

**CONDUCT REVIEW OFFICE
DENVER SHERIFF DEPARTMENT**

DPD Case: DA Letter and CORA Request

Subject Officer: Deputy Chief Matt Murray, P91021

Assignment: Police Administration Building (PAB)

Summary of Complaint

Included with this case are numerous items for review containing a variety of information, including pertinent documents, a great number of photographs, phone records, and correspondence from the PPA (Police Protective Association), Denver Police Department (DPD) command staff, the District Attorney's Office, and the Avon Police Department. Also included is correspondence related to CORA (Colorado Open Records Act) requests from the PPA and the media, audio- and video- recorded interviews of involved parties and witnesses, audio- and video- recordings of media interviews and reports, and news articles from different media sources. For a complete understanding of the case, it is necessary that all documents, statements, and audio- and video-recordings be reviewed in their entirety.

On Tuesday, April 26, 2016, the Avon Police Department received a complaint from [REDACTED] alleging that she had been sexually assaulted by Mr. Davin Munk, a Denver Police officer. The case was referred to the Denver Police Department and Deputy Chief Matt Murray and Chief Deputy District Attorney Adrienne Greene took lead roles in the investigation. It is alleged that Chief Murray bypassed over 35 years of protocol when he did not contact the appropriate District Attorney for the case.

During the initial stages of the investigation, [REDACTED] was identified as a second suspect. Both she and Officer Munk were arrested and taken into custody and charged with several counts of sexual assault. During the investigation, the victim had voluntarily provided her cell phone which contained numerous texts and photos that would have exonerated [REDACTED]. This information was in the Department's possession when [REDACTED] was arrested and taken into custody on May 4, 2016. Chief Murray said he was not involved in [REDACTED] arrest and that he was camping from May 4 - 6, 2016. It has also been alleged that under the direction of Chief Murray, unusual requests were being made of the Crime Lab and the Department in violation of policy, and press releases were provided to media giving updates of the investigation that provided names and photos of the suspects.

District Attorney Mitch Morrissey conveyed that over time, he became aware of many things about the case that concerned him and took issue with how the investigation was being handled. He confronted Chief Murray at the annual Memorial Ceremony and expressed his concerns. He subsequently wrote a letter to Chief White on May 17, 2016 concerning the matter and received a response from Chief White on June 3, 2016.

Multiple CORA (Colorado Open Records Act) requests were made by the PPA pertaining to the case and subsequent correspondence, and it is alleged that Chief White and Chief Murray violated policy when they did not properly respond to the requests.

Deputy Chief Murray has been with the Department approximately 26 years and has been Deputy Chief of Administration since December of 2011.

[REDACTED]

Relevant Department Rules

Specification #1 - RR-105 – Conduct Prejudicial
(Conduct Categories A - F)

Statement of Fact

Background of Case – Avon Police Department

On Tuesday, April 26, 2016, Officer Bryan Mullet of the Avon Police Department received a phone call from [REDACTED], who identified herself only by her first name, alleging that she had been sexually assaulted by a police officer and another woman just a few days prior.¹ During her interview, she told Officer Mullet that the suspect sent her numerous pictures and text messages and showed him a lewd video of the suspect that she had on her cell phone. Upon viewing the video, Officer Mullet was able to see that the person was wearing a Denver Police badge and was in full uniform. [REDACTED] said during the incident, when she was assaulted by him and the other woman, he put a gun to her head and pulled the trigger. She said the gun was not loaded at the time but that she didn't know that until after it happened. She alleged that he continued to send her threatening messages warning her not to report the incident and she described him as "fucking scary."

In her interview the following day, [REDACTED] explained that she had installed a messaging application to her phone called KIK about five days prior. It was through this messaging application that she met the suspect who identified himself as "Vin." [REDACTED] explained that she wanted a "fuck buddy" and that the fact that Vin was a police officer made it more exciting for her. She expressed several times that she just wanted to have sex with a cop. When she first met Vin, she was infatuated by him and she had gone to his place once before and they had consensual sex. She said it was when she went to see him again on Saturday, April 23, 2016, that she was assaulted by him and the other woman.² It was discovered that the officer lived in Denver and the case was referred to DPD Internal Affairs.

Sexual Assault Investigation – DPD Internal Affairs

On Monday, May 2, 2016, Deputy Chief Matt Murray and Chief Deputy District Attorney Adrienne Greene were subsequently contacted and the criminal investigation into the matter began.³ The suspect officer was identified as Officer Davin Munk, badge #13080.

During [REDACTED] interview on May 3, 2016, she gave a detailed account of her allegations of a sexual assault by Officer Munk and the female suspect. She said she was terrified of Officer Munk and was concerned for her safety. During this time, she voluntarily provided her cell phone containing numerous texts and photos and consented to have DPD Technical Electronic Support Unit (TESU) obtain communication information that took place between her and Officer Munk. On the same day, TESU downloaded the information from her phone using the CellBrite System to conduct a complete dump of all the data it held. The data dump provided over 12,000 messages, texts, photographs, videos, and postings.

¹ [REDACTED] was subsequently identified by Officer Mullet by way of her vehicle's Colorado license plates.

² For a detailed report of the facts in this case and the allegations made by [REDACTED] please refer to the investigation conducted by DPD Internal Affairs Bureau.

³ Because this case involved criminal charges against a police officer, it became necessary to involve a Denver Deputy District Attorney. Mr. Doug Jackson, formerly a Denver Deputy District Attorney, was generally the person called in on these cases at the time. In this case, however, Mr. Jackson was ill and Chief Deputy District Attorney Adrienne Greene was called instead.

An arrest warrant, signed and approved by Ms. Greene, was obtained for Officer Munk on May 3, 2016. He was arrested and taken into custody the same day and charged with six counts of class 2 felonies, and one count of a class 5 felony. A search warrant for property at his residence, also signed and approved by Ms. Greene, was obtained and Crime Scene Supervisor Angela Deadmond was requested to process the scene. Ms. Deadmond was advised by Ms. Greene to also respond to [REDACTED] residence to collect the clothing she was reportedly wearing during the incident; however, Ms. Deadmond expressed her concern for cross contamination of scenes if she was to complete both the victim's and suspect's scene processing. In response, Ms. Greene subsequently advised her that another investigator would respond to the victim's home to collect the clothing to eliminate any cross-contamination potential.

During the initial stages of the investigation, it was learned that the female suspect, who was also alleged to have sexually assaulted [REDACTED], was identified as [REDACTED]. After obtaining details of the reported offense, an arrest warrant for [REDACTED] was obtained on Wednesday, May 4, 2016. [REDACTED] was arrested the same day and charged with six counts of class 2 felonies. She was taken into custody, declined an interview, and requested an attorney. Also on this date, a search warrant was executed for Officer Munk's cell phone and a press release went out to the media entitled, "Denver Police Officer Arrested for Investigation of Sexual Assault."

On Thursday, May 5, 2016, Officer Munk's cell phone was delivered to TESU for data recovery. However, a data dump of the cell phone was attempted several times but continually encountered recovery issues. On this same date, a DPD civilian employee who was an acquaintance of Officer Munk's ex-girlfriend, revealed to Internal Affairs that [REDACTED] posts on her Tumblr account included posts "involving rape and wanting to be pulled over by a cop."⁴ A 48-hour extension for the investigation related to Officer Munk was obtained. Also on this date, a press release went out to the media announcing the arrest of [REDACTED] the previous day. The press release had booking photos of Officer Munk and [REDACTED] attached and was entitled, "Second Suspect Arrested in Sexual Assault Investigation."

Later in the day on May 6, 2016, Ms. Greene and District Attorney Doug Jackson dismissed the case and determined not to prosecute either Officer Munk or [REDACTED] based on information found on [REDACTED] cell phone, specifically indicating that the actions were agreed upon by [REDACTED] prior to the event.⁵ Ms. Greene and Mr. Jackson indicated in their case filings that the case was refused because of [REDACTED] credibility. They noted that the text messages between her and Officer Munk undermined her account that the event was non-consensual and there was "no reasonable likelihood of conviction."

Both Officer Munk and [REDACTED] were released from custody on the same date and the investigation into the matter was concluded. Another press release was provided to the media by DPD entitled, "Update in Sexual Assault Investigation Involving DPD Officer, Female Suspect," indicating that the investigation was completed and would not result in charges being filed against Officer Munk or [REDACTED] based on new evidence that was obtained.

⁴ Tumblr is a free social media tool that allows users to not only create their own blogs, but also "follow" other blogs that interest them.

⁵ Mr. Jackson was not initially called on this case because he was out ill and unavailable; however, he subsequently became involved when he returned to work.

District Attorney Mitch Morrissey Concerns

Then District Attorney Mitch Morrissey reported that all Internal Affairs cases such as this should be funneled through one person, District Attorney Doug Jackson; and it is Mr. Jackson who handles cases alleging police misconduct. During his interview, he said there are selective people who are on-call and despite the fact that Mr. Jackson was ill the day the investigation began, the next person on the list, District Attorney Lamar Sims, should have been called. He also took issue with the fact that he was not properly informed.

Mr. Morrissey indicated that there was a rush to judgment and that unusual requests were being made of the Crime Lab that were in violation of Crime Lab protocol.⁶ Additionally, he said they did the wrong thing when they arrested [REDACTED], as they already had in their possession the evidence from [REDACTED] cell phone that would have exonerated her. As such, he said [REDACTED] arrest was unwarranted. Mr. Morrissey also took issue with the press release naming [REDACTED] as a second suspect arrested in the sexual assault investigation and providing her photo to the media.⁷

On Thursday, May 12, 2016, a week after the investigation was concluded, DPD held its annual Fallen Officers Memorial Ceremony in the courtyard of the Police Administration Building. After the ceremony, while still on the dais, Mr. Morrissey spoke to Chief Murray about concerns he had in how the case against Officer Munk and [REDACTED] had been handled. When Mr. Morrissey expressed his concerns and questioned Chief Murray, Chief Murray said they had probable cause to arrest [REDACTED]. Chief Murray said he did not think it was the time or place to have this discussion and walked away.

Mr. Morrissey was not satisfied with Chief Murray's response to his questions about the case when they were at the Memorial Ceremony, so he returned to his office and wrote a letter to Chief White. In his letter dated May 17, 2016, he outlined his concerns pertaining to the direction of the investigation and arrest of [REDACTED] on May 5, 2016.

On June 3, 2016, Chief White responded to Mr. Morrissey's letter indicating that he would look into the matter and ensure that the appropriate action is taken.

CORA RequestsInvestigative Documents

On Tuesday, July 5, 2016, the Denver Police Protective Association (PPA), sent a CORA (Colorado Open Records Act) request to Ms. Mary Dulacki, Records Coordinator for the Department of Safety, requesting information pertaining to the investigation involving former officer Davin Munk. The following day, Ms. Dulacki forwarded the email to many members of DPD with a cc to the District Attorney's Office. In her email, she asked them

⁶ It should be noted that special requests were also made for specific detectives in the Department to handle the investigation.

⁷ Chief Murray said he was camping (May 4 - 6, 2016) and was not involved in [REDACTED] arrest, nor was he involved in putting out the press release. He said, "I wasn't present, I wasn't consulted, I wasn't getting that information."

to provide any documentation they may have in their possession in response to the PPA's CORA request. Ms. Dulacki responded to this request with information forwarded to the PPA on Tuesday, August 2, 2016, and on Wednesday, August 31, 2016, when she provided a redacted copy of the IAB case on disc.

On Thursday, October 27, 2016, another CORA request was made by the PPA and an email was sent to Ms. Dulacki requesting additional information pertaining to the arrest of former Officer Davin Munk. The following day, Friday, October 28, 2016, Ms. Dulacki sent an email in response to each of the items detailed in the email request the day before.

Correspondence between Mr. Morrissey and Chief White

On Wednesday, December 28, 2016, Ms. Dulacki received yet another CORA request from the PPA. This time, the request was very specific and requested "copies of all electronic and written communication exchanges" from/to the District Attorney and Chief White regarding the incident involving former officer, Davin Munk. Ms. Dulacki forwarded the request to the involved officers with a cc to Deputy Director of Safety Chris Lujan and stated in her email, "Apparently, the PPA will not let this one die." She asked, "Can you please advise if you are aware of any other communications?" No one advised her that they were aware of any other communications and Chief Murray's response, specifically, was, "I have no records responsive to this request." Ms. Dulacki responded to the CORA request on Tuesday, January 3, 2017 and stated, in part, "... We are unaware of any other electronic or written communications exchanges responsive to your request."

On Tuesday, January 3, 2017, the same day that Ms. Dulacki responded to the CORA request dated Wednesday, December 28, 2016, another CORA request was sent by the PPA requesting the same information as outlined in the CORA request dated December 28, 2016. The following day, Wednesday, January 4, 2017, Ms. Dulacki responded to the email stating, "The response to this request is the same as the prior response – we have located no other additional responsive records." Less than a half hour later, the PPA made the same CORA request to the District Attorney's Office. Chief Deputy District Attorney Alfredo Hernandez responded to the CORA request on Monday, January 9, 2017, via email. In his response, he provided the letter from Mr. Morrissey dated May 17, 2016 to Chief White, and Chief White's response to his letter dated June 3, 2016.⁸

Letter from Mr. Morrissey to Chief White is Found

On Friday, January 27, 2017, Ms. Dulacki spoke to Mr. Tony Kovaleski, a reporter for KMGH Channel 7, who she said let her know that he had a story and was getting ready to interview Mr. Morrissey. He indicated that he had a copy of the letter from Mr. Morrissey and Chief White's response to that letter. Ms. Dulacki informed him that her work phone was almost dead, and asked him to send a copy of the letters to her personal email account and his producer, Ms. Brittaney Freeman, forwarded them to her that afternoon. She then reported to Deputy Director of Safety Chris Lujan that she "heard" about the letters from Channel 7.

⁸ It should be noted that the second page of the letter from Mr. Morrissey to Chief White that was provided by Chief Deputy District Attorney Alfredo Hernandez has an incorrect date of July 7, 2016.

On the following Monday, January 30, 2017, Ms. Dulacki went to Chief White's office first thing in the morning, letters in hand, and advised him and Chief Murray of the letters she said she received from the DA's Office. Chief White said he requested the letter from Ms. Bee Ling Withers and she was able to produce a copy of it and provided it to Ms. Dulacki. On the same day, Ms. Dulacki provided both letters to the PPA in an email indicating, in part, "It has been brought to my attention that there are additional records responsive to your request ..." She also provided the letters to various news agencies in response to other CORA requests.

DA's Office Investigation of CORA Violation

On Wednesday, February 22, 2017, Detective Nick Rogers, President of the PPA, filed a criminal complaint with the District Attorney's Office alleging that Chief White and Chief Murray engaged in a violation of CORA, which was a criminal offense at the time. Chief Deputy District Attorney Joseph Morales responded to their allegations in an email dated Friday, March 3, 2017, and stated in part, "The Denver District Attorney's Office has determined that an investigation is warranted based on the email and attached documents submitted by you on February 22, 2017." The District Attorney's Office then opened a criminal investigation into the matter.

On May 25, 2017, District Attorney Beth McCann met with Detective Rogers and the rest of the PPA Board and informed them that she would not be filing criminal charges on Chief White or Chief Murray. She criticized their handling of the CORA requests saying they "were handled carelessly," but she said there was no criminal intent. She did not fully exonerate them, however, and said there was not "sufficient evidence ... to find a knowing and willful violation of CORA beyond a reasonable doubt."

Independent Investigation – Flynn

On March 2, 2017, then Executive Director Stephanie O'Malley engaged the services of Employment Matters, LLC, Flynn Investigations Group, to assume the role of Internal Affairs and conduct an investigation into the handling of the sexual assault case by Chief Murray and the subsequent CORA requests from the PPA. The independent investigation began after the criminal investigation into the matter that concluded with the decision by District Attorney Beth McCann not to file charges against Chief White or Chief Murray.

The investigation by Ms. Jody Luna, J.D., of Flynn Investigations Group was completed on November 23, 2017 and the entire case was forwarded the following day, November 24, 2017, to the Denver Sheriff Department Conduct Review Office for their review.

Again, included with this case are numerous items for review containing a variety of information, including pertinent documents, a large number of photographs, phone records, and correspondence from the PPA, command staff, the District Attorney's Office, and the Avon Police Department. Also included is correspondence related to the CORA requests from the PPA and the media, audio- and video- recorded interviews of involved parties and witnesses, audio- and video- recordings of media interviews and reports, and news articles from different media sources. For a complete understanding of the case, it is necessary that all documents, statements, and audio- and video-recordings be reviewed in their entirety.

[REDACTED]

24-72-204 **Allowance or denial of inspection - grounds - procedure - appeal - definitions.**

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(l) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any other law enforcement purpose;

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(XIII) Records protected under the common law governmental or "deliberative process" privilege, if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government, unless the privilege has been waived. The general assembly hereby finds and declares that in some circumstances, public disclosure of such records may cause substantial injury to the public interest. If any public record is withheld pursuant to this subparagraph (XIII), the custodian shall provide the applicant with a sworn statement specifically describing each document withheld, explaining why each such document is privileged, and why disclosure would cause substantial injury to the public interest. If the applicant so requests, the custodian shall apply to the district court for an order permitting him or her to restrict disclosure. The application shall be subject to the procedures and burden of proof provided for in subsection (6) of this section. All persons entitled to claim the privilege with respect to the records in issue shall be given notice of the proceedings and shall have the right to appear and be heard. In determining whether disclosure of the records would cause substantial injury to the public interest, the court shall weigh, based on the circumstances presented in the particular case, the public interest in honest and frank discussion within government and the beneficial effects of public scrutiny upon the quality of governmental decision-making and public confidence therein.

[REDACTED]

Summation of Morrissey Concerns⁹

Mr. Morrissey's first concern was about Chief Murray not following the on-call protocol that had been in place for more than 35 years. There does not appear to be a formal policy in place pertaining to this and, in fact, Mr. Jackson said that there was no rule that says Chief Murray couldn't call anyone else. Furthermore, this was an unusual allegation involving a police officer that also involved a victim of sex assault. Chief Murray said Deputy District Attorney Greene had extensive experience in sex assault cases and she was available and willing to help in the investigation. Moreover, Chief White indicated that a violation of a District Attorney's policy would not constitute a violation of a DPD policy.

As previously noted, according to numerous people involved in the [REDACTED] investigation, it was Ms. Greene who was taking the lead in the investigation. She was the person making special requests and giving direction for evidence collection. Although it was conveyed that she was one of the people who reported to Mr. Morrissey that the investigation was "off the tracks," based on the review of this investigation, it appears she was primarily responsible.

Mr. Morrissey took issue with the fact that he was not immediately informed of the case. When he asked Ms. Greene who was "running this thing" and asked why he hadn't been notified, she told him that Chief Murray was running the investigation. During her interview with the investigator in this case, she said that Chief Murray got her involved but clarified that he was initially involved but she had less contact with him as the days went on. Chief Murray indicated that his involvement ended with the arrest of Officer Munk on the first day of the investigation.

Mr. Morrissey said it's highly unusual to prosecute cops for sexual assault and that he heard that the investigation was "off the tracks." He said there were red flags when he heard that special requests were being made for specific crime scene investigators and direction was being given to people to do things that were in violation of crime lab protocol for good forensic evidence collection.

Mr. Morrissey also claimed that there was a "rush to judgment" to arrest [REDACTED] because he claimed the detectives were in possession of the victim's cell phone and that information in her cell phone would actually have exonerated [REDACTED]. He said the data from the victim's cell phone only needed to be downloaded and a review of the victim's cell phone data should have preceded her arrest. Ms. Greene said the evidence Mr. Morrissey describes in the letter wasn't initially available as it took some time to download. When Mr. Morrissey spoke to Chief Murray about the arrest of [REDACTED], he said Chief Murray defended himself by saying, "We had probable cause." Again, under the direction of Ms. Greene, it was reported by numerous individuals involved in the investigation that [REDACTED] should be arrested. Mr. Morrissey was also upset when a press release announced [REDACTED] arrest and provided her picture.

⁹ The issues in Mr. Morrissey's letter to Chief White are discussed in detail as they provide a basis for the actions taken by Chief Murray and Chief White and must be considered in the totality of the circumstances in this case.

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Mr. Morrissey's first concern was about Chief Murray not following the on-call protocol that had been in place for more than 35 years. There does not appear to be a formal policy in place pertaining to this and, in fact, Mr. Jackson said that there was no rule that says Chief Murray couldn't call anyone else. Furthermore, this was an unusual allegation involving a police officer that also involved a victim of sex assault. Chief Murray said Deputy District Attorney Greene had extensive experience in sex assault cases and she was available and willing to help in the investigation. Moreover, Chief White indicated that a violation of a District Attorney's policy would not constitute a violation of a DPD policy.

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Chief White

During this investigation, Chief White said he did not handle CORA requests unless the email(s) were addressed only to him. He said when he is included in the email with many other members of the Department, he relies on them to handle the request. According to Chief Murray, since he handles most of the administrative functions for the Chief, Chief White thought that he (Chief Murray) would provide what was requested because that would be what is normal.

When Chief White received the letter from Mr. Morrissey, Chief Murray was upset and wanted to defend himself, but Chief White told him to "stay out of it." Chief Murray said if he had helped Ms. Dulacki find the letter, he would have been "violating this directive."

Ms. Dulacki was asked why she didn't ask Ms. Withers before going to Chief White's office about the letter. She said she "wanted to find out what Chief White had to say. It was his name on the letter." She said that "would have been completely inappropriate when [she] hadn't even discussed this with Chief White." She said she was waiting to talk to him about it and that going to Ms. Withers "would have seemed almost insubordinate to [her] to do something like that."

Furthermore, Ms. Dulacki says she knew the letter was to Chief White, and Chief Murray said she usually goes directly to the person who has the document if she doesn't get a document she needs from other sources.

Chief White Receives Letter from Mr. Morrissey

When Chief White received Mr. Morrissey's letter, he showed it to Chief Murray and Chief Quiñones. Chief Quiñones told Chief White that there was some validity to the letter based on what he knew from Mr. Laberge and Sergeant Hernandez about how the case was being handled, and as outlined more extensively above. He believed there was a "rush to judgment" and he told Chief Murray during the investigation that he should slow things down. Chief Murray said that the letter from Mr. Morrissey was "baseless, as not a single accusation made by Mr. Morrissey was accurate."

Chief Murray told Chief White that he had nothing to do with [REDACTED] arrest and that the letter was "fabricated." He said he had "zero input" in "the [REDACTED] arrest," that his involvement in the case ended with the arrest of Officer Munk, and that [REDACTED] had not yet been identified when he went camping. He also conveyed that he took calls when he was camping, but said they were calls keeping him apprised of the situation and at no time was he consulted about [REDACTED] arrest or anything about sending out press releases. Commander Montoya said Ms. Greene might have spoken to Chief Murray when he was camping, but confirmed it was Ms. Greene who wanted [REDACTED] picked up.

Chief Murray informed Chief White that there was "nothing inappropriate" regarding the Munk investigation and that Ms. Greene played a "very significant part" in the decision to arrest [REDACTED]. Although Chief Murray was not involved in [REDACTED] arrest, he reiterated that they had probable cause to arrest her. Additionally, Chief White was told it was a group consensus of all involved in the investigation to have [REDACTED] arrested and charged with sexual assault. In fact, Commander Montoya said he was in agreement to arrest [REDACTED] and had no reason to oppose her arrest. He said the victim gave a compelling interview and was very credible. This was confirmed by several people involved in the investigation.

Based on what was conveyed to him, Chief White said he thought the letter had inaccurate information and it didn't require any other action on his part. Chief White also indicated that he did not believe there was a written "on-call" policy for the District Attorney's Office. He said, even if it existed, it would apply to the District Attorney's Office and would not be deemed a departmental policy violation.¹¹

Chief White said the letter was about a difference of opinion over legal actions that were taken and that it contained misinformation. He said Chief Murray had nothing to do with [REDACTED] arrest.

Chief White said that the information was "inaccurate" and an attempt to undermine him through Chief Murray and that gave him reason to question the entire tone and nature of the letter. He said he knew [the information was inaccurate] through Chief Murray and Internal Affairs and validated the information given to him.

Again, Chief White confirmed the information given to him and told Chief Murray to read the letter but to "leave it alone" and "stay out of this." Chief Murray was frustrated and angry when he read the letter and wanted to defend himself, but Chief White made it "very clear" to him that he was not to get involved.

Responses to CORA Requests (for case information and correspondence)

As stated in the Statement of Fact above, the PPA sent a CORA request to Ms. Dulacki on July 5, 2016 requesting information pertaining to the investigation involving former officer Davin Munk. Ms. Dulacki responded to this request on August 2, and August 31, 2016, when she provided a redacted copy of the IAB case on disc.

Another CORA request was made by the PPA on October 27, 2016 requesting additional information. Ms. Dulacki responded to the request the following day. She received yet another CORA request on December 28, 2016; this time the request was for communication exchanges from/to the District Attorney and Chief White. Ms. Dulacki responded to Ms. Yeros on January 3, 2017 stating that [the Department] was not aware of anything responsive to her request. On the same day, another request from the PPA was made for the same information as before. Ms. Dulacki responded the next day, "The response to this request is the same as the prior response – we have located no other additional responsive records." Less than a half hour later, Ms. Yeros made the same CORA request on behalf of the PPA to the District Attorney's Office. The DA's Office responded on January 9, 2017 and provided the letter from Mr. Morrissey to Chief White and Chief White's response to the letter. Up to this point, the letters had not been provided to the PPA by the Department in response to the CORA requests.

Chief Murray serves as Chief of Staff to Chief White, and Chief Murray typically responds to Ms. Dulacki's requests. Chief White said he would open an email from Ms. Dulacki if it only had his name on it but that the emails are usually addressed to others and he receives several on a daily basis.

¹¹ The actions of Chief White are addressed in more detail in another document pertaining to the allegations against him in this case.

When Chief White received the letter from Mr. Morrissey, he discussed it with Chief Murray and during his interview, he said that Chief Murray was "anxious to respond" to the letter but that he (Chief White) was trying to "circumvent" an unnecessary argument with Mr. Morrissey. He gave Chief Murray a "directive" not to be involved in "that particular letter" and that would have included responding to CORA requests. However, it should be noted that it does not appear that anyone was delegated the responsibility of responding to applicable CORA requests in Chief Murray's stead.

Regarding the 2016 CORA request, Chief Murray reiterated that Chief White typically relies on him to gather material for open records requests in the office, but in this case, he was recused because he was the officer in question in Mr. Morrissey's letter. He said he didn't talk to Ms. Dulacki about the letter in July because he thought the request was about the Internal Affairs case.

Chief Murray said there is no question that the letter should have been disclosed. He stated, in part, "... The Chief told me to stay out of it and I stayed out of it. And I'm going to say again, Mary says she knew the letter was to the Chief, she goes to people [when] she needs a document she doesn't get, and when she did go to the Chief and ask for a document, she got it. Those are the facts."

Chief White reiterated, "All Mary had to do was come to me ... It was that simple, and she would've gotten exactly what she wanted."

Ms. Dulacki acknowledged in her statement to the DA that Chief White "didn't do CORA." Because the letter pertained to him, she admitted that she should have just asked him. "Eventually she did that and when she did, she got the letter ..."

Evidence

This office considered only the evidence that is contained in this file and any reasonable inferences to be drawn from that evidence.

The CRO examined the credibility of involved parties and the weight to be given their statements. In doing so, we took into consideration the individuals' means of knowledge, strength of memory and opportunities for observation; the reasonableness or unreasonableness of their statements; the consistency or lack of consistency in their statements; their motives; whether their statements have been contradicted or supported by other evidence; their bias, prejudice, and interest, if any; their manner or demeanor while making statements; and all other facts and circumstances shown by the evidence which could affect the credibility of the individuals involved. A suspicion, belief or opinion not supported by the weight of the evidence was not considered.

It should be noted that certain individuals have questioned the integrity of the Department and the command staff, including Chief White and Chief Murray, and while it may be considered irrelevant when determining any departmental infraction by Chief Murray, their credibility is an underlying factor in this case and must be taken into consideration.

Charges not Included

The Department considered including the following specifications against Chief Murray, and for the reasons outlined below, determined that these violations would not be able to be proven by a preponderance of the evidence.

RR-112.2 – Commission of a Deceptive Act - *In connection with any investigation or any judicial or administrative proceeding, officers shall not knowingly commit a materially deceptive act.*

This rule violation was considered; however, it was determined that this rule would not be appropriate to charge in this case. While there is little question that the email Chief Murray sent to Ms. Dulacki stating, "I have no records responsive to this request" was, at a minimum, missing key information that would have been helpful to Ms. Dulacki, the email was not sent in connection with any investigation or any judicial or administrative proceeding, therefore this rule would not apply to the email response sent. Additionally, while there are numerous conflicting statements regarding who was involved in various conversations, and what was said in those conversations, there is no way to demonstrate by a preponderance of the evidence which version of these conversations is the most accurate. As there is no way to prove what really happened, or if the differences in the recollection of these conversations was simply due to inaccurate memories, or any intent to deceive, this specification was not included.

RR-112.1 – Misleading or Inaccurate Statements - *Officers shall not knowingly make misleading or inaccurate statement relating to their official duties.*

This rule violation was considered and as set forth above in RR-112.2, it was also determined that this rule would not be appropriate to charge in this case. When Chief Murray responded that he had no records responsive to the request made by Ms. Dulacki, his reasons for not providing that information were somewhat plausible. Additionally, Chief Murray indicated that he misinterpreted the last email from Ms. Dulacki when she asked if anyone was aware of any other communications. As such, Chief Murray's actions do not demonstrate the required intent of this rule and there is insufficient evidence that would demonstrate by a preponderance of evidence that Chief Murray "knowingly" made a misleading or inaccurate statement.

RR-115.1 – Conduct Prohibited by Law - *Officers shall obey the Charter of the City and County of Denver, all City ordinances, all state and federal statutes, all lawful court orders, and all other applicable laws whether criminal, civil, traffic, or administrative.*

This rule violation was considered and ultimately not included due to the underlying CORA law requiring that the violation be "knowingly." Specifically, the law as written at the time stated: "Any person who willfully and knowingly violates the provisions of this part 2 is guilty of a misdemeanor..." While there is certainly evidence to show that the CORA request was not handled in the

manner that it should have been, there is insufficient evidence to show, by a preponderance of evidence, that the initial failures by Chief Murray to disclose the existence of the document was done "willfully and knowingly."

Ops. Manual §503.01(3)(d) - *For the duration of the complaint process, including the complaint intake, formal investigation, and IRP, the subject officer and his or her representative are prohibited from contacting and/or interviewing any witnesses or conducting any type of investigation into the allegations...*

This specification was considered, but, due to the language of the rule, it was determined that it is unclear it would apply in this case. While there was evidence which demonstrated both Chief White and Chief Murray discussed the case, this rule does not adequately cover individuals who are both subjects and witnesses of the same case speaking about the case. While we do not believe that there is enough evidence to sustain a violation of this rule as it is written, the suggestion has been made to update the language of the rule to clarify that this applies to subjects of the same case.

Conclusion

The Department's top priority is to develop and foster trust and integrity within the Department and within the community. The discipline system, and the dedication it shall receive, is vital to promoting these values internally and externally. The Department's matrix based system of discipline should attempt to accomplish the elimination, to the extent possible, any public perception that the discipline system is ineffective, unfair, inconsistent, or unreasonable and which reflects the goals, values, and priorities of the Department and promotes respect and trust within the Department and with the community it serves.

In addition, an appropriate discipline system will also serve to help accomplish other goals of the Department, including but not limited to, ensuring the orderly functioning and operation of the Department and adherence to its established standards of conduct, as well as reinforcing the Guiding Principles of the Department and the Law Enforcement Code of Ethics.

It should be noted that public perception is affected by the intense media coverage of law enforcement agencies and their conduct, and matters such as this frequently come under public scrutiny. Misinformation, a lack of awareness of the broader issues, and adverse public reactions to these circumstances are not uncommon and the result, unfortunately, is detrimental to the Department's professional image.

Analysis and Conclusions

Specification No. 1:

RR-105 – Conduct Prejudicial **(Conduct Categories A – F)**

Finding – Sustained

Rationale for Finding

As previously stated, the first CORA request from the PPA to Ms. Dulacki was made on July 5, 2016 requesting information pertaining to the investigation involving former officer Davin Munk. In her attempt to obtain the pertinent information, Ms. Dulacki sent an email to members of the Department the following day that said, in part, "... please provide me with any communications that you may have in your possession." Chief Murray said he did not respond to this request because he believed the request was specifically for the case file. Additionally, he said the email asked if anyone had any communications in their possession and he did not have the letter in his possession.

Ms. Dulacki received another CORA request from the PPA dated December 28, 2016, which was more detailed, and asked specifically for any communication between Mr. Morrissey and Chief White. Ms. Dulacki's email to the Department on the same date stated in part, "Can you please advise if you are **aware** of any other communications?" (emphasis added) Chief Murray responded via email the following day, stating, "I have no records responsive to this request."

Chief Murray indicated in his interview that there was a lot going on at this time; he had a family crisis with his granddaughter and he was in the middle of working on issues with the controversial use of force policy. He said he made a good faith search for the records the PPA was requesting before he answered Ms. Dulacki; however, he said the request was not his priority and he relied on Ms. Dulacki to ensure that the records requested were located and released. Moreover, when Chief White received the letter from Mr. Morrissey, Chief Murray was "anxious to respond" to the letter but he said Chief White gave him a "directive" not to be involved in "that particular letter" and to "stay out of it." He said it was his understanding that this also included responding to CORA requests.

Based on how the CORA requests were handled by the Department, Detective Rogers alleged that Chief White and Chief Murray purposefully withheld the information sought after in the CORA request. As previously noted, he filed a criminal complaint with the District Attorney's Office alleging that Chief White and Chief Murray engaged in a violation of CORA, which was a criminal offense at the time. At the conclusion of the criminal investigation, District Attorney Beth McCann announced that she would not be filing criminal charges against Chief White and Chief Murray because there was no criminal intent. She conveyed that the manner in which the CORA requests were handled was done with negligence and was "careless" and "cavalier." However, she did not think there was the appropriate mental state to file charges. As such, she indicated that their conduct did not rise to the level of criminal misconduct.

The standard of proof in an administrative finding of a departmental rule violation is based on a preponderance of the evidence; whereas, the standard of proof in a criminal proceeding is proof beyond a reasonable doubt. As such, there is no requirement that Chief Murray actually be convicted of a criminal offense for a determination to be made that he violated a departmental rule or policy. Accordingly, the Department takes all allegations of misconduct such as this very seriously and an administrative review of the facts and circumstances in this case was conducted.

As previously noted, Chief Murray said he did not respond to the first CORA request dated July 5, 2016, because he was under the impression that the request was for the case file involving Officer Munk. He also did not have the letter in his possession. As such, Chief Murray's explanation for not responding to this particular email is somewhat plausible as the email from Ms. Dulacki on this date specifically asked for any communications "that you may have in your possession." However, despite the fact that Chief Murray did not have the letter in his possession; he admitted to knowing about it and Ms. Dulacki's email request to the Department dated December 28, 2016 specifically asked if anyone was "aware" of any other communications. Chief Murray indicated that he did not interpret the email that way and stated again that he did not have the letter in his possession; however, the email from Ms. Dulacki on this date was clearly stated.

Chief Murray never denied that he knew that the letter existed and openly admitted to being aware of it. There is no question that the letter should have been disclosed in response to the PPA's CORA request, despite the fact that Chief Murray was told to "stay out of it" and did not have it in his possession. Also, by his own admission, Chief Murray said, "The letter was responsive, we had it, should have gotten it to release it." He added:

The Chief told me to stay out of it and I stay out of it. And I'm going to say again, Mary says she knew the letter was to the Chief, she goes to people [when] she needs a document she doesn't get, and when she did go to the Chief and ask for a document, she got it. Those are the facts.

Chief Murray said in an interview with the media, "... you can tell by this interview, we are hiding nothing, [we are] more than happy to talk about this." He indicated that there was no reason to suppress the letter and that it had more to do with the process that had a fallacy because of the players who were involved. He again reiterated that he was recused because he was the officer in question in Mr. Morrissey's letter and again, Chief White gave him a directive to "stay out of it."

In addition to saying he did not have the letter, Chief Murray said the letter was not his and that he did not help Ms. Dulacki look for the letter because he recused himself and it was his understanding that he would have been violating the Chief's directive to "stay out of it" if he had helped her find the letter. However, because he was very much aware of the written communication between Mr. Morrissey and Chief White, he had an administrative responsibility to, at the very least, convey his awareness of the letter to Ms. Dulacki.

Chief Murray's assessment that there are issues with the manner in which CORA requests are handled has been confirmed by this office; however, these issues are currently being addressed by the Department and the City and do not suspend his responsibility to

appropriately respond to CORA requests as mandated by policy. Moreover, Chief White appointed Chief Murray as his Chief of Staff and Chief Murray responded to and gathered material for open records requests in the office. Because it was normally his responsibility to respond to the CORA requests, Chief Murray should not have depended on Ms. Dulacki to locate the document and should have ensured that someone was delegated the responsibility of responding to applicable CORA requests in his stead. He did not do this.

In sum, Chief Murray was forthright in his statements and never denied that he knew about the letter. He was given a directive not to be involved in the matter which he thought included responding to CORA requests, and he openly admitted that the document should have been produced in response to the requests. He had an obligation to divulge his knowledge about the letter when Ms. Dulacki specifically asked in her email if anyone was "aware" of any communication between Mr. Morrissey and Chief White. Again, Chief Murray did not do this, nor did he ensure that the requests were handled appropriately. After a careful review of all the facts in this case and based on the totality of the circumstances, the CRO finds by a preponderance of evidence that Chief Murray violated this rule when he did not comply with a CORA request as mandated by Department policy.

The CRO would be remiss in their duties if we did not point out that when Chief Murray had the authority to respond to CORA requests, that Chief Murray was doing so as a representative for the Department and on behalf of the Chief. As such, his failure to comply with policy was a negative reflection on the Department and on Chief White himself.

When analyzing this case for potential misconduct, the case was reviewed in its entirety and an assessment was completed to determine the appropriate rule violation. This office had the responsibility to consider all the facts and circumstances underlying the conduct of Chief Murray and determined that the appropriate departmental rule that addressed the conduct was RR-105, Conduct Prejudicial. When Chief Murray did not appropriately respond to the CORA requests, he "engag[ed] in conduct prejudicial to the good order and police discipline of the Department [and] conduct unbecoming an officer." Sound judgment was exercised by this office in order to ensure that this rule violation was sustained for legitimate and appropriate reasons and accurately addressed the misconduct of Chief Murray. Disciplinary action for a violation of this rule can be taken when the officer's misconduct is not specifically set forth in Department rules pursuant to subpart (a), or when the harm from the misconduct is greater than would reasonably be expected pursuant to subpart (b) of the rule.¹²

Pursuant to subpart (a) of this rule, this office has determined that there is no question that Chief Murray failed to comply with the CORA request from the PPA as mandated by policy. Furthermore, his failure to comply with policy was a poor reflection on the Department, on Chief White, and himself. As such, this allegation has been sustained pursuant to subpart (a) of this rule.

In reviewing this case in its entirety and as noted previously in this report, the CRO has made some very plausible findings and reasonable inferences with regards to the timing of

¹² See the complete definition of this rule (RR-105) in the Specifications attached to this report.

the correspondence and the actions taken by the PPA. These findings and inferences are detrimental to the operations and professional image of the Department; however, to determine whether the injury or harm caused in this case was a result of Chief Murray's actions, a reviewer must consider a causal connection between his conduct and the underlying conduct of others (i.e., PPA) and the foreseeable result in order to justify holding him accountable for the result. (See Section 26.3 in the Disciplinary Handbook.) As such, this office cannot find that Chief Murray's conduct was the sole cause of harm that was greater than would have reasonably been expected and no action can be taken for a violation of RR-105 pursuant to subpart (b).

Chief Murray's underlying conduct was analyzed to establish an appropriate Conduct Category for this violation in accordance with Section 15.0 of the Disciplinary Handbook. In failing to comply with the CORA request, it has been determined that Chief Murray's demonstrated misconduct had a "pronounced negative impact on the operations [and] professional image of the Department." As such, this violation is sustained and has been determined to be a Conduct Category C violation pursuant to the disciplinary Matrix. A Conduct Category B violation was not considered because the rule violation involved misconduct that had much more than a minimal negative impact on the operations and professional image of the Department; and a Conduct Category D violation was not considered because the nature of the misconduct did not rise to the level of being "substantially contrary to the values of the Department" nor did it "involve a demonstrable serious risk" of harm.

Matrix Analysis

Conduct Category – C

Preliminary Discipline Level – 3

Rationale: Conduct that has a pronounced negative impact on the operations or professional image of the Department, or on relationships with other officers, agencies or the public.

Prior Discipline

Date of current incident: May 17, 2016

Time Frame for considering prior sustained misconduct: 5 Years

Number of prior relevant sustained cases within the time frame: None

Revised Discipline Level Based on Prior Discipline

Conduct Category: C

Discipline Level: 3

Penalty: 2 Fined Days

Penalty Range: Presumptive

Mitigating or Aggravating Circumstances

Considering all the facts and circumstances in this case, the CRO found that there were mitigating factors pertaining to Chief Murray's conduct that should be taken into consideration in determining the appropriate disciplinary penalty for this rule violation. Despite the findings by this office that Chief Murray was obligated to respond to the CORA request and was found to have violated this rule, Chief White did, in fact, tell him to "stay out of it" and Chief Murray understood that directive to include responding to CORA requests pertaining to the case. Furthermore, there are some issues with the CORA process that need to be addressed and no one was appointed to respond to them in Chief Murray's stead. Additionally, as mentioned in the above rationale, Chief Murray was dealing with a family crisis at the time and was simultaneously working on the controversial Use of Force Policy.

However, after taking the mitigating circumstances into consideration, Chief Murray's rank was considered a factor in aggravation. The Department has higher expectations for command officers than subordinate officers and expects that a command officer should exercise greater restraint and circumspection than a subordinate officer. Commanders are expected to lead by example. They are responsible for holding others accountable and should likewise be accountable.

While there are a number of mitigating factors that this office has taken into consideration, they are not sufficiently significant when compared to Chief Murray's rank as an aggravator. In weighing all the factors in mitigation with the aggravating factor of Chief Murray's rank, this office took into consideration the significance of those factors as they relate to the gravity of the misconduct and find that Chief Murray's responsibility to comply with the CORA requests on behalf of the Department and on behalf of the Chief, was sufficiently weighty. It was Chief Murray's responsibility to circumvent any potential issues for the Chief by appropriately handling the CORA requests. In not doing so, the matter was called to the Department's attention and Chief White became a subject in this investigation. As such, it has been determined that Chief Murray's rank carries a significant amount of weight and justifies an increase in the presumptive penalty. Accordingly, an aggravated penalty is warranted for this rule violation.

Final Recommendation for This Specification

Conduct Category: C
Discipline Level: 3
Penalty: 4 Fined Days
Penalty Range Aggravated

Recommendations

	R&R	Finding	Range	Conduct Category	Level	Penalty
Spec #1	RR-105 – Conduct Prejudicial	Sustained	A - F	C	3(A)	4 Fined Days

Maj. 160745

Conduct Review Office
Denver Sheriff Department

Date: 7/13/2018

CONDUCT REVIEW OFFICE
DPD Case: DA Letter and CORA Request
SPECIFICATIONS

Specification No. 1:

RR-105 – Conduct Prejudicial (Conduct Categories A – F)

Officers shall not engage in conduct prejudicial to the good order and police discipline of the Department or conduct unbecoming an officer which:

- (a) May or may not specifically be set forth in Department rules and regulations or the Operations Manual; or
- (b) Causes harm greater than would reasonably be expected to result, regardless of whether the misconduct is specifically set forth in Department rules and regulations or the Operations Manual.



**CONDUCT REVIEW OFFICE
DENVER POLICE DEPARTMENT
ADDENDUM RE: DISCIPLINARY RECOMMENDATION**

Case Number: IC2017-0177

Subject Officer: Lieutenant Matthew Murray (P91021)

Assignment: Deputy Chief of Administration¹

Addendum Re: Disciplinary Recommendation

Specification No. 1:

RR-105, Conduct Prejudicial, of the Denver Police Department Operations Manual, provides that,

Officers shall not engage in conduct prejudicial to the good order and police discipline of the Department or conduct unbecoming an officer which:

- (a) May or may not specifically be set forth in Department rules and regulations or the Operations Manual; or
- (b) Causes harm greater than would reasonably be expected to result, regardless of whether the misconduct is specifically set forth in Department rules and regulations or the Operations Manual.

Addendum Setting Forth Rationale for Finding

Information was presented at Lieutenant Murray's pre-disciplinary hearing to support a determination that, by a preponderance of the evidence, Department policy was not violated. The following information and disciplinary guidelines, as set forth in the DPD Discipline Handbook, were taken into consideration:

- Prior to submitting a written order to the Manager of Safety for approval, the Chief of Police must provide written notice to the subject officer advising him/her of the charges, an explanation of the evidence supporting those charges and an opportunity to respond to the charges at a pre-disciplinary meeting (Chief's Hearing). [Discipline Handbook, §§ 30.1, 30.2]
- As provided by City Charter, the Manager may approve, modify or disapprove any recommendation made to him/her. No provision of the City Charter or Civil Service Commission Rules requires the Manager to follow the recommendations or to give "due weight" to them. [Discipline Handbook, § 27.2]
- In preparing the recommended Review and Findings document, the Denver Sheriff's Conduct Review Office had not reviewed the evidence presented at Lieutenant Murray's pre-disciplinary hearing, as that process had not yet occurred.
- Lieutenant Murray was questioned about the underlying incident as part of the investigation into the formal allegations brought against him. He was not, however, given an opportunity to respond to the charges against him and exercise his due process rights until his pre-disciplinary hearing.

¹ As of July 15, 2018, Mr. Murray holds the rank of Lieutenant in the Community Relations Division.

CONDUCT REVIEW OFFICE, DENVER POLICE DEPARTMENT

ADDENDUM RE: DISCIPLINARY RECOMMENDATION

Case Number: IC2017-0177

Re: Lieutenant Matthew Murray, P91021

- During his pre-disciplinary hearing, Lieutenant Murray presented information which the Chief considered, in totality of the circumstances, and based his decision to "Not Sustain" the Conduct Prejudicial specification, including the following:
 - This case exemplifies the necessity to re-examine the processes the City utilizes in responding to CORA requests. CORA requires most public "records" be available to the public. Here, there is not a preponderance of evidence that Lieutenant Murray or any other Command officer knowingly attempted to thwart these processes. Rather, there were a series of misunderstandings and failures to communicate whereby those involved in these processes were under the assumption that another person was accurately responding to the subject CORA requests. This issue is further compounded by the general boilerplate language, "We are not in possession of any records responsive to this request," used in responding to requests for documents under CORA.
 - Mary Dulacki received a CORA request from the PPA dated December 28, 2016, which asked specifically for any communication between Mr. Morrissey and Chief White. Ms. Dulacki's email to the Department on the same date stated, in part, "Can you please advise if you are aware of any other communications?" Lieutenant Murray responded via email the following day, stating, "I have no records responsive to this request." During the pre-disciplinary hearing, Lieutenant Murray presented evidence that other high-ranking/Command staff had the same response to the same email from Ms. Dulacki.
 - In accordance with District Attorney Beth McCann's findings that there was no criminal intent to violate CORA, and there was not "sufficient evidence...to find a knowing and willful violation of CORA beyond a reasonable doubt," here there is not a preponderance of evidence that Lieutenant Murray knowingly engaged in conduct prejudicial to the good order and police discipline of the Department or conduct unbecoming an officer. The evidence does not demonstrate that Lieutenant Murray had the scienter or intent to knowingly mislead, obstruct, or otherwise thwart the process of responding to the CORA requests.

Based on the foregoing, the allegation that Lieutenant Murray violated RR-105, Conduct Prejudicial, is Not Sustained.

Finding

Not Sustained

CONDUCT REVIEW OFFICE, DENVER POLICE DEPARTMENT

ADDENDUM RE: DISCIPLINARY RECOMMENDATION

Case Number: IC2017-0177

Re: Lieutenant Matthew Murray, P91021

Commander Recommendations

	R&R	OMS	Finding	Category	Level	Range	Penalty
Spec #1	105	N/A	Not Sustained	N/A	N/A	N/A	N/A

Paul M. Pazen, Chief of Police

By: Commander Michael H Battista