



December 12, 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 No. 2020-5147, Lieutenant Elvis Ortega #457 and Police Officer Paul Lane #15431

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 No. 2020-5147.<sup>1</sup>

As set forth in detail in COPA's Final Summary Report in Log No. 2020-5147 (FSR), dated May 24, 2022, there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation of 366 days' suspension against Officer Lane based on findings that he struck [REDACTED] (Mr. [REDACTED]) in the groin while he was handcuffed, struck Mr. [REDACTED] with his firearm without justification, pointed his firearm at or in the direction of Mr. [REDACTED] without justification, and failed to make the required notifications regarding the foot pursuit of Mr. [REDACTED] to OEMC. Likewise, a compelling and evidentiary basis supports COPA's disciplinary recommendation of 366 days' suspension against Lt. Ortega for failing to report Officer Lane's misconduct to COPA.

## **I. BACKGROUND**

### **A. Relevant Factual Background<sup>2</sup>**

In the early morning hours of November 7, 2020, Officer Lane engaged in a brief foot pursuit of Mr. [REDACTED] who had a gun in his left hand and matched the description of a suspect related to a ShotSpotter alert. During the foot pursuit, Officer Lane announced over radio "We got one running, we got one running." Officer Lane caught up to Mr. [REDACTED] after Mr. [REDACTED] threw away the gun and fell to the ground. Officer Lane approached Mr. [REDACTED] directed profanities at Mr. [REDACTED] knelt on top of him, and pointed his firearm at him. As Mr. [REDACTED] flailed on the ground, Officer Lane appeared to strike him with his firearm, then pressed the firearm against the back of Mr. [REDACTED] head and announced he had "one at gunpoint" over the radio. Officer Lane then asked Mr. [REDACTED] if he wanted to get shot and threatened to beat him up.

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

As Officer Lane struggled with Mr. [REDACTED] his partner Sgt. Stephans approached. Mr. [REDACTED] continued to move around on the ground, and Officer Lane used his firearm to strike Mr. [REDACTED] twice in the side of the body. Sgt. Stephans then got on the ground to help Officer Lane handcuff Mr. [REDACTED]. During the handcuffing, Officer Lane rested his firearm on Sgt. Stephans' back, and the weapon momentarily pointed in the direction of the sergeant's head. Officer Lane then re-holstered his firearm. Sgt. Stephans went to search for Mr. [REDACTED] firearm and Officer Lane waited with Mr. [REDACTED]. Officer Lane told Mr. [REDACTED] to stop moving, then picked up a pair of handcuffs from the ground and punched Mr. [REDACTED] in the groin area with the handcuffs still in his hand.

Following the incident, Lt. Ortega reviewed Officer Lane's BWC footage, his TRR, and the arrest report related to the incident. He then issued Officer Lane a SPAR for profanity and muzzle awareness.

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

As the Superintendent states in the enclosed letter, he does not concur with COPA's recommended penalties for Lt. Ortega and Officer Lane. The Superintendent further disagrees with COPA's finding that Officer Lane failed to make the required notifications pertaining to the foot pursuit to OEMC.

## **C. Applicable Department Policy**

### 1. Foot Pursuits Training Bulletin

The Foot Pursuits Training Bulletin (Bulletin) provided *inter alia* that once a member initiated a foot pursuit, the member was required to immediately notify [OEMC] and attempt to broadcast their location, description of the subject, direction of travel, and the reason for the foot pursuit.<sup>3</sup> The Bulletin further provided that when two officers engaged in a foot pursuit, one should take the role of the "primary" or "lead" officer, who should direct the foot pursuit and focus on the fleeing person. The "secondary" or "support" officer should be responsible for radio communications, including updating the direction of travel, and requesting assist units. The Bulletin further clarified that the roles of the "primary" and "secondary" officer "may change between officers during the pursuit based on the circumstances."<sup>4</sup>

### 2. Supervisory Responsibilities Regarding Allegations of Misconduct

Department policy provided that when supervisory personnel observed or received information about misconduct other than transgressions for which summary punishment may be administered, they were required to report the information to COPA within one hour of receipt.<sup>5</sup> The supervisor was also required to record all available information in a written report and to forward that report to COPA and to BIA "without unnecessary delay."<sup>6</sup>

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<sup>3</sup> ETB #18-01 Foot Pursuits Training Bulletin at p. 4 (revised February 2020).

<sup>4</sup> ETB #18-01 Foot Pursuits Training Bulletin at p. 2 (revised February 2020).

<sup>5</sup> G08-01-02.II.B.3.a Specific Responsibilities Regarding Allegations of Misconduct (Eff. May 4, 2018 – December 31, 2021) (If the notification occurred during non-business hours, the supervisory personnel was required to contact CPIC.)

<sup>6</sup> G08-01-02.II.B.3.b

## II. ARGUMENT

### A. The Evidence Does Not Support the Superintendent's Argument That Officer Lane Was Relying on His Partner to Make the Necessary Notifications to OEMC.

The Superintendent's argument fails on the merits. Specifically, the Foot Pursuits Training Bulletin provided that the roles of the "primary" and "secondary" officer may change during the pursuit based on circumstances.<sup>7</sup> It was precisely the circumstances present in this case that required Officer Lane, not Sgt. Stephans, to notify OEMC. Although Officer Lane was the officer pursuing Mr. ██████████ and Sgt. Stephans was not, Officer Lane initiated radio contact with OEMC, stating "We got one running, we got one running" and later relayed "I've got one at gunpoint." Sgt. Stephans reported that he observed Officer Lane on his radio and did not want to interfere with Officer Lane's notifications. Although Officer Lane made two different notifications, neither notification conveyed the required information, including that he was engaging in a pursuit, the reason for the foot pursuit, or the identity of the person being pursued. The Superintendent nevertheless contends that Officer Lane relied on Sgt. Stephans to make the notifications and should not be held responsible for his failure to do so. The evidence, however, shows that Officer Lane did not make the required notifications even though he was already in communication with OEMC. Thus, he had the ability and opportunity to initiate the appropriate notifications. His failure to do so violated Department policy.

The Superintendent further argues that his non-concurrence with this finding warrants a one-day reduction of COPA's penalty recommendation, resulting in a suspension of 365 days. He provides no persuasive argument, no comparable outcomes, and no meaningful facts warranting reduction by one day.<sup>8</sup>

The totality of the circumstances in this case indicates that the recommended penalty of 366 days' suspension is warranted. Officer Lane treated Mr. ██████████ in a degrading and aggressive manner. Officer Lane's misconduct has brought disrespect upon himself and the Department and warrants a significant penalty of no less than 366 days' suspension.

### B. Lieutenant Ortega's Intentional Circumvention of The Accountability System Warrants a More Serious Penalty Than the Superintendent Recommends.

Although the Superintendent agrees that Lt. Ortega's failure to report Officer Lane's misconduct violated Department policy, he proposes a significantly lower penalty of 30 days' suspension because the

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<sup>7</sup> ETB #18-01 Foot Pursuits Training Bulletin at p. 2.

<sup>8</sup> The Superintendent points out, while addressing COPA's recommended penalty for Lt. Ortega, that a suspension of 366 days places the matter in front of the Police Board, while a suspension of 365 days subjects the matter to arbitration. He thus challenges COPA's penalty recommendation for Officer Lane and suggests that a suspension of 365 days is more appropriate. COPA disagrees and stands by its recommendation. The Superintendent appears to take issue with this matter being heard before the Police Board but has not identified any reasons for that position. COPA believes a hearing before the Police Board for Lt. Ortega and Officer Lane is appropriate. The Superintendent's statement regarding the relative roles of the Police Board and an arbitrator does not satisfy his burden of overcoming COPA's recommendation. Moreover, his statement appears to be an attack on the role of the Police Board in serious misconduct cases. COPA believes a transparent disciplinary process is of fundamental importance to building police-community relations in Chicago. The Police Board decides cases involving allegations of serious misconduct such as those involving Officer Lane and Lt. Ortega. The Police Board is an impartial decision-maker that rules based on the evidence presented at a full evidentiary hearing. Accused officers' due process rights are protected throughout the entire proceeding with the right to counsel and ability to cross-examine witnesses. Furthermore, the Police Board's role in disciplinary cases promotes accountability and increases the public's trust in the disciplinary system. Hearings before the Police Board are open to the public and its findings published on its website. In addition, the Police Board's procedures are governed by the Consent Decree and its work subject to public comment. For these reasons, COPA maintains that a hearing before the Police Board is appropriate in this matter.

Superintendent finds the fact that Lt. Ortega “did try to take action”.<sup>9</sup> COPA strongly disagrees. The totality of the evidence shows that Lt. Ortega knew about Officer Lane’s use of excessive force. Nevertheless, he failed to report it.

Contrary to the Superintendent’s claim, COPA finds Lt. Ortega’s attempt “to take action” far from sufficient under the circumstances. Rather, his conduct demonstrates his intent to bypass the accountability system.<sup>10</sup> Lt. Ortega’s intentional circumvention of the accountability system shows a concerning lack of leadership for which a penalty of no less than 366 days suspension is warranted.

In fact, the Superintendent fails to provide any facts in support of mitigation. Rather, he simply notes that recommended suspensions of 365 days or less are subject to arbitration. COPA does not believe that statement of fact meets the Superintendent’s burden of overcoming COPA’s recommendation.

Further, the Superintendent argues that a recent Police Board decision finding Lt. Daly not guilty of failure to report a subordinate’s use of excessive force is instructive.<sup>11</sup> COPA disagrees. In that case, following a full hearing, the Police Board found that although Lt. Daly sufficiently investigated the incident, he had no reason to suspect excessive force. Thus, the Police Board concluded that Lt. Daly did not fail to report excessive force about which he did not know. In its conclusion, the Police Board emphasized that reviewing officers should always be on the “sharpest lookout for wrongful conduct” and “are to use their most determined efforts to root out and report any use of excessive or illegal force.”<sup>12</sup>

Here, Lt. Ortega knew of Officer Lane’s use of excessive force against Mr. ██████████ but did not report it to COPA. In fact, Lt. Ortega admitted that he observed Officer Lane’s conduct on BWC footage. Instead of reporting the incident to COPA as was required per Department policy, Lt. Ortega unilaterally decided that the force Officer Lane used against Mr. ██████████ was appropriate despite evidence to the contrary.<sup>13</sup> Specifically, the BWC footage depicted Mr. ██████████ on the ground and Officer Lane pressing his firearm against the back of Mr. ██████████ head while threatening to shoot him, appearing to strike Mr. ██████████ with his firearm several different times, and punching Mr. ██████████ in the groin while holding a pair of handcuffs in his hand.<sup>14</sup>

Lt. Ortega’s actions raise serious questions regarding his ability to lead, bring discredit upon the Department, and undermine the accountability system that was created to prevent exactly this type of misconduct.<sup>15</sup> In addition, his conduct subverts the “critical role” of supervisors “in ensuring that force is used legally, consistent with Department policy, and in a manner that will promote community confidence in the

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<sup>9</sup> Superintendent’s Letter Non-concurrence at p. 2.

<sup>10</sup> See Investigation of the Chicago Police Department, United States Department of Justice Civil Rights Division and United States Attorney’s Office Northern District of Illinois at pp. 11, 41, 44 - 46 (Jan. 13, 2017), <https://www.justice.gov/opa/file/925846/download> (last accessed Nov. 23, 2022); *Illinois v. City of Chicago*, 17 CV 6260, Consent Decree at paras. 228-235, <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf> (last accessed Nov. 23, 2022).

<sup>11</sup> *In re Garcia et al.*, 21 PB 2994 (Aug. 2022),

<https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/21PB2994.pdf> (last accessed Nov. 23, 2022).

<sup>12</sup> *In re Garcia et al.*, 21 PB 2994 at p. 12.

<sup>13</sup> Final Summary Report, 2020-0005147, pp. 4, 7.

<sup>14</sup> Final Summary Report, 2020-0005147, pp. 4, 7.

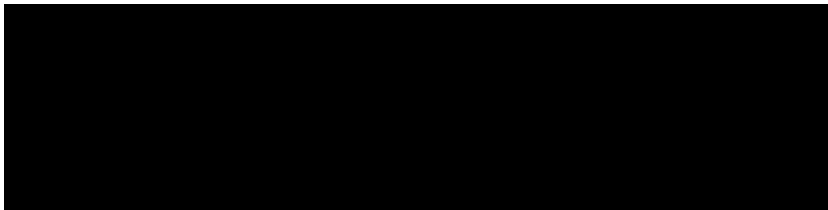
<sup>15</sup> In its 2017 Report, the Department of Justice repeatedly pointed out concerns that supervisors’ failure to “ensure the accurate reporting, review, and investigation of officers’ use of force has helped create a culture in which officers expect to use force and never be carefully scrutinized about the propriety of that use.” Lt. Ortega’s willful violation of the Department’s force review policies perpetuates that culture See Investigation of the Chicago Police Department, United States Department of Justice Civil Rights Division and United States Attorney’s Office Northern District of Illinois at p. 41 (Jan. 13, 2017).

Department.”<sup>16</sup> The totality of the circumstances therefore support COPA’s recommended penalty of a 366 days suspension for Lt. Ortega.

### III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet his affirmative burden of showing that COPA’s finding and penalty recommendation in this case are unreasonable. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent’s non-concurrence in this matter and accept COPA’s recommended finding and penalty of 366 days suspension for Lt. Ortega and Officer Lane.

Respectfully,



Andrea Kersten  
Chief Administrator  
Civilian Office of Police Accountability

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<sup>16</sup> *Illinois v. City of Chicago*, 17 CV 6260, Consent Decree at para. 228, <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf> (last accessed Nov. 23, 2022).