

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): 2024-0084

Date of Panel Review: 25-Sep-2024 5:30 PM (EDT)

Board Members Present:

Case Findings:

Allegations 2 and 5: Sustained

Allegations 1,3,4,6: Not sustained

Disciplinary Recommendation:

Officer Training memorandum, de-escalation and an apology to the affected parties

Officer Training memorandum, de-escalation and an apology to the affected parties

Dissenting Opinion/Comment: Board member votes not to sustain allegations 2 and 5.

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.

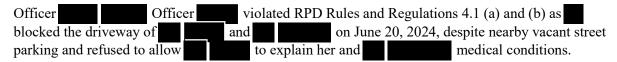
Not Sustained: A finding at the conclusion of an investigation that there is insufficient evidence to establish whether an act of misconduct occurred.

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.

PTN: 2024-0084

Allegation #1:



- 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 violated RPD Rules and Regulations 4.2 (a) as repeatedly interrupted both and and some on June 21, 2024, as they were attempting to explain their grievances of the prior day and dismissed their concerns.

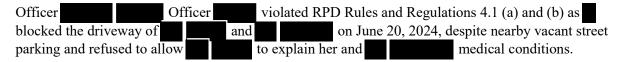
- Does the Board Agree with the Findings of Fact? Yes
- Does the Board Agree with the Substantiated Evidence of Misconduct? Yes
- Does the Board Agree with the Proposed Disciplinary Action? Yes

Allegation #3:

Officer Officer Violated the Body Worn Camera (BWC) Manual § IV A 1 on June 20, 2024, as did not activate BWC in interactions with prior to entering patrol vehicle and driving away.

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

Allegation # 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 # 5:

Officer Violated RPD Rules and Regulations 4.2 (a) as repeatedly interrupted both and and violated RPD Rules and Regulations 4.2 (a) as repeatedly on June 21, 2024, as they were attempting to explain their grievances of the prior day and dismissed their concerns.

- 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

Allegation # 6:

Officer violated the Body Worn Camera (BWC) Manual § IV A 1 on June 20, 2024, as did not activate BWC in interactions with prior to entering patrol vehicle and driving away.

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

PTN: 2024-0084

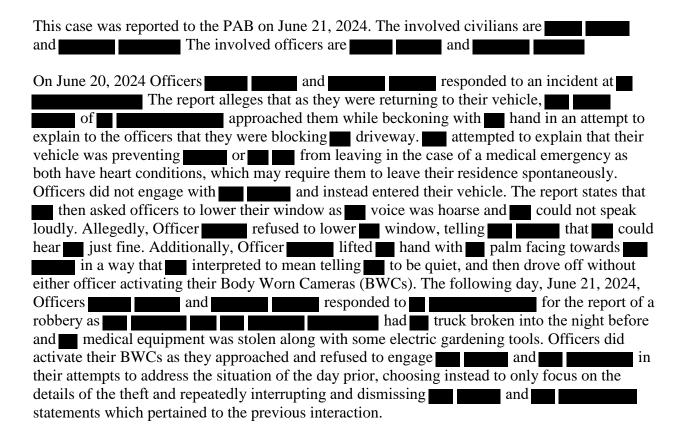


CLOSING REPORT

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





INVOLVED OFFICERS

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

INVOLVED INDIVIDUALS

Name	Age	Sex	Race/ Ethnicity
	n/a	Female	Black
	37	Male	Black

ALLEGATIONS

	LEGITIONS	
1	Officer	Officer violated RPD Rules and Regulations 4.1 (a) and (b) as blocked the driveway of and and and on June 20, 2024, despite nearby vacant street parking and refused to allow to explain and medical conditions.
2	Officer	Officer violated RPD Rules and Regulations 4.2 (a) as repeatedly interrupted both and and on June 21, 2024, as they were attempting to explain their grievances of the prior day and dismissed their concerns.
3	Officer	Officer violated the Body Worn Camera (BWC) Manual § IV A 1 on June 20, 2024, as did not activate BWC in interactions with prior to entering patrol vehicle and driving away.
4	Officer	Officer violated RPD Rules and Regulations 4.1 (a) and (b) as blocked the driveway of and and some on June 20, 2024, despite nearby vacant street parking and refused to allow to explain and medical conditions.



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5	Officer	Officer violated RPD Rules and Regulations 4.2 (a) as repeatedly interrupted both and and on June 21, 2024, as they were attempting to explain their grievances of the prior day and dismissed their concerns.
6	Officer	Officer violated the Body Worn Camera (BWC) Manual § IV A 1 on June 20, 2024 as did not activate BWC in interactions with prior to entering patrol vehicle and driving away.

INVESTIGATION

On June 21, 2024, the incident was reported to the PAB via a walk-in intake interview.

On June 24, 2024, the incident was reported to RPD Professional Standards Section (PSS).

On June 27, 2024, PSS notified PAB of the investigation and provided documents in PSS IA # 2024-0392. PAB opened case 2024-0087 which was later closed and attached to this case as a duplicate.

On July 18, 2024, a PAB investigator was assigned to this case.

On July 18, 25, and 30, 2024, PSS provided additional documents obtained in the investigation.

On August 6, 2024, party interviews were scheduled with involved civilians and Officer Interview/Statement Requests were sent to the involved officers.

On August 8, 2024, a Source of Information (SOI) Request was sent to RPD for additional BWC footage.

On August 9, 2024, RPD provided additional evidence in the case.

On August 13, 2024, PAB investigators conducted party interviews with both involved civilians.

As of the writing of this report, neither involved officer has responded to Officer Interview/Statement Requests.



EVIDENCE REVIEWED

EVIDENCER	EVIEWED	1		
Evidence	Description	Provided by	Reason declined	Filename
Notification of	Form sent to	RPD	n/a	
Initiation of	PAB to notify			
PSS	of PSS			
Investigation	investigation			
Notification of	Initial	RPD	n/a	
Initiation of	notification			
PAB	package sent to			
Investigation	RPD to notify			
990 FT	of PAB			
	investigation,			
	containing			
	response from			
	RPD.			
Intra-	The second secon	RPD	n/a	
	of Record			
Correspondence				
	Officer			
	directing			
	become familiar	E .		
	with the BWC			
	Manual § IV.			
- m	A. 1.		TOP:	
Intra-	CONT. STANDARD STANDA	RPD	n/a	
- V	of Record			
Correspondence	A STATE OF THE PROPERTY OF THE PARTY OF THE			
	Officer			
	directing last to			
	become familiar			
	with the BWC			
	Manual § IV.			
	A. 1.			
Stenographic		RPD	n/a	
Statement	PSS Interview			



EVIDENCE REVIEWED

Evidence Evidence	Description	Provided by	Reason declined	Filename
	of			
Stenographic Statement	Transcript of PSS Interview of	RPD	n/a	
BWC Footage	BWC Footage captured by Officer on June 20, 2024.	RPD	n/a	
BWC Footage		RPD	n/a	
BWC Footage	BWC Footage captured by Officer on June 21, 2024.	RPD	n/a	
Investigative Interview	Video recording of PAB interview of	n/a	n/a	
Investigative Interview	Video recording of PAB interview of	n/a	n/a	
Interview Transcription	PDF of transcription of investigative interview of	n/a	n/a	



EVIDENCE REVIEWED

Evidence	Description	Provided by	Reason declined	Filename
			n/a	
_	transcription of investigative interview of			

APPLICABLE RULES & LAWS

RPD Rules and Regulations

4.1: CONDUCT

- a) Employees shall so conduct themselves in both their private and professional lives as to avoid bringing discredit upon the Department.
- b) Employees shall not engage in conduct on or off-duty which adversely affects the efficiency of the Department, or engage in conduct on or off-duty which has a tendency to impair public respect for the employee and/or the Department, and/or impair confidence in the operation of the Department.

4.2: COURTESY

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

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.

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.

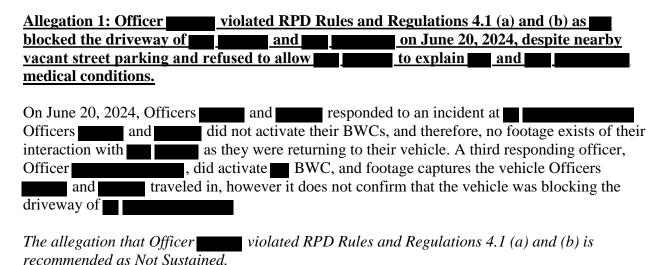


ANALYSIS

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)).

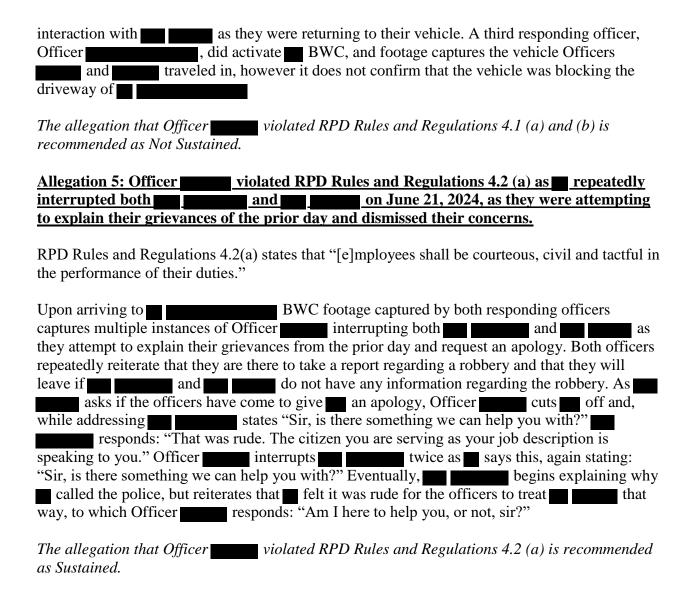
Substantial evidence means more than a mere scintilla but less than a preponderance; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See NLRB v. Int'l Bhd. of Elec. Workers, Local 48, 345 F.3d 1049, 1054 (9th Cir. 2003); De la Fuente II v. FDIC, 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, "The 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." (https://www.merriam-webster.com/legal/preponderance%20of%20the%20evidence). This is understood to be a greater than 50% chance that the claim is true (https://www.law.cornell.edu/wex/preponderance of the evidence#:~:text=Preponderance%20of%20the%20evidence%20is,that%20the%20claim%20is%20true).





Allegation 2: Officer	violated RPD Rules and Regulations 4.2 (a) as repeatedly
interrupted both	and on June 21, 2024, as they were attempting
to explain their grievance	s of the prior day and dismissed their concerns.
RPD Rules and Regulation the performance of their du	s 4.2(a) states that "[e]mployees shall be courteous, civil and tactful in ties."
they attempt to explain the repeatedly reiterate that the leave if and Eventually, the officers gat the end of the interaction again states that	BWC footage captured by both responding officers of Officer interrupting both and and as as ir grievances from the prior day and request an apology. Both officers are there to take a report regarding a robbery and that they will do not have any information regarding the robbery. There the necessary information regarding the robbery, however towards asks: "Was that a problem yesterday?" to which Officer will not address yesterday's events, and tells that the wrong attitude, at one point stating that was yelling and
The allegation that Officer as Sustained.	violated RPD Rules and Regulations 4.2 (a) is recommended
Allegation 3: Officer	violated the Body Worn Camera (BWC) Manual § IV A 1 on
	not activate BWC in interactions with prior to
entering patrol vehicl	
neither responding officer l	otification package sent on August 8, 2024, RPD confirmed that had activated their BWC during their interaction with on a received a counseling memorandum for violating the BWC manual
The allegation that Officer recommended as Sustained	, and the second
Allegation 4: Officer blocked the driveway of vacant street parking and medical conditions.	violated RPD Rules and Regulations 4.1 (a) and (b) as on June 20, 2024, despite nearby refused to allow to explain and and and and and and and and and an
On June 20, 2024, Officers Officers and	and responded to an incident at did not activate their BWCs, and therefore, no footage exists of their







llegation 6: Officer violated the Body Worn Camera (BWC) Manual § IV A 1 on une 20, 2024, as did not activate BWC in interactions with prior to ntering patrol vehicle and driving away.
n response to the initial notification package sent on August 8, 2024, RPD confirmed that either responding officer had activated their BWC during their interaction with on on on 20, 2024. Both officers received a counseling memorandum for violating the BWC manual in June 26, 2024.
the allegation that Officer violated the Body Worn Camera Manual § IV A is ecommended as Sustained.



RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	Officer The Control	Officer violated RPD Rules and Regulations 4.1 (a) and (b) as blocked the driveway of and on June 20, 2024, despite nearby vacant street parking and refused to allow to explain and medical conditions.	Not Sustained
2	Officer The Control	Officer violated RPD Rules and Regulations 4.2 (a) as repeatedly interrupted both and on June 21, 2024, as they were attempting to explain their grievances of the prior day and dismissed their concerns.	Sustained
3	Officer The Control	Officer violated the Body Worn Camera (BWC) Manual § IV A 1 on June 20, 2024, as did not activate BWC in interactions with prior to entering patrol vehicle and driving away.	Sustained
4	Officer Control	Officer violated RPD Rules and Regulations 4.1 (a) and (b) as blocked the driveway of and on	Not Sustained
5	Officer Control	Officer violated RPD Rules and Regulations 4.2 (a) as	Sustained



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#	Officer	Allegation	Finding/Recommendation
		to explain their grievances of the	
		prior day and dismissed their	
		concerns.	
		Officer violated the Body	
		Worn Camera (BWC) Manual § IV	
		A 1 on June 20, 2024, as did not	
6			Sustained
		interactions with prior	
		to entering patrol vehicle and	
		driving away.	

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 and the second	
This is the first time Officer has been the subject of an investigation closed	by the PAB.
A review of the Rochester Police Department Discipline Database located on the C Rochester's website suggests that Officer has not been the subject of a previous procession by the RPD Professional Standards Section (PSS).	•
However, the PAB understands that the database is incomplete.	
RPD declined to provide disciplinary records for Officer	
Allegation 2: Officer violated RPD Rules and Regulations 4.2 (a) as interrupted both and and on June 21, 2024, as they wer to explain their grievances of the prior day and dismissed their concerns. DISCIPLINARY MATRIX APPENDIX	
Misconduct	Level
RPD Rules and Regulations 4.2 (a) states that "Employees shall be courteous, civil and tactful in the performance of their duties."	3

- **Recommended Level:** 2 ("More than minimal negative impact on the community or department image or operations, or relationships with other officers, or agencies.")
- Recommended Discipline: Training memorandum and an apology to the affected parties.
- Explanation of deviation from presumptive penalty: This is Officer first sustained finding of violation of this policy. The misconduct did not significantly harm the affected parties and rejument originally requested an apology.



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Allegation 3: Officer	violated the Body	Worn Camera (BWC) Manua	l § IV A 1 on
June 20, 2024, as did not	activate BWC	in interaction	ns with	prior to
entering patrol vehicle a	nd driving away.			

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
The RPD Body Worn Camera (BWC) Manual § IV A 1 states that "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.	3
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."	

- **Recommended Level:** 3 ("Pronounced negative impact on the community or department image or operations, or relationships with other officers, or agencies.")
- **Recommended Discipline:** 10-day suspension.

Officer
This is the first time Officer 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 pled guilty of violating RPD Rules and Regulations § 4.18: Department Property and Equipment, as caused a traffic accident while operating patrol car on 2010. Officer received a letter of reprimand for conduct.
However, the PAB understands that the database is incomplete.
RPD declined to provide disciplinary records for Officer



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Allegation 5: Officer	violated RPD	Rules and Regulations 4.2 (a) as repea	<u>tedly</u>		
interrupted both	and	on June 21, 2024, as they were atten	pting		
to explain their grievances of the prior day and dismissed their concerns.					

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
RPD Rules and Regulations 4.2 (a) states that "Employees shall be courteous,	3
civil and tactful in the performance of their duties."	

- **Recommended Level:** 2 ("More than minimal negative impact on the community or department image or operations, or relationships with other officers, or agencies.")
- **Recommended Discipline:** Training memorandum and an apology to the affected parties.
- Explanation of deviation from presumptive penalty: This is Officer first sustained finding of violation of this policy. The misconduct did not significantly harm the affected parties and originally requested an apology.

Allegation 6: Officer violated the Body Worn Camera (BWC) Manual § IV A 1 on June 20, 2024, as did not activate BWC in interactions with prior to entering patrol vehicle and driving away.

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
The RPD Body Worn Camera (BWC) Manual § IV A 1 states that "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.	3
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."	

- **Recommended Level:** 3 ("Pronounced negative impact on the community or department image or operations, or relationships with other officers, or agencies")
- **Recommended Discipline:** 10-day suspension.