



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): 2024-0036

Date of Panel Review: 26-Apr-2024 12:30 PM (EDT)

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

Case Findings: Sustained

Disciplinary Recommendation: The Board recommends a 30 day suspension for allegation 1 and a 10 day suspension for allegation 2. The Board feels that the Officer erred twice as to allegation 1 - He failed to issue any citation, was instructed to go back, and then issued the wrong citation.

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.



Officer Name- Allegation # 1:

Officer [REDACTED] Rules and Regulations 2.1(a) (General Duties): Officer [REDACTED] cited [REDACTED] for an incorrect violation of law.

- **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**
-

Officer Name- Allegation # 2:

Officer [REDACTED] Body Worn Camera Policy (Recording Requirements and Restrictions): Officer [REDACTED] did not activate his body worn camera during his interaction with [REDACTED]

- **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? Yes**



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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 following events took place on February 27, 2024, at approximately 3:30 pm, at or near [REDACTED] 14606.

[REDACTED] was told by [REDACTED] neighbor that [REDACTED] car was hit by [REDACTED]. [REDACTED] observed front end damage to [REDACTED] vehicle and then contacted the Rochester Police Department to make a formal report regarding the damage done to [REDACTED] car.

Officer [REDACTED] then responded to [REDACTED] regarding [REDACTED] call about the accident. [REDACTED] informed Officer [REDACTED] that [REDACTED] wanted [REDACTED] to be held responsible for the damage to [REDACTED] car. Officer [REDACTED] then went and spoke to [REDACTED]. [REDACTED] admitted to hitting [REDACTED] car but stated that [REDACTED] did not report it because there was no damage done. Officer [REDACTED] relayed this information to [REDACTED] and informed [REDACTED] that he would not be citing [REDACTED] for the accident and that it was in his discretion to refrain from doing so.

[REDACTED] reported this interaction to the Police Accountability Board and also to Officer [REDACTED] supervisor. After a complaint was made, Officer [REDACTED] went back and issued a citation to [REDACTED] for backing unsafely. This citation is unsatisfactory to [REDACTED] as [REDACTED] alleges [REDACTED] should instead be cited for leaving the scene of an accident.

INVOLVED OFFICERS

Officer Name	Officer Rank	Badge/Employee #	Date of Appointment	Sex	Race/Ethnicity
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



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INVOLVED INDIVIDUALS

Name	Age	Sex	Race/ Ethnicity
██████████	██	██████	██████████
██████████	██	██████	██████

ALLEGATIONS

1	Officer ██████████	Rules and Regulations 2.1(a) (General Duties): Officer ██████ cited ██████ for an incorrect violation of law.
2	Officer ██████████	Body Worn Camera Policy (Recording Requirements and Restrictions): Officer ██████ did not activate his body worn camera during his interaction with ██████

INVESTIGATION

Reporter ██████████ filed a complaint with the Police Accountability Board on March 5, 2024.

The Police Accountability Board notified the Rochester Police Department of its investigation and requested corresponding documents on March 12, 2024.

The Rochester Police Department responded to the Police Accountability Board's request on March 13, 2024, and provided the Police Accountability Board with two computer aided dispatch reports, two photographs, and eight documents relating to a traffic citation.

The Police Accountability Board conducted an in-person interview of ██████████ on March 14, 2024, during which time ██████████ provided a photograph of ██████ car.

Also on March 14, 2024, the Police Accountability Board requested an officer statement from ██████████ to which the Rochester Police Department did not respond.

The Police Accountability Board conducted an in-person interview of witness ██████████ on March 27, 2024.



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EVIDENCE PROVIDED

Evidence	Description	Provided by	Filename
Intake Report	██████ initial report	██████	i-Sight Case 2024-0036 Details Overview
Information Request	First Source of Information Request to the Rochester Police Department and response	Police Accountability Board	S-SharePoint File Transfer - InitialNotification 2024-0036 RPD response 3-13-24.pdf - All Documents
Information Request Response	Computer aided dispatch reports	Rochester Police Department	S-SharePoint File Transfer - CAD - All Documents
Information Request Response	Photographs	Rochester Police Department	Genetec Clearance Collaborative investigation management
Information Request Response	Traffic citation documents	Rochester Police Department	S-SharePoint File Transfer - Tracs Traffic Ticket - All Documents
Audio Recording	Interview of ██████	Police Accountability Board	ZOOM0001.MP3 (sharepoint.com)*
Photograph	Photograph of ██████ vehicle	██████	PAB Reports - IMG 3419.jpg - All Documents (sharepoint.com)
Audio and Visual Recording	Interview of ██████	Police Accountability Board	IMG 0024.MOV (sharepoint.com)

EVIDENCE DENIED

Evidence	Description	Reason declined
Personnel Records of the Officers involved	Request from the Police Accountability Board to the Rochester Police Department	Personnel records will not be given as the Police Accountability board does not have disciplinary authority.
Body Camera Footage	Request from the Police Accountability Board to the Rochester Police Department	None exists.
Request for Officer Statement	Request from the Police Accountability Board to the Rochester Police Department	A compelled officer statement conflicts with the collective bargaining agreement.

* ██████ interview begins at 4 minutes and 50 seconds. The proceeding time is unrelated banter between ██████ and the interviewers.



APPLICABLE RULES & LAWS

Rochester Police Department Rules and Regulations

2.1 GENERAL DUTIES

- a) Members shall protect life and property, preserve the peace, prevent violations of the law, detect and arrest violators of the law and enforce those laws of the United States, the State of New York, and the local laws and Ordinances of the City of Rochester over which the Department has jurisdiction.
- b) Employees shall perform their duties in a competent manner.

Rochester Police Department Body Worn Camera Policy

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.
 - 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.
- B. Mandatory BWC Recordings. Members assigned a BWC will activate it and record all activities, and contact with persons, in the course of performing or when present at any enforcement activity, or upon direction of a supervisor. There are no exceptions to the requirement to record mandatory events.
 - 1. "Enforcement activities" are:

[†] The body worn camera policy has been condensed for purposes of this document. The entirety of which may be viewed using the following link. [Body Worn Camera \(BWC\) Manual | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#)



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- a. arrests and prisoner transports (including issuance of appearance tickets and mental hygiene arrests);
 - b. pursuits (pursuit driving as defined by G.O. 530, Pursuit Driving, and foot pursuits);
 - i. Members will activate the BWC and record any involvement or assistance with a vehicle or foot pursuit, including direct involvement in the pursuit, deploying a tire deflation device, blocking traffic or taking a traffic point, paralleling, following from a distance, responding to the general area to provide assistance if needed, and responding to and while present at the apprehension/arrest site.
 - c. detentions/stops of persons and vehicles;
 - d. force.
- C. Standard BWC Recordings. Unless a specific exception exists, members assigned a BWC will activate it and record all activities, and contact with persons, in the course of performing police duties. This includes all calls for service and self-initiated police activity unless listed as Optional below.
- D. Optional BWC Recording. Unless a mandatory or standard event arises which must be recorded, members are not required to record the following activities with a BWC, but may do so if the member believes it serves a legitimate law enforcement purpose:
 - 1. While driving or a passenger during routine vehicle patrol.
 - 2. Traffic control and traffic points.
 - 3. Walking beats, directed patrol, corner posts, and special attention checks.
 - 4. Completing reports when no longer in the presence of civilians (e.g., in a police car or in a police facility).
 - 5. Interviewing cooperative victims, witnesses, and persons with knowledge in a private residence or a police facility.
 - 6. Conducting general photo queries, photo arrays, and physical line-ups.
 - 7. While conducting parking enforcement if no civilians are present.
 - 8. Completing security surveys.



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9. Conducting a neighborhood canvass.
10. During community or neighborhood meetings; or meetings of government bodies or agencies.
11. Routine walk-up requests for information or assistance (e.g., giving directions).
12. Civilian transports.

STANDARD OF PROOF

The Police Accountability Board is tasked with determining whether or not sworn Rochester Police Department Officers have committed any actions in violation of department policies, order, or training. In order for a finding of misconduct to be considered sustained, the Police Accountability Board is authorized to use a “substantial evidence” standard of proof. See City of Rochester Charter § 18-5(l)(10).

Substantial evidence “is that which a reasonable mind might accept as adequate to support a conclusion”. NLRB v. Int’l Bhd. of Elec. Workers, Local 48, 345 F.3d 1049, 1054 (9th Cir. 2003). 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).

Even though authorized, the Police Accountability Board of Rochester, New York, utilizes the much higher standard of proof, which is a preponderance of evidence. When utilizing the standard of a preponderance of the evidence “the relevant facts must be shown to be more likely true than not” [true]. United States v. Montano, 250 F.3d 709 (9th Cir. 2001). This is commonly understood to mean that there is at least a 51% chance that the allegations made are in fact true.

ANALYSIS

The following findings are made based on the above standards:

Allegation 1: Officer [REDACTED] cited [REDACTED] for an incorrect violation of law.

The Rochester Police Department’s Rules and Regulations 2.1(a) states that Officers shall detect violators of the law and enforce those laws of the State of New York.

The New York State Vehicle and Traffic Laws are among those that Rochester Police Department Officers are charged with enforcing. Section 600(1) of the New York State Vehicle and Traffic Law states that any motor vehicle operator who has knowingly caused property damage to another must report it to the nearest police station when the owner is not present. Violation of this law is considered a traffic infraction and is punishable by a fine up to \$250 and jail time up to fifteen days. N.Y. Veh. & Traf. Law § 600 (McKinney).



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Officer [REDACTED] responded to the home of [REDACTED] on February 27, 2024, following a complaint that [REDACTED] car had been hit by [REDACTED]. [REDACTED] alleges that [REDACTED] car was damaged as a result of the collision. The damage to [REDACTED] car was also confirmed by [REDACTED] as well as photographic evidence. [REDACTED] has also stated, during her Police Accountability Board interview, that [REDACTED] revisited the scene of the accident and visually inspected [REDACTED]. [REDACTED] did not report the accident to law enforcement nor did she attempt to make communication with her neighbor [REDACTED].

Because [REDACTED] caused damage to [REDACTED] vehicle, took notice of the damage, by visual inspection, and failed to report it, [REDACTED] should have been cited under Section 600 (1) of the New York State Vehicle and Traffic Law for leaving scene of an incident without reporting. Instead, Officer [REDACTED] cited [REDACTED] under Section 1211(a) of the New York State Vehicle and Traffic Law- limitations on backing, which states that "the driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic". This law does not apply as [REDACTED] did back [REDACTED] vehicle without interfering with traffic as the vehicle that [REDACTED] hit was stationary. Officer [REDACTED] cited [REDACTED] for an incorrect violation of law.

Allegation 1 against Officer [REDACTED] is sustained.

Allegation 2: Officer [REDACTED] did not activate his body worn camera during his interaction with [REDACTED].

The Rochester Police Department's Body Worn Camera Policy states that Officers are to activate their body worn camera and record all activities and all contact with persons unless an enumerated exception applies. Some exceptions which may override the necessity of standard body camera recording are: during routine traffic patrols, when completing reports and outside of the presence of civilians, and when interviewing cooperative victims in a private residence or police facility.

The entirety of Officer [REDACTED] and [REDACTED] interaction occurred outside near the front of [REDACTED]. After a thorough search of the Rochester Police Department's database, there is no video evidence of the interaction between Officer [REDACTED] and [REDACTED]. Officer [REDACTED] did not activate his body worn camera during this interaction. Due to the location of the interaction, no RPD exception applies and the interaction between Officer [REDACTED] and [REDACTED] should have been captured on his body worn camera. Officer [REDACTED] did not activate his body worn camera and therefore violated policy.

Allegation 2 against Officer [REDACTED] is sustained.

RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	Officer [REDACTED]	Rules and Regulations 2.1(a) (General Duties): Officer [REDACTED] cited	Sustained



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#	Officer	Allegation	Finding/Recommendation
		██████████ for an incorrect violation of law.	
2	Officer ██████████	Body Worn Camera Policy (Recording Requirements and Restrictions): Officer ████████ did not activate his body worn camera during his interaction with ██████████	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:

Sustained Allegation 1 against Officer ██████████

Disciplinary Matrix Appendix

Misconduct	Level
Rules and Regulations 2.1(a): Members shall protect life and property, preserve the peace, prevent violations of the law, detect and arrest violators of the law and enforce those laws of the United States, the State of New York, and the local laws and Ordinances of the City of Rochester over which the Department has jurisdiction.	3

- Recommended Level: 2 (“Pronounced negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 prior sustained violations): **10 day suspension**
- Explanation of deviation from presumptive penalty: No deviation.



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Sustained Allegation 2 against Officer [REDACTED]

Disciplinary Matrix Appendix

Misconduct	Level
Body Worn Camera Policy: Officers shall activate their body worn camera and record all activities and all contact with persons unless an enumerated exception applies.	3

- Recommended Level: 3 ("Pronounced negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.")
- Recommended Discipline (based on 0 prior sustained violations): **10 day suspension**
- Explanation of deviation from presumptive penalty: No deviation.