



INTRODUCTION

Pursuant to § 18-11 of the Charter of the City of Rochester, and in the interest of public accountability, the Police Accountability Board has made the following investigative report public. It has been redacted so as not to disclose the identities of the officers and civilians involved.

Pursuant to *Rochester Police Locust Club, Inc. v. City of Rochester*, 41 N.Y.3d 156 (2023), Rochester Police Officers can only be disciplined by the Rochester Police Department. Accordingly, where a finding of police misconduct has been sustained by the Board, the PAB issues disciplinary recommendations to the Chief based on our Disciplinary Matrix.

The final Board decision as to the PAB determination of misconduct and recommended discipline are followed by the investigatory report prepared by PAB staff.

BOARD DECISION

Public Tracking Number (PTN): 2022-0009

Date of Panel Review: 16-Jan-2025 5:30 PM (EST)

Board Members Present: [REDACTED] [REDACTED] [REDACTED]

Case Findings:

Allegations 1 and 2: Not Sustained

Allegations 3,4,5,6: Sustained

Disciplinary Recommendation:

Officer 1: Training memos regarding the body worn camera policy and report writing.

Officer 2: Training memos regarding the body worn camera policy and report writing .

Dissenting Opinion/Comment: N/A.



DEFINITIONS

Exonerated: A finding at the conclusion of an investigation that either the alleged act did not occur, or that although the act at issue occurred, the subject officer's actions were lawful and proper and within the scope of the subject officer's authority under police department guidelines.

Not Sustained: A finding at the conclusion of an investigation that there is insufficient evidence to establish whether an act of misconduct occurred.

Sustained: A finding at the conclusion of an investigation by a preponderance of the evidence that the subject officer committed the act charged in the allegation and that it amounted to misconduct.

Closed: Vote to close the case.



Allegation # 1:

Officer 1 entered the address of [REDACTED] Cottage Street on June 8, 2022 and June 10, 2022 without warrant while the tenant was not present which violates RPD General Order #415 and U.S. Constitution Amendment 4.

- **Does the Board Agree with the Findings of Fact? Yes**
 - **Does the Board Agree with the Substantiated Evidence of Misconduct? N/A**
 - **Does the Board Agree with the Proposed Disciplinary Action? N/A**
-

Allegation # 2:

Officer 2 entered the address of [REDACTED] Cottage Street on June 8, 2022 and June 10, 2022 without warrant while the tenant was not present which violates RPD General Order #415 and U.S. Constitution Amendment 4.

- **Does the Board Agree with the Findings of Fact? Yes**
 - **Does the Board Agree with the Substantiated Evidence of Misconduct? N/A**
 - **Does the Board Agree with the Proposed Disciplinary Action? N/A**
-

Allegation # 3:

Officer 1 neglected to activate their Body Worn Camera while responding to the call on June 8, 2022 and June 10, 2022, which violates the Body Worn Camera Manual.

- **Does the Board Agree with the Findings of Fact? Yes**
 - **Does the Board Agree with the Substantiated Evidence of Misconduct? Yes**
 - **Does the Board Agree with the Proposed Disciplinary Action? No - Board only recommends training**
-

Allegation # 4:

Officer 2 neglected to activate their Body Worn Camera while responding to the call on June 8, 2022 and June 10, 2022, which violates the Body Worn Camera Manual.

- **Does the Board Agree with the Findings of Fact? Yes**
- **Does the Board Agree with the Substantiated Evidence of Misconduct? Yes**
- **Does the Board Agree with the Proposed Disciplinary Action? No - Board only recommends training**



Allegation # 5:

Officer 1 failed to create an Incident Report to document the events of June 8, 2022 and June 10, 2022, which violates RPD General Order No. 465.

- **Does the Board Agree with the Findings of Fact?** Yes
 - **Does the Board Agree with the Substantiated Evidence of Misconduct?** Yes
 - **Does the Board Agree with the Proposed Disciplinary Action?** No - Board only recommends training
-

Allegation # 6:

Officer 2 failed to create an Incident Report to document the events of June 8, 2022 and June 10, 2022, which violates RPD General Order No. 465.

- **Does the Board Agree with the Findings of Fact?** Yes
 - **Does the Board Agree with the Substantiated Evidence of Misconduct?** Yes
 - **Does the Board Agree with the Proposed Disciplinary Action?** No - Board only recommends training
-



City of Rochester
Police Accountability Board
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CLOSING REPORT

STATEMENT OF AUTHORITY

Article XVIII of the Rochester City Charter defines the authority and duties of the Police Accountability Board. Pursuant to § 18-1, “The Police Accountability Board shall be the mechanism to investigate such complaints of police misconduct and to review and assess Rochester Police Department patterns, practices, policies, and procedure...The Police Accountability Board shall provide a nonexclusive alternative to civil litigation.”

EXECUTIVE SUMMARY

The complaint received by the Police Accountability Board on June 20, 2022 alleges that on Friday, June 17, 2022 at an address on Cottage Street, two [REDACTED] Rochester Police Department officers, one [REDACTED] and one [REDACTED] unlawfully entered an apartment, also allowing two maintenance workers into the apartment while the tenant was not present. Neighbors observed the unlawful entry and notified the tenant via phone call. Fifteen minutes after receiving notification, the tenant returned to their apartment where they discovered their door was “kicked in” and damaged. The tenant also discovered the RPD officers and maintenance workers inside the apartment. The tenant requested that the RPD officers and maintenance workers immediately leave the apartment. According to the complaint, RPD officers denied this request and informed the tenant that everyone would leave once the maintenance workers turned the water line back on. However, the complaint states that the tenant was unaware of any such issue and maintains that the water was on and functioning properly, thus requiring no maintenance.

The PAB investigation determined that the alleged incident occurred as part of a landlord-tenant dispute spanning several months in the year of 2022 prompting many 911 calls to the address. A review of 20 audio-recorded phone calls made to 911 between the involved parties in the month of June 2022 revealed two dates that most closely align with the details of the complaint received by PAB. Specifically June 8, 2022 (Event # E2215901841), and June 10, 2022 (Event # E2216101763), both of which were assigned to Officers 1 and 2..

INVOLVED OFFICERS

Officer #	Officer Name	Officer Rank	IBM / Employee #	Date of Appointment	Sex	Race/Ethnicity
Officer 1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Officer 2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

INVOLVED INDIVIDUALS

Designation	Name	Age	Sex	Race/ Ethnicity
Complainant 1	[REDACTED]	41	M	Black
Witness 1	[REDACTED]	33	M	-
Witness 2	[REDACTED]	-	M	-



ALLEGATIONS

1	Officer 1	Officer 1 entered the address of [REDACTED] Cottage Street on June 8, 2022 and June 10, 2022 without warrant while the tenant was not present which violates RPD General Order #415 and U.S. Constitution Amendment 4.
2	Officer 2	Officer 2 entered the address of [REDACTED] Cottage Street on June 8, 2022 and June 10, 2022 without warrant while the tenant was not present which violates RPD General Order #415 and U.S. Constitution Amendment 4.
3	Officer 1	Officer 1 neglected to activate their Body Worn Camera while responding to the call on June 8, 2022 and June 10, 2022, which violates the Body Worn Camera Manual.
4	Officer 2	Officer 2 neglected to activate their Body Worn Camera while responding to the call on June 8, 2022 and June 10, 2022, which violates the Body Worn Camera Manual.
5	Officer 1	Officer 1 failed to create an Incident Report to document the events of June 8, 2022 and June 10, 2022, which violates RPD General Order No. 465.
6	Officer 2	Officer 2 failed to create an Incident Report to document the events of June 8, 2022 and June 10, 2022, which violates RPD General Order No. 465.

INVESTIGATION

PAB sent the first of four Source of Information (“SOI”) requests to RPD in July of 2022 requesting the following:

1. Call Record for service at [REDACTED] Cottage St. on 6/17/2022 (transcript, recording, or report).
2. Names and badge numbers of officers at [REDACTED] Cottage Street on 6/17/2022.
3. Any & all reports for 6/17/2022 at [REDACTED] Cottage St. including but not limited to: Field Information Forms, Investigative Action Reports and RPD 1339s, Incident Reports, Use of Force Forms, Any Addendum Reports.
4. Any and all pictures or video footage of [REDACTED] Cottage St. on 6/17/2022, including but not limited to: BWC and blue light camera.

RPD Liaison to the PAB, Captain Steven Swetman responded via the Shared File Transfer folder on November 18, 2022 stating, “Please be advised that we conducted a search of LERMS on 6/17/2022 at [REDACTED] Cottage Street



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along with a search of IAPRO and C3 Sentinel. There are no incidents that occurred on 6/17/2022 that we can tell based on the search. Also be advised that during a query of that location there were 28 calls at [REDACTED] Cottage Street from 4/6/22 to 7/14/22. We are requesting a copy of the complaint for this case and all other cases so we can attempt to gather further information for your request.”

PAB sent the second SOI request to RPD on 04/13/2023 requesting the following:

1. Transcript for call to service at [REDACTED] Cottage St., Rochester, NY 14611.
2. Audio file of call to service at [REDACTED] Cottage St., Rochester, NY 14611.
3. Job Card(s) related to [REDACTED] and, or the address of [REDACTED] Cottage St., Rochester, NY 14611.
4. Warrant and related documents.
5. Property Damage Reports.
6. Incident Report.
7. Any Interdepartmental Correspondence mentioning [REDACTED] and, or the address of [REDACTED] Cottage St., Rochester, NY 14611.
8. Body Worn Camera footage.
9. Blue Light Camera footage.
10. Drone Camera footage
11. Any and all RPD Detail Reports.
12. Any and all records and evidence related to the incidents.

On 4/17/2023, the following evidence items were provided to PAB via the SFT folder: Event No. E2216101761 Summary, Event No. E2216101763 Summary, Incident Report CR# 2022-00080624, Incident Report CR# 2022-00111228 and Incident Report CR# 2023-00014454. An accompanying response from Cpt. Swetman on 4/17/2023 states, “RPD received this second request on 4-13-23. I have attached the only incident reports I can find in LERMS related to [REDACTED] Cottage St. There was no BWC for these incidents. I attached a job card for what could possibly be the incident this request refers to but was from 6/10/22, not 6/17/22. An FIF is attached and is not to be released to the public or complainant. It contains 1 anonymous reporter and identifying information of such. If there is additional information you obtain and think there could be more information please let me know and I will try searching with whatever else you can provide. Thanks. Captain Swetman 4-17-22.”

Investigator had a phone call with the Tenant on 9/30/22 attempting to gather clarifying information, obtain evidence and identify potential witnesses. An Investigative Case note was created to document the phone call. PAB sent the third SOI request to RPD on 5/20/24 requesting more specific evidence items, which Cpt. Swetman responded to generally on 5/22/24 by stating, “RPD received your request on 5-20-24 at 1027hrs. Please see my responses below. Did a meeting ever occur with ECD where they were going to potentially fulfill



your requests? I do not have access to audio files and #1 should go through ECD sent a few reports back in April 2023. I did find the CAD job card to the one report which I sent today. There does appear to be more calls during the time frame you mentioned and that is voluminous and should be done through ECD for audio. Thanks Captain Swetman 5-22-24”

The third SOI requested the following:

1. Transcripts and audio files of any calls made to ECD regarding the address of [REDACTED] Cottage Street between 04/24/2022-01/02/2023. Cpt. Swetman responded to item #1 stating, “This would be handled by ECD I do not have access to audio files and that is a large time frame and voluminous.”
2. Any warrants executed at the address of [REDACTED] Cottage Street during the month of June 2022. Cpt. Swetman responded to item #2 stating, “I do not see anything in LERMS indicating a warrant was executed.”
3. Officer 1 training and disciplinary records. Cpt. Swetman responded to item #3 stating, “If there are any discipline records they are on the 50A database. Training is 6.5 months at the academy. What records are you specifically seeking?”
4. Officer 2 training and disciplinary records. Cpt. Swetman responded to item #4 stating, “If there are any discipline records they are on the 50A database. Training is 6.5 months at the academy. What records are you specifically seeking?”
5. Identification of all RPD officers that responded to the address of [REDACTED] Cottage Street during the month of June 2022. Cpt. Swetman responded to item #5 stating, “If ECD fulfills request #1 then you will have all this.”
6. BWC footage from all officers that responded to the address of [REDACTED] Cottage Street during the month of June 2022. Cpt. Swetman responded to item #6 stating, “I queried C3 from 5/31/22-7/1/22 and found zero files for [REDACTED] Cottage.”
7. Justification for responding officers not using BWC while reporting to the address of [REDACTED] Cottage Street during the month of June 2022. Cpt. Swetman responded to item #7 stating, “I cannot answer this.”
8. Interdepartmental correspondence, if any, regarding [REDACTED] Cottage Street. Cpt. Swetman responded to item #8 stating, “I do not have a record of anything in IAPRO.” On May 29, 2024, the Emergency Communications Department responded to a PAB request for information by providing 27 audio files with corresponding event cards for service calls at the address of [REDACTED] Cottage Street between 4/25/22-9/7/22. PAB sent the fourth and final SOI to RPD on 7/2/24 requesting evidence from RPD based on the specific event cards provided by ECD. PAB communicated the following update with the fourth SOI request: “As you know, the property owner and a tenant respectively placed many 911 calls to assist at the multi-unit address of [REDACTED] Cottage Street in the midst of an extended eviction dispute between 04/25/2022 and 09/07/2022. Those many calls generated several ECD job cards and audio files, which the PAB has recently attained and reviewed providing insight into the issue, which led to this allegation. In review of these job cards, phone calls and previously provided RPD reports, it is unclear which specific officers were directly involved in the alleged unauthorized entry of the residence while the tenant was absent, which is the focus of this PAB investigation. It is also unclear the specific date(s) of occurrence.” Cpt. Swetman responded stating, “RPD received your request on 7-2-24 at



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1528hrs. Your request involved me going through every event number, finding the CR#, and then going into our BWC software and RMS and searching individually by each CR# for the below line items. It yielded the same reports that I sent you on 4-17-23. Three reports total for this location. There is no BWC under any of those CR#'s. Additionally, I cannot explain why there is no BWC but do keep in mind this incident is from 2022 and depending how BWC is tagged, retention times would allow the BWC to be purged. The name of each employee was on the job cards and that is all I can go off of. You have this information. I do not have the ability to obtain any notes that they may have had or took. E2215700022 was not a sergeant and the job card showed it being an officer. Thanks Captain Swetman 7-3-24”

Investigator conducted an interview with the property owner on 8/23/24 who also provided a 32-page document, which chronicled much of the dispute with the tenant and other evidence relevant to the eviction process. The property owner also provided contact information for two of the contractors who were involved in the dispute and present during the incident. On 12/31/24, Investigator conducted an interview with one of the maintenance workers who had multiple interactions with the tenant and was present during the incident.

Evidence	Description
ECD Summary of Events created by [REDACTED], PAB Investigator.	This document is a summary of each event card and audio-recorded 911-call provided to the PAB by ECD. The ECD summary spans the landlord-tenant dispute from April 25, 2022 to September 7, 2022. These files confirm June 8, 2022 and June 10, 2022 as dates of importance regarding the allegations.
Animal Services Report #DOC080624-08062024130930	Created by an Animal Control Officer on April 6, 2022. Animal Control was called to the address of [REDACTED] Cottage Street because to assess the quantity of dogs on the property, the licenses for each dog on the property and the welfare of the dogs. The report reveals that the maximum quantity of dogs allowed at the location is four. The report states, “there are 7 dogs, the backyard is rough. Some living in attic, basement and backyard. Dogs look skinny. See notes.” The Rochester Municipal Code violations listed on the report were for, 31-4 Unleashed dogs, 31-7 Dangerous Dogs, 31-10 Unlicensed, 31-11 Number of Dogs, Other – No live animals at anytime shall be kept in cellar. The report concludes by instructing the tenant/dog owner to correct the issues and ensure that the dogs cannot get into the apartment next door as previously alleged.
Animal Services Report #DOC080624-08062024130721	Created by an Animal Control Officer on May 23, 2022. Animal Control was called to the address of [REDACTED] Cottage Street because to assess the quantity of dogs on the property, the licenses for each dog on the property and the welfare of the dogs. The report reveals that the maximum quantity of dogs allowed at the location is four. The report states, that the tenant/dog owner is still in violation of Rochester Municipal Code concerning licenses and number of dogs at the property. One of the dogs was released to the humane society.
Investigative Case Note 1 written by [REDACTED], PAB Investigator on 9/30/22.	[REDACTED] spoke to [REDACTED] via telephone on 09/30/2022 at 11:04am. [REDACTED] doesn’t know the exact time of occurrence but says the incident happened between 2pm-3pm. [REDACTED] got off work at 2pm that day and began receiving calls around 2:15pm from neighbors informing [REDACTED] that police and other people were inside of his apartment. When [REDACTED] arrived at his apartment, [REDACTED]



Evidence	Description
	<p>discovered that his door was off the hinges and there were two police officers inside the apartment. [REDACTED] has five dogs, two of which were inside the apartment and being contained upstairs by two Animal Control Officers. No warrant was presented to [REDACTED]. There were also three maintenance workers in the basement. [REDACTED] was told that the maintenance workers entered the apartment to fix a water issue. [REDACTED] says that [REDACTED] has not seen the landlord since moving in until recently, and was not given notice that anyone would be entering the apartment prior to 06/17/2022. According to [REDACTED], the landlord is aware of several issues within the apartment, some of which include water leaking through the ceiling, a backed up bath tub and general plumbing issues but did not inform [REDACTED] of any plan to resolve. [REDACTED] stated that [REDACTED] has been living at [REDACTED] Cottage St. since 2017 and there is an ongoing court issue regarding the landlord and his tenancy. The landlord has been trying to evict [REDACTED] for some time but was unable to do so because of the Moratorium on Covid-related Residential and Commercial Evictions which expired in January of 2022. [REDACTED] has still not been able to provide the names and badge numbers of the two officers that entered the apartment. [REDACTED] did say that [REDACTED] regularly sees one of the officers on Brooks Ave. and walking around Genesee St. regularly. [REDACTED] says [REDACTED] may have a card from the officer but does not know where it is. [REDACTED] described this officer as a "big white guy". [REDACTED] went to the public safety building to obtain a copy of two police reports. One report for this specific incident on 6/17/2022 and another for an incident where a locksmith was hired to open his apartment door without notice or his permission on Saturday, June 25, 2022 around 11 pm. [REDACTED] called the police regarding the 6/25/2022 incident and states that they responded. However, no police report exists for the 6/17/22 call or the 6/25/22 call. [REDACTED] contacted 311 regarding the issue and was given a report number, which [REDACTED] will provide.</p>
<p>32-Page Document created by [REDACTED], Landlord and Owner of [REDACTED] Cottage Street. [REDACTED] submitted this document to PAB on 08.23.24.</p>	<p>This document chronicles much of the dispute with the tenant and other evidence relevant to the eviction process. There are several instances of suspected animal abuse, threats of physical violence and using dogs to intimidate, destruction of the property and harassment towards the other tenants at the property via tampering with water access. There are written statements and text message screenshots submitted by other tenants at the property and contractors. Rochester Housing Authority documents which reveal failed inspections at the property, specifically for the neighboring tenant because of this tenant's many pit bulls in the backyard preventing access.</p>
<p>08.23.24 [REDACTED] Interview conducted by PAB Investigators [REDACTED] and [REDACTED].</p>	<p>This interview reveals that issues arose between the tenant and the property owner in March or April of 2020 when the Covid-19 lockdown started. The tenant began harassing neighbors. The house is a duplex, and a tenant in the other apartment left due to not feeling safe. The tenant had at least a dozen pit bulls on the premises with marks on them indicative of dog fighting. The property owner notified the police who state that without video proof of dog fighting, they could not do anything. The property owner captured photos of the conditions that the dogs were kept in, and activities the dogs engaged in which appeared to be fight training. On</p>



Evidence	Description
	<p>one occasion, the property owner sent a contractor to the home to fix something and this tenant allegedly pulled a gun on the contractor. That contractor said they would not return to the property following that incident. Another tenant moved in next door with children. This tenant began shutting off the water to the whole building. The police were called and they warned the tenant not to shut off the water. The property owner admits to not knowing the exact dates of this timeline but generally describes this behavior among other issues as recurring events leading up to June 2022. This tenant continued to shut off the water to the entire building, which denied water access to the tenant in the other apartment. Ultimately, in June of 2022 the police, the property owner and the contractor arrived on scene so that the water could be turned on and a lock could be installed to prevent tenant access to the main water valve and stop the tampering. The property owner states that RPD officers were only there to make sure that everyone was safe. The property owner went on to say that this tenant was a violent person who did not get along with people and destroyed as much of the property as they could before leaving. The property owner was on scene in person at least twice but states that there were many calls to RPD resulting in many officers showing up for various reasons. On one occasion, the property owner asserts that the tenant punched a contractor. Overall, the property owner was disappointed in the response time of RPD, which sometimes would cost them money because the contractors could not complete the work to secure the water access without the protection of RPD. The property owner also believes the tenant should have been arrested but that did not happen. The property owner maintains that RPD was on-scene to deter any violence towards the contractors from the tenant. When asked if the officers ever entered the property, the property owner stated, “No, I believe the only time that they actually entered the apartment - and I'm not one hundred percent sure if they actually entered or just stayed nearby. Just outside the door was when we changed the locks or when we locked off the downstairs and locked off the water meter so that the guy couldn't turn it off any anymore.” When asked if the tenant was present at the time, the property owner stated, “I'm trying to remember if [REDACTED] was present. I'm honestly don't remember if [REDACTED] was present because I wasn't there. This was one of my contractors that went in and locked off the water meter and everything.” When asked to elaborate about their knowledge of the actions taken by RPD, the property owner stated, “Well, they stood outside of the apartment once when I was there and I was trying to tell 'em that, you know, if they could escort me into the property to do a walkthrough of the property to make sure that there were no other dangers, but they wouldn't, they wouldn't walk into the property with me despite having given the tenant 24 hour notice of entry.” The interview concluded with the property owner offering documents related to the dispute with the tenant. The property owner provided names and contact numbers of two of the contractors involved and the investigators thanked the property owner for their time and cooperation.</p>



Evidence	Description
<p>12.31.24 [REDACTED] Interview conducted by PAB Investigators [REDACTED] and [REDACTED].</p>	<p>This interview revealed that there was a dispute between the property owner and a tenant at [REDACTED] Cottage Street. [REDACTED] as the regular maintenance contractor and property manager offered his witness account of what transpired. [REDACTED] stated, "So, as you know, [REDACTED] probably told you guys, I'm the property manager. [REDACTED] lives out in California. I maintain and take care of all of his properties, local stuff, building and codes, yada, yada, yada. It is a duplex; it is a side by side. The main water line from the street into the house goes into [REDACTED] side. If my memory suits me right, this guy continually shut the water off. Out of spite because [REDACTED] was being evicted. [REDACTED] actually shut the water off. And I think at one point I had to go reconnect the other side because when it comes out of the main, it goes two ways. One to [REDACTED], one for [REDACTED], not a big deal, whatever... I called RPD probably two, three times, I can't even remember now. [REDACTED] continually shut the water off. [REDACTED] broke the water line. At one point I had to redo it so that the other side could have water. It was a screaming match a few times, but this particular gentleman, I remember [REDACTED], [REDACTED] was always talking about guns and all this crap. So that's why I didn't even bother talking to [REDACTED]... I remember [REDACTED] said [REDACTED] was gonna beat my head in with a baseball bat one time, but I think RPD told [REDACTED] to let me in there to turn the water back onto the other side. [REDACTED] continually said no, there was a screaming match and next thing I know he's gone and I had to reconnect the water line, turn it back on." When asked about RPD's presence and if they entered the home, [REDACTED] stated, "When the guy finally opened the door I think they did, but there was still somebody at the door and on the front step" When asked if the police entered forcefully, [REDACTED] responded, "They didn't, [REDACTED] opened the door." When asked if the tenant was present while the work to the water line was being done, [REDACTED] stated, "I don't recall. Maybe [REDACTED] was upstairs, but I didn't see [REDACTED]. I don't know where [REDACTED] was. I don't know if they put [REDACTED] in a car, if [REDACTED] left, I don't know." When asked, was RPD in the house with you while you were working? [REDACTED] stated, "I had one officer come downstairs with me. I just needed to make sure my tenant has water. Understood. I told [REDACTED], you know, I don't feel comfortable with this. Just can you stand there while I reconnect it? They just stood there. That was it." [REDACTED] concluded the interview by offering that the work on the water line took about 20 minutes to complete and the tenant trashed the property in many ways while also having many big aggressive dogs. [REDACTED] maintains that proper notice was posted every time work needed to be done and the tenant would not cooperate which is why law enforcement was contacted.</p>
<p>Investigative Note 2 written by [REDACTED], PAB Investigator on 1/9/25.</p>	<p>Investigator attempted to contact the tenant in July of 2024 to follow up regarding contact information for the neighboring witnesses and additional evidence, which they stated they would provide at intake and during the phone call on 9/30/22. Investigator used the phone number provided and it was no longer in service. Investigator emailed the email address on file and received a system generated reply stating that the message cannot be delivered because the mailbox is disabled. Investigator located and used other phone numbers associated with the tenant, all of which did not connect to the tenant or were no longer in service. Investigator had a phone conversation with [REDACTED] on December 27, 2024 in</p>



Evidence	Description
	<p>attempts to schedule a formal interview. [REDACTED] is one of the contractors who works on [REDACTED] property at the address of [REDACTED] Cottage Street. [REDACTED] was on location when RPD responded several times and witnessed the actions taken. While on the phone attempting to schedule a formal interview, [REDACTED] offered the following, “The officers were very professional and tried to do things in a peaceful manner. The tenant refused to turn the water on. I don’t think [REDACTED] has the right to turn the water off, [REDACTED] was given numerous warnings. They (the RPD officers) talked to [REDACTED] peacefully and nice, we had to call them for my safety, and my employee’s safety.” [REDACTED] informed Investigator that [REDACTED] is on the road and out of town often, making it difficult to interview in person. Investigator received approval from acting Director of Investigations to conduct a virtual interview. This interview was scheduled for January 7, 2025 at 10am. [REDACTED] was not available at the time of the interview due to being on the road. Investigator and [REDACTED] agreed to conduct the interview later in the afternoon. [REDACTED] stated that [REDACTED] would reach out once [REDACTED] was in a secure location. At approximately 3pm, Investigator reached out to [REDACTED] to inquire about the status of the interview. [REDACTED] stated that [REDACTED] was still on the road. Investigator informed [REDACTED] that another date and time could be arranged, and inquired about rescheduling. [REDACTED] did not respond and another interview time has not been set up.</p>

APPLICABLE RULES & LAWS

RPD General Order 415

A search is defined as any activity by a government official (including a police officer) that invades any area in which a person has a reasonable expectation of privacy. This includes, but is not limited to, a physical entry into an area, location or item; a visual inspection or surveillance into a private area without an actual physical entry; an auditory interception or overhearing of communications on a communications device, such as a telephone; and viewing data on a computer or similar device. A search deals with a person’s privacy rights and can occur regardless of whether any items are actually seized or taken by the police.

U.S. Constitution Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

RPD Body Worn Camera Manual

IV. RECORDING REQUIREMENTS AND RESTRICTIONS A. Members assigned a BWC will activate it and record all activities, and all contact with persons, in the course of performing police duties as soon as it is safe and practical to do so, as set forth in this Manual.



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1. Members will activate and record with the BWC preferably upon being dispatched and prior to exiting their police vehicle, or prior to commencing any activity if on foot patrol, as set forth below.
 2. Members will immediately activate the BWC when required unless it is not safe and practical, i.e., the member cannot immediately activate the BWC due to an imminent threat to the member's safety, physical resistance, flight, or other factors rendering immediate activation impractical. In such cases, the member will activate the BWC as soon as possible.

RPD General Order 465

The RMS Incident Report (IR) will be used to record investigations of all criminal and non-criminal incidents, including Missing Person investigations, that have occurred within the City of Rochester (COR). Additionally, all out-of-jurisdiction incidents (e.g. property stolen outside the COR but recovered within the COR) will be recorded on an IR.

New York State Tenant's Rights

Landlord's Duty of Repair - Landlords of multiple dwellings must keep the apartments and the building's public areas in "good repair" and clean and free of vermin, garbage, or other offensive material. Landlords are required to maintain electrical, plumbing, sanitary, heating, and ventilating systems, and appliances that the landlord installed (such as refrigerators and stoves) in good and safe working order. All repairs must be made within a reasonable time that may vary depending upon the severity of the repairs.

Individual Locks, Peepholes and Mailboxes - Tenants in multiple dwellings can install and maintain their own locks on their apartment entrance doors in addition to the lock supplied by the landlord. The lock may be no more than three inches in circumference, and tenants must provide their landlord with a duplicate key upon request. Failure to provide the landlord with a duplicate key if requested can be construed as a violation of a substantial obligation of the tenancy and can lead to eviction proceedings.

Hot Water - Landlords must provide all tenants of multiple dwellings with both hot and cold water. Localities can designate temperature.

Right to Privacy - Tenants have the right to privacy within their apartments. A landlord, however, may enter a tenant's apartment with reasonable prior notice, and at a reasonable time, and with the tenant's consent, either to provide routine or agreed upon repairs or services, or in accordance with the lease. If the tenant unreasonably withholds consent, the landlord may seek a court order to permit entry. In an emergency, such as a fire or water leak, the landlord may enter the apartment without the tenant's consent or prior notice.



STANDARD OF PROOF

For the purpose of PAB’s investigations, findings must be made pursuant to a “substantial evidence” standard of proof. City Charter 18-5(I)(10). This standard is met when there is enough relevant and credible evidence in the record as a whole that a reasonable person could support the conclusion made. (See 4 CFR §28.61(d)).

Substantial evidence means more than a mere scintilla but less than a preponderance; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See NLRB v. Int’l Bhd. of Elec. Workers, Local 48, 345 F.3d 1049, 1054 (9th Cir. 2003); De la Fuente II v. FDIC, 332 F.3d 1208, 1220 (9th Cir. 2003). However, for the purposes of this case, the higher standard of by a preponderance of evidence is applied. Merriam Webster defines preponderance of evidences as, “[t]he standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.” This is understood to be a greater than 50% chance that the claim is true. *Wex Dictionary. Legal Information Institute, Cornell Law School*, https://www.law.cornell.edu/wex/preponderance_of_the_evidence.

ANALYSIS

Allegation 1: Officer 1 entered the address of [REDACTED] Cottage Street on June 8, 2022 and June 10, 2022 without warrant while the tenant was not present which violates RPD General Order #415 and U.S. Constitution Amendment 4.

The alleged misconduct likely occurred on June 8, 2022. On June 8, 2022 the preponderance of evidence shows that Officer 1 and Officer E. 2 did not enter the apartment and also did not allow the contractors to enter. This fact is corroborated by the tenant’s 911 call placed that day at 3:24pm. As of the time of this call, [REDACTED] had just returned home from work and was told by multiple neighbors that the property owner was at the home with about 15 people and police officers. [REDACTED] neighbors told [REDACTED] that the people were trying to get into the apartment again but they left disappointed because the cops would not let them enter the house.

The interviews from the property owner and the contractor reveal that the officers did not enter the property without the tenant being present and did not permit the contractors to enter without notice. Officers 1 and Officer E. 2 were at the address on 6/10/22, and may have entered the apartment while the tenant was present to maintain safety. The presence of the RPD officers and Animal Control was necessary given the prior threats and attempts of violence towards the contractors with the additional threat of several big aggressive dogs. Officer statements requests were sent to Officers 1 and . 2 on 7/11/24 requesting an interview or statement regarding the allegations. As of January 10, 2024, there has been no response from either officer.

The allegation that Officer 1 entered the apartment unlawfully is deemed not sustained.

Allegation 2: Officer 2 entered the address of [REDACTED] Cottage Street on June 8, 2022 and June 10, 2022 without warrant while the tenant was not present which violates RPD General Order #415 and U.S. Constitution Amendment 4.



For the reasons outlined in Allegation 1, the evidence does not show by a preponderance that Officer 2 entered the subject premises.

The allegation that Officer 2 entered the apartment unlawfully is deemed not sustained.

Allegation 3: Officer 1 neglected to activate their Body Worn Camera while responding to the call on June 8, 2022 and June 10, 2022, which violates the Body Worn Camera Manual.

Body-Worn camera footage was requested four times throughout the course of the PAB investigation and none was provided. RPD Captain Steven Swetman responded to the second SOI request stating, “There was no BWC for these incidents.” In the third SOI, PAB requested “Justification for responding officers not using BWC while reporting to the address of [REDACTED] Cottage Street during the month of June 2022.” Cpt. Swetman responded by stating, “I cannot answer this.” Officer statements requests were sent to Officers 1 and Officer E. 2 on 7/11/24 requesting an interview or statement regarding the allegations. As of January 10, 2024, there has been no response from either officer. An interview or statement may have provided insight into the decision not to activate the BWC devices when responding on 6/8/22 and 6/10/22.

Without justification for not having any BWC footage, the allegation that Officer 1 neglected to activate their Body Worn Camera while responding to the calls on June 8, 2022 and June 10, 2022, in violation of the Body Worn Camera Manual is Sustained.

Allegation 4: Officer 2 neglected to activate their Body Worn Camera while responding to the call on June 8, 2022 and June 10, 2022, which violates the Body Worn Camera Manual.

Without justification for not having any BWC footage, the allegation that Officer 2 neglected to activate their Body Worn Camera while responding to the calls on June 8, 2022 and June 10, 2022, in violation of the Body Worn Camera Manual is Sustained.

Allegation 5: Officer 1 failed to create an Incident Report to document the events of June 8, 2022 and June 10, 2022, which violates RPD General Order No. 465.

The investigation revealed that Officers 1 and . 2 responded to the address of [REDACTED] Cottage Street on 6/8/22 and 6/10/22. However, there exists only one police report during the month of June 2022, which was not created by either involved officer and precedes the date of incident. The inexplicable lack of an Incident Report which would’ve documented the actions taken by Officers 1 and Officer E. 2 at the address of [REDACTED] Cottage Street on 6/8/22 and 6/10/22 violate RPD General Order 465. Additionally, if these Officers were justified in their actions taken, it is difficult to prove in the absence the report. Officer statements requests were sent to Officer 1 and Officer 2 on 7/11/24 requesting an interview or statement regarding why no report was generated for either date. As of January 10, 2024, there has been no response from either officer.

As a result of a failure to create a report, this allegation that Officer 1 failed to create an Incident Report to document the events of June 8, 2022 and June 10, 2022, which violates RPD General Order No. 465 is Sustained.



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Allegation 6: Officer 2 failed to create an Incident Report to document the events of June 8, 2022 and June 10, 2022, which violates RPD General Order No. 465.

As a result of a failure to create a report, this allegation that Officer 2 failed to create an Incident Report to document the events of June 8, 2022 and June 10, 2022, which violates RPD General Order No. 465 is Sustained.

RECOMMENDED FINDINGS

Allegation #	Officer	Allegation	Finding/Recommendation
1	1	Unlawful Entry (Search)	Not sustained
2	2	Unlawful Entry (Search)	Not sustained
3	1	Violation of BWC Policy	Sustained
4	2	Violation of BWC Policy	Sustained
5	1	Failure to Create a Report	Sustained
6	2	Failure to Create a Report	Sustained

RECOMMENDED DISCIPLINARY ACTION

AUTHORITY

Article XVIII of the Rochester City Charter further requires that the Police Accountability Board create a “written, consistent, progressive and transparent tool or rubric” that “shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior sustained complaints.” This disciplinary matrix is a non-binding set of guidelines for the Police Accountability Board’s own recommendations regarding officer misconduct.

According to the matrix, the disciplinary history of an officer will be considered when assessing an appropriate penalty resulting from the current investigation. Prior discipline changes the presumptive penalties according to the matrix. Mitigating and aggravating factors related to the misconduct may be considered when determining the level of discipline, so long as an explanation is provided.

The Recommended Disciplinary Action based on the above Recommended Findings is as follows:

Officer 1

This is the first time Officer 1 has been the subject of an investigation closed by the PAB.

A review of the Rochester Police Department Discipline Database located on the City of Rochester’s website suggests that Officer 1 has not been the subject of a previous investigation by the RPD Professional Standards Section (PSS).



However, the PAB understands that the database is incomplete.

RPD declined to provide disciplinary records for Officer 1.

Sustained Allegation #3 against Officer 1

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
<p>IV. RECORDING REQUIREMENTS AND RESTRICTIONS A. Members assigned a BWC will activate it and record all activities, and all contact with persons, in the course of performing police duties as soon as it is safe and practical to do so, as set forth in this Manual.</p> <p>1. Members will activate and record with the BWC preferably upon being dispatched and prior to exiting their police vehicle, or prior to commencing any activity if on foot patrol, as set forth below.</p>	<p>3</p>

- **Recommended Level: 1** (“Minimal negative impact to individuals, community, or public perception of the agency with no impact on relations with other agencies”)
- **Recommended Discipline:** Counseling and training regarding the body worn camera policy
- **Explanation of deviation from presumptive level:** This is the first allegation of police misconduct against this officer, and the incident did not involve interaction with a citizen.

Sustained Allegation #5 against Officer 1

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
<p><u>RPD General Order 465</u> The RMS Incident Report (IR) will be used to record investigations of all criminal and non-criminal incidents, including Missing Person investigations, that have occurred within the City of Rochester (COR). Additionally, all out-of-jurisdiction incidents (e.g. property stolen outside the COR but recovered within the COR) will be recorded on an IR.</p>	<p>1</p>

- **Recommended Level: 1** (“Minimal negative impact to individuals, community, or public perception of the agency with no impact on relations with other agencies”)



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- **Recommended Discipline:** Counseling and training regarding the incident report writing requirement

Officer 2

This is the first time Officer 2 has been the subject of an investigation closed by the PAB.

A review of the Rochester Police Department Discipline Database located on the City of Rochester’s website suggests that Officer NAME has not been the subject of a previous investigation by the RPD Professional Standards Section (PSS).

However, the PAB understands that the database is incomplete.

RPD declined to provide disciplinary records for Officer 2.

Sustained Allegation #4 against Officer 2

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
<p>IV. RECORDING REQUIREMENTS AND RESTRICTIONS A. Members assigned a BWC will activate it and record all activities, and all contact with persons, in the course of performing police duties as soon as it is safe and practical to do so, as set forth in this Manual.</p> <p>1. Members will activate and record with the BWC preferably upon being dispatched and prior to exiting their police vehicle, or prior to commencing any activity if on foot patrol, as set forth below.</p>	<p>3</p>

- **Recommended Level: 1** (“Minimal negative impact to individuals, community, or public perception of the agency with no impact on relations with other agencies”)
- **Recommended Discipline:** Counseling and training regarding the body worn camera policy
- **Explanation of deviation from presumptive level:** This is the first allegation of police misconduct against this officer, and the incident did not involve interaction with a citizen.



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Sustained Allegation #6 against Officer 2

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
<p><u>RPD General Order 465</u> The RMS Incident Report (IR) will be used to record investigations of all criminal and non-criminal incidents, including Missing Person investigations, that have occurred within the City of Rochester (COR). Additionally, all out-of-jurisdiction incidents (e.g. property stolen outside the COR but recovered within the COR) will be recorded on an IR.</p>	1

- **Recommended Level: 1** (“Minimal negative impact to individuals, community, or public perception of the agency with no impact on relations with other agencies”)
- **Recommended Discipline:** Counseling and training regarding the incident report writing requirement