



**Brandon Johnson**  
Mayor

**Department of Police · City of Chicago**  
3510 S. Michigan Avenue · Chicago, Illinois 60653

**Fred L. Waller**  
Interim Superintendent

June 1, 2023

Andrea Kersten  
Chief Administrator  
Civilian Office of Police Accountability  
1615 West Chicago Avenue, 4th Floor  
Chicago, Illinois 60622

Re: Superintendent's Non-Concurrence with Penalty Recommendation  
Complaint Log No. 2021-0001076

Dear Chief Administrator Kersten:

After a careful review of the above referenced complaint log number, the Chicago Police Department (Department) does not concur with the recommended penalty for Officer Tobias Houston # 10647 and Officer Jack Kwa # 7726.

The COPA investigation recommended a penalty of a 3 to 5 days suspension for Officer Houston after concluding that he:

1. Failed to make, or failed to immediately make, notifications of his firearm discharge;
2. Failed to timely activate his body worn camera.

The COPA investigation recommended a penalty of a 1-3 days suspension for Officer Kwa after concluding that he:

1. Failed to make, or failed to immediately make, notifications of his firearm discharge;

The Department agrees that the two allegations for Officer Houston and the one allegation for Officer Kwa should be sustained. But the Department believes that the recommended penalties for both officers is too severe considering the totality of the circumstances. It is the Department's recommendation that both officers receive a "Violation Noted" for these sustained violations. Pursuant to the Municipal Code of Chicago, the Department provides the following comments.

Per Department policy, a Violation Noted penalty will only be used for investigations that warrant a sustained finding but resulted from unintentional violations of policy or law. S08-01-05-IX-C-1-b. That is exactly the situation here. Both accused members accepted responsibility and admitted they did not make immediate notifications of their weapons discharge. Officer Kwa stated it was due to the high volume of radio traffic and the on-going tense situation. Officer Houston stated he did not feel it was safe and feasible to go over the radio.

Both officers had just discharged their firearm at a person. In the Department directive entitled "Traumatic Incident Stress Management Program," a traumatic incident is defined as "any police incident or action which may result in a member experiencing emotional or psychological distress." E06-03-III-A. This directive then goes on to identify certain duty-related situations as traumatic incidents and the first situation identified is when a member discharges a firearm. Id. At B-1.

In addition to this, the officers were aware that another officer had been shot. The combination of these two would definitely be defined as an extremely stressful and highly traumatic incident, or as Officer Kwa stated, a "tense situation." As stated by Deputy Chief Melean in his comments during Command Channel Review, "based on the circumstances, it is reasonable that Officer Kwa did not go on the radio immediately. The adrenaline and the emotions going on at that time could easily cause the officer to forget to use his radio instantaneously."

Furthermore, the comments made by Commander Don Jerome and Deputy Chief Fred Melean are additional support for the Department's recommendation. Commander Jerome stated that he was on the scene of the incident and that Officer Kwa immediately came around to the front of the location after discharging his weapon and within moments advised he discharged his weapon. Per Commander Jerome, "It was not at the very moment practical nor in the best interest of safety to tie up emergency radio transmissions for a notification. It was not known if the offender was still actively engaged or if the threat was neutralized. In addition, emergency radio transmissions were being continually broadcast coordinating assisting officers arriving on scene and coordinating life-saving measures for the injured police officer." Deputy Chief Melean added that "the investigator is forgetting that an officer was already shot and other officers were continually being fired upon. The radio traffic situation is heavy with an ambulance being requested for the shot officer. This minor infraction of the general order is understandable in this circumstance and did not affect the outcome of the investigation of the shooting."

Regarding Officer Houston's failure to properly activate his BWC, although the Department believes Officer Houston's explanation that he thought he activated his BWC and that he didn't realize he didn't until after he was fired upon and then activated his camera, it is imperative that BWC's be activated because the video is a critical tool to determine the true circumstances of police-citizen encounters. However, based on the above comments as well as the fact that the failure to activate his BWC had no bearing on the shooting investigation because the investigator had ample evidence to conclude his investigation, it is the opinion of the Department that the appropriate penalty for both accused members should be a "Violation Noted" for all allegations. The Department looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii).

Sincerely,



Fred L. Waller  
Interim Superintendent  
Chicago Police Department