

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	August 29, 2018
Time of Incident:	11:28 am
Location of Incident:	XXXX South Langley Avenue
Date of COPA Notification:	October 17, 2018
Time of COPA Notification:	6:33 pm

Involved Individual 1 asserts that he was arrested and subjected to embarrassment for no reason. Involved Individual 1 further asserts that he was denied assistance of counsel. The officers who arrested Involved Individual 1 were in fact responding to an investigative alert with probable cause to arrest issued by a detective after Involved Individual 1 was positively identified in a photo array. Additionally, Involved Individual 1 met with his attorney within three hours of his arrest. The officers are exonerated of all allegations.

II. INVOLVED PARTIES

Involved Officer #1:	Officer A Star #XXXXXX / Employee #XXXXXX Date of Appointment: XX/XX/ 2013 PO / XX DOB: XX/XX/1976 Male / Black
Involved Officer #2:	Officer B Star #XXXXXX / Employee #XXXXXX Date of Appointment: XX/XX/2013 PO / XX DOB: XX/XX/1973 Female / Black
Involved Individual #1:	Involved Individual 1 DOB: XX/XX/1973 Male / Black

III. ALLEGATIONS

Officer	Allegation	Finding
Officer A	It is alleged that Officer A <ol style="list-style-type: none"> 1. Arrested Involved Individual 1 without justification, in violation of Rules 1 & 2; and 2. Denied Involved Individual 1 access to counsel, in violation of Rules 1 & 2. 	<p>EXONERATED</p> <p>EXONERATED</p>
Officer B	It is alleged that Officer B: <ol style="list-style-type: none"> 1. Arrested Involved Individual 1 without justification, in violation of Rules 1 & 2; and 2. Denied Involved Individual 1 access to counsel, in violation of Rules 1 & 2. 	<p>EXONERATED</p> <p>EXONERATED</p>

IV. APPLICABLE RULES AND LAWS

Rules – The following acts are prohibited:

1. Rule 1: Violation of any law or ordinance.
 2. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
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Special Orders

1. Special Order S04-16: Investigative Alerts
 2. Special Order S06-02: Live Lineups, Photo Lineups, and Showups
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Federal Laws

1. United States Constitution, Amendment IV
 2. United States Constitution, Amendment V
 3. United States Constitution, Amendment VI
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State Laws

1. Illinois Constitution, Article I, Section 6. Searches, Seizures, Privacy and Interceptions
2. Illinois Constitution, Article I, Section 10. Self-Incrimination and Double Jeopardy

V. INVESTIGATION¹

a. Interviews

COPA interviewed Involved Individual 1.² His focus seemed to be on the fact that his experience seemed like an arrest even though CPD officers told him that he was being taken to the station for questioning. Although it was unclear exactly what his allegations were, the R/I concluded that they can be fairly construed as: (1) a false arrest and (2) a denial of counsel.

Involved Individual 1 stated that officers appeared in front of his house and began to arrest him. They informed him that he was wanted on an investigative alert and that he needed to answer some questions. Involved Individual 1 felt embarrassed as he was arrested in front of his children. He was taken to a police station, processed, and released about five hours later. During that time, he met with an attorney from the public defender's office. Involved Individual 1 states that he was never Mirandized.

b. Documentary Evidence

COPA obtained the following documentary evidence from CPD:

1. An arrest report (RD #XXXXXX)³ showing that Involved Individual 1 was arrested on August 29, 2018, based on an Investigative Alert with probable cause to arrest Involved Individual 1 for two counts of aggravated criminal sexual assault against minors. The narrative states that Involved Individual 1 was arrested and taken to the station, and that detectives were informed.
2. A case incident report (RD #XXXXX)⁴ showing that on June 12, 2018, a father went to a police station to report that both of his daughters had told him that Involved Individual 1 had made sexual contact with them in the summer of 2014.
3. Subsequently, an investigative alert (#XXXXXXX)⁵ issued for Involved Individual 1, which stated that Involved Individual 1 "is wanted for an aggravated criminal sexual abuse to victims [VICTIM 1], [VICTIM 2] both minors. . . Probable cause to arrest."

Additionally, Involved Individual 1 provided COPA with the following documentary evidence:

4. A Notice of Representation and Declaration of Rights⁶ signed by Involved Individual 1 around 2:17 pm on August 29, 2018 stating that he is represented by a public defender.

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² Att. 8.

³ Att. 11.

⁴ Att. 10.

⁵ Att. 12.

⁶ Att. 9.

5. An Attorney/711 Visitation Notification form⁷ filled out by Sgt. A stating that Involved Individual 1 was visited by an attorney around 2:15 pm on August 29, 2018.

VI. ANALYSIS

The officers are exonerated of all allegations. The documentary evidence shows that a valid investigative alert, with probable cause to arrest, was issued for Involved Individual 1 in relation to accusations of aggravated criminal sexual assault. Involved Individual 1 was informed of the investigative alert while he was being arrested. He asked for the reason and the officers did not tell him. “While it is assuredly good police practice to inform a person of the reason for his arrest at the time he is taken into custody, [the Supreme Court of the United States has] never held that to be constitutionally required.”⁸ In fact, given the inflammatory nature of the charges, it was reasonable of the officers to withhold the information, especially while in the presence of Involved Individual 1’s children. The officers followed the directives in that they took the subject into custody.⁹

As to Involved Individual 1’s contention that he was denied counsel and was not informed of the charges against him, that is an allegation that falls on its face. Involved Individual 1, according to his interview, was arrested around 11:30 am. Police records, which he brought to COPA’s attention, show that he spoke with an attorney around 2:15 pm even before processing was completed, which is corroborated by the paperwork that Involved Individual 1 signed around 2:17 pm. Thus, Involved Individual 1 spoke with an attorney who told him about the charges he faced within less than 3 hours of his arrest.

Involved Individual 1 has a right to counsel. Under the Fifth Amendment, he is protected from the effects of statements elicited from him while in custody unless the interrogators informed him of his rights.¹⁰ Here, Involved Individual 1 was arrested and processed but not interrogated. Involved Individual 1 also has a right to counsel under the Sixth Amendment. That right attaches only once adversarial proceedings have begun, “whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.”¹¹ Such proceedings had not begun in Involved Individual 1’s case.¹²

Because the officers arrested Involved Individual 1 based on a valid investigative alert, and because he met with counsel within three hours of his arrest, the officers are exonerated of all allegations.

⁷ Att. 9.

⁸ *Devenpeck v. Alford*, 543 U.S. 146, 155 (2004).

⁹ Special Order S-04-16, IV.A.1.a (“Officers who run name checks on individuals who have an Investigative Alert / Probable Cause to Arrest on file will take the subject into custody if not already in custody.”).

¹⁰ *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (“Our holding . . . briefly stated is this: the prosecution may not use statements, whether exculpatory inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.”).

¹¹ *Rothgery v. Gillespie County*, 554 U.S. 191, 198 (2008) (citing *United States v. Gouveia*, 467 U.S. 180, 188 (1984)) (internal quotation marks removed).

¹² Based on that, Involved Individual 1 also did not have a right to an attorney during the photo lineup that the detectives used to identify him before they issued an investigative alert.

CONCLUSION

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

Officer	Allegation	Finding
Officer A	It is alleged that Officer A <ol style="list-style-type: none"> 1. Arrested Involved Individual 1 without justification, in violation of Rules 1 & 2; and 2. Denied Involved Individual 1 access to counsel, in violation of Rules 1 & 2. 	EXONERATED EXONERATED
Officer B	It is alleged that Officer B: <ol style="list-style-type: none"> 1. Arrested Involved Individual 1 without justification, in violation of Rules 1 & 2; and 2. Denied Involved Individual 1 access to counsel, in violation of Rules 1 & 2. 	EXONERATED EXONERATED

Approved:

 Deputy Chief 1
 Deputy Chief Administrator – Chief Investigator

 Date

Appendix A

Assigned Investigative Staff

Squad#:	XX
Investigator:	Investigator 1
Supervising Investigator:	Supervising Investigator 1
Deputy Chief Administrator:	Deputy Chief 1