



## 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.

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## BOARD DECISION

**Public Tracking Number (PTN):** 2024-0055

**Date of Panel Review:** 24-Oct-2024 5:30 PM (EDT)

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

**Case Findings:**

Allegation 1: Not sustained.

Allegation 2: Sustained

**Disciplinary Recommendation:** Officer [REDACTED] [REDACTED] 30-day suspension

**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:

Rules and Regulations 4.2 (Courtesy): Unknown Officers were discourteous in their interaction with [REDACTED]

- 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
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## Allegation # 2:

Body Worn Camera Policy (Recording Requirements and Restrictions): Officer [REDACTED] did not activate [REDACTED] body worn camera during [REDACTED] interaction with [REDACTED], nor did [REDACTED] activate [REDACTED] body worn camera during the search of [REDACTED] vehicle.

- 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

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### STATEMENT OF AUTHORITY

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**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.”**

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### EXECUTIVE SUMMARY

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The following events took place on April 9, 2024, at approximately 4:00 am, at or near Taylor Street, Rochester, New York, 14611.

On the above mentioned date and time, reporter, [REDACTED] and a [REDACTED] passenger were driving in the area of State Street while making a food delivery [REDACTED]. Before they reached their destination, [REDACTED] noticed a State Trooper attempting to pull [REDACTED] over. [REDACTED] pulled [REDACTED] car over and stated that the State Trooper was then joined by about a dozen other officers, which included members from Rochester Police Department, the Sheriff's Office, as well as other New York State Troopers.

[REDACTED] was then physically removed from [REDACTED] vehicle and assaulted by New York State Troopers. [REDACTED] then alleged that [REDACTED] was made fun of by Rochester Police Department Officers based on [REDACTED] handicapped status. More specifically, [REDACTED] stated that a Rochester Police Department Officer said “Oh, we got another disabled person”. After being removed from [REDACTED] car, [REDACTED] was then handcuffed and taken to the Rochester Police station, and [REDACTED] vehicle was subsequently towed. The computer aided dispatch report provided by the Rochester Police Department, showed that [REDACTED] had an active warrant and officers were given the directive to take [REDACTED] directly to jail.

Shortly after [REDACTED] interaction with law enforcement, [REDACTED] contacted the Police Accountability Board to report [REDACTED] interaction with members of the Rochester Police Department. [REDACTED] did not identify any specific officer but stated that [REDACTED] was made fun of based on [REDACTED] disability.



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245 E. Main Street  
 Rochester, NY 14604

### INVOLVED OFFICERS

	Officer Rank	Badge/Employee #	Date of Appointment	Sex	Race/Ethnicity
██████████	██████	██████████	██████████	██████	██████████
██████	██████	██████████	██████████	██████	██████████
██████████					
██████████	██████	██████████	██████████	██████	██████████

### INVOLVED INDIVIDUALS

Name	Age	Sex	Race/ Ethnicity
██████████	45-50	Male	African American

### ALLEGATIONS

1	Unknown Officers	Rules and Regulations 4.2 (Courtesy): Unknown Officers were discourteous in their interaction with ██████████
2	Officer ██████████	Body Worn Camera Policy (Recording Requirements and Restrictions): Officer ██████████ did not activate ████████ body worn camera during ████████ interaction with ██████████ nor did ████████ activate ████████ body worn camera during the search of ██████████ vehicle.

### INVESTIGATION

Reporter ██████████ filed a complaint with the Police Accountability Board on April 15, 2024.

The Police Accountability Board notified the Rochester Police Department of its investigation and requested corresponding documents on May 20, 2024.



City of Rochester  
**Police Accountability Board**  
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 Rochester, NY 14604

The Rochester Police Department responded on May 22, 2024, seeking clarifying information.

The Police Accountability Board provided clarifying information and submitted a second request for information on May 29, 2024.

The Rochester Police Department responded on May 30, 2024, and provided the Police Accountability Board with two computer aided dispatch reports and three body worn camera videos.

The computer aided dispatch reports stated [REDACTED] had an outstanding warrant and needed to be taken straight to jail. The body worn camera videos showed Rochester Police Officers searching [REDACTED] vehicle.

An interview was conducted with [REDACTED] on May 20, 2024, by the Police Accountability Board. During this interview, [REDACTED] alleged that [REDACTED] was assaulted and made fun of by the officers who responded to [REDACTED] arrest. More specifically, [REDACTED] was assaulted by New York State Troopers and made fun of by Rochester Police Department Officers.

### EVIDENCE PROVIDED

Evidence	Description	Provided by	Filename
Intake Report	[REDACTED] initial report	[REDACTED]	<a href="#">i-Sight   Case 2024-0055   Details   Overview</a>
Request for Information	Initial Notification and Request for Information to the Rochester Police Department	Police Accountability Board	<a href="#">PAB Reports - InitialNotification 2024-0055 RPD response 5-22-24.pdf - All Documents (sharepoint.com)</a>
Request for Information Response	Supplemental Request for Information to the Rochester Police Department	Police Accountability Board	<a href="#">PAB Reports - SupplementalSOI 2024-0055-052924 rec 5-29-24 1649hrs RPD response 5-30-24.pdf - All Documents (sharepoint.com)</a>
Request for Information Response	Computer Aided Dispatch Report-Event Information	Rochester Police Department	<a href="#">PAB Reports - I NetViewer Event Information.pdf - All Documents (sharepoint.com)</a>



City of Rochester  
**Police Accountability Board**  
 Established 2019

245 E. Main Street  
 Rochester, NY 14604

Evidence	Description	Provided by	Filename
Request for Information Response	Computer Aided Dispatch Report-Event Unit	Rochester Police Department	<a href="#">PAB Reports - I NetViewer Event Unit.pdf - All Documents (sharepoint.com)</a>
Request for Information Response	Body Worn Camera Footage A	Rochester Police Department	<a href="#">Genetec Clearance   Collaborative investigation management</a>
Request for Information Response	Body Worn Camera Footage B	Rochester Police Department	<a href="#">Genetec Clearance   Collaborative investigation management</a>
Request for Information Response	Body Worn Camera Footage C	Rochester Police Department	<a href="#">Genetec Clearance   Collaborative investigation management</a>
Audio Interview	Interview with [REDACTED]	Police Accountability Board	<a href="#">New Recording 8.m4a (sharepoint.com)</a>

### EVIDENCE DENIED

Evidence	Description	Reason declined
Body Camera Footage for Officer [REDACTED]	Request from the Police Accountability Board to the Rochester Police Department	None exists.
Formal Officer Statement	Request from the Police Accountability Board to the Rochester Police Department	None given.

### APPLICABLE RULES & LAWS

#### Rochester Police Department Rules and Regulations

##### 4.2 COURTESY

- a) Employees shall be courteous, civil and tactful in the performance of their duties.





- b) Employees shall not express or otherwise manifest any prejudice concerning age, marital status, handicap, disability, race, creed, color, religion, national or ethnic origin, sex, sexual preference, or other personal characteristics.
- c) Employees shall not use harsh, profane, insolent, or intentionally insulting language toward any other employee or other person.

## **Rochester Police Department Body Worn Camera Manual**

### **IV. Recording Requirements and Restrictions<sup>1</sup>**

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:
  - a. arrests and prisoner transports (including issuance of appearance tickets and mental hygiene arrests);

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<sup>1</sup> 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 \(arcgis.com\)](#)





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.



City of Rochester  
**Police Accountability Board**  
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245 E. Main Street  
Rochester, NY 14604

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8. Completing security surveys.
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.

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### STANDARD OF PROOF

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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, department orders, 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(I)(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 a preponderance of evidence, which is a much higher standard of proof. 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.

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### ANALYSIS

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The following findings are made based on the above standards:

Allegation 1: Rochester Police Department Officers were discourteous to [REDACTED] by making fun of [REDACTED] disability.



The Rochester Police Department's Rules and Regulations 4.2 (b) states that Officers shall not express or otherwise manifest any prejudice concerning age, marital status, handicap, disability, race, creed, color, religion, national or ethnic origin, sex, sexual preference, or other personal characteristics.

On April 9, 2024, [REDACTED] decided to earn additional funds by delivering food using [REDACTED]. [REDACTED] picked up an order from Taco Bell and made [REDACTED] way to deliver the order when [REDACTED] was stopped and pulled over by a New York State Trooper. Shortly after [REDACTED] was pulled over, additional New York State Troopers, as well as officers from the Rochester Police Department and the Sheriff's Office arrived on the scene.

[REDACTED] alleges that Rochester Police Department Officers then stated "Oh, we got another disabled person". This statement is prejudicial and discriminatory. It seeks to distinguish [REDACTED] from other citizens that the officers have come into contact with based solely on [REDACTED] having a disability.

The utterance of this statement is a clear violation of the Rochester Police Department's Rules and Regulations; however, [REDACTED] was unable to identify which officer made this statement. Therefore there is no specific person to charge with this violation. Furthermore, this statement could not be independently corroborated or heard on the body camera footage provided by the Rochester Police Department.

*Allegation 1 against unknown officers is not sustained.*

Allegation 2: Officer [REDACTED] did not activate [REDACTED] body worn camera during [REDACTED] interaction with [REDACTED] nor did Officer [REDACTED] activate [REDACTED] body worn camera during the search of [REDACTED] vehicle.

The Rochester Police Department's Body Worn Camera Policy states that Officers are to activate their body worn camera and record all activities and contact with persons in the course of performing or when present at an enforcement activity. Enforcement activities include arrests, prisoner transports, detentions, and stops of persons. There are also enumerated exceptions that would deem the activation of an officer's body worn camera to be discretionary. Some exceptions 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.

[REDACTED] was pulled over, removed from [REDACTED] vehicle, placed in handcuffs, and taken to jail and at least some of these events occurred within the presence of Rochester Police Department Officers. In addition, [REDACTED] vehicle was searched by Rochester Police



City of Rochester  
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245 E. Main Street  
 Rochester, NY 14604

Department Officers. After a thorough search of the Rochester Police Department's database, there is no record of Officer [REDACTED] body camera footage capturing any of these mandatory recording incidents. Officer [REDACTED] failed to activate [REDACTED] body worn camera despite being present for the aforementioned events.

*Allegation 2 against Officer [REDACTED] is sustained.*

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### RECOMMENDED FINDINGS

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#	Officer	Allegation	Finding
1	Unknown Officers	Rules and Regulations 4.2 (Courtesy): Unknown Officers were discourteous in their interaction with [REDACTED]	Not Sustained
2	Officer [REDACTED]	Body Worn Camera Policy (Recording Requirements and Restrictions): Officer [REDACTED] did not activate [REDACTED] body worn camera during [REDACTED] interaction with [REDACTED] nor did [REDACTED] activate [REDACTED] body worn camera during the search of [REDACTED] vehicle.	Sustained

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### RECOMMENDED DISCIPLINARY ACTION

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### AUTHORITY

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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.

Officer [REDACTED] has one sustained finding of officer misconduct associated with PTN 2023-0077. The sustained finding pertains to Officer [REDACTED] failing to activate [REDACTED] body worn camera during the search of a vehicle. Because the sustained finding contained in PTN 2023-0077 are for the same charged contained in the case at bay, it will be considered an aggravating factor in the Recommended Disciplinary Action as outlined.

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

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: **30-day suspension.**