

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER LIVIUS TOMESCU,) **No. 21 PB 2989**
STAR No. 19503, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
)
)
) **(CR No. 1091232)**
RESPONDENT.)

FINDINGS AND DECISION

On April 6, 2021, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Livius Tomescu, Star No. 19503 (“Respondent”), recommending that Respondent be discharged from the Chicago Police Department for violating several Rules of Conduct.

A hearing on the charges against Respondent took place before Hearing Officer April Perry on November 18, 19, and 22, 2021. Following this evidentiary hearing, the members of the Police Board read and reviewed the record of the proceedings, including the Hearing Officer’s Report (neither party filed a response to this report), and viewed the video recording of the entire evidentiary hearing. Hearing Officer Perry made an oral report to and conferred with the Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

As a result of its hearing on the charges, the Police Board finds and determines that:

1. Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.
2. A copy of the charges filed, and a notice stating the date, place, and time the initial

status hearing would be held, were personally served upon Respondent not fewer than five (5) days before the date of the initial status hearing for this case.

3. Throughout the hearing on the charges Respondent appeared and was represented by legal counsel.

Summary of the Facts

4. In the fall of 2017, Respondent was 48 years old and working as a human resources investigator for the Chicago Police Department (“CPD”) as well as at CPD’s training academy. Rafia Iqbal (“Iqbal”) was a CPD recruit who was approximately 22 years old. After seeing each other a handful of times at CPD’s academy, Respondent and Iqbal began dating in the summer of 2018. Respondent and Iqbal’s dating relationship continued until October 3, 2018. The charges in this case arise from actions taken by Respondent during the course of his relationship with Iqbal and immediately following their breakup.

As an investigator for the human resources unit, one of Respondent’s job duties included conducting background investigations of new recruits. Respondent was not assigned to conduct Iqbal’s background investigation. However, at around the same time Iqbal was applying to CPD, Iqbal’s brother-in-law, Sohail Bhatti, was also applying. Respondent requested that he be assigned to the HR investigation for Bhatti. It was through Respondent’s background investigation of Bhatti that Respondent met Iqbal’s sister and brother-in-law.

Iqbal began her 6-month training at CPD’s academy on August 27, 2018. As part of her training, Iqbal was assigned to a “homeroom” with approximately 25 other recruits. A recruit named Heather Cavazos was chosen by the other students to be the homeroom “commander.” Cavazos asked Iqbal to be the homeroom “secretary,” which entailed taking attendance and other administrative duties.

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On October 1, 2018, Iqbal told Respondent about a statement made by Mark Burckel, one of the other recruits in her class. Specifically, Iqbal told Respondent that when Burckel found out about Iqbal's status as the class secretary, Burckel stated, "you're Heather's bitch now." This comment made Respondent very angry. Respondent then made a series of phone calls to Recruit Burckel and Burckel's friend, Recruit Colton Sodt, to discuss the comment. Burckel and Sodt were so concerned about Respondent's phone calls that they immediately reported Respondent to their homeroom instructor. Iqbal also was upset by Respondent's actions, and their dating relationship was over by October 3, 2018.

In the week after their breakup, Respondent sent a series of text messages to Iqbal, stating (among other things): "You wanted to treat me like a piece of shit. Let's see how you turn out when this thing is all over," and "You thought you were going to throw me under the bus, I'm taking you with me," and "will introduce myself to your family for what I was to you for the last 2 month.....before the day is over."

Respondent did indeed contact Iqbal's sister and tell her that he and Iqbal had been dating. Respondent also asked for Iqbal's sister's assistance in repairing the relationship in a series of text messages, stating: "hoping Allah will make your sister 'hear' me. She's not speaking to me. Can you suggest any other dua please? I miss her terribly," and "Please know for yourself and more importantly for Rafia that I will be there waiting for her whenever she'll want me to be."

On October 10, 2018, Respondent was stripped of his police powers. In March 2019, the Bureau of Internal Affairs investigator assigned to Respondent's case requested that Respondent be assigned to the Personnel Concerns Program, which is "a structured program...for an employee that has been identified as having difficulties that are affecting the member's

competency as an employee of the department.” Personnel Concerns Employee Resource, E06-06. At around the same time, a sergeant in the Human Resources Division recommended that Respondent receive a mandatory physical and psychological examination. Respondent thereafter enrolled in the Personnel Concerns Program. Respondent was subsequently found unfit for duty and placed on medical leave. In August 2019, Respondent was found fit for duty and released from the Personnel Concerns Program.

Respondent’s Motion to Dismiss

5. On October 7, 2021, Respondent filed a Motion to Dismiss the charges (“Motion”), arguing that the Superintendent is barred from pursuing the charges against him because Respondent was already punished for any misconduct in this case by being placed on medical leave, forced to participate in the Personnel Concerns Program, and asked to undergo psychological testing as part of his fitness for duty analysis. On November 29, 2021, the Superintendent filed a Response, and on December 3, 2021, Respondent filed a Reply. The Police Board has considered these filings, as well as the evidence that was presented in support of these filings at the hearing. For the following reasons, Respondent’s Motion is denied.

We begin by agreeing with Respondent’s general premise that the Superintendent is not entitled to reconsider his final disciplinary decisions, or otherwise punish an officer twice for the same misconduct. *See, e.g., Coleman v. Illinois Racing Bd.*, 124 Ill. 2d 218, 224 (1988). Thus, the core issue before the Board is whether CPD’s prior actions constitute discipline, such that the Superintendent would be barred from pursuing charges based on the same underlying misconduct. Based upon the language and purpose of CPD policy, the Board concludes that CPD’s prior actions are not disciplinary and therefore do not warrant dismissal of the charges

brought against Respondent.

According to the language of the Personnel Concerns Program Employee Resource, E06-06, the program is not intended to be punitive. Indeed, the Employee Resource notes that “[t]he thrust of the Personnel Concerns Program is non-disciplinary.” Beyond this explicit statement, the language used in the Employee Resource reveals that the program is intended to help police officers, recognizing the struggles that officers face. *See, e.g., id.* (“The Chicago Police Department ... recognizes that Department members are subject to the frailties of humankind and that the problems of the human experience may negatively impact on work performance and expected conduct.”); *id.* (“The Personal Concerns Program is a structured program ... for an employee that has been identified as having difficulties that are affecting the member’s competency as an employee of the Department.”).

Courts uniformly hold that programs designed to ensure officers are fit for duty are not disciplinary in nature. In *Swick v. City of Chicago*, 11 F.3d 85 (7th Cir. 1993), an officer claimed that his due process rights were violated when, without a hearing, he was placed on involuntary sick leave for more than a year, forced to turn in his badge and gun, and stripped of his police powers. The court, however, disagreed, finding that “[p]lacing a person on sick leave is not a disciplinary measure.” *Id.* at 86–87. Similarly, in *Murphy v. City of Chicago*, No. 01-C-1802, 2002 WL 977508, at *6 (N.D. Ill. May 13, 2002), the court concluded that it did not constitute double punishment for an officer to receive both a suspension and placement on medical leave pending the outcome of a psychological evaluation because “the purposes of the two actions are markedly different.” The purpose of a suspension is “to punish [the officer] for his unacceptable conduct, but the purpose of the medical leave was to permit the CPD to assess [the officer’s] emotional and/or psychological fitness for duty and to advance the CPD’s interest in ensuring the

fitness of its active-duty officers.” *Id.*

Respondent makes much of the fact that unlike the officer in *Murphy*, whose placement into the Personnel Concerns Program was “recommended,” Respondent was “ordered” into the Personnel Concerns Program “under the expressed threat that if he did not conform his conduct after the program then he would be fired.” Motion at 7. Even if true, we do not find this distinction to be meaningful. It is of the utmost importance that CPD can ensure its officers are healthy and able to perform their duties appropriately, whether or not the officer agrees with CPD’s concerns. Though an officer may not appreciate CPD’s attempt to evaluate, guide, and assist during times of physical or psychological distress, that does not mean the officer is being punished.

In sum, the Board finds that CPD’s prior actions do not constitute discipline, and consequently there are insufficient grounds for dismissing the charges because of double punishment. Respondent’s motion to dismiss is denied.

Charges Against the Respondent

For the reasons set forth below, the Board finds Respondent **guilty** of the charges in Specification Nos. 1 – 10 and **not guilty** of the charges in Specification No. 11.

Specification Nos. 1 and 2

6. Police Officer Livius Tomescu, Star No. 19503, is **guilty** of violating Rules 2 and 4 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 1:

On one or more occasions, including on or about July 31, 2018, and/or August 7, 2018, and/or September 27, 2018, Officer Tomescu accessed one or more documents in Chicago Police Department (“CPD”) Recruit Rafia Iqbal’s (“Iqbal”) CPD personnel and/or

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background investigation file, including Iqbal's Personal History Questionnaire and/or Kentech Consulting, Inc. Background Investigative Report, without an official police purpose and/or for personal purposes. Officer Tomescu thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 4, which prohibits any conduct or action taken to use the official position for personal gain or influence.

7. Police Officer Livius Tomescu, Star No. 19503, is **guilty** of violating Rules 2, 4, 6, and 41 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 2:

On one or more occasions, including on or about July 31, 2018, and/or August 7, 2018, Officer Tomescu disseminated one or more documents from CPD Recruit Iqbal's CPD personnel and/or background investigation file, including Iqbal's Personal History Questionnaire and/or Kentech Consulting, Inc. Background Investigative Report, by emailing said document(s) to Iqbal's personal email address without an official police purpose and/or for personal purposes. Officer Tomescu thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 4, which prohibits any conduct or action taken to use the official position for personal gain or influence;
- c. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, when he violated sections IV(A)(1), V(B)(1)(f), and/or V(B)(2) of CPD General Order G09-01-03, "Use of Internet" (effective January 12, 2010) and/or section II(B) of CPD Special Order S09-05, "Department Reports, Publications, Survey Responses and Official Statistics" (effective August 14, 2003); and
- d. Rule 41, which prohibits disseminating, releasing, altering, defacing or removing any Department record or information concerning police matters except as provided by Department orders.

With respect to Specification Nos. 1 and 2, the Board finds that on July 31, 2018, and again on August 7, 2018, Respondent accessed and then emailed to Iqbal documents from Iqbal's CPD background investigation file. Namely, on July 31, 2018, Respondent emailed Iqbal her

Personal History Questionnaire (“PHQ”), and on August 7, 2018, Respondent emailed Iqbal her Kentech Consulting Background Investigation Report.¹ There was no official police purpose for Respondent to have sent his girlfriend copies of documents from her personnel file, and therefore we conclude that Respondent is guilty of these charges.

The evidence that the Board relies on in support of these charges is largely the emails themselves. Superintendent’s Exhibit 5 purports to be an email from Livius Tomescu to an email address containing Iqbal’s name. The email signature block contains Respondent’s name and CPD star number, as well as the work address and phone numbers that Respondent acknowledged during his testimony belonged to him. While the Superintendent could have presented definitive evidence that this email was sent from Respondent’s CPD email account (for example, through testimony from a CPD custodian of records or information technology employee), the Board concludes that there is sufficient evidence to support the conclusion that the email is what it purports to be. Attached to the email in Superintendent’s Exhibit 5 is a copy of what both parties acknowledge is Rafia Iqbal’s PHQ, which includes 16 pages of personal details about Iqbal. One of those details is Iqbal’s personal email address, which matches the email address to which Exhibit 5 was sent. The PHQ attached to Exhibit 5 has the file name “Rafi-Taffy.”

Similarly, Superintendent’s Exhibit 7 contains two emails – the first purports to be an email to Respondent’s CPD email address from what appears to be a CPD scanner, containing as an attachment Iqbal’s Kentech Consulting Background Investigation Report. The second email is

¹ The PHQ is a form filled out by applicants as part of their application process. The “Kentech Report” is an outsourced background investigation report prepared for applicants whose HR investigations are not conducted by CPD.

a forward of that same scanned report to Iqbal's personal email address. The subject line is "COPY OF YOUR KENTECH AS PROMISED." The email itself contains the same signature block as Superintendent's Exhibit 5 – Respondent's name, star number, CPD address, and CPD phone numbers. The Kentech Report contains 13 pages of personal details about Iqbal, including the same personal email address to which Exhibit 7 was sent.

In concluding that Respondent sent Superintendent Exhibit 5 and Superintendent Exhibit 7 to Iqbal, the Board places little weight on the testimony of either Iqbal or Respondent. Iqbal's testimony about Superintendent's Exhibit 5 and 7 was undeveloped, contradictory, and confusing. At the same time, the Board does not credit Respondent's denials at the hearing of having sent these emails, as it contradicts Respondent's previous statement to BIA that he had no recollection about whether or not he had sent the emails.

Instead, the Board believes that it is a reasonable inference that the emails sent from Respondent's email address came from him. No one else in CPD's HR department had any motivation to send Iqbal her background file, and certainly not to do so using Respondent's email account. Iqbal's assigned HR investigator had her own email account and computer if she had for some reason wanted to send Iqbal materials from Iqbal's file. Moreover, we note that Iqbal's HR investigator was not working on August 7, 2018, when the second email was sent, and it is highly unlikely that she would have named the July 31 attachment "Rafi-Taffy" (a whimsical play on Rafia Iqbal's name). As further indication that it was Respondent who sent the emails, Respondent's email account was used three separate times on two different days when he was at work (on July 31, 2018, at 1:36 p.m., on August 7, 2018, at 6:48 a.m. to send the attachment from the scanner, and again at 7:14 a.m. to forward the attachment to Iqbal). Finally, as was made clear in Respondent's testimony and will be discussed in more detail below,

Respondent went to frequent and extreme lengths to do things for Iqbal that he believed were helpful to her. It is consistent with his own description of their relationship that he would have sent to her materials from her personnel file. For these reasons, the Board finds Respondent guilty of the charges in Specification Nos. 1 and 2.

Specification No. 3

8. Police Officer Livius Tomescu, Star No. 19503, is **guilty** of violating Rules 1, 2, 3, 4, and 6 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 3:

On one or more occasions, including on or about July 31, 2018, and/or September 27, 2018, Officer Tomescu conducted one or more Law Enforcement Agencies Data System (“LEADS”) inquiries of the name and/or personal information of Arqum Usmani (“Usmani”) without an official police purpose and/or for personal purposes. Officer Tomescu thereby violated:

- a. Rule 1, which prohibits violation of any law or ordinance, when he violated section 1240.80(a) of the Illinois Administrative Code, (20 Ill. Adm. Code 1240.80(a) (1999)), entitled “Dissemination of Data Obtained Through LEADS”;
- b. Rule 2, which prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department;
- c. Rule 3, which prohibits any failure to promote the Department’s efforts to implement its policy or accomplish its goals;
- d. Rule 4, which prohibits any conduct or action taken to use the official position for personal gain or influence; and
- e. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, when he violated section VI(A)(2) of CPD General Order G09-01-01, “Access to Computerized Data, Dissemination and Retention of Computer Data” (effective February 3, 2012) and/or sections IV(A)(1), V(B)(1)(e), V(B)(1)(f), and/or V(B)(2) of CPD General Order G09-01-03, “Use of Internet” (effective January 12, 2010).

Respondent acknowledged at the hearing the facts that underlie the charges in

Specification No. 3. Specifically, Respondent acknowledged that on July 31, 2018, and again on September 27, 2018, he used LEADS to search for information about Iqbal's ex-boyfriend Arqum Usmani without having any official police purpose. LEADS, a database which is restricted to law enforcement use, gives officers access to a number of personal details about individuals, including their address history, date of birth, social security number, and arrest history. Respondent testified that he used LEADS to search for Usmani because Iqbal had told Respondent disturbing things about Iqbal's and Usmani's prior relationship, and Respondent was concerned for Iqbal. As this is clearly an inappropriate use of the LEADS database and an abuse of his position as a police officer, the Board finds Respondent guilty of the charges in Specification No. 3.

Specification No. 4

9. Police Officer Livius Tomescu, Star No. 19503, is **guilty** of violating Rules 1, 2, 3, 4, and 6 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 4:

On or about August 23, 2018, Officer Tomescu conducted one or more LEADS inquiries on the name and/or personal information of CPD Recruit Iqbal without an official police purpose and/or for personal purposes. Officer Tomescu thereby violated:

- a. Rule 1, which prohibits violation of any law or ordinance, when he violated section 1240.80(a) of the Illinois Administrative Code, (20 Ill. Adm. Code 1240.80(a) (1999)), entitled "Dissemination of Data Obtained Through LEADS";
- b. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- c. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals;
- d. Rule 4, which prohibits any conduct or action taken to use the official position for

personal gain or influence; and

- e. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, when he violated section VI(A)(2) of CPD General Order G09-01-01, “Access to Computerized Data, Dissemination and Retention of Computer Data” (effective February 3, 2012) and/or sections IV(A)(1), V(B)(1)(e), V(B)(1)(f), and/or V(B)(2) of CPD General Order G09-01-03, “Use of Internet” (effective January 12, 2010).

Respondent acknowledged at the hearing the facts that underlie the charges in Specification No. 4. Specifically, Respondent admitted that on August 23, 2018, he ran Iqbal’s name through LEADS without having any police purpose for doing so. Respondent testified that he knew from his work as an HR investigator that Iqbal’s address would be checked immediately prior to her starting at the academy to ensure her Chicago residency. Because Iqbal lived in Niles at the time she applied to CPD, Respondent helped her find a Chicago apartment, and even co-signed on a lease with her to ensure she would be able to meet the residency requirement. Respondent testified that a few days before Iqbal was to begin at the academy, she asked him to run a LEADS search to ensure that her address had been updated in the system. Respondent did so, and then informed Iqbal that her address had been updated in the system.

However well-intentioned Respondent may have been, Respondent’s use of LEADS to benefit someone he was in a relationship with was an abuse of his position as a police officer, and the Board finds him guilty of the charges in Specification No. 4.

Specification No. 5

10. Police Officer Livius Tomescu, Star No. 19503, is **guilty** of violating Rules 2, 3, and 4 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 5:

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On or about September 27, 2018, Officer Tomescu contacted Usmani via telephone, identified himself to Usmani as a CPD police officer, and asked Usmani questions about CPD Recruit Iqbal, all without an official police purpose and/or for personal purposes. Officer Tomescu thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals; and
- c. Rule 4, which prohibits any conduct or action taken to use the official position for personal gain or influence.

Respondent acknowledged at the hearing the facts that underlie the charges in Specification No. 5. As is discussed more above, Respondent obtained personal details about Iqbal's ex-boyfriend Usmani by running his name through LEADS. Respondent admitted at the hearing that he then called Usmani three times from Respondent's CPD phone. Respondent further admitted that he identified himself as a CPD officer and told Usmani that he had questions about Iqbal. Usmani, who knew Iqbal was going through the CPD application process, agreed to speak with Respondent. Respondent admitted that he asked Usmani whether he and Iqbal were still dating, and further asked why they had broken up. At no time did Respondent tell Usmani that Respondent was now dating Iqbal.

Respondent clearly used his official position for personal gain by contacting Usmani under the guise of working for CPD when he really just wanted to learn more about his girlfriend's previous relationship. The Board finds Respondent guilty of the charges in Specification No. 5.

Specification Nos. 6 and 7

11. Police Officer Livius Tomescu, Star No. 19503, is **guilty** of violating Rules 2, 3, 4,

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and 8 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 6:

On or about October 1, 2018, Officer Tomescu left one or more voicemails for and/or made one or more telephone calls to CPD Recruit Mark Burckel (“Burckel”), during which Officer Tomescu identified himself as a police officer in CPD-HRD [Human Resources Division] and threatened to have Burckel expelled and/or terminated from CPD’s training academy and/or demanded that Burckel apologize to CPD Recruit Iqbal in front of other CPD recruits. Officer Tomescu thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department’s efforts to implement its policy or accomplish its goals;
- c. Rule 4, which prohibits any conduct or action taken to use the official position for personal gain or influence; and
- d. Rule 8, which prohibits disrespect to or maltreatment of any person, while on or off duty.

12. Police Officer Livius Tomescu, Star No. 19503, is **guilty** of violating Rules 2, 3, and 8 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 7:

On or about October 1, 2018, and while speaking to CPD Recruit Colton Sodt (“Sodt”) on the telephone, Officer Tomescu threatened to have Sodt expelled and/or terminated from CPD’s training academy and/or demanded that Sodt apologize to CPD Recruit Iqbal in front of other CPD recruits. Officer Tomescu thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department’s efforts to implement its policy or accomplish its goals; and
- c. Rule 8, which prohibits disrespect to or maltreatment of any person, while on or off duty.

The disposition of the charges in Specification Nos. 6 and 7 depends upon what occurred

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when Respondent called Officers Burckel and Sodt on October 1, 2018. We will begin by summarizing the facts that Respondent has acknowledged.

It is undisputed that on the morning of October 1, 2018, Iqbal told Respondent that fellow recruit Burckel used the phrase “you’re Heather’s bitch now” in reference to Iqbal’s new duties as class secretary. Respondent was very angry about this statement and believed that it was his responsibility to do something about it, despite the fact that Iqbal asked him not to.

Respondent acknowledges (and phone records show) that Respondent called Burckel from the CPD HR number and left him a voicemail at 9:18 a.m. that same day. In that voicemail, Respondent identified himself as an “officer from HR investigations,” and told Burckel that it was “very important” that Burckel call Respondent back.

Respondent acknowledges (and phone records show) that Burckel and Respondent talked twice that day. In the first conversation, the parties agree that Burckel denied having called Iqbal a bitch. Respondent then immediately called Iqbal to confirm that it was indeed Burckel who had called her a bitch, which she confirmed, and Iqbal added that Recruit Sodt had also been present for the comment. Respondent then called Burckel back to repeat that it was Burckel who had called Iqbal a bitch, and then Respondent asked for Sodt to be put on the phone.

Respondent admits that after he spoke with Burckel and Sodt, he sent a text message to Burckel that stated:

Before I speak to Iqbal later this afternoon I need to know if you apologized. If not I have no problem escalating this to Sgt. Lipman. There’s no reason for a police recruit to use that kind of language towards another female recruit, its inexcusable! Text me back when you’re out of class to see if this incident can be quashed. Superintendent Exhibit 12.

Respondent also agreed that he sent an email to Burckel’s and Sodt’s homeroom instructor on the same issue.

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The content of Respondent's phone calls with Burckel and Sodt – and specifically the threatening or harassing nature of those phone calls – was disputed at the hearing. Respondent testified that he did not threaten Burckel and Sodt with any disciplinary repercussions, and that such a threat was beyond his power as an HR investigator. Respondent testified that he did ask Burckel to apologize “before the next class” and that perhaps this statement was misinterpreted by Burckel to mean “in front of the class.” Respondent further testified that he knew Iqbal wanted to keep this incident quiet, and that threatening to have it aired publicly would have been contrary to that interest. According to Respondent, he merely asked Burckel to make a private apology to Iqbal for his rude statement. Respondent further testified that he only asked to speak to Sodt so Respondent could verify whether it was in fact Burckel who made the comment.

In contrast, Mark Burckel described Respondent's phone calls as threatening. Burckel testified that he began as a recruit in the CPD academy on August 27, 2018, assigned to the same homeroom as Colton Sodt and Rafia Iqbal. Burckel and Sodt became close friends; Iqbal was not one of his friends. On October 1, 2018, Burckel listened to Respondent's voicemail on his lunch break and was worried that an HR investigator was contacting him. He immediately returned the call, and then had a series of calls with Respondent about whether Burckel had called Iqbal a bitch. According to Burckel, Respondent began their discussion by asking whether Burckel liked being at the CPD academy. Respondent then accused Burckel of calling Iqbal a bitch and demanded that Burckel apologize in front of the class, and said if he did not apologize he would be fired. At the conclusion of their conversation, Respondent then asked Burckel to hand the phone over to Sodt. Burckel testified that he already felt like he was on thin ice as a new recruit, and that everyone was above him in the chain of command. These conversations made him worried enough that he and Sodt went to a homeroom instructor immediately after lunch to

report what had happened.

Colton Sodt testified that he was with Burckel at lunch when Burckel received a series of phone calls. During one of those calls, Burckel handed Sodt the phone, and Sodt began speaking with Respondent, who told Sodt that he needed to apologize in front of the class for calling Iqbal a bitch or Sodt would be fired. Sodt, afraid of being fired from his dream job, immediately went back to the academy and told a homeroom instructor what had happened.

The Board finds Sodt's testimony to be credible. Unlike Respondent (who is facing charges) and Burckel (who apparently will be referred for Rule 8 discipline for having called Iqbal a bitch), Sodt has no interest in the outcome of these proceedings. Additionally, although Sodt briefly denied to BIA that Burckel had used the word bitch, he immediately corrected himself, which makes Sodt the most consistent and least impeached of any of the fact witnesses who testified.

Moreover, Sodt's description of Respondent's behavior is consistent with the other evidence in the case, which demonstrates Respondent was both aggressive and unrestrained in his attempts to "help" Iqbal. Respondent's voicemail to Burckel – identifying himself as an "officer from HR investigations," and demanding a call back about a "very important" matter – was misleading as well as an abuse of his power over new recruits.² Respondent's rapid-fire phone calls to Burckel, then Iqbal, then Burckel, followed by his demand that Sodt be put on the phone, are consistent with someone who is extremely angry. Finally, the fact that both Burckel and Sodt were worried enough about what Respondent said that they immediately reported the

² Although Respondent has emphasized that HR investigators are not technically above recruits in the chain of command, it would be reasonable for recruits to believe that the people who conduct their background investigations have power over their careers.

incident to their homeroom instructor demonstrates that Respondent did more than politely ask for an apology. Given all of this, the Board finds that the preponderance of the evidence supports a finding that Respondent mistreated Burckel and Sodt and that Respondent is guilty of the charges in Specification Nos. 6 and 7.

Specification No. 8

13. Police Officer Livius Tomescu, Star No. 19503, is **guilty** of violating Rules 2, 3, and 8 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 8:

On or about October 8, 2018, Officer Tomescu sent CPD Recruit Iqbal one or more text messages in which Officer Tomescu made one or more threatening, harassing, and/or derogatory comments, including, but not limited to: threatening to tell CPD's Internal Affairs Division that Iqbal lied about her age on her employment application to CPD; stating, "[y]ou thought you were going to throw me under the bus, I'm taking you with me!"; stating, "[i]mmigration office will be my next stop after the IAD interview. That interview will also involve your sister and your brother"; and/or threatening to introduce himself to Iqbal's family without Iqbal's permission. Officer Tomescu thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals; and
- c. Rule 8, which prohibits disrespect to or maltreatment of any person, while on or off duty.

At the hearing, Respondent acknowledged sending the following text messages to Iqbal a few days after they broke up:

I'm going to get interviewed by IAD regarding the CR. I will have to tell them all that I know about you to include the fact that you lied about your age on your application for CPD knowing full well that it wasn't your legal age. And that is just 1 of the things that I'll go on the record with. You know what else I'm referring to. You wanted to treat me like a piece of shit. Let's see how you turn out when this thing is all over. You thought

you were going to throw me under the bus, I'm taking you with me! Call me before you make it to the academy this morning. Immigration office will be my next stop after the IAD interview. That interview will also involve your sister and your brother.

The second text message reads:

And lastly...will introduce myself to your family for what I was to you for the last 2 months.....before the day is over.

The Board finds that by their plain language the above text messages constitute a violation of CPD rules. Whether or not Respondent's messages were likely to be carried out, whether or not Respondent immediately regretted them, and whether or not the things Respondent accused Iqbal of were based in fact – all of which were disputed at the hearing – messages saying he will report a person's family to immigration, approach someone's family "...before the day is over," and take someone "under the bus" with him are all threatening and harassing—especially when Respondent knew that Iqbal purposefully had not told her family about their relationship. Respondent was clearly highly emotional about both his breakup and the fact that he was being referred for discipline, but that does not excuse his behavior. The Board finds Respondent guilty of the charges in Specification No. 8.

Specification No. 9

14. Police Officer Livius Tomescu, Star No. 19503, is **guilty** of violating Rules 2, 3, and 4 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 9:

On or about October 8, 2018, Officer Tomescu used information he obtained while conducting a background investigation of CPD Applicant Sohail Bhatti ("Bhatti") while Officer Tomescu was assigned to CPD-HRD, namely, personal telephone number(s) and or email address(es), to contact Bhatti and/or his wife, Rabia Iqbal, via telephone and/or email for personal purposes. Officer Tomescu thereby violated:

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- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals; and
- c. Rule 4, which prohibits any conduct or action taken to use the official position for personal gain or influence.

Respondent acknowledged at the hearing the facts that underlie the charges in Specification No. 9. Specifically, Respondent testified at the hearing that he used an email address from a chain of messages related to Bhatti's background investigation to email Iqbal's sister on October 8, 2018. The email stated in part: "Good morning Rabia; If you get a chance today and you have a few minutes to spare I'd like to talk to you about Rafia. Please give me a call when you can..." Respondent testified that he later spoke to Rabia (Iqbal's sister) and told Rabia that he had been dating Iqbal. Respondent further acknowledged that he later sent Rabia a series of text messages asking for her help with his relationship with Iqbal. Respondent also acknowledged speaking with Iqbal's brother-in-law about the same topic, though he was Bhatti's background investigator at the time. Based upon these admissions, the Board finds Respondent guilty of the charges in Specification No. 9.

Specification No. 10

15. Police Officer Livius Tomescu, Star No. 19503, is **guilty** of violating Rules 2 and 14 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 10:

On or about November 8, 2018, at or near 3510 South Michigan Avenue in Chicago, and during an interview with CPD's Bureau of Internal Affairs, Officer Tomescu falsely stated that he obtained CPD Recruit Burckel's phone number from CPD Recruit Iqbal's cellular phone, or used words to that effect. Officer Tomescu thereby violated:

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- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 14, which prohibits making a false report, written or oral.

Respondent acknowledged in his testimony that he told BIA that he had gotten the phone number he used to call Burckel on October 1, 2018, from Iqbal's cellular phone. Respondent further testified that this statement was true. According to Respondent, approximately one week prior to being told that Burckel had called Iqbal a bitch, he had become suspicious of Iqbal, and took her phone and looked through the contacts list, where he saw Burckel's number stored under "B."

The Board finds Respondent's testimony not credible. Respondent did not provide any reason why a week before Burckel called Iqbal a bitch Respondent would have been at all interested in Burckel's phone number, even assuming that Burckel's number was stored in Iqbal's phone (a fact that Iqbal denies). Presumably, there were several numbers stored in Iqbal's phone – why would Burckel's have stood out to Respondent? Moreover, Respondent did not provide any explanation for how he saved the number to be able to access it when he suddenly found a need to call Mark Burckel. Did he write it down? Take a photo of it? Save it in his own phone? Memorize it? Respondent's explanation for how and why he obtained Burckel's phone number simply does not make sense. What makes more sense is that Respondent obtained Burckel's phone number on the morning of October 1, 2018, when (as is discussed above) Respondent was at the HR office and angry at Burckel. Part of Respondent's defense to the charges in Specification Nos. 1 and 2 was that HR files were totally unsecured, and that everyone in the HR office had free access to all of the new recruits' files. We take Respondent at his word,

and believe that this is the more reasonable explanation for how Respondent obtained Burckel's phone number. The Board finds Respondent's statement to BIA to be an intentional false statement that was material to the BIA investigation of Respondent's conduct. Respondent is therefore guilty of the charges in Specification No. 10.

Specification No. 11

16. Police Officer Livius Tomescu, Star No. 19503, is **not guilty** of violating Rules 2 and 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 11:

On or about November 8, 2018, at or near 3510 South Michigan Avenue in Chicago, and during an interview with CPD's Bureau of Internal Affairs, Officer Tomescu falsely denied accessing CPD Recruit Iqbal's CPD personnel and/or background investigation file, or used words to that effect. Officer Tomescu thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 14, which prohibits making a false report, written or oral.

At the hearing, Respondent admitted that during an interview with BIA Sergeant Emmet Welch, Respondent was asked whether "on or about September 27, 2018, did you access the personnel file application of ...your girl...of PPO Iqbal," and he answered, "no." As is discussed more in reference to the charges in Specification Nos. 1 and 2, the Board has concluded that Respondent did in fact access Iqbal's personnel file. However, all of the evidence presented at the hearing demonstrated that Respondent's actions were on July 31, 2018, and August 7, 2018, *not* on September 27, 2018.

The Superintendent has presented no evidence that Respondent accessed Iqbal's

personnel file on September 27, 2018. Nor has the Superintendent argued that the phrase “on or about” September 27, 2018, would encompass conduct on July 31 or August 7. The Board finds Respondent not guilty of the charges in Specification No. 11.

Disciplinary Action

17. The Board has considered the facts and circumstances of the conduct of which it has found Respondent guilty, and the evidence presented in mitigation, including Respondent’s complimentary and disciplinary histories.

The Board has considered thoroughly the evidence the Respondent offered in mitigation, which includes three witnesses who testified about their personal experiences with Respondent and six letters in mitigation. Officer Matthew Purches, who had been Respondent’s partner on a burglary/robbery team, testified that Respondent was an exemplary officer who had high ethical standards and believes in right and wrong. Officer Devonna Young, who had Respondent as her training officer, testified that Respondent was attentive and helpful in training her, and always compassionate and respectful toward her. Officer Ryan Reese, who became friends with Respondent after working with him in the 9th District, testified that Respondent taught him how to be a good officer and had high integrity.

In addition, Respondent, who joined the Police Department in 2006, has a complimentary history of 71 total awards, including 2 Life Saving Awards, 2 Department commendations, 50 honorable mentions, and 4 attendance recognition awards; he has no sustained complaints on his disciplinary history.

Nevertheless, Respondent’s accomplishments as a police officer, the witnesses’ and letter writers’ evaluations of his work and character, and the lack of prior disciplinary history do not

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mitigate the seriousness of his misconduct.

Respondent's use of his official position for personal reasons and the threatening behavior that he exhibited relate directly to his public duties as a police officer, and render him unfit to hold that office. Respondent's poor judgment included numerous overt abuses of authority. The abuses of authority began small with Respondent's attempts to help Iqbal by sending her portions of her personnel file and running her name through LEADS to check her residency. Then, Respondent's "help" graduated to something much more disturbing when he sought out and contacted Iqbal's ex-boyfriend, and later threatened Iqbal's classmates. Finally, after their breakup, Respondent's behavior continued to escalate with his direct threats to Iqbal, use of her brother-in-law's HR file to contact Iqbal's family, and false statement to BIA. Respondent has demonstrated through the conduct of which he has been found guilty that he does not possess the good judgment and self-control required of Chicago police officers to fairly and impartially deal with the many potentially explosive situations which officers regularly encounter. Moreover, Respondent's action in subjecting CPD recruits to disrespectful and threatening statements has brought discredit upon the Chicago Police Department and undermined its mission. Chicago police officers are expected to treat all individuals with respect, not disrespect and threats. Respondent's conduct and the lack of control and lack of judgment he demonstrated are incompatible with continued service as a police officer with the Chicago Police Department.

In addition, Respondent attempted to cover up his actions by making a false statement during his interview with CPD's Bureau of Internal Affairs. Respondent's intentional and material false statement renders him unfit to be a Chicago police officer. Trustworthiness, reliability, good judgment, and integrity are all material qualifications for any job, particularly

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one as a police officer. The duties of a police officer include making arrests and testifying in court, and a police officer's credibility is inevitably an issue in both the prosecution of crimes and in the Police Department's defense of civil lawsuits. A public finding that an officer has knowingly made a false official statement is detrimental to the officer's ability to perform his responsibilities, including his credibility as a witness, and, as such, is a serious liability to the Department. See *Rodriguez v. Weis*, 408 Ill.App.3d 663, 671 (1st Dist. 2011).

The Board finds that Respondent's conduct is sufficiently serious to constitute a substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something that the law recognizes as good cause for him to no longer occupy his office.

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POLICE BOARD DECISION

The members of the Police Board of the City of Chicago hereby certify that they have read and reviewed the record of the proceedings, viewed the video-recording of the entire evidentiary hearing, received the oral report of the Hearing Officer, and conferred with the Hearing Officer on the credibility of the witnesses and the evidence. The Police Board hereby adopts the findings set forth herein by the following votes.

By a vote of 9 in favor (Ghian Foreman, Paula Wolff, Steven A. Block, Mareil  B. Cusack, Nanette Doorley, Michael Eaddy, Steve Flores, Jorge Montes, and Andrea L. Zopp) to 0 opposed, the Board determines that Respondent’s Motion to Dismiss shall be denied for the reasons set forth in Section No. 5 above.

By votes of 9 in favor (Foreman, Wolff, Block, Cusack, Doorley, Eaddy, Flores, Montes, and Zopp) to 0 opposed, the Board finds Respondent **guilty** of the charges in Specification Nos. 1 – 10, as set forth in Section Nos. 6 – 15 above.

By a vote of 9 in favor (Foreman, Wolff, Block, Cusack, Doorley, Eaddy, Flores, Montes, and Zopp) to 0 opposed, the Board finds Respondent **not guilty** of the charges in Specification No. 11, as set forth in Section No. 16 above.

As a result of the foregoing and for the reasons set forth in Section No. 17 above, the Board, by a vote of 9 in favor (Foreman, Wolff, Block, Cusack, Doorley, Eaddy, Flores, Montes, and Zopp) to 0 opposed, hereby determines that cause exists for discharging Respondent from his position as a police officer with the Department of Police and from the services of the City of Chicago.

NOW THEREFORE, IT IS HEREBY ORDERED that the Motion to Dismiss the charges is **denied**, and that Police Officer Livius Tomescu, Star No. 19503, as a result of having

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been found **guilty** of charges in Police Board Case No. 21 PB 2989, be and hereby is **discharged** from his position as a police officer with the Department of Police and from the services of the City of Chicago.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Steven A. Block, Mareilé B. Cusack, Nanette Doorley, Michael Eaddy, Steve Flores, Jorge Montes, and Andrea L. Zopp.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 24th DAY OF FEBRUARY, 2022.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

The following members of Board hereby dissent from the findings and decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2022.

DAVID O. BROWN
Superintendent of Police