

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	January 27, 2016
Time of Incident:	12:00 P.M.
Location of Incident:	2750 W. Roosevelt Rd, Chicago, IL 60612
Date of COPA Notification:	May 21, 2020
Time of COPA Notification:	12:44 A.M.

At approximately 12:00 p.m. on January 27, 2016 at or near 2750 W Roosevelt Rd, Chicago, IL 60612, **Accused Police Officers Alejandro Miranda (“Officer Miranda”), Star # 8300 and Timothy Philbin (“Officer Philbin”), Star # 17565**, both of the 11th District, responded to a call of a disturbance at 2750 W. Roosevelt Road, the Safe Haven Shelter. When the officers arrived, they observed the Complainant, [REDACTED] ([REDACTED] standing outside of Save Haven. The manager of Safe Haven, [REDACTED] [REDACTED] signed complaints of criminal trespass to land against [REDACTED] Officer Miranda and Officer Philbin arrested [REDACTED] and brought him to the 11th District for processing.

[REDACTED] alleges Officers Miranda and Philbin arrested him without justification and that they did not read him his Miranda rights. He also alleges that the officers used excessive force when they forcefully took his arms behind his back while he was being handcuffed. Lastly, he alleges during the arrest the accused officers called him “stupid”.

II. INVOLVED PARTIES

Involved Officer #1:	Alejandro Miranda, Star # 8300, Employee # [REDACTED] Date of Appointment: 6- 29-1998, Police Officer, UOA: 188 District, DOB: [REDACTED]-1973, Male, Other.
Involved Officer #2:	Timothy Philbin, Star # 17565, Employee # [REDACTED] Date of Appointment: 11-29- 2003, Police Officer, UOA: 011 District, DOB: [REDACTED]-1966, Male, White.
Involved Individual #1:	[REDACTED] [REDACTED] DOB: [REDACTED]-1994, Male, Hispanic.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Alejandro Miranda	<p>It is alleged by [REDACTED] [REDACTED] that on or about January 27, 2016 at or near 2750 W Roosevelt Rd., Chicago, IL 60612, Officer Miranda committed misconduct in that he:</p> <ol style="list-style-type: none"> 1. Arrested [REDACTED] [REDACTED] without justification. 2. Was inattentive to duty by not reading his Miranda Rights during the arrest. 3. Forcefully took [REDACTED] [REDACTED] arms behind his back while handcuffing him without justification. 4. Disrespected and or maltreated [REDACTED] [REDACTED] while he was on duty. 	<p>Exonerated. Not sustained. Not sustained. Not sustained.</p>
Officer Timothy Philbin	<p>It is alleged by [REDACTED] [REDACTED] that on or about January 27, 2016 at or near 2750 W Roosevelt Rd., Chicago, IL 60612, Officer Philbin committed misconduct in that he:</p> <ol style="list-style-type: none"> 1. Arrested [REDACTED] [REDACTED] without justification. 2. Was inattentive to duty by not reading his Miranda Rights during the arrest. 3. Forcefully took [REDACTED] [REDACTED] arms behind his back while handcuffing him without justification. 4. Disrespected and or maltreated [REDACTED] [REDACTED] while he was on duty. 	<p>Exonerated. Not sustained. Not sustained. Not sustained.</p>

IV. APPLICABLE RULES AND LAWS

Rules

1. **Rule 2:** Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

2. **Rule 8:** Disrespect or maltreatment of any person on or off duty.
3. **Rule 10:** Inattention to duty.

General Orders

1. **G03-02:** Use of Force.
 2. **G04-03:** Custodial Interrogations.
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Federal Laws

1. **4th Amendment**, U.S Constitution.
2. **Miranda v. Arizona**

INVESTIGATION**a. Interviews**

On July 2, 2020 **Complainant**, [REDACTED] [REDACTED] gave COPA an audio recorded interview.¹ On January 27, 2016 [REDACTED] was at the location of Safe Haven, because he was getting help from social services and could leave his property there. [REDACTED] had called the police earlier because of his property was stolen at Safe Haven. **Officers Miranda and Philbin** arrived at the scene and spoke with the manager, [REDACTED] [REDACTED] [REDACTED] related to COPA that, “(A)ll of the sudden the other officer snuck up behind me and pulled both of my arms behind my back, and said I was arrested.”² “That little movement with arms hurt my arms that actually hurt my shoulders; but unfortunately no bruises that I can show you because there was no bruises , more like internal pain.”³ [REDACTED] did not seek medical attention. Additionally, during his arrest, the Officers did not read him his Miranda rights. Finally, the accused officers called him stupid, which disrespected him.

On Monday, October 19th, 2020 **Officer Timothy Philbin** gave COPA an audio recorded interview⁴. At approximately 11:45 a.m. Officers Philbin and Miranda were dispatched to Safe Haven for a disturbance. They approached the security guards that were standing outside. The manager [REDACTED] [REDACTED] signed complaint’s against [REDACTED] [REDACTED] ([REDACTED] for criminal trespassing. Officer Philbin stated he did not recall communicating with [REDACTED] during the incident. [REDACTED] person was searched and patted down with [REDACTED] in handcuffs. Officer Philbin said “Miranda Rights are supposed to be read when you are questioning someone about self-incrimination of a crime. I do not recall reading [REDACTED] the Miranda Rights.”⁵ Officer Philbin stated “I do not recall questioning Mr. [REDACTED] and do not recall Officer Miranda questioning Mr. [REDACTED]”⁶ [REDACTED] did not complain of any pain on his body. During the arrest both officers did not say to

¹ Attachment 4.

² Attachment 4 at 9:27.

³ Attachment 4 at 10:34.

⁴ Attachment 14.

⁵ Attachment 14 10:15.

⁶ Attachment 14 10:35.

█████ that he was stupid or anything that would make him feel disrespected. █████ was taken to the 011 district for processing.

On Tuesday October 20th, 2020 **Officer Alejandro Miranda** gave COPA an audio recorded interview.⁷ Officer Miranda's interview is substantially the same as Officer Philbin's interview except that Officer Miranda stated, "given that my name is Miranda I make it a constant to read them their rights. I am not sure at one point I did nor did not but yes; I am more than likely to read the Miranda Rights due to my name."⁸ Additionally, he stated, "Miranda rights are supposed to be read after someone is under arrest."⁹ Prior to the interview of both officers viewed the arrest report, case report and supplementary report. The arrest report has a picture of █████ on the right-hand corner, Officer Miranda said, "from the picture it reminds me that it is the individual I saw on that date."¹⁰

b. Digital Evidence

There are no **Body Worn Cameras (BWC)** available for this incident in 2016. BWC was not rolled out for the 011 District until June 5, 2017.

c. Documentary Evidence

The **Arrest Report** indicates he was arrested at 12:00 p.m. for criminal trespassing.¹¹ The report details why █████ was arrested due to signed complaints from the manager █████ █████ of Safe haven. In the lock up keepers' section in the arrest report it does not state █████ complained of any injuries and there are no complaints of injury listed in the report.

The **Case Report** of shows the officers arrival time at Safe Haven of 11:55 a.m.¹² It details that the manager of Safe haven █████ █████ asked █████ to leave the property and he refused. When the Officers Miranda and Philbin arrived they also asked █████ to leave the property and he refused.

The **Supplementary Report** clarifies the building of Safe Haven to be a government building and property which lead to the arrest of █████ for criminal trespass to land.¹³

V. 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;

⁷ Attachment 16.

⁸ Attachment 16 10:48.

⁹ Attachment 16 11:23.

¹⁰ Attachment 16 7:03.

¹¹ Attachment 3.

¹² Attachment 5.

¹³ Attachment 9.

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 reviewed complied with 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 conduct complied with Department policy than that it did not, 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.

VI. ANALYSIS

1. Officers arrested █████ █████ without justification.

The Fourth Amendment of the United States Constitution and the Illinois Constitution of 1970 guarantees the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Police-citizen encounters are categorized into three tiers: (1) an arrest of a citizen, which must be supported by probable cause; (2) a temporary investigative seizure conducted pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968) and 725 ILCS 5/107-14, which must be supported by reasonable, articulable suspicion of criminal activity; and (3) a consensual encounter, which does not implicate any Fourth Amendment interests. *People v. McDonough*, 239 Ill. 2d 260, 268 (2010).

█████ was on government property and was asked to leave multiple times. Officers Philbin and Miranda had probable cause to arrest █████ as a result of █████ █████ signing complaints against him for criminal trespass. Based on clear and convincing evidence, COPA **exonerates** Officers Philbin and Miranda of the allegation that they arrested █████ █████ without justification.

2.. Officers were inattentive to duty by not reading his Miranda Rights during the arrest.

"In *Miranda v. Arizona*, the Supreme Court ruled that detained criminal suspects must be informed of certain constitutional rights, such as the right to an attorney and against self-

incrimination, prior to police questioning.¹⁴ However, routine traffic stops do not require that Miranda rights be given before asking questions related to on-the-scene fact gathering.¹⁵ Additionally, Miranda is not implicated solely by a suspect being taken into custody, rather, police must be engaged in the custodial interrogation of a suspect for Miranda to apply.”¹⁶

Custodial Interrogations general order G04-03 states warning of the individual’s rights must be given before the commencement of any in-custody interrogation about a specific crime or offense for which the individual is in custody.¹⁷ Officer Miranda stated during his COPA interview, that he did read the Miranda Rights to ██████ although Officer Philbin stated he (Philbin) did not. Additionally, since no interrogation questions were asked, Miranda was not required. Therefore, there is insufficient evidence to prove the allegations by a preponderance of the evidence, COPA finds the allegation that Officers Philbin and Miranda were inattentive to duty, by not reading his Miranda Rights during the arrest, are **not sustained**.

3. *Officers forcefully took ██████ ██████ arms behind his back while handcuffing him without justification.*

General Order G03-02 states “force is defined as any physical contact by a department member, either directly or through the use of equipment, to compel a subject’s compliance.”¹⁸ During the arrest, ██████ claimed his arms were pulled, with force, behind his back, while Officers Philbin and Miranda handcuffed him, which lead his arms and shoulder to be in pain. Officers Philbin and Miranda stated, they did not forcefully pull ██████ arms behind his back while being handcuffed. There are no Body Worn Cameras available in 2016 since the 011 District did not get BWC until June 5, 2017. Due to that, there is insufficient evidence to prove the allegations by a preponderance of the evidence, COPA finds the allegation for Officer Philbin and Miranda are **not sustained**.

4. *Disrespected and or maltreated ██████ ██████ while he was on duty.*

Disrespect and or maltreatment is not condoned by the Department. Rule number 8: Disrespect and or maltreatment of any person on or off duty and Rule number 2: Any action or conduct which impedes the department’s efforts to achieve its policy and goals or brings discredit upon the department, are applicable to this arrest. ██████ stated Officers Philbin and Miranda disrespected him by saying “he was mocking me and saying I was stupid for getting arrested.”¹⁹ and stated, “he was humiliating me for being stupid and stuff.”²⁰ Telling a person, they are stupid, at any time while on duty, would lead a Chicago Police Department member to violate the policy and would bring discredit upon the Department. Both of the accused officers deny the allegation that they called ██████ stupid or anything that would lead him to think he was being disrespected. No

¹⁴ Miranda v. Arizona, 384 U.S. (1966)

¹⁵ Berkemer v. McCarty, 468 U.S. 420 (1984)

¹⁶ “Id”

¹⁷ Attachment 36.

¹⁸ Attachment 35.

¹⁹ Attachment 4 at 20:19.

²⁰ Attachment 4 at 20:46.

Body Worn Cameras were available in 2016 for the 011 District and no POD video on the scene was available due to when [REDACTED] made the complaint on May 21, 2020, 4 years had passed from the initial date That leads there to be insufficient evidence to prove the allegations by a preponderance of the evidence, COPA finds the allegation for Officers Philbin and Miranda is **not sustained**.

VII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Miranda	<p>It is alleged by [REDACTED] that on or about January 27, 2016 at or near 2750 W Roosevelt Rd., Chicago, IL 60612, Officer Miranda committed misconduct in that he:</p> <ol style="list-style-type: none"> 1. Arrested [REDACTED] without justification. 2. Was inattentive to duty by not reading his Miranda Rights during the arrest. 3. Forcefully took [REDACTED] arms behind his back while handcuffing him without justification. 4. Disrespected and or maltreated [REDACTED] while he was on duty. 	<p>Exonerated.</p> <p>Not Sustained.</p> <p>Not Sustained.</p> <p>Not Sustained.</p>
Officer Philbin	<p>It is alleged by [REDACTED] that on or about January 27, 2016 at or near 2750 W Roosevelt Rd., Chicago, IL 60612, Officer Philbin committed misconduct in that he:</p> <ol style="list-style-type: none"> 1. Arrested [REDACTED] without justification. 2. Was inattentive to duty by not reading his Miranda Rights during the arrest. 3. Forcefully took [REDACTED] arms behind his back while handcuffing him without justification. 4. Disrespected and or maltreated [REDACTED] while he was on duty. 	<p>Exonerated.</p> <p>Not Sustained.</p> <p>Not Sustained.</p> <p>Not Sustained.</p>

Approved:



Angela Hearts-Glass
Deputy Chief Investigator

5-27-2021

Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Investigator:	Madilyn Kohs
Supervising Investigator:	Andrew Dalkin
Deputy Chief Administrator:	Angela Hearts-Glass
*Attorney:	Chris Reed