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Office of Accountability and Transparency

Monitoring Report
Incident OAT22-007

On November 23, 2022, a Phoenix Police Department officer responded to a trespassing call at a Chase Bank. Following contact with the alleged trespasser, the officer took the individual into custody and conducted a search of his pockets for identification. The Department initiated an investigation and closed it, finding the officer's conduct within policy. Following media coverage, the Department opened a second investigation.

This report summarizes OAT's review of the Department's second administrative investigation into the November 23rd incident and provides recommendations to improve future Department investigations.

February 22, 2024

STATUTORY HISTORY AND AUTHORITY

The City of Phoenix created the Office of Accountability and Transparency (OAT) in 2021 to perform independent civilian oversight of the Phoenix Police Department (Department). OAT monitors Department administrative investigations of critical incidents involving sworn personnel and provides community members a way to freely communicate complaints, commendations, and concerns about officers and the Department without fear of retaliation. Phoenix City Code (P.C.C.) §§ 20-6 and 20-7 give OAT the authority to monitor Department administrative investigations.¹

Specifically, P.C.C. § 20-6, requires OAT to monitor administrative investigations of:

- officer-involved shootings;
- deaths in-custody;
- any duty-related incidents resulting in serious bodily injury;
- incidents in which Department personnel are under investigation for or charged with offenses against persons under Arizona law; and
- incidents in which a Phoenix police officer is under investigation for any misdemeanor or local law violation where use of force or threatened use of force is an element in the crime.²

Phoenix City Code § 20-7, gives OAT discretionary authority to monitor:

- Department administrative investigations of any incidents that result in a Department administrative investigation in which OAT believes it is in the City's best interest for OAT to be involved, and
- Department administrative investigations when requested to do so by the City Manager.³

¹ [P.C.C. Chapter 20 can be found here.](#)

² P.C.C. Sec. 20-6.

³ P.C.C. Sec. 20-7.

EXECUTIVE SUMMARY

On November 23, 2022, a Chase Bank employee at the 32nd Street and Bell location called Phoenix Police to report a trespasser. When the Involved Officer arrived, he spoke to bank personnel who claimed they had asked the alleged trespasser to leave. The Involved Officer then contacted the alleged trespasser, the Involved Civilian, and asked for identification. The Involved Civilian declined to provide identification, explained that he was not asked to leave by bank personnel, he was a Wall Street Journal (WSJ) reporter on assignment for a story about banking, and repeatedly stated that he would voluntarily leave. The Involved Officer responded by placing the Involved Civilian in handcuffs and placed him in the back of the patrol car. After placing the Involved Civilian in handcuffs, the Involved Officer searched the Involved Civilian's pockets, found his wallet, and went through it to find identification. The Involved Officer then issued a trespass warning to the Involved Civilian and removed the handcuffs. The Involved Civilian then left the scene. An independent witness captured the incident on cell phone video. The Involved Civilian filed a complaint with the Department to which the Department responded on December 9, 2022, that there was no wrongdoing.

OAT received notice of this incident by news coverage in January 2023. Responding to news coverage, the Department stated that a Professional Standards Bureau (PSB) investigation would occur. Exercising its discretionary authority, OAT sent the Police Chief and the City Manager a Notice of Intent to Monitor on January 5, 2023.

PSB completed its investigative report on May 31, 2023, OAT received a copy of this report—as well as the remainder of the PSB investigative file—on August 10, 2023, the day after the Department's Media Advisory detailing the result of the investigation and the Involved Officer's sanction.

OAT's conclusion following review is that the Department's administrative investigation was not thorough and complete. OAT's recommendations for future investigations follow.

FACTUAL AND PROCEDURAL HISTORY⁴

- November 23, 2022 – Incident
- December 9, 2022 – Department communicated to Involved Civilian that the first administrative investigation closed, conduct found within policy
- January 2023 – OAT learned of incident via news coverage
- January 5, 2023 – OAT noticed Department of intent to monitor
- February 5, 2023 – OAT received initial disclosures from Department
- May 31, 2023 – Department concluded its second administrative investigation
- May 31, 2023 – Department issued discipline to Involved Officer
- August 22, 2023 – OAT received additional disclosure from Department
- February 16, 2024 – OAT completed Monitoring Report
- February 22, 2024 – OAT released Monitoring Report to the public and the media

I. **Incident**

On November 23, 2022, at approximately 3 p.m., a Phoenix Police Department officer responded to a Chase Bank, near 32nd St and Cactus Rd., regarding a trespassing complaint. The Involved Civilian, a reporter with the WSJ, was on assignment working on a story about banking and approached customers for interviews before they walked into the bank.

The Involved Officer responded and spoke with the bank staff, who reported that the Involved Civilian had been asked to leave. During this discussion, the bank staff indicated that she wanted the Involved Civilian trespasses from the property. The Involved Officer then approached the Involved Civilian and asked for the Involved Civilian's identification so that the Involved Officer could charge the Involved Civilian with trespassing.

⁴ Table 1 contains a detailed list of the information and materials OAT received from the Department's Professional Standards Bureau or through the public records request process (See Appendix).

The Involved Civilian declined to provide his identification, stating he had done nothing wrong and further denied having been asked to leave. The Involved Civilian told the Involved Officer he did not need to be trespassed and would voluntarily leave. The Involved Civilian repeatedly told the Involved Officer he would leave. Despite this, the Involved Officer detained the Involved Civilian and placed him in handcuffs. The Involved Civilian was subsequently placed in the rear of a police vehicle.

The Involved Civilian was handcuffed for approximately 11 minutes and placed in the back of the patrol vehicle with his feet outside the vehicle for approximately nine (9) minutes. Before placing the Involved Civilian in the back of the police vehicle, the Involved Officer went into the Involved Civilian's pocket and removed the Involved Civilian's wallet. The Involved Officer then searched through the Involved Civilian's wallet and retrieved his identification.

During the encounter, a civilian witness, recorded the encounter with her cellphone. While recording, the Involved Officer asked civilian witness if she wanted "to be arrested as well?" The Involved Officer issued the Involved Civilian a trespass warning, removed the handcuffs from the Involved Civilian, and the Involved Civilian walked away.

The Involved Civilian later complained to the PSB that the Involved Officer used excessive force while unlawfully detaining him, detained him based on race, and threatened to assault him if he did not comply.

In January of 2023 local and national media outlets published stories about this incident, including the Involved Civilian's allegations he was detained and arrested based upon his race. These reports also included statements by the civilian witness who recorded some of the interaction between the Involved Civilian and the Involved Officer and a letter from the WSJ to the Department.

The Department released the following statement in response to the media reports and the Wall Street Journal's letter:

The Phoenix Police Department received a letter from the Editor in Chief of the Wall Street Journal expressing concerns about an interaction with one of their reporters and a Phoenix police officer. This letter was shared with our Professional Standard Bureau for review, and they are conducting an administrative investigation. Once the administrative investigation is complete, it will be made available as part of a public records request. Bank personnel contacted police after they received customer complaints that a man was approaching people as they entered the bank asking them personal questions. The interaction between the Involved Officer and the man who was the subject of the complaint took place on private property.⁵

II. **The Phoenix Police Department's Investigation**

The Involved Civilian filed a complaint on November 28, 2022. On December 9, 2022, the Department informed the Involved Civilian that the Department had completed the investigation and found no wrongdoing. Shortly after this communication, the Department opened another investigation into this incident under case number PSB23-0002. PSB's investigation included a review of body-worn camera, surveillance video, recorded interviews, and incident reports.

The PSB investigation noted four allegations: (1) search of a detained person without establishing a full custody arrest; (2) unlawful detainment; (3) excessive force; and (4) racial bias in detainment.

The Department concluded its second administrative investigation on May 31, 2023, and issued training to the Involved Officer on the same date.

⁵ Dave Biscobing, *Phoenix PD Handcuffed, Detained Wall Street Journal Reporter*, ABC 15 ARIZONA (Jan. 4, 2024), <https://www.abc15.com/news/local-news/investigations/phoenix-pd-handcuffed-detained-wall-street-journal-reporter>.

III. Investigative Sufficiency

Under P.C.C. § 20-10, OAT is tasked with reviewing any Department administrative investigation it monitors to ensure that it is thorough and complete.⁶

The Department provided OAT with most of its administrative investigation materials on April 27, 2023, nearly four months after it received the monitoring notice. OAT received the final batch of disclosures on August 10, 2023, the day after the Media Advisory.

OAT did not identify significant issues of concern regarding the investigation into Allegations 1, 2, and 3. However, as it relates to Allegation 4, Racial Bias, OAT asserts that the investigation into this specific allegation, **was not** thorough and complete.

a. **Recommended Steps for Improved Investigations**

OAT recommends the Department take the following steps to improve future administrative misconduct investigations:

1. **Interview Officer Regarding Every Allegation**

Here, the PSB investigators failed to ask the Involved Officer any questions related to this allegation. The Involved Civilian alleged that the Involved Officer specifically and individually used race as a factor in his detainment.

In the initial interview, the PSB investigator should have asked appropriate probing questions regarding the detention based on the race allegation including: asking the Involved Officer if race played a factor in the decision to detain the Involved Civilian; asking the Involved Officer if the bank/complainant referred to the Involved Civilian's race in their call to PPD or during the Involved Officer's interaction with bank staff while on scene; asking the Involved Officer

⁶ OAT's thorough and complete sufficiency determinations include a review and assessment of: allegations made; evidence obtained, reviewed and analyzed; quality and extent of subject and witness interviews; investigative report clarity and objectivity; and the investigative process taken.

if the Involved Civilian's race played a factor in his decision to take formal law enforcement action, as opposed to allowing the Involved Civilian to leave when they said they would leave on their own accord. These questions and others would have provided PSB with sufficient facts and information that could have been used to reach reliable conclusions and findings.

The Involved Officer's PSB interview was silent on the issue of race being a factor in the detainment. Not interviewing the Involved Officer regarding this allegation leaves the question of whether race was a factor unexplored and therefore unanswered. The Involved Officer may have admitted that the Involved Civilian's race played a factor in his detention or indirectly provided enough probative evidence for PSB to conclude race was a factor in the detention of involved civilian.

PSB resolved this allegation and determined it to be unfounded solely based on its review of the Involved Officer's BWC video and without exploring this allegation with the Involved Officer. PSB's findings and conclusions were therefore not based upon sufficient facts and information to reach reliable conclusions on this allegation. Relying solely on BWC to resolve intent and motivation-based allegations cannot result in a complete and thorough investigation.

These questions are necessary and relevant for PSB investigators to adequately assess the truth of not just this specific allegation, but any allegation in any investigation. In future investigations, PSB investigators must fully and deeply explore every allegation raised.

2. Fully Explore Use and Understanding of De-Escalation Tactics and Alternate Responses Under Policy

In this investigation, PSB's interview of the Involved Officer did not fully examine whether the officer considered de-escalation strategies or tactics throughout this interaction.

OAT's review identified several opportunities to utilize strategies that reasonably could have de-escalated the situation and eliminated the need to take formal law enforcement action. After speaking to the Involved Civilian, the Involved Officer had conflicting statements about whether the Involved Civilian was in fact asked to leave. The bank manager was relying on what her employees told her, not any action she personally took, but the Involved Officer did not speak to the employees the manager relied on. The Involved Civilian stated that he was only told that he could not solicit, not that he had to leave.

Because a request to leave is required to formally trespass, when presented with conflicting stories, the Involved Officer should have either sought additional evidence to resolve the discrepancy or exercised a de-escalation technique that could have resolved the issue and eliminated the need for any further police action. Possible de-escalation techniques could have included giving equal weight to the Involved Civilian's version of the facts, requesting that he leave the premises and not return, and allowing him the opportunity to leave and informing him that if they refused to leave, he would be arrested and charged for trespassing.

Additionally, as the interaction progressed, the Involved Civilian stated several times his detainment was not necessary and that he would voluntarily leave. The bank wanted the Involved Civilian to leave the premises; allowing the Involved Civilian to do so voluntarily would have accomplished this and prevented the next series of events that led to the misconduct allegations.

Balancing the need to take immediate formal law enforcement action with the de-escalation strategies available in this interaction calls into question whether the Involved Officer meaningfully contemplated strategies that would have prevented the incident from escalating.

Because the investigation into this incident failed to fully explore alternatives to the actions the Involved Officer took and what his understanding was of the available options other than detention—including his training in de-escalation and whether his decisions were consistent with that training—the investigation is not as robust as it could have been. A specific inquiry about the Involved Officer’s understanding of whether policy allowed him to let the Involved Civilian leave the premises without taking formal law enforcement action would have further developed the investigation by illuminating the Involved Officer’s understanding of policy that controlled this engagement and the resulting discretion they had in how it progressed. OAT’s recommendation in this regard is rooted in promoting a civilian-focused understanding of such matters that produces an outcome that builds greater trust in the Department.

3. Discipline Issued for Improper Search Incident to Lawful Arrest

Under Department policy, “[i]mmediately upon a *full custody arrest*, an officer may lawfully search the person of the arrestee, items under the arrestee’s immediate control (such as a backpack or wallet and the area within the arrestee’s reach).”⁷ Policy further clarifies that “[i]f an officer observes a criminal violation (including criminal traffic) and intends to cite and release the subject from the start of the incident, the suspect being issued the [a citation] *will not be searched incident to arrest*.”⁸ Under Operations Order 3.18.3.C.1(m) misconduct involving an unjustified search is specifically designated a Class II

⁷ Phoenix Police Dep’t., OPERATIONS ORDER 4.11.7.B (Rev. 10/15) (emphasis added).

⁸ *Id.* (emphasis added).

violation. Accordingly, “Class II violations will be referred to the Police Chief or the Discipline Review Board (DRB) for a 24 or 40-hour suspension without pay and possible demotion.”⁹

These two sections, taken together, provide clear guidance in the circumstances of this incident. The Involved Officer did not carry out a full custody arrest of involved civilian. The Involved Officer stated in his PSB interview that he was not certain if he was going to book the Involved Civilian or cite and release him and the Involved Civilian was not booked and was not transported for further investigation. Operations Orders clearly prohibited the search in this instance.

4. Deviation from Discipline Under Policy

Per Department policy, the sustained allegation here—search of a detained person without establishing a full custody arrest—is a Class II violation that calls for a 24–40-hour suspension without pay or a demotion.¹⁰ Any deviation based upon relevant factors should be based upon the discipline level outlined by the applicable Operating Order. The PSB Investigative Report states that a written reprimand is the appropriate discipline for the Involved Officer and upon review, the Chief’s Office deviated down from written reprimand to additional training.

Recognizing that deviating from an established appropriate discipline level is within the Department’s discretion, in this instance, deviation based upon “lack of clarity” in the Department’s search incident to arrest is unfounded.

⁹ Phoenix Police Dep’t., OPERATIONS ORDER 3.18a.3.C. (Rev. 10/23); Phoenix Police Dep’t., OPERATIONS ORDER 3.18.2.H (Rev. 04/16).

¹⁰ *Id.*

The Department's August 9, 2023, Media Alert regarding this investigation stated:

While a written reprimand would be appropriate for the policy violation noted, the lack of clarity in policy, and the fact that the incident did not involve malicious intent, repeat offenses, or a reckless or willful disregard for policy, the decision has been made to require the Officer to receive training.¹¹

The Media Alert references Operating Order 4.41.5.D.5 as the order lacking clarity, and this lack of clarity served as the basis for a several "step" reduction from 24-40 hours without pay, bypassing a written reprimand, and down to four hours of training.

It appears that this rationale is based upon the application of the incorrect Operating Order that covers the Involved Officer's alleged misconduct. It was determined that the Involved Officer improperly searched involved Civilian under the search incident to arrest doctrine. However, the Involved Officer's contact and unlawful search is more accurately controlled by Operating Order 4.11.7(B) and (E) as discussed above.

As a Class II violation, the proper starting point to even consider deviation, was a 24–40-hour suspension without pay, and a possible demotion, as outlined by Operations Order 3.18.3.C.

5. Actual Training Completed

The Involved Officer's training certification shows that he completed a four-hour Search and Seizure Refresher training on August 18, 2023. This training certification also shows that the Involved Officer completed a separate two-hour "Detention Recruit: Laws of Arrest" training on the same date and time. OAT

¹¹ Brandon Gray, *Phoenix PD Concludes Investigation on Excessive Force Complaint Filed by Wall Street Journal Reporter*, KTAR (Aug. 2023), <https://ktar.com/story/5526563/phoenix-pd-concludes-investigation-on-excessive-force-complaint-filed-by-wall-street-journal-reporter/>.

noted that while the Search and Seizure Refresher training is listed as a four-hour training, the certification indicates that the training took place during a two-hour timeframe, from 12 p.m. to 2 p.m., while the second training, "Detention Recruit: Laws of Arrest," took place during the same time frame of 12 p.m. to 2 p.m., both on August 18, 2023.

This concurrent training, as documented, was only half of the training time the officer was required to complete. Not only did the Involved Officer receive a substantial reduction in discipline down to training, but it appears that they did not even fully complete the mitigated consequence for the unlawful search. Additionally, the subject matter of the second training does not appear to be appropriate for the type of misconduct in this case.

For future investigations where the Department deviates from the discipline issued, the basis for the deviation should be both clearly stated and supported by reference to all potential policy that covers the misconduct. Additionally, any sanctioned officer should be expected to fully comply with issued discipline or training.

CONCLUSION

OAT respectfully submits the above report and recommendations in compliance with P.C.C. §§ 20-6 and 20-7 and requests a response from the Police Chief within 30 days, by March 23, 2024.

Appendix
Investigative Materials List

Items	PPD Date	Date to OAT
PSB Cover Page		
Checklist for PSB Investigations		
Redaction Notice – No entries		
PSB Internal Investigation Report	May 31, 2023	August 10, 2023
PSB Administrative Paperwork		
Officer A Training Certification	August 18, 2023	August 22, 2023
PSB Report Attachments		
Photos of Incident Scene	May 31, 2023	August 10, 2023
CFS Report	May 31, 2023	August 10, 2023
Operating Orders 3.18 and 4.11	May 31, 2023	August 10, 2023
Arizona Revised Statutes 13-1502, 13-2412	May 31, 2023	August 10, 2023
List of Involved Civilians	May 31, 2023	August 10, 2023
List of Involved PPD Employees	May 31, 2023	August 10, 2023
BWC Videos		
Officer A BWC	November 23, 2023	April 27, 2023
Officer B BWC	November 23, 2023	April 27, 2023
Officer C BWC	November 23, 2023	April 27, 2023
PSB Interviews		
Voicemail left for Witness Civilian (*2)	November 30, 2023	April 27, 2023
PSB Findings Call to Witness Civilian	December 9, 2023	April 27, 2023
PSB Voicemail of Findings left for Involved	December 9, 2023	April 27, 2023
PSB Call with Witness Civilian (*3)	December 9, 2023	April 27, 2023
Officer A PSB Interview	January 9, 2023	April 27, 2023
Other Items/Evidence		
Photos of No Trespass Signs (*2)	January 11, 2023	April 27, 2023
Photo of Entrance	January 11, 2023	April 27, 2023
Findings Letters (*3)	August 10, 2023	August 10, 2023
WSJ Staff Correspondence (*2)	December 7, 2023	August 10, 2023
Comparable Discipline Document	June 1, 2023	August 10, 2023
EXO Summary	July 20, 2023	August 10, 2023
AZPOST Document	August 1, 2023	August 10, 2023

MONITORING CASE DETAILS

Monitoring Report Date: February 22, 2024

OAT Monitoring Case #: 22-007

Classification of Monitoring Case: Discretionary

Police Incident Report #: 20201755741

Incident Date & Time: November 23, 2023, approximately, 3:00 p.m.

Location: 32nd Street and Cactus Road, Phoenix, AZ

OAT Monitoring Notice Sent: January 5, 2023

Department Administrative Case #: PSB23-0002

Department-Issued/CIRB Findings: **Allegation #1-** The Involved Officer conducted a search of a detained person without establishing a full custody arrest:
Sustained

Allegation #2- The Involved Officer unlawfully detained a person:
Unfounded

Allegation #3 The Involved Officer used excessive force when he detained a person:
Unfounded

Allegation #4 The Involved Officer wrongfully detained a person, based upon the person’s race:
Unfounded

Administrative Finding Date: May 31, 2023

Officer(s) Involved: (1) Involved Officer

Officer(s) Injury Level(s): None

Civilian(s) Involved: (1) Involved Civilian

Civilian(s) Injury Level(s): None

Complainant(s): Involved Civilian and their Employer