CIVILIAN OFFICE OF POLICE ACCOUNTABILITY **LOG #1081732**

SUMMARY REPORT OF INVESTIGATION[1]

Date/Time/Location of Incident:	July 16, 2016/Approximately 2 AM/[redacted]
Date/Time of COPA Notification:	August 5, 2016/12:08 PM
Involved Officer #1:	[redacted], Star #[redacted], Employee #[redacted], Date of Appointment: [redacted], 2006, Police Officer, Unit of Assignment: [redacted], Date of Birth: [redacted], 1981, Male, Asian Pacific
Involved Officer #2:	[redacted], Star #[redacted], Employee #[redacted], Date of Appointment: [redacted], 2013, Police Officer, Unit of Assignment: [redacted], Date of Birth: [redacted], 1983, Male, White
Involved Officer #3:	[redacted], Star #[redacted], Employee #[redacted], Date of Appointment: [redacted], 2012, Police Officer, Unit of Assignment: [redacted], Date of Birth: [redacted], 1983, Male, White
Involved Individual #1:	[redacted], Date of Birth: [redacted], 1994, Male, Black
Case Type:	Excessive Force

I. ALLEGATIONS

Officer	Allegation	Finding
Officer [redacted] #[redacted]	1. Grabbing [redacted] on or about the body without justification, in violation of Rules 2, 3, 6, 8, and 9	Exonerated
Officer [redacted] #[redacted]	1. Grabbing [redacted] on or about the body without justification, in violation of Rules 2, 3, 6, 8, and 9 2. Forcefully taking [redacted] to the ground without justification, in violation of Rules 2, 3, 6, 8, and 9	Exonerated

[1] On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

Officer [redacted] #[redacted]	1. Grabbing [redacted] on or about the body without justification, in violation of Rules 2, 3, 6, 8, and 9 2. Forcefully taking [redacted] to the ground without justification, in violation of Rules 2, 3, 6, 8, and 9 3. Displaying your taser at or in the direction of [redacted] without justification, in violation of Rules 2, 3, and 38	Exonerated

II. SUMMARY OF EVIDENCE[2]

COPA's investigation included interviews of the accused officers [redacted] #[redacted][3], [redacted] #[redacted][4], and [redacted] #[redacted].[5] COPA contacted [redacted][6], [redacted][7], [redacted][8], [redacted][9], and [redacted][10] via telephone and mail numerous times, as well as, visited their residences[11] to schedule an interview, but the attempts were met with negative results. Chicago Police Department ("CPD") reports[12], RD #[redacted], documenting the incident were also collected, which included summaries of the officers' accounts. COPA also received Chicago Fire Department reports[13] documenting [redacted]'s behavior and condition. COPA received video footage from Officers [redacted] and [redacted] in-car cameras[14] and [redacted]'s cell phone.[15]

Upon a review of the compiled evidence, COPA finds the following narrative occurred by clear and convincing evidence. On July 16, 2016 at approximately 2 AM around [redacted], Officers [redacted] and [redacted] observed [redacted] violating traffic laws, and subsequently, initiated their emergency lights. [redacted] did not stop and continued to drive into an alley, and eventually parked in a residential garage. The officers approached [redacted]'s vehicle, which was also occupied by three males. [redacted] failed to comply with the commands of Officer [redacted] and

[2] COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA's ongoing efforts to increase case closure capacity, certain cases opened under IPRA are summarized more succinctly in a Modified Summary Report of Investigation, pursuant to COPA Guideline Modified Summary Report of Investigation Template and Approvals, effective February 13, 2019.
[3] Attachments 60 and 61
[4] Attachment 66
[5] Attachment 71
[6] Attachments 15, 34, 41, and 72
[7] Attachments 35, and 72
[8] Attachments 38, 39, and 72
[9] Attachments 36, 42, and 72
[10] Attachments 37, 40, and 72
[11] Attachments 16 and 45
[12] Attachments 4, 5, 6, 8, and 10
[13] Attachments 17 and 46
[14] Attachments 27 and 28
[15] Attachment 44

told him that he was at his own house and that Officer [redacted] should not to touch him. Officer [redacted] went to grab [redacted], but [redacted] flailed his arm upwards.

Officer [redacted] unholstered his taser and assisted Officer [redacted]. [redacted] continued to flail his arms, and stated to the officers to shoot him and let him go, and began ferociously moving away from the officers. Officers [redacted] and [redacted] attempted to control [redacted] by grabbing his body and commanding [redacted] to the ground. [redacted] continued to struggle, and Officers [redacted] and [redacted] told him to stop resisting. Officer [redacted] and [redacted] then conducted a takedown. Officer [redacted] and additional officers arrived on scene for assistance. While on the ground, [redacted] continued to defeat custody, and Officer [redacted] also grabbed [redacted] in order to assist. The officers gained control of [redacted] and placed him into the squad car, where he continued to act aggressively and attempted to flee from the squad car.

III. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;

2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;

3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or

4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g.*, *People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

IV. ANALYSIS AND CONCLUSION

a. Grabbing [redacted] On or About the Body Without Justification

COPA finds Allegations #1 against Officers [redacted], [redacted], and [redacted], that they grabbed [redacted] on or about the body without justification, to be Exonerated. CPD policy[16] permits officers to use force against individuals based on the individual's actions.

The officers stated based on [redacted]'s actions they used an appropriate level of force to place [redacted] into custody. The officers stated that [redacted] continued to resist and attempt to avoid physical control by flailing and swinging his arms and legs, kicking, twisting his body, pulling away, balling up his fists, striking an officer in the chest, and moving away from the officers. The officers further stated they believed [redacted] to be under the influence as he remained noncompliant to their verbal directions. Video footage corroborates the officers' statements. COPA finds the collective force used by Officers [redacted], [redacted], and [redacted] (grabbing [redacted] about the body) to be permissible under CPD's use of force policy.

Notwithstanding the above, at minimum [redacted] was a passive resister[17] because he failed to comply with verbal direction. The officers' force was reasonable and proportional since they used holding techniques by grabbing [redacted] about the body to place him into custody. Therefore, COPA finds that Allegations #1 against Officers [redacted], [redacted], and [redacted] are Exonerated.

b. Forcefully Taking [redacted] to the Ground Without Justification

COPA finds Allegations #2 against Officers [redacted] and [redacted], that they forcefully took [redacted] to the ground without justification, to be Exonerated. CPD policy permits officers to conduct a takedown against an assailant whose actions are aggressively offensive without weapons.[18] [redacted] was an assailant. As stated above, [redacted] acted aggressively by striking Officer [redacted] in the chest, swinging his arms, flailing around, and balling his fists. [redacted] used force and the officers reasonably believed [redacted] would continue to use force against them. Considering all the evidence, COPA finds Officers [redacted] and [redacted]'s use of force – forcefully taking [redacted] to the ground – to be permissible and proper under CPD policy. Therefore, COPA finds that Allegations #2 against Officers [redacted] and [redacted] are Exonerated.

c. Displaying Taser At or In the Direction of [redacted] Without Justification

COPA finds Allegation #3 against Officer [redacted], that he displayed his taser at or in the direction of [redacted] without justification, to be Exonerated. General Order G03-02-02 regulated when an officer could use his taser, but the order does not address when an officer can or cannot draw his taser. Rule 38 clarifies when an officer can display his weapon, stating that "an officer is prohibited form unlawfully or unnecessarily using or display a weapon." Determining whether Officer [redacted]'s display of his taser was prohibited during this incident is fact dependent.

[16] General Order G03-02-02: Force Options (Effective January 1, 2016)
[17] *Id.* at 3 stating a passive resister is "a person who fails to comply with verbal or other direction."
[18] *Id.* at 7 stating an assailant whose actions are aggressively offensive without weapons is one "who is using or threatening the imminent use of force against himself/herself or another person" and "one who places a member in fear of a battery…"

CPD policy permits an officer to use a taser against an active resister.[19, 20] COPA finds that [redacted]'s actions of pulling away and moving to defeat custody were an attempt to avoid the officers' physical control, thus, making him an active resister. Officer [redacted] believed [redacted] was an assailant because he fled from the officers and disobeyed verbal directions. Officer [redacted] also stated [redacted] was agitated and aggressive and believed the situation would escalate. As such, COPA finds Officer [redacted] appropriately displayed his taser at or in the direction of [redacted] to prepare himself if the situation necessitated the use of his taser. Therefore, COPA finds that Allegation #3 against Officer [redacted] is Exonerated.

Approved:

[redacted]

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

7-31-19
Date

[19] *Id.* at 4 stating an active resister is "a person whose actions attempt to create distance between that person and the member's reach with the intent to avoid physical control and/or defeat the arrest. This type of resistance includes gestures ranging from evasive movement of the arm, trough flailing arms…"
[20] *Id.* at 5.

Assigned Investigative Staff

Squad#:	[redacted]
Investigator:	[redacted]
Supervising Investigator:	[redacted]
Deputy Chief Administrator:	Angela Hearts-Glass