

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	January 12, 2018
Time of Incident:	12:00 pm
Location of Incident:	██████████, Chicago, Illinois
Date of COPA Notification:	January 4, 2019
Time of COPA Notification:	10:58 am

On January 12, 2018, at approximately 12:00 p.m., Chicago Police Officers James Foley (Officer Foley) and John McGovern (Officer McGovern) arrived at ██████████ and arrested ██████████ (Mr. ██████████ on a signed complaint from his mother, ██████████ (Mrs. ██████████

Mrs. ██████████ called authorities alleging her son was stealing her personal property and selling it on-line.

Approximately a year later, Mr. ██████████ filed a complaint with the Civilian Office of Police Accountability (COPA) on January 9, 2019, alleging police illegally arrested him and searched his vehicle without consent.

II. INVOLVED PARTIES

Involved Officer #1:	James Foley, star #10613, employee ID# ██████████, Date of Appointment: September 6, 1994, DOB: ██████████, 1968, Police Officer, Airport Operations-North, Male, White
Involved Officer #2:	John McGovern <sup>1</sup>
Involved Individual #1:	██████████ DOB: ██████████, 1963, Male, White

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer James Foley	It is alleged that, on January 12, 2018, near ██████████, around 12:45 pm, Officer Foley:	

<sup>1</sup> Attachment 35 – CPD PAR Sheet and Receipt showing Officer McGovern’s retirement date. COPA was unable to interview Officer McGovern as he retired during the investigation. As such, COPA brought no allegations against him.

	1. Searched [REDACTED] vehicle without justification; and	Not Sustained
	2. Failed to activate his body-worn camera during a law enforcement related activity.	Sustained

**IV. APPLICABLE RULES AND LAWS**

Rules

1. Rule 1: Prohibits violation of any law or ordinance.
2. Rule 5: Failure to perform any duty.
3. Rule 10: Inattention to duty.

General Orders

1. General Order G07-03: Vehicle Towing and Relocation Operations

Special Orders

1. Special Order S03-14: Body Worn Cameras (effective date: October 17, 2017)
2. Special Order S07-03: Vehicle Towing and Relocation Operations

Federal Laws

1. United States Constitution, Amendment IV: Prohibits unlawful searches and seizures.

State Laws

1. 50 ILCS 706: Law Enforcement Officer-Worn Body Camera Act

**V. INVESTIGATION<sup>2</sup>****a. Interviews**

██████████

In an interview with COPA on January 9, 2019, Mr. ██████████ provided the following information. He was on the second floor of his home at ██████████ His mother lives on the first floor.

He was going downstairs as a uniformed police officer he identified as Officer McGovern<sup>4</sup> came outside and said get your “fucking ass in the house right now” while accusing him of stealing his mother’s items including checks. Once inside, he denied stealing anything to Officers McGovern and Foley, who were already inside.

Mr. ██████████ said both officers were already inside the first floor speaking with his mother and claimed he did not know she called the police. He left after the officers told him to leave so he got in his vehicle, drove around the block, parked and called for a supervisor.

He described his vehicle as a 2002 gray 4 door Nissan Sentra. He said the keys were in his pocket and car locked prior to exiting his vehicle when a supervisor he identified as wearing a white shirt arrived. He said Officer McGovern told him “If you fucking come back, you’re going to jail.”

Mr. ██████████ said Officer Foley, after exiting the residence, went in his pockets and took his keys. He said he observed Officer Foley unlock his car, rifle through it and toss stuff around. The last thing he saw prior to being placed in the back of Officer McGovern’s squad car was Officer Foley going into the garage. Mr. ██████████ explained the garage is equipped with an alarm system and heard it go off.

Mr. ██████████ said Officer McGovern requested an ambulance after he complained of chest pains. That he was handcuffed to the gurney once the ambulance arrived and transported to MacNeal Hospital.

After leaving the hospital and processed in the 8<sup>th</sup> district, Mr. ██████████ stated he was unaware his vehicle was towed and feared it was stolen. He eventually found it after calling the City of Chicago Impound lot on Doty Road.

Mr. ██████████ explained previous incidents with his mother in which authorities were called. He provided COPA with numerous records relating to ownership of the residence, phone records, and other department records.

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<sup>2</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>3</sup> Attachment 4 – ██████████ Sworn Audio Statement

<sup>4</sup> Mr. ██████████ identified Officer McGovern as Officer McGowan.

██████████

In an interview with COPA on January 22, 2019, Mrs. ██████████ provided the following information. She observed her son, ██████████ enter the garage to retrieve her belongings to sell on eBay. She then became upset and called the police.

When they arrived, she claimed the police asked ██████████ why he was selling his mother's belongings. ██████████ gave no response and went upstairs. The police called him back downstairs and informed him he had to leave because his mother was very upset.

She then stated the police and ██████████ were outside in front of the house speaking to each other when one of the officers returned and asked if she wanted ██████████ arrested. She said yes.

Her other son, ██████████ interjected to remind her and inform COPA investigators the police told ██████████ to leave, which he did, but then returned ten minutes later.<sup>6</sup>

Speaking simultaneously, Mrs. ██████████ and ██████████ indicated she received a yellow paper indicating ██████████ was arrested for senior abuse and selling her property. They stated they're in a civil suit with ██████████ for matters relating to ownership of the house.

When asked, Mrs. ██████████ recalled officers asking her if they could enter the garage but said the officers did not go inside because they could not find the key. She and ██████████ then explained previous domestic incidents with ██████████

### **Officer James Foley**

COPA interviewed **Officer Foley**<sup>7,8,9,10</sup> on April 26, 2019. In summary, he stated the following. He responded to the residence along with Officer McGovern where they encountered Mrs. ██████████ who relayed to them her son was stealing and selling her belongings. Mrs. ██████████ showed him previous case reports between her and her son and said she wanted her son arrested.

A sergeant at some point arrived at the scene but could not recall exactly who and when, only that they were on the street while he and Officer McGovern arrested Mr. ██████████. Mr. ██████████ complained of chest pain after being arrested so they called for an ambulance which took him to MacNeal Hospital. Officer McGovern went with Mr. ██████████ to the hospital while he, Officer Foley, went to the station to complete the reports.

When asked, Officer Foley could not recall if he was made aware Mr. ██████████ might have had a gun, searching Mr. ██████████ vehicle, or attempting to gain access to a shed or garage.

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<sup>5</sup> Attachments 14 and 24 – ██████████ Audio Statement, her other son, ██████████ was also present for interview

<sup>6</sup> Mrs. ██████████ said ██████████ returned to fight with the police but did not elaborate or provide any other details.

<sup>7</sup> Attachment 28 – PO Foley – Audio Statement: Part 1

<sup>8</sup> Attachment 29 – PO Foley – Audio Statement: Part 2

<sup>9</sup> Attachment 30 – PO Foley – Audio Statement: Part 3

<sup>10</sup> Attachment 31 – Transcript of interview with Officer Foley

Officer Foley stated he was assigned a body worn camera (BWC) and activated it to the best of his knowledge. Generally, he activates his BWC when he responds to a call and leaves it on, there would be no reason for him to turn it on and off.

COPA's interview went off the record to allow Officer Foley the opportunity to view BWC associated with Mr. [REDACTED] arrest. When asked if his BWC lasted the duration of the activity or whether he prematurely turned it off, Officer Foley indicated there were two separate incidents that occurred in which both parties were present in the residence. While leaving he coded the incident as 1 Frank, peace restored, domestic situation.

He then explained Mr. [REDACTED] arrived back to the residence prompting the officers to return and thought he reactivated his BWC.

When asked again about searching Mr. [REDACTED] vehicle, Officer Foley stated that based on the BWC and his recollection there was no search. Officer Foley indicated Mrs. [REDACTED] was very adamant about retrieving her belongings and wanting the key to the lock Mr. [REDACTED] placed on the garage door.

Officer Foley stated Mr. [REDACTED] was searched and he observed keys in the car so he opened the door to get the keys and attempted to enter the garage to help Mrs. [REDACTED] retrieve her belongings. Officer Foley clarified he was not sure whether he opened the door or if someone else did. Officer Foley also stated he was unable to enter the garage as well.

When asked about entering Mr. [REDACTED] vehicle without justification, Officer Foley said Mr. [REDACTED] was in custody and referenced the sergeant on scene speaking about towing the vehicle. If that were the case, he would have to make sure the vehicle was secure but did not recall if the vehicle was towed or whether he inventoried anything.

Officer Foley explained that if a vehicle is towed a full custodial search is performed to check for any contraband and anything found would be inventoried but again could not recall if that occurred in this incident.

#### **b. Digital Evidence<sup>11</sup>**

##### **Officer Foley's BWC**

The duration of **Officer Foley's** BWC footage is 6 minutes 18 seconds long and depicts the following.<sup>12</sup> Officer Foley arrives at the residence. As he exits his police vehicle another marked police vehicle is parked near the residence. Officer Foley walks along the side of the residence and enters through the rear door. Upon entering the residence Officer Foley is met by Officer McGovern, Mrs. [REDACTED] and her son Mr. [REDACTED] who appear to be in mid conversation. Officer McGovern attempts to summarize the dispute to Officer Foley.

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<sup>11</sup> COPA received In Car Camera (ICC) Footage and determined it was not pertinent to COPA's investigation.

<sup>12</sup> Attachment 26 – Officer Foley's BWC

Under questioning from Officer McGovern, Mr. ██████ says he has no idea what is happening prompting both officers to question Mrs. ██████. Officer McGovern informs Mr. ██████ to leave the property and if he returns, he will be arrested. After Mr. ██████ leaves, Officer Foley asks Mrs. ██████ for her son's name, date of birth and address to look him up.

Both officers leave and walk to the alley to check if Mr. ██████ left in his vehicle. Mrs. ██████ provides a piece of paper to Officer McGovern who then hands it to Officer Foley. The paper contains the information Officer Foley requested from Mrs. ██████. Officer Foley walks toward the front of the residence saying words to the effect of "1 Frank Paul" and deactivates his BWC.

### **Officer McGovern's BWC**

The duration of **Officer McGovern's** BWC is 1 hour 13 minutes and 36 seconds long and depicts the following.<sup>13</sup> Officer McGovern arrives at the residence and encounters Mrs. ██████ outside near the rear of the residence. They go inside as Mrs. ██████ explains why she called the police. Officer McGovern asks if her son is still in the residence. Mrs. ██████ replies her ██████ is in possession of a police scanner and leaves when she calls the police.

At some point in their conversation, Mrs. ██████ hears her son upstairs, so Officer McGovern calls for him to come downstairs.<sup>14</sup> Officer McGovern is with Mrs. ██████ in the kitchen area discussing her problems with her son. At some point her son calls for a supervisor to the residence. Officer McGovern exits the residence.

Officer Foley returns to the residence and speaks to Mrs. ██████. As Officer Foley exits the residence, he informs Officer McGovern that Mrs. ██████ wants Mr. ██████ arrested. The officers place Mr. ██████ under arrest as the supervisor arrives. After a brief discussion between Mr. ██████ and the supervisor, the supervisor informs him he is under arrest. The supervisor also mentions towing Mr. ██████ vehicle.

While under arrest, Mr. ██████ complains of chest pains and is taken to MacNeal Hospital after an ambulance is called.

### **c. Documentary Evidence**

An **Office of Emergency Management and Communications (OEMC) Event Query Report**<sup>15</sup> indicates Mrs. ██████ called police on January 12, 2018, at 12:35 p.m. Additional information reveals the offender, Mr. ██████ was transported to MacNeal Hospital.

An **Original Case Incident Report**<sup>16</sup> states Mr. ██████ was arrested for Theft – Over \$500.

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<sup>13</sup> Attachment 26 – Officer McGovern's BWC

<sup>14</sup> Please see narrative for Officer Foley's BWC

<sup>15</sup> Attachment 9 – Event Query

<sup>16</sup> Attachment 21 – Case Report of incident giving rise to the allegations

An **Arrest Report**<sup>17</sup> shows Officer McGovern and Officer Foley arrested Mr. [REDACTED] at 12:45 p.m. on January 12, 2018, at [REDACTED]. The report states ‘offender was placed into custody on signed complaint from victim after relating offender has been taking items from her home and selling them on eBay without her permission or consent.’

A **Tow Report**<sup>18</sup> prepared by Officer Foley dated January 12, 2018, documents a gray 4 door 2002 Nissan belonging to Mr. [REDACTED] was towed near [REDACTED]. A field titled personal property in vehicle is check marked unknown. Also, the inventory numbers field is left blank. The vehicle tow classification categorizes the vehicle as the arrestee’s property. The narrative lists ‘offender/owner in custody for theft and CDTP<sup>19</sup>.’

#### d. Additional Evidence

Mr. [REDACTED] provided COPA a copy of his **cellular phone records**<sup>20</sup> showing his call to police on the day of his arrest. He also provided additional **department records**<sup>21</sup> documenting domestic incidents between him and his mother where he is listed as the victim as well as **records**<sup>22</sup> pertaining to ownership of the property.

## VI. 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 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

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<sup>17</sup> Attachment 22 – Arrest Report JB113613

<sup>18</sup> Attachment 33 – Tow Report

<sup>19</sup> Criminal damage to property

<sup>20</sup> Attachment 7 – Phone records

<sup>21</sup> Attachment 8 – Police reports receipts tendered by the RPV

<sup>22</sup> Attachment 6 – Deed, Tax Bill, and Insurance

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.

## VII. ANALYSIS

### Allegation 1 against Officer Foley

COPA finds **Allegation 1**, Officer Foley searched ██████████ vehicle without justification is **NOT SUSTAINED**.

In his interview, Mr. ██████████ stated he observed Officer Foley "rifle through and toss things" around after entering his vehicle. Mr. ██████████ lacking specificity, did not elaborate or describe what items, if any, Officer Foley is alleged to have rifled through or toss around. Furthermore, Officer Foley could not recall if he entered Mr. ██████████ vehicle but acknowledged he was standing near Mr. ██████████ vehicle with the door open.

Even after Officer Foley mentions he saw keys in Mr. ██████████ vehicle and opened the door he later clarified he was unsure if he or someone else opened the door. Given these conflicting statements, no other independent witness statements corroborating either Mr. ██████████ or Officer Foley's version of events and a lack of indisputable digital evidence proving otherwise, COPA is unable to, by a preponderance of the evidence, determine whether Officer Foley searched Mr. ██████████ vehicle without justification. Accordingly, COPA finds Allegation 1 against Officer Foley is **NOT SUSTAINED**.

### Allegation 2 against Officer Foley

COPA finds **Allegation 2**, Officer Foley failed to activate his body-worn camera during a law enforcement related activity is **SUSTAINED**.

In his statement, Officer Foley stated he generally activates his BWC when responding to a call and there would be no reason to turn it on and off. He also claimed two separate incidents occurred at the residence, one which Officer Foley coded out as peace restored complying with policy and procedures outlined in Special Order S03-14. Specifically, S03-14 states "for the purposes of the deactivation of BWCs, the Department has identified the following circumstances as the conclusion of a law-enforcement-related activity when the member has cleared the assignment."<sup>23</sup>

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<sup>23</sup> See Attachment 34 - CPD Special Order S03-14 Body Worn Cameras (effective date October 17, 2017), Section III, B, 1(a)1

However, Officer Foley response to the second incident, Mr. ██████ return to the residence, did not adhere to Department directive. Special Order S03-14 states, “the decision to electronically record a law enforcement-related encounter is mandatory, not discretionary.”<sup>24</sup> It further states “the Department member will activate the system to event mode at the beginning of an incident and will record the entire incident for all law-enforcement-related activities.”<sup>25</sup> Per S03-14, arrests are a law-enforcement related activity.<sup>26</sup>

Contrary to the officer’s belief, Officer Foley failed to comply with Special Order S03-14 because his BWC failed to record the second incident he referred to in his COPA interview. The BWC failed to record Mr. ██████ arrest and any subsequent actions Officer Foley may have taken while engaged in a law enforcement related activity. For these reasons, COPA finds by a preponderance of the evidence that the officer’s actions constituted misconduct. Therefore, COPA finds Allegation 2 against Officer Foley **SUSTAINED**.

**VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

**a. Officer James Foley**

**i. Complimentary and Disciplinary History**

Officer Foley’s complimentary history consists of the following: (1) 2004 Crime Reduction Ribbon; (1) 2009 Crime Reduction Award; (1) 2019 Crime Reduction Award; (1) Attendance Recognition Award; (4) Complimentary Letter; (1) Democratic National Convention Award; (4) Department Commendation; (7) Emblem of Recognition – Physical Fitness; (107) Honorable Mention; (1) Honorable Mention Ribbon Award; (1) Joint Operations Award; (1) NATO Summit Service Award; (1) Presidential Election Deployment Award 2008; (2) Problem Solving Award; (1) Recognition/Outside Governmental Agency Award; (1) Unit Meritorious Performance Award. Total of (135) Awards

As of June 1, 2022, there is no Sustained Complaints History. There is no SPAR History.

**ii. Recommended Penalty, by Allegation**

**1. Allegation No. 2: Violation Noted**

**IX. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding Recommendation</b>
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<sup>24</sup> CPD Special Order S03-14 Body Worn Cameras (effective date October 17, 2017), Section III, A, 1  
<sup>25</sup> CPD Special Order S03-14 Body Worn Cameras (effective date October 17, 2017), Section III, A, 2  
<sup>26</sup> CPD Special Order S03-14 Body Worn Cameras (effective date October 17, 2017), Section III, A, 2 (f)

Officer James Foley	It is alleged that, on January 12, 2018, near [REDACTED], around 12:45 pm, Officer Foley:  1. Searched [REDACTED] vehicle without justification; and  2. Failed to activate his body-worn camera during a law enforcement related activity.	Not Sustained  Sustained
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Approved:



Angela Hearts-Glass  
*Deputy Chief Investigator*

7-29-2022

Date