



Brandon Johnson
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Fred L. Waller
Interim Superintendent

June 15, 2023

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

Re: Superintendent's Partial Non-Concurrence with Findings and
Non-Concurrence with Penalty Recommendations
Complaint Log No. 2021-0003840

Dear Chief Administrator Kersten:

After a careful review of the above referenced complaint log number, the Chicago Police Department (Department) does not concur with one of the recommended findings in the above referenced complaint log file nor with the recommended penalty involving Field Training Officer (FTO) Agustin Torres Jr., # 13901.

The COPA investigation recommended a penalty of a 20-day suspension for FTO Agustin Torres Jr after concluding that he:

1. Threatened to arrest a citizen unless the citizen provided his identification;
2. Failed to provide the citizen a completed Investigatory Stop Receipt.

Allegation 1:

The Department concurs with this finding as the burden of proof has been met. However, it is the Department's opinion that FTO Torres' explanation does well to mitigate the discipline to be imposed. First, FTO Torres denied threatening to arrest the citizen and the Department believes it is reasonable for him to believe that he was not threatening the citizen. FTO Torres should have done a better job in explaining to the citizen the reason for the stop and the elements of the citizen's conduct that gave FTO Torres justification for an arrest. FTO Torres' request for identification was part of the investigative stop and not a basis of any potential arrest. Specifically, he states "give me your ID or you're going to jail for yelling out obscenities in the street." Attachment #10 at 2:52. If the purpose of discipline is to correct errant behavior and modify future conduct, then the Department believes this can be accomplished with a 5- day suspension.

Allegation 2:

The Department does not concur with this finding. The Summary Report quotes the language of the

directive correctly: "Upon the completion of an Investigatory Stop that involves a Protective Pat Down or any other search, sworn members are required to provide the subject of the stop a completed Investigatory Stop Receipt." Summary Report at page 8 citing S04-13-09-VII-A-3. The Summary Report then goes on to state that "Although FTO Torres Jr did not conduct a Protective Pat Down of [REDACTED] he did conduct a computer search for information about him, which meant FTO Torres Jr was bound by the Special Order." Id. at page 8.

The Department does not agree that a computer name check inquiry is covered by this directive. The directive discusses Investigatory Stops and the use of Protective Pat Downs and then proceeds to the Plain Touch Doctrine. This discussion concerns actual physical contact/searches of a person or their property. The Investigatory Stop Report, CPD-11-910 (Rev 7/17) specifically asks:

1. Was a search beyond a protective pat down conducted of the person?
2. Was a search beyond a protective pat down conducted of his/her effects?
3. Was contraband found as a result of the search?

The use of a Department database to obtain information based on a person's name is not considered nor called a search by the Department. The Department directive concerning the procedure for traffic offenses, is named "Traffic Violators, Names Checks, and Bonding" and states that: "the arresting officer will remain with the traffic violator until.... The result of the TVB name-check is received." S04-14-05-II-D-1.

Additionally, the Department directive "Processing persons Under Department Control" states that an arresting officer will be responsible for: "ensuring an arrestee is not charged until a name check has been completed." S06-01-II-A-4.

Because the directive regarding the Investigatory Stop System does not apply to computer name check inquiries, the Department recommends that this allegation be exonerated. The Department looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii).

Sincerely,

[REDACTED]
Fred L. Waller
Interim Superintendent
Chicago Police Department