

July 20, 2023

Stephanie L. Everett, Esq.
Executive Director
Office of Police Accountability and Transparency
2201 Washington Street
Boston, MA 02119

Re: Case #122—Media Relations Bureau
Notification of Non-Concurrence

Dear Director Everett,

Pursuant to City of Boston Ordinance 12-17.11(e), I am writing to notify the Civilian Review Board (CRB) of the decision to not implement the actions recommended in the above referenced case. Specifically, the CRB voted to sustain the allegations contained in the complaint and recommended that “all members of the Media Relations Bureau attend a mandatory (re) training on juvenile matters and a cultural awareness and sensitivity training.” For the reasons detailed below, I do not believe that a violation of Department Rules and Procedures occurred and, therefore, the disposition should be exonerated (the action complained of did occur, but investigation revealed that action was proper, legal and reasonable).

The allegation against the Office of Media Relations relates to the identification of a juvenile victim after he was pronounced deceased. While the investigator is correct that Rule 300 states, in part, that the release of names of juveniles is prohibited by Departmental policy, the investigation failed to account for the fact that, in this case, the juvenile had been declared deceased and the privacy afforded by that provision of the rule is no longer applicable. Massachusetts does not afford an individual, juvenile or adult, the right to privacy after death. As a result, and in accordance with Massachusetts Public Records Laws (M.G.L. c. 4 §7 and M.G.L. c. 66 §10) and Department policy, the identification in this case was proper, legal and reasonable. Additionally, Section 5 of the Rule allows for the release of “[I]dentities of persons killed; only after obtaining confirmation that the next-of-kin have been properly notified.” Here, that notification occurred and there was no violation of the policy resulting from the post published by the Office of Media Relations.

Additionally, of concern is the method used to obtain information from an employee of the Department. Specifically, the investigation notes that the assigned investigator and OPAT Deputy Director spoke with a senior member of the Media Relations team. Prior to the phone call with Deputy Director Steies, information was relayed that he and the investigator were “looking to better understand the process for how BPD releases information to the public, particularly when the information released concerns a minor.” While a complaint was referenced, the senior member of the Office of Media Relations was not informed that either he or the Office were the subject of the complaint or that the discussion would serve as the basis of a

recommendation regarding a violation of Department rules and procedures.¹ As a member of a Union, and where there was a possibility that discipline would be recommended as a result of the information provided, the employee should have been afforded the opportunity to have a representative with him during the conversation. Setting aside my determination that there was no violation of Department Rules and Procedures, the absence of the opportunity for representation could have several repercussions, up to and including the rescission of any recommended disciplinary action.²

Finally, I want to express my sincere condolences to the family on their loss. My disagreement with the CRB's recommendation regarding this complaint is not a reflection on the complainant or the trauma the family has undoubtedly suffered following this incident. The Department takes the privacy rights of all individuals very seriously and is aware of the impact the sharing of public information may have on those involved in these types of incidents. Notwithstanding, based on my review of this investigation, the employees involved acted in accordance with the Department's Rules and Procedures and I will not be implementing the recommended finding and disciplinary action.

Please do not hesitate to contact me if you have any questions or would like to discuss this matter further.

Sincerely,



Michael A. Cox
Police Commissioner

¹ Union represented employees, upon request, have the right to have their representative present during an interview that the employee reasonably believes could lead to discipline (commonly referred to as "Weingarten rights"). See *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975). Such representatives are entitled to provide advice and active assistance to employees during investigatory interviews.

² Rule 109 of the Department Rules and Procedures includes the process for interviewing members of the Department during an investigation and has been incorporated into the employee collective bargaining agreements.