX, Date of Appointment: XXX, 2007, Police Officer, Date of Birth: XXX, 1970, Female, White |
| Involved Officer #2: | Officer B, star # XXX, employee ID# XXX, Police Officer, Date of Appointment: XXX, 2016, Date of Birth: XXX, 1986, Male, White |
| Subject #1: | Subject 1, 42, Male, White |

III. ALLEGATIONS

| Officer | Allegation | Finding |
|----------------|---|----------------|
| Officer A | <ol style="list-style-type: none"> 1. It is alleged that on January 13, 2018, Officer A used her official position as a police officer for personal gain / influence. 2. It is alleged that while using the social media platform Facebook, Officer A | Unfounded |

| | | |
|-----------|--|---------------|
| | attacked the Complainant's sexual orientation. | Not Sustained |
| Officer B | 1. It is alleged that while using the social media platform Facebook, Officer B attacked the Complainant's sexual orientation. | Not Sustained |

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2: Prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon.
2. Rule 8: Prohibits disrespect or maltreatment of any person, while on or off duty.
3. Rule 9: Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

V. INVESTIGATION

a. Interviews

In an interview with COPA on January 30, 2018, **Complainant Subject 1**, stated that two active Chicago police officers have engaged in conduct unbecoming of a police officer. Subject 1 stated that through a Facebook page called "Anyone But Subject 1 for Sheriff 2018," Chicago Police Officers A, and B, made numerous disparaging comments and remarks against his family and sexuality¹. Subject 1 stated that he is running for Cook County Sheriff as an Independent and that he announced his candidacy in May of 2017. Subject 1 related that shortly after he announced his intention to run for political office the Anyone But Subject 1 for Sheriff 2018 Facebook page was created. Subject 1 stated that the Facebook group was public and that he read comments from CPD Officers A and B that stated his sister was a whore for having a child out of wedlock, his father should have pulled out of his mother, and that his mother should have had an abortion. Subject 1 related that these statements caused his family distress. Subject 1 also alleged that Officers A and B made numerous comments that he is a homosexual. Subject 1 did provide some screen shots but not copies of the above referenced comments. However, Subject 1 stated that the

¹ Officer A's Facebook alias was "XXX". Officer B's Facebook alias was "XXX".

Facebook group was public and that these comments could be viewed by anyone with a Facebook account².

Lastly, Subject 1 alleged that Officer A emailed Civilian 1 of a private company called XXX, of which Subject 1 is a stock owner and representative. Subject 1 stated that Officer A wrote, in summation “as an active police officer from a very large police department I am appalled that you feel that [Subject 1] is the face for your product I’ll be sure to spread the word on your poor choice of an endorser... Sincerely active police officer A.” Subject 1 stated that after this email his photo and endorsement were taken down from the XXX website. Subject 1’s shares in the company were not affected.³

In an interview with **Civilian 1** on March 8, 2018, Civilian 1 related to COPA that he is the president and owner of XXX, and that he has held that position for nine years. He stated he has known Subject 1 for about three years and first came across videos Subject 1 posted on the website YouTube.com. Civilian 1 enjoyed Subject 1’s YouTube videos and stated that he reached out to Subject 1 and singer Civilian 2, to endorse his company’s product about a year ago. Civilian 1 stated that in consideration for Subject 1’s endorsement, Subject 1 was given shares in the XXX company. Civilian 1 stated that in January of 2018, he received an email from Officer A. Civilian 1 did not know Officer A before he received her email. Civilian 1 went on to state that the email he received seemed like it was from an “internet troll” or someone who does not like Subject 1. In Civilian 1 words, he felt the email was “vile” and “infantile”. He interpreted Officer A’s repeated statements that she is an active police officer as a way for her to invoke power in the situation since all of Civilian 1’s clients are police departments. Civilian 1 stated that he did a name search in Google and Facebook, and found out that Officer A was a Chicago Police Officer. Civilian 1 stated that he did speak about this email to Subject 1 briefly and that he ultimately took down any public endorsements Subject 1 may have made about his company’s product due in part to the email.⁴

In an interview with COPA on April 5, 2018, **Officer A**, stated that she knew Subject 1 from his numerous videos and posts on Facebook. She stated that she joined the Facebook group Subject 1 for Cook County Sheriff to learn more about his candidacy for the position. Officer A stated that after joining Subject 1 for Cook County Sheriff she discovered that Subject 1 did not stand for the same values she stood for. In the summer of 2017, Officer A stated that she joined the Facebook group Anyone But Subject 1 for Cook County Sheriff 2018. When asked whether she made disparaging remarks about Subject 1’s family or sexuality, Officer A stated that she did not remember, and that making such remarks was not in her character.

Officer A testified that she used her personal email address to contact XXX, a company that sells vehicle pursuit products directly to police agencies. Officer A sent an email to this

³ Attachment 4

⁴ Attachment 6

company telling them that Subject 1 is a con artist, has no respect for law enforcement, or violent crimes against women. Officer A stated that Subject 1's claims that he's been a police officer for 16 years are not true. Officer A also stated that she would spread the word on [XXX's] poor choice for an endorser. In this email, Officer A refers to herself as being an active police officer at a very large department. She then signs the email as 'Active Police Officer A'. When asked specifically about this email, Officer A stated that she contacted XXX to let them know what kind of person they were dealing with. Officer A entitled the email as "Endorsement".⁵

In an interview with COPA on April 6, 2018, **Officer B** stated that he was a member of the Facebook Group Anyone But Subject 1 for Cook County Sherriff 2018. He stated he became a member sometime in 2017, and ended his membership in January of 2018. Officer B stated that he made about 20 or more posts in the group since he became a member. When ask specifically what kinds of posts he made, Officer B could not remember. Officer B also could not remember if he made disparaging remarks about Subject 1's sexual orientation or his family. Officer B stated that he had made memes in the past but could not remember if he made any memes about Subject 1 or if he posted a meme about Subject 1 onto the Facebook group. Officer B stated that he left the Facebook when Subject 1 sent him a private message requesting that he stop posting about him using the group. Officer B agreed to stop posting about Subject 1 and left the Facebook group altogether.⁶

b. Additional Evidence

COPA reviewed the January 13, 2018, **email** sent by Officer A to info@XXX. The email is entitled 'Endorsement' and Officer A states that Subject 1 is a con-artist, that has no respect for women or victims of violent crimes. Officer A writes that as an active police officer from a very large police department she is appalled that Subject 1 is the face of XXX's product and that she will spread the word on XXX's poor choice of endorsement. Officer A signs the email as "Active Police Officer A".⁷

Between April 22, 2018, through April 27, 2018, COPA reviewed the **Facebook group** Anyone But Subject 1 for Cook County Sheriff 2018. COPA Investigators found numerous post from XXX, (Officer A) and XXX, (Officer B). COPA did not observe any posts or comments from Officer A that were disparaging to Subject 1's sexual orientation or family. Many of Officer A's posts pertain to Subject 1's political rhetoric. Officer A also made numerous comments about Subject 1's videos, personality, and her interpretations of his posts and political positions.

⁵ Attachment 13

⁶ Attachment 14

⁷ Attachment 8

Officer B did refer to Subject 1 as “XXX” on December 15, 2017. However, COPA Investigators did not discover any posts made by Officer B that disparaged Subject 1’s sexual orientation, or family.⁸

VI. ANALYSIS

Subject 1 alleged that Officer A used her official position as a police officer for personal gain / influence in violation of Chicago Police Rule 4. This allegation stems from the January 13, 2018, email sent by Officer A to a company called XXX. This company used Subject 1 as an endorser of its products. The email is sent from Officer A’s personal email address. The email attacks Subject 1’s character and Officer A begs the company throughout the email to stop using Subject 1 as an endorser. Officer A calls Subject 1 a con-artist, states that he is in debt, has no respect for woman, or victims of violent crimes. Although Officer A states multiple times throughout the email that she is an active police officer from a large police department. Officer A never represents herself as a Chicago Police Officer. When asked specifically about the email during her statement to COPA, Officer A stated that she wanted XXX to know what kind of person they were dealing with. COPA finds that Officer A did not use her position as a police officer for personal gain / influence in violation of Chicago Police Rule 4, and thus this allegation against Officer A must be found **Unfounded**.

The First Amendment of the United States Constitution states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. CONST. AMEND. I. “The government as employer . . . has far broader powers than does the government as sovereign.” *Waters v. Churchill*, 511 U.S. 661, 671 (1994) (internal citations and quotations omitted).

The United States Supreme Court has held that the First Amendment does not protect a government employee’s speech made “pursuant to their official duties.” *Garcetti v. Ceballos*, 547 U.S. 410, 421-22 (2006). Furthermore, speech that is not made pursuant to the government employee’s official duties is protected by the First Amendment only when the speech regards “a matter of public concern, and the employee's interest in expressing herself” is “not be outweighed by any injury the speech could cause to the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Id.* at 668 (internal citations and quotations omitted). Absent the most unusual of circumstances, the First Amendment does not protect the speech of a government employee when the government “employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest.” *Connick v. Myers*, 461 U.S. 138, 147 (1983) (internal citation omitted). Thus, the

⁸ Attachments 15 and 16

determination of whether the speech is protected by the First Amendment in the government employment context involves a three-part analysis: (1) is the speech made pursuant to the government employee's official duties; (2) does the speech address a matter of public concern and (3) does the interest of government employee in expressing his or her own views outweigh the government's interest in workplace efficiency.

A. Is the Speech Made Pursuant to the Government Employee's Official Duties

The controlling factor in the *Garcetti* inquiry is whether the speech "owes its existence to a government employee's professional responsibilities." *Callahan v. Fermon*, 526 F.3d 1040, 1044 (7th Cir. 2008) (quoting *Garcetti*, 547 U.S. at 421). The inquiry is a practical one that is not governed by the job description or the location of the speech. *Id.*

In this case, although Officer A referenced her position as an active police officer from a very large police agency in her email, she never actually stated that she is a Chicago police officer. Further, the email was sent from her personal email address, while she was off duty. The email clearly was not sent or created pursuant to Officer A's official duties as a government employee.

B. Does the Speech Address a Matter of Public Concern

Speech addresses a matter of public concern if it can be "fairly considered as relating to any matter of political, social, or other concern to the community." *Connick*, 461 U.S. at 146. "Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." *Id.* at 147. While motive is relevant, "personal aspect contained within the motive of the speaker does not necessarily remove the speech from the scope of public concern." *Marshall v. Porter County Plan Comm'n*, 32 F.3d 1215, 1219 (7th Cir. 1994).

Here, the email does address a matter of public concern. The Complainant, and the subject of the email, Subject 1, is an Independent candidate for Cook County Sheriff, which makes him a public figure. Subject 1 is running for public office. He is running for a position which would make him head of the second largest sheriff's department in the United States. Officer A stated that she sent the email to let XXX know the kind of person that they were dealing with. Officer A was expressing her opinion regarding Subject 1's character. For these reasons COPA finds that the email did address a matter of public concern.

C. Does the Interest of the Government Employee in Expressing his or her Own Views Outweigh the Government's Interest in Workplace Efficiency

Courts have held that law enforcement officers are "subject to greater First Amendment restraints than most other citizens." *See McMullen v. Carson*, 754 F.2d 936, 938 (11th Cir. 1985)

(citing *Kelley v. Johnson*, 425 U.S. 238, 47 L. Ed. 2d 708, 96 S. Ct. 1440 (1978)). "A police department has a more significant interest than the typical government employer in regulating the speech activities of its employees in order to promote efficiency, foster loyalty and obedience to superior officers, maintain morale, and instill public confidence." *Tyler v. City of Mountain Home*, Ark.72 F.3d 568, 570 (8th Cir. 1995); *Breur v. Hart*, 909 F.2d 1035, 1040 (7th Cir. 1990).

The Seventh Circuit considers a multitude of factors when balancing the government employee's First Amendment interests against the government's interest in workplace efficiency including:

(1) whether the statement would create problems in maintaining discipline by immediate supervisors or harmony among co-workers; (2) whether the employment relationship is one in which personal loyalty and confidence are necessary; (3) whether the speech impeded the employee's ability to perform her daily responsibilities; (4) the time, place, and manner of the speech; (5) the context in which the underlying dispute arose; (6) whether the matter was one on which debate was vital to informed decision making; and (7) whether the speaker should be regarded as a member of the general public.

Using the factors as outlined above, a Court would likely hold that Officer A's email is protected under the First Amendment and her free speech rights outweighs the government's interest of workplace efficiency. First, the statements Officer A made in her email would likely not create discipline problems by her immediate supervisors as they were not the subject of the email. Second, the statements contained in her email would likely not impede on Officer A's daily duties as a police officer. Next, Officer A sent the email on a Saturday morning while she was off duty. The context of Officer A's dispute against Subject 1 is unclear. Officer A joined an anti-Subject 1 Facebook website and made numerous comments about him online using this platform. Officer A's anti Subject 1 email would likely not be vital to her decision-making process as a police officer, unless she had to interact with Subject 1 himself. However, Subject 1 and Officer A do not even know each other. Lastly, Officer A should be regarded as a member of the general public since she was off duty at the time and did not introduce or represent herself as a Chicago police officer. For the reasons stated above, COPA recommends a finding of **Unfounded** for allegation 1 against Officer A.

COPA recommends a finding of **Not Sustained** against Officers A and B who are both alleged to have made disparaging remarks about Subject 1's sexuality and family. Subject 1 stated that Officers A and B made numerous comments, memes, and remarks about his family and sexuality via the Facebook group, Anyone But Subject 1 for Cook County Sheriff 2018. Subject 1 stated that the attacks against him were fair game but the attacks against his family and his sexuality were over the line.

Subject 1 produced a string of screen shots from a XXX, in which XXX uses an avatar photo of Officer A hugging a man. XXX has made numerous comments about Subject 1. None of the comments made by XXX, from the screen shots produced by Subject 1 disparage Subject 1’s sexuality or his family in any way. Although XXX does make anti Subject 1 comments, none are the type of comments complained of by Subject 1. Officer A admitted to being a member of the Facebook group Anyone But Subject 1 for Cook County Sheriff 2018, she denied making such comments about Subject 1’s family and sexuality. Although Officer A through her XXX internet persona could have attacked Subject 1’s family and sexuality and deleted those posts, there is currently not enough evidence to support this allegation and therefore COPA recommends a finding of **Not Sustained**.

As to Officer B, Subject 1 did not provide any screenshots, or memes attributed to Officer B. Officer B testified in his interview with COPA that he could not remember if he ever made negative comments about Subject 1’s sexuality or family. Officer B could also not recall if he ever posted a meme to the Facebook group. Although one could infer that because Officer B was on an anti-Subject 1 site he likely posted negative comments about Subject 1. During a review of the Facebook group, COPA Investigators read numerous posts and comments from Officer B. COPA Investigators did not find any posts attributed to Officers B that attacked Subject 1’s sexuality or family. Officer B could have deleted these post before COPA reviewed the Facebook group. Because of this possibility, COPA finds that there is not enough independent verifiable evidence to support a positive finding for or against Officer B, and therefore the allegation against him must also be found **Not Sustained**.

VII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

| Allegation | Finding |
|---|----------------|
| Officer A | |
| 1. It is alleged that on January 13, 2018, Officer A used her official position as a police officer for personal gain / influence in violation of Chicago Police Rule 4 | Unfounded |
| 2. It is alleged that while using the social media platform Facebook, Officer A attacked the Complainant’s sexual orientation, in violation of Rule 2, 8, 9. | Not Sustained |
| Officer B | |

| | |
|--|---------------|
| 1. It is alleged that while using the social media platform Facebook, Officer B attacked the Complainant's sexual orientation, in violation of Rule 2, 8, 9. | Not Sustained |
|--|---------------|

Approved:

Deputy Chief Administrator A
Deputy Chief Administrator

Date

Appendix A

Assigned Investigative Staff

| | |
|------------------------------------|------------------------------|
| Squad#: | Squad X |
| Investigator: | Investigator A |
| Supervising Investigator: | Supervising Investigator A |
| Deputy Chief Administrator: | Deputy Chief Administrator A |