



PAB

RPD Discipline: An Oversight Investigation

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What is an Oversight Investigation?

Pursuant to City Charter Article 18-5(K)(1), the Police Accountability Board (PAB) shall review and assess Rochester Police Department (RPD) policies, procedures, patterns and practices. In 2023, PAB voted to execute this duty with a process called oversight investigation. An oversight investigation is a thorough examination of all powers executed by RPD and its officers. It addresses a specific subject or aims to answer a particular question. An oversight investigation does not offer recommendations but serves as an invitation for collaboration.

The tools of an oversight investigation include, but are not limited to, requests for information, oversight hearings, and education hearings. Following the completion of an oversight investigation, a report is presented to the PAB board. Once the final report is approved by the board, it is then disseminated to the mayor, police chief, city council, and the public. The report will be published at www.rocpab.org.

Data Release: There are many potential analyses that were excluded from the present oversight investigation. The PAB has provided access to the raw data used for this report on www.rocpab.org. The PAB invites the public to review and analyze the data. For questions or collaborations, contact the PAB at PABinfo@CityofRochester.gov.

Definitions

CBA: The Agreement between the City of Rochester and the Rochester Police Locust Club, Inc., or collective bargaining agreement (CBA) provides orderly collective bargaining relations between the City and Locust Club to secure prompt and equitable disposition of grievances, and to establish fair wages, hours and working conditions for the employees covered by the Agreement.

Command Discipline: Command discipline is a less severe alternative to the RPD's process of a formal discipline investigation. Any record of command discipline is removed from an officer's personnel file after one year without further discipline.

General Order: Written orders issued by the Chief of Police outlining policy or procedure on matters, which affect the entire Department. A General Order is the most authoritative current directive issued by the Department.

Locust Club: The Rochester Police Locust Club is the bargaining agent, or labor union, representing the following members of the Rochester Police Department: Police Officers, Investigators, Sergeants, Lieutenants, and all Captains except: a maximum of five sworn employees assigned to the office of the Chief of Police, the Chief's Aide, the commanding officer of Professional Standards Section, and the commanding officer of the Research and Evaluation section.

PAB: The City of Rochester Police Accountability Board ensures public accountability and transparency over the powers exercised by sworn officers of the Rochester Police Department.

PSS: The Professional Standards Section (PSS) is responsible for receiving, processing and investigating complaints made against Rochester police officers and non-sworn employees of police action or misconduct

Sustained Finding: A PSS investigation concluded that an officer's conduct did occur and amounted to misconduct or misjudgment.

Executive Summary

The Division of Policy & Oversight reviewed and assessed the patterns, practices, policies, and procedures related to discipline at the Rochester Police Department (RPD). The PAB analyzed discipline data from Professional Standards Section (PSS) Annual Reports and the Rochester Police Discipline Database. The PAB also analyzed policies, including the Locust Club collective bargaining agreement, the PSS Manual, General Orders 301 (Discipline) and 305 (Command Discipline), and Article 18 of the City Charter.

Among the findings by PAB:

Patterns

- Sustained findings for departmental investigations of officer misconduct have decreased markedly, from a 10-year peak of 39 sustained findings in 2019 to no sustained findings in 2023. This persistent decline in sustained findings suggests that there may be a systematic change in the RPD's approach to issuing discipline since 2019.
- The RPD and City Law Department do not consistently upload discipline files for sustained allegations of misconduct to the Rochester Police Discipline Database, which was created in response to the repeal of 50-a in June 2020.
- An analysis of PSS Annual Reports reveals irregularities in reporting of discipline practices. Some sustained findings of misconduct are missing from annual reports, some command discipline penalties are reported incorrectly, and fleet vehicle accidents are reported inconsistently.

Practices

- The RPD's implementation of command discipline appears to be inconsistent with policies and procedures.
- The most recent collective bargaining agreement (2019-2024) expanded the practice of command discipline, more than doubling the number of eligible violations.
- The routine destruction of records under command discipline is inconsistent with the concept of progressive discipline. Any record of command discipline may be destroyed after one year without further discipline.

Policies

- The PSS Manual has not been updated since February 2014.
- General Order 305 (Command Discipline) has not been updated to reflect the changes in the most recent collective bargaining agreement.
- General Order 320 (Civilian Review Board) was rescinded on February 18, 2024, but has not been replaced with a General Order for the Police Accountability Board.
- Some penalties are missing from the collective bargaining agreement's classification of penalties, including Rules and Regulations 4.29 (fraternization).

Procedures

- Despite the mandate of Article 18 of the City Charter that "any complaint received and accepted by PSS shall be transmitted to the Board," the RPD only notifies the PAB of investigations that originate from citizen complaints.
- Despite the mandate of Article 18 of the City Charter, "If PSS makes any findings with respect to the complaint, they shall send all such findings to the Board within five business days," the RPD does not share findings on any PSS investigations.

Background

In May 2019, Rochester City Council passed Local Law No. 2 of 2019 to amend the City Charter and create the Police Accountability Board (PAB).¹ In November of that year, 75% of Rochester voters approved the amendment.² This law granted the PAB the power to impose discipline according to a disciplinary matrix, which would require the Chief of Police to carry out a penalty designated by the PAB.³

Since 2019, the union representing the officers of the Rochester Police Department (RPD) has challenged the portions of Local Law No. 2 of 2019 related to the PAB's exclusive power to discipline officers. In November 2023, the New York State Court of Appeals upheld the judgment that the PAB's exclusive disciplinary power was inconsistent with New York State Law. The decision stated, "[T]he portion of Local Law No. 2 of 2019 addressing police discipline does exceed the City's authority under the Municipal Home Rule Law and is invalid."⁴

The remaining portions of the law, which do not address police discipline, remain valid.⁵ The Court of Appeals did not state that any amendment to the City Charter would be required, nor did the Court invalidate Article 18 of the City Charter as a whole. The PAB is still empowered to investigate allegations of police misconduct. However, the PAB does not have the exclusive power to impose discipline upon officers with sustained allegations of misconduct. Therefore, the PAB makes disciplinary recommendations to the RPD. The RPD makes the final determination over whether to impose officer discipline and what form that discipline takes.

The present oversight investigation seeks to analyze the patterns, practices, policies, and procedures related to discipline within the RPD's disciplinary system.

¹ Local Law amending the City Charter with respect to establishing the Rochester Police Accountability Board, Local Law No. 2-2019. <https://www.cityofrochester.gov/WorkArea/DownloadAsset.aspx?id=21474841412>.

² Brian Sharp, "Rochester voters approve Police Accountability Board, setting stage for court battle," *Democrat and Chronicle*, November 5, 2019, <https://www.democratandchronicle.com/story/news/2019/11/05/police-accountability-board-rochester-ny-election-results-passes-referendum-vote/4171703002/>.

³ Charter of the City of Rochester § 18-3(G). <https://ecode360.com/35278812>

⁴ Rochester Police Locust Club, Inc. v. City of Rochester, New York State Court of Appeals, N.E.3d (2023). <https://law.justia.com/cases/new-york/court-of-appeals/2023/81.html>

⁵ Charter of the City of Rochester § 18-14. <https://ecode360.com/35278812>

Locust Club Collective Bargaining Agreement

In November 2023, the New York State Court of Appeals upheld lower courts' decisions that the City of Rochester "was obliged to negotiate with the Locust Club on the issue of police discipline because in 1985 it had repealed the provision of its charter vesting a local official in charge of the police force with unilateral authority over police discipline."

The Court of Appeals noted that the New York State Legislature *could* enact a law to allow the City of Rochester (and all municipalities in the state) to oversee police discipline. But without such legislation, the City of Rochester must abide by "The Taylor Law's mandate of collective bargaining for police discipline." Both houses of the New York State Legislature introduced bills to prohibit police discipline from collective bargaining in 2021 and 2022. Neither bill was voted out of its respective committee.⁶

There are some municipalities in New York State where the local government controls the process of police discipline. For example, in 2006, The New York State "Court of Appeals rule[d] that all police disciplinary matters are reserved to the New York City police commissioner and not subject to collective bargaining."⁷ For Rochester however, the courts have decided that since the City of Rochester repealed its right to oversee police discipline in 1985, discipline must be negotiated between the Locust Club and the City government. The results of those periodic negotiations are cemented in the Agreement between the City of Rochester and the Rochester Police Locust Club, Inc., or the collective bargaining agreement (CBA).

In January 2023, the City of Rochester announced that negotiations had concluded for the current contract, which is valid from July 1, 2019, to June 30, 2024.⁸ With negotiations for the next contract underway, the PAB aims to empower City officials and civilians alike to understand the effects of the CBA on the discipline process.

Article 20, Section 1: Department Investigation and Bill of Rights

This section of the CBA carefully outlines officers' rights during a PSS investigation. It regulates many aspects of the investigation process, including the timing and location of officer interviews and an officer's right to information about the investigation. Officers are entitled to representation from the Locust Club or a personal attorney during interviews. Officers have a right to their own copy of all warnings and memorandums. The CBA clarifies that such warnings and memorandums are *not* classified as discipline.

Article 20, Section 2: Command Discipline

The command discipline procedure serves as a less severe alternative to formal departmental charges of misconduct. According to the CBA, a commanding officer must start the command discipline process no later than 90 days after the alleged misconduct. After 90 days, all violations must be investigated through the formal discipline procedure. Only certain violations are eligible for command discipline, including all

⁶ An act to amend the civil service law, in relation to removing police officer discipline from collective bargaining in the state, 2021-S4434, New York State Senate (2021-2022). <https://www.nysenate.gov/legislation/bills/2021/S4434>.

⁷ New York City Law Department, Press Release, "Court of appeals rules that all police disciplinary matters are reserved to the New York City police commissioner and not subject to collective bargaining," (2006). <https://www.nyc.gov/html/law/downloads/pdf/pr032806.pdf>.

⁸ City of Rochester, News Release, "City, RPD Locust Club Reach Five-Year Labor Agreement," 2023. <https://www.cityofrochester.gov/article.aspx?id=21474851434>.

class 1 violations and three class 2 violations. See Appendix 1 of this report for the list of violations that are eligible for command discipline.

A commanding officer can only propose certain penalties in the case of command discipline:

1. A letter of reprimand; or
2. Suspension without pay for up to three (3) days; or
3. Reimbursement to the City, not to exceed \$100.00 of the value of the property which is intentionally or negligently damaged or lost by a member; or
4. Successful completion of an approved Driver Improvement School; or
5. Transfer from the current section/unit of assignment.

When an officer accepts the commanding officer's disciplinary findings, they may not file a grievance, nor may they appeal the finding through the Civil Service Law.

A notable difference between command discipline and the formal discipline procedure is the maintenance of the discipline record in an officer's personnel file. The collective bargaining agreement states, "The record of any command discipline shall be removed from a member's personnel record after the member has had no other discipline imposed for a period of one year and will not be used against the member thereafter. Upon request of the member, such written records shall be destroyed or returned to him."

Changes to Command Discipline in the 2019-2024 Collective Bargaining Agreement

Previous contracts presented command discipline as a way for commanding officers to "impose discipline for *minor violations* of the Rules & Regulations and General orders of the Department." (Emphasis added.) The current contract omits the 'minor' qualifier in the description of command discipline. The current contract also expands the list of violations eligible for command discipline to include all class 1 violations, which increased the number of eligible violations from 17 to 41. The current contract allows more types of violations to bypass the formal departmental investigation process.

For example, Rules and Regulations 1.2 "*Familiarity* with Laws, Rules and Ordinances" was eligible for command discipline under the previous contract, but 1.1 "*Obedience* to Laws, Ordinances and Rules" was not eligible (emphasis added). This change has the potential to change discipline practices markedly, rendering nearly any violation of a General Order newly eligible for command discipline as a less severe alternative to formal departmental charges, which would remain on an officer's record.

Article 21, Section 3: Release of Employment Records

This section describes the strict guidelines for what information may be released regarding an RPD officer's disciplinary records. The City of Rochester is permitted to release discipline records about any disciplinary proceedings where the officer (current or former) pled guilty to the departmental charges. The City is also permitted to release records about officers who retired or resigned *after* departmental charges were filed. The City is not permitted to release records related to officer who resigned or retired during the course of an investigation *before* departmental charges were filed. If departmental charges were subsequently filed after an officer retired or resigned, and the officer was given an opportunity to clear their name or submit a written statement, the City would be permitted to release such records.

CBA Appendix 1: Discipline Guidelines & Classification of Penalties

Appendix 1 of the CBA explains the “guidelines to be used in determination of penalties for discipline.” Each item from the RPD’s Rules and Regulations is assigned a classification: 1, 2, or 3. The classifications denote the severity of violating any such rule or regulation, with class 1 representing the least severe and class 3 representing the most severe violations.

The CBA’s Table of Penalties, or discipline matrix, is reproduced below. The discipline guidelines and classification of penalties are also included in this report as Appendix 2. It includes the classification assigned to each item of the Rules and Regulations. Rules and Regulations Section 4.29 (Fraternization) is absent from the CBA’s classification list.

Table of Penalties			
	1st Incident	2nd Incident	3rd Incident
Class 1	3-Day Suspension	10-Day Suspension	20-Day Suspension
Class 2	10-Day Suspension	30-Day Suspension	60-Day Suspension
Class 3	Dismissal	Dismissal	Dismissal

The Table of Penalties lists the maximum penalty that the Chief of Police can impose for the each violation. The Chief may impose a penalty more or less severe than those listed in the table. The CBA states, “In the event the Chief chooses to exceed or reduce the penalties listed above, he shall explain his reasoning, in writing to the member, with copy to the Locust Club.” The CBA also states, “The Chief, at his discretion, may consider extenuating circumstances and may impose a lesser penalty than listed above.” The CBA does not require that the Chief explain his reasoning while considering extenuating circumstance to impose a lesser penalty.

According to the Table of Penalties, discipline should be progressive in nature. Progressive discipline means that officers should receive more severe penalties for subsequent violations. At the same time, article 20, section 2 of the CBA states, “The record of any command discipline... will not be used against the member... after the member has had no other discipline imposed for a period of one year.” Consequently, discipline cannot be truly progressive when prior violations are excluded from future investigations of misconduct.

RPD Policies, Procedures, Patterns, and Practices

Policies and Procedures

General Order 301 (Discipline)

General Order 301 details the procedure for issuing discipline. The General Order states, “Discipline is a necessary element in the maintenance and growth of any person or organization.” Upon discovering an instance that is or may be construed to be a violation of Departmental directives, supervisors are required to “instruct the subordinate on how to correct noted inadequacies,” regardless of penalty. This remedial instruction “shall be officially recorded as a memorandum or counseling memorandum and documented on an intra-departmental correspondence.”

After issuing a memorandum, a supervisor initiates command discipline proceedings as allowed by current directives. (The command discipline procedure is explained below.) Next, the supervisor recommends whether, or not, they prefer to issue Departmental charges. After giving remedial instruction and issuing a memorandum, the supervising officer forwards the paperwork to PSS. If recommending discipline, the supervisor would explain their decision in an intra-departmental correspondence to the Chief of Police. Next, PSS reviews the paperwork: PSS adds it to the officer’s disciplinary file if no further action is indicated or recommends discipline to the Chief. Lastly, the Chief of Police reviews the package and recommendations for disciplinary action. The Chief decides whether to file the package in the employee’s discipline file without penalty or to proceed with disciplinary action.

General Order 305 (Command Discipline)

RPD is not unique in using command discipline as a less severe alternative to formal departmental charges of misconduct. Other jurisdictions in New York State use the practice of command discipline, notably the New York City Police Department (NYPD). NYPD’s Patrol Guide explains that supervisors may carry out command discipline as “non-judicial punishment available to a commanding/executive officer to correct deficiencies and maintain discipline within the command.”⁹

General Order 305 details the procedure for issuing command discipline. Upon discovering a violation, the reporting supervisor completes RPD Form 1334, conducts a preliminary investigation, and submits the documentation through the chain of command. Next, the Section Platoon Commanding Officer interviews the subject officer and conducts any further investigation as necessary. The commanding officer informs the officer of the result of the investigation, the finding, and the proposed penalty, if any. Lastly, the officer either accepts the finding and the penalty, accepts the finding but appeals the penalty, or declines to accept the finding or the penalty. If the officer declines the finding and penalty, they must elect disciplinary proceedings pursuant to Section 75 of the Civil Service Law.³

According to RPD’s Open Data Portal, General Order 305 has not been updated to reflect current list of eligible violations as of May 21, 2024.

⁹ New York City Police Department, “318-01 Command Disciplines and Authorized Penalties,” Public Administrative Guide, (2024). https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/public-adminguide1.pdf.

Professional Standards Section (PSS) Manual

The RPD classifies complaints by the source who submitted the complaint: a citizen or someone internal to the Department. Departmental investigations can originate from many sources: anonymous citizen complaints, complaints from other City departments, complaints from RPD officers or civilian employees, fleet vehicle accidents, or the Chief of Police. The PSS Manual states, “The investigative process for [internally generated] cases should proceed in the same manner as a citizen complaint.”¹⁰

Upon receiving a complaint and completing a personnel complaint form, a PSS Sergeant assigns a PSS number in IA Pro, which is the computer application for maintaining discipline files. The manual goes on to describe the procedures for gathering reports, interviews, neighborhood checks, witness statements, and other evidence. After conducting the investigation, the PSS investigator submits the investigative package to the commanding officer of PSS.

When an investigation concludes to sustain an allegation of misconduct, the Chief of Police, at his sole discretion, rules whether or not departmental charge(s) are to be filed against the officer. The PSS Manual does not indicate what factors influence the Chief’s decision to file charges after a sustained finding. Once departmental charges are prepared, the officer is offered an Opportunity to be Heard to respond to the charges. The officer may plead guilty for the charges as prepared, or they may plead not guilty and proceed with a departmental hearing.

After an officer pleads guilty to departmental charges or is found guilty after a hearing, the following penalties may be imposed: letter of reprimand, fine up to \$100, suspension without pay, demotion, or termination. The Chief of Police may also decide not to issue any disciplinary action after an investigation results in sustained allegations. For example, the Chief may issue a Memorandum of Record in lieu of discipline. In that case, a Notice of Finding informs the officer of their opportunity to rebut the sustained allegation in an intra-departmental correspondence to the Chief.

Section IV of the PSS manual details the “Procedure for Civilian Review Board case review.” The Civilian Review Board was abolished when the PAB was established in 2019. The manual also references General Order 320 (Civilian Review Board), which was rescinded on February 18, 2024. As of May 21, 2024, there is no general order for the Police Accountability Board.

The PSS Manual also explains command discipline in further detail. The manual states, “[Command discipline] occurs when an officer commits a violation, which does not necessitate the need for a full internal investigation.” The manual reiterates the CBA mandate that “Command discipline shall be removed from the member’s record after the member has had no other discipline imposed for a period of one year.” The purge date can be extended if a written agreement is prepared in advance. If an officer is disciplined again over the course of one year, the command discipline package must be maintained for an additional year after each subsequent disciplinary proceeding. Finally, the manual states that after one year, any physical or computer records of the file are removed, including from the officer index. There is only one instance where a reference to the investigation remains. When a citizen complaint is converted to command discipline, the investigative package is retained under the complainant’s name.

¹⁰ The RPD is required to notify the PAB when PSS commences an investigation. As of May 21, 2024, the RPD does not notify the PAB of investigations from internal complaints. See the “Information Sharing” section of this report for further discussion.

Patterns

Professional Standards Section (PSS) Annual Reports

The PSS Annual Report provides summary statistics about investigation findings for citizen complaints and departmental investigations, including the number of complaint investigations that were initiated, completed, and remain open during the calendar year. The report breaks down the investigation findings for citizen complaints and departmental findings.

The PSS Annual Report provides case-level statistics for sustained allegations of misconduct. For each case with a sustained finding, the report lists the PSS case number, the number of personnel involved, the allegation, and the departmental action. There are four categories of investigation: command discipline, satellite issues, citizen complaints, and departmental investigations. A satellite issue is “an alleged violation, which was discovered through an investigation, but was not part of the original complaint.”

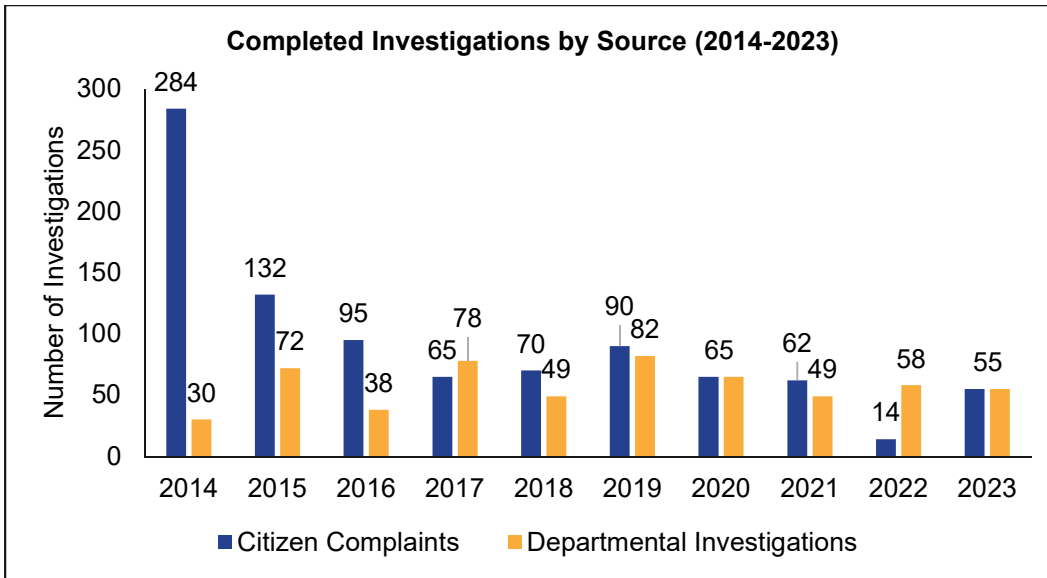
According to the 2023 PSS Annual Report, the following findings apply to all allegations:

- Exonerated:** Conduct was lawful, justified, and proper.
- Sustained:** The conduct occurred and amounted to misconduct or misjudgment.
- Unsubstantiated:** Insufficient evidence to prove or disprove the allegation.
- Policy Review:** The allegation is true however; the action of the employee was consistent with current agency policy. The policy will be placed under review.
- Office:** An allegation is closed because a complainant fails to cooperate with the investigation and there is not enough evidence available to draw a fair conclusion and apply a finding.

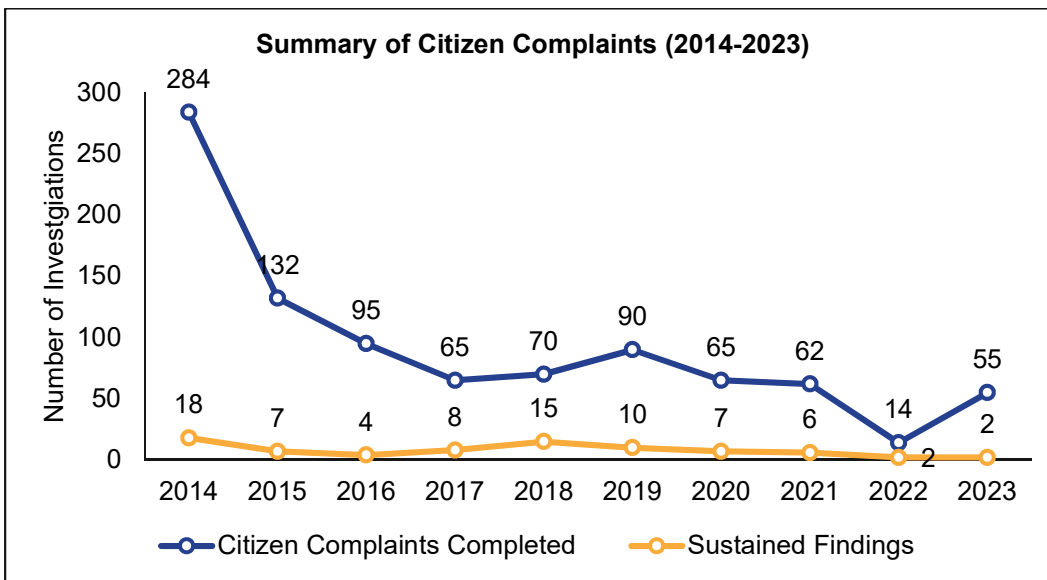
Note: The PSS Annual Report does not list definitions for “unprovable” and “unfounded” findings.

The table below shows the findings for citizen complaints and departmental investigations over a 10-year period. The category “Policy Review” was included for the first time in the 2023 report. The policy review findings are included in the total column for 2023.

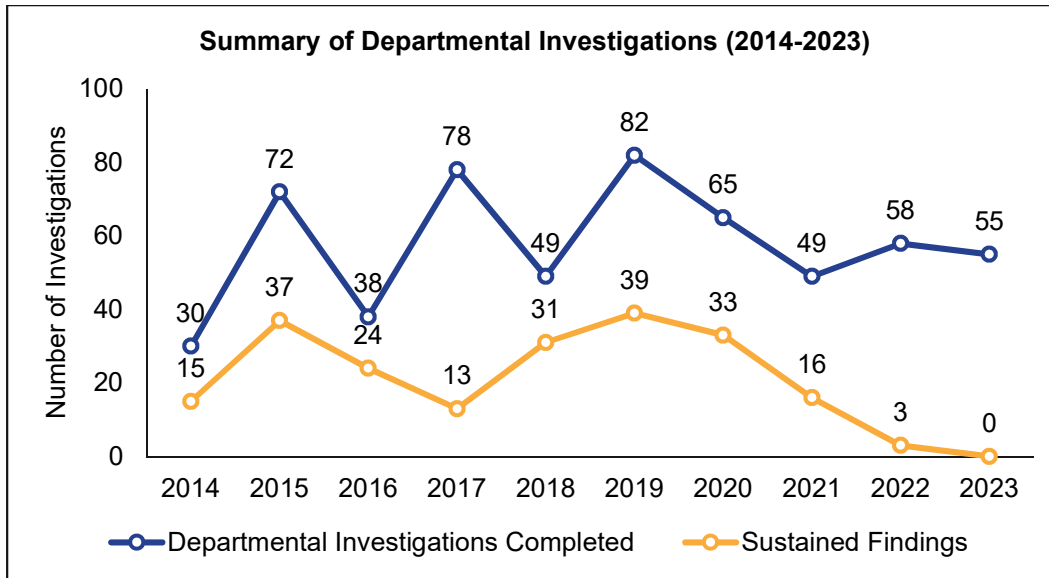
Year	Sustained	Exonerated	Unprovable	Unfounded	Officed	Total
2014	33	36	154	75	16	314
2015	44	43	71	22	24	204
2016	28	31	45	15	14	133
2017	21	42	47	25	8	143
2018	46	37	22	10	4	119
2019	49	64	25	29	5	172
2020	40	43	8	30	9	130
2021	22	50	9	18	12	111
2022	5	37	7	15	8	72
2023	2	77	14	0	7	110*



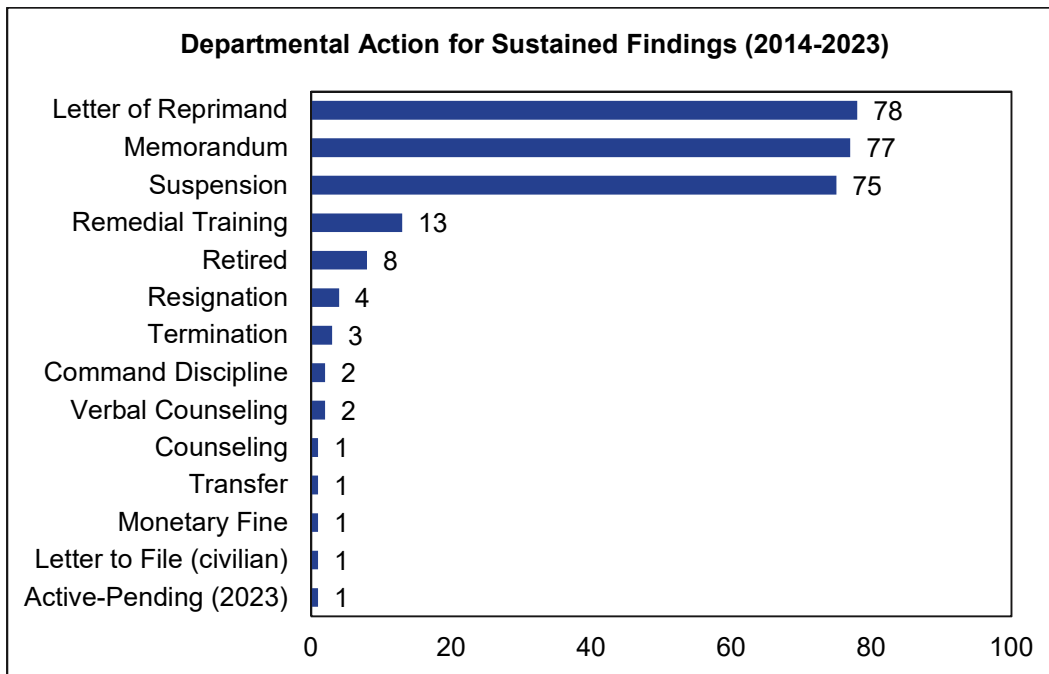
The number of citizen complaint investigations has decreased over the past ten years. On average, there are 93 citizen complaints per year, with a maximum of 284 investigations in 2014 and a minimum of 14 investigations in 2022. It is possible that the small number of citizen complaints to PSS in 2022 is related to the PAB opening to accept complaints that year. The number of departmental investigations has fluctuated since 2014. On average, there are 58 departmental investigations per year, with a maximum of 82 investigations in 2019 and minimum of 30 investigations in 2014.



The number of citizen complaints that concluded a sustained finding has fluctuated over time. On average, there are 8 sustained findings per year, with a maximum of 18 sustained findings in 2014. Since 2018, the number of sustained findings has decreased year over year from 15 sustained findings to 2 sustained findings in 2022 and 2023.



The number of departmental investigations that concluded a sustained finding fluctuated over time until reaching a maximum of 39 sustained findings in 2019. On average, there are 21 sustained findings per year. Since 2019, the number of sustained findings has decreased year over year to a minimum of zero sustained findings in 2023. One would expect to see the number of sustained findings to fluctuate over time. The emergence of a marked pattern in sustained findings suggests that there may be a systematic change in the RPD’s approach to issuing discipline since 2019.



From 2014 to 2023, the most frequent departmental action for a sustained allegation of misconduct was letter of reprimand (78), followed by memorandum (77) and suspension (75). The chart above includes findings from citizen complaints, departmental investigations, command discipline, and satellite issues.

Rochester Police Discipline Database and the Repeal of 50-a

In June 2020, New York State enacted legislation “to amend the civil rights law and the public officers law, in relation to the disclosure of law enforcement disciplinary records; and to repeal section 50-a of the civil rights law relating thereto.” This law is referred to colloquially as “the repeal of 50-a.” Civil Rights Law § 50-a(1) stated that police discipline records were confidential. With the repeal of 50-a, members of the public could now access discipline records through Freedom of Information Law (FOIL) requests.¹¹

In response to the repeal of 50-a, the City of Rochester created an online tool called the Police Department Discipline Database. The database includes records “for any completed investigation where charges were substantiated.” As of May 21, 2024, the landing webpage for the database stated, “Additional records will be added to the database at the conclusion of each case.”¹²

Even though the repeal of 50-a facilitated the public release of discipline records, any record of a command discipline file is removed after one year. Over the course of this oversight investigation, the PAB observed that command discipline files appear to be removed promptly from the Discipline Database.

The PAB conducted an analysis comparing the contents of the Discipline Database with the data in the PSS Annual Reports. The following records of sustained findings of misconduct with penalties of letter of reprimand or higher are missing from the Discipline Database. There may be additional files missing from the Discipline Database, but the PAB cannot confirm that from the information in annual reports alone.

PSS Investigations Missing from Discipline Database				
PSS #	Type	Allegation	Departmental Action	Information Source
97-1061	Citizen Complaint	Procedure Force	60-Day Suspension	Democrat and Chronicle Database
23-0708*	Command Discipline	Unknown	Active-Pending	PSS Annual Report
23-0783	Command Discipline	Procedure	3-Day Suspension	PSS Annual Report

*The RPD reported to the PAB that as of May 15, 2024, PSS #23-0708 remained “in the chain of command” and would be transmitted upon completion. It is unclear why the case-level data was included in the annual report if the departmental action had not yet been issued.

¹¹ Malgieri, Patrick M. and Terrance P. Flynn, “Repeal of Civil Rights Law 50-a Makes Police Disciplinary Records Public Through FOIL,” June 12, 2020. <https://www.harrisbeach.com/insights/repeal-of-civil-rights-law-50-a-makes-police-disciplinary-records-public-through-foil/>.

¹² City of Rochester, “Police Department Discipline Database.” <https://www.cityofrochester.gov/policediscipline/>.

Case-Level Data Missing from Annual Reports

An analysis of the Discipline Database revealed that some investigations are missing from PSS Annual Reports. The following departmental investigations appear to be missing from case-level data in annual reports since 2014. There may be additional cases missing from annual reports, but the PAB cannot confirm that from the information in the Discipline Database alone.

PSS Investigations Missing from Annual Reports				
PSS #	Type	Allegation	Departmental Action	Information Source
14-0762	Citizen Complaint	Force	120-Day Suspension	Discipline Database
15-0466	Departmental Investigation	Procedure	Letter of Reprimand (2)	Discipline Database
16-0628	Departmental Investigation	Failed to File SRR Force/Discourtesy	Could not locate 3-Day Suspension	Discipline Database
20-0077	Departmental Investigation	Courtesy	5-Day Suspension	Discipline Database
22-0458	Command Discipline	Unknown	Unknown	IA Pro Dataset shared by RPD

The PAB inquired about the allegation and penalty for PSS #22-0458 on May 16, 2024, because the investigation was omitted from PSS Annual Reports. A year had already passed since the incident took place. By the time the PAB learned about this discipline record, the RPD had already removed the file and was unable to share any information about it.

Fleet Vehicle Accidents

Some files on the discipline database include a complete officer index. The officer index lists all allegations of misconduct over the officer's career, with some information redacted. The officer indexes revealed information about the departmental response to fleet vehicle accidents.

There are three fleet vehicle accidents in the Rochester Police Discipline Database that resulted in letters of reprimand but appear to be missing from annual reports: PSS #07-0632, PSS #08-1144, PSS #13-0714. The penalty of letter of reprimand suggests that these fleet vehicle accidents were handled as discipline. There are fourteen fleet vehicle accidents, resulting in memorandums and/or driving school, that were not included in the case-level data of annual reports from 2007 to 2019. It is unclear whether PSS considers those fleet vehicle accidents as departmental investigations.

Inconsistencies in Command Discipline

Upon analyzing historical data from PSS Annual Reports, the PAB found irregularities with the reporting of command discipline. The 2017 PSS Annual Report contained inconsistencies in the application and reporting of command discipline. Two cases of command discipline resulted in memorandums in 2017. As stated in the collective bargaining agreement, General Order 305 (Command Discipline), and the PSS Manual, a memorandum is not an appropriate penalty for command discipline. Two other instances of command discipline incorrectly reported the penalty as “command discipline.”

Inconsistent Applications of Command Discipline				
PSS #	Number of Personnel	Allegation	Departmental Action	Inconsistency
17-0159	1	Procedure	Memorandum	Inappropriate Penalty
17-0551	1	Procedure	Memorandum	Inappropriate Penalty
17-1081	1	Procedure	Command Discipline	Missing Penalty
19-0220	1	Procedure	Command Discipline	Missing Penalty

Practices

The Role of Discretion in Issuing Discipline

RPD policies and the collective bargaining agreement make it clear that the Chief of Police has the sole discretion to file departmental charges and issue discipline for sustained findings of misconduct. When the decision to discipline officers is left to the discretion of one individual, there are opportunities for biases to overcome facts and fairness.

In the spirit of transparency and fairness, many law enforcement agencies have codified this process of decision making with explicit policies. For example the New York City Police Department (NYPD) has published an in-depth document called the Disciplinary System Penalty Guidelines, which explains the specific information that is considered when issuing discipline penalties. When issuing discipline, departments typically weigh *aggravating* and *mitigating factors*, which are unique circumstances that can influence the severity of a penalty. The NYPD's guidelines describe with precision the factors that would aggravate or mitigate a penalty.¹³

The PAB inquired with the RPD's liaison to the PAB about the Chief's decision to issue discipline after an investigation concludes to sustain the finding. PAB asked, "Page 15 [of the PSS Manual] describes the steps to be taken after the Chief rules that departmental charges are to be filed against an officer. Upon completion of an investigation, what factors contribute to the Chief's ruling that charges are to be filed? Are there cases where the Chief ruled not to file departmental charges after an investigation sustained the allegation(s) of misconduct?"

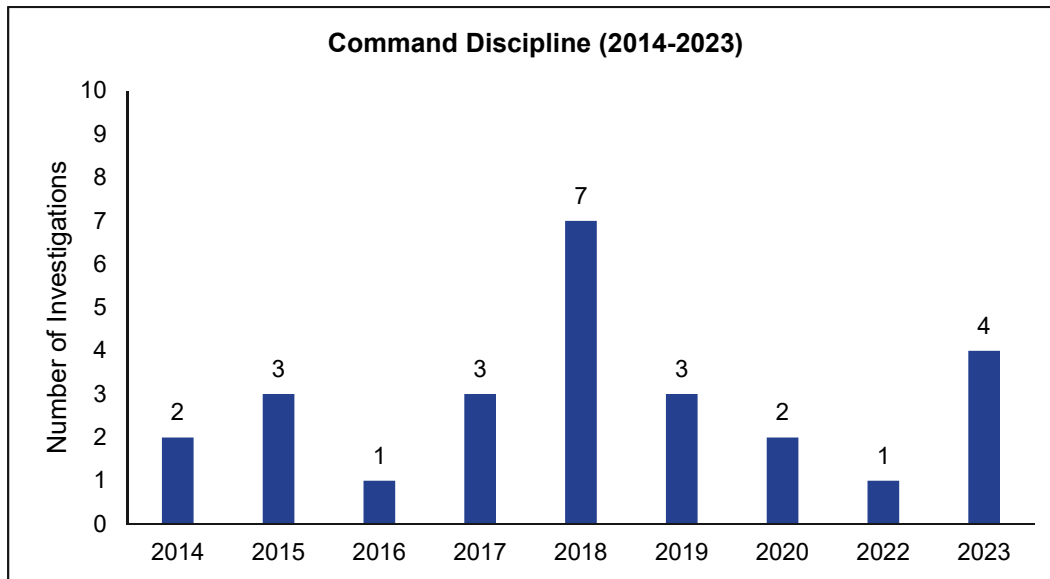
It is the RPD's position that a variety of factors affect the decision to issue discipline. The Chief is the only one who can determine a penalty/finding, so it is up to them to decide on a final finding. Each situation is unique, with different circumstances and facts that can all play a factor in their decision.

The PAB also inquired about decision making with Chief David Smith directly. However, the Chief declined to respond. The Chief requested to review a rough draft of this completed oversight investigation, after which he would decide whether a formal interview would be necessary.

¹³ New York City Police Department, "Disciplinary System Penalty Guidelines," (2021). https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/disciplinary-system-penalty-guidelines-effective-01-15-2021-compete-.pdf.

Review of Command Discipline Records

It is difficult to assess the practice of command discipline due to the routine purging of records. The PSS Annual Reports give some details about each instance of command discipline: the PSS log number, the number of personnel involved, the allegation, and the penalty.



The number of command discipline investigations has fluctuated since 2014, with an average of 3 investigations per year since 2014. While the number of command discipline investigations has not changed markedly, it represents a higher proportion of all discipline in recent years. In 2023, command discipline accounted for 67% of all discipline imposed on RPD officers. The number of command discipline investigations reached a maximum in 2018 with 7 investigations, but command discipline only accounted for 21% of all discipline that year. The PAB will continue to assess the practice of command discipline to monitor this pattern.

The PAB reviewed the four instances of command discipline included in the 2023 PSS Annual Report. The following review of individual personnel records does not constitute a PAB investigation into allegations of officer misconduct, rather an assessment of the practice of command discipline.

Command Discipline Review #1

PSS Case Number: 23-0036

Days to Commencement: 3 days

Command Discipline Allegation: Violated pursuit policy

Command Discipline Penalty: Letter of Reprimand

Incident Description: In December 2022, an RPD officer initiated a vehicle pursuit after attempting “to stop a vehicle that was wanted for several county warrants and by Investigators in relation to car thefts and catalytic converter thefts.” Within a few minutes, supervisors directed the officer to terminate the pursuit. The officer continued the pursuit for over ten minutes, with portions of the pursuit outside the City of Rochester.

PAB Review: The command discipline form alleged that the officer violated General Order 530 (Emergency Response Driving; Pursuit Driving). The PAB understands this violation to fall under Rules and Regulations 1.1 (A), Obedience to Laws, Ordinances and Rules, which is a class 1 violation. The timing, violation, and penalty of this incident meet the eligibility criteria for command discipline. It is important to note that such a violation would not have been eligible for command discipline under earlier collective bargaining agreements.

The command discipline form also noted that the officer “admitted to knowing he was unable to pursue the vehicle, purposely not broadcasting his attempt to stop it, and continuing on after a supervisor terminated the pursuit.” The behavior in this note appears to suggest that the officer did not comply with a supervisor’s lawful order. That could indicate a violation of Rules and Regulations 1.3 (Obedience to Orders), a class 3 violation.¹⁴ Class 3 violations are not eligible for command discipline.

The Chief of Police stated in the letter of reprimand, “This matter may be taken into account if it becomes necessary to impose discipline upon you in the future.” The letter did not mention that the record of discipline would be purged after a year without incident. A comparison to other personnel records reveals that the aforementioned phrase appears in all letters of reprimand. Such language may not be appropriate given the parameters of command discipline.

¹⁴ RPD Rules and Regulations § 1.3 (Obedience to Orders): a) Employees shall comply with all lawful orders. Non-compliance shall be insubordination. data-rpdny.opendata.arcgis.com/documents/rpdny::rpd-rules-and-regulations.

Command Discipline Review #2

PSS Case Number: 23-0248

Days to Commencement: 15 days and 200 days

Command Discipline Allegation: GO 250 [sic] III D. 4. E. Failure to remain with prisoner resulting in their escape

Command Discipline Penalty: Transfer

Incident Description: On June 15, 2023, an officer was instructed to “sit on the prisoner guard” for a hospital patient with an outstanding warrant. Over the course of the officer’s duty, the officer could not locate the patient, who had left hospital grounds.

The command discipline form alleges that the officer violated General Order 520 (Prisoner Transporting & Processing). The PAB understands this violation to fall under Rules and Regulations 1.1 (A), Obedience to Laws, Ordinances and Rules, which is a class 1 violation. The timing, violation, and penalty of this incident meet the eligibility criteria for command discipline.

An Order of Protection from June 13, 2023, is also included in this command discipline package. The Order of Protection instructs the officer to “refrain from assaulting, striking, stalking, harassing, menacing, intimidating, threatening, making comments of any kind that could be construed as offensive in nature, or commit [sic] any offense against [redacted].” The Order of Protection does not issue an allegation of misconduct, rather it says, “You are advised that further similar conduct on your part may result in disciplinary action.”

In October 2023, the Chief of Police issued an intra-departmental correspondence describing an incident that occurred in March 2023, where the officer was seen on video “fraternizing” with a patron at a bar in full uniform. The Chief wrote, “The purpose of this intra-departmental correspondence is to close both command discipline packages under PSS – 2023-0248. The completed command discipline package outlines the prisoner escape and this intra-departmental correspondence documents the first incident and ensure [sic] that both incidents are properly closed.”

PAB Review: This record combines two violations. The June 2023 Order of Protection does not mention that it is related to the March 2023 incident, but its inclusion in the discipline package leads one to that conclusion.

There is no evidence of command discipline proceedings for the first incident until October 2023. If the proceeding did not commence by June 15, 2023, command discipline would not have been appropriate. The Chief of Police appears to have made an exception to the 90-day parameter, extending it to 200 days. The PAB inquired about discretion in extending the period for command discipline. The Chief declined to respond. He requested to review a rough draft of this completed oversight investigation, after which he would decide whether a formal interview would be necessary.

The Order of Protection mentions, but does not allege violations of, Rules and Regulations 4.1 (conduct) and 1.6 (insubordination), which are both class 3 violations. If these are the true allegations for the March 2023 incident, command discipline would not be appropriate. The October intra-departmental correspondence alleges a violation of Rules and Regulations 4.29 (fraternization), which is missing from the CBA classification list. It is unclear why the Chief required the officer to review Rules and Regulations 4.1 (conduct) and 1.6 (insubordination) and omitted Rules and Regulations 4.29 (fraternization) in his June 2023 Order of Protection.

Command Discipline Review #3

PSS Case Number: 23-0708
Days to Commencement: Unknown
Command Discipline Allegation: Unknown
Command Discipline Penalty: Active-Pending

Incident Description: Unknown

PAB Review: As of May 21, 2024, this command discipline package was missing from the Rochester Police Discipline Database. The PAB requested the records according to the established procedure for information sharing on April 25, 2024. The RPD reported to the PAB that as of May 15, 2024, PSS #23-0708 remained “in the chain of command” and would be transmitted upon completion. It is unclear why the case-level data was included in the annual report if the departmental action had not yet been issued.

Command Discipline Review #4

PSS Case Number: 23-0783
Days to Commencement: 4 days
Command Discipline Allegation: GO 210-III-A
Command Discipline Penalty: Suspension

Incident Description: An officer requested time off in advance of the 2023 Thanksgiving holiday. Their commanding officer responded that the officer would be required to go through the typical “holiday pick” process to take time off on Thanksgiving and the day after Thanksgiving. The officer subsequently requested a combination of sick time and compensatory time over the holiday week. After the officer requested sick leave for their Thanksgiving shift, the commanding officer conducted a home visit. The commanding officer concluded that the officer was not home.

The command discipline form alleges a violation of General Order 210 (Sick Leave). The PAB understands this violation to fall under Rules and Regulations 1.1 (A), Obedience to Laws, Ordinances and Rules, which is a class 1 violation. The timing, violation, and penalty of this incident meet the eligibility criteria for command discipline.

PAB Review: As of May 21, 2024, this command discipline package was missing from the Rochester Police Discipline Database. The PAB requested the records according to the established procedure for information sharing on April 25, 2024. The RPD fulfilled the request on May 15, 2024.

The commanding officer stated in the command discipline addendum, “It is my belief that [the officer] used two sick occurrences... to circumvent the denial of days off on 11/23 and 11/24.” This statement suggests that the commanding officer believed the officer was not truthful about their use of sick leave. The commanding officer did not allege a violation of Rules and Regulations 4.6 (Truthfulness), a class 3 violation.

Information Sharing

Information Sharing in Article 18 of the City Charter

Article 18 of the City Charter requires that the PAB and the RPD share specific information about complaints. The law states, “The RPD and the City shall provide to the [PAB], as requested: access to all documents and evidence, including but not limited to RPD personnel files, IA Pro database, all other RPD databases, PSS investigative files...”¹⁵

Additionally, the PAB must notify the RPD upon accepting a complaint, and the RPD must notify the PAB upon accepting a complaint.¹⁶ As of May 21, 2024, the RPD does not notify the PAB when PSS commences an investigation based on an internal complaint. Despite the mandate of the City Charter, the City Law Department has advised the RPD only to notify the PAB when PSS commences an investigation based on a citizen complaint.

PSS must also provide the PAB its entire investigative case file related to a complaint when an investigation is completed. PSS must submit the findings to the PAB within five business days.¹⁷ It is the position of the RPD and the City Law Department that this portion of the City Charter was dependent upon the PAB’s exclusive power to discipline officers. The PAB disagrees with this position. It is the position of the RPD and the City Law Department that PSS findings and recommendations should not be shared with the PAB.

The PAB and the RPD have agreed to share information with a secure file transfer system (SFT) through Microsoft SharePoint and GeneTech Clearance, a digital evidence management system. After accepting a complaint, the PAB transmits a Notification of Initiation of PAB Investigation to the Chief of Police and PSS. The Notification of Initiation of PAB Investigation lists the subject officer, if known, the incident details, the potential violations of Rules and Regulations and/or general orders, and whether the report involves potential criminal activity. The package includes a copy of the complaint, with names redacted, and an initial source of information request.

The RPD commenced a process of regular information sharing with the PAB in October 2022. After accepting a complaint, PSS prepares a Notice of Investigation letter (NOI). The NOI includes the PSS case number, date of transmittal, complainant name, subject officers, complaint date, incident details, and related police report numbers.

Interpretation of the City Charter Mandate on Information Sharing

Despite the mandate of Article 18 of the City Charter that “any complaint received and accepted by PSS shall be transmitted to the Board,” the RPD only notifies the PAB of investigations that originate from citizen complaints. This is despite the fact that the PSS manual states that investigations may originate from a variety of sources, including internal complaints submitted through the chain of command. The 2023 PSS Annual Report indicated that 11 departmental investigations were initiated during the 2023 calendar year. The RPD did not provide Notice of Investigation Letters to the PAB about those investigations.

¹⁵ Charter of the City of Rochester § 18-3(H) <https://ecode360.com/35278812>

¹⁶ Charter of the City of Rochester § 18-5(F)(1)

¹⁷ Charter of the City of Rochester § 18-5(G)(4)

Secure File Transfer (SFT) Analysis

As of May 21, 2024, PSS had referred 30 cases to the PAB through NOI letters since October 6, 2022. On average, PSS transmits the Notice of Investigation three days after receiving the complaint. The PAB sought to compare the number of citizen complaints listed in PSS Annual Reports with the number of NOI letters transmitted through the SFT. The table below shows the number of NOI letters received each year and the number of citizen complaints listed in the PSS Annual Report.

Year	Notice of Investigation (NOI) Letters	Citizen Complaints Initiated
2022	6	12
2023	17	14
2024	7	N/A

Between October 6, 2022, and December 31, 2022, the RPD transmitted 6 Notice of Investigation letters to the PAB. The 2022 PSS Annual Report mentioned that the RPD initiated 12 investigations that originated as citizen complaints during the entire year. It is not possible to compare the two numbers, since the PAB only received NOI letters during a three-month period.

During the 2023 calendar year, the RPD transmitted 17 Notice of Investigation letters to the PAB. Each of the letters indicated that the complaint originated as a “citizen complaint.” The 2023 PSS Annual Report showed that RPD initiated 14 investigations from citizen complaints. It is unclear if the RPD may have a different definition of “citizen complaint,” as the number of NOI letters does not match the number of citizen complaints initiated.

As of May 21, 2024, the RPD had transmitted 7 NOI letters to the PAB during the 2024 calendar year.

Conclusion

The Rochester Police Department has seen a persistent decrease in discipline over the past five years, which suggests there may be a new approach to police discipline altogether. Since 2019, Professional Standards Section has issued fewer sustained findings for investigations of misconduct every year, culminating in a record low of two sustained findings in 2023: zero sustained findings for departmental investigations and two sustained findings for citizen complaints.

The most recent collective bargaining agreement between the Locust Club and the City of Rochester redefined the practice of command discipline so that it is no longer reserved for the discipline of *minor* violations. The practice of purging any record of command discipline is inconsistent with the concept of progressive discipline. Additionally, the PAB found that the RPD has not adhered to the policies governing command discipline over the past ten years.

With respect to command discipline, the RPD has:

1. Seemingly misclassified alleged violations to fit the eligibility criteria for command discipline;
2. Issued inappropriate penalties for command discipline;
3. Extended the 90-day period for issuing command discipline without explanation;
4. Omitted instances of command discipline from PSS annual reports; and
5. Omitted command discipline files from the discipline database as of May 21, 2024.

The PAB found that many of the RPD's policies related to discipline are out of date. The PSS Manual has not been updated since February 2014. General Order 305 (Command Discipline) has not been updated to reflect the changes in the most recent collective bargaining agreement. The RPD rescinded General Order 320 (Civilian Review Board) on February 18, 2024, but has not instituted a general order for the Police Accountability Board as of May 21, 2024. Some penalties are missing from the collective bargaining agreement's classification of penalties, including Rules and Regulations 4.29 (fraternization).

The RPD does not adhere to the Charter of the City of Rochester with respect to sharing information with the PAB. Despite the mandate of Article 18 of the City Charter that "any complaint received and accepted by PSS shall be transmitted to the Board," the RPD only notifies the PAB of investigations that originate from citizen complaints. The City Charter states that PSS must provide the PAB its entire investigative case file related to a complaint when an investigation is completed. Additionally, PSS must submit the findings of an investigation to the PAB within five business days. In contrast to the mandate of the City Charter, it is the position of the RPD and the City Law Department that PSS findings and recommendations should not be shared with the PAB.

Lastly, the RPD effectively limited the scope of this oversight investigation by refusing to answer questions about decision making in issuing discipline unless they could review a draft of this completed oversight investigation.

Appendix 1: Violations Eligible for Command Discipline

Rule	Description	Class	2016-19	2019-24
1.1 (A)	Obedience to Laws, Ordinances and Rules	1		x
1.1 (B)	Assist Other Persons	1		x
1.1 (C)	Constitutes Violation	1		x
1.2 (A)	Familiarity with the Laws, Ordinances and Rules: Returning from Absence	1	x	x
1.2 (B)	Familiarity with the Laws, Ordinances and Rules: Unfamiliarity No Defense	1	x	x
1.2 (C)	Familiarity with the Laws, Ordinances and Rules: Making Changes as Directed	1	x	x
1.4	Issuance of Orders	1		x
1.5	Conflict of Orders	1		x
2.2 (A)	Identification: Sworn	1		x
2.2 (B)	Identification: Non-Sworn	1		x
2.3	Respond when Directed	1	x	x
2.4	Reporting for Duty	1	x	x
2.7	Cooperation/Coordination	2	x	x
2.8	Seeking Information Regarding Duties	1	x	x
2.9	Inspecting Area of Assignment	1	x	x
2.10	Leaving Area of Assignment	2	x	x
2.11	Attitude and Impartiality	1		x
2.12	Assistance to Fellow Employees	2	x	x
2.17	Serving Warrants/Subpoenas	1		x
2.19	Loitering or Sleeping on Duty/Congregating	1	x	x
2.20	Reading on Duty	1	x	x
2.21	Supervisors Addressed by Title	1	x	x
2.22	Concealment	1	x	x
3.2	Conducting Private Business or Association on Duty	1		x
3.4	Preferment	1		x
3.5	Sale of Tickets or Donations	1		x
3.7	Recommending Attorneys	1		x
4.7	Malicious Rumors	1	x	x
4.12	Political Activity	1		x
4.13	Seeking/Accepting Compensation for Damages	1		x
4.14	Debts	1		x
4.16	Correspondence, Letterheads	1		x
4.17	Personal Cards	1	x	x
4.18	Department Property and Equipment	1	x	x
4.19	Department Facilities & Property	1		x
4.22	Use of Tobacco	1	x	x
4.24	Applications for Pistol Permits	1		x
4.26	Notices, Posting, Circulation	1		x
4.28	Responsibility of Employees while Suspended from Duty	1		x
5.2	Reporting Violations	1		x
5.5	Information Regarding Crime	1		x
5.7	Address and Telephone Number	1	x	x

Appendix 2: Classification of Penalties

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APPENDIX 1 DISCIPLINE GUIDELINES & CLASSIFICATION OF PENALTIES

The parties agree that the following are guidelines to be used in determination of penalties for discipline.

- A. Table of Penalties: Penalties may be assessed up to the maximum listed below for infractions as classified in accordance with Appendix 1:

	<u>1st Incident</u>	<u>2nd Incident</u>	<u>3rd Incident</u>
<u>Class 1</u>	3 Day Suspension	10 Day Suspension	20 Day Suspension
<u>Class 2</u>	10 Day Suspension	30 Day Suspension	60 Day Suspension
<u>Class 3</u>	Dismissal	Dismissal	Dismissal

- A. The Chief at his sole discretion may assess penalties in excess of those listed above. In the event the Chief chooses to exceed or reduce the penalties listed above, he shall explain his reasoning, in writing to the member, with copy to the Locust Club.
- B. The Chief, at his discretion, may consider extenuating circumstances and may impose a lesser penalty than listed above.
- C. Loss of accrued time may be substituted for suspensions without pay upon the request of the member and at the discretion of the Chief.
- D. The imposition of discipline is not grievable. Appeals of discipline shall be in accordance with Section 76 of the NY State Civil Service Law.

CLASSIFICATION OF PENALTIES

**MANUAL OF RULES AND REGULATIONS
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2.13	Assistance to Citizens	2
2.14	Medical Attention for Ill Persons	2
2.15	Arrests	3
2.16	Investigations	3
2.17	Serving Warrants/Subpoenas	1
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4.9	Divulging Police Information	3
4.10	Speeches, Statements, etc.	2
4.11	Membership and Organizations	2
4.12	Political Activity	1
4.13	Seeking/Accepting Compensation for Damages	1
4.14	Debts	1
4.15	Expenditures of Department Funds	2
4.16	Correspondence, Letterheads	1
4.17	Personal Cards	1
4.18	Department Property and Equipment	1
4.19	Department Facilities & Property	1
4.20	Use of Alcoholic Beverages	3
4.21	Gambling	3
4.22	Use of Tobacco	1
4.23	Controlled Substances	3
4.24	Applications for Pistol Permits	1
4.25	Harassment	2
4.26	Notices, Posting, Circulation	1
4.27	Cooperation with Internal Investigations	2
4.28	Responsibility of Employees while Suspended From Duty	1

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*** SECTION I**

- 1.1 Any violation of Sections A, B or C is a Class 1 offense unless the alleged conduct constitutes a crime, then said violation is a Class 3 offense.