



February 26, 2021

Superintendent David O. Brown
Chicago Police Department
3510 S. Michigan Ave
Chicago, Illinois 60653

Re: Chicago Police Department's Search Warrant Community Working Group

Superintendent Brown:

The recent public scrutiny surrounding both the acquisition and execution of search warrants by members of the Chicago Police Department (CPD) has brought to light many of the challenges our oversight system encounters. One such challenge is most certainly our information sharing and communication surrounding common issues. Our respective agencies are often singularly focused on the task at hand and have at times missed opportunities to collaborate. CPD's recently announced intent to publish another revised Special Order pertaining to the acquisition and execution of search warrants, as well as the announcement of City Council's proposed Anjanette Young Ordinance, (O2021-764), compels COPA to offer some additional insights that may further these conversations.

Given COPA's mandate to investigate complaints of improper search and seizure, we are responsible for conducting disciplinary investigations of allegations of misconduct involving search warrants. COPA is therefore uniquely situated to provide valuable insight into the complex interplay between law enforcement's exercise of authority in the acquisition and execution of search warrants and its impact of officers' conduct in the community. When it began operations in late 2017, COPA was charged with investigating complaints of misconduct related to improper searches and seizures. Our work since then has informed COPA's perspective on these issues.

As a threshold matter, COPA recognizes that: a) search warrants are a necessary and valid law enforcement tool that can be critical in maintaining public safety; and, b) CPD certainly has the capacity and internal expertise to lawfully and appropriately utilize this tool. However, after reviewing CPD's most recent training on search warrants, the 2020 revision to CPD search warrant policies, speaking to command staff, and interviewing a multitude of officers in disciplinary investigations, COPA has identified certain critical policy gaps for your review and consideration.

Qualifications of Affiant Officers

Currently, CPD has no criteria establishing authorities or prohibitions regarding who can serve as an affiant officer for a search warrant. Many of COPA's search warrant – related misconduct investigations involve officers assigned to Tactical Teams that operate in various Districts. Given the nature of their assignment, Tactical Team officers may have many encounters with residents that can lead to information regarding criminal activity suitable to support search warrant acquisition. However, Tactical Teams are ill-equipped and inadequately trained to perform much of the investigative work necessary to independently corroborate information provided by a "John Doe" informant. Specifically, they are not well-situated or trained to conduct covert surveillance or work up investigative leads. They also lack direct access to or familiarity with additional investigative tools such as Thompson's Rueters and LexisNexis databases. Furthermore, many Tactical Team officers

have limited years of service and therefore lack the requisite experience to serve as an affiant for the acquisition of a search warrant. CPD members assigned to the Bureaus of Detectives and Organized Crime as well as other specialized units are typically more experienced, have the benefit of additional training, and are far better equipped to conduct investigations to independently corroborate underlying information. CPD should consider identifying and strictly regulating which units and officers may serve as affiants for search warrants. Alternatively, CPD could require a certification process comprised of training, years of experience, and other suitable performance metrics, by which an officer can be qualified to serve as an affiant.

Evaluating the Law Enforcement Interest

The execution of a search warrant involving the entry into a residence involves an inherent amount of risk, both to civilians and officers involved. Additionally, such warrants require the allocation of considerable resources in terms of the number of officers and hours involved in execution. COPA's review of many complaints for the issuance of search warrants demonstrates that the type and/or amount of contraband sought is often relatively minor (small amount of narcotics, etc). COPA recognizes that when an individual target is a significant threat to his/her community, it may be worth acquiring and executing a search warrant for even a small amount of contraband. However, CPD must affirmatively evaluate the legitimacy of any law enforcement interest and weigh the risk of harm to all parties involved in determining whether a search warrant is necessary and/or the most appropriate tactic. This evaluation should be performed by a supervisor and the basis for any decision should be documented in an official CPD report.

Documentation of Affiant's Investigation

Each and every action of an affiant officer and every other officer assisting in an investigation to support acquiring a search warrant must be properly documented in an official CPD report. Actions including but not limited to, documenting phone calls and emails, identifying CPD members participating in the approval process, retaining all documents generated during an officer's independent investigation, and retaining all draft versions of the complaint for search warrant supporting affidavit reviewed and revised by an Assistant State's Attorney. CPD must also establish clear guidance regarding the storage and maintenance of such documents.¹

Search Warrant Supervisor Role

Any revised CPD Special Order relative to search warrants must specifically prescribe the role and duties of the search warrant supervisor in all aspects of the search warrant process, including but not limited to the determination that a search warrant is appropriate under the circumstances, the search warrant complaint preparation, and the search warrant approval process. Furthermore, a single search warrant supervisor must supervise the entire process. As currently drafted, the Special Order does not require that the same individual remain the search supervisor throughout the entire search warrant process. The current Special Order thereby invites circumstances in which the search warrant supervisor who leads the execution team has little or no knowledge of or role in the acquisition of that search warrant. This diffusion of responsibility can result in a failure to provide meaningful support and guidance to an affiant officer and constrains the ability to hold officers accountable for misconduct when it occurs.

¹ COPA made similar observations and recommendations set forth in the Advisory Letter Regarding SWAT After Action Reviews and Reports, issued January 28, 2021.

Handcuffing During Execution of Search Warrants

COPA recognizes that current law grants law enforcement officers wide latitude regarding their application of handcuffs during the execution of a search warrant inside a home or premises. However, CPD must acknowledge that the low bar of an act's legality should not be the sole criterion in determining whether to take the action. Much like the 2020 Special Order on Search Warrants added a provision requiring officers to exercise due care when minors are present (S04-19(E)(3)), COPA urges CPD to include a requirement that officers evaluate the *necessity* of applying handcuffs, with particular emphasis on the length of time handcuffs remain in place.

As we are all committed to the common goal of strengthening trust between CPD and the people of our City, COPA would welcome the opportunity to further this dialogue and provide more context and information to support these recommendations. Should you have questions or want to discuss this further, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Sydney R. Roberts". The signature is fluid and cursive, with the first name being the most prominent.

Sydney R. Roberts
Chief Administrator

cc: Eric Carter, First Deputy
Dana O'Malley, General Counsel
Karen Konow, Chief of BIA
Kevin Connor, COPA General Counsel
Andrea Kersten, COPA Chief of Investigative Operations