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SEPTEMBER 2020

ADVISORY CONCERNING THE CIVILIAN OFFICE OF POLICE ACCOUNTABILITY'S PRACTICE OF ADMINISTRATIVELY TERMINATING DISCIPLINARY INVESTIGATIONS

CITY OF CHICAGO
OFFICE OF INSPECTOR GENERAL



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SEPTEMBER 10, 2020

The Public Safety section of the City of Chicago Office of Inspector General (OIG) conducts, on an ongoing basis, reviews of individual closed disciplinary investigations conducted by the Civilian Office of Police Accountability (COPA) and the Chicago Police Department's (CPD) Bureau of Internal Affairs (BIA). In the course of these reviews, OIG identified issues with COPA's use of "administrative termination" to conclude disciplinary investigations short of an investigative finding.

To close an investigation, COPA may use either non-finding or finding dispositions, which are laid out in COPA's Investigations Manual (the Manual).¹ Despite the fact that it does not appear in the Manual, COPA uses administrative termination as a non-finding disposition. OIG found that administrative termination is ill-defined and frequently misapplied, with inconsistencies and inaccuracies in its use falling into two general categories. In the first category of cases, the criteria for use set forth in COPA's Administrative Termination Memorandum template were not met, although they were sometimes recorded as met in contradiction with the facts and circumstances of the investigation.² In the second category of cases, investigations were closed via administrative termination when there were more clearly defined and closely applicable dispositions available.

OIG recommended that COPA add policies on the use of administrative termination to its Manual; establish clear and specific criteria for its use; ensure that all potentially appropriate dispositions are considered; ensure that, during supervisory review, all required criteria for administrative termination are met; ensure that the chief administrator's approval is sought when appropriate; and refrain from administratively terminating investigations based solely on the age of the complaint or as a means to increase case closure capacity. Finally, OIG recommended that COPA review investigations recently closed by administrative termination to ensure their dispositions were appropriate.

¹ The finding dispositions included in the Manual are "Sustained," "Not Sustained," "Unfounded," and "Exonerated." The non-finding dispositions included in the Manual are "Administratively Closed," "Closed-No Affidavit," and "Closed-Mediation/ADR."

² The Administrative Termination Memorandum is a case closure document template which contains a list of criteria for an administrative termination disposition.

COPA agreed with many of OIG's recommendations and acknowledged that, "[i]n the past, operating practices were not as systematic and consistent as those to which we aspire." Specifically, COPA agreed that administrative termination and its associated criteria should be added to the Manual in a way that establishes clear and specific affirmative criteria for its use. COPA further agreed with the importance of closing an investigation using the most appropriate available disposition. COPA emphasized that its investigators receive "considerable training regarding the requirements of each disposition and the appropriate circumstances of its application" and are regularly provided with updated policies on the application of each disposition.

In its response, COPA described the criteria listed in the Administrative Termination Memorandum template as a "guide, not a complete list or a schedule of requirements that must all be met prior to Administrative Termination."³ This contradicts the plain language of the template, which states, "Criteria set forth below must be met in order to close as Administrative Termination." COPA also asserted in its written response that the chief administrator is not required to approve the use of administrative termination to close an investigation where all of the criteria were not met. This directly contradicts what OIG was told by COPA management, as well as a memorandum which COPA supplied with its response, which states that "[c]ases that fall outside of this criteria require Chief Administrator approval to be Administratively Terminated." These contradictions, highlighted by COPA's response and accompanying materials, underscore the need to clarify and codify the requirements surrounding the application of administrative termination.

COPA agreed in part with OIG's recommendation that administrative termination should not be used to close an investigation solely based on the age of the complaint or as a means to increase case closure capacity, but detailed circumstances under which COPA believes it might be appropriate to do so. Specifically, COPA stated that it must make "[d]ifficult decisions about which investigations are deserving of [its] limited resources." Thus, certain cases that "may have an indicia [sic] of misconduct, but are unlikely to produce an affirmative finding, such that pursuit of the matter would misapply finite resources and manpower" are proper subjects for administrative termination. (Emphasis omitted). Additionally, COPA outlined its views on the use of administrative termination in the investigation of incidents which occurred more than five years in the past. In such circumstances, the superintendent's approval is required to proceed with an investigation; COPA stated that administrative termination is appropriate when "COPA sought and obtained Superintendent approval to proceed with [the] investigation, but its efforts ultimately indicated an inability to reach an affirmative finding." Finally, COPA agreed to audit

³ Along with its response, COPA provided to OIG a memorandum dated October 25, 2018, which outlines the criteria for the use of administrative termination. This memorandum is ambiguous as to whether these criteria must be met or are simply a guide.

administratively terminated investigations to ensure that the most appropriate disposition was utilized when closing them.

The Public Safety section's advisory to COPA is attached in Appendix A. COPA's response is attached in Appendix B. OIG encourages COPA to implement OIG's recommendations and to continue to conduct investigations in a manner which demonstrates a professional standard of care. OIG thanks COPA's management and staff for their ongoing cooperation in OIG's review of closed disciplinary cases.

MAY 27, 2020

APPENDIX A: OIG ADVISORY CONCERNING PRACTICE OF ADMINISTRATIVELY TERMINATING DISCIPLINARY INVESTIGATIONS



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VIA ELECTRONIC MAIL

MAY 27, 2020

SYDNEY ROBERTS
CHIEF ADMINISTRATOR
CIVILIAN OFFICE OF POLICE ACCOUNTABILITY
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CHICAGO, ILLINOIS 60622

Dear Chief Administrator Roberts:

The City of Chicago Office of Inspector General's (OIG) Public Safety section has identified issues with the Civilian Office of Police Accountability's (COPA) use of administrative termination to conclude disciplinary investigations short of an investigative finding. Based on its in-depth review of administratively terminated disciplinary investigations, OIG recommends that COPA take measures to improve the quality of these outcomes.⁴ Where administrative termination is ill-defined and frequently misapplied, each investigation in which it is used represents a risk that an allegation of police misconduct is improperly disposed of without ensuring either accountability or vindication for an accused Chicago Police Department (CPD) member.

Pursuant to its enabling ordinance, the Public Safety section's Inspections Unit reviews individual closed disciplinary investigations conducted by COPA and CPD's Bureau of Internal Affairs (BIA). Based on its reviews, OIG may make recommendations, like those contained herein, to inform and improve future

⁴ OIG's review of administratively terminated disciplinary investigations covers investigations initiated under both IPRA and COPA from August 2015 to December 2018.

investigations. Through this process, OIG identified a pattern of concerns regarding COPA's use of administrative termination as a non-finding disposition.⁵

Inconsistencies and inaccuracies in the application of administrative termination fall into two general categories. In the first, the criteria for use set forth in COPA's Administrative Termination Memorandum template was not met, although sometimes marked as met in contradiction with the facts and circumstances of the investigation.⁶ In the second category, investigations were closed via administrative termination when there were other more clearly defined and closely applicable dispositions available.

Specifically, OIG recommends that COPA add policies on the use of administrative termination to its Investigations Manual; establish clear and specific criteria for its use; ensure that all potentially appropriate dispositions are considered; ensure that, during supervisory review, all required criteria for administrative termination is met; ensure that the chief administrator's approval is sought when appropriate; and refrain from administratively terminating investigations based solely on the age of the complaint or as a means to increase case closure capacity. Further, based on its observations in individual case files, OIG recommends that COPA review investigations recently closed by administrative termination to ensure that they were disposed of appropriately. By adopting these recommendations, COPA can improve transparency, ensure consistency in future investigations, and increase accountability in its investigative process; a transparent, policy-driven disciplinary system is crucial to building public trust and to ensuring procedural fairness for CPD members.

I. BACKGROUND

In October of 2016, the Chicago City Council passed an ordinance establishing COPA, replacing the Independent Police Review Authority (IPRA) as the civilian oversight agency for CPD. COPA, which officially took over IPRA functions on September 15, 2017, was tasked with, among other things, providing "a just and efficient means to fairly and timely conduct investigations within its jurisdiction, including investigations of alleged police misconduct and to determine whether those allegations are well-founded, applying a preponderance of the evidence standard."⁷

⁵ As discussed further below, COPA may close a disciplinary investigation either by way of reaching a finding, which is a substantive determination on the merits of the allegations under investigation, or by way of various non-finding dispositions.

⁶ The Administrative Termination Memorandum is a case closure document template which contains a list of "criteria" for an administrative termination disposition. See Appendix A.

⁷ Municipal Code of Chicago (MCC) § 2-78-110.

COPA's 2019 Annual Report states that COPA administratively terminated 55 cases in 2018 and 168 in 2019. Since 2017, 376 investigations—13.6% of all investigations closed by COPA by way of a non-finding disposition—have been administratively terminated.⁸

A. COPA'S INVESTIGATIONS MANUAL DOES NOT LIST ADMINISTRATIVE TERMINATION AS AN AVAILABLE DISPOSITION

COPA's Investigations Manual (the Manual) establishes guidelines for COPA employees from complaint intake through the completion of each investigation, to post-closing litigation. The Manual specifies that for each allegation that COPA retains and investigates, it "must close the case with a final disposition or a finding to be subject to CPD's internal review process and, if necessary, other administrative review processes." To close an investigation, COPA may use either non-finding or finding dispositions.

FINDING DISPOSITIONS

The finding dispositions included in the Manual are listed and defined as follows:

Disposition	Definition
Sustained	"When the allegation is supported by substantial evidence."
Not Sustained	"When there is insufficient evidence to either prove or disprove the allegation."
Unfounded	"When the allegation is false or not factual."
Exonerated	"When the incident occurred but the actions of the accused were lawful and proper."

NON-FINDING DISPOSITIONS

The non-finding dispositions included in the Manual are listed and defined as follows:⁹

Disposition	Definition
Administratively Closed ¹⁰	"An investigation may be considered for Administrative Closure under any of the following circumstances:

⁸ See COPA's 2019 Annual Report, <https://www.chicagocopa.org/wp-content/uploads/2020/02/2019-COPA-Annual-Report.pdf>

⁹ Definitions for each non-finding disposition are reproduced here as they appear in the Manual, the Manual does not offer any further explanation of definitional terms

¹⁰ OIG notes that the use of two different dispositions with very similar names but different functional meanings, administrative closure and administrative termination—a term not contained in COPA's Investigations Manual (discussed further below) seems likely to cause confusion and may lead to the misuse of these dispositions

	<ul style="list-style-type: none"> • Preliminary investigative efforts in response to a notification made by the Department do not reveal misconduct and COPA has not received a complaint regarding the matter. • Where the complaint does not involve a CPD member or other City of Chicago employee and the preliminary investigation provides insufficient information from which to determine an appropriate entity for referral. • Documentation received from Department members alerting COPA that the Department member may be the subject of a future complaint. • Complaints involving alleged misconduct occurring over five or more years ago. After preliminary investigative efforts, COPA does not have sufficient objective verifiable evidence to support a request to the superintendent to proceed with the investigation."
Closed–No Affidavit ¹¹	<p>"An investigation may be considered for Closure – No Affidavit under either of the following circumstances:</p> <ul style="list-style-type: none"> • After making good faith efforts to do so, COPA has been unable to acquire a sworn affidavit from a complainant or other individual certifying that allegations made are true and correct. • In the absence of a sworn affidavit, COPA's preliminary investigative efforts do not result in sufficient objective verifiable evidence to support an affidavit override request submitted to BIA."

¹¹ The Uniform Peace Officers' Disciplinary Act (50 ILCS 7/25) was amended in 2003 to require that a sworn affidavit attesting to the allegations must be in place in order to conduct a full disciplinary investigation into misconduct by a peace officer. There are certain exceptions to this requirement, as outlined in applicable directives, policies, and collective bargaining agreement. If a sworn affidavit cannot be obtained but objective, verifiable evidence exists, COPA may seek an affidavit override from the chief of BIA authorizing completion of the investigation. The term *Closed – No Affidavit* is used interchangeably with the term *Closed – No Conversion*; these terms have the same meaning.

Closed-Mediation/ADR	"The case was resolved through mediation or another alternative dispute resolution (ADR) process."
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"Administrative termination" does not appear in COPA's 2018 Investigations Manual as an available disposition.¹² Rather, criteria for its use, all of which must be met in order to use it, appear in the Administrative Termination Memorandum template. While these criteria lay out circumstances in which an investigation may *not* be disposed of by administrative termination, and identify tasks which must be completed before such a disposition, they provide no affirmative guidance on or criteria for circumstances under which its use might be appropriate.

The criteria listed in the template is as follows:

1. The potential allegations in the case do not involve:¹³
 - Firearm discharge
 - Physical violence or threats of physical violence or involve parties that [sic] historically been alleged to have committed physical violence or who have threatened physical violence
 - Use of force resulting in serious bodily harm or injury
 - Verbal abuse rising to the level of racial bias
 - Any incident in which video or audio evidence exists that depicts and corroborates the allegation(s)
2. All other closing dispositions have been considered and there exists a lack of evidence to reach an Exonerated or Sustained finding.
3. The accused officer's history has been considered (i.e. pattern or practice of past complaints of a similar nature).
4. Officer's credibility has been assessed against that of the subject's, witnesses', and other involved parties'.

B. COPA'S EXPLANATION AND APPLICATION OF ADMINISTRATIVE TERMINATION

COPA reported to OIG that administrative termination is most frequently used to dispose of cases left over from IPRA, COPA's predecessor agency, in the service of COPA's ongoing internal operational goal of clearing its inherited backlog of IPRA's

¹² COPA has reported to OIG as recently as February 7, 2020, that the 2018 Investigations Manual is the most current version in use by COPA investigators

¹³ The Administrative Termination Memorandum was revised in October 2018 and September 2019. The 2018 version reads, "The case does not involve " while the 2019 version reads, "The potential allegations in the case do not involve "

legacy cases. Other factors COPA considers when deciding to administratively terminate an investigation may include the credibility of the involved parties, how much is left to be done in the investigation, and its age.

COPA's chief administrator and deputy chief administrators established the mandatory criteria set forth in the Administrative Termination Memorandum template. COPA reported to OIG that each of these must be met in order for an investigation to be administratively terminated, and that in a situation in which all of the criteria are not met, the administrative termination of an investigation must be approved by the chief administrator. Notably, however, none of the investigations reviewed by OIG for the purposes of this inquiry contained any record or indication of chief administrator approval when the underlying record did not establish all of the required criteria. Moreover, when the Administrative Termination Memorandum template was revised in September 2019, the signature line for the chief administrator was removed.

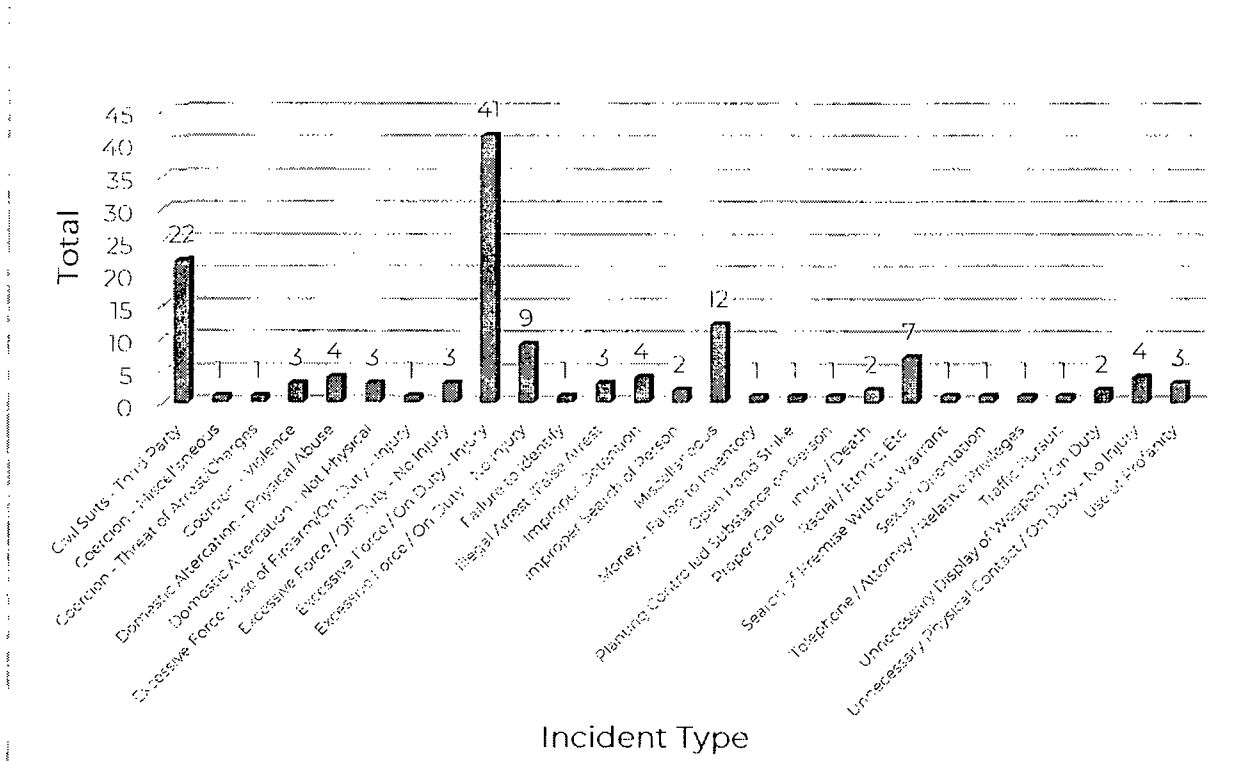
COPA reported that, beyond the criteria set forth in the Administrative Termination Memorandum template, circumstances under which administrative termination would not be an appropriate disposition might include those in which:

- an individual requires medical assistance;
- an individual has broken bones;
- any type of strangulation is alleged;
- a CPD member is alleged to have used a racial epithet; or
- there are allegations involving a reference to an individual's ethnicity.

When asked to specifically explain the application of "physical violence or threats of physical violence or involved parties that historically [sic] been alleged to have committed physical violence or who have threatened physical violence," COPA stated that this was intended to refer to "domestic violence" (DV) rather than generally to "physical violence, no such definition or distinction is found in the Manual or the Administrative Termination Memorandum template."¹⁴

¹⁴ In the COPA's 2019 Annual Report, COPA continues to use the phrase "physical violence" rather than "domestic violence."

FIGURE 1: ADMINISTRATIVELY TERMINATED CASES BY INCIDENT TYPE, FROM SEPTEMBER 2017-DECEMBER 2018¹⁵



COPA further explained that an accused member's entire complaint history, not just sustained complaints, would be accounted for when considering whether or not to administratively terminate an investigation. Reportedly, an investigation involving a member whose complaint history included "three, four, five" similar complaints would not be eligible for administrative termination.

II. ANALYSIS

A. INCONSISTENCIES AND INACCURACIES IN COPA'S USE OF ADMINISTRATIVE TERMINATION

The following summaries of administratively terminated investigations reviewed by OIG provide illustrative examples of the two primary ways in which this disposition is misused. The Administrative Termination Memoranda used below include both the October 2018 version and the September 2019 version.

¹⁵ Figure 1 shows the number of closed administratively terminated investigations, separated by incident type, for the period from September 15, 2017 to December 31, 2018.

Coercion – Threat of Arrest/Charges (#19-1434)

An investigation, regarding the exoneration of and granting of certificates of innocence to four individuals who were convicted of a 1994 rape and murder, was administratively terminated, with COPA providing the following explanation:

- "Review of the suppression hearing transcript, as well as [the accused's] deposition testimony in the subsequent lawsuits, revealed apparent contradictions and potential Rule 14 violations.¹⁶ A closer review of the transcripts demonstrated responses that were subject to a variety of interpretations or conditioned upon his recollection.¹⁷
- There is not sufficient evidence to indicate that [the accused] committed a Rule 14 violation, in that he willfully provided a false statement or report on a material fact.
- It is unlikely that any further use of resources would yield information likely to result in sustained allegations.
- The case is more than 25 years old, and therefore the likelihood of any potential witnesses, and accused officer, accurately recalling events related to the investigation is remote."

The criteria for Administrative Termination were not met here. Specifically, the accused officer's disciplinary history was not considered as required, and the officer's credibility was apparently not assessed against that of other involved parties. First, the only accused officer still employed by CPD had six complaints of either "Force, DV, Civil Suits," "Coercion," or "Improper Search" at the time of this investigation's initiation and had been involved in numerous civil suits.¹⁸ Also, according to statements made by this accused officer during his deposition, he was an arresting officer in a murder case, separate from the case resulting in this investigation, in which the convicted party later had their conviction overturned.¹⁹ Second, it is unclear from COPA's investigative file how the credibility of the parties might have been assessed. This is further clouded by COPA's indication that the accused officer committed potential Rule 14 violations but that the statements in question were "subject to a variety of interpretations or conditioned upon his [accused] recollection," while all four of the individuals originally convicted were granted certificates of innocence.

¹⁶ CPD's Rule 14 is a serious infraction, a sustained allegation of which often results in a recommended penalty of separation from CPD employment, prohibiting the "[m]aking a false report, written or oral"

¹⁷ COPA's Administrative Termination Memorandum provides no further explanation for this observation

¹⁸ Information about the accused member's disciplinary history, as offered herein, is based on OIG's review of disciplinary records and was not included anywhere in COPA's analysis

¹⁹ OIG does not suggest that the accused's involvement in a separate case in which a murder conviction was overturned indicates that the accused committed any misconduct. Rather, OIG notes that COPA's own criteria would have required consideration of this fact, and there is no evidence in the case file that this consideration took place

Force/DV/Civil Suits – Civil Suits – Third Party (#19-1077)

An investigation into allegations of excessive force, initiated in response to a civil suit notification, was administratively terminated, with COPA providing the following explanation:

- "On October 18, 2018, the case was terminated and dismissed without prejudice because [the complainant] was reported to be deceased.
- The originating event was in October of 2015, almost four years [prior]. Though COPA did not reach out to [the complainant], [the complainant] has since passed away.
- After review of information related to the civil and criminal matters, it is apparent that COPA is unlikely thru [sic] additional investigation to reach a sustain [sic] finding.
- COPA also lacks sufficient independent, objective evidence to support an affidavit override. Therefore, no additional resources should be devoted and the case should be Administratively Terminated [sic]."

Administrative Termination was misused here, and a more directly applicable non-finding disposition was available. First, the category code of Force/DV/Civil Suits and the fact that the reporting party victim alleged excessive force are at odds with the criteria that an investigation must not involve "physical violence or threats of physical violence" in order to qualify for administrative termination. Second, the criteria stating that the "officer's credibility has been assessed against that of the subject's, witnesses', and other involved parties'" could not possibly have been met, given that the complainant died before having been interviewed by COPA. Presumably, this would have made any assessment of his credibility impossible. Finally, Closed – No Affidavit would have been a more appropriate non-finding disposition for this investigation. COPA states that it lacks "sufficient independent, objective evidence to support an affidavit override," as the reason to administratively terminate the investigation, which precisely constitutes the circumstances under which an investigation would properly be Closed – No Affidavit for lack of an affidavit or affidavit override.

Improper Search – Unlawful Detention (OIG #19-1074)

A COPA investigation in which the complainant alleged that they were stopped, detained, that they and their vehicle were searched without justification, and that the accused officer(s) damaged their cellphone beyond repair was administratively terminated, with COPA providing the following explanation:

- "Not only did the officers have reasonable suspicion to conduct an investigatory stop, but that [complainant] himself made the 911 call that initiated the stop and gave a description of himself to the OEMC

- [Office of Emergency Management and Communications] operator as the person with a gun.
- [Complainant] previously contacted 911 and gave his description as a person with a gun."

Among the required criteria for administrative termination is that, "[a]ll other closing dispositions have been considered and there exists a lack of evidence to reach an Exonerated or Sustained finding." Based on the definition of "Exonerated" in COPA's Investigations Manual as well as the assigned investigator's narrative contained in the Administrative Termination Memorandum template, this criteria was not met. The investigator wrote, "COPA investigated this allegation and finds that not only did the officers have reasonable suspicion but that [Complainant] himself made the 911 call that initiated the stop, and gave a description of himself to the OEMC operator as the person with a gun as the 911 call came from [Complainant's] own phone." This statement evidences a determination that the accused officer(s) committed no wrongdoing when the officer stopped, detained, and searched the reporting party and their vehicle; that is, it suggests that a finding of Exonerated was in fact available.

Arrest/Lockup Procedures – Proper Care – Injury/Death (#19-0595)

An investigation initiated in response to an Extraordinary Occurrence Notification regarding an individual found unresponsive in his cell and ultimately pronounced dead was administratively terminated, with COPA providing the following explanation:

- "There is insufficient evidence to determine whether [the deceased] told any Chicago Police Department Personnel he needed medical attention, or that he was suffering from any ailment that would require CPD to take him to the hospital.
- There is insufficient evidence to determine whether CPD failed to provide medical care to [the deceased] and the only possible finding for the allegations is Not Sustained.
- These individuals [lockup personnel] have retired from the CPD and therefore, COPA lacks jurisdiction."

COPA's investigation of this matter should not have been eligible for administrative termination; not all the requisite criteria was met, and a different, more appropriate disposition was available. The Administrative Termination Memorandum gives no indication that the first two required criteria were considered or satisfied – that "the accused officer's history has been considered (i.e. pattern or practice of past complaints of a similar nature)," or that "the officer's credibility has been assessed against that of the subject's, witnesses', and other involved parties' [sic]."

Furthermore, COPA's own definition of a different disposition, administrative closure, was explicitly met here. COPA's preliminary investigation, which was conducted in response to a CPD notification, did not reveal misconduct and COPA did not receive a complaint regarding the matter; furthermore, the fact that all involved CPD members had retired and were no longer CPD or City of Chicago employees would also have rendered administrative closure an appropriate disposition.

Verbal Abuse – Racial/Ethnic (#19-0592)

An investigation into allegations of an officer using language containing “racial and/or religious overtones” was administratively terminated, with COPA providing the following explanation:

- “There is no known video evidence of the incident, nor does there exist a likelihood that such evidence exists as of the date of this memo.
- There are no identified witnesses to any of the alleged racial jokes and or comments.
- Specific dates, times and exact locations of the alleged misconduct were not provided. This lack of specificity resulted in difficulties with identifying witness and other possible evidence, i.e., possible video evidence.
- Available evidence resulted in differing unsubstantiated accounts – [the accused] denied the alleged use of racial jokes and comments.
- While Sgt. acknowledge [sic] that [Complaining Officer], and he address the complaint by speaking directly with [the accused] and effecting his subsequent transfer, these actions fail [sic] to establish what racial jokes or comments, if any, were said by [the accused] or if these comments created a hostile environment.
- The incident was reported to CPD supervisory staff. CPD had the ability to address this matter within the involved officer's chain of command, because the allegations did not involve any members of the public.”

The category code of this investigation, Verbal Abuse – Racial Ethnic, should have made administrative termination ineligible as a potential non-finding disposition, as the plain language of COPA's criteria explicitly excludes incidents of this kind in cases which allegations involve “[v]erbal abuse rising to the level of racial bias.” Additional category codes which similarly appear plainly excluded from administrative termination include those in which potential allegations involve excessive force, domestic altercations involving physical abuse, or verbal abuse involving references to sexual orientation or religious affiliation.

III. RECOMMENDATIONS

To ensure the accurate and consistent application of COPA's finding and non-finding dispositions going forward, OIG recommends that COPA:

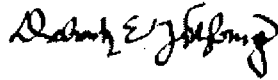
1. Include administrative termination and the associated criteria in the Investigations Manual, alongside other available non-finding dispositions, and consider addressing the likelihood of confusion caused by two different dispositions with nearly synonymous names.
2. Establish clear and specific affirmative criteria which provides guidance on the circumstances in which the use of administrative termination as a non-finding disposition *is* appropriate, and ensure that all investigators are properly trained on its application.
3. Ensure that the most appropriate disposition, finding or non-finding, is used for each investigation and that all potentially appropriate dispositions are considered.
4. During review of the Administrative Termination Memorandum, the supervisor should ensure that each of the required criteria listed has been completed, including that the category codes associated with the allegation(s) do not on their face contradict eligibility criteria for administrative termination before approval.
5. Ensure that, if an investigation in which all criteria is not met is administratively terminated, the chief administrator's approval is obtained and documented.
6. Articulate in each Administrative Termination Memorandum those facts establishing the satisfaction of each of the required criteria.
7. Refrain from administratively terminating investigations solely based on the age of the complaint and/or as a means to increase case closure capacity.
8. Audit administratively terminated investigations to ensure that the most appropriate disposition was utilized when closing the investigation.

IV. CONCLUSION

To increase trust and confidence in Chicago's police accountability system, and in COPA specifically, it is imperative that each of COPA's investigations is conducted thoroughly, transparently, and without bias, and that each disposition, whether a finding or non-finding, is applied consistently and accurately according to established criteria.

Please respond in writing by June 29, 2020. OIG looks forward to COPA's response, which will be published along with this advisory pursuant to MCC ¶12-56-250.

Respectfully,

A handwritten signature in black ink, appearing to read "Deborah Witzburg".

Deborah Witzburg
Acting Deputy Inspector General for Public Safety
Office of Inspector General

cc: Joseph M. Ferguson, Inspector General, OIG
Brian Dunn, General Counsel, OIG
Kevin Connor, General Counsel, COPA
Adam Burns, Attorney, COPA

ADVISORY APPENDIX A: COPA'S ADMINISTRATIVE TERMINATION CLOSURE MEMORANDUM TEMPLATE

ADMINISTRATIVE TERMINATION CLOSURE MEMORANDUM	
Log #	
Recommendation for Closure	Summary of Relevant Investigative Activity and Comments
<p>Case disposition for a truncated investigation. Criteria set forth below must be met in order to close as Administrative Termination.</p> <p>The potential allegations in the case do not involve:</p> <ul style="list-style-type: none"> • Firearm discharge; • Physical violence or threats of physical violence or involve parties that historically been alleged to have committed physical violence or who have threatened physical violence; • Use of force resulting in serious bodily harm or injury; • Verbal abuse rising to the level of racial bias • Any incident in which video or audio evidence exists that depicts and corroborates the allegation(s). <p>All other closing dispositions have been considered and there exists a lack of evidence to reach an Exonerated or Sustained finding.</p> <p>The accused officer's history has been considered (i.e. pattern or practice of past complaints of a similar nature).</p> <p>Officer's credibility has been assessed against that of the subject's, witnesses', and other involved parties'.</p>	<p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>

<p>Deputy Chief:</p> <p>Approved: <input checked="" type="checkbox"/> Declined: <input type="checkbox"/></p> <p>Comments:</p>	<p>Date:</p>
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APPENDIX B: COPA'S RESPONSE



July 1, 2020

Via Electronic Mail

Deborah Witzburg
Deputy Inspector General
Office of Inspector General
740 North Sedgwick Street, Suite 200
Chicago, Illinois 60654

Re: Advisory Concerning COPA's Practice of Administratively Terminating Disciplinary Investigations

Dear Deputy Inspector General Witzburg:

I am in receipt of your May 27, 2020 Advisory Letter (Letter) recommending measures to ensure accurate and consistent application of COPA's finding and non-finding dispositions. I appreciate your diligent and thorough review of our investigative files. Your recommendations will help us improve as an investigative body.

COPA largely concurs with your recommendations. In the past, operating practices were not as systematic and consistent as those to which we aspire. COPA is currently developing policies that we believe will address your concerns, gain Independent Monitoring Team approval, and comply fully with Consent Decree mandates.

While COPA agrees with your recommendations, a few points raised warrant further examination. For example, the Letter states that:

COPA's 2019 Annual report states that COPA administratively terminated 55 cases in 2018 and 163 in 2019. Since 2017, 376 investigations – 13.6% of all investigations closed by COPA by way of a non-finding disposition – have been administratively terminated.

While the simple math is correct, it does not reflect the relative rates at which COPA administratively terminated cases.

As you note, COPA began operating in September 2017. In 2018, COPA received 4,181 complaints and notifications, retaining 1,207 for investigation. In 2019, COPA received 5,394 complaints and notifications, retaining 2,089 for investigation – an increase of 73% over the prior year.¹ In 2019, COPA both received and retained significantly more cases than in prior years. Unsurprisingly, the number of administratively terminated cases rose, though at a slower pace.

Your Letter also states that

Where administrative termination is ill-defined and frequently misapplied, each investigation in which it is used represents a risk that an allegation of police misconduct

¹ See COPA's 2019 Annual Report.

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is improperly disposed of without ensuring either accountability or vindication for an accused Chicago Police Department (CPD) member.

Please note that the definition and application of *Administrative Closure* differs significantly from the definition and application of *Administrative Termination*.³¹ We do however understand that the employment of such similar terms may cause unintended confusion. *Administrative Closure* is appropriate in situations where, after a preliminary review of the facts, no actionable misconduct is identified, because: the action complained of was not misconduct; the conduct or actors are not within COPA jurisdiction; or, the incident occurred more than five years prior to receipt of the complaint and there is insufficient objective and verifiable evidence to support seeking the Superintendent's approval to open an investigation.

Conversely, *Administrative Termination* is appropriate in situations where complaints are generally, timely-made and within COPA jurisdiction, but, after a preliminary review of the facts, there is insufficient evidence to reach an affirmative finding. The Administrative Termination process was designed to facilitate expeditious closure of unpromising investigations to allow investigators to focus attention on those investigations where affirmative findings are more likely to be available. COPA, which has never achieved full staffing, currently has approximately 125 of 151 budgeted FTE, including administrative staff. While significantly increased intake volume demands the exercise of discretion in determining which investigations to pursue, we concur there have been few instances when application of the *Administrative Termination* process may have been misapplied.

COPA also wishes to clarify the statement regarding the use of an accused member's disciplinary history in considering whether to administratively terminate an investigation. Please note that each Administrative Termination is primarily a fact-specific analysis of the conduct alleged. While an officer's history may be relevant to the totality of the analysis, allegations related to prior conduct are not dispositive in determining whether a complaint should be investigated. To the extent possible, prior to initiating a full investigation, COPA conducts credibility assessments of all parties in determining if there is a reasonable basis for a complaint. An Officer's prior conduct would only be used in furtherance of a pattern and practice investigation or when contemplating progressive discipline at the conclusion of an investigation.

Regarding your specific recommendations that COPA:

1. Include administrative termination and the associated criteria in the Investigations Manual, alongside other available non-finding dispositions, and consider addressing the likelihood of confusion caused by two different dispositions with nearly synonymous names.

COPA concurs with this recommendation. As you may know, COPA is currently undertaking a substantive review of its Investigation Manual, policies, and training as part of its Consent Decree compliance efforts. COPA anticipates that the review will yield numerous policy and practice revisions. As noted above, COPA also understands PSIG's concerns regarding potential confusion, inconsistency, and ambiguity in the definitions and application of *Administrative Termination* and *Administrative Closure*. In an effort to address these concerns, COPA will explore alternative policies

³¹ Investigations Manual (2018), p. 19 – Final Disposition and Findings.

³² COPA clarified its policies, issuing an internal memo entitled, "Review And Closing Authority - Investigations Involving No Findings" (EEF Date: October 23, 2018), a copy of which is attached hereto.

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and terminology to define the process more clearly while adhering to our goals of efficiency, transparency, accuracy, and thoroughness.

2. Establish clear and specific affirmative criteria which provides guidance on the circumstances in which the use of administrative termination as a non-finding disposition is appropriate, and ensure that all investigators are properly trained on its application.

COPA concurs with this recommendation as indicated in the response to Recommendation 1 above.

3. Ensure that the most appropriate disposition, finding or non-finding, is used for each investigation and that all potentially appropriate dispositions are considered.

COPA also concurs with this recommendation. COPA's unwavering intention is to close each case in the most appropriate and accurate manner. Moreover, COPA's goal has always been to reach an affirmative finding whenever possible, rather than dispose of cases by either Administrative Termination or Administrative Closure. Each investigation requires fact-specific analyses regardless of its ultimate disposition. There has been occasional misunderstanding of these processes, which we hope to remedy through additional clarification and training. Note however that COPA investigators receive considerable training regarding the requirements of each disposition and the appropriate circumstances of its application. COPA also continually revises, communicates, and provides training regarding changes in practice that may affect the disposition process. Further, COPA continues to develop a culture that embraces continuous improvement.

4. During review of the Administrative Termination Memorandum, the supervisor should ensure that each of the required criteria listed has been completed, including that the category codes associated with the allegation(s) do not on their face contradict eligibility criteria for administrative termination before approval.

COPA also concurs with this recommendation, although again, we seek to clarify the appropriate application of the Administrative Termination policy. Supervising Investigators and Deputy Chiefs should review and consider such dispositions prior to approving them. COPA agrees that where a Termination Memorandum conflicts with express guidelines regarding Administrative Termination, supervisory staff must closely review the Termination Memorandum. In the future, COPA will endeavor to clarify policies, rules, and procedures applicable to Administrative Termination. There may exist some misunderstanding regarding criteria applicable to the Administrative Termination process. The "criteria" articulated on the form are meant to be a guide, not a complete list or a schedule of requirements that must all be met prior to Administrative Termination.

Implicit in the Termination Memorandum form is the understanding that investigative teams have some discretion to determine the disposition of matters of which they have the most detailed knowledge. Moreover, there is often extensive discussion, which may include Deputy Chiefs and the Chief Administrator, regarding whether Administrative Termination is appropriate in a given case. Consistent with your recommendations, COPA should ensure that the precise rationale for Administrative Termination is indicated in the Termination Memorandum.

5. Ensure that, if an investigation in which all criteria is not met is administratively terminated, the Chief Administrator's approval is obtained and documented.

COPA concurs with the recommendation in part. As indicated above, COPA received more than 5,000 complaints in 2019 and received more than 2,000 investigations. Given activity related to the recent

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protests, we are likely to receive many more complaints in 2020. As you note, COPA administratively terminated 168 investigations in 2019. The Chief Administrator cannot perform a detailed review of that number of Administrative Terminations while effectively discharging her many other duties. As discussed above, the Chief Administrator is permitted to and must rely on the determinations of experienced Deputy Chiefs, Supervising Investigators, and Investigators. COPA agrees that it may be appropriate for the Chief Administrator to approve specific Administrative Terminations in certain circumstances and will endeavor to develop policies describing and applying to such circumstances.

6. Articulate in each Administrative Termination Memorandum those facts establishing the satisfaction of each the required criteria.

COPA concurs with this recommendation. See COPA's response to Recommendation 4.

7. Refrain from administratively terminating investigation solely based on the age of the complaint and/or as a means to increase case closure capacity.

COPA concurs with this recommendation in part. COPA's consistent intention is to investigate each complaint thoroughly to reach an affirmative conclusion. However, such a conclusion is not always possible - particularly the investigation of incidents occurring more than five years in the past. As you know, the Uniform Police Officers' Disciplinary Act and applicable Collective Bargaining Agreements create substantial barriers to investigating older complaints, regardless of individual case merits.⁴ Such constraints were considered in developing the Administrative Termination process.

Again, Administrative Closure is appropriate where investigations lack indicia of misconduct after preliminary examination or are simply outside of COPA's jurisdiction. Administrative Termination is appropriate for cases that may have indicia of misconduct, but are unlikely to produce an affirmative finding, such that pursuit of the matter would misapply finite resources and manpower. While these dispositions were intended to be mutually exclusive, it is conceivable that either Administrative Closure or Administrative Termination could appropriately dispose of the investigation of an incident that occurred five years prior in which it is difficult to obtain objectively verifiable evidence of misconduct.

There is an additional hurdle to overcome in the investigation of aging cases. The investigation of incidents occurring five or more years prior to the date of the complaint requires the Superintendent's approval. COPA must apply discretion in determining which cases may be appropriate for submission to the Superintendent. In the absence of the Superintendent's approval, Administrative Closure is appropriate because COPA does not have the authority to proceed. However, if COPA sought and obtained Superintendent approval to proceed with investigation, but its efforts ultimately indicated an inability to reach an affirmative finding, then Administrative Termination would be appropriate.

Further, COPA does not enjoy the resources sufficient to allow it to review the universe of incidents that preceded its creation. Difficult decisions about which investigations are deserving of limited resources must be made - endlessly. The authority to make such decisions is vested in the Chief Administrator. She is charged with making the difficult determinations regarding the allocation of agency resources. COPA's enabling ordinance vests the Chief Administrator with the authority to "promulgate rules and procedures for the conduct of the Office and its investigations consistent with

⁴ 20 ILCS 725 et seq.

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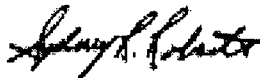
due process of law, equal protection under the law, and all other applicable local, state and federal laws, and in accordance with Section 2-78-170.¹³

8. Audit administratively terminated investigations to ensure that the most appropriate disposition was utilized when closing the investigation.

COPA concurs with this recommendation. We have already begun to outline the process by which our Quality Management Division will review investigations closed through both the Administrative Closure and Administrative Termination processes. We expect that review to begin in the near future.

In conclusion, COPA appreciates PSIG's review of and suggestions to improve its policies and processes. We acknowledge that operational challenges may have resulted in an inadequate understanding of the appropriate application of Administrative Termination criteria. While COPA's goal remains the thorough investigation of every case, resource limitations sometimes require the Chief Administrator to exercise discretion to administratively close matters. COPA will continue to work to develop ever more clear and consistent policies and processes consistent with PSIG recommendations, Consent Decree mandates, and the DMT's forthcoming recommendations.

Sincerely,



Sydney R. Roberts
Chief Administrator
Civilian Office of Police Accountability

cc: Kevin Connor (COPA)
Andreas Kertsten (COPA)
Jay Westensee (COPA)

Att: Memo - Review And Closing Authority

¹³ MCC §2-78-120(f); see also MCC §2-78-170

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- performance audits of City programs and operations by its Audit and Program Review Section;
- inspections, evaluations and reviews of City police and police accountability programs, operations, and policies by its Public Safety Section; and
- compliance audit and monitoring of City hiring and human resources activities and issues of equity, inclusion and diversity by its Diversity, Equity, Inclusion, and Compliance Section.

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