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EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS DECEMBER 17, 2020

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## ACRONYMS

BIA	Bureau of Internal Affairs
BWC	Body-Worn Camera
CBA	Collective Bargaining Agreement
CLEAR	Civilian and Law Enforcement Analysis and Reporting
CMS	Case Management System
COPA	Civilian Office of Police Accountability
CPD	Chicago Police Department
CR	Complaint Register
DOJ	Department of Justice
DOL	Department of Law
MCC	Municipal Code of Chicago
FOP	Fraternal Order of Police
IAD	Internal Affairs Division
ILCS	Illinois Compiled Statutes
IPRA	Independent Police Review Authority
PATF	Police Accountability Task Force
PBPA	Policemen's Benevolent & Protective Association
OIG	Office of Inspector General
OPS	Office of Professional Standards

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## I. EXECUTIVE SUMMARY

The Office of Inspector General (OIG) conducted an evaluation of the use of the affidavit override in disciplinary investigations of Chicago Police Department (CPD) members conducted by CPD's Bureau of Internal Affairs, CPD District and Unit accountability sergeants,<sup>1</sup> the Independent Police Review Authority (IPRA) and the Civilian Office of Police Accountability (COPA).

Illinois state law and the collective bargaining agreements between the City of Chicago and the labor unions representing CPD members require that, in order to serve as the basis of a disciplinary investigation, except in certain limited exception circumstances, allegations of misconduct against a police officer must be supported by a sworn affidavit. In the absence of a sworn affidavit, the investigating agency may obtain and proceed on the basis of an affidavit override. An affidavit override is an authorization from the head of a counterpart police misconduct investigating agency to complete an investigation, without an affidavit, on the basis of there being objective, verifiable evidence to support the allegations. Examples of such evidence might include video of the

incident, audio from a 911 call, global positioning systems records, or witness statements.

The override process, if used as designed, is an effective tool for ensuring that police misconduct is meaningfully investigated, while also providing an opportunity for verification of the reliability of complaints for which CPD members may be investigated. Historically, however, the process has been underused and, perhaps, poorly understood.

OIG's evaluation produced the following findings:

1. The majority of finalized disciplinary investigations<sup>2</sup> were closed for lacking an affidavit;
2. CPD, COPA, and IPRA (COPA's predecessor agency) did not pursue affidavit overrides and improperly closed investigations for lacking an affidavit, including:
  - a. Investigations closed for lacking an affidavit when there was objective, verifiable evidence which supported the allegations rendering them

<sup>1</sup> An accountability sergeant is a CPD District or Unit sergeant who has been designated to conduct BIA investigations of subordinate CPD members when the allegations involve lesser transgressions such as unprofessional behavior

<sup>2</sup> OIG uses "finalized disciplinary investigation" to exclude investigations in a pending status and administratively closed investigations, which were not conducted to completion because the allegations did not concern potential rule violations, did not concern a current CPD member, or were closed for another administrative reason

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eligible for an override;

- b. Investigations closed following an insufficient preliminary investigation; and
  - c. Instances in which the investigation was assigned a case status reserved for investigations closed for lacking an affidavit when the investigation was either exempt from the affidavit requirement, or another closure type was more appropriate.
3. The investigating agencies often closed investigations associated with a civil lawsuit for lacking an affidavit, without regard to the possibility of the City potentially bearing financial costs for conduct which is never meaningfully investigated, the possibility that materials associated with a civil suit might provide sufficient basis for an override request, and that a civil suit may give rise to sworn statements that might be substituted for an otherwise required affidavit, or provide a reliable basis for obtaining an affidavit override.
4. Investigations completed on the basis of an affidavit override result in Sustained allegations at a higher rate than do investigations completed via a signed affidavit or an exemption from the affidavit requirement.

By improving the mechanisms by which it operates, CPD and COPA can better ensure that the affidavit override process functions to lower barriers to accountability while appropriately protecting the procedural

rights of CPD members. To that end, OIG recommends that CPD and COPA amend policies and improve training related to the pursuit of affidavits and use of the affidavit override.

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## II. BACKGROUND

An individual who files a complaint against a Chicago Police Department (CPD) member must submit a sworn affidavit—a statement confirmed by oath or affirmation certifying that the allegations are true and correct—to enable a full investigation of the complaint. The affidavit requirement is established in Illinois state law<sup>5</sup> and prescribed in collective bargaining agreements (CBAs) between the City of Chicago and the unions representing CPD members.<sup>4</sup> The CBAs and CPD directives establish limited exemptions from the affidavit requirement for a small subset of allegation types, for example, allegations respecting violations of CPD's residency and medical roll policies, criminal misconduct (for which anonymous complaints may be investigated), and allegations for which the reporting party is an employee of CPD or the Civilian Office of Police Accountability (COPA).<sup>5</sup>

In the absence of an affidavit, the investigating agency may obtain and proceed on the basis of an affidavit override, which is a written authorization from the head of a counterpart police misconduct investigating agency to complete an investigation, without an affidavit, under appropriate circumstances when there is objective, verifiable evidence to support the allegations.<sup>6</sup>

OIG's evaluation determined that 62.3% of finalized investigations initiated between January 1, 2017 and December 31, 2018 were closed for lacking an affidavit,

<sup>3</sup> SO ILCS 725/3 8(b)

<sup>5</sup> Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No 7, Effective July 12, 2012 through June 30, 2017 Section 6.1-D, Appendix L, accessed May 7, 2020 [http://directives.chicagopolice.org/contracts/FOP\\_Contract.pdf](http://directives.chicagopolice.org/contracts/FOP_Contract.pdf). Agreement Between the City of Chicago and the Policemen's Benevolent & Protective Association of Illinois, Unit 156-Sergeants, Effective July 1, 2012 through June 30, 2016 Section 61-E Accessed May 7, 2020. [http://directives.chicagopolice.org/contracts/PBPA\\_SgtContract.pdf](http://directives.chicagopolice.org/contracts/PBPA_SgtContract.pdf)

= Agreement Between FOP and City of Chicago, July 12, 2012-June 30, 2017, Section 6.1-D, Appendix L, Agreement Between City of Chicago and PBPA, July 1, 2012-June 30, 2016 Section 6.1-E, Section 61-F, CPD General Order G08-01 Complaint and Disciplinary Procedures, accessed June 15, 2020, <http://directives.chicagopolice.org/directives/data/a7a57be2-12cc274e-6a512-cc27-4f9e4cc4978f77ea.htm> Pownapi-I. COPA Employee Policy Handbook, 31.4 Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement, eff August 2019

<sup>6</sup> Agreement Between FOP and City of Chicago, July 12, 2012-June 30, 2017, Appendix L, CPD Special Order S08-01-01 Conduct of Complaint Investigations, accessed April 24, 2020, <http://directives.chicagopolice.org/directives/data/a7a57be2-12ce5918-9f612-ce5e-33a7953b833b1c1e.pdf?hl=true> COPA Employee Policy Handbook, 31.4 Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement, eff August 2019 The language differed slightly in the PBPA contracts, to include that an override may be approved based upon the sufficiency of evidence supporting the allegations Agreement Between City of Chicago and PBPA, July 1, 2012-June 30, 2016 Section 610 The City has entered into a new CRA with the PBPA, the CBA that was set to expire in 2016, however, was in effect through the entirety of the period of analysis for this evaluation Consequently, that version is relied upon throughout herein Provisions relevant, to this analysis are unchanged

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representing 2,290 instances in which allegations of potential misconduct were reported but not fully investigated.<sup>7</sup>

## A. DISCIPLINARY INVESTIGATION PROCESS

Disciplinary investigations involving CPD members are initiated through two types of events: complaints and notifications. Complaints typically are filed by a member of the public when an individual believes that they have experienced or witnessed police misconduct. However, complaints may also be filed by CPD members or COPA employees. A complainant may report allegations in a number of different ways, including to COPA or to a CPD supervisor who will complete an initiation report.<sup>8</sup> Notifications are preliminary investigations initiated following an incident which falls into a specified category of events which may or may not involve misconduct, such as a firearm discharge or a death in police custody.

Most complaints and notifications are investigated by either COPA or CPD's Bureau of Internal Affairs (BIA)<sup>9</sup> All complaints and notifications are initially routed to COPA and issued a unique case identification number known as a log number. COPA intake personnel determine if the allegations are within COPA's jurisdiction, which includes allegations of excessive force, bias-based verbal abuse, false arrest, and improper search, and notification-based investigations of critical incidents, such as a firearm discharge or death in custody.<sup>10</sup> If COPA does not have jurisdiction, the complaint or notification is usually forwarded to BIA. Depending on the type and severity of the allegations, BIA may conduct the investigation or assign the investigation to an accountability sergeant from the accused CPD member's assigned unit.<sup>11</sup> Under some circumstances, complaints involving CPD members

<sup>7</sup> OIG uses "finalized investigation" to exclude investigations in a pending status and administratively closed investigations, which were

not conducted to completion because the allegations did not concern potential rule violations, did not concern a current CPD member, or were closed for another administrative reason

<sup>3</sup> An initiation report documents the details of the complaint, including the allegations, incident details, and information about the involved parties.

<sup>9</sup> The Office of Professional Standards (OPS) was the first iteration of civilian oversight of CPD OPS was housed within CPD but employed civilian investigators in a unit which reported directly to the CPD superintendent. OPS was dissolved and replaced by the Independent Police Review Authority (IPRA) in 2007 COPA replaced IPRA on September 15, 2017 CPD's internal investigating agency was previously known as the Internal Affairs Division (IAD) The Bureau of Internal Affairs (BIA) replaced IAD as the internal CPD investigating agency following a reorganization of the command structure in 2011

<sup>10</sup> MCC § 2-78-120 Civilian Office of Police Accountability, accessed May 7, 2020,

[https://codelibrary.amlegal.com/codes/chicago/latest/chicago\\_il/0-0-0-2443853#JID....2-78-120](https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443853#JID....2-78-120) <sup>1</sup> An accountability sergeant is a CPD district or unit sergeant who has been assigned to conduct BIA investigations of subordinate CPD members when ! lie allegations involve lesser transgressions such as unprofessional behavior This position is also known as "CR sergeant" ("CR" refers to "complaint register", the term for an investigation in which the affidavit requirement has been satisfied )

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are investigated by the City of Chicago Office of Inspector General (OIG).<sup>12</sup>

After the complaint or notification has been assigned to the appropriate agency and unit, the preliminary investigation process begins.<sup>13</sup> During this phase, the investigator contacts involved parties, collects evidence, and identifies any additional witnesses.<sup>14</sup> For investigations which require an affidavit, the investigator should, according to policy, also contact the complainant to schedule an interview and obtain an affidavit as soon as possible.<sup>15</sup>

An investigation may be administratively closed at any time during intake or after the preliminary investigation has begun if it is determined that the alleged conduct does not indicate a potential violation of the CPD Rules of Conduct, if the accused is not a current CPD member, or in other limited circumstances.

In situations in which an affidavit is required, at the conclusion of the preliminary investigation, the investigator should have either secured an affidavit or determined whether it is appropriate to request an affidavit override. An affidavit override may be requested when the investigator is unable to secure an affidavit from the complainant, victim, or other individual with knowledge of the alleged incident, yet the allegations are supported by objective, verifiable evidence obtained during the preliminary investigation.<sup>16</sup>

<sup>12</sup> Investigations conducted by OIG are excluded from the evaluation and from the reported data analyses results

<sup>13</sup> OIG uses the term "preliminary investigation" in reference to investigative activity-such as evidence collection and interviews of involved parties and witnesses-conducted prior to conversion to a full Complaint Register (CR) investigation or closure for lacking an affidavit. Paragraph 460 of the consent decree entered in Illinois v Chicago provides a similar description of a preliminary investigation- "[I]f potential misconduct is alleged, COPA, BIA, or the district will initiate a preliminary investigation into the complaint Preliminary investigations will take all reasonable steps to discover any and all objective verifiable evidence relevant to the complaint or administrative notification through the identification, retention, review, and analysis of all available evidence, including, but not limited to all time-sensitive evidence, audio and video evidence, physical evidence, arrest reports, photographic evidence, GPS records, computer data, and witness interviews All reasonable steps will be taken to preserve relevant evidence identified during the preliminary investigation "

<sup>14</sup> CPD Special Order S08-01-01 Conduct of Complaint Investigations, accessed April 24, 2020, COPA Investigations Manual III-B-a

<sup>15</sup> CPD Special Order S08-01-01 requires the investigator to send a certified letter, attempt to contact the complainant via telephone on

at least two occasions, and make a home visit if unable to reach the complainant COPA Investigations Manual Section IV-F-1 states that investigators must make "reasonable attempts to secure an affidavit, including in-person visits, phone calls, and other methods, as appropriate," but does not specify a sequence or required number of attempts COPA Rules and Regulations § 31 states that COPA's "investigative activities will be conducted in accordance with Department General and Special Orders" In its response to a draft, of this report, COPA asserted, that "the process of COPA investigators in conducting investigations is not prescribed by Department directives"

<sup>ii</sup> OIG uses the term "victim" in reference to the individual alleged to have been harmed by police

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When an affidavit or an override is obtained in a situation in which it is required, an investigation is converted to a Complaint Register (CR) investigation.<sup>17</sup> After conversion, the investigator may interview the accused CPD member and complete the investigation. Interviewing the accused CPD member is the only investigative action prohibited before an affidavit or override is obtained.

If an affidavit cannot be obtained, and the allegations do not merit an affidavit override or an override request has been denied, the investigation will be submitted to a supervisor for review and approval for termination based on the lack of an affidavit. Finalized investigations closed for lacking an affidavit are assigned a case status of "Closed/No Conversion."

Figure 1 below displays the role of the affidavit requirement in the investigation process.



misconduct, in accordance with the use of the term by CPD and COPA in documenting and referencing the involved parties in a disciplinary investigation

<sup>7</sup> Notification-based investigations and complaints filed by CPD members or COPA employees are exempt from the affidavit requirement, and as such are automatically converted to a CR investigation when potential misconduct has been identified CPD General Order G08-01 Complaint and Disciplinary Procedures, accessed June 15, 2020. COPA. Employee Policy Handbook. 31 A Affidavits. Affidavit Overrides, Exceptions to Affidavit Requirement eff August 2019

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## FIGURE 1: AFFIDAVIT REQUIREMENT AND INVESTIGATION PROCESS

### PRELIMINARY INVESTIGATION

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NmC\$N^RSIdN;:

Source: OIG visualization

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## B. SWORN AFFIDAVIT REQUIREMENT

The sworn affidavit requirement was codified in Illinois state law with an amendment to the Uniform Peace Officers' Disciplinary Act (50 ILCS 725), effective January 1, 2004. Section 3.8(b) of 50 ILCS 725 states that "[a]nyone filing a complaint against a sworn peace officer must have the complaint supported by a sworn affidavit."<sup>18</sup>

Section 6 of 50 ILCS 725 states that "[t]he provisions of this Act apply only to the extent there is no collective bargaining agreement currently in effect dealing with the subject matter of this Act."<sup>19</sup> The sworn affidavit requirement is discussed in each of the collective bargaining agreements (CBAs) between the City of Chicago and the labor unions representing sworn CPD members, which are the Fraternal Order of Police Chicago Lodge 7 (FOP), representing police officers, and the Policemen's Benevolent & Protective Association of Illinois Unit 156 (PBPA), which has separate subunits representing sergeants, lieutenants, and captains.<sup>20</sup>

The CBAs and the investigating agencies' policies allow for any person with knowledge of an incident involving potential misconduct by a CPD member to submit a sworn affidavit in support of the allegations.'

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The affidavit documents used by CPD and COPA can be found in Appendix D.

## C. AFFIDAVIT OVERRIDE REQUEST AND APPROVAL PROCESS

If the investigating agency does not obtain an affidavit in a situation in which one is required, it should review the evidence collected during its preliminary investigation and determine whether there is an appropriate basis upon which to seek an override of the affidavit requirement, which would allow the investigation to continue to completion. An affidavit override may be granted upon the presentation of "objective, verifiable evidence" which "supports the allegation<sup>18</sup>".<sup>22</sup>

<sup>18</sup> 50 ILCS 725/3-8(b); 50 ILCS 725/6

<sup>20</sup> Agreement Between FOP and City of Chicago, July 12, 2012-June 30, 2017, Appendix L, Agreement Between City of Chicago and PBPA Section 6.10

<sup>21</sup> CPD Special Order S08-01-01 Conduct of Complaint Investigations, COPA Employee Policy Handbook, 31.4 Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement, eff August 2019, Agreement Between FOP and City of Chicago, July 12, 2012-June 30, 2017, Appendix L, Agreement Between City of Chicago and PBPA, July 1, 2012-June 30, 2016, Section 6.10

<sup>22</sup> Agreement Between FOP and City of Chicago, July 12, 2012-June 30, 2017, Appendix L, COPA Rules

and Regulations, April 13, 2018, § 2.4.1, accessed May 7, 2020, [http://www.chicagocopa.org/wp-](http://www.chicagocopa.org/wp-content/uploads/2018/04/rvja-COP)

[content/uploads/2018/04/rvja-COP](http://www.chicagocopa.org/wp-content/uploads/2018/04/rvja-COP) pdf. CPD Special Order S08-

01-01 Conduct of Complaint Investigations, eff November 30, 2017. COPA Employee Policy Handbook.

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The criteria for evidence is not specifically defined, but CPD and COPA policies provide examples of the type of evidence that may qualify, such as video recordings, medical records, police reports, global positioning systems data, and witness statements.<sup>23</sup> Any such evidence that exists should be collected during the preliminary investigation.

BIA and COPA are permitted to make determinations regarding whether or not to pursue an override on a case-by-case basis; there is no explicit requirement for the investigating agency to request an override for every investigation in which objective, verifiable evidence supporting the allegations has been obtained.<sup>24</sup>

If the investigating agency believes there is sufficient objective, verifiable evidence to seek an override, it may submit a formal request for an override to the executive of the counterpart investigating agency for consideration; the chief administrator of COPA submits override requests to the chief of BIA, and vice versa.<sup>25</sup> If the override request is granted, the investigation may continue to completion.

BIA, COPA, and their respective predecessor agencies submitted a total of 98 affidavit override requests between February 18, 2005 and December 26, 2018. The annual number of override requests has increased in recent years; 64 of the aforementioned 98 requests were submitted after January 1, 2016. Affidavit overrides are most commonly requested for allegations of domestic violence and excessive force.

OIG reviewed the case files for 88 of the 102 investigations involving an affidavit override request.<sup>20</sup> OIG identified only 20 (or 22.7%) which were initiated by a victim

, 31.4 Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement, eff. August 2019 <sup>23</sup> Agreement Between FOP and City of Chicago, July 12, 2012-June 30, 2017, Appendix L, COPA Rules and Regulations, April 13, 2018. § 24 1 COPA Employee Policy Handbook, 31 4 Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement, eff August 2019

<sup>24</sup>- CPD Special Order SOS 01-01 directs the investigator to evaluate the evidence and determine if objective, verifiable evidence supporting the allegations exists but does not include any provision which would require the investigator to request an override COPA Employee Policy Handbook, 3 1 4 Section 2-B states. "If the assigned Investigator and the Supervising Investigator determine that objective verifiable evidence exists to support an Affidavit Override, the assigned Investigator and the Supervising Investigator will prepare correspondence to the Chief of BIA, along with any supporting investigative file materials, detailing the evidence in support of the Affidavit Override request" The subsections that follow outline a process for COPA management and executives to review the prepared draft request and allows each reviewer to approve or deny the request <sup>25</sup>- Agreement Between FOP and City of Chicago, July 12, 2012-June 30, 2017, Appendix L, Agreement Between City of Chicago and PBPA, July 1. 2012- June 30. 2016, Section 610, CPD Special Order S08-01-01 Conduct, of Complaint Investigations, eff November .30, 2017, COPA Employee Policy Handbook, 3 1 4 Affidavits. Affidavit Overrides. Exceptions to Affidavit Requirement, eff August 2019, COPA Rules and Regulations, April 13. 2018, § 2 4 1 Collectively, BIA and COPA reported a total of 102 affidavit over ride requests submitted during OIG's

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who filed a complaint. The remaining 68 investigations were initiated in another manner, such as a third-party complainant or an investigation initiated by a CPD supervisor who responds to a 911 call for service regarding a domestic altercation.

Figure 2 displays the most common types of objective, verifiable evidence cited in requests for an affidavit override among the cases reviewed. Multiple items of evidence were cited in the majority of override requests.

FIGURE 2: EVIDENCE COMMONLY CITED IN AFFIDAVIT OVERRIDE REQUESTS

Verifiable.. Evidence**	Count	Percent..7
CPD Records and Reports	39	44.3%
Arrest Reports	- 1-	
Video Evidence	37	42.0%
Photographic Evidence	18	20.5%
Evidence/Technician's Testimony	14	15.9%
Medical Records	14	15.9%
Hospital records, ambulance run sheets, etc.	10	11.4%
OEMC Records	10	11.4%
911 Call records, dispatch/record	7	7.9%
Witness Statements	6	6.8%
CPD member witness, third-party witness, etc."		

Source: OIG analysis of data collected during case file reviews

## D. IMPACT OF THE SWORN AFFIDAVIT REQUIREMENT

In 2015, the Chicago Tribune conducted an analysis of disciplinary investigation outcomes and found that 58% of complaints filed between January 2011 and December 2014 were closed without findings due to the absence of an affidavit<sup>27</sup> In

analysis period, A were excluded from the evaluation because the investigations were conducted by OIG, and 10 were in a pending status at the time of OIG's review OIG was able to review the remaining 88 case files

" Jeremy Corner and Geoffrey I-ling, "Tribune analysis Cops who pile up complaints routinely escape discipline," Chicago Tribune June 13, 2015. accessed April 24 2020,

<https://www.chicagotribune.com/news/politics-government/cpdcivilrights/CT-Chicago-police-a-i?on=commentary&mot=20150613-story&itm=1>

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April 2016, then-Mayor Rahm Emanuel's Police Accountability Task Force (PATF) concluded in its final report that the affidavit requirement as applied and the resulting barriers to the investigation of anonymous complaints effectively discouraged reports of misconduct.<sup>28</sup>

On January 13, 2017, the United States Department of Justice (DOJ) released a report detailing its investigation into a pattern and practice of unconstitutional conduct by CPD. In it, DOJ described the affidavit requirement as a "tremendous disincentive to come forward with legitimate claims [that] keeps hidden serious police misconduct that should be investigated."<sup>29</sup> Additionally, DOJ found that allegations reported in a civil lawsuit are not appropriately addressed, stating:

"In fact, for most of the lawsuits in which police misconduct victims received significant settlements or verdicts, IPRA's parallel misconduct investigation was closed for lack of an affidavit. In other words, the City routinely pays large sums to police misconduct victims who have filed non-verified complaints in civil litigation describing the misconduct in question but fails to investigate these same officers for disciplinary purposes because their administrative complaints are not verified."<sup>50</sup>

On March 31, 2017, newly appointed United States Attorney General Jefferson Beauregard Sessions III ordered a review of previous DOJ activity, including civil rights investigations and "contemplated consent decrees."<sup>21</sup> Sessions indicated that the DOJ would not pursue a federal consent decree despite the previous administration's findings. However, the Emanuel administration announced an intent to negotiate an agreement with the DOJ to pursue certain reforms signaled by the pattern and practice investigations conducted by the Obama-era DOJ. Concerns about the scope and effect of such an agreement prompted the filing of three separate lawsuits against the City seeking reform and oversight of CPD. On August 29, 2017, then-Illinois Attorney General Lisa Madigan filed a federal lawsuit

<sup>28</sup>The PATF was appointed by then-Mayor Rahm Emanuel in 2015 in the aftermath of the delayed release of police video of the shooting of Chicago teenager Laquan McDonald and the controversy regarding CPD and the City's response to the shooting Accessed April 24, 2020, [https://chicagopatf.org/wp-content/uploads/701G/04/PATF\\_Final\\_Report\\_Executive\\_Summary\\_4\\_13\\_16-1.pdf](https://chicagopatf.org/wp-content/uploads/701G/04/PATF_Final_Report_Executive_Summary_4_13_16-1.pdf)

<sup>29</sup> United States Department of Justice Civil Rights Division and United States Attorney's Office Northern District of Illinois, "Investigation of the Chicago Police Department", p 50, January 13, 2017, accessed April 24, 2020, <https://www.justice.gov/opa/file/925846/download> <sup>50</sup> Ibid p 51

<sup>51</sup> San Horwitz, Mark German, and Wesley Lowery "Sessions orders Justice Department to review all police reform agreements" Washington Post April .3. 2017 Accessed June 19, 2020 [https://www.washingtonpost.com/news/justice/wp/2017/04/03/ba954058-18bd-lie7-9887-la5314b5GaQ8\\_story.html](https://www.washingtonpost.com/news/justice/wp/2017/04/03/ba954058-18bd-lie7-9887-la5314b5GaQ8_story.html)

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against the City of Chicago to obtain a consent decree.<sup>32</sup> Thereafter, the plaintiffs in two class action lawsuits, *Campbell v. City of Chicago* and *Communities United v. City of Chicago*, entered into an agreement with the Attorney General's Office, pursuant to which they were given certain enforcement rights under the consent decree resulting from that office's suit."

Several provisions related to the affidavit requirement and the disciplinary investigation process are included in the consent decree entered in *Illinois v. City of Chicago*, most notably:

TI 425. The City, CPD, and COPA will ensure individuals are allowed to submit complaints in multiple ways, including: in person to COPA or at a CPD district station, by telephone, online, anonymously, and through third party representatives. [...]

TI 431. The City and CPD will undertake best efforts to ensure that the absence of a signed complainant affidavit alone will not preclude an administrative investigation.

TI 468. COPA, BIA, and the districts will ensure that investigators do not: [...]

- b. make statements that could discourage a CPD member or non-CPD member witness from providing a full account of the specific allegations; [...]
- f. close an investigation solely because the complainant seeks to withdraw the complaint or is unavailable, unwilling, or unable to cooperate with an administrative investigation. If the complainant is unable or unwilling to provide information beyond the initial complaint, the administrative investigation will continue based on the available evidence in accordance with this Agreement, applicable law, and any applicable collective bargaining agreements."

<sup>32</sup> Illinois Attorney General "Attorney General Madigan Files Lawsuit Against City of Chicago to Obtain Consent Decree for Police Reform" Illinois Attorney General August 29, 2017. Accessed June 19, 2020 "<https://illinoisattorneygeneral.gov/pressroom/2017..08/20170829.html>

<sup>33</sup> ACLU Illinois. "In a Major Step toward Federal Oversight of Police Reform, Community Groups Enter into an Agreement with City of Chicago and Illinois Attorney General" ACLU Illinois March 21, 2018 Accessed June 19, 2020 <https://www.aclu-il.org/en/pio-issues/maior-step-toward-federal-oversight-of-police-reform-community-groups-enter-into-an-agreement-with-city-of-chicago-and-illinois-attorney-general>

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### III. OBJECTIVES, SCOPE, AND METHODOLOGY

## A. OBJECTIVES

The objectives of the evaluation were to:

1. identify any patterns among investigations involving an affidavit override request since the affidavit requirement became effective;
2. determine whether, during the period of study, any investigations closed for lacking an affidavit may have met the eligibility criteria for an affidavit override request; and
3. determine whether, during the period of study, there are any apparent disparities in the rates of closure for lacking an affidavit by victim demographics.<sup>35</sup>

## B. SCOPE

The scope of study included disciplinary investigations conducted by CPD, COPA, and IPRA (COPA's predecessor agency), each of which fall under OIG's oversight jurisdiction.

Administratively closed investigations were excluded from data analysis regarding investigative outcomes and also from sampling consideration. Criteria for administrative closure require that those investigations do not concern allegations which constitute misconduct, or the investigations were closed prior to completion for another administrative reason, and therefore an administratively closed status does not indicate a completed investigation of alleged misconduct committed by a CPD member.

Cases pending review and pending investigation were also excluded from data analysis and sampling consideration because the outcome was not yet determined.

## C METHODOLOGY

### 1. DOCUMENT REVIEW

OIG reviewed training materials and training schedules from CPD and COPA as well as the following statutes, ordinances, collective bargaining agreements, and investigating agency policies.

- OIG uses the term "victim" in reference to the individual alleged to have been harmed by police misconduct, in accordance with the use of the term by CPL; and COPA in documenting and referencing the involved parties in a disciplinary investigation

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- 50 ILCS 725 Uniform Peace Officers' Disciplinary Act;
- MCC § 2-84-330 Article IV Sworn Member Bill of Rights;
- CBA between the City of Chicago Department of Police and the Fraternal Order of Police Lodge 7, Effective July 1, 2012 through June 30, 2017;
- CBA between the City of Chicago Department of Police and Policemen's Benevolent and Protective Association of Illinois, Unit-156 Sergeants, Effective July 1, 2012 through June 30, 2016;

- CBA between the City of Chicago Department of Police and Policemen's Benevolent and Protective Association of Illinois, Unit-156 Lieutenants, Effective July 1, 2012 through June 30, 2016;
- CBA between the City of Chicago Department of Police and Policemen's Benevolent and Protective Association of Illinois, Unit-156 Captains, Effective July 1, 2012 through June 30, 2016;<sup>36</sup>
- CPD General Order G08-01 Complaint and Disciplinary Procedures;
- CPD General Order G08-01-01 Department Member's Bill of Rights;
- CPD Special Order S08-01-01 Conduct of Complaint Investigations;
- COPA Rules and Regulations;
- COPA Policy Manual; and
- COPA Investigations Manual.

## 2. INTERVIEWS

OIG interviewed CPD BIA command staff, CPD District accountability sergeants, COPA supervising investigators, COPA management staff, COPA legal staff, and COPA's chief administrator during the fieldwork stage.

## 3. CASE FILE REVIEWS

OIG developed a coding framework for a qualitative review of all accessible closed case files for investigations involving an affidavit override request and for a qualitative review of a sample of investigations closed for lacking an affidavit. Using this framework, OIG determined whether an investigation may have been eligible for an affidavit override request and whether the preliminary investigation was sufficient to have allowed the investigating agency to properly make such a determination. OIG relied exclusively on documentation and evidence included in investigative case files and information recorded in the Civilian and Law Enforcement Analysis and Reporting (CLEAR) Auto-CR application modules to make determinations. If CPD, COPA, or IPRA conducted any investigative or

On July 15, 2020, the Chicago City Council ratified an arbitrator's award on the provisions of a new CBA between the City and the union representing CPD's sergeants, lieutenants, and captains. The referenced CBA was in effect through the entirety of the period of analysis for this evaluation, and as noted above, provisions relevant to this analysis are unchanged.

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deliberative activity which was not documented in their case files, OIG did not have any mechanism for considering it.

The final determinations regarding the sufficiency of preliminary investigations involved the identification of instances in which an assigned CPD, COPA, or IPRA investigator failed to collect evidence known to exist or did not search for evidence likely to exist based on the facts and circumstances.

Determinations of potential override eligibility were made through a multistep process. OIG analysts flagged investigations for potential override eligibility and forwarded them to OIG legal staff for further review. The final

determinations regarding potential affidavit override eligibility were made via consensus among OIG analysts and OIG attorneys.

#### 4. DATA ANALYSIS

OIG analyzed data from CLEAR Auto-CR regarding disciplinary investigative outcomes, incident category codes, and victim demographics. OIG conducted statistical analyses to determine whether there were any apparent demographic disparities in investigative outcomes, but OIG was unable to develop reliable and meaningful findings due to incomplete data.

To evaluate whether an investigation that was closed for lacking an affidavit may have met the eligibility criteria for an affidavit override request, OIG constructed a stratified random sample of investigations closed for lacking an affidavit and reviewed individual case files of the investigations selected for the sample. The sample was constructed to be representative of the population proportions of incident category groups, predominant incident subcategories, and association with a civil lawsuit. OIG constructed the sample to select an equalized number of investigations per year conducted by BIA investigating sergeants, CPD District and Unit accountability sergeants, and IPRA or COPA investigators.

While the sample construction methodology ensured a representative sample was drawn, OIG does not intend for the results of testing of the sample to be extrapolated to the full population of investigations closed for lacking an affidavit, due to the variability in the facts and circumstances of individual investigations and the prevalence of factors outside the control of investigating agencies which may impede their ability to obtain an affidavit.

#### D.j STANDARDS

OIG conducted this review in accordance with the Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General found in the

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Association of Inspectors General's Principles and Standards for Offices of Inspector General (i.e., "The Green Book").

#### E. AUTHORITY AND ROLE

The authority to perform this inquiry is established in the City of Chicago Municipal Code §§ 2-56-030 and -230, which confer on OIG the power and duty to review the programs of City government in order to identify any inefficiencies, waste, and potential for misconduct, to promote economy, efficiency, effectiveness, and integrity in the administration of City programs and operations, and, specifically, to review and the operations of CPD and Chicago's police accountability agencies. The role of OIG is to review City operations and make recommendations for improvement. City management is responsible for establishing and maintaining processes to ensure that City programs operate economically, efficiently, effectively, and with integrity.



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#### IV. FINDINGS AND RECOMMENDATIONS

*CLOSED. FOR LACKING AN AFFIDAVIT. ■*

OIG evaluated the outcomes of investigations initiated between January 1, 2017 and December 31, 2018. During this time frame, 8,602 disciplinary investigations of CPD members were initiated<sup>37</sup> OIG selected this period of study to allow sufficient time for disciplinary investigations to be completed and finalized before conducting the evaluation.<sup>38</sup>

Figure 3 below displays the total number of investigations initiated during the analysis period by case status categories and year of initiation.<sup>39</sup> Investigations closed for lacking an affidavit account for 62.3% of the 3,678

finalized investigations, representing 2,290 instances in which allegations of potential misconduct were reported but not fully investigated.

<sup>57</sup> OIG's evaluation focused on analyzing finalized investigations, which excluded investigations in a pending status and administratively closed investigations. Pending cases were excluded because the outcome has not been determined, and administratively closed investigations were excluded because a full investigation was not conducted, due to the allegations not concerning a current CPD member, the allegations not constituting potential misconduct, or another administrative reason.

As depicted in Figure 3, a significant proportion of investigations were not yet completed and finalized at the time OIG conducted the evaluation. Of the 4,181 investigations initiated in 2018, 215 were in a pending review status and 468 were in a pending investigation status at the time of OIG's evaluation, representing 163% of all investigations initiated in 2018.

Note that the case status "Closed/No Conversion" refers to investigations closed for lacking an affidavit. See Appendix C for definitions of the disciplinary investigation case status categories.

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### FIGURE 3: INVESTIGATIONS BY CASE STATUS CATEGORY AND YEAR

Closed/Final

Closed/No Conversion (No Affidavit)

Other Final Status

**Subtotal - Finalized Investigations**

Administratively Closed

Pending Review<sup>57</sup>

Pending Investigation

Subtotal - Pending and \* Administratively Closed Investigations:

Total Investigations 1

Source CLEAR Auto-CR Case status as reported on September 15, 2020

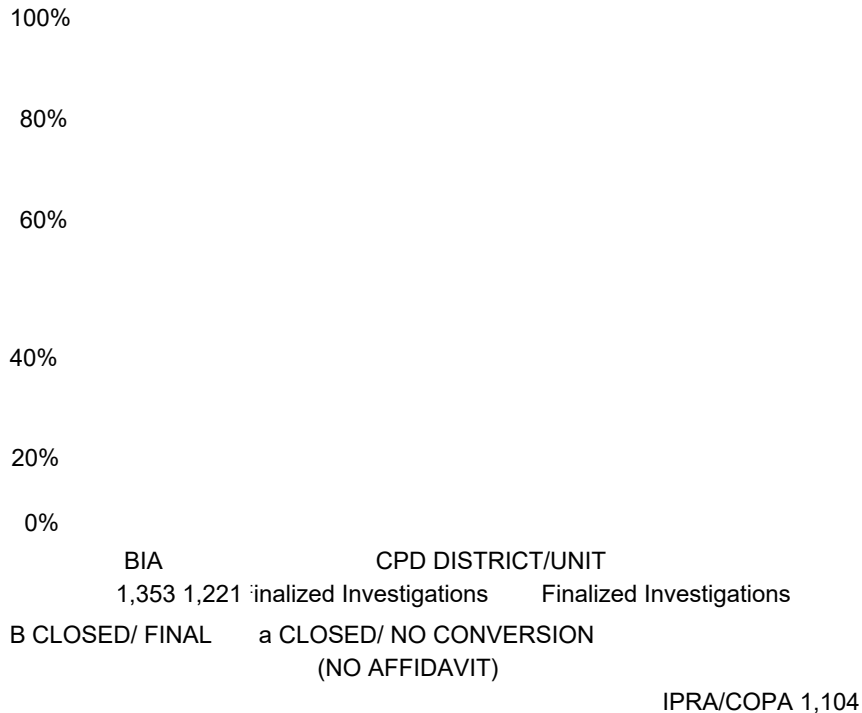
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## A. CLOSURE RATE BY INVESTIGATING AGENCY

Among the 3,678 finalized investigations, 36.8% were conducted by BIA, 33.2% were conducted by CPD District or Unit accountability sergeants, and 30.0% were conducted by IPRA and COPA.<sup>0</sup> Figure 4 displays the rates of closure by investigating agency and outcome of finalized investigations initiated between January 1, 2017 and December 31, 2018.

FIGURE 4: INVESTIGATION OUTCOMES BY INVESTIGATING AGENCY



Finalized Investigations MOTHER FINAL STATUS

Source: Visualization of CLEAR Auto-CR data Case status as reported on September 15, 2020.

Investigations conducted by CPD District and Unit accountability sergeants showed a materially higher rate of closure for lacking an affidavit than did BIA and IPRA or COPA investigations. Investigations are assigned to accountability sergeants when the allegations are considered less serious, such as a failure to provide adequate service. OIG interviewed accountability sergeants, who stated that complainants sometimes decline to pursue an investigation or sign an affidavit because they "just want to vent."

Investigations conducted by OIG are excluded from analysis  
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## CLOSURE RATE BY INCIDENT TYPE

Among the most common types of allegations, the incident type with the highest rate of closure for lacking an affidavit is improper search and seizure, with 68.1% of investigations in that category in a final status of Closed/No Conversion. Figure 5 below displays rates of closure by incident type for the most common types of allegations. OIG interviewed a supervising investigator at COPA, who stated that individuals often call COPA immediately after a police encounter to report a violation of their rights, such as an unjustified street stop or false arrest, when they are still upset about the interaction, but then fail to provide a formal statement.

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FIGURE 5: INVESTIGATION OUTCOMES BY INCIDENT TYPE

"Lacking an			
Operational / Personnel Violations	976	63.5%	1,538
Excessive Force / Domestic Incidents <sup>41</sup>	366	58.3%	628
Improper Search / Seizure	403	68.1%	592
Arrest / Lockup Procedures, etc.	156	65.0%	240
Conduct Unbecoming (Off-Duty)	119	51.7%	230
All Other Incident type Categories	270	60.1%	450
<b>TOTAL</b>	<b>1,538</b>	<b>62.3%</b>	<b>3,678</b>

Source CLEAR Auto-CR Case status as reported on September 15, 2020

Incident type groups are reported according to the categorization set out in CPD's Incident Category Table for misconduct allegations (CPD 44 248), in which excessive force and domestic incidents are aggregated into a single group. The rate of closure for lacking an affidavit among finalized excessive force investigations is 48.9% (individual incident category codes 05A, 0513, 05C, 05D, 05F, 05FI, and 05Z), unnecessary physical contact is 69.3% (05M, OSN), and unnecessary display of weapon is 60.0% (05P, OSQ). The rate of closure for lacking an affidavit among finalized domestic altercation investigations is 50.0% (05K) and domestic incidents not involving physical violence is 68.0% (051.) See [lv: p //diiv-cuves.chicago.ponco.org/Q' rns/CPD 4 4 : "48 odf](#)

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## C. CLOSURE RATE BY VICTIM DEMOGRAPHICS

OIG attempted to conduct an analysis of finalized investigation outcomes by victim sex, race/ethnicity, and age, using demographic information as recorded in CLEAR Auto-CR, in an effort to determine whether there may be a relationship between victim demographics and rate of closure for lacking an affidavit. Because of a lack of complete demographic information for each recorded victim, the results of the analysis were inconclusive. Among the 3,678 finalized investigations initiated between January 1, 2017, and December 31, 2018, there are 3,130 with at least one datapoint of victim demographic information. The race/ethnicity of the victim was not documented in 7.8% of the 3,130 investigations, and the age of the victim was not documented in 12.9%/\*2

## RECOMMENDATION

1. CPD and COPA should collect comprehensive data, as available, regarding the sex, race/ethnicity, and age of each alleged victim, in addition to the information about complainants of which the consent decree mandates collection, to enable reliable analysis of and identification of potential trends in investigation closure rates by victim demographics.

## CPD MANAGEMENT RESPONSE

1. *Consent Decree H509(i) requires the Case Management System ("CMS") to capture self-reported demographic information of complainants, but no such requirement exists for victims. If a victim is already reluctant to provide an affidavit, it may prove very difficult to collect that victim's demographic data. Notwithstanding, the Department will attempt to collect this data.*

## COPA MANAGEMENT RESPONSE

1. *COPA launched its new Case Management System (CMS) in February 2019 and in 2020 integrated enhancements were instituted to track these data points - to the extent they are provided by the alleged victim - as required by the Consent Decree.*

Paragraph 509(i) of the consent decree entered in Illinois v Chicago mandates the collection certain self-reported demographic information for complainants in police misconduct investigations, defined in Paragraph 424 as a member of the public who submits a complaint to the City, but not for victims COPA reported to OIG that victim demographic data may be collected but not reflected in the investigative case file

I<sup>1</sup>-1 ACE 24

OIG conducted a qualitative review of a stratified random sample of 183 case files for investigations closed for lacking an affidavit initiated between January 1, 2017 and December 31, 2018, and identified 47 investigations, or 25.7% of the sample, which were improperly closed for lacking an affidavit or the investigating agency did not pursue an override when supporting evidence existed. OIG determined an investigation was improperly closed when a different outcome may have been more appropriate or when the investigator did not complete required steps before closing an investigation for lacking an affidavit.

As displayed in Figure 6 below, OIG identified three categories in which investigations were improperly closed

for lacking an affidavit: cases in which an affidavit override was not requested but the available evidence indicated that the investigation may have been eligible for an override request, insufficient preliminary investigations which impeded the ability to properly and thoroughly assess all available evidence for potential override eligibility, and affidavit exemptions or errors in case Closure categorization.

OIG relied exclusively on evidence and documentation available in CLEAR Auto-CR application modules and electronic case files to make determinations regarding override eligibility and the sufficiency of preliminary investigations.<sup>3</sup> OIG did consult evidence not present in the case file for additional context, on the occasion that OIG could locate such evidence, but did not consider any evidence absent from the case file in making determinations of override eligibility or the sufficiency of preliminary investigations.

In February 2019, BIA and COPA began transitioning to a new case management system (CMS). All investigations initiated prior to February 11, 2019 continue to be documented in CLEAR Auto-CR. The new CMS incorporates certain new features not available in the CLEAR application, such as an investigative notes module. For investigations documented in CLEAR Auto-CR, investigative notes and impressions are captured in either investigative reports or a separate investigator's log document and uploaded as case file attachments in CLEAR.

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## FIGURE 6: REVIEW OF SAMPLED CASE CLOSURES BY INVESTIGATING

No Affidavit Override Request Made in Potentially Eligible Cases

Insufficient Preliminary Investigations

Affidavit Exemptions & Other Case Closure Errors

**Subtotal - No Affidavit Override Requested, Improper Closure**

**Subtotal - No Problems Identified**

**TOTAL - Sampled Cases**

Source: OIG analysis of 183 disciplinary investigation case files with a reported case status of Closed/No Conversion (No Affidavit)

While the sample size and testing methodology allow OIG to report these findings with confidence in the

validity of the results, OIG does not intend for the results of this test to be extrapolated to the full population of investigations closed for lacking an affidavit, due to the variability in the facts and circumstances of individual disciplinary investigations and the prevalence of factors which can effect outcomes that are outside the control of investigating agencies. OIG is reporting the results of this test to emphasize the importance of ensuring that every credible complaint of misconduct is fully investigated and the importance of providing an opportunity for bona fide victims to receive justice and for corrective action and discipline where allegations of misconduct could be sustained based on the available evidence.

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## A. NO AFFIDAVIT OVERRIDE REQUEST MADE IN POTENTIALLY ELIGIBLE CASES

OIG analysts and attorneys determined via consensus that five of the 183 case files reviewed during the evaluation contained sufficient objective, verifiable evidence in support of the allegations to merit a request for an affidavit override. Figure 7 below summarizes the incident details and the objective, verifiable evidence which OIG determined to support the allegations, meriting a request for an affidavit override.

FIGURE 7: AFFIDAVIT OVERRIDE REQUEST ELIGIBLE CASES-SAMPLE

WL

The accused CPD member, the victim's fiancé, allegedly entered CPD evidence technician photos of victim's injury • Dispatch notes from 911 call by the victim

The complainant alleged that the accused CPD member was involved in a body-worn camera video of a stop and frisk • Body-worn camera video of a stop and frisk • False arrest - COPA (2018)

The complainant alleged the accused CPD members entered a stop and frisk • Body-worn camera video of a stop and frisk • Unlawful detention - COPA (2018) • % ■

The reporting party witness alleged the accused CPD member conducted a stop and frisk • Body-worn camera video • Negative search results for an investigatory stop • provide a report for the street stop. which confirm the accused conducted a name check of the victim

The complainant alleged the accused CPD member conducted a stop and frisk • Body-worn camera video • Traffic Stop Statistical Study report detained and ticketed

Source OIG determinations based on case file reviews of investigations closed for lacking an affidavit

The investigating agencies' policies which outline the affidavit override process do

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not require BIA or COPA to request an override when the criteria have been met, allowing the agencies to make override request decisions on a case-by-case basis. This means that BIA and COPA may decline to pursue an affidavit override, even when the allegations are supported by objective, verifiable evidence.

COPA policies regarding affidavit override requests state that the agency may consider factors other than evidence, such as "the nature and seriousness of the alleged misconduct; the credibility, reliability, and accuracy of the information in the complaint based on COPA's knowledge of the facts and circumstances; and the degree to which the alleged misconduct concerns the integrity of the officers involved or otherwise may undermine public confidence in the Department."<sup>44</sup> COPA does not offer any additional guidance on how to consider these factors in evaluating the evidence. BIA's policies do not offer any additional considerations other than assessing whether the evidence collected is "sufficient."

## B. INSUFFICIENT PRELIMINARY INVESTIGATIONS

OIG identified 39 instances among the sample of 183 case files reviewed in which investigators failed to conduct a sufficient preliminary investigation, such that the investigating agency was not positioned to make an appropriate determination of eligibility for an override request.

OIG determined that a preliminary investigation was insufficient when the documentation in the case file indicated that the investigator had failed to collect evidence known to exist or failed to search for evidence likely to exist based on the facts and circumstances at issue. OIG identified 21 investigations in which the investigator failed to collect known evidence, such as failing to obtain an arrest report when investigating allegations of false arrest. Separately, OIG identified 23 investigations in which the investigator failed to search for evidence likely to exist, such as failing to request body-worn camera (BWC) video related to an incident that occurred during a traffic stop<sup>44</sup>

The following case study is an example of a failure to collect evidence known to exist. In this particular investigation, the investigator's failure to collect the BWC video known to exist resulted in a missed opportunity to pursue an affidavit override.

CORA Rules and Regulations. April 13, 2018, § 24 I '■- I he sum of the individual counts of each type of insufficient preliminary investigation is greater than 30 because uve o' the case files contained indicaticns of hoih lypes of failures

PACT 28

Iho complainant, alleged thafthe accused CPD members failed to arrest her boyfriend for domestic battery. The complainant called 911 to request a supervisor after officers responding to"an earlier call allegedly failed to arrest her boyfriend after she reported that he battered, her. Tho sergeant who responded to the request for a supervisor prepared an initiation report for a disciplinary



investigation into the original responding officers. The CPD District accountability sergeant assigned to conduct the investigation failed to obtain BWC video from the initial police response to the incident, even though the initiation report indicated that BWC video was available! ■' •

After determining that the case file indicated an insufficient preliminary investigation, OIG independently obtained and reviewed the BWC video that was absent from the case file in order to further explore what a proper preliminary investigation might have yielded, and found that the video ■ contained objective, verifiable evidence in support of the allegations. OIG would have determined this investigation was eligible for an override request if the BWC video was included in the case file, but instead, the accountability sergeant's failure to obtain the BWC video evidenced an insufficient preliminary investigation, in that the investigating agency failed to collect evidence it knew to exist. '

For the purposes of this analysis, OIG designated case files as evidencing an insufficient preliminary investigation only if OIG could identify instances in which the assigned investigator failed to collect evidence known to exist or failed to search for evidence likely to exist. OIG's case file reviews also revealed common shortcomings in investigative quality which, while not meeting the criteria for that designation, may have negatively impacted the investigating agency's ability to or likelihood of obtaining an affidavit or an override.

Such investigative quality issues identified during OIG's review of a sample of 183 case files include the following:

1. Many case files lacked details regarding the origin of the investigation.

OIG located a written complaint authored by the reporting party, such as a letter to the investigating agency or a submission through the online complaint portal, in 29 of the case files reviewed. Among the remaining 154 investigations, OIG located a report with at least some information regarding the complaint origin in 66 case files, and in the remaining 88, the Face Sheet module in CLEAR Auto-CR was the only source of information regarding the initiation of the

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complaint. Initiation reports and the Face Sheet generally include a short summary of the allegations and the involved parties, but rarely include details regarding exactly how the investigating agency became aware of the allegations and whether a victim who did not file a complaint was aware that a disciplinary investigation had been initiated.

In the following case study, the investigators approached a victim who did not file a complaint in a manner that did not seem to consider the origin of the investigation, in that investigators referred to her "complaint," when in fact the investigation had been initiated by the report of a CPD supervisor.

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The victim called 911 to report that h'er fiance-a CPD member-entered her bedroom while she was asleep', yelled obscenities at her, and injured her finger during a subsequent struggle. The investigation was initiated by the CPD sergeant who responded to the call for service. The IPRA investigator assigned to conduct the investigation was unable to successfully contact the victim. <sup>1</sup>

-The investigation, which was initiated in March 2017, was still in a pending status

when COPA replaced .IPRA in September 2017. Two COPA investigators conducted a home visit in November 2018 in an attempt to reach the victim.-The victim was-not. homeland the COPA ■Tin vest i gators left a message .withher:12-: year-old son, stating that it was "'important for.[the victim] to contact us regarding her complaint." The victim never contacted COPA and the investigation was closed for lacking an affidavit..

2. Investigators occasionally discussed evidence with complainants that may have refuted the allegations.

OIG identified multiple investigations conducted by BIA and CPD District and Unit accountability sergeants in which the investigator informed the complainant that they had reviewed evidence and found that it did not support the allegations, which may have effectively discouraged the complainant from filing or pursuing their complaint. Investigators are now specifically prohibited from discouraging complaints through a provision in Paragraph 468 of the consent decree entered in *Illinois v. Chicago*, effective March 1, 2019.<sup>16</sup> Additionally, providing an assessment of the evidence to the complainant suggests that the investigator may have predetermined the outcome of an

's "COPA, BIA, and the districts will ensure that investigators do not make statements that could discourage a CPD member or non CPD member witness from providing a full account of the specific allegations" Illinois v City of Chicago. No 17-cv-62G0. 2019 VVL 398703 (N D Ill Jan 31, 2019: --i68

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investigation before collecting all available evidence and interviewing the involved parties.

The following case study is an example of an investigator discussing evidence with a complainant during their initial contact. After the investigator suggested that the video evidence did not support the complainant's allegations, the complainant ceased communication with the investigator.

## CASESTODY^ COMPLAINANT

The complainant alleged that the accused CPD members who responded to a traffic accident falsified a traffic crash report and exhibited racial bias. He claimed, that he, a Black man, was treated unfairly while the accused CPD members- . . . treated the other individual involved in the traffic accident fairly, and that he was racially profiled by a CPD member who questioned the validity/ of his license plates and asked if his car was

stolen.

When the assigned BIA investigator first contacted the complainant, he stated ■ that he found no evidence of misconduct on the BWC video, adding that the accused CPD members "were professional, courteous, appeared to be excellent in their response time, completion of the required report, and thorough in their preliminary investigation."<sup>47</sup> Soon after this, the complainant ended the call without scheduling an appointment to give a statement and sign an affidavit, and the investigator was unable to successfully contact the complainant again, so the investigation was closed for lacking an affidavit.

### 3. Complainants or victims often failed to appear for scheduled appointments.

CPD directives establish required minimum attempts to contact involved parties before closing an investigation for lacking an affidavit-the investigator must mail a certified letter, make at least two phone calls, and make a home visit if contact was not successful via letter or phone.<sup>48</sup> COPA's own policies and Investigations Manual define the standard as a requirement for investigators to

The BWC video did not capture the entirety of the interactions between the complainant and each of the accused CPD members. While the BIA investigator's analysis of the available BWC video evidence may be factually correct, it does not allow for the possibility that the alleged misconduct may have occurred during a portion of the encounter that was not captured on BWC video. Based on this partial information, the investigator represented to the complainant, that the evidence did not support the complainant's allegations.<sup>48</sup> COPA Rules and Regulations § 31 states that COPA investigations will be conducted in accordance with applicable rules and laws, including CPD Special Orders, and therefore COPA investigators are required to adhere to the standard for required attempts to contact established in CPD Special Order S08 01.

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make "reasonable attempts" and a "good faith effort" to contact involved parties but do not establish a sequence or required number of attempts to contact.<sup>49</sup> While investigators may meet the technical requirements for contact attempts, this does not consistently result in the appearance of complainants or victims for scheduled appointments.

Investigators often cite a failure to appear for a scheduled appointment in closing an investigation for lacking an affidavit. This raises equity and access concerns, in that complainants, victims, and witnesses who live a great distance from the investigating agency's offices, who do not have reliable transportation, who work irregular or inconsistent hours, and/or who require accommodations for a physical or mental health condition may have greater difficulty in attending scheduled appointments.

### 4. Investigators did not consistently provide third-party complainants and witnesses with an opportunity to sign an affidavit.

OIG identified 26 investigations, of the 183 sampled, in which a third-party complainant or witness was identified, but only found evidence that CPD and COPA investigators provided that third-party complainant or witness with an opportunity to sign an affidavit in 7 of those 26 investigations.<sup>50</sup> The relevant laws, contracts, and policies allow for anyone with knowledge of the allegations to sign an affidavit, regardless of

whether that person is the victim and regardless of whether or not that person witnessed the incident related to the allegations.<sup>31</sup>

#### 5. Investigative case files often lacked descriptive summaries of video evidence.

OIG identified video evidence in 51 of the 183 case files reviewed, and only 20 of those 51 case files contained descriptive written summaries of video evidence. An assigned investigator's failure to include a descriptive summary of video evidence impedes a reviewing supervisor's ability to properly assess whether the investigation may have been eligible for an affidavit override. It would be

COPA Investigations Manual Section IV-F-1 COPA Rules and Regulations § 2 m Affidavits in Support of Complaints COPA Employee Policy Handbook, 3 I 4 Affidavits, Affidavit Overrides, Exceptions to Affidavit Requirement, eff August 2019

■° In 11 of the 26 investigations, the case file contained no documentation of attempts to contact the third-party complainant and/or witness In the remaining 15 investigations in which attempts to contact were documented, only 7 contained documentation indicating that the third-party complainant and/or witness was offered an opportunity to sign an affidavit ■■' CPD Special Order S08-01-01 Conduct of Complaint Investigations. COPA Employee Policy Handbook. 31 4 Affidavits. Affidavit Overrides, Exceptions to Affidavit Requirement eff August. 2019, Agreement Between FOP and City of Chicago. July 12. 2012-June 30. 2017. Appendix L Agreement Between City of Chicago and PBPA, July 1. 201- June 30. 2016, Section 610

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impractical to expect that supervising investigators would personally review all video evidence when approving an investigation for closure for lacking an affidavit; therefore, supervisors must be able to rely on written summaries of video evidence. A summary which states only that "the video evidence did not capture evidence of misconduct" does not provide the supervisor with the details needed to make an informed decision regarding potential eligibility for an affidavit override request.

### C. AFFIDAVIT EXEMPTIONS AND OTHER CASE CLOSURE TYPE ERRORS

OIG identified three investigations that were assigned a final case status of "Closed/No Conversion," which accurately describes investigations closed for lacking an affidavit, when the affidavit requirement did not apply to the facts and circumstances of the incident or when a more appropriate case closure type was available.

- One investigation involved a complaint filed by a CPD member, and complaints filed by CPD members are exempt from the affidavit requirement.<sup>52</sup> Based on the available documentation, it appears that this investigation was completed and should have assigned a status of Closed/Final. A full summary report which includes findings related to the allegations is included in the case file.
- Two of the investigations involved allegations against civilian members of CPD. The affidavit requirement applies only to sworn CPD members and therefore an investigation into the allegations against accused civilian CPD members should have been completed without an affidavit.<sup>3</sup>

## RECOMMENDATIONS

2. CPD and COPA should clarify policies and improve training to ensure that investigations in which

an affidavit is not required are not closed for lacking an affidavit

3. CPD and COPA should amend policies to clarify that allegations against a civilian CPD member may be investigated to completion without an affidavit, even if the investigation of allegations against sworn CPD members reported under the same log number must be terminated for lacking an affidavit.

CPD General Order 008-01 Complaint and Disciplinary Procedures, accessed June 15, 2020 ■ 50 ILCS 775/5 8(b) CPD General Order 008-01 Complaint and Disciplinary Procedures, accessed June 15, 2020

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4. CPD and COPA should document, in detail, all evidence obtained during the preliminary investigation, and all instances in which evidence was sought or requested but unavailable, in the summary report or closing memo for all investigations closed for lacking an affidavit.
5. Where objective, verifiable evidence supporting the allegations exists, yet the investigating agency declines to request an affidavit override, CPD and COPA should explicitly document the reason(s) for declining to do so in the summary report or closing memo.
6. CPD and COPA should adequately pursue signed affidavits when they are available, both by lowering access barriers for signers and by providing opportunities for third-party witnesses and other involved parties to sign affidavits.
7. CPD and COPA should ensure that case files include documentation of an investigation's origins and summaries of video evidence which describe the events captured therein.
8. *CPD and COPA should take measures to prohibit investigators from discouraging reporting parties from signing affidavits, including as specifically required by Paragraph 468 of the consent decree entered in Illinois v. Chicago.*

## CPD MANAGEMENT/RESPONSE

2. *The Department will provide guidance and supervision to help ensure that investigations for which an affidavit are not required are not closed for lacking an affidavit.*
3. *CPD agrees that this point is important to emphasize, and notes that this is already addressed by C08-01(IV) ("Exceptions to the Sworn Affidavit Requirement") and S08-01-01(II)(F)(5)(a)(4) ("Conduct of Investigation"). Accordingly, CPD agrees with this recommendation to the extent such actions do not conflict with collective bargaining agreements for civilian members.*
4. *The Department agrees that it is important to document all evidence obtained during a preliminary investigation, as well as attempts to obtain such evidence. These concerns have largely been addressed by the Department's transition to the CMS. The CLEAR system that OIC reviewed contained significantly less information than CMS. In addition, CLEAR did not contain as much information as the investigative paper file.*

5. *CPD notes that Consent Decree TJ463(b) requires that BIA seek written approval for on override affidavit from COPA if objective verifiable*

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*evidence supporting the allegation is revealed during a preliminary investigation, as reflected in Special Order S08-01-01. BIA will document, in the CMS, its reasons for not pursuing an override affidavit in the event BIA does not pursue the override affidavit despite the existence of objective verifiable evidence supporting the allegation.*

6. *Consistent with Consent Decree H463, the Department agrees that attempts to secure a signed complainant affidavit will reasonably accommodate the complainant's disability status, language proficiency, and incarceration status. The Department further agrees that third-party witnesses and other involved parties should be afforded an opportunity to sign affidavits.*
7. *The Department documents the origin of an investigation in the CMS. The Department also provides summaries of video evidence but does not provide substantive summaries because such summaries introduce the risk of imparting a characterization of the video evidence.*
8. *Consent Decree 7/468 is guiding revisions to BIA unit directives on this issue.*

## COPA MANAGEMENT RESPONSE

2. *Beginning in 2019, COPA embarked on a comprehensive review of its policies and training curriculum for compliance with the Consent Decree, which included revision to its policy on Affidavits and Overrides as well as related training. This included educating investigative staff that investigations may not be closed solely for lack of an affidavit. COPA also completed its Affidavit and Overrides Consent Decree-compliant training in early November 2020*
3. *This recommendation aligns with COPA's current investigative practice. COPA's Affidavit and Overrides Consent Decree-compliant training, conducted in early November 2020, makes clear that allegations against a civilian Department member may be investigated to completion absent an affidavit. To the extent necessary, COPA will clarify further through revisions to COPA policies and operational guidance.*
4. *This recommendation aligns with COPA's current investigative practices. To the extent necessary, COPA will clarify through COPA policies, training, and operational guidance that closing documents must reflect adequate justification for a no finding closure to include reference to evidence obtained during the preliminary investigation and evidence sought or requested but unavailable.*

*5 COPA will clarify through COPA policies, training, and operational*

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*guidance that closing documents must reflect adequate justification for a no finding closure, to include reference to the existence of objective, verifiable evidence which may support an affidavit override request and, if applicable, reasons for declining to seek an affidavit override.*

6. *This recommendation aligns with COPA's current investigative practices, specifically when 3rd party witnesses or other involved parties are known and willing to serve as affiants and where access barriers or challenges are known. To the extent necessary, COPA will further memorialize this expectation in COPA policies, operational guidance, and training.*
7. *This recommendation aligns with COPA's current investigative practices. Specifically, an investigation's origin is a required field in CMS. It is also COPA's current investigative practice to memorialize the receipt of video evidence, its relevance to the investigation, and, to the extent necessary for supervisor review, maintain notes summarizing pertinent events captured on video in CMS. To the extent necessary, COPA will further memorialize this expectation in COPA policies, operational guidance, and training.*
8. *This recommendation aligns with COPA's current investigative practice and COPA staff has not and does not discourage anyone from signing an affidavit. To the extent necessary, this will be further memorialized in revisions to COPA policies, operational guidance and training.*

OIG found that investigations initiated via notification of a civil lawsuit filing reported a higher rate of closure for lacking an affidavit than the rate among all finalized investigations. This results in the perpetuation of a

condition identified by the DOJ, that "the City routinely pays large sums to police misconduct victims who have filed non-verified complaints in civil litigation describing the misconduct in question but fails to investigate these same officers for disciplinary purposes because their administrative complaints are not verified."<sup>34</sup>

Further, this is in spite of greater opportunities for alternatives to an affidavit in the presence of a civil suit. First, filings in support of a civil complaint may themselves contain objective, verifiable evidence constituting a sufficient basis for an override request. Second, a complainant or witness involved in a civil suit might give a sworn statement in the course of that proceeding, either in a verified complaint or in deposition testimony during a discovery phase, which might bear the same indicia of reliability as-and conceivably satisfy the legal requirement for-a sworn affidavit.

OIG analyzed data regarding case closure statuses for investigations initiated between January 1, 2017 and December 31, 2018 and found that 73.5% of finalized investigations associated with a civil suit were closed for lacking an affidavit. This rate is 11.2% higher than the rate of all investigations closed for lacking an affidavit (62.3%) as demonstrated in Figure 8.<sup>b5</sup>

United States Department of Justice Civil Rights Division and United States Attorney's Office Northern District of Illinois, "Investigation of the Chicago Police Department", p 51 January 13, 2017, accessed May 7, 2020, <https://www.justice.gov/ooa/lile/925846/download>

See Finding 1 for additional information regarding the rate of closure for lacking an affidavit by investigating agency incident type, and victim demographics

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**Final CLOSED/FINAL      a CLOSED/NO CONVERSION      k OTHER FINAL STATUS  
(NO AFFIDAVIT)**

Source: OIG analysis of CLEAR Auto-CR data

The preliminary investigation of allegations made via a civil lawsuit typically begins with the investigator contacting the plaintiff or the plaintiff's attorney. Plaintiffs and attorneys routinely decline to participate while the related civil litigation is pending so as to avoid jeopardizing the outcome of a civil lawsuit by providing evidence or statements in an administrative disciplinary investigation.

Investigators often close the investigation for lacking an affidavit after the plaintiff or the plaintiff's attorney declines to participate or following several unsuccessful attempts to contact either party. According to OIG's review of the investigating agencies' policies and case files, they do not currently track the progress of ongoing civil litigation and therefore do not have an effective mechanism for renewing efforts to contact plaintiffs after their lawsuits are resolved, when there may no longer be any obstacles to participating in a disciplinary investigation.



During OIG's review of 183 sampled investigations closed for lacking an affidavit, OIG found a higher rate of insufficient preliminary investigations among investigations associated with a civil lawsuit than investigations without an associated civil lawsuit. The sample of 183 included 23 investigations with an associated civil lawsuit, and OIG identified an insufficient preliminary investigation in TI of the civil lawsuit investigations, a rate of 47.8%. This rate is 26 5% higher than the overall rate of insufficient preliminary investigations as identified in the full sample of 183 investigations (21 3%)

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Neither Illinois state law nor federal law currently require civil complaints to be verified.<sup>56</sup> Plaintiffs may elect to file a civil lawsuit as a verified complaint. A verified complaint or sworn deposition testimony taken for a civil proceeding could potentially be used to satisfy the affidavit requirement, because these statements are, like an affidavit, sworn and therefore bear similar indicia of reliability; however, no current CPD or COPA policy expressly authorizes the use of a verified complaint or sworn deposition as an affidavit to enable a full disciplinary investigation.<sup>57</sup>

## RECOMMENDATIONS

9. CPD and COPA should amend policies and improve training to ensure that investigators track the status of civil litigation which overlaps with disciplinary investigations, and require investigators to proactively contact victims and witnesses when a settlement is reached or when civil proceedings otherwise conclude.
10. CPD and COPA should consider adopting policies which allow for a verified court filing or sworn deposition testimony to satisfy the affidavit requirement, enabling a full investigation of allegations of misconduct raised in a civil lawsuit.

## CPD MANAGEMENT RESPONSE

9. *The Department is amending policies and providing training consistent with Consent Decree JjV464(h) and 480 to ensure that filings and evidence discovered during civil and criminal cases are considered as part of disciplinary investigations.*
10. *The Department agrees to consider adopting such policies.*

## COPA MANAGEMENT RESPONSE

9. *Tracking the status of civil litigation which overlaps with open disciplinary investigations is consistent with COPA's current investigative practice. To the extent necessary, this will be further memorialized in revisions to COPA policies, training, and operational guidance. Such revisions will include conducting follow-up with victims and witnesses*

<sup>†</sup> 735 11 CS 5/2-605 Fed R Civ P 3

<sup>57</sup> The version of COPA Policy § 1 3 8 Civil and Criminal Complaint Review effective March 20, 2018 states "If the civil complaint is

verified (state court filings only), no affidavit is needed " Tins provision was removed in the cur rent revised version of the policy, effective August 19, 2019 Additionally, as of February 7, 2020, the currently effective version of the COPA Investigations manual was last revised in March 2018. and as such does not contain guidance reflective of revisions to multiple policies, including the Airgust 2019 revisions to COPA Policy § 1.3 8 Civil .and Criminal Complaint Review and COPA Policy §3 I 4 Affidavits. Affidavit Oven ides. Exceptions to Affidavit Requirement

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*and considering opening or re-opening an investigation upon settlement or judgment against the City after review of litigation materials.*

*10. This recommendation aligns with COPA's current investigative practice. To the extent necessary, COPA will further memorialize in revisions to COPA policies, training, and operational guidance.*

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OIG analyzed the reported allegation findings for the 32,724 completed investigations initiated between January 1, 2005-the year in which the first affidavit override was requested-and December 31, 2018.<sup>58</sup> OIG found that 47.1% of investigations completed via an affidavit override resulted in one or more Sustained allegations, compared to 11.6% of investigations completed via a signed affidavit or an exemption from the affidavit requirement.

#### FIGURE #9: REPORTED ALLEGATION FINDINGS BY AFFIDAVIT TYPE 100.0%

t: \*47;i%

Investigations Completed via Signed Affidavit or Affidavit Exemption

i Zero Sustained Allegations

80 0% 60.0% 40.0% 20.0% 0.0%

Investigations Completed via Affidavit Override

B One or More Sustained Allegations Source OIG Visualization of CLEAR Auto-CR data

-<sup>58</sup> OIG defines "completed investigations" as investigations with reported allegation findings and a case status of Closed/Final, Close-Hold, Closed/Penalty Not Served, or Closed/Resigned Not Served A total of 103,781 investigations were initiated between January 1, 2005 and December 31, 2018, ol which 52,047 (30 9%) reported a case status of Closed/Final as of September '15, 2020, and an additional 677 reported a case status of Close-Hold, Closed/Penalty Mot Served, or Closed/Resigned Not. Served Because this particular analysis concerns investigative findings. OIG excluded finalized investigations which were not completed to findings, which are mvestigai ions with a reported case status ol Closed/Mo Conveis-on (No Affidavit) or Aciminis'.raueelv Terminated

OIG FILL<sup>1</sup> #18-0770

Investigations completed via an override are subject to additional internal review and enhanced scrutiny before they are finalized than are investigations supported by a signed affidavit. When an investigator determines that an override may be appropriate, the evidence and supporting documentation are subject to a multi-step verification process culminating in submission to the agency executive of the counterpart investigating agency for approval.<sup>139</sup> The override approval process appropriately functions in this way to ensure that allegations which are not credible or not supported by objective, verifiable evidence are not converted to a full Complaint Register investigation and completed to findings.

The observed relationship between Sustained allegations and the use of the affidavit override process may suggest that cases involving an override are more likely to include meritorious allegations than investigations completed on the basis of a signed affidavit, and it provides some reassurance that the affidavit override process does not function to advance spurious or unsupported allegations of misconduct.

The chief of BIA interviews affidavit override requests submitted by the chief administrator of COPA and vice versa

page

## V. CONCLUSION

The affidavit override process has the potential to serve as an effective tool both for ensuring that police misconduct is meaningfully investigated and for assuring some measure of reliability in complaints for which police officers may be investigated. Where the override process is underused and poorly understood, neither goal is effectively served. By clarifying policy and improving training, CPD and COPA can better ensure that the affidavit override process functions to lower barriers to accountability while appropriately protecting the procedural rights of CPD members.

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## APPENDIX A: CHICAGO POLICE DEPARTMENT RESPONSE

Iori K. Lightfoot  
Mayor

Department of Police • City of Chicago  
3510 S. Michigan Avenue • Chicago, Illinois 60653

David O. Brown  
Superintendent of Police

November 20, 2020

### VIA ELECTRONIC MAIL

Ms. Deborah Witzburg Deputy Inspector General  
Public Safety Section  
City of Chicago Office of Inspector General 740 N. Sedgwick, Suite 200  
Chicago, Illinois 60654 dwitzburg@igchicago.org  
<mailto:dwitzburg@igchicago.org>

**Re: CPD's Response to OIG's Evaluation of the Use of the Affidavit Override in Disciplinary Investigations of Chicago Police Department Members**

Dear Deputy Inspector General Witzburg:

The Chicago Police Department ("CPD") has prepared the following responses to recommendations 1 through 10 of the Evaluation of the Use of the Affidavit Override in Disciplinary Investigations of Chicago Police Department Member ("OIG Evaluation").

*Recommendation 1: CPD and COPA should collect comprehensive data regarding the sex, race/ethnicity, and age of each alleged victim, in addition to the information about complainants of which the consent decree mandates collection, to enable reliable analysis of and identification of potential trends in investigation closure rates by victim demographics.*

Response: Consent Decree 1J509(i) requires the Case Management System ("CMS") to capture self-reported demographic information of complainants, but no such requirement exists for victims. If a victim is already reluctant to provide an affidavit, it may prove very difficult to collect that victim's demographic data. Notwithstanding, CPD will attempt to collect this data.

*Recommendation 2: CPD and COPA should clarify policies and improve training to ensure that investigations in which an affidavit is not required are not closed for lacking an affidavit*

Response: CPD will provide guidance and supervision to help ensure that investigations for which an affidavit are not required are not closed for lacking an affidavit.

*Recommendation 3: CPD and COPA should amend policies to clarify that allegations against a civilian CPD member may be investigated to completion without an affidavit, even if the investigation of allegations against sworn CPD members reported under the same log number must be terminated for lacking an affidavit.*

Response: CPD agrees that this point is important to emphasize, and notes that this is already addressed by

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G08-01(IV) ("Exceptions to the Sworn Affidavit Requirement") and S08-01-01(H)(F)(5)(a)(4) ("Conduct of Investigation"). Accordingly, CPD agrees with this recommendation to the extent such actions do not conflict with collective bargaining agreements for civilian members.

*Recommendation 4: CPD and COPA should document, in detail, all evidence obtained during the preliminary investigation, and all instances in which evidence was sought or requested but unavailable, in the summary report or closing memo for all investigations closed for lacking an affidavit.*

Response: CPD agrees that it is important to document all evidence obtained during a preliminary investigation, as well as attempts to obtain such evidence. These concerns have largely been addressed by CPD's transition to the CMS. The CLEAR system that OIG reviewed contained significantly less information than CMS. In addition, CLEAR did not contain as much information as the investigative paper file.

*Recommendation 5: Where objective, verifiable, evidence supporting the allegations exists, yet the investigating agency declines to request an affidavit override, CPD and COPA should explicitly document the reasons(s) for declining to do so in the summary report or closing memo.*

Response: CPD notes that Consent Decree, H463(b) requires that BIA seek written approval for an override affidavit from COPA if objective verifiable evidence supporting the allegation is revealed during a preliminary investigation, as reflected in Special Order S08-01-01. BIA will document, in the CMS, its reasons for not pursuing an override affidavit in the event BIA does not pursue the override affidavit despite the existence of objective verifiable evidence supporting the allegation.

*Recommendation 6: CPD and COPA should adequately pursue signed affidavits when they are available, both by lowering access barriers for signers and by providing opportunities for third-party witnesses and other involved parties to sign affidavits.*

Response: Consistent with Consent Decree 1J463, CPD agrees that attempts to secure a signed complainant affidavit will reasonably accommodate the complainant's disability status, language proficiency, and incarceration status. CPD further agrees that third-party witnesses and other involved parties should be afforded an opportunity to sign affidavits.

*Recommendation 7: CPD and COPA should ensure that case files include documentation of an investigation's origins and summaries of video evidence which describe the events captured therein.*

Response: CPD documents the origin of an investigation in the CMS. The Department also provides summaries of video evidence but does not provide substantive summaries because such summaries introduce the risk of imparting a characterization of the video evidence.

*Recommendation 8: CPD and COPA should take measures to prohibit investigators from discouraging reporting parties from signing affidavits, including as specifically required by Paragraph 468 of the consent decree entered in Illinois v. Chicago.*

Response: Consent Decree fl468 is guiding revisions to BIA unit directives on this issue.

*Recommendation 9: CPD and COPA should amend policies and improve training to ensure that investigators track the status of civil litigation which overlaps with disciplinary investigations, and require investigators to proactively contact victims and witnesses when a settlement is reached or when civil proceedings otherwise conclude.*

Response: The Department is amending policies and providing training consistent with Consent Decree

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ffJ464(h) and 480 to ensure that filings and evidence discovered during civil and criminal cases are considered as part of disciplinary investigations.

*Recommendation 10: CPD and COPA should consider adopting policies which allow for a verified court filing or sworn deposition testimony to satisfy the affidavit requirement, enabling a full investigation of allegations of misconduct raised in a civil lawsuit.*

Response: The Department agrees to consider adopting such policies.

Scott Spears  
Assistant General Counsel Office of the Superintendent Chicago Police Department

Sincerely,

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EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS

DECEMBER 17, 2020

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## Management Response Form

Project Title: Evaluation of Affidavit Override in Disciplinary Investigations

Project Number: 18-0770

Department Name: Chicago Police Department.

Date: 20 NOV 707.0

Department Head: Superintendent David Brown

■ ^^^-oiGRconiondatJon

Agree/ :Dba =■■■&gt; ■■■&lt;■■■ Department's Proposed Action:

\* Implementation

' Party

grx9 :

Target Date

Responsible

1. CPD and COPA should collect comprehensive data regarding the sex, race/ethnicity, and age of each alleged victim, in addition to the information about complainants of which the consent decree mandates collection, to enable testable analysis of and identification of potential trends in investigation closure rates by victim demographics.

Agree

Consent Decree 1J509(i) requires the Case Management System ("CMS") to capture self-reported demographic information of complainants, but no such requirement exists for victims. If a victim is already reluctant to provide an affidavit, it may prove very difficult to collect that victim's demographic data. Notwithstanding, the Department will attempt to collect this data.

May 3, 2021

CPD

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EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS

DECEMBER 17, 2020

OIG Recommendation

Agree/  
Disagree

Department's Proposed Action -

Implementation  
Target DateParty  
Responsible

2. CPD and COPA should clarify policies and improve training to ensure that investigations in which an affidavit is not required are not closed for lacking an affidavit.

Agree

The Department will provide guidance and supervision to help ensure that investigations for which an affidavit are not required are not closed for lacking an affidavit.

May 3, 2021

CPD

3. CPD and COPA should amend policies to clarify that allegations against a civilian CPD member may be investigated to completion without an affidavit, even if the investigation of allegations against sworn CPD members reported under the same log number must be terminated for lacking an affidavit.

Agree

CPD agrees that this point is important to emphasize, and notes that this N/A is already addressed by G08-01(1V) ("Exceptions to the Sworn Affidavit Requirement") and S08-01-01(II)(F)(5)(a)(4) ("Conduct of Investigation"). Accordingly, CPD agrees with this recommendation to the extent such actions do not conflict with collective bargaining agreements for civilian members.

N/A

OIG Recommendation 'f' ■■■■

^■ Agree/.'  
Disagree

Department's Proposed Action

Implementation  
Target DateParty  
Responsible

4. CPD and COPA should document, in detail, all evidence obtained during the preliminary investigation, and all instances in which evidence was sought or requested but unavailable, in the summary report or closing memo for all investigations closed for lacking an affidavit.

Agree

The Department agrees that it is important to document all evidence obtained during a preliminary investigation, as well as attempts to obtain such evidence. These concerns have largely been addressed by the Department's transition to the CMS. The CLEAR system that OIG reviewed contained significantly less information than CMS. In addition, CLEAR did not contain as much information as the investigative paper file.

N/A

N/A

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EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS

DECEMBER 17, 2020

OIG Recommendation	Agree/ Disagree	Department's Proposed Action	Implementation Target Date	Party Responsible
5. Where objective, verifiable evidence supporting the allegations exists, yet the investigating agency declines to request an affidavit override, CPD and COPA should explicitly document the reason(s) for declining to do so in the summary report or closing memo.	Agree	CPD notes that Consent Decree 11463(b) requires that BIA seek written approval for an override affidavit from COPA if objective verifiable evidence supporting the allegation is revealed during a preliminary investigation, as reflected in Special Order S08-01-01. BIA will document, in the CMS, its reasons for not pursuing an override affidavit in the event BIA does not pursue the override affidavit despite the existence of objective verifiable evidence supporting the allegation.	N/A	N/A
6. CPD and COPA should adequately pursue signed affidavits when they are available, both by lowering access barriers for signers and by providing opportunities for third-party witnesses and other involved parties to sign affidavits.	Agree	Consistent with Consent Decree 11463, the Department agrees that attempts to secure a signed complainant affidavit will reasonably accommodate the complainant's disability status, language proficiency/ and incarceration status. The Department further agrees that third-party witnesses and other involved parties should be afforded an opportunity to sign affidavits.	May 3, 2021	CPD
7. CPD and COPA should ensure that case files include documentation of an investigation's origins and summaries of video evidence which describe the events captured therein.	Agree	The Department documents the origin of an investigation in the CMS. The Department also provides summaries of video evidence but does not provide substantive summaries because such summaries introduce the risk of imparting a characterization of the video evidence.	N/A	N/A
8. CPD and COPA should take measures to prohibit investigators from discouraging reporting parties from signing affidavits, including as specifically required by Paragraph	Agree	Consent Decree 11468 is guiding revisions to BIA unit directives on this issue.	May 3, 2021	CPD

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OIG Recommendation	Agree/ Disagree	Department's Proposed Action	Implementation Target Date	Party Responsible
--------------------	--------------------	------------------------------	-------------------------------	----------------------



468 of the consent decree entered in Illinois v. Chicago.			
9. CPD and COPA should amend policies and improve training to ensure that investigators track the status of civil litigation which overlaps with disciplinary investigations, and require investigators to proactively contact victims and witnesses when a settlement is reached or when civil proceedings otherwise conclude.	Agree	The Department is amending policies and providing training consistent with Consent Decree HH464(h) and 480 to ensure that filings and evidence discovered during civil and criminal cases are considered as part of disciplinary investigations.	May 3, 2021 CPD
10. CPD and COPA should consider adopting policies which allow for a verified court filing or sworn deposition testimony to satisfy the affidavit requirement, enabling a full investigation of allegations of misconduct raised in a civil lawsuit.	Agree	The Department agrees to consider adopting such policies.	May 3, 2021 CPD

Deputy Inspector-General  
Office of the Inspector General  
740 North Sedgwick Street, Suite 200  
Chicago, Illinois 60654

Via Electronic Mail

Re: PSIG Evaluation - Use of Affidavit Override (OIG-Project Number: 18-0770) Dear, Deputy Inspector General Witzburg:

Thank you for your work in the Office of Inspector General (OIG) Evaluation. As indicated in our Management Responses, COPA's current investigative practices are largely in alignment with the recommendations of the OIG and will be reviewed further to ascertain if additional clarity, guidance or training would enhance our investigative processes. Below are several points that we believe offer a broader understanding of COPA's current Affidavit Override-related practices and policies.

• Timeliness and Relevance to Current COPA Operations.

COPA emphasizes that practices in place during the evaluation period (January 2017 - December 2018) do not reflect current COPA practices. COPA has matured significantly as an organization during the past two years. The Report includes no information on or description of COPA's continued growth and improvement in 2019 and 2020, whether driven by organizational improvement efforts or Consent Decree compliance mandates. Of interest, COPA has maintained an increased rate of cases closed following a full investigation to findings compared to its predecessor, the Independent Police Review Authority (IPRA). Among our many improvements in process and practices in the past two years are our ongoing development and revision of policies, enhanced emphasis on training, creation and implementation of a robust and adaptable Consent Decree compliant case management system, and increased community outreach.

• No Consideration of COPA Investigatory Discretion and Importance of Complainant Cooperation

The Report does not adequately account for the essential requirement of complainant cooperation, the impact that the lack of cooperation has on case merits in certain investigations, and the ability to pursue those investigations - even where COPA can meet, the standard for obtaining an override. The Report also neglects to give due credence to the explicit grant of discretion provided in our enabling Ordinance to determine whether matters related to civil suits (a large portion of the Review sample) should merit investigation. COPA evaluates each new complaint, including those related to civil suits, and reaches conclusions based upon the merits of each individual case. The Report's broad declaration that investigations were "improperly closed for lacking an affidavit" is a gross overstatement.

1615 WEST CHICAGO AVENUE, 47M FLOOR, CHICAGO, ILLINOIS 60622 312.743.3034 (COM-LAIF) 312.743.3603 (MAIN LINE) 312.745.3598 (TTY) | WWW.CHICAGOCOFA.ORG

OIG FILE #18-0770

EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS      DECEMBER 17, 2020

Page 2 of 2 November 16, 2020 Ms. Deborah  
Witzburg

• Applicability of Department Directives to COPA Investigative Practices.

The Report asserts that COPA investigative policy is bound by Chicago Police Department Special Orders, including S08-01 -01. We do not agree with this assessment. COPA investigators are bound to apply the standards of conduct described in Department orders and directives to the extent necessary to evaluate members' conduct. COPA investigators employ COPA processes and policies in their administrative investigations. Note that S08-01-01 itself specifies that its application is limited to "allegations of misconduct brought against a Department member and investigated by the Department." (emphasis added). In short, the process of COPA investigators in conducting investigations is not prescribed by Department directives.

Notwithstanding the specific points raised above, we thank your office for its ongoing dedication to ensuring that our investigative practices and procedures are as robust, transparent, and accessible as possible. Please be assured that COPA in whole or part, is addressing or preparing to address each Report recommendation as we continue to improve our operations and training to meet Consent Decree mandates.

Respectfully,

Sydney R. Roberts  
Chief Administrator  
Civilian Office of Police Accountability

Joseph Ferguson (OIG) Karen Konow (BIA) Kevin Connor (COPA)

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EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS      DECEMBER 17, 2020

4750

### Management Response Form - REVISED 11/5/2020

Project Title: Evaluation of Affidavit Override in Disciplinary Investigations

Project Number\* 18-0770

Department Name: Civilian Office of Police Accountability

Date\* 11/16/20

Department Head\* Chief Sydney Roberts

OIG Recommendation C\$>:1.1

" Af ree/  
Dbifroa..  
  
Agree

Department's proposed Action

^Implementation  
Target Date:      Jx Party  
Responsible  
Implemented      COPA  
2020.

1. CPD and COPA should collect comprehensive data regarding the sex, race/ethnicity, and age of each alleged victim, in addition to the information about complainants of which the consent decree mandates collection, to enable reliable analysis of and identification of potential trends in investigation closure rates by victim demographics.

COPA launched its new Case Management System (CMS) in February 2019 and in 2020 integrated enhancements were instituted to track these data points - to the extent they are provided by the alleged victim - as required by the Consent Decree.

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PAGb S.S

OIG FILE #18-0770

EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS DECEMBER 17, 2020

OIG Recommendation	Agree/ Disagree	Department's Proposed Action	Implementation Target Date	Party Responsible
2. CPD and COPA should clarify policies and improve training to ensure that investigations in which an affidavit is not required are not closed for lacking an affidavit	Agree	Beginning in 20.19, COPA embarked on a comprehensive review of its policies and training curriculum for compliance with the Consent Decree, which included revision to its policy on Affidavits and Overrides as well as related training. This included educating investigative staff that investigations may not be closed solely for lack of an affidavit. COPA also completed its Affidavit and Overrides Consent Decree-compliant training in early November 2020.	Implemented 2020	COPA
3. CPD and COPA should amend policies to clarify that allegations against a civilian CPD member may be investigated to completion without an affidavit, even if the investigation of allegations against sworn CPD members reported under the same log number must be terminated for lacking an affidavit.	Agree	This recommendation aligns with COPA's current investigative practice. COPA's Affidavit and Overrides Consent Decree-compliant training, conducted in early November 2020, makes clear that allegations against a civilian Department member may be investigated to completion absent an affidavit. To the extent necessary, COPA will clarify further through revisions to COPA policies and operational guidance.	2020-2021	COPA
4. CPD and COPA should document, in detail, all evidence obtained during the preliminary investigation, and all instances in which evidence was sought or requested but unavailable, in the summary report or closing memo for all investigations closed for lacking an affidavit.	Agree	This recommendation aligns with COPA's current investigative practices. To the extent necessary, COPA will clarify through COPA policies, training, and operational guidance that closing documents must reflect adequate justification for a no finding closure to include reference to evidence obtained during the preliminary investigation and evidence sought or requested but unavailable.	2020-2021	COPA

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EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS DECEMBER 17, 2020

OIG Recommendation	Agree/ Disagree	Department's Proposed Action	Implementation Target Date	Party Responsible
5. Where objective, verifiable evidence supporting the allegations exists, yet the investigating agency declines to request an affidavit override, CPD and COPA should explicitly document the reason(s) for declining to do so in the summary report or closing memo.	Agree	COPA will clarify through COPA policies, training, and operational guidance that closing documents must reflect adequate justification for a no finding closure, to include reference to the existence of objective, verifiable evidence which may support an affidavit override request and, if applicable, reasons for declining to seek an affidavit override.	2020-2021	COPA

6. CPD and COPA should adequately pursue signed affidavits when they are available, both by lowering access barriers for signers and by providing opportunities for third-party witnesses and other involved parties to sign affidavits.	Agree	This recommendation aligns with COPA's current investigative practices, specifically when 3 <sup>rd</sup> party witnesses or other involved parties are known and willing to serve as affiants and where access barriers or challenges are known. To the extent necessary, COPA will further memorialize this expectation in COPA policies, operational guidance, and training.	2020-2021	COPA
7. CPD and COPA should ensure that case files include documentation of an investigation's origins and summaries of video evidence which describe the events captured therein.	Agree	This recommendation aligns with COPA's current investigative practices. Specifically, an investigation's origin is a required field in CMS. It is also COPA's current investigative practice to memorialize the receipt of video evidence, its relevance to the investigation, and, to the extent necessary for supervisor review, maintain notes summarizing pertinent events captured on video in CMS. To the extent necessary, COPA will further memorialize this expectation in COPA policies, operational guidance, and training.	Implemented 2020.	COPA

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EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS      DECEMBER 17, 2020

OIG Recommendation	Agree/ Disagree	Department's Proposed Action	Implementation Target Date	Party Responsible.
8. CPD and COPA should take <i>measures to prohibit investigators from discouraging reporting parties from signing affidavits, including as specifically required by Paragraph 46S of the consent decree entered in Illinois v. Chicago.</i>	Agree	This recommendation aligns with COPA's current investigative practice and COPA staff has not and does not discourage anyone from signing an affidavit. To the extent necessary, this will be further memorialized in revisions to COPA policies, operational guidance and training.	2020-2021	COPA
9. CPD and COPA should amend policies and improve training to ensure that investigators track the status of civil litigation which overlaps with disciplinary investigations, and require investigators to proactively contact victims and witnesses when a settlement is reached or when civil proceedings otherwise conclude.	Agree	Tracking the status of civil litigation which overlaps with open disciplinary investigations is consistent with COPA's current investigative practice. To the extent necessary, this will be further memorialized in revisions to COPA policies, training, and operational guidance. Such revisions will include conducting follow-up with victims and witnesses and considering opening or re-opening an investigation upon settlement or judgment against the City after review of litigation materials.	2020-2021	COPA
10. CPD and COPA should consider adopting policies which allow for a verified court filing or sworn deposition testimony to satisfy the affidavit requirement, enabling a full investigation of allegations of misconduct raised in a civil lawsuit.	Agree	This recommendation aligns with COPA's current investigative practice. To the extent necessary, COPA will further memorialize in revisions to COPA policies, training, and operational guidance.	2020-2021	COPA

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EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS      DECEMBER 17, 2020

## APPENDIX C: GLOSSARY

CLEAR

CLEAR Auto-CR

CMS

Complaint Register (CR) Number

Finalized Investigation

Involved Party

Log Number

Preliminary Investigation

#### Sworn Affidavit

Civilian and Law Enforcement Analysis and Reporting system, a collection of applications and modules for the creation, storage, and analysis of CPD records and operations.

CLEAR application which hosts the electronic case files for disciplinary investigations initiated prior to February 11, 2019.

Case Management System, which replaced Auto-CR as the system used to host electronic case files and perform administrative tasks on February 11, 2019.

A tracking number assigned to any incident involving potential misconduct by a CPD member that is the subject of a full disciplinary investigation.<sup>60</sup>

A term used by OIG to describe disciplinary investigations conducted to completion. Finalized investigations exclude investigations in a pending status and administratively closed investigations, which were not conducted to completion because the allegations did not concern potential rule violations, did not concern a current CPD member, or were closed for another administrative reason.

Any individual involved in an incident related to a disciplinary investigation, including a complainant, reporting party, witness, victim, or accused CPD member.

A tracking number assigned to any incident involving potential misconduct by a CPD member that may be investigated.<sup>61</sup>

The initial phase of the investigation after the allegations have been received by the assigned investigating agency. Investigative actions during the preliminary investigation include contacting involved parties, collecting known evidence, and searching for additional evidence.<sup>62</sup>

A written statement by an individual certifying that the statement is true and correct under penalties provided by law.<sup>61</sup>

■° CPD General Order G08-01 ■' CPD General Order C08-01 COPA  
Investigations Manna! Section IH-B(a)

CPD General Order G08-01 Puisunnt to Section IV-D. when a reporting party -s a CPD member or COPA employee, no affidavit is  
lequned .

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Sworn Affidavit    An action taken by the chief administrator of COPA and the  
Override            chief of BIA to allow a disciplinary investigation to be  
                         completed when a sworn affidavit has not been obtained but the standards defined by  
                         the appropriate collective bargaining agreement have been met.<sup>6"</sup>

#### DISCIPLINARY INVESTIGATION CASE STATUS CATEGORIES<sup>6-</sup>

Closed/Final

Closed/No Conversion

Administratively Closed

Other Final Status

Pending Review

Pending Investigation

The investigation was completed, the agency developed findings regarding the allegations, the full review  
process was completed, and closing procedures were completed and finalized.

The investigation was not converted to a Complaint Register (CR) investigation and was closed without  
findings due to the absence of either a sworn affidavit or an affidavit override. This case status is commonly  
referred to as "No Affidavit".

The investigation was closed for an administrative reason, such as (1) the allegations do not concern a current CPD member; (2) the allegations do not constitute potential misconduct, defined as a violation of the CPD Rules of Conduct; (3) the preliminary investigation of a critical incident, such as a weapon discharge or injury sustained in CPD custody, did not identify potential misconduct; or (4) the allegations were previously investigated or have been consolidated into an existing investigation.

The investigation was suspended, terminated, or concluded but not finalized, typically because the accused CPD member resigned, retired, or was on the medical roll when the investigation concluded.

The investigation concluded but has not been finalized, due to a current case status in the internal review, grievance, or appeal process.

The investigation is ongoing.

<sup>41</sup>- CPD General Order C08-01

OIG aggregated certain individual case statuses as reported in CLFAR Auto-CR into the categories of "Other Final Status," "Pending Review," and "Pending Investigation "

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EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS      DECEMBER 17, 2020

## APPENDIX D: SWORN AFFIDAVIT DOCUMENTS

### CPD-44.126 SWORN AFFIDAVIT FOR LOG NUMBER INVESTIGATION

#### SWORN AFFIDAVIT FOR LOG NUMBER INVESTIGATION CHICAGO POLICE DEPARTMENT

STATE OF ILLINOIS j

COUNTY OF COOK )

Location of Incident

Summary of Statement(s):

, hereby state as follows:



I have read the above summary and/or attached statement(s) in its entirety, reviewed it for accuracy and been given an opportunity to make corrections and additions to the statement(s).

Under penalties as provided by law pursuant to 735 ILCS 5/1 -109,1 certify that the information set forth in the statement(s) above and/or attached summary are true and correct, except as to any matters therein stated to be on information and belief as to such matters, I certify as aforesaid that I verily believe the same to be true.

Print Affiant's Name

Witness' Signature

Date

Date

Attachment No. Log No.

INVESTIGATOR USE ONLY]

4. S; ■COM||lgT£ :JH^

A Sworn Affidavit has not been signed for this investigation

WO AFFIDAVIT - NO ☐ NO AFFIDAVIT -

CONTACT REFUSED

CPD-44.126 (Rev. 8/16) English

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on under the following circumstances ☐ NO AFFIDAVIT

☐ NO AFFIDAVIT • NO REQUIRED

COOPERATION

EVALUATION OF AFFIDAVIT OVERRIDE IN DISCIPLINARY INVESTIGATIONS

DECEMBER 17, 2020

## COPA SWORN AFFIDAVIT

Location of Incident

### SWORN AFFIDAVIT

Date of Incident Time of Incident

I,

affirm that the statement I have given to the Civilian  
Office of Police Accountability, and any allegations that I have made, are true.

(Printed name of person making-statement)

(Date)

State of Illinois County of Cook

Signed and affirmed to before me on

(Date)

(Signature of Notary Public)

Attachment No

Complaint Log No .

## 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 human resources activities and issues of equity, inclusion and diversity by its Diversity, Equity, Inclusion, and Compliance Section.

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 and cost-effectiveness of government operations; and
- 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, and 240.

*Cover image courtesy of the Department of Assets, Information and Services.*