

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	December 26, 2015
Time of Incident:	3:11 am
Location of Incident:	3810 W. Congress Parkway
Date of IPRA Notification:	December 26, 2015
Time of IPRA Notification:	4:08 am

On December 26, 2015, at 3810 W. Congress Parkway, at 3:11am, Officers Kevin Mulligan (Officer Mulligan) and Clarence McCoy (Officer McCoy) were on routine patrol, when they conducted a traffic stop of a red Oldsmobile vehicle, which Officer McCoy observed travel through a red light. [REDACTED] ([REDACTED] was the driver of the red Oldsmobile, and [REDACTED] and [REDACTED] were passengers. Officer McCoy pulled his Chicago Police Department (CPD) SUV alongside the red Oldsmobile. Immediately after the red Oldsmobile pulled over, [REDACTED] began to exit the vehicle. Officer Mulligan yelled for [REDACTED] to get back into the vehicle. As [REDACTED] turned toward the officers, Officer Mulligan saw the top of [REDACTED] left-hand, while [REDACTED] right hand was inside his waistband area. At that moment, Officer Mulligan feared [REDACTED] might have a weapon. Officer Mulligan was unable to exit the SUV, which was parked too close to the open driver’s side door of the red Oldsmobile. Officer Mulligan attempted to take cover and drew his service weapon, from a sitting position, as he leaned back in his front passenger’s seat, with his right leg up. While attempting to take cover, Officer Mulligan unintentionally discharged one round from his weapon, striking the right front passenger window and outside passenger side mirror of the red Oldsmobile. [REDACTED] was not struck nor were any of the occupants injured.

II. INVOLVED PARTIES

Involved Officer #1:	Kevin Mulligan, Star# 7621, employee ID# [REDACTED] Date of Appointment: June 3, 2013, Police Officer, Unit 011, DOB: [REDACTED], 1988, Male, White
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1982 Male Black

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

Involved Individual #2: [REDACTED]
 DOB: [REDACTED] 1991
 Female
 Black

Involved Individual #3: [REDACTED]
 DOB: [REDACTED] 1987
 Male
 Black

Involved Individual #4: [REDACTED]
 DOB: [REDACTED] 1991
 Female
 Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Kevin Mulligan #7621	1. On December 26, 2015, at approximately 3:11 am in the vicinity of 3739 W. Congress Parkway, you unintentionally discharged your firearm. 2. On 26 December 2015, at approximately 3:11 am in the vicinity of 3739 W. Congress Parkway, while on duty, you failed to notify OEMC of your weapon discharge. 3. On December 26, 2015, at approximately 3:11 am, in the vicinity of 3739 W. Congress Parkway, while on duty, you carried, on or about his person, a firearm containing more than one style of prescribed ammunition in violation of General Order U04-02.	1. Sustained / 30 Days 2. Sustained / 30 Days 3. Sustained/ 1 Day

IV. APPLICABLE RULES AND LAWS

Rules

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1. Rule 2: Prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
 2. Rule 3: Prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.
 3. Rule 5: Failure to perform any duty.
 4. Rule 6: Disobedience of an order or directive, whether written or oral
 5. Rule 10: Inattention to Duty
 6. Rule 11: Incompetency or inefficiency in the performance of duty
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General Orders

1. General Order G03-02-06: Firearms Discharge Incidents Involving Sworn Members
2. General Order G03-02-03: Deadly Force
3. General Order U04-02: Uniform and Property

V. INVESTIGATION²

a. Interviews³

IPRA interviewed ██████████ (██████████) on April 8, 2016, at the office of the Independent Police Review Authority.⁴ ██████████ stated on December 26, 2015, at approximately 3:11 am, he drove eastbound on the Eisenhower Expressway, from Waukegan, Illinois, in his red, 1995 Oldsmobile. He exited the expressway at Independence Boulevard in Chicago, Illinois.

██████████ (██████████) was his front seat passenger, ██████████ sat behind ██████████ and ██████████ sat behind ██████████. A vehicle containing family friend ██████████ cousin ██████████ his mother, ██████████ and stepfather, ██████████ followed ██████████ car.

After ██████████ exited the expressway, he saw a marked Chicago Police Chevrolet Tahoe, in his rearview mirror. The police vehicle did not have its lights or sirens activated. ██████████ stated when he reached the second light, he pulled over because the car was running hot. ██████████ pulled his car in front of the fire hydrant and proceeded to get out of the car. He stated that, at first, the police were behind him when he pulled over, but then the police pulled on the side of him, right next to him, as he was getting out of his car. ██████████ explained there was a couple of feet between the two cars. ██████████ heard someone say to get back in the car. ██████████ thought it was his stepfather's voice. However, when he turned around and looked, he saw the Chicago police vehicle to the side of him. ██████████ automatically raised his hands when he saw an officer was standing between the door jam and the Tahoe. ██████████ stated as he was putting his hands up, the officer shot in his car. The shot went through the door, at the time ██████████ was standing between the door jamb

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 COPA strives to complete all relevant investigative steps, including interviews, in a timely manner. In this investigation, COPA's predecessor, IPRA, conducted the interviews of involved civilians and officers many months after the incident impairing the reliability of the statements.

⁴ Atts. 36, 42.

of the car. Other than the command the officer gave ██████ when the police car pulled up next to him, to get back in the car, the officer did not give any additional commands. The officer did not ask him to put his hands up. ██████ initially stated he did not see the officer raise the gun, but later stated he did see, because he looked back and observed the officer firing the gun and he jumped. ██████ stated he observed the officer in the Tahoe, pointing the weapon, which was black, out of the window. It appeared to ██████ that the officer was leaning back, like he was attempting to get a good angle. However, ██████ later clarified that he only observed the firearm after hearing the shot and did not see the officer pull the trigger.

██████ stated after firing the shot, the officer jumped out of the Tahoe, grabbed him, and checked if he had been hit. He then placed handcuffs on ██████ and put him in the back of the officer's truck. While officer was checking ██████ the officer told him he thought ██████ had a gun. ██████ asked the officer how he thought he could have a gun when he had just pulled over.

The officers separated everyone in different cars. After this, the officers told ██████ they were going to issue some tickets to him and let him go. ██████ questioned why he was being ticketed and was told it was because he was driving while his license was suspended. While ██████ was at the station to get his tickets and I-bond, the officer who fired his weapon apologized for shooting. The officer said he had a "CPR little thing" and "he wears it in case someone gets shot". ██████ stated he responded by saying, "You ain't trying to save nobody, shooting at people." ██████ stated the officer then said, 'I was just nervous,' and ██████ responded, "Okay" and walked out.⁵

IPRA interviewed ██████ ██████ on March 4, 2016, at his residence, in Waukegan, Illinois.⁶ In summary, ██████ stated on December 26, 2015, at approximately 3:00 am he was with ██████ and his friend ██████. They were in Chicago, exiting the expressway at Independence Boulevard and Congress Parkway and ██████ was driving the car, although he was not sure if the car belonged to ██████ was seated behind ██████ who was the front seat passenger. ██████ was ██████ girlfriend at the time, and he was seated behind her.

██████ explained the group was on its way to Chicago to visit ██████ other side of the family for a Christmas gathering. His group was in one car, and ██████ mom, stepfather, cousin and maybe one other person were in another car. ██████ explained his group exited the expressway and pulled over to wait on the other car.

██████ stated they parked, and as the police officers approached in an SUV, ██████ was exiting the vehicle to urinate. As the police pulled up alongside the side of their car, ██████ said, "Oh, that ain't nobody but the police,"⁷ and the officer responded, "Slow down. ... Hold on, stop."⁸ At this point ██████ had already turned around.⁹ The officer then shot through the window. The shot struck the passenger's side of ██████ car, where ██████ was sitting. ██████ had his hands up and the police officer shot while he was inside the police car. The officer never exited his SUV

⁵ Att. 42, p. 17, line 3-4.

⁶ Att. 31, 33.

⁷ Att. 33, p. 8, lines 5-6

⁸ Att. 33, P.8, lines 7-8

⁹ ██████ did not explain the direction ██████ faced once he turned.

prior to shooting. The police car did not have its lights or siren on when it pulled up. [REDACTED] car was facing west, and the police car was also facing west so that the passenger side of the police car was next to the driver's side of [REDACTED] car. The officer who shot was seated in the police car's front passenger's seat. [REDACTED] believed [REDACTED] door was still open at the time the officer shot and if [REDACTED] had not turned to the side, he would have been shot. The bullet, instead, came through the car and shot out through the passenger's window.

IPRA interviewed [REDACTED] ([REDACTED] on April 8, 2016, at the office of the Independent Police Review Authority.¹⁰ [REDACTED] stated on December 26, 2015, at approximately 3:11 am, she was travelling in a car with [REDACTED] and [REDACTED] on the Eisenhower Expressway and they exited at Independence Boulevard to come into Chicago. [REDACTED] explained upon exiting the Eisenhower expressway, they were then located on Congress Parkway. They exited the expressway because they were pulling over to wait for [REDACTED] mother to get behind them, as her car was a couple of cars behind them. The balance of [REDACTED] account of the incident is substantially similar to that of [REDACTED] and [REDACTED]

IPRA interviewed [REDACTED] ([REDACTED] on May 17, 2016, at the location of [REDACTED] [REDACTED].¹² [REDACTED] stated on December 26, 2015, at approximately 3:11 am, she had just left North Chicago and exited the expressway on Independence Boulevard. She was in a vehicle with [REDACTED] and [REDACTED]. She sat in the rear passenger seat. [REDACTED] explained they exited on Independence Boulevard and Congress Parkway and stopped at the red light. They were the third car in line at the light and her son, [REDACTED] was in the first car. A Chicago Police SUV come up on the passenger side of their car and cross the light. [REDACTED] pulled over and parked.

As they drove by, she saw the Chicago police SUV parked on the side of the vehicle her son was driving. She saw the officers in the car and the officer's passenger window down. She observed her son's hands on the roof of the car, that he was situated at the closed driver's door, and saw her son looking as they passed. As soon as they passed, she heard one gunshot. She did not see the officer fire, because they had passed [REDACTED] car. She started to scream and told the driver to pull over. They jumped out and ran back to where [REDACTED] and the others were. There was a bullet hole in the window and the window was shattered.

[REDACTED] informed the IPRA investigators that she did not see emergency lights on the police SUV as it drove past, nor did she hear a siren.

IPRA interviewed Sergeant Jon Utz #1934 on September 16, 2016, at the office of the Independent Police Review Authority.¹⁶ Sergeant Utz stated on December 26, 2015, at approximately 3:00 am, he was working as a patrol supervisor in the 11th District. Sergeant Utz was working by himself that evening and responded to an incident that occurred at Independence Boulevard and Congress Parkway. When he arrived on scene, he observed numerous squad cars near that intersection.

¹⁰ Att. 49.

¹¹ [REDACTED] noted [REDACTED] sat behind her and [REDACTED] sat behind [REDACTED]

¹² Transcript of interview with [REDACTED] incorporated as Attachment#50.

¹⁶ Att. 73.

Sergeant Utz recalled he spoke with officers in the 11th District, including Officer Mulligan, who related he unintentionally discharged his firearm. Sergeant Utz stated he cannot recall specifics of what he learned and from whom. Officer Mulligan and Officer McCoy were under his supervision that evening as he was the only street sergeant assigned to the 11th District working that night.

Sergeant Utz was shown the Original Case Incident report¹⁷ for the incident and asked why no civilians were listed. Sergeant Utz affirmed it is standard procedure to document the names of the individuals involved in the incident. Sergeant Utz affirmed he reviewed the case report and approved it. Sergeant Utz believed this incident was identified as a non-criminal, unintentional discharge of a firearm by a police officer.

Sergeant Utz was shown the TRR submitted by Officer Mulligan for this incident, which he had originally reviewed and approved.¹⁹ When asked if he was aware that Officer Mulligan marked Box# 65, that he used the sights of his weapon, Sergeant Utz replied he was not at the incident and does not know if Officer Mulligan marked it yes.

Sergeant Utz was shown an Initiation Report he made.²⁰ Sergeant Utz was unable to recall if he called in the Initiation Report before or after he reviewed the Tactical Response Report (TRR). There were two other supervisors on scene at that incident, Lieutenant Stuart and the On-Call Incident Commander (OCIC), who was the street deputy. Lieutenant Stuart was his direct supervisor during his watch but could not recall if he spoke to Lieutenant Stuart about this incident. Sergeant Utz did not know if the standard procedure in this case was to call in the log number before or after the completion of a report.

Sergeant Utz explained his standard action, prior to reviewing a TRR, would be to speak to the officer about what happened during the incident. Sergeant Utz does not confirm the veracity of the report if he is not at the incident, he only approves that the TRR is complete. Sergeant Utz stated he only reviewed the first page of the TRR, which describes the actions and the responses of the officers.

He could not recall any detailed conversations he had with Officer Mulligan regarding this incident.

IPRA interviewed Lieutenant Stephanie Stuart #330 on October 25, 2016, at the office of the Independent Police Review Authority.¹⁴ On December 26, 2015 at approximately 3:00 am, Lieutenant Stuart was on duty as the Watch Operations Lieutenant in the 11th District. Her beat was 1199 that day.

Lieutenant Stuart stated she responded to a call of shots fired at the location of 3810 W. Congress Parkway. Upon her arrival, she observed a squad car and a regular car just west of Independence Boulevard. While on scene, she spoke with two officers who were in the squad car, Officer Mulligan and Officer McCoy. She could not recall who she spoke with first and vaguely recalled what the officers told her. The officers informed her they were attempting to pull over a

¹⁷ Att. 4.

¹⁹ Att. 8.

²⁰ Att. 21.

¹⁴ Att. 72.

car which had run a red light a couple of blocks east of where they were located. As the officers pulled up alongside the car, the driver jumped out, and Officer Mulligan accidentally discharged his weapon.

Lieutenant Stuart was shown the OEMC transmission printout¹⁵ and affirmed she was the individual who called in and informed OEMC, “1135R shots fired by the police per 1199.”¹⁶ Lieutenant Stuart did not recall if any officers had already made notifications, but believes it was the job of the first supervisor on the scene, or the officers who were involved, to make the notification. She affirmed it is usually the officer that fired the shots who calls in to say shots have been fired by the police.

Lieutenant Stuart was shown the TRR generated for this incident and was asked if it was normal that during an accidental discharge the member would use his sights. This was the first officer-involved shooting she handled, and she could not say whether it was normal or not. She did not see the TRR the night of the incident. She recalled the sergeant on duty that evening was Sergeant Utz and explained she and Sergeant Utz had worked together before.

Lieutenant Stuart stated she wanted to clear up something regarding the notifications made that evening. She was just making sure they were done and did not know whether the officers had made them prior to her arrival. She had arrived at the scene of the incident approximately 5-10 minutes after the discharge. Officer Mulligan told her he had discharged his weapon after he arrived on scene. She did not speak to Officer Mulligan right away, as she stated she wanted to make sure no one was injured first. She did not recall speaking with Sergeant Utz, when they were on scene, nor did she recall speaking with the people who were involved. She did not have anything to do with the case report and was not aware who instructed the officers to issue a citation for [REDACTED]

Lieutenant Stuart could not recall whether Officer Mulligan explained the specific circumstances regarding the discharge of his weapon. She explained it was busy that Christmas night and she was also involved in the earlier fatal police-involved shooting. However, she indicated she was uncertain if she spoke to any of the civilians present or involved in the incident. Lieutenant Stuart explained it is usually up to the street deputies and detectives to take the officer's weapon. Lieutenant Stuart confirmed Sergeant Utz, Officer Mulligan, and Officer McCoy were all under her command.

Upon questioning, Lieutenant Stuart explained the duties of a lieutenant responding to a police-involved shooting included ensuring everyone on scene is okay, securing the scene, and ensuring proper notifications are made. Her duties do not include approving and reviewing the reports generated as a result of a shooting. She has not spoken with Officer Mulligan and Officer McCoy about the incident since it occurred. In closing, Lieutenant Stuart added the first time she saw the TRR generated for this incident was during this interview and she had no knowledge of anything which was contained therein. Lieutenant Stuart affirmed she did speak with Officer McCoy that evening, though she could not recall what he said about how Officer Mulligan's gun went off.

¹⁵ Att. 20, p.1.

¹⁶ See Attachment 72, p.6, lines 12-14.

IPRA interviewed Officer Clarence McCoy #4647 on July 29, 2016, at the office of the Independent Police Review Authority.¹⁷ Officer McCoy stated he was on duty as a patrol officer with his partner Officer Mulligan on December 26, 2015, at approximately 3:11a.m.

While responding to another call, Officer McCoy saw a car run a red light. Because he was driving, it was his intention to pull the driver of that car aside and tell him not to run red lights and then proceed on to other call.

Officer McCoy pulled behind the vehicle which ran the red light and the vehicle pulled over on its own. Officer McCoy stated he did not intend to get out of the vehicle when he pulled up beside the vehicle, and he did not intend to write a ticket.

Officer McCoy stated at the time he pulled beside the vehicle, the driver, [REDACTED] was already getting out of his vehicle. It did not seem to him as though the car was running hot or smoky. Officer McCoy stated that including [REDACTED] there were three or four people in the vehicle. He could not recall whether [REDACTED] said anything when he got out of the car, though he does recall [REDACTED] later said he pulled over because there was something wrong with his car. At this point, the front passenger's seat window of their police SUV was lowered, though he could not recall if he or Officer Mulligan lowered it. Officer Mulligan told [REDACTED] to get back in the car. At the point that Officer Mulligan told [REDACTED] to get back into the car, he had observed [REDACTED] reach down in the driver's floor area of the car as if he was doing something with his hands. He could not see [REDACTED] hands, and when [REDACTED] turned back around he could not tell if he had something in his hands.¹⁸ [REDACTED] then turned around to face the officers and started walking toward them, "real fast."¹⁹ Officer Mulligan then discharged his firearm. Officer McCoy could not recall how Officer Mulligan exactly unholstered his gun but stated Officer Mulligan put his feet up against the door jamb as though he was trying to create distance between the two as [REDACTED] approached their vehicle. Officer McCoy estimated the distance between the two vehicles "could have been a couple of feet maybe."²⁰ Officer McCoy stated neither he nor Officer Mulligan exited their vehicle before the shot was fired.

Officer McCoy stated he knew a threat existed because [REDACTED] "was walking towards them fast,"²¹ and he had just witnessed [REDACTED] doing something in his car. Officer McCoy added he and Officer Mulligan were in a "fatal front,"²² explaining they were in more danger because they were in the car.

Officer Mulligan did not give [REDACTED] a verbal warning before firing his weapon. Officer McCoy did not know whether Officer Mulligan aimed his weapon, because he did not directly

¹⁷ Att. 58.

¹⁸ Officer McCoy was questioned by the investigator about why he earlier told Detective Healey that [REDACTED] raised his hands. Officer McCoy stated he probably did tell Detective Healey that, but he could not remember.

¹⁹ Officer McCoy was confronted with the fact his statement to Detective Healey did not include this information in his report. Officer McCoy stated he recalled that [REDACTED] turned around and came toward them. Att. 62, p. 11, lines 9-18.

²⁰ Att. 62, P. 11, line 22.

²¹ Att. 62, p.11, line 7.

²² Att. 62, p.19, line 8.

observe the firearm discharge. However, Officer McCoy believed that if Officer Mulligan aimed his weapon, he would have shot [REDACTED] because Officer Mulligan and [REDACTED] were about three feet apart. At the time of the discharge, [REDACTED] driver's side door was still open, and he was standing in the space between the car door and the car.

After the shot went off, Officer McCoy and Officer Mulligan both exited their vehicle and asked [REDACTED] whether he was shot. Officer Mulligan grabbed his first aid kit and raised [REDACTED] shirt up. Officer McCoy was calling on the radio for assistance. Officer McCoy could not specifically recall what he said to request more units, but stated he gave the wrong location because he was nervous. Officer McCoy checked the other passengers in the car and determined no one was shot. When the lieutenant arrived, he notified her that shots were fired by the police.

When asked by IPRA why he had not notified OEMC that Officer Mulligan had discharged his weapon, Officer McCoy stated he called for more units and then he went to assist Officer Mulligan to see if [REDACTED] had been shot. After taking these actions, he was trying to keep the crowd back in order to preserve the scene. It took the assisting units approximately a minute or more to arrive. He affirmed it was the lieutenant who notified OEMC that shots had been fired by the police.

Officer McCoy stated their in-car camera was not functioning the night of the incident. After the incident, [REDACTED] was issued a citation for running the red light. Despite their intention not to issue a ticket, because Officer Mulligan discharged his weapon, he felt he had no other choice but to issue [REDACTED] a citation.

IPRA interviewed Officer Kevin Mulligan #7621 on August 11, 2016 at the office of the Independent Police Review Authority.²³ Officer Mulligan stated on the night of the incident he was on patrol in a CPD vehicle with his partner Officer McCoy. Officer McCoy was the driver, and Officer Mulligan was the passenger.

Officer Mulligan stated they received a call of a burglar alarm at the Church's Chicken located on Madison Ave. and were assigned to respond. As the officers traveled to the call, they approached Congress and Independence Boulevard. Officer McCoy asked him if he saw the car go through the red light. In response, he shifted his focus forward, and Officer McCoy started to maneuver their vehicle to get behind the car in question. Officer Mulligan did not see the traffic violation.

Officer Mulligan stated the car pulled over on its own, and Officer McCoy moved their police vehicle alongside the car at a slow rate of speed, at which time Officer McCoy lowered Officer Mulligan's window. Officer Mulligan affirmed it was not procedure to pull up next to a car during a traffic violation. Proper procedure would have included notifying OEMC of their location, activating lights, and situating the police vehicle approximately four feet offset behind the car with the wheels turned towards the street.

The driver of the car, Alonso [REDACTED] got out of the car. Officer Mulligan immediately told [REDACTED] to get back in the car. In response to Officer Mulligan's direction, [REDACTED] immediately went and sat back down in the driver's seat, facing the officers' Tahoe. The driver's side door was

²³ Atts. 64 and 66.

closed enough so that he could possibly fit a foot outside the door. While seated, ██████ had one foot on the ground and then, while staring at the officer, Officer Mulligan observed ██████ reaching into the driver's side door panel. Officer Mulligan then observed ██████ get out of the car again and observed ██████ right hand completely dig into his waistband and his other hand directly above the belt line. At that moment, Officer Mulligan was in fear for his life and thought ██████ was in possession of a weapon to use against them. ██████ did not have his hands up when he exited his vehicle and did not walk towards the hood of the vehicle.

Officer Mulligan, believing there was insufficient time to provide further verbal commands, unbuckled his seatbelt, leaned back and brought his right leg up on his support side while unholstering the firearm. Officer Mulligan explained he had a leg partially up, because it was such a small space to unholster his gun. According to Officer Mulligan, as he was turning to defend himself, his trigger finger, or some finger, must have hit the side panel of their police vehicle, and his firearm discharged a round. After the firearm discharged, his entire body had turned, his feet were up, and his finger was on the slide. Officer Mulligan realized his gun had gone off. According to Officer Mulligan, he had not intended to fire his weapon from inside the car. The bullet went through their open SUV window, through ██████ open window, and through the passenger's window that was up.

Officer Mulligan stated after his gun discharged, Officer McCoy got out of the car and Officer Mulligan believed he heard him on the radio, though he could not recall what was said. Officer Mulligan stated he holstered his gun and got out of the car. He asked ██████ if he had been hit and raised ██████ shirt for two reasons: (1) to determine if he had a gun; and (2) to see if he had been struck by a bullet or anything. After determining ██████ was not hit, Officer Mulligan turned his attention to the passengers in the car to see if they had been hit.

Shortly thereafter, additional officers arrived on scene. Officer Mulligan immediately found Lieutenant Stephanie Stuart, on scene. He then heard the OEMC dispatcher on the radio ask for the star number of the officer who discharged the weapon. Officer Mulligan provided his star number to Lieutenant Stuart and then sat in a vehicle and made a statement to the detective.

When asked why he did not immediately notify OEMC he had discharged his weapon, Officer Mulligan explained that after asking the female passenger whether she was fine, he heard people running towards the scene with their cell phones cameras out screaming words to the effect of, "You killed him."²⁴ Officer Mulligan responded, "He's fine, he's fine."²⁵ Soon thereafter other officers arrived, and Officer Mulligan heard the dispatcher over the radio request the star number of the officer that shot, at which time Officer Mulligan told Lieutenant Stuart, "It's 7621."²⁶ Officer Mulligan affirmed it was Lieutenant Stuart, not himself, who made the notification of the discharge of the firearm.

Officer Mulligan authored a Tactical Response Report (TRR)²⁷ in his case. Officer Mulligan was asked about Box# 65 of the TRR, which indicated Officer Mulligan had used his sites of the firearm. Officer Mulligan stated he did not use his sights when he discharged his

²⁴ Att. 66, p. 40, line 21.

²⁵ Att. 66, p. 40, line 24.

²⁶ Att. 66. P. 41, line 20.

²⁷ Att. 8.

firearm. Officer Mulligan affirmed he composed the TRR with the street deputy and a sergeant, but ultimately signed off on it himself, and that he had the opportunity to proofread it before he signed off on it. Officer Mulligan explained he made an honest mistake in filling it out and that he was in shock when he got back to the station. Officer Mulligan stated the firearm discharge was unintentional.

COPA interviewed Officer Mulligan on December 16, 2019 at the Office of the Civilian Office of Police Accountability.²⁸ Officer Mulligan acknowledged that what he had previously told to the IPRA investigators was true and accurate and that he had nothing to add to that statement. Officer Mulligan was asked about his weapon having been loaded with two different types of 9 mm ammunition. Officer Mulligan admitted that he had, in fact, loaded the gun he fired during this incident. He related that he inadvertently loaded two different types of 9 mm ammunition into the magazine sometime prior to December 26, 2015. He also stated that he had received a Summary Punishment Action Request (SPAR) for having mixed ammunition in his weapon.

b. Digital Evidence²⁹

POD camera video from Roosevelt³⁰, POD #6208, located at 3742 W. Congress Parkway depicts an eastward facing view on Congress Parkway. At the 03:08:16 timestamp, a sedan matching the description of [REDACTED] vehicle is observed pulling up at the stoplight taking the first spot in line, it edges up slightly into the crosswalk. Two additional vehicles pull behind this vehicle. At the 03:08:35 timestamp, the vehicle matching the description of [REDACTED] vehicle is observed driving into the intersection while the two vehicles behind it remain at the stop light. At the 03:08:42 timestamp, a CPD SUV is observed passing to the right of the stationary vehicles stopped at the intersection and proceeding through the intersection.

²⁸ Att. 91

²⁹ COPA also viewed in-car video from Beat 1135R, incorporated as Attachment #86 from the night of the incident. As it was of negligible probative value, it is not summarized herein. The audio files are empty. IPRA also requested the in-car camera video and audio for Beat 1114R, but none were found per the CPD response dated 12/28/15 to IPRA's request incorporated as Attachment #11.

³⁰ POD video DVD is incorporated as Attachment # 13. It is impossible to determine, from the POD video, whether the light is red at the time [REDACTED] drives through the intersection, as the video does not show the traffic signal, just the middle of the intersection.



The vehicle matching the description of [REDACTED] vehicle is observed driving into the intersection while the two vehicles behind it remain at the stop light

Scene Photographs³¹: Photographs taken by Evidence Technician Gutierrez #11666 on December 26, 2015.

OEMC Transmissions³²

The OEMC transmissions corroborate that a Beat 1199 (Lt. Stewart) informs the OEMC Dispatch that the star number of the officer involved in the shooting was 7621. (Att. No. 23, 14:05 minutes) There is no notification, by the Accused (or Officer McCoy) that he fired his weapon.

c. Physical Evidence

Illinois State Police – Division of Forensic Services Laboratory Report³³ dated January 29, 2016 indicates a Smith and Wesson, model M&P9, 9mm Luger caliber semiautomatic pistol fired the Winchester 9mm Luger +P+ caliber fired cartridge case.³⁴

d. Documentary Evidence

³¹ Scene photographs are incorporated as Attachment #28.

³² Att. 23-25.

³³ Atts. 52 and 90

³⁴ Att. 83, p. 5.

Original Case Incident Report³⁵: This report characterizes the incident as an Unintentional Discharge of a Firearm by Police. It provides information regarding the location of the occurrence, the involved vehicle, and the involved officers.

Crime Scene Processing Report³⁶: The report indicates Evidence Technician Hiram Gutierrez #11666, took possession of Officer Mulligan's weapon at the 11th District station, where it was rendered safe and unloaded. The Evidence Technician then relocated to the 3810 W. Congress Parkway to process the scene where he recovered the discharged cartridge case. The report indicates the weapon was swabbed for DNA at 3340 W. Fillmore, and inventoried. Additionally, the report notes the weapon is registered to Kevin Officer Mulligan per the gun desk.

Inventories:³⁷

- **Inventory #13597768:** 1 – firearm: Smith & Wesson, Model MP9, 9MM, Semi-automatic, approximately 4in. barrel, blue steel S/N – [REDACTED] 1 – magazine, Smith & Wesson, 9MM, 17 round capacity magazine; 1 – live round head stamped WIN 9MM Luger +P, recovered from weapon chamber; 11 – live rounds Head Stamped WIN 9MM Luger +P, recovered from magazine; 5 live rounds head stamped WCC +P+1, 3, recovered from magazine.
- **Inventory #13597769:** 1 biological Swab box containing two swabs of biological samples recovered from all rough surfaces of weapon inventory # 13597768
- **Inventory #13597770:** Expended shell – discharges cartridge case head stamped with WCC +P+1 3 recovered between front seats of police Vehicle #8413 L/P #MP6539.
- **Inventory 13601878:** Recording – Audio/Visual: DVD of POD #6208, 810, 811 Recordings 26 Dec 2015 from 0300-0330 hours.
- **Inventory #13610633:** Recording – Audio/ Visual: CD of Zone 10 Radio Transmissions elated to RD HY550228
- **Inventory #13610634:** Consent to Search Form Signed by [REDACTED] [REDACTED]
- **Inventory #13610682:** Recordings – Audio/Visual: CD downloaded from CPD vehicle #: 8767, 9268, 8984, 8952, 9237, 9333, 9269.
- **Inventory #13610682:** Recordings – Audio/Visual: CD downloaded from CPD vehicle #: 9099, 8431, 8808, 8890, 8806, 8444.

Detective Case Supplementary Report³⁸: This is a Field Investigation Closed Non-Criminal Report submitted by Detective David Healy #20855 on March 8, 2016. The report

³⁵ Att. 4.

³⁶ Att. 27.

³⁷ Att. 83. Inventory No. 13597768, recovered from Officer Mulligan, was received and examined by the Illinois State Police Crime Lab. (See attachment No. 90). Contained in this inventory were twelve (12) Winchester 9 mm Luger + P unfired cartridges and five (5) Winchester 9 mm Luger +P+ unfired cartridges. The version of Chicago Police Uniform and Property Order, U04-02-01 effective on date of incident allowed the use of 9mm Luger +P and +P+ cartridges. However, the version of Chicago Police Uniform and Property Order, U04-02-01 effective on the date of the incident required that semiautomatic pistols be fully loaded with only one manufacturer and style of prescribed ammunition (same bullet type and grain weight).

³⁸ Att. 57.

documents the investigative steps taken by reporting Detective David Healy relative to the Unintentional Discharge of A Firearm by Police.

Detective Healy interviewed Officer Mulligan on scene on December 26, 2015 at approximately 3:55 am. He related, in summary and verbatim, Officer McCoy was driving that evening and he was the passenger officer. He related Officer McCoy told him he observed a vehicle go through the first red lights on Congress Parkway and Independence Boulevard. Officer Mulligan related he was looking elsewhere and did not observe this. Officer McCoy motioned to a red Oldsmobile that was stopping at a second light. Officer McCoy then drove towards the vehicle as the light changed green. At this time, Officer Mulligan observed two females turning around towards their police vehicle and related the Oldsmobile immediately pulled over to the curb at approximately 3810 W. Congress Parkway. Officer Mulligan could not recall if Officer McCoy activated the emergency lights prior to pulling alongside the Oldsmobile on the driver's side. Officer Mulligan explained Officer McCoy lowered their front passenger window and recalled he asked Officer McCoy twice what he was doing by pulling up next to the Oldsmobile. Officer Mulligan stated at this time, both vehicles were faced west on Congress Parkway.

The driver of the Oldsmobile, [REDACTED] began to exit his vehicle. Officer Mulligan stated he responded to [REDACTED] actions by yelling at him to get back into his vehicle, however, [REDACTED] instead, turned towards their police car. Officer Mulligan related as [REDACTED] did this, he observed [REDACTED] hands in his waistband. Officer Mulligan was able to see the top of [REDACTED] left hand however; his right hand was still covered inside his waistband area. Officer Mulligan explained he feared [REDACTED] might have a weapon. Officer Mulligan stated he was unable to exit his side of the vehicle because the squad car was too close to [REDACTED] vehicle and [REDACTED] driver's door was also still open, which impeded him from opening his front passenger door without striking it.

Officer Mulligan then drew his service weapon from a seated position as he was leaning back in the front passenger seat, while he put his right leg up attempting to take cover. He then unintentionally discharged one round which struck the Oldsmobile damaging the front passenger window and passenger outside mirror. Officer Mulligan stated he then exited the squad and immediately secured [REDACTED] as he immediately checked [REDACTED] to see if he had been injured. [REDACTED] responded he was not injured. Officer Mulligan then checked with the other three occupants of the Oldsmobile to see if anyone was injured, who also related they were not injured. Officer Mulligan stated he requested assist units to his location.

Detective Jensen interviewed [REDACTED] at [REDACTED] on December 26, 2015 at approximately 4:00 am. [REDACTED] related, in summary and not verbatim, substantially the same information to Detective Jensen as she related during her interview with IPRA. During her interview with Detective Jensen, [REDACTED] related some additional information. [REDACTED] stated while they were at the stop light, a marked police car pulled up behind them. Additionally, [REDACTED] stated a police vehicle pulled next to their vehicle and everyone put their hands up. [REDACTED] opened his front driver's side door and exited with his hands in the air. [REDACTED] explained the front passenger side window next to her shattered, and the bullet damaged the passenger side view mirror. [REDACTED] was unable to describe the officer's gun but did observe the muzzle flash when the officer fired his weapon.

Detective Healy interviewed Officer McCoy on scene on December 26, 2015 at approximately 4:15 am. Officer McCoy related, in summary and not verbatim, similar information to Detective Healy as he related during his interview with IPRA. During his interview with Detective Healy, Officer McCoy related some additional information.

Officer McCoy stated he pulled alongside the vehicle and lowered the front passenger window. Officer McCoy explained he did this to ask the driver why he proceeded through the first red light. Officer McCoy explained from his vantage point, he was not able to see [REDACTED] hand because they were down. He observed [REDACTED] turn away and then turn back again raising his hands up fast. Officer McCoy stated he observed Officer Mulligan discharge his firearm one time while he was seated inside their squad car. Upon questioning as to whether their squad car video system was functioning at the time of the incident, Officer McCoy related the video system was not functioning, and there was a blank screen. Officer McCoy explained a previous repair ticket (ticket #42712493) had been issued for it.

Detective Francis interviewed [REDACTED] on scene on December 26, 2015 at approximately 4:20 am. [REDACTED] was advised of his Miranda Rights by Detective Francis. After acknowledging he understood his rights, [REDACTED] related, in summary and not verbatim, substantially the same information to Detective Healy as he related during his interview with IPRA. During his interview with Detective Healy, [REDACTED] related some additional information.

[REDACTED] related he had just exited the expressway westbound at Independence Boulevard and was driving to 3912 W. Congress Parkway. [REDACTED] stated he tried to “time” the red light as it changed to green when he exited the expressway at Independence Boulevard, but it was still red when he entered the intersection and he ran the red light. [REDACTED] explained his vehicle was not running well and it sounded as though it was going to die out. [REDACTED] stated he was trying to keep the car running and did not stop for the light because he did not want the car to “die out” in the intersection. [REDACTED] pulled over on the north side of Congress Parkway just west of Independence Boulevard, after he went through the intersection, to see what was wrong with the car. [REDACTED] reached down to pull the hood release, at which time a police Tahoe pulled up alongside the driver’s side of his vehicle. [REDACTED] stated the driver officer leaned over and asked him why he went through the red light. [REDACTED] explained to the officers his car was not running well.

[REDACTED] stated he did not have any guns or weapons in his hands or anything else on his person that might be mistaken for a weapon when he got out of his car. [REDACTED] related he did not make any sudden movements, point anything at the officers, or do anything “stupid” with his hand to make the officers think he had any guns or weapons. That is why he immediately turned around and put his hand on the roof when the officer told him to get back in his car. There were no guns or weapons in the car that he is aware of. [REDACTED] stated the vehicle belongs to an individual by the name of [REDACTED] did not believe anyone in the car had any guns or weapons. He did not observe anyone in the car point anything at the officers, nor did he observe anyone in the car do anything else to make the officers believe they had weapons.

██████████ stated no one got hit, and he does not believe the officer fired his gun intentionally. He explained he does not blame the officer for drawing his gun, because he knows how things are out here, with everyone “gunning” for the police and blaming the police for everything. ██████████ stated the police have a hard job and do not get credit for it. ██████████ related he just wanted “this thing to go away” because he did not want anyone to get into trouble over this. ██████████ added the police have “had his back” on several occasions.

Detective Jensen interviewed ██████████ at ██████████ on December 26, 2015 at approximately 4:39 am. ██████████ related substantially the same information to Detective Jensen as he related during his interview with IPRA.

Detective Healy interviewed ██████████ in the 11th District police station on December 26, 2015 at approximately 6:10 am. ██████████ (██████████ related, in summary and not word for word, she was a passenger in the vehicle being driven by ██████████ and was seated directly behind ██████████ stated ██████████ was seated in the front passenger seat, and ██████████ was seated in the rear seat next to her. After ██████████ pulled over to the curb, ██████████ related she observed officers pull up with their blue lights activated. She related ██████████ was exiting their car. ██████████ explained the officer on the passenger side had his window rolled down and had his foot extended outside of the window. She then heard one gunshot and she saw the officer’s gun. The officer shot while he was still seated in his vehicle. The front passenger window of the Oldsmobile broke after the gunshot.

Detective Francis interviewed ██████████ in the 11th District police station on December 26, 2015 at approximately 6:15 am. ██████████ (██████████ related substantially the same information to Detective Francis as ██████████ related during her interview with IPRA.

Detective Francis interviewed ██████████ in the 11th District police station on December 26, 2015 at approximately 6:40 am. ██████████ related substantially the same information to Detective Francis as ██████████ related during her interview with IPRA.

Detective Healy interviewed ██████████ in the 11th District police station on December 26, 2015 at approximately 6:47 am. ██████████ related substantially the same information to Detective Healy as she related during her interview with IPRA.

Detective Francis interviewed ██████████ in the 11th District police station on December 26, 2015 at approximately 6:25 am. ██████████ related, in summary and not word for word, he was the front seat passenger in the vehicle which was following the Oldsmobile being driven by ██████████ Jr. His girlfriend, ██████████ was driving the vehicle in which he was seated. ██████████ had no additional information to relate to Detective Francis than what had already been related by other people in the car driven by ██████████

Tactical Response Report (TRR)³⁹: Officer Mulligan’s TRR indicates, on December 26, 2015, he was in uniform. ██████████ was an unarmed subject, in an unintentional discharge

³⁹ Att. 8.

incident. The incident took place outdoors with poor artificial lighting conditions, in clear weather conditions. Officer Mulligan's weapon was a semi-automatic pistol: Smith & Wesson Model M&P, 4.25-barrel length, and 9mm caliber. Officer Mulligan drew his weapon, from his strong side; he fired first, with his sights,⁴⁰ from a protective cover described as safari land.⁴¹

The OCIC, Deputy Chief Berscott Ruiz, signed the TRR. Deputy Chief Ruiz concluded, based on preliminary information, the member's actions were in compliance with Department Procedures and Directives. The Deputy Chief's rationale notes, "P.O. Mulligan, Kevin fired his weapon in fear of his life and that of his partners in that as P.O. Mulligan and his partner were about to effect a traffic stop, the traffic violator curbed his vehicle and immediately exited his vehicle. As the police unit pulled up alongside of the curbed vehicle the driver [turned] towards the unit with one hand on his belt and the other hand in his waistband. While still in his vehicle, P.O. Mulligan unholstered and raised his weapon. At this time, P.O. Mulligan['s] weapon was unintentionally discharged. No one was injured due to the discharge."⁴²

Synoptic Report⁴³: Officer Kevin Mulligan submitted to alcohol and drug testing on the early morning of the incident. The results are contained within the Synoptic Report, which indicates that at the time of the Breath Alcohol Content test which was administered at 6:06 am on December 26, 2015, Officer Mulligan's Breath Alcohol Content was of .000. Additionally, the synoptic report indicated a urine specimen was collected from Officer Mulligan at 6:09 am which was observed by Sergeant Jon Utz, Star #1934. The substance abuse panel run on the urine specimen was negative for controlled substances.

Personnel Action Request Chicago Police Department⁴⁴: The report notes Lieutenant Berscott Ruiz's retirement was effective July 1, 2016.

Event Query⁴⁵ The first Event Query records a disturbance, for event #1536001737, at 3810 W. Congress Parkway, called in by Beat 1114R, December 26, 2015, at 03:11:11 and a notification at 03:15:00, which indicates 1135R Shots Fired by Police per 1199. The Event Query notes other notifications made relative to this event number.

Traffic Tickets⁴⁶: ██████ received two traffic citations regarding this December 26, 2015 incident: disobeying a red light and driving on suspended driver's license. Both tickets were nolle prosequi, November 1, 2017.

In-Car Camera (ICC)⁴⁷: The CPD Records Division response notes no ICC video or audio for Beat 1114R, on the date and time of the incident.

⁴⁰ During his interview with IPRA, Officer Mulligan stated this was a mistake.

⁴¹ Safari land is a brand of holster.

⁴² COPA notes the conflicting statements in Deputy Chief Ruiz's report relative to Officer Mulligan's weapon discharge. First stating Officer Mulligan fired the weapon in fear for his life and later indicating the weapon accidentally discharged.

⁴³ Att. 19.

⁴⁴ The Personnel Action Request report is incorporated as Attachment #85.

⁴⁵ Att. 9.

⁴⁶ Atts. 6, 84

⁴⁷ Att. 11.

VI. ANALYSIS

a. Standard of Proof

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 occurred and violated 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 been found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, 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.

b. Analysis of Allegations⁴⁸

Allegation #1: On December 26, 2015, at approximately 3:11 am in the vicinity of 3739 W. Congress Parkway, Officer Mulligan failed to properly handle his weapon causing it to discharge in violation of Rules 10, 11, 2, 3, and 5.

⁴⁸ COPA notes that it identified apparent inconsistencies in the reports and statements of various Department members, most notably Officer Mulligan's and McCoy's descriptions of ██████████'s purported conduct prior to his firearm discharge. For this reason, COPA does not rely on the portions of Officer Mulligan's and McCoy's statements that are not corroborated by independent evidence, except to the extent they provided statements against their own interest, which are inherently reliable. Nonetheless, after a careful review of the available evidence, COPA has determined there is insufficient evidence to allege that Officer Mulligan, Officer McCoy, or any other Department member provided any willful and materially false statements relating to this investigation.

Rule 2 prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department. Rule 3 prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals. Rule 5 prohibits the failure to perform any duty. Rule 10 prohibits the inattention to duty and Rule 11 prohibits the incompetency and inefficiency in the performance of any duty. By failing to properly handle his weapon on December 26, 2015, Officer Mulligan caused it to discharge.

During his interview regarding the night of the incident, Officer Mulligan stated, "...I was in fear of my life to try to unholster my gun, and then basically, at that point I was trying to take it out and then the gun went off..."⁴⁹ This account is corroborated by Officer McCoy's description of his partner's actions that evening. In describing his partner's actions immediately preceding the discharge, Officer McCoy stated, "He put his feet up like against the door as if he was trying to move back from the guys that was the driver. As he was doing that, and the guy was coming towards us, that's when he let out a shot."⁵⁰ When asked by the investigator if he had asked his partner what he was doing, Officer McCoy responded, "No, it was too quick. It happened within seconds. It probably was within five seconds."⁵¹ When asked if he thought his partner raised, aimed, and fired his weapon, Officer McCoy stated, "...he couldn't have aimed it because of the way he went back...I would think as close as that guy was, he would have aimed it, he would have shot him. There's no way he would have missed."⁵²

The rapidly unfolding nature of the interaction between the officers and ██████████ played into the what transpired during those early morning hours, but ultimately, it was Officer Mulligan's own critical errors which caused the discharge.

Officer Mulligan admitted that he did not intend to fire his weapon.⁵³ Because the discharge of his weapon was not intentional, the only reasonable conclusion which can be drawn from these facts is that Officer Mulligan mishandled his weapon. Department members are specifically trained to only have their finger on the trigger when they have made the conscious decision to discharge their firearm (*i.e.* when the use of deadly force is appropriate). A preponderance of the evidence demonstrates that contrary to his training, Officer Mulligan had his finger on the trigger⁵⁴ of his weapon and unintentionally pulled the trigger causing his firearm to discharge. With these actions, Officer Mulligan displayed an inattention to duty and an incompetency and inefficiency in the handling of his weapon which could have resulted in death or serious injury to innocent civilians.⁵⁵

⁴⁹ See Officer Mulligan's Transcript, Attachment #66, p. 55.

⁵⁰ See Officer McCoy's Transcript, Attachment #62, p. 18.

⁵¹ See Officer McCoy's Transcript, Attachment #62, p. 18.

⁵² See Officer McCoy's Transcript, Attachment #62, p. 29-30

⁵³ See Officer Mulligan's Transcript, Attachment #66, pp.11-12 and p. 31-32.

⁵⁴ Officer Mulligan implied his finger was on the trigger. *See* Attachment #66, p. 11. Regardless, there is no other plausible explanation for the gun discharging under the circumstances described by Officer Mulligan. Alternatively, Officer Mulligan handled the firearm in a reckless manner causing it to discharge.

⁵⁵ While it may have been appropriate for Officer Mulligan to unholster his weapon based on ██████████ alleged conduct during the traffic stop, at the moment Officer Mulligan had his finger on the trigger of his gun, Officer Mulligan was clearly not authorized to use deadly force because there did not exist an objectively reasonable imminent threat of death or great bodily harm, nor was Officer Mulligan attempting to apprehend a fleeing felon.

By unintentionally discharging his weapon into an occupied vehicle, Officer Mulligan brought discredit upon himself and the Department. The Department's own Rules and Regulations set forth that "[excellence] in the performance of duty" is a goal of all Department members.⁵⁶ The actions taken by Officer Mulligan fall far short of that mark. While the evidence indicates the firing of his weapon was unintentional, the possibility of the grave consequences which could have resulted because of his mishandling of his firearm cannot be ignored (i.e. causing death or great bodily injury to the occupants of the vehicle who at most violated a minor traffic law and possessed no weapons of any kind).

Allegation #2: On December 26, 2015, at approximately 3:11 am in the vicinity of 3739 W. Congress Parkway, Officer Mulligan failed to notify OEMC of his weapons discharge in violation of Rules 10, 11, 2, 3, and 5.

The applicable Chicago Police Department order is **General Order G03-02-06**,⁵⁷ which sets forth the investigative and reporting procedures to be followed relative to the firearm discharge incidents involving sworn members. Subsection V. (A) states, "Members who unintentionally discharge a firearm...will follow the procedures described in Item X of this directive so long as there were no personal injuries via that firearm." Subsection X. (A) defines an unintentional firearm discharge as the, "unintended accidental firing of a firearm in circumstances which did not occur during a training exercise and do not involve injury via the firearm." In relevant part, Subsection X. (B) sets forth the procedures the officer must follow when unintentionally discharging the firearm:

1. notify OEMC, their immediate supervisor, and the station supervisor in the district of occurrence.
2. complete a TRR, a case report, and any other appropriate report...
3. submit all reports to his or her immediate supervisor for review and approval...

The evidence in this case has clearly established that Officer Mulligan did not call into OEMC to notify them that he had accidentally discharged his firearm.⁵⁸ Officer Mulligan admitted, in his August 11, 2016 interview, that after he checked on the status of [REDACTED] and the front seat passenger immediately after the incident, he did not notify OEMC that he had discharged his weapon.⁵⁹ It was Unit 1199 who notified OEMC that they "have shots fired by the police over here, shots fired over here by the police."⁶⁰ While Subsection X(A) may not specifically set forth the duty of the officer to notify OEMC of the nature of the incident, it does state that OEMC should be notified of the "occurrence." As General Order G03-02-06 deals specifically with the *discharge of a firearm*, it is clear that the occurrence is the firearm discharge. To omit the fact that the officer is calling in a notification regarding the discharge of a firearm is to fundamentally change the manner and way the call is handled by OEMC and others responding to the incident.

⁵⁶ See Rules and Regulations of the Chicago Police Department, III. B.

⁵⁷ This report cites the version of General Order 03-02-06 in effect on the date of the incident.

⁵⁸ See the OEMC Transmissions, attached and incorporated as Attachments #22-25.

⁵⁹ See Officer Mulligan's Transcript Attachment #66, p.40-41.

⁶⁰ See the OEMC Transmissions, attached and incorporated as Attachments #22-25, Event 01737-a-030912 to 041000hrs, timestamp 05:41.

Rule 2 prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department. Rule 3 prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals. Rule 5 prohibits the failure to perform any duty. Rule 6 prohibits any disobedience of an order or directive. By failing to follow the procedures set forth in **General Order G03-02-06** Officer Mulligan violated Rules 2, 3, 5, and 6.

In sum, based on the totality of the facts and circumstances, COPA finds that on December 26, 2015, at approximately 3:11 am, in the vicinity of 3839 W. Congress Parkway, Officer Kevin Mulligan failed to notify OEMC of his weapon discharge in violation of Rules 2, 3, 5, and 6.

Allegation #3: On December 26, 2015, at approximately 3:11 am in the vicinity of 3739 W. Congress Parkway, Officer Mulligan carried, on or about his person, a firearm containing more than one style of prescribed ammunition in violation of General Order U04-02.

Officer Mulligan admitted to the facts contained in Allegation #3. He stated that he previously received a SPAR for this violation.

VII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Kevin Mulligan	<p>1. On December 26, 2015, at approximately 3:11 am in the vicinity of 3739 W. Congress Parkway, you unintentionally discharged your firearm.</p> <p>2. On 26 December 2015, at approximately 3:11 am in the vicinity of 3739 W. Congress Parkway, while on duty, you failed to notify OEMC of your weapon discharge.</p> <p>3. On December 26, 2015, at approximately 3:11 am, in the vicinity of 3739 W. Congress Parkway, while on duty, carried, on or about his person, a firearm containing more than one style of prescribed ammunition in violation of General Order U04-02</p>	<p>1. Sustained / 30-Day Suspension</p> <p>2. Sustained / 30-Day Suspension</p> <p>3. Sustained/ 1-Day Suspension</p>

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

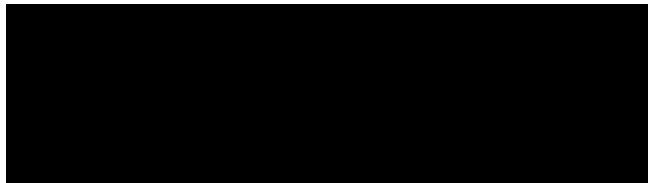
a. Officer Kevin Mulligan

i. Complimentary and Disciplinary History: Officer Mulligan has received numerous awards and commendations, specifically: An Emblem of Recognition, an Attendance Recognition Award, 17 Honorable Mentions, 3 Complimentary Letter and one Life Saving Award. He also has no recorded disciplinary history.

ii. Recommended Penalty, by Allegation

Based upon the facts giving rise to the sustained findings COPA recommends a 30-day suspension for Allegations 1 and a 30-day suspension for Allegations 2. To the extent that Officer Mulligan has not already been discipline, COPA recommends a one-day suspension for Allegations 3.

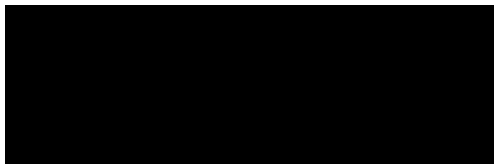
Approved:



4-19-2020

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date



4-19-2020

Sydney R. Roberts
Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Investigator:	Heather Weber
Supervising Investigator:	Andrew Dalkin
Deputy Chief Administrator:	Angela Hearts-Glass