



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 #2022-0001827

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 (CPD) in Log # 2022-0001827.<sup>1</sup>

As set forth in detail in COPA's Final Summary Report (FSR) dated January 18, 2024, there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation that Police Officer Reynol Cuellar De La Cruz, Star #7661 (Officer Cuellar De La Cruz), receive a 15-day suspension and retraining regarding CPD's search policies based on sustained findings that he 1) touched [REDACTED] genitals over his clothing, and 2) unbuckled [REDACTED] belt. Additionally, there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation that Police officer Virginia Dominguez, Star #8383 (Officer Dominguez), receive a 2-day suspension and retraining regarding CPD Special Order S04-13-09 based on a sustained finding that she searched a male subject as a female officer when male officers were available on scene to perform the search.

## I. BACKGROUND

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

On May 4, 2022, Officer Cuellar De La Cruz, while viewing POD footage at the 2<sup>nd</sup> District Station, observed [REDACTED] ([REDACTED]) holding money in his hand and completing two hand-to-hand exchanges with other individuals on the sidewalk on 35th Street.<sup>3</sup> Officer Cuellar De La Cruz and his partner, Officer Dominguez, immediately drove to 238 East 35th St., where they conducted a street stop of [REDACTED]. Two additional officers arrived as backup to assist: Officer Victor Jurado

<sup>1</sup> As required by the Police Board Rules of Procedure, enclosed are copies of COPA's final summary report, CPD's non-concurrence letter (Non-Concurrence), and the certificate of meeting.

<sup>2</sup> A more detailed factual summary can be found in the FSR.

<sup>3</sup> Att. 5, pg. 2; Att. 11 at 13:10.

(Officer Jurado) and Officer Jovino Navarro (Officer Navarro). As the officers approached ██████ he immediately put his hands up in the air and faced a nearby wall.<sup>4</sup> Upon approach, Officers Cuellar De La Cruz and Dominguez immediately handcuffed ██████<sup>5</sup> As they were doing so, Officer Cuellar De La Cruz asked if ██████ had anything on him that the officers should know about,<sup>6</sup> to which ██████ replied that he had some weed.<sup>7</sup> He additionally revealed to the officers that the marijuana was in his pocket.<sup>8</sup> The officers then commenced a protective pat-down of ██████ (which eventually escalated to a full-blown search of ██████ person), participated in by both Officer Cuellar De La Cruz and Officer Dominguez. This search resulted in the officers obtaining a clear plastic baggie containing smaller bags of a green substance consistent with cannabis,<sup>9</sup> as well as several lighters and more empty plastic baggies.<sup>10</sup>

██████ later alleged to COPA that he was stopped and searched without justification by Officers Cuellar De La Cruz and Dominguez, as well as that Officer Cuellar De La Cruz both unbuckled his belt and touched his genitals over his pants while conducting the search of his person. Upon further review of the evidence, COPA served additional allegations related to Officer Cuellar De La Cruz making two false, misleading, and/or incomplete statements in ██████ Investigatory Stop Report, in which he documented that the pat-down of ██████ and the search of ██████ were both based on consent. COPA additionally served Officer Dominguez with an allegation related to her search of a subject of the opposite gender, in violation of CPD Special Order S04-13-09.

COPA reached sustained findings regarding the allegations that Officer Cuellar De La Cruz unbuckled ██████ belt; that he touched ██████ genitals over his clothing while searching him; and that the ISR he completed inaccurately stated that both the pat-down and search of ██████ were based on consent. Additionally, COPA sustained the allegation that Officer Dominguez searched a male subject as a female officer, when male officers were available to perform the search. The remainder of the allegations were found to be not sustained.

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

The Superintendent disputes COPA's sustained allegations related to both Officer Cuellar De La Cruz and Officer Dominguez. Specifically, CPD dissents with COPA's sustained findings that Officer Cuellar De La Cruz unbuckled ██████ belt; that Officer Cuellar De La Cruz touched ██████ genitals over his clothing while searching him; and lastly, that Officer Dominguez improperly searched a male subject as a female officer, when other officers of the same gender as the subject were available to perform the search.<sup>11</sup>

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<sup>4</sup> Att. 4 at 2:05.

<sup>5</sup> Att. 4 at 2:15.

<sup>6</sup> Att. 2 at 2:13.

<sup>7</sup> Att. 2 at 2:13. See also Att. 5, pg. 2.

<sup>8</sup> Att. 2 at 2:18.

<sup>9</sup> Att. 4 at 2:30. See also Att. 5, pg. 2.

<sup>10</sup> Att. 4 at 2:36.

<sup>11</sup> The Superintendent concurs with COPA's sustained allegation against Officer Cuellar De La Cruz related to him making one or more false, misleading, and/or incomplete statements when completing his Investigatory Stop Report, when he documented that the pat-down of ██████ was based on consent. Additionally, the Superintendent concurs with COPA's sustained allegation against Officer Cuellar De La Cruz related to him making one or more false, misleading, and/or incomplete statements when completing his Investigatory Stop Report, when he documented that the search of ██████ was based on consent.

## C. Applicable CPD Policy

COPA thoroughly addressed and analyzed the applicable CPD policies at issue in its FSR. The Superintendent bears the burden of overcoming the Chief Administrator's recommendation for discipline when he disagrees with that recommendation.<sup>12</sup> To prevail, the Superintendent must establish that his recommended disposition of the case is more reasonable than COPA's "based on the nature of the misconduct alleged and the information contained in the Request for Review file."<sup>13</sup>

### II. ARGUMENT

#### A. Officer Reynol Cuellar De La Cruz

- i. **Allegation #3 is properly sustained because Officer Cuellar De La Cruz can be seen on body-worn camera reaching in between [REDACTED] legs and manipulating [REDACTED] genitals over his clothing.**

During Officer Cuellar De La Cruz's search of [REDACTED] he patted down [REDACTED] legs before then reaching and feeling in between [REDACTED] legs.<sup>14</sup> While Officer Cuellar De La Cruz denied to COPA that he made contact with [REDACTED] genitals<sup>15</sup> and explained instead that he merely touched [REDACTED] right and left thighs<sup>16</sup> in order to check for weapons, body-worn camera (BWC) footage refutes this. Specifically, the officer's own BWC footage shows that Officer Cuellar De La Cruz not only made contact with [REDACTED] genitals during the search, but also felt around and manipulated the area.<sup>17</sup> Both BWC recordings<sup>18</sup> and screenshot stills from that footage<sup>19</sup> show Officer Cuellar De La Cruz's right hand up in between [REDACTED] legs, and very clearly not on either of [REDACTED] inner thighs, but instead feeling around and manipulating the area. While the Department does not agree that Officer Cuellar De La Cruz's BWC footage reveals him to be touching [REDACTED] genitals over his clothing during the search, such actions are clearly visible on the recording.

As discussed in COPA's FSR, this search technique not only exceeded the scope of an appropriate search of a detained subject, but it was also intrusive, inappropriate, and unnecessary. Because Department policy recognizes the importance of treating all members of the public with dignity and respect, an inappropriate, unwarranted, or overly invasive search or pat-down, along with any nonessential physical contact with members of the public, is prohibited. There was no justifiable reason for such a search technique, which was not only unnecessary but additionally unprofessional and a violation of [REDACTED] dignity. The Department does not offer an explanation for their disagreement with this sustained finding; instead, they merely point to Officer Cuellar De

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<sup>12</sup> Chicago Mun. Code § 2-78-130 (a)(iii); Rules of Procedure, City of Chicago Police Board (VI) (February 18, 2021).

<sup>13</sup> Rules of Procedure, City of Chicago Police Board (VI) (E) (February 18, 2021).

<sup>14</sup> Att. 2 at 2:23. See also Atts. 14 and 15.

<sup>15</sup> Att. 11 at 25:10.

<sup>16</sup> Att. 11 at 25:10.

<sup>17</sup> Att. 2 at 2:23. See also Atts. 14 and 15, which are still screenshots from BWC footage.

<sup>18</sup> Att. 2 at 2:23.

<sup>19</sup> Atts. 14 and 15.

La Cruz's denial and that they believe him to be credible. Regardless, BWC footage clearly depicts Officer Cuellar De La Cruz reaching in between [REDACTED] legs and unnecessarily manipulating the area. Conclusively, COPA believes its burden of a preponderance of the evidence has been met, and that it is more likely than not that Officer Cuellar De La Cruz touched [REDACTED] genitals over his clothing while searching him based on the photographic and video evidence available.

**ii. Allegation #4 is properly sustained because it is visible on BWC that Officer Cuellar De La Cruz unbuckled [REDACTED] belt.**

BWC footage also shows Officer Cuellar De La Cruz holding onto [REDACTED] partially unbuckled belt<sup>20</sup> and putting his hands in and around [REDACTED] waistband to shake [REDACTED] pants<sup>21</sup> during the search. Similar to the previous allegation, Officer Cuellar De La Cruz denied unbuckling [REDACTED] belt at any point during the search,<sup>22</sup> instead explaining that he merely grabbed [REDACTED] belt and shook it to see if something would fall out.<sup>23</sup> However, the BWC footage shows Officer Cuellar De La Cruz holding [REDACTED] belt with it partially open,<sup>24</sup> and therefore not just "shaking it out."

While the Department disagrees that Officer Cuellar De La Cruz unbuckled [REDACTED] belt, it is important to note that at the beginning of [REDACTED] encounter with Officer Cuellar De La Cruz, the belt was fully fastened and within the belt loops of his pants. Further, at no point did [REDACTED] unbuckle his belt himself. Similar to the previous allegation, the Department does not offer an explanation for their dissent with this finding other than pointing to Officer Cuellar De La Cruz's denial of the allegation and that they believe him to be credible, regardless of the BWC footage that shows [REDACTED] fastened belt go from buckled to undone following the officer's hands on him. It is for all of the above reasons that COPA believes it has met its burden, and that it is more likely than not that Officer Cuellar De La Cruz unbuckled [REDACTED] belt based on the photographic and video evidence available.

**B. Officer Virginia Dominguez**

**i. Allegation #3 is properly sustained because reaching inside a subject's clothes or pockets constitutes a search under the 4<sup>th</sup> Amendment, and as a female officer, Officer Dominguez should not have conducted a search of [REDACTED]**

Regarding Officer Dominguez's role in the search of [REDACTED] she participated by manipulating [REDACTED] right jacket pocket before then reaching inside, and then did the same thing for the front pocket of his sweatshirt.<sup>25</sup> From [REDACTED] pockets, Officer Dominguez retrieved a clear plastic baggie filled with smaller bags containing a green substance.<sup>26</sup> She additionally conducted a pat

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<sup>20</sup> Att. 2 at 3:26. See also Att. 4 at 3:36. See also Atts 16 and 17.

<sup>21</sup> Att. 2 at 4:47. See also Atts. 18-20.

<sup>22</sup> Att. 11 at 20:43.

<sup>23</sup> Att. 11 at 20:43.

<sup>24</sup> Att. 2 at 3:26 and Att. 4 at 3:36. See also Atts 16-17.

<sup>25</sup> Att. 4 at 2:24.

<sup>26</sup> Att. 4 at 2:30 and Att. 5, pg. 2.

down of [REDACTED] right leg before then reaching into his right pant pocket and left jacket pocket, retrieving several lighters and more empty plastic baggies.<sup>27</sup>

It is important to note that it was not Officer Dominguez's actions in searching [REDACTED] that were unjustified (see Allegation #2); it was her search of [REDACTED] as an officer of the opposite gender that constituted misconduct. While the Department believes that the allegation regarding Officer Dominguez's participation in the search as a female officer searching a male subject should not be sustained because her actions did not constitute a search, that contention is incorrect. It has been widely held following the Supreme Court's ruling in *Terry v. Ohio* that any continued exploration of an individual's pocket after a police officer concludes no weapon is inside exceeds the permitted scope of a *Terry* pat-down, at that point becoming a general exploratory search.<sup>28</sup> Additionally, Officer Dominguez admitted the allegation to COPA, acknowledging that she conducted a search of [REDACTED] as a female officer; however, she claimed she did so for officer safety.<sup>29</sup> She further described her actions as "a search" throughout her statement.<sup>30</sup>

As discussed in depth in COPA's FSR, S04-013-09 specifically states that searches and protective pat downs must be "conducted by a member who is the same gender as the person that is the subject of the investigatory stop;"<sup>31</sup> however, "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."<sup>32</sup> Again, while Officer Dominguez attempted to justify her participation in the search of [REDACTED] as being related to officer safety, none of the mitigating circumstances delineated by CPD policy were present during this interaction with [REDACTED] to excuse a female officer conducting a search of a male subject. First, there were three male officers present at the scene of this incident that were readily available to search [REDACTED] including Officer Cuellar De La Cruz, who had simultaneously commenced his own search of [REDACTED]. This further negated the need for Officer Dominguez to conduct a search of [REDACTED]. Further, [REDACTED] was immediately handcuffed by the officers at the beginning of their interaction, refuting Officer Dominguez's claim that her search of a male subject was necessary for officer safety. There were also no circumstances related to [REDACTED] stop that Officer Dominguez offered that would give rise to reasonable suspicion that [REDACTED] was armed and/or dangerous, further disproving Officer Dominguez's explanation of her search being related to officer safety. Thus, Officer Dominguez's actions not only constituted an exploratory search for evidence, they were prohibited by S04-13-09. It is for all of the above reasons that COPA believes it has met its burden of a preponderance of the evidence, and that it is more likely than not that Officer Dominguez's actions not only constituted a search under the 4<sup>th</sup> Amendment, it was unjustified under CPD policy.

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<sup>27</sup> Att. 4 at 2:36.

<sup>28</sup> See *People v. Trisby*, 2013 IL App (1st) 112552, ¶ 12; see also *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993); see also *People v. Creagh*, 214 Ill. App. 3d 744, 747 (1991).

<sup>29</sup> Att. 12 at 6:25.

<sup>30</sup> Att. 12 at 13:50.

<sup>31</sup> S04-013-09(VI)(A)(2).

<sup>32</sup> S04-013-09(VI)(A)(2).

### III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet his affirmative burden of showing COPA's recommendations in this case are unreasonable. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent's non-concurrence in this matter and accept COPA's findings and recommendations.

Respectfully,

A handwritten signature in blue ink, appearing to read "LaKenya White". The signature is fluid and cursive, with a large initial "L" and "W".

LaKenya White  
Chief Administrator  
Civilian Office of Police Accountability