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AUGUST 2013

CITY OF CHICAGO OFFICE OF INSPECTOR GENERAL

REPORT OF THE PUBLIC SAFETY SECTION OF THE OFFICE OF INSPECTOR GENERAL

REPORT CONCERNING COPA'S RELEASE OF INVESTIGATIVE REPORTS WHILE UNDER REVIEW BY THE SUPERINTENDENT

CITY OF CHICAGO
OFFICE OF INSPECTOR GENERAL
740 NORTH SEDGWICK STREET, SUITE 200
CHICAGO, ILLINOIS 60654
JOSEPH M FERGUSON TELEPHONE (773) 478-7799
INSPECTOR GENERAL

FAX (773) 478-3949

TO THE MAYOR, THE CHAIR OF THE COMMITTEE ON PUBLIC SAFETY, THE CITY COUNCIL, THE CITY CLERK, THE CITY TREASURER, AND THE RESIDENTS OF THE CITY OF CHICAGO:

The Public Safety Section (PS) of the City of Chicago Office of Inspector General (OIG) releases this report concerning the external release of officer-involved investigative reports by the Civilian Office of Police Accountability (COPA) in compliance with its obligations under both the Municipal Code of Chicago (MCC) and the Illinois Freedom of Information Act (FOIA). Media reporting from late-December 2017 and January 2018-concerning the publication of and details within COPA's investigative report on Officer Robert L. Rialmo's fatal shooting of Quintonio LeGrier and Bettie Jones (Rialmo Report)-prompted OIG to review COPA's release practices while investigative findings and recommendations are under consideration by the Superintendent of the Chicago Police Department (CPD).

Government transparency is required to build and maintain public trust. For law enforcement oversight agencies, public transparency is critical to holding law enforcement accountable and maintaining legitimacy with the public. To ensure the longevity of transparency policies, however, such policies should be applied in a manner that avoids the appearance of interfering with an ongoing investigation or disciplinary procedure. Integrity of the accountability process is as important as transparency of the process.

Under Illinois' FOIA, "[a]ll records in the custody or possession of a public body are presumed to be open to inspections or copying." 5 ILCS 140/1.2. While the state statute ensures transparency in governmental records, it also contemplates exemptions to release. Exemptions, however, are to be narrowly construed. This includes Section 7(l)(d)(i) of FOIA, which exempts from release the deliberations of public officials before reaching a final decision.

MCC Chapter 2-78 enables COPA's investigative work while placing limits on the release and publication-of this work. Under MCC § 2-78-100, COPA's release of its "report[s] summarizing an investigation ... concerning an incident of alleged police misconduct... [are] made available to the public pursuant to Section 2-78-145." Such reports, under MCC § 2-78-145, shall be posted on the Office's website and open to

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REPORT ON COPA'S RELEASE OF INVESTIGATIVE REPORTS UNDER REVIEW

public inspection, along with the response of the Superintendent thereto, if any, promptly after, but not before, the process set forth in Section 2-78-130(a) is completed and disciplinary charges, if any, are served on the employees in question.

MCC 2-78-130(a)(iv) clarifies, "A response of the Superintendent that proposes to take no action or action different from that recommended by the Chief Administrator shall not be valid or effective until the process of subsection (a)(iii) of this section is completed." MCC 2-78-130(a)(iii) requires the Superintendent and the Chief Administrator of COPA to meet and confer when the Superintendent's response deviates from COPA's investigative findings and recommendations and enumerates the role of the Police Board in resolving any impasse. Therefore, the investigative and disciplinary process under the MCC requires COPA and the Superintendent to complete their respective procedures before any disposition is finalized and prior to the release of any findings or reports to the public.

The mission of COPA is to conduct its investigations with integrity, transparency, independence, and timeliness. For example, COPA, through Section 6.2 of its Rules and Regulations, adopted in April 2018, contemplates the assertion of

FOIA exemptions, in part, "to protect the integrity of an open investigation."

This PS inquiry, however, determined COPA's late-December 2017 release of the Rialmo Report risked creating the appearance of an accountability system susceptible to external pressure. While PS recognizes that COPA's actions were taken in the spirit of robust transparency, PS recommended COPA revisit its release practices to comply with the time allowed under the MCC. PS also recommended COPA adhere to its FOIA obligations in a manner that respects both local and state law, ensures the integrity and procedural fairness of the discipline process, provides public transparency, and enhances the public's trust.

COPA concurred with PS' recommendations, concluding "withholding release during the non-concurrence period is essential to preserving the integrity of the accountability process." To that end, COPA will prospectively assert FOIA's pre-decisional, deliberative communication exemption, housed at Section 7(1)(f) of FOIA, for requests that fall within the non-concurrence period.

The harmonization of the aforementioned local and state law obligations will ensure transparency and public accountability while also preserving the integrity of the City of Chicago's investigative and disciplinary processes. PS thanks COPA management and staff for their cooperation and timely response.

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AUGUST 9, 2018

Respectfully,

Joseph Lipari
Deputy Inspector General, Public Safety City of Chicago

cc: Sydney Roberts, Chief Administrator, COPA
Ghian Foreman, President, Chicago Police Board Eddie T. Johnson,
Superintendent of Police, CPD Edward Siskel, Corporation Counsel

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APPENDIX A: PS LETTER TO COPA

JOSEPH M FERGUSON INSPECTOR GENERAL

CITY OF CHICAGO OFFICE OF INSPECTOR GENERAL 700 NORTH SEDGWICK STREET, SUITE 200 CHICAGO, ILLINOIS
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VIA ELECTRONIC MAIL

JUNES, 2018

SYDNEY ROBERTS CHIEF ADMINISTRATOR
CIVILIAN OFFICE OF POLICE ACCOUNTABILITY 1615 WEST CHICAGO AVENUE, 4TH FLOOR ■CHICAGO,
ILLINOIS 60622

Dear Chief Administrator Roberts:

Pursuant to the authority granted by the City of Chicago Municipal Code (MCC) § 2-56-230, the Public Safety Section of the City of Chicago Office of Inspector General (OIG) writes to respectfully recommend that the Civilian Office of Police Accountability (COPA) revisit its willingness to disclose its investigatory reports while they are still under consideration by the Superintendent of the Chicago Police Department (CPD). Pursuant to MCC § 2-56-245, OIG looks forward to COPA's response on this issue.

In late December 2017, in response to a request under the Freedom of Information Act (FOIA), COPA released to the Chicago Tribune its investigatory report on Officer Robert L. Rialmo's fatal shooting of Quintonio LeCner and Bettie Jones in 2015 (Log Number 1078616). At the time of the release, the Chief Administrator's findings and recommendations were before CPD's Superintendent for review.¹ The timing of this release is difficult to reconcile with the express terms of the Municipal Code, which provides that COPA's final summary reports shall be posted and open to public inspection "promptly after, but not before the process set forth in Section 2-78-130(a) is completed and disciplinary charges, if any, are served on the employees in question." MCC § 2-78-145 (emphasis added). The contemplated process in Section 2-78-130(a) includes the Superintendent issuing a response to COPA's recommendations and, in the event, the Chief Administrator and Superintendent disagree on the recommended action, a meeting between them to attempt to resolve the issue. If the disagreement remains unresolved, then a member of the

¹Read: Civilian Office of Police Accountability report on fatal shooting of Quintonio LeCner, Ber tie Jones,' Chicago Tribune. December 28, 2017, accessed May 14, 2018.

<http://www.chicagotribune.com/news/local/breaking/ci-odriowiobert-nalrpouintonio-leoriei-bettio-ions-2Q171?2ft.html>

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Chicago Police Board determines whether COPA's recommendation is accepted, and charges will be filed before the Board. As there was a disagreement in Officer Rialmo's case, the findings and recommendations went through that entire process, yet the report was released well before the completion of the process and disciplinary charges were served.

The release of the Rialmo report prior to the time contemplated by the City's Municipal Code raises concerns about COPA's commitment to the integrity of fair investigations through action that creates the appearance of an accountability system susceptible to external pressures. Closer adherence to the letter and spirit of the strictures of the Municipal Code would better maintain the important and delicate balancing of procedural fairness to disciplinary subjects and final decision makers on the one hand and the public interest in transparency on the other. While the OIG is sensitive to the need for transparency on issues of police accountability and recognizes the importance of open and accessible public records, it notes the availability of several important FOIA exemptions, which serve to protect significant rights and interests, such as procedural justice and an unimpaired deliberative process. For example, under Section 7(l)(f) of FOIA the deliberations of public officials before reaching a final governmental decision are exempt from disclosure and under Section 7(l)(n) records related to the adjudication of employee discipline are exempt from disclosure. Reliance on these or other exemptions under FOIA would have permitted COPA to comply with the terms and intent of MCC § 2-78-130, and better served to protect the integrity and procedural fairness of the investigative and disciplinary process. While COPA may assert that the timing of the release of its summary report in response to a FOIA request technically complies with the Municipal Code because COPA did not post the report, providing the report to the news media serves to make it available for public inspection—a result that the ordinance prohibited until a later stage in the process. With the available FOIA exemptions, COPA should be able to harmonize the requirements of municipal law governing the release of its disciplinary-related recommendations and the obligations of FOIA.

OIG requests that COPA revisit its policy on releasing its reports prior to the time allowed under the Municipal Code. OIG believes that COPA can adhere to FOIA obligations in a manner that respects both local and state law, ensures the integrity and procedural fairness of the disciplinary process, and grows the public's trust. Should your office have any clarifying questions, please feel free to reach Associate General Counsel James Ferg-Cadima at jferg@cityofchicago.org or (773) 473-4454. As required by MCC § 2-56-245, please send your response to this recommendation by August 6, 2018. Thank you in advance for your time and attention to this request; we look forward to COPA's response.

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REPORT ON COPA'S RELEASE OF INVESTIGATIVE REPORTS UNDER REVIEW

Joseph M. Ferguson Inspector General City of Chicago

cc: The Honorable Rahm Emanuel, Mayor
Eddie T. Johnson, Superintendent of Police
Edward Siskel, Corporation Counsel
Ghian Foreman, President, Chicago Police Board

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Via Electronic Mail

August 3, 2018

Joseph M. Ferguson
Inspector General, City of Chicago
Office of Inspector General

740 North Sedgwick Street, Suite 200
Chicago, Illinois 60654

Dear Inspector Ferguson:

COPA is in receipt of your June 5, 2018 letter recommending that COPA revisit its practice of releasing its Summary Reports pursuant to a Freedom of Information Act (FOIA) request while COPA's investigative findings and recommendations are still under review by the Superintendent. COPA has given this recommendation serious consideration and has concluded withholding release during the non-concurrence period is essential to preserving the integrity of the accountability process.

COPA is ever-mindful of the need to balance transparency against ensuring that Chicago's accountability system is both procedurally fair and not unduly influenced by external pressures. COPA disagrees that our actions have ever veered from those guiding principles, however, how best to balance transparency against procedural fairness is a delicate issue. Therefore, as part of any review of all current policies/practices within COPA, our current FOIA practice warranted review. Having reviewed and analysed the pertinent issues, the interest of all stakeholders, and the applicable law, going forward, COPA will assert FOIA's deliberative process exemption (Section 7(1)(f)) and - to the extent applicable¹ - the adjudication of employee discipline exemption (Section 7(1)(n)), upon receipt of a FOIA request prior to the conclusion of the non-concurrence period.

We trust this response satisfies the OIG's concerns and look forward to discussing this issue, or any other issue that the Deputy Inspector General for Public Safety wishes to raise with COPA, as we are continually striving to improve our processes in any way we can.

¹ Binding case law prevents COPA from asserting this exemption recommended by OIG COPA's current Summary Report, including the one released in response to a FOIA request relating to Officer Rialmo, contained no disciplinary recommendation and therefore COPA could not have cited this exemption. See *Kalvcn v. City of Chicago*, 2014 IL App (1st) 121846 ¶¶ 14; *FOP. Chicago v. City of Chicago*, 2016 IL App (1st) 143884 ¶¶ 39-56. To the extent COPA changes its Summary Report to include disciplinary recommendations, COPA will consider asserting this exemption as applicable.

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REPORT ON COPA'S RELEASE OF INVESTIGATIVE REPORTS UNDER REVIEW

Respectfully,

Sydney R. Roberts
Chief Administrator
Civilian Office of Police Accountability

cc: The Honorable Rahm Emanuel, Mayor
Walter Katz, Deputy Chief of Staff for Public Safety
Edward Siskel, Corporation Counsel
Eddie T. Johnson, Superintendent of Police
Ghian Foreman, President, Chicago Police Board

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MISSION

The City of Chicago Office of Inspector General (OIG) is an independent, nonpartisan oversight agency whose mission is to promote economy, efficiency, effectiveness, and integrity in the administration of programs and operations of City government. OIG achieves this mission through,

- administrative and criminal investigations by its Investigations Section;
- 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 employment activities by its Hiring Oversight Unit.

From these activities, OIG issues reports of findings and disciplinary and other recommendations to assure that City officials, employees, and vendors are held accountable for violations of laws and policies; to improve the efficiency, cost-effectiveness government operations and further to prevent, detect, identify, expose and eliminate waste, inefficiency, misconduct, fraud, corruption, and abuse of public authority and resources.

AUTHORITY

OIG's authority to produce reports of its findings and recommendations is established in the City of Chicago Municipal

Code §§ 2-56-030(d), -035(c), -110, -230, - 240 and -250.

PUBLIC INQUIRIES: DANIELLE PERRY: (773) 478-0534

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