



July 20, 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 #s 2019-0003821 & 1091276, Officer Bernadette Kelly

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 #s 2019-0003821 & 1091276.¹

As set forth in detail in COPA's Summary Reports of Investigation in Log #s 1091276 and 2019-0003821 (SRIs), both dated February 24, 2022, there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation of separation against Officer Bernadette Kelly based on findings in both cases that she violated Department policy by searching a person of opposite gender in violation of Department policy. In addition, during each search, COPA found that Officer Kelly touched, through clothing, the male detainees' sex organs, anus, buttocks, and/or the area of the detainees' body immediately adjacent to their sex organs, anus, and buttocks, without justification.

I. BACKGROUND

A. Relevant Factual Background²

1. Log # 1091276

On October 2, 2018, Officer Kelly and her partner, Officer Gloria Nunez, initiated a traffic stop of [REDACTED] Mr. [REDACTED] refused to exit his car, so the officers requested a supervisor on scene. Sergeant Brown arrived on scene and requested additional assistance. The assisting officers arrived and broke Mr. [REDACTED] driver's side window, and Mr. [REDACTED] exited the car. Once outside of the car, Officer Kelly and assisting male officers escorted Mr. [REDACTED] to the back of his car. Officer Kelly then search Mr. [REDACTED] as four male officers held him or stood close by. Officer Kelly can be seen on BWC behind Mr. [REDACTED] placing her right arm between [REDACTED] legs and reaching upward while conducting a custodial search. Mr. [REDACTED] could be seen on the BWC looking back quickly and can be heard audibly reacting. Mr. [REDACTED] informed COPA that Officer Kelly reached her hand "between [his] butt area ... trying to force her finger in between [his] but cheeks." Mr. [REDACTED] was charged with various traffic offenses and with resisting or obstructing a police officer.

¹ 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.

² A more detailed factual summary can be found in the SRI.

2. Log # 2019-0003821

On September 21, 2019, Officer Kelly and her male partner, Officer Ball, initiated a traffic stop of [REDACTED] and [REDACTED]. Officer Kelly asked the two men to exit the car, but Mr. [REDACTED] requested a supervisor. Two male and one female officer then arrived on scene. Eventually, Mr. [REDACTED] and Mr. [REDACTED] exited the car. Officer Kelly placed Mr. [REDACTED] in handcuffs and patted him down while Officer Ball placed Mr. [REDACTED] in handcuffs and patted him down. Officer Kelly then searched both men, starting with Mr. [REDACTED]. She patted Mr. [REDACTED] around his chest, abdomen, waist, buttocks, and legs, manipulating his pockets, and reaching into his pockets, removing and examining various items. Officer Kelly then grabbed Mr. [REDACTED] waistband on both sides and pulled his pants up high around his waist. She directed Mr. [REDACTED] to spread his legs wider and used her foot to move his feet further apart. From behind, Officer Kelly used both hands to grab and manipulate Mr. [REDACTED] genital and groin area, his thighs, and lower legs during the pat down. Officer Kelly then searched Mr. [REDACTED] in the same manner. As Officer Kelly conducted the searches, three male officers stood nearby. Mr. [REDACTED] filed a complaint with COPA alleging that Officer Kelly grabbed his genitals during the search. Following a search of their persons and car, Mr. [REDACTED] and Mr. [REDACTED] were released without charging. Neither man received an investigatory stop receipt (ISR).

B. Disputed Findings and Recommendations

As the Superintendent states in the enclosed letter, he concurs with COPA's sustained findings, but he disagrees with COPA's recommended penalty of separation.

C. Applicable Department Policy

1. Protective Pat Downs

Special Order S04-13-09 provides that protective pat downs "will be conducted by a member who is the same gender as the person that is the subject of the Investigatory Stop. If a member of the same gender is not immediately available, officer and public safety is compromised, and it is imperative that an immediate search be conducted, members will not endanger themselves or the public to comply with this requirement. Members will exercise caution when patting down outer garments of persons of the opposite sex."³

2. Custodial Searches

General Order G06-01-02 provides that "[c]ustodial searches will be conducted by a member who is the same gender as the arrestee; however, if a member of the same gender is not immediately available and officer or citizen safety is compromised absent an immediate search, members will not endanger themselves or the public to comply with this requirement."⁴

II. ANALYSIS

A. Officer Kelly's pattern of searching male persons in the presence of male officers justifies her separation from the Department.

Time and again, Officer Kelly has shown a complete disregard for Department rules governing custodial searches and pat downs of individuals of the opposite gender. Specifically, in addition to these two cases, COPA has identified at least four additional cases in which Officer Kelly is alleged to have improperly searched a person of the opposite gender although a male officer was present on scene. Several of these cases involve allegations of unlawful strip searches and/or inappropriate touching of the complainant's

³ S04-13-09.VI.A

⁴ G06-01-02

genital area.⁵ Following the discovery of these additional allegations, COPA notified the Superintendent and requested that Officer Kelly be reassigned from Unit 189, Narcotics and Vice Division to desk duty pending the outcome of COPA's investigations into her misconduct.⁶ Despite COPA repeatedly raising concerns regarding Officer Kelly's pattern of misconduct, the Superintendent maintains that a 60-day suspension⁷ is an appropriate penalty.

Specifically, the Superintendent argues for a lower penalty because he believes that Officer Kelly's misconduct in these two cases was unintentional, where she erroneously believed that it was her responsibility as the arresting officer to conduct pat downs of male individuals for officer safety.⁸ This explanation is belied by the evidence. Officer Kelly has been a police officer with the Chicago Police Department since October of 2011. Custodial searches and pat downs of persons of opposite gender have been prohibited unless exigent circumstances exist since at least January 1, 2016.⁹ As a Chicago Police Officer, Kelly is required to comply with the rules and directives of the Department. Nevertheless, Officer Kelly has repeatedly flouted these rules. Namely, in the span of less than five years, Officer Kelly has had at least six different complaints lodged against her for similar misconduct. Her actions have caused visible distress, humiliation, and pain to the men she has "searched" without any exigent circumstances requiring her, a female officer, to search them. Moreover, the similarity between the allegations against her show that Officer Kelly's misconduct stemmed not from a misunderstanding of the rules, but from her abuse of power.

Additionally, the Superintendent believes that Officer Kelly's disregard of the rules is mitigated by the fact that she was formerly partnered with another female officer, during which time she performed pat downs of male individuals as no male officer was immediately available.¹⁰ This explanation neither mitigates nor justifies Officer Kelly's misconduct in the two cases presently pending before the Police Board, or in the remaining cases pending against her. In at least six cases, including the two pending before the Police Board, male officers were present on scene and could have performed pat downs or custodial searches of male detainees. Instead, Officer Kelly took it upon herself to perform highly intrusive searches, including grabbing and manipulating the men's genital and groin areas.¹¹ Officer Kelly's actions violated the Department's rules and directives and constituted a gross breach of public trust that citizens will not be exposed to indignity or abuse at the hands of Chicago Police Officers. For these reasons, COPA recommends that Officer Kelly be separated from the Chicago Police Department.

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⁵ COPA will provide the additional log numbers to the independent member of the Police Board upon request.

⁶ Letter from COPA Chief Administrator to CPD Superintendent, Request for Officer Reassignment (September 28, 2021). iCLEAR's Watch Information shows that although Officer Kelly remains assigned to Unit 189 – Narcotics Division, her assignment type is listed as "Support."

⁷ The Superintendent analogizes Officer Kelly's cases to Log # 2019-0004971, in which COPA sustained an allegation that Officer Cappello, a male officer, conducted an improper search by placing his hands inside of a female juvenile arrestee's pants and touched her pubic hair without justification. COPA recommended a 30-day suspension for Officer Cappello. While the incident involving Officer Cappello is extremely troubling, unlike the incidents involving Officer Kelly, it appears to be isolated.

⁸ Superintendent's Concurrence as to Findings and Non-Concurrence as to Penalty, at p. 1 (May 23, 2022)

⁹ G06-01-02 (eff. Jan 1, 2016)

¹⁰ Superintendent's Concurrence as to Findings and Non-Concurrence as to Penalty, at p. 1 (May 23, 2022)

¹¹ Officer Kelly admitted to touching, through clothes, parts of Mr. ██████████ sex organs, his anus, or his buttocks, unnecessary steps that made the search more intrusive.

III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet his affirmative burden of showing COPA's penalty recommendations in these cases 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 penalty of separation for Officer Kelly.

Respectfully,



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability