

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	October 26, 2017
Time of Incident:	10:47 a.m.
Location of Incident:	████████████████████
Date of COPA Notification:	October 26, 2017
Time of COPA Notification:	11:50 a.m.

On October 26, 2017, at 11:50 a.m., the Civilian Office of Police Accountability (COPA) received a notification of “Shots Fired – Animal Destruction.” Complainant ██████████ alleged that officers entered his locked backyard without a search warrant and shot his dog without justification.¹ COPA obtained evidence from the Chicago Police Department (CPD) and the Office of Emergency Management and Communications (OEMC). COPA found merit in Mr. ██████████ allegation that his dog was unjustifiably killed. COPA identified the shooting officer as Officer Brian Josephs and served him with an allegation that he destroyed an animal without justification. After a thorough investigation, including an interview of Officer Josephs and Sgt. Martin, COPA sustained the allegation against Officer Josephs based on the preponderance of the evidence.

II. INVOLVED PARTIES

Involved Officer #1:	Brian Josephs, Star# 4077, Employee ID# ██████████, DOA: 10/26/1998, Officer, 008th District, DOB: ██████████ 1975, Male, White
Complainant #1:	████████████████████ DOB: ██████████ 19991, Male, Hispanic

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Brian Josephs	1. It is alleged that on October 26, 2017, at approximately 10:47 a.m., in the vicinity of ██████████ ██████████ Officer Brian Josephs, #4077, destroyed an animal without justification.	Sustained

IV. APPLICABLE RULES AND LAWS

¹ In his complaint, Mr. ██████████ was concerned about what he believed to be the officers’ improper entry into his backyard. After reviewing the evidence, however, COPA determined that their entry into his backyard was permissible due to the exigent circumstances arising from the shooting of Mr. ██████████ dog. Accordingly, COPA did not serve allegations to that effect on the involved officers.

Rules

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

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 38: Unlawful or unnecessary use or display of a weapon

General Orders

General Order G03-02: Use of Force

V. INVESTIGATION²**a. Interviews**

COPA interviewed Complainant ██████████ on October 31, 2017, after he submitted a **Web Complaint**.⁴ Mr. ██████████ stated that on October 26, 2017, he returned home to find all his gates opened. He then entered his backyard where he saw a great deal of blood. Mr. ██████████ neighbors told him that the police had been at his house looking for his missing girlfriend when they shot his dog. Mr. ██████████ stated that he has not spoken to his girlfriend since his girlfriend's mother took out an Order of Protection against him. He said that whenever his girlfriend runs away, her mother calls the police on him.

After speaking with neighbors, Mr. ██████████ learned that the officers first went into his neighbor's yard and used their ladder to look over the fence into his yard to figure out how to enter it. The officers then went to Mr. ██████████ gangway where they moved several items, including a lawnmower, wheel barrow, and metal door. Mr. ██████████ said that these items acted as a barricade, securing his two pit bulls in the backyard. Mr. ██████████ said that the dogs could not have gotten out of his backyard while the barricade was in place. Based on his conversations with his neighbors, Mr. ██████████ believes that the officers entered his backyard after removing the barricade and then shot his dog. Mr. ██████████ was told that, after the officer shot his dog, the police removed both of his dogs.

After Mr. ██████████ found out what had happened, he went to the pound to retrieve his dogs. When he arrived at the pound, Mr. ██████████ found out that one of his dogs, a one-year old pit bull, had died from a gunshot wound. Mr. ██████████ said that neither of his dogs were violent, that the officers did not have a warrant, and they should not have entered his backyard and shot his dog.

COPA interviewed Accused Officer Brian Josephs⁵ on January 31, 2018, after Officer Josephs reviewed the relevant footage from his BWC. Officer Josephs stated that on October 26,

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

³ Att. 10

⁴ Att. 3

⁵ Att. 29

2017, he was on-duty and assigned to Beat 822. He was working as a patrol officer in uniform and driving a marked car. Officer Josephs received a call for service regarding an Order of Protection at [REDACTED]. Officer Josephs responded to the call along with Officer Patrick Egan and Sgt. Steven Martin.

Officer Josephs said that he and the other officers met with the 911-caller at the corner of 52nd Street and Springfield Avenue. She related that she had an Order of Protection against [REDACTED] who resides at [REDACTED]. She was fearful that her 17-year-old daughter was inside the house with him. The officers noted that the Order of Protection appeared to be expired. They explained to her that even if the order was valid, the order does not prohibit him from being inside his own house. However, she still wanted the officers to see if her daughter was there.

Officer Josephs and Sgt. Martin entered the gated front yard, while Officer Egan continued speaking with the mother. Sgt. Martin stepped onto the porch and began knocking on the front door. Meanwhile, Officer Josephs walked towards the south side of the house to check the side door. Officer Josephs then walked towards the north side of the house and looked east to see if anyone was trying to exit the house. He did not see any people but saw two pit bulls in the backyard. Officer Josephs said that he had a feeling that there might be dogs there because he had heard barking. Officer Josephs said that the only object keeping the dogs in the backyard was a damaged wooden fence. He then walked back towards the porch, announcing that there were a couple of pit bulls in the backyard that do not look secure. Officer Josephs was unsure if Sergeant Martin heard his comment because he was speaking to Officer Egan.

Officer Josephs then walked back to the north side of the yard to check on the dogs. At that time, one of the dogs emerged from the backyard and was standing in the front yard. Officer Josephs drew his pistol and said, "Get Back." Officer Josephs said that the dog took an aggressive stance towards him or his sergeant. Officer Josephs did not know who or what the dog was looking at, but he was afraid for his life and for the safety of Officer Egan and Sgt. Martin. Believing that the dog was getting ready to attack, Officer Josephs fired one round at the dog, hitting it. Officer Josephs said that he was about ten to fifteen feet from the dog when he fired. He said that, at that time, his sergeant was on the elevated porch by the front door and Officer Egan was outside of the fence with the mother.

The injured dog retreated into the backyard. Afterwards, Animal Control arrived and retrieved both dogs. Officer Josephs said that he had never been to [REDACTED] and had no prior experience with the dogs there. He said that, after the dog was shot, he spoke to one of the neighbors who told him that the two dogs were a menace to the community.

Officer Josephs described the dog as a vicious animal. Officer Josephs said that he believed it was vicious because it took an aggressive stance, causing him to fear for his life. He could not elaborate on what the dog was doing that made him conclude it was taking an aggressive stance. When asked what the difference was between a dog standing normally and a dog taking an aggressive stance, Officer Josephs said that he did not know. Officer Josephs said that the aggressive stance was the only action the dog took that made him believe that it was going to

attack. He could not recall if the dog was growling prior to shooting it, however he said that the wounded dog did growl at Animal Control when they were trying to retrieve it from under the car.

Officer Josephs stated that he had a gun and a Taser on his person, but could not recall if he had O.C. Spray or a baton with him. Officer Josephs said that he did not use his Taser on the dog because he was not trained on how to tase an animal. He explained that the CPD Academy's Taser training only used human silhouettes as targets. However, when asked if he was trained on how to shoot animals, Officer Josephs said that he was not – because his firearm training had only provided human silhouettes as targets. Officer Josephs said he chose his gun over his Taser because he was afraid and it is quicker for him to draw his gun. Although he did not know for certain if the dog was going to attack him, he was in fear for his life and was not going to wait and see. Officer Josephs said his fear for his life justified his choice of the lethal option of the gun over the Taser.

Officer Josephs was unsure if he would consider himself afraid of dogs. He said that he had a negative experience with dogs before where he had to shoot two of them while on-duty. Officer Josephs was unaware if his past experiences with dogs had any influence on his reaction in this incident. Officer Josephs said that he has never received training regarding animal encounters in the field.

Officer Josephs denied destroying an animal without justification. He said that he was justified in using deadly force because he was in fear for his safety and the safety of his sergeant and other individuals on scene. Officer Josephs said that he did not leave the gated yard when he first noticed the dogs were not secure because his sergeant was still on the porch.

On February 9, 2018, **COPA interviewed Officer Steven Martin⁶**, who stated that on October 26, 2017, he was on-duty and assigned to Beat 810, working in uniform, in a supervisory role and driving a marked car. Sgt. Martin said that he went to [REDACTED] that day because he was responding to a call regarding a missing teenager. Officers Egan and Josephs responded to the call as well. When they arrived at the location, they spoke with the woman who called 911. She said that her daughter had runaway and believed that she was staying at Mr. [REDACTED] house.

Sgt. Martin then went to the house to determine if the missing teenager was there. He described the house as having a fenced-in front yard and a separate fenced-in backyard. Sgt. Martin walked up the stairs of the front porch and knocked on the door. Sgt. Martin asked Officer Josephs to watch for anyone trying to exit from a side door. Sgt. Martin said that he was talking to the mother, who was standing outside of the fence, when Officers Josephs and Egan warned him that there was a dog in the yard. Sgt. Martin said that he then looked at the dog and saw Officer Josephs shoot it. Sgt. Martin said that he only saw the dog standing in the yard for about a second before it was shot.

When the dog entered the front yard, Sgt. Martin said that he was standing by the door on the front porch, which has about five steps leading up to it. When Sgt. Martin first saw the dog, he was not afraid of it. Sgt. Martin was going to say, “No!” or “Don’t!” to Officer Josephs because he did not want him to shoot. Sgt. Martin wanted to intervene and try to control the dog first. Since

⁶ Att. 35

Sgt. Martin was not afraid of the dog, he thought that the best course of action would have been to stand still for a minute and see what happened. Sgt. Martin speculated that right before the dog was shot, it was probably trying to figure out what was going on and how it should react. Sgt. Martin did not hear the dog bark or growl before it was shot.

Sgt. Martin said that the dog did not injure anyone. After it was shot, the officers left the yard and closed the front gate. It was not until later that Sgt. Martin learned that there was another dog in the yard. Sgt. Martin said that he recalls responding to this location before and remembers that there may have been dogs. However, when he arrived at the location, he was not thinking about it and did not warn anyone that there may be dogs.

Sgt. Martin did not recall having any conversations with Officer Josephs about the incident after they left the scene. Sgt. Martin remembers being upset that the dog was shot. Sgt. Martin also thinks that Officer Josephs felt bad about what happened. Sgt. Martin said that Officer Josephs claimed to have shot the dog to save his sergeant. However, Sgt. Martin said that he was not yet in a position where he needed saving. He said the dog was not running at him, but just came out in the front yard and stopped. Sgt. Martin said he looked at Officer Josephs, and he looked back at the dog, but before he could do anything, Officer Josephs shot the dog. Sgt. Martin was not happy about what happened, but does not believe there was any malice involved in Officer Josephs's decision.

Sgt. Martin said that, although he was not afraid of this dog when he saw it, in the past he has encountered threatening dogs. In fact, he stated that he had been involved in three incidents where he had to use deadly force against dogs because they were definitely going to attack him.

Sgt. Martin said that he has known for a long time that Officer Josephs is afraid of dogs. He said that Officer Josephs is not only afraid of big dogs, but small ones too. Sgt. Martin said that one time while he was off-duty he brought his dog, a puppy at the time, by the station. Sgt. Martin said that Officer Josephs was afraid of it. Sgt. Martin also said that Officer Josephs has said in the past that he is afraid of dogs.

b. Digital Evidence

Body Worn Camera (BWC) Video⁷ from Officer Brian Josephs begins with Officer Josephs en route to [REDACTED] Officer Josephs meets with Officer Patrick Egan and Sgt. Steven Martin. The officers speak with [REDACTED], the mother who had requested police assistance in locating her daughter.

At 10:44 a.m., Sgt. Martin and Officer Josephs open the unlocked gate and walk into the front yard. Sgt. Martin knocks on the front door several times, but there is no response. Officer Josephs approaches the gangway on the northside of the house. Dogs are heard briefly barking. Officer Josephs walks back in the direction of the front door and says, "A couple pit bulls in there. It doesn't look very secure."

⁷ Att. 17

Officer Josephs then walks back towards the northside gangway. Seconds later, Officer Josephs draws his firearm and yells, "Get Back." The dog becomes visible, appearing to have walked out into the front yard from the north gangway. The dog stops about ten to fifteen feet from Officer Josephs, who then shoots it.⁸ The dog appears to be wounded and runs back through the north gangway towards the backyard of the house.

After Officer Josephs discharges his weapon, the two other officers start swearing and Officer Josephs responds, "What...? What? I don't know if he is going to come after me. What am I supposed to do?" Officer Patrick Egan asks, "Did you hit him?" and Officer Josephs confirms that he hit the dog. Officer Egan then says, "Fuck." Officer Josephs says, "I didn't want to do it. I don't know if he is going to attack... Jeez, I'm sorry." After reporting the firearm discharge over the radio, the officers walk to the south side of the house where they knock on a side door, getting no response. Officer Egan is seen looking over a barrier wall into the backyard in search of the wounded dog. During their search, the officers see a second dog, who is not injured.

At 10:55 a.m., Officer Kristophe Jaros arrives on scene. Officers Josephs and Egan describe to him what occurred. Officer Josephs says that he originally drew his gun when he noticed the two dogs, but that he put it back when the dogs did not follow him. He describes Sgt. Martin as still standing on the porch knocking on the door when he went back over towards the gangway to check if the dogs were going to come out. He tells Officer Jaros that one of the dogs did come out and was 10 feet away from him. Officer Josephs points to where he describes the dog as standing. Then Officer Josephs says, "He's looking at us and I let a round go."

Officer Josephs says that he wants to go back into the yard to look for his shell casing, but if he goes back in then he may have to shoot the other dog. One of the officers says that he will keep a look out for the other dog. Officer Josephs asks the officer to let him know if he sees it so that he can run out of the yard. Officer Josephs opens the front gate and goes back into the front yard to search for his shell casing. Sgt. Martin is then heard saying to another officer that he knew that this house had a dog because he had responded to calls at this house before.

At 11:08 a.m., Sgt. Bikulcius arrives on scene. Sgt. Martin and Officer Josephs describe what happened to him. Sgt. Martin said that there were two dogs, but that he only saw one dog. Officer Josephs says,

Originally, I saw two. And then they were trying to peek their heads out. So, I actually pulled my gun out and then walked back this way. And for a while they didn't follow us. Well Steve was still up on the porch, so after a couple seconds, I walked back this way just to see. And sure enough one comes running out. And he just kind of stands right there, right about where the shadow meets the sunlight. And he stood there and... I am not going to wait there for him to start attacking us.

Animal control arrives on scene at 11:14 a.m. Sgt. Bikulcius and the animal control officer detain the uninjured dog and place it in the animal control vehicle. The police officers and the animal control officer go through the gangway into the backyard in search of the wounded dog. The officers locate the dog in the garage, hiding under a car. The officers open the side gate to get

⁸ The dog does not appear to be growling or taking an aggressive stance.

out of the backyard, onto the side street. The officers eventually retrieve the wounded dog from under the car and escort it into the animal control vehicle.

Officer Josephs and Sgt. Bikulcius then continue to search the front yard for the bullet casing, while the other officers speak with a relative of the dog's owner, who has arrived on scene, and then separately with Mrs. Cano. At 11:59 a.m., Commander Ronald Pontecore arrives on scene. The video ends shortly thereafter.

c. Physical Evidence

A **Synoptic Report**⁹ documents that on October 26, 2017, at approximately 1:52 p.m., Officer Brian Josephs submitted to alcohol and drug testing pursuant to Chicago Police Department Policy following the use of a firearm. He tested negative for both.

d. Documentary Evidence

The **Original Case Incident Report**,¹⁰ authored by Officer Patrick Egan, documents the incident and is consistent with the summaries of the interviews and BWC footage contained herein.

The narrative section of the **Tactical Response Report**,¹¹ authored by Officer Josephs, stated that while investigating, he went to the north end of the residence to ascertain if anybody was inside. He did not see any people, but observed two dogs attempting to exit through a broken fence in the rear of the residence. Officer Josephs then retreated so as to not enrage the dogs further. Officer Josephs returned to check on the dogs because his sergeant was preoccupied on the front porch. At this time, Officer Josephs noticed that one of the dogs had exited through the broken fence and was making its way towards the front yard. The dog was growling and taking an aggressive stance. Officer Josephs believed that the dog was about to charge at him or his sergeant and therefore fired one round at the dog, causing it to retreat into the backyard.

e. Additional Evidence

Screenshots¹² from Officer Patrick Egan's BWC show that Officer Brian Josephs was equipped with a gun, a Taser, and a baton. Based on the images, it is not clear if Officer Josephs had O.C. Spray on his person.

VI. ANALYSIS

Officer Brian Josephs was alleged to have destroyed an animal without justification. On October 26, 2017, at approximately 10:47 a.m., he shot a pit bull belonging to Complainant [REDACTED]. Officer Josephs was in the front yard of [REDACTED] conducting an investigation of a runaway teen. While investigating, a dog emerged from a broken fence and came to the front yard. Officer Josephs yelled at the dog, "Get back." Based on Officer Josephs's

⁹ Att. 12

¹⁰ Att. 4

¹¹ Att. 5

¹² Att. 36

BWC footage and Sgt. Martin’s description of the event, COPA determined that the dog was standing in a normal, nonthreatening stance about ten to fifteen feet from Officer Josephs. Officer Josephs then immediately fired his gun, shooting the dog, after which it retreated into the backyard.

CPD enacted a new Use of Force policy on October 16, 2017, ten days prior to this incident. The policy states, “A sworn member is justified in using deadly force to stop a dangerous animal only when the animal reasonably appears to pose an imminent threat to the safety of the sworn member, another person, or another animal and no reasonably effective alternatives appear to exist.”¹³ The directive further states, “A threat is imminent when it is objectively reasonable to believe that the subject’s actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; and the subject has the means or instruments to cause death or great bodily harm; and the subject has the opportunity and ability to cause death or great bodily harm.”¹⁴

Whether Officer Josephs’s conduct was justified depends on whether the dog was an “imminent threat,” as defined by the Use of Force policy. It is not objectively reasonable to believe that the dog’s action of standing still while observing the officers in the yard was immediately likely to cause death or great bodily harm to Officer Josephs, Sgt. Martin, or anyone else on scene. COPA determined that Officer Josephs’s belief that the dog was an imminent threat was not objectively reasonable given the totality of the circumstances. Therefore, COPA recommends a finding of Sustained as to the allegation that Officer Josephs destroyed the dog without justification.

VII. CONCLUSION

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

Officer	Allegation	Finding
Officer Brian Josephs	1. It is alleged that on October 26, 2017, at approximately 10:47 a.m., in the vicinity of [REDACTED] [REDACTED] Officer Brian Josephs, #4077, destroyed an animal without justification.	Sustained

Approved:

[REDACTED]
 Joshua Hunt
 Deputy Chief Administrator – Chief Investigator

15 Feb 2018

 Date

¹³ The Use of Force Model: G03-02 (III)(C)(6)
¹⁴ The Use of Force Model: G03-02 (III)(C)(2)

Appendix A

Assigned Investigative Staff

Squad#:	11
Investigator:	Brittany Barclae
Supervising Investigator:	Brian Dollar
Deputy Chief Administrator:	Joshua Hunt