



June 2, 2023

Mr. Max A. Caproni
Executive Director, Chicago Police Board
30 North LaSalle Street, Suite 1220
Chicago, Illinois 60602

Via Email

RE: Request for Review, Log #2021-1496: Lieutenant Michael Keeney #2439

Dear Mr. Caproni,

Pursuant to the Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedure Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent of the Chicago Police Department (CPD) in Log # 2021-1496.¹

As set forth in detail in COPA's Final Summary Report dated October 13, 2022 (FSR), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendations against Lieutenant Michael Keeney ("Lt. Keeney").²

I. BACKGROUND

A. Relevant Factual Background³

On April 22, 2021, Lt. Keeney and other officers responded to multiple reports of a person with a gun, a robbery, vehicular hijacking, and shots fired in proximity to each other. Lt. Keeney encountered an individual matching the description of the suspect, [REDACTED] running in his direction and towards a fence on Bloomingdale Trail. Lt. Keeney discharged his weapon three times, in two separate volleys, at [REDACTED] but did not strike him. During each moment that Lt. Keeney discharged his weapon at [REDACTED] was running along the fence away from Lt. Keeney with his left side to Lt. Keeney and the weapon in his right hand as he ran. [REDACTED] was subsequently placed into custody. Radio transmissions depict an unknown officer announce that shots were fired to which the OEMC dispatcher asked twice if the shots fired were from "the offender or shots fired by police."⁴ Lt. Keeney responded, "2510 shots fired. The offender is on the ground...the weapon is here as well."⁵ Shortly after, an unknown officer announced he believes shots were fired by the offender. The dispatcher relayed shots had been fired by the offender. Lt. Keeney then corrected the information and identified himself as the individual who discharged his weapon.⁶

¹ As required by the Police Board Rules of Procedure, enclosed are copies of COPA's FSR, CPD's non-concurrence letter, and the certificate of meeting.

² At the time of the shooting, Lieutenant Keeney was a sergeant.

³ A more detailed factual summary can be found in the FSR.

⁴ Att. 45 at 7:34:39

⁵ *Id.* at 7:34:58

⁶ *Id.* at 7:37:12

B. Disputed Findings and Recommendations

The Superintendent disagrees with the Sustained findings against Lt. Keeney for violation of the CPD's use of force policies and failing to timely and/or accurately notify OEMC of the discharge of his firearm.

C. Applicable CPD Policy

1. Use of Deadly Force.

Pursuant to CPD policy, "[t]he use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person."⁷ A CPD member is only permitted to use deadly force in two situations. First, deadly force may be used to prevent death or great bodily harm from an imminent threat posed to the sworn member or another person. Second, deadly force may be used to prevent an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay.⁸ "A threat is imminent when it is objectively reasonable to believe that:

- a. the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; and
- b. the subject has the means or instruments to cause death or great bodily harm; and
- c. the subject has the opportunity and ability to cause death or great bodily harm."⁹

CPD policy prohibits the use of deadly force "on a fleeing person unless the subject poses an imminent threat."¹⁰ During all use of force incidents, CPD members are required to use de-escalation techniques to prevent or reduce the need for force unless doing so would cause immediate risk of harm or be ineffective.¹¹

2. Firearm Discharge and Officer-Involved Death Incident Response and Investigation

CPD policy requires that, "the involved member(s) will immediately notify the OEMC providing all relevant information and requesting additional resources" for all firearm discharges.¹²

II. ARGUMENT

A. The Superintendent ignores CPD policy prohibiting use of deadly force on fleeing persons absent an imminent threat.

The Superintendent contends that Lt. Keeney's use of deadly force complied with CPD policy and that Allegation #1 should have been Unfounded. COPA disagrees. The preponderance of the evidence shows that ██████ did not pose an imminent threat of death or great bodily harm to Lt. Keeney or to anyone else when Lt. Keeney shot at him. The Superintendent relies heavily on ██████ actions before Lt. Keeney shot at him. COPA considered ██████ dangerous prior behavior in evaluating the propriety of Lt. Keeney's use of force under CPD policy. But COPA found no evidence demonstrating that ██████ presented an imminent threat at the moments Lt. Keeney used deadly force. The Superintendent's letter provides no such

⁷ *Id.* G03-02 (IV)(C) effective April 15, 2021.

⁸ *Id.*

⁹ *Id.* at (IV)(B).

¹⁰ *Id.* at (IV)(D)(1).

¹¹ G03-02-01.II.B effective April 15, 2021.

¹² G03-06 (V)(A) effective April 15, 2021.

evidence.¹³ Lt. Keeney told COPA that he fired at [REDACTED] because he feared [REDACTED] would fire upon him. The evidence, however, shows [REDACTED] was in full flight from Lt. Keeney every time Lt. Keeney fired upon him.¹⁴

Lt. Keeney also told COPA that he feared [REDACTED] would harm other officers or bystanders. But the evidence shows [REDACTED] running away from others as well.¹⁵ Further, Lt. Keeney informed COPA that at the moment he discharged his weapon, he did not see any citizens nearby.¹⁶ The Superintendent's reference to *Tennessee v. Garner*, 471 U.S. 1(1985) is inapposite. The *Garner* decision effectively sanctioned the use of deadly force on people that committed violent crimes or threatened violence.¹⁷ That decision, however, conflicts with CPD policy in place at the time of this incident. CPD's force policies were substantially altered in 2017.¹⁸ Since 2017, CPD's policies on the use of deadly force are more restrictive than the *Garner* standard. The new policy imposes additional restrictions on the use of deadly force. In particular, the policy was changed to require the existence of an imminent threat to fire upon a fleeing felon. Prior to 2017, CPD policy permitted use of deadly force to prevent an arrest from being defeated by escape where the officer reasonably believed the person had committed a forcible felony.¹⁹ As set forth more fully in COPA's FSR, Lt. Keeney's use of force did not comply with CPD policy in place on the date of this incident.

For these reasons, COPA's sustained finding on Allegation #1 against Lt. Keeney should stand along with the recommended penalty of separation.

B. Lieutenant Keeney failed to timely notify OEMC that he discharged his firearm in violation of CPD policy.

The Superintendent contends that Lt. Keeney's OEMC communication complied with CPD policy and #2 should have been Unfounded. COPA disagrees. The Superintendent asserts that Lt. Keeney complied with policy because after he was made aware that an officer provided OEMC with incorrect information, he cleared up the confusion. However, had Lt. Keeney immediately notified OEMC that he discharged his weapon and provided the relevant information as required by CPD policy, there would not have been confusion to clear up.

Thus, COPA's sustained finding on Allegation #2 against Lt. Keeney should stand along with the recommended penalty of separation.

¹³ The Superintendent's letter contains one unsupported assertion that [REDACTED] had the "apparent intent" to cause death. Superintendent's letter at p. 7. The Superintendent does not explain how he came to that conclusion.

¹⁴ Att.45 7:34:35.

¹⁵ The Superintendent argues that because COPA found Lt. Keeney credible, Allegation #1 should have been Unfounded. However, COPA evaluates all of the evidence collected relying upon a preponderance of the evidence standard to determine the finding. While Lt. Keeney was found to be truthful in his account of the events, the preponderance of the evidence collected displayed that his actions were unreasonable and in violation of CPD's Use of Force policy as [REDACTED] was fleeing and did not present an imminent threat of death or great bodily harm at the time that deadly force was used.

¹⁶ Att. 85 Page 41 Lines 12-14.

¹⁷ See *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

¹⁸ See, e.g., *Summary of Use of Force Policies and Central Differences With Prior Policies*, available at <https://home.chicagopolice.org/wp-content/uploads/2017/05/Use-of-Force-Overview-Points-051717.pdf>; CPD

Announces Use of Force Training Underway, available at

https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/July/070517_UseofForce.pdf

¹⁹ See G03-02-03: Deadly Force (effective February 10, 2015 to October 15, 2017).

III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet the affirmative burden of overcoming COPA's recommendation. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent's non-concurrence in this matter and accept COPA's recommended penalty of separation for Lt. Keeney.

Respectfully,

A large black rectangular redaction box covering the signature area.

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability