



September 29, 2022

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 #2019-0005064

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 (Department) in Log # 2020-0005064.<sup>1</sup>

As set forth in detail in COPA's Summary Report of Investigation dated March 31, 2022 (SRI), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation based on a finding that officers Gregory Smith<sup>2</sup> and Betty Whitfield,<sup>3</sup> committed misconduct by, among other things, using a Department vehicle in a way that endangered the safety of citizens and pursuing a vehicle in violation of Department policy.

The Superintendent bears the affirmative burden of proof in overcoming COPA's recommendations. COPA respectfully requests that the Board reject the Superintendent's non-concurrence in this matter for the reasons set forth below.

## **I. BACKGROUND**

### **A. Relevant Factual Background<sup>4</sup>**

Officers Smith and Whitfield were parked when their license plate reader alerted them to a stolen vehicle. The officers followed in their vehicle, activating their emergency lights to stop the vehicle. The driver of the stolen vehicle fled at a high rate of speed and ultimately crashed into a single-family home. The vehicle's driver was pronounced dead on scene.

### **B. Disputed Findings and Recommendations**

As the Superintendent states in the enclosed letter, he does not concur with COPA's findings related to Officer Smith's use of a Department vehicle and Officer Whitfield's participation in an improper vehicle pursuit.

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<sup>1</sup> As required by the Police Board Rules of Procedure, enclosed are copies of COPA's final summary report, the Department's non-concurrence letter, and the certificate of meeting.

<sup>2</sup> Star # 8823.

<sup>3</sup> Star # 7235.

<sup>4</sup> A more detailed factual summary can be found in COPA's SRI.

## C. Applicable Department Policy

### 1. Duty to Drive with Due Regard.

Pursuant to Illinois Law, police vehicles are afforded special privileges and exemptions when engaging in emergency response calls and motor vehicle pursuits.<sup>5</sup> These special privileges apply to all Department members and only when the vehicle driven is readily identifiable as an emergency vehicle. During pursuits, the exemptions allow Department members to exceed the speed limit, disregard regulations governing direction of movement, and to proceed past a red stop signal/stop as may be required so long as to not endanger life or property.<sup>6</sup> These provisions do not relieve Department members from the responsibility of driving with due regard for the safety of all persons, nor do such provisions protect Department members from the consequences of any conscious disregard for safety.<sup>7</sup>

When engaged in non-pursuit emergency vehicle operation, the operator of a marked vehicle is directed to activate the emergency-roof lights and siren in advance of encountering any traffic obstruction or to alert others of the approach of his or her vehicle.<sup>8</sup> Department policy mandates that the operator is to adhere to basic traffic-safety practices and operate the vehicle at a speed and in a manner compatible with weather and local conditions to ensure that control of the vehicle is maintained. In doing so, operators are to proceed through intersections or traffic signals only after determining it is reasonable and safe to proceed, yielding the right-of-way to all pedestrian traffic.

### 2. Initiation and Continuation of a Motor Vehicle Pursuit.

Under Department policy, the initiation, continuation, and supervisory authorization of each motor vehicle pursuit must conform to a balancing test in which the member decides whether the necessity to immediately apprehend the fleeing suspect outweighs the level of inherent danger created by the motor vehicle pursuit.<sup>9</sup> In doing so, members are to determine whether the speeds involved and/or the maneuvering practices engaged in permit the Department vehicle operator complete control of the vehicle and do not create unwarranted danger to him/herself or others.

## II. ARGUMENT

### A. The preponderance of the evidence shows that Officer Smith failed to drive with due regard.

COPA stands by the summary of the evidence and analysis in its SRI. COPA's conclusion that Officer Smith failed to drive with due regard is sufficiently supported by available evidence. The evidence shows that Officer Smith drove the Department vehicle without its emergency lights through a stop sign and reached speeds of 55 miles per hour in a residential 30 mile per hour zone. The Superintendent argues Officer Smith should not be held accountable for his unsafe driving because no uninvolved persons were harmed. Department policy nor state law contain such a loophole, nor should they. The requirement that emergency vehicles be readily identifiable before engaging in risky driving maneuvers is plainly designed to ensure the safety of all citizens, whether an officer happens to see them or not. For these reasons, COPA believes the Police Board should reject the Superintendent's arguments on this issue.

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<sup>5</sup> 625 ILCS 5/11-205.

<sup>6</sup> 625 ILCS 5/11-205 (C).

<sup>7</sup> General Order G03-03(III)(A), effective June 1, 2003.

<sup>8</sup> General Order G03-03-02(III)(A), effective June 1, 2003.

<sup>9</sup> General Order G03-03-01 (II)(A), effective April 9, 2019.

**B. The preponderance of the evidence shows Officer Whitfield was an active participant in the pursuit and should be held accountable.**

The Superintendent argues that officers sitting in the passenger seat of a Department vehicle engaged in a motor vehicle pursuit have no duty to take any action to prevent initiation or continuation of that pursuit; even where Department policy and/or state law will be violated. COPA disagrees and believes officers who participate in a motor vehicle pursuit should know that they can and will be held accountable for their actions.<sup>10</sup>

The Superintendent cites the Jamie Jawor Police Board decision for the proposition that an officer must have fair notice of forbidden conduct. In that case, Officer Jawor sought to evade responsibility for participating in a prohibited motor vehicle pursuit by arguing that her conduct did not meet the definition of a pursuit under Department policy because she never activated her vehicle's lights and sirens.<sup>11</sup> The Police Board rejected that overly technical reading of applicable Department policy, stating "the Board warns against arguments that attempt to interpret General Orders in a manner to avoid liability. The rules exist to provide officers with *guidance* about their conduct, not loopholes to avoid discipline."<sup>12</sup>

COPA submits that officers sitting in a passenger seat of a Department vehicle are on adequate notice that they cannot sit idly by and allow misconduct to continue.<sup>13</sup> As noted in one Police Board decision, "[b]ackup from a partner includes far more than simply supporting his or her actions. Instead, it clearly includes stepping in as the voice of reason and good judgment when a partner's worse instincts may be getting the better of him."<sup>14</sup>

The argument is even stronger where an officer is an active participant in the pursuit. It would be a gross miscarriage of justice to immunize an officer that actively caused a pursuit to begin or continue simply because that officer was not behind the wheel.

In this case, Officer Whitfield was an active participant in the pursuit. Officer Whitfield was the officer that confirmed the vehicle was stolen, informed OEMC that they intended to conduct a traffic stop, and notified OEMC when the vehicle drove away. Officer Whitfield told COPA she, together with Officer Smith, conducted the balancing test and ultimately determined the circumstances required that they terminate the pursuit. Notably, Officer Whitfield never suggested she was unaware that she could be held accountable for the pursuit. COPA believes these facts establish that Officer Whitfield actively participated in the pursuit and knew that she could be held accountable for any misconduct related to the pursuit.<sup>15</sup>

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<sup>10</sup> The Superintendent has also previously agreed that officers sitting in the passenger seat of a Department vehicle involved in an improper pursuit. In log no. 2019-0001703 the Superintendent concurred with COPA's finding that Officer Courtney Armstrong, star #14440, initiated a traffic pursuit without justification. Officer Armstrong was in the passenger seat of the Department vehicle during that incident. Similarly, in log no. 2019-0000294, the Superintendent initially disagreed with COPA's finding that Officer Karlisa Williams, star 319576, committed misconduct by failing to intervene and initiating a traffic pursuit. Officer Williams was a passenger in the Department vehicle during this incident. However, the Superintendent then ultimately agreed to impose discipline on Officer Williams for that misconduct. COPA can provide additional information on these log numbers upon request.

<sup>11</sup> See *In the Matter of Charges Filed Against Police Officer Jamie Jawor, Star No. 6470, Department of Police, City of Chicago*, No. 20 PB 2978 (CR No. 1085772), decided July 15, 2021 (hereinafter *Jawor*).

<sup>12</sup> *Id.* at p. 7.

<sup>13</sup> COPA by no means intends to suggest that an officer sitting in the passenger seat of a Department vehicle take physical steps to stop an improper pursuit. Officers in that position have other tools, such as persuasion and, if necessary, using the vehicle's radio to reach a supervisor.

<sup>14</sup> *In the matter of Charges Filed Against Police Officer Eugene Posey, Star No. 18709, Department of Police, City of Chicago*, No. 16 PB 2922 (CR No. 1069136), decided August 25, 2017 (taking note of officer's conduct where officer had an opportunity to interrupt partner's violation of individual's constitutional rights).

<sup>15</sup> COPA recommends that the Department revise its motor vehicle pursuit policy to the extent it believes officers are not aware that they can and will be held accountable for their actions during pursuits.

**C. Officer Whitfield had the ability and the duty to activate the Department vehicle's lights and sirens.**

The Superintendent disagrees with COPA's finding that Officer Whitfield committed misconduct by failing to activate the Department vehicle's lights and sirens. It is COPA's understanding that Officer Whitfield had access to the Department vehicle's lights and sirens and she never told COPA she could not activate the lights and sirens. Rather, Officer Whitfield stated she instead determined there was no need to turn on the lights before they positively identified the vehicle. COPA does not believe she can avoid liability for failing to activate the lights based on an overly technical reading of the order.

Such a result would be absurd and create dangerous precedent. "No rule should be read literally if such a reading is contrary to the rules objective."<sup>16</sup>

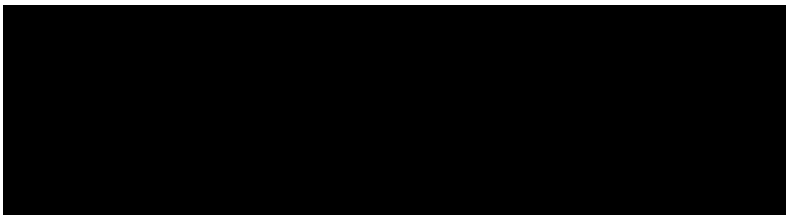
**D. Questions of Fact or Law Should be Decided after a Full Hearing of the Police Board.**

Given the nature and extent of the disagreements in this matter, COPA respectfully submits that the many issues raised would be more appropriately addressed through a full hearing of the Police Board. COPA also welcomes an opportunity to present additional argument upon request of the single member of the Police Board.

**III. CONCLUSION**

For these reasons, COPA maintains that the Superintendent has failed to meet his affirmative burden of showing COPA's recommendation in this case was unreasonable. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent's non-concurrence in this matter and accept COPA's findings and disciplinary recommendations.

Respectfully,



Andrea Kersten  
Chief Administrator  
Civilian Office of Police Accountability

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<sup>16</sup> *Jawor* at page 5 (citing 2A N. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 46.07, at 126 (5th ed. 1992)).