

Processing Complaints Against Chicago Police Officers
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PROCESSING COMPLAINTS AGAINST CHICAGO POLICE OFFICERS

I. The Police Consent Decree Encourages, Requires, Enables and/or Regulates Police Accountability.

On January 31, 2019 Federal Court Judge Robert Dow entered a Consent Decree in *State of Illinois v City of Chicago*, # 17 cv 6260.² The suit alleged that the Chicago Police Department (CPD) illegally engaged in a pattern of using excessive force in a manner that disproportionately harmed Chicago's African American and Latino residents. Every section of this 229-page, 799-paragraph decree encourages, requires, enables and/or regulates police accountability. Its major sections are community policing; impartial policing; use of force; recruitment, hiring and promotion; training; supervision; officer wellness and support; and accountability and transparency. It also has a detailed section on implementation, enforcement and monitoring. Judge Dow has appointed attorney Maggie Hickey to be the monitor for the Police Consent Decree (hereafter, "Consent Decree"), and former Federal Judge David Coar to be its special master. The effective date of the Decree is March 1, 2019.

For up-to-date information about the Consent Decree, see the Illinois Attorney General's website at <http://chicagopoliceconsentdecree.org>. The Resource tab lets you review the Decree, its drafts, documents from the Department of Justice's investigation of the CPD, documents from the Chicago Police Accountability Task Force, and court orders entered in *State of Illinois v Chicago* since the entry of the Decree.

This memo focuses more narrowly on the process by which complaints alleging police misconduct are investigated and adjudicated. Some of its sections will refer to particular paragraphs of the Consent Decree.

II. Investigating Complaints Against Chicago Police Officers

A. Two Agencies Investigate Complaints against Chicago Police Officers

Two entities investigate complaints against Chicago police officers. The Chicago Civilian Office of Police Accountability (COPA) receives all complaints of misconduct against police officers, but investigates only certain categories of them. It sends the rest to the Bureau of Internal Affairs (BIA) (sometimes referred to as the Internal Affairs Division – IAD) of the CPD. Most complaints that BIA investigates assert violations of the CPD rules relating to personnel and operational matters. (See Section II.D.2, below.)

² The origin of the Decree was the U.S. Justice Department's 2016 investigation during the Obama administration of the CPD and IPRA, focusing on the use of force and on Chicago's police accountability system. The original expectation was that the Department of Justice would sue Chicago, but that idea died with the election of President Trump. As a result, Lisa Madigan, as Illinois Attorney General, filed the suit that led to the Consent Decree.

Sydney Roberts is the Chief Administrator of COPA. Chief Dana Alexander heads BIA.

Although BIA and COPA serve similar functions, they differ in many ways. BIA is a division of the CPD. The head of BIA reports to the Chicago Police Superintendent. COPA is a separate and independent department. It went into operation on September 15, 2017. It replaces the Independent Review Authority (IPRA).

The ordinance creating COPA is designed to make it more independent than IPRA was or BIA is:

- Its budget is guaranteed to be 1% of the annual appropriation of all non- grant funds for the Chicago Police Department (§ 2-78-105 of the Chicago Municipal Code);
- The Chief Administrator must not be a current or former sworn member of the Chicago Police Department (CPD), nor within the last five years a non-sworn member of the CPD or an employee of the Cook County State's Attorney's Office (§ 2-78-115(e));
- No investigator may be, or have been within the last five years, a sworn member of the CPD (§ 2-78-115(s)); and
- The Chief Administrator of COPA may be removed only for cause (§ 2- 78-155).

B. How Transparent are COPA and BIA?

1. COPA 's Website Discloses a Vast Amount of Data

Chicago Municipal Code (CMC) Section 2-78-150(a) requires COPA to post on its web site by the 15th of April, July, and October a quarterly report that includes 1) the number of investigations started, concluded and pending; 2) the number of complaints sustained, and not sustained; 3) the number of complaints referred to other agencies; and 4) the number of complaints filed against each officer in each district – without identifying any officer. CMC Section 2-78-150(b) requires COPA to file by February 15 an annual report with similar information for the prior calendar year.

In fact, COPA's website (www.chicagocopa.org) reports much more data. (See the separate document titled “A Guide to COPA's website.”) The Chicago Police Consent Decree will require it to report slightly more information.

2. BIA's Website Reports Very Little Data

The most recent report on BIA's website is a three-page report for the year 2016. It reports the types of complaints BIA investigated in 2016, but BIA's jurisdiction has narrowed since then. (See discussion below in Section II.D.)

BIA's website reports no information about how it processes complaints. It does not report how many complaints it forwarded to supervisors for investigation, or their nature. Nor does it report the number of complaints it investigated, or the number or percent that it sustained, or the number of its pending investigations. Nor does it report what, if any, discipline BIA proposed when complaints were sustained. BIA’s website includes no quarterly reports.

The Police Superintendent, however, reports certain BIA data monthly to the Chicago Police

Board, including the number of findings in each category (sustained, not sustained, unfounded and exonerated).³ But that reporting is not very useful because BIA lumps together information on complaints of violations of operational and personnel rules with information on all other types of complaints. It also, BIA lumps together information on complaints that it investigates and complaints that it sends to the Police Districts to investigate. That data should also be disaggregated.

3. The Consent Decree Requires both COPA and BIA to Publish a Vast Amount of Data

Paragraph 550 of the Consent Decree requires both COPA and BIA, by April 2020, to publish quarterly and annual reports with aggregate data on a) the classification of allegations, and complainant demographic information; b) complaints received from the public, specified by district or unit of assignment, and sub-categorized by classification of allegations; c) the average time of various steps in investigations, findings, and discipline; d) the number of sustained, not sustained, exonerated, and unfounded findings; e) the number of investigations resulting in various types of discipline; f) the number of cases grieved, the number that proceeded before the Police Board, the number that proceeded to arbitration; and the number that were settled prior to a hearing; g) outcomes of misconduct investigations by classification of allegations, broken down by race, gender, and age of the complainant and the police officer; h) (1) the number of officers subject to more than two completed investigations in the past 12 months, and (2) the number who have had more than one sustained allegation of misconduct in the past 12 months, including the number of sustained allegations; i) police officers subject in the past 12 months to more than two complaints of discriminatory policing, excessive force, or unlawful stops, searches or arrests,⁴ and, j) the disposition of misdemeanor criminal prosecutions of current police officers.

While COPA already reports much of the above data, BIA will have a lot of work to do to comply with Paragraph 550. In addition, paragraph 551 of the Decree specifically requires BIA's quarterly and annual reports to include data reflecting complaint investigations conducted by the districts.

C. Decline in Complaints of Police Misconduct

Complaints of Chicago police misconduct declined from 4,122 in 2015 to 3,813 in 2018 (COPA's 2018 Annual Report, p. 16). The 2018 figure is 93% of the 2015 figure. IPRA had previously

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- ³ That information is contained in the "Blue Books" that the Police Chief submits to the Chicago Police Board each month, reporting on statistics for the prior month. The "Blue Books" submitted in January of each year also contain statistics for the prior calendar year. In the January "Blue Book," see the page titled "IAD and IPRA Statistics," and the table therein titled "BIA Investigative Findings." To find the "Blue Books," go to the home page of the Chicago Police Board, then click on the heading, "Public Meetings of the Police Board," then scroll down to "2019 Regular Meetings," and you will see recent ones listed. At the end of the "Regular Meetings" section, you can click on "Archives" to find older "Blue Books."
- ⁴ Requiring data in regard to police officers for the past 12 months is better than requiring it for one quarter only, because an officer who is subject to several complaints, or investigations, or adverse findings for 12 months, is more likely to be at-risk than if he were subject to several such actions in only one quarter (and perhaps not in others).

hypothesized that the decline in complaints resulted from a decline in the number of adult arrests (See IPRA's Report for the Fourth Quarter of 2016, pp. 24-26.)

D. Types of Complaints Investigated by COPA and BIA 1.

COPA

COPA is responsible for investigating complaints against police alleging domestic violence, excessive force⁵, coercion⁶, verbal abuse, improper search or seizure of either an individual or property, and unlawful denial of access to counsel. (§§ 2-78-120(b) and (f) of the Chicago Municipal Code – hereafter "CMC"). Complaints alleging improper search or seizure, and unlawful denial of access to counsel were transferred from BIA's jurisdiction to COPA effective September 15, 2017, when COPA began its operations.

Types of Complaints Retained by COPA in 2018

Type	#	%
Improper Search and Seizure	425	41
Excessive Force	228	22
Civil Suits ⁷	96	9
Domestic Violence	79	7
Miscellaneous	89	9
Verbal Abuse	52	5
Coercion	26	2
Denial of Counsel	7	1
Unnecessary Display of Weapon	41	4
Total	1,043	100

(Source: COPA Annual Report for 2018, p. 22. The percent column was calculated by the author.)

5 "Excessive force" is defined as a police officer's application of force which, either because of the type of force employed, or the extent to which such force is employed, exceeds the force that reasonably appears to be necessary under all the circumstances surrounding the incident, including whether any use of force was appropriate. (CMC, 2-78-100.)

6 "Coercion" is defined as the use of improper or unlawful force or threats, express or implied, in order to compel a person to act against his or her will. It includes compelling a person to make statements. (CMC, Section 2-78-100, CMC.)

7 The Chief Administrator of COPA has discretion to review lawsuits against the City, the CPD, or police officers, that have been settled or resulted in a judgment for the purpose of reopening a prior investigation or opening a new investigation of alleged police misconduct, (CMC, Section 2-78-120 (f).)

2. BIA

BIA investigates all types complaints not investigated by COPA. BIA's 2016 annual report list 15 categories of complaints it investigated, and the numbers of each type it receives each year. The categories in 2016 were Arrest/Lock-up Procedures, Alcohol Abuse, Bribery/Official Corruption, Coercion, Conduct Unbecoming of an Officer, Criminal Misconduct, Drug/Substance Abuse, Medical Integrity, Operation/Personnel Rules Violations, Search Related, Search Warrants, Supervisory Responsibility, Traffic, and Verbal Abuse. Its 2016 report shows that the five most common types of complaints that BIA investigated were:

The Five Most Common Types of Complaints that BIA Investigated in 2016

Type	#	%
Personnel and Operational matters	1,071	58
Search-related ⁸	349	19
Arrest/Lock-up	187	10
Criminal Misconduct	123	7
Conduct Unbecoming an Officer	114	6
Total	1,844	100

(Source: BIA 2016 Annual Report, found at: <https://home.chicagopolice.org/wp-content/uploads/2014/12/2016YearEndSummary.pdf>. As of the writing of this memo, the 2016 Report was the most recent posted on the BIA website.)

E. Procedures For Investigating Complaints of Police Misconduct

COPA and BIA investigators are expected to interview the complainant and the charged police officer, question other police officers and witnesses who may have knowledge of the alleged misconduct, and obtain other relevant evidence, such as police records, medical records, videotapes, and audiotapes.

BIA refers many complaints to police supervisors for investigation. BIA's website states:

Complaints received by the Internal Affairs Division, may be forwarded to an employee's immediate supervisor. The Internal Affairs Division personnel investigate allegations of misconduct that generally carry more serious consequences for the employee, the department, or community confidence in the police. Immediate supervisors investigate complaints with less serious consequences.

The BIA website does not define the difference between more and less serious consequences, or disclose how many complaints police supervisors investigate.

⁸ These types of complaints were transferred to COPA for investigation on September 15, 2017.

Paragraph 457 of the Consent Decree provides that CPD must adopt a written policy specifying when BIA will retain and investigate complaints itself, and when it will transfer complaints to a CPD district for investigation. The policy must consider the police officer's complaint and discipline history and the seriousness of the alleged misconduct.

1. The Impact of Collective Bargaining Agreements on Investigations, and the Impact of the Consent Decree on those Agreements

The Collective Bargaining Agreement (CBA) between the City of Chicago and the Fraternal Order of Police (FOP), which expired on June 30, 2017 but is still being honored, regulates the process of investigating complaints of police misconduct. Several provisions are summarized below:

Section 8.4 of the CBA provides, as a general rule, that discipline records and records of disciplinary investigations shall be destroyed within 5 years of the incident or when the violation was discovered, whichever is longer.⁹

Another provision states that no complaint of misconduct more than five years old shall be investigated or re-investigated unless the Superintendent of Police specifically authorizes it in writing. CBA § 6.1.D.

CBA § 6.1.M. provides as follows:

If, before taking an Officer's statement, the CPD, IPRA or IAD has video or audio evidence relevant to the matter under investigation. . . an Officer who is not allowed to review that evidence before giving a statement shall not be charged with a Rule 14 violation [making a false statement] unless the Officer has been presented with that evidence and given the opportunity to clarify and amend his or her original statement (emphasis added). The CPD shall not charge an Officer with a Rule 14 violation unless it has determined that: (1) the Officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation.

Before an officer is interrogated, he shall be informed in writing of the nature of the complaint and the names of the complainants. CBA § 6.1.E

⁹ In 2014, the Fraternal Order of Police (FOP) sought to enjoin the release of information over four years old contained in records of investigations of misconduct complaints. The FOP argued that both the Illinois Personnel Record Review Act and Section 8.4 of the CBA barred their release. The trial court enjoined the release of the records, but the court of appeals reversed in *Fraternal Order of Police v. City of Chicago*, Ill. Court of Appeals, First District, 59 N.E.3d 96 (2016), 405 Ill. Dec. 803. The Court of Appeals relied in part on *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, 379 Ill.Dec. 903, 7 N.E.3d 741, which ruled that police discipline records are subject to production under the Illinois Freedom of Information Act.

Within 72 hours after making a statement in writing or that is audio recorded, an officer must be provided with a copy such statement. In order to re-interrogate an officer within 72 hours of the first interrogation, the officer must first be given a copy of any prior statements. CBA § 6.1. H.

During an interrogation, an officer has the right to be represented by counsel of his or her choice. He or she also has the right to be represented by a current or former union member. The interrogation shall be suspended for a reasonable time until representation can be obtained. CBA § 6.1.J.

One section regulates in great detail the order in which an officer can be questioned when two investigators ask questions. CBA § 6.1.C

Appendix L to the CBA is entitled "Affidavits in Disciplinary Investigations." The first five paragraphs provide that no affidavit shall be required 1) to support a complaint of criminal conduct; 2) to support a complaint of medical roll abuse or of a residency violation, if the complaint has been otherwise verified; 3) when a supervisor signs a complaint based on a citizen's allegation of misconduct; 4) when one police officer complains of misconduct by another officer (because both are subject to discipline for making a false report); and 5) when additional allegations are made to a complaint already supported by an affidavit. Paragraph 6 provides:

In all other cases [COPA and BIA] will make a good faith effort to obtain an . . . affidavit . . . [in which] the complainant affirms under oath that [his] allegation(s) . . . are true.

Paragraphs 10 and 11 of Appendix L provide:

10. No officer will be required to answer any allegation of misconduct unless it is supported by an appropriate affidavit, except as specified in paragraphs one through five above. [If] no affidavit is received within a reasonable time, the investigation will be terminated and no record of the complaint or investigation will appear on the Officer's Disciplinary History.

11. Upon the receipt of a complaint which requires an affidavit, [COPA or BIA] may conduct a preliminary investigation into those allegations but no Complaint Register (CR) number will be issued unless and until the required affidavit is obtained.

The Collective Bargaining Agreements that apply to Sergeants, Lieutenants and Captains have similar provisions.

Paragraph 711 of the Consent Decree provides in part:

Nothing in this Consent Decree is intended to (a) alter any of the CBAs between the City and the Unions; or (b) impair or conflict with the collective bargaining rights of employees . . . Nothing in this Consent Decree shall be interpreted as obligating the City or the Unions to violate (i) the terms of the CBAs . . . In negotiating Successor CBAs, . . . the City shall use its best efforts to secure modifications to the CBAs consistent with the terms of this Consent Decree, or to the extent necessary to provide for the effective implementation of the provisions of this Consent Decree.

2. The Impact of the Illinois Uniform Peace Officer Disciplinary Act on Investigation Procedures

The Illinois Uniform Peace Officer Disciplinary Act, 50 ILCS 725, regulates how complaints of police misconduct are investigated. 50 ILCS 725/2(c). It does not apply, however, to an officer charged with violating any criminal law, 50 ILCS 725 /5. Moreover, the Act applies "only to the extent there is no collective bargaining agreement currently in effect dealing with the subject matter of this Act." 50 ILCS 725/6.

In investigations covered by this Act, no officer may be interrogated unless first informed in writing of the nature of the investigation, and the names of all complainants if an administrative proceeding is instituted. 50 ILCS 725/3.2. The interrogation must be of reasonable duration, and allow for breaks for rest and personal necessities, 50 ILCS 725/3.5. "Anyone filing a complaint against a sworn peace officer must have the complaint supported by a sworn affidavit." 50 ILCS 725/3.8(b). The officer under investigation shall have the right to be represented by counsel of his choice, and no interrogation shall take place until reasonable time and opportunity are provided the officer to obtain counsel. 50 ILCS 725/3.9. No police officer shall be required to submit to a polygraph test during an interrogation. 50 ILCS 725/3.11.

3. The Impact of COPA's Rules on Investigation Procedures

COPA's rules can be found on its website (www.chicagocopa.org).¹⁰ They state at § 3.1 that COPA will follow the provisions of the Collective Bargaining Agreements with the police, Illinois law, and other applicable laws, ordinances, rules and constitutions. Article III of COPA's Rules generally describes the investigative process.

4. The Impact of CPD Orders on Investigation Procedures

The Chicago Police Department (CPD) has issued orders that affect the conduct of investigations. For instance, the General Order titled "Department Member Bill of Rights" provides that when COPA (and not any other entity) asks questions of an officer who has been involved in a shooting, the questioning may not take place within 24 hours of the shooting. (CPD General Order G08-01-0, issued on May 4, 2018.) That rule has been criticized because it gives time to the shooting officer and other officers on the scene to manufacture a false but consistent version of the shooting. But repealing that rule alone may not have much effect because the Illinois Uniform Peace Officer Disciplinary Act provides that police officers also have the right to be represented by a lawyer in disciplinary interrogations (50 ILCS 725/3.9), and it usually takes more than 24 hours to hire a lawyer.

5. The Impact of the Police Consent Decree on Investigation Procedures

The Consent Decree has several paragraphs that regulate investigations of complaints alleging police misconduct. Paragraph 464 has several requirements, including that

¹⁰ If you click on "About" at the top left of the home page, you get a drop down menu on which you can click "Rules and Regulations."

investigators will monitor or combine open investigations against the same officer; determine if there is any misconduct beyond that initially alleged; consider an officer's discipline history, including complaints not sustained when consistent with law and CBA; and consider evidence gathered in a criminal investigation or in criminal or civil litigation. Paragraph 465 provides that, when interviewing an officer, an investigator must ask about the officer's communications about the incident and get the details of those communications (subject to any evidentiary privilege); ask if (s)he reviewed audio or video footage of the incident and when and where; and ask about media or social media coverage of the incident.

Paragraph 466 provides that investigators shall not automatically prefer or discount any statement solely due to its source, including statements made by police officers.

Paragraph 467 provides that, for each allegation, COPA or BIA shall recommend one of four findings: sustained, not sustained, exonerated and unfounded. The latter two findings must be supported by clear and convincing evidence. Paragraph 468 provides that investigators shall not ask questions that suggest a justification for an officer's actions, discourage a witness from providing a full account of the allegations, close investigations because of findings in criminal proceedings, or disregard a witness statement because the witness is connected with the complainant or a CPD member, or has a criminal conviction.

The decree also encourages the City to transfer from BIA to COPA the authority to investigate complaints of sexual misconduct by police officers. (See the separate memo titled, "COPA should Investigate Complaints of Sexual Misconduct.") Paragraph 475 provides that the City will use its best efforts to ensure that name of a complainant is not revealed to the charged officer prior to his/her interrogation. (See also Section VI below on the duty of police officers to be truthful and report misconduct by other officers.)

6. The Rights of Police Officers in Disciplinary Interrogations are Protected by Multiple Sources

As shown in Sections II. E. 1-5, above, the rights of police officers in disciplinary interrogations are protected by multiple sources. That means that if, for instance, one section of the CBA between the City and the FOP that protects police officers in discipline proceedings is repealed, the same right may still be protected by the Illinois Uniform Peace Officer Disciplinary Act. Moreover, if the "24-hour rule" section of the CPD General Order titled "Department Member Bill of Rights" is repealed, police officers may still be protected by that rule, because an Arbitrator ruling in a grievance filed under the CBA with the FOP has apparently interpreted the CBA to require the "24-hour" rule. ("Cops Traded away Pay for Protection in Police Contracts, Chicago Tribune, May 20, 2016.)

F. When Must a Complaint be Supported by an Affidavit?

As noted in Sections II. E. 1 and 2 above, both the Collective Bargaining Agreements, and the Uniform Peace Officers' Disciplinary Act, generally require that a police misconduct complaint be supported by a sworn affidavit. Paragraphs 431 and 462 of the Consent Decree, however, provide that absence of a signed affidavit alone will not preclude a preliminary investigation. A preliminary investigation may review other evidence, such as audio and video

evidence, physical evidence, arrest reports, photographic evidence, GPS records, computer data, and witness interviews. (Decree Paragraph 460.) If the preliminary investigation reveals objective verifiable evidence suggesting it is necessary and appropriate for the investigation to continue, BIA or COPA may seek an override of the affidavit requirement. (See Decree paragraph 463(b), and Section II.G, below.)

Comparison of Number of Complaints Closed due to Lack of an Affidavit and due to the Entry of a Finding

Reason for closing	COPA		BIA		TOTAL	
	#	%	#	%	#	%
No affidavit and no affidavit override ¹¹	339	49	440	55	779	52
Finding of any kind	346	51	361	45	707	48
Total	685	100	801	100	1486	100

(Source: COPA Annual Report for 2018, p. 29, and the "Blue Books" that the Police Superintendent submits to the Chicago Police Board each month. See footnote 3, above.)

G. BIA has Approved Most of COPA's Requests for Overrides of the Affidavit Requirement

Paragraphs 7, 8 and 9 of Appendix L to the CBA with the FOP allow both the head of BIA and IPRA to ask each other to allow an investigation to proceed without an affidavit when "objective verifiable evidence," supports a complaint. These requests are known as affidavit override requests. In 2018, COPA made 27 override requests to BIA, which granted them all. (See COPA's Annual Report for 2018, p. 24.)

H. Pattern or Practice Investigations

Section 120 of the ordinance creating COPA authorizes it to investigate and determine whether members of the Police Department are engaging in patterns or practices of misconduct. (CMC § 2-78-120). If after an investigation COPA finds that the CPD engaged in a pattern or practices of misconduct, COPA may recommend changes in CPD's policies, practices, programs and training (§ 2-78-120(n)). If COPA finds that an officer has violated an applicable CPD rule, COPA has the power to recommend to the Police Superintendent appropriate disciplinary or remedial action, including "additional training or counseling" (CMC § 2-78-120(l)).

COPA's Rule 3.10.5 explains that the Chief Administrator may initiate a pattern or practice investigation at the request of three COPA staff on evidence from the source indicated:

¹¹ See Section II.G.

Position	Evidence Source
Deputy Chief of Intake	Complaint intake information
First Deputy Chief of Investigations	Investigative findings
General Counsel	Civil or Criminal Litigation

That same rule explains that the Chief Administrator may also initiate such an investigation at the request of the Deputy Inspector General for Public Safety, the COPA Community Council,¹² the CPD, at least three members of the Public Safety Committee of the City Council, or the Corporation Counsel. Rule 3.10.5 also lists COPA's standards for initiating a pattern or practice investigation.

In addition, the Deputy Inspector General for Public Safety has the power to conduct a variety of reviews and audits relating to police accountability, including the "practices" of the CPD (CMC § 22-56-230 (d)).

Pattern or practice investigations could be useful because a small number of police officers have repeatedly been named in multiple complaints of police misconduct, and have been responsible for a high share of the monetary judgments for misconduct against the City. (See for instance, the Chicago Tribune article dated 1/31/16 by Angela Caputo and Jeremy Gerner, titled, "Small group of police costs the city millions. Just 1% of the force was involved in nearly a third of misconduct lawsuit settlements since 2009." (See also the memo titled "Citizens Police Data Project."))

III. Findings on Complaints of Misconduct

Types of Findings on Complaints of Misconduct Against Chicago Police.

Finding	Meaning
Sustained	The allegation is supported by sufficient evidence to justify discipline
Not sustained	There is insufficient evidence either to prove or disprove the allegation.
Unfounded	The allegation is false or not factual.
Exonerated	The incident occurred, but the actions of the accused were lawful and proper.

COPA's and BIA's 2018 Findings

Findings	COPA		BIA		TOTAL	
	#	%	#	%	#	%
Sustained	117	34	134	37	251	36
Not sustained	83	24	128	35	211	30
Unfounded	117	34	82	23	199	28
Exonerated	29	8	17	5	46	6
Total	346	100	361	100	707	100

¹² The nine members of COPA's Community Advisory Council are listed on COPA's website under the heading "Community Outreach."

(Source: COPA Annual Report for 2018, p. 28, and the "Blue Books" that the Police Superintendent submits each month to the Chicago Police Board. See footnote 3 above.)

Comparing the above rates of the four types of findings made by COPA and BIA would be more useful if BIA separately reported its findings on complaints of violations of operational/personnel rules (typically filed by supervisors) from its findings on complaints filed by civilians; and if it separately reported the findings that BIA investigators make from findings that police supervisors make. BIA's practice of lumping together the findings on different kinds of violations hides information that is more useful to the public.

IV. Discipline of Police

A. Discipline Recommendations

COPA lacks independent authority to impose discipline. Instead, when it makes a "sustained" finding on an allegation of misconduct, it recommends a level of discipline to the Police Superintendent.

B. What Follows a Discipline Recommendation

Both COPA's and BIA's discipline recommendations on sustained cases are subject to several layers of CPD review. Recommendations other than discharge are subject to a Command Channel Review (CCR), in which supervisors in the accused officer's chain of command review and comment on the recommended discipline. Next, the recommendations and the CCR comments are forwarded to the Superintendent for review.

Discharge recommendations go directly to the Superintendent. If he approves the discharge decision, the case goes to the Chicago Police Board. (See Section IV. C., below.) The current President of the Police Board is Ghian Foreman.

The Superintendent must respond to a COPA discipline recommendation within 60 days. If s/he proposes no discipline or discipline that differs from COPA's recommendation, s/he must discuss the matter with COPA's Chief Administrator. If they disagree, a member of the Chicago Police Board resolves the dispute. (Section 2-78- 130(a)(iii) of the COPA ordinance.)

Other than in discharge cases, which are heard only by the Police Board, officers can challenge final CPD discipline decisions through arbitration. The procedure can be either a summary disposition on the record or a full evidentiary hearing depending on the officer's rank and the level of discipline recommended. The arbitrator's decision is final. (Chicago Police Accountability Task Force Report, 2016, p. 65; Department of Justice Report on CPD, p. 49.) Decisions of the Police Board and arbitrators are subject to administrative review in the Circuit Court of Cook County, and can be appealed to the Illinois Appellate Court and the Illinois Supreme Court.

C. The Role of the Chicago Police Board in Discipline

The Chicago Police Board lacks independent power to initiate discipline against any police officer. But if the Police Superintendent seeks to discharge a police officer, he must file a charge with the Police Board. A hearing officer then holds a hearing, at which attorneys with the Chicago Corporation Counsel's office represent the Superintendent. The officer is usually represented by an attorney. The Police Board then reviews the record of the hearing and decides if the officer is guilty or not guilty of one or more charges. If it decides the former, it then decides on the discipline. (Chicago Police Board 2018 Annual Report, pp. 4 and 5.)

If the Superintendent suspends an officer below the rank of sergeant for a period from 31 days through one year, the officer has the right to request a review by the Police Board. In order to suspend an officer of the rank of sergeant or above for more than 30 days, the Superintendent must file written charges, and the Board will then hold an evidentiary hearing. Under the current union contracts, an officer lacks the option of requesting Police Board review of a suspension of 30 days or fewer (except in cases in which the union decides not to advance a police officer's grievance to arbitration.) (Chicago Police Board, 2018 Annual Report, p. 5.)

Paragraph 532 of the Consent Decree requires the City to adopt selection criteria for Police Board members.

D. Information that the Chicago Police Board Reports

The Chicago Police Board decided 90 discharge cases in the five-year period from 2014 through 2018. The outcomes were as follows:

Outcomes of Discharge Cases before the Chicago Police Board, 2014 – 2018

Guilty: Discharged	Guilty: Suspended or Reprimanded	Not guilty	Resigned	Other	Total
33	11	18	22	6	90

Thus, of the 90 discharge cases decided by the Police Board in the above five years, 55 police officers (61%) were either discharged or resigned prior to a hearing. (Source: Police Board 2018 Annual Report, p. 7.)

The Chicago Police Board also publishes on its website each of its decisions. These refer to the officer by name and star number, describe the charges filed, present the evidence on both sides, evaluate the strength of the evidence including credibility of witnesses, reach a decision as to guilt or innocence, and if guilty, decide the discipline. The votes of the Police Board members are recorded. The decisions typically range from 10 to 30 pages. Because the Police Board can resolve cases years after COPA completed its investigation, the witnesses who testify are not necessarily the same. As a result, the outcomes can differ.

V. Other Entities that Review Police Activities

A. Chicago Inspector General

The Office of Chicago Inspector General issued a review of the Chicago Police Department's management of School Resource Officers placed in Chicago Public Schools. See Inspector General's 2018 Statement to Chicago Public Safety Committee.

<http://chicagoinspectorgeneral.org/publications-and-press/inspector-generals-2018-statement-to-chicago-public-safety-committee/>

The current Inspector General of Chicago is Joseph Ferguson.

B. Deputy Inspector General for Public Safety

The ordinance that created COPA also created the Office of the Deputy Inspector General for Public Safety (DIGPS) within the office of Chicago Inspector General. (See Sections 2-56-200 through 2-56-280 of the Chicago Municipal Code.) Mayor Emanuel's Police Accountability Task Force (PATF) had recommended in 2016 the creation of both COPA and the DIGPS office. The current DIGPS is Joseph Lipari.

The DIGPS is nominated by the Inspector General, and must be approved by the Chicago City Council. (CMC§ 2-56-220(b)). The mission of the DIGPS is to ensure the accountability of the police force by conducting reviews and audits of the CPD, COPA and the Chicago Police Board (§ 2-56-210). The DIGPS is authorized to make findings and recommendations based on its reviews and audits (§ 2-56-230 (a) – (f)). It must prepare reports summarizing its findings, conclusions and recommendations; those reports must be public (§ 2-56-240). City agencies to which it has issued recommendations shall file a written response within 60 or 90 days (§ 2-56-245). Promptly after receiving a response, DIGPS shall post on its website the report, recommendations and response (§ 2-56-250). The DIGPS term ends when the appointing Inspector General's term ends (§ 2-56-225(c)). Before then, the DIGPS may be removed only for cause (§ 2-56-280).

The DIGPS issued in 2019 a report on BIA investigations of complaints of police misconduct. See, <http://chicagoinspectorgeneral.org>.

Paragraph 558 of the Consent Decree requires the DIGPS annually to evaluate the effectiveness of the police accountability system, including the rules prohibiting certain types of police conduct: Rule 14 (making a false report); Rule 21 (failure to report a crime or illegal act); and Rule 22 (failure to report conduct that violates CPD rules, policies, and orders). The DIGPS is also required annually to review CPD actions for potential bias and issue a report. (Paragraph 561.)

C. The Proposed Community Safety Oversight Board

On October 5, 2016 the Chicago City Council passed a resolution expressing its intent to create a Community Safety Oversight Board as recommended by the PATF. (See October 14, 2016 Report of the Legislative Reference Bureau of the Chicago City Council.)

VI. Enforcement of the Duties of Police Officers to Be Truthful and Report Misconduct of Other Officers.

The Chicago Police Board has adopted Rules of Conduct for Chicago Police Officers. Rule 14 prohibits making a false report; Rule 21 prohibits failure to report a crime or illegal act; and Rule 22 prohibits failure to report conduct that violates CPD rules, policies, and orders. If enforced, these rules should discourage the “code of silence,” and obstruction of justice by lying.

The ordinance establishing COPA states that it may recommend discipline or remedial action if it finds that an officer has violated “the duty to provide truthful information regarding the officer's own conduct and the conduct of others, and the duty to report the misconduct of others” (§ 2-78-120(l)).

Several paragraphs of the Consent Decree should encourage the enforcement of Rules 14, 21 and 22 of the Police Board. Paragraph 436 provides that CPD is required to adopt policies that require police officers promptly to report to a supervisor other police officers who engage in misconduct, and require that the supervisor document such misconduct and promptly report it to COPA.

Paragraph 445 provides that the City will use its best efforts to share information with the Cook County State's Attorney, the Cook County Public Defender, the Federal Defender and the U.S. Attorney about judicial findings made in criminal cases that a CPD member was untruthful. Upon receipt of such information that may suggest misconduct, COPA will initiate the intake process.

Paragraph 466 provides that when assessing credibility, COPA, BIA, and the police districts will consider any record or determination of deception or untruthfulness in investigations or legal proceedings, and not prefer or discount any statement solely due to its source, including statements made by police.

Paragraphs 488(d) and (e) contain provisions with respect to investigations of officer-involved shootings and deaths. Under paragraph 488(d), the City will ensure that police not discuss facts of the incident with witnesses until they are interviewed by COPA (except to the extent necessary to ensure public safety, as instructed by counsel in relation to court proceedings, or for participation in CPD officer wellness programs). Under paragraph 488(e), police who are involved in the incident or witnessed it, “will be separated, transported separately from the scene, and monitored to avoid contact or communications relating to the incident until released by the responding supervisor at or above the rank of Commander.”

Paragraph 496 provides that the City will ensure that interfering with an administrative investigation, including being untruthful in an investigation of misconduct, or colluding with

other individuals to undermine such an investigation, or intentionally withholding requested evidence or information from an investigator, will result in discipline and/or criminal prosecution based on the seriousness of the conduct.

Paragraph 587 deals with the automated electronic data system that the City must establish to identify officers at elevated risk of being involved in serious misconduct. That system is required to include a vast amount of data on each officer, including (i) all instances in which CPD is notified that a court has made a negative credibility determination regarding a CPD officer; (j) instances in which CPD learns through the Cook County State's Attorney's Office that a finding was made in a criminal proceeding that a police officer was untruthful, including any findings made at suppression hearings; and (k) all instances in which CPD learns from a prosecutorial authority that prosecution was declined based on concerns about a CPD officer's credibility.

Finally, Paragraph 558 of the Consent Decree requires the DIGPS annually to analyze CPD's enforcement of Rules 14, 21 and 22 of the Chicago Police Board.

VII. Conclusions

A. Police Officers Charged with Misconduct have Many Opportunities to Present their Case

When a misconduct complaint is filed against a Chicago police officer, he may present his case to the COPA or BIA investigator. If either COPA or BIA sustains a complaint and recommends discharge, the Chicago Police Board holds a hearing at which the officer may present his case and be represented by counsel. If the proposed discipline is suspension for over 31 days, the officer has the right to request a hearing before the Police Board, as above. If the proposed discipline is less than a suspension for 31 days, the officer may challenge it through arbitration. The procedure can be either a summary disposition on the record or a full evidentiary hearing, depending on the officer's rank and the level of discipline recommended. The arbitrator's decision is final. (Chicago Police Accountability Task Force Report, 2016, p. 65; Department of Justice Report, p. 49.) (See also Sections II.E.6, IV.B, and IV.C, above.)

B. Few Officers Charged with Misconduct are Discharged

In 2018, a total of 4,143 misconduct complaints were filed against Chicago Police Officers. (Blue Book of information submitted in January 2019 to the Police Board by the Chicago Police Superintendent. See footnote 3, above.)

In 2018, 779 of those cases were closed because of a lack of an affidavit or an affidavit override. (See p. 12, above.)

In 2018, COPA and BIA entered a finding in 707 cases.¹³

¹³ The total of 779 plus 707 is less than the 4,143 misconduct complaints filed in 2018 for two main reasons. The first is that fewer than 4,143 complaints were resolved in 2018 (leading to a backlog of complaints to resolve). The second is that investigations can be closed for reasons in addition to the lack of an affidavit, or the entry of a finding. For instance, COPA's 2018 Annual Report states that in

In the five-year period, 2014-2018, the Chicago Police Board decided 90 discharge cases. The Board discharged 33, and 22 resigned before a hearing, for a total of 55, or 61%. That averages 11 discharges and resignations per year. (See p. 15, above.)

(See also the memo titled Citizens Police Data Project”)

C. The Consent Decree will Require Agencies Involved in the Police Accountability Process to become More Proactive

Various sections of the Consent Decree will require agencies involved in the police accountability process to be more proactive. For instance, Paragraph 464 of the Decree requires investigators to monitor or combine open investigations against the same officer and determine if there is any misconduct beyond that initially alleged. (See Section II.E.5., above.) Paragraphs 583 to 605 require the city to establish an early intervention system that seeks to identify police at risk of being involved in serious misconduct. (See Section VI above and the memo titled “The Consent Decree Requires the CPD To Adopt an Early Intervention System.”) Paragraph 558 requires the DIGPS annually to analyze CPD’s enforcement of the rules that prohibit officers from filing a false report, or from failing to report a crime or conduct that violates CPD rules.

The sections of the Consent Decree that require COPA, BIA and the CPD to aggregate and report on data involving the police accountability process should enable them to be more proactive, and should assist DIGPS in its role of auditing CPD, COPA and the Chicago Police Board. The agencies, such as COPA, that already aggregate and report on such data in quarterly and annual reports and on their websites, will have an advantage in complying with the Consent Decree. An agency, such as BIA, will have to implement much more changes, which means that the Consent Decree Monitor may need to monitor it closely.

2018 it “administratively closed” 262 investigations, and “administratively terminated” 55 investigations. (COPA 2018 Report, p. 29.) COPA, however, does not fully explain these numbers, stating only that COPA may “administratively close a duplicate log number generated in error for an incident already under investigation.” (Id. at p. 28.)