

IN THE MATTER OF A COMPLAINT
AGAINST THE WAUSAU POLICE
DEPARTMENT,

Case No. 225-007

Respondent.

PROBABLE CAUSE DETERMINATION

1. The Crime Victims Rights Board reviewed a complaint filed by VH¹ against the Wausau Police Department. The Board evaluated the complaint to determine whether it stated probable cause that the Police Department violated VH's rights as a crime victim. *See Wis. Stat. § 950.04(1v)*. The Board finds no probable cause.

BOARD PROCEDURE

2. VH filed a complaint with the Board on March 21, 2022.

3. Upon receipt of the complaint, the Board contacted the Department of Justice (DOJ) Office of Crime Victim Services, which verified that the substance of the complaint had been presented to DOJ and that the DOJ mediator had acted as provided in Wis. Stat. § 950.08(3). *See Wis. Admin. Code CVRB § 1.05(1), (4)*.

¹ This probable-cause determination uses the victim's initials to protect the victim's privacy.

4. The Board gave a copy of the complaint to the Police Department and invited it to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5)*. Police Department Chief Benjamin K. Bliven filed a response on behalf of the Police Department.

5. The Board made this probable-cause determination at a meeting on October 18, 2022. *See Wis. Admin. Code CVRB § 1.05(6)*.

6. In making the probable-cause determination, the Board considered all relevant information, including the complaint and response. *See Wis. Admin. Code CVRB § 1.05(7)(a)–(c)*.

7. The Board notifies the parties and the DOJ mediator of its conclusions through the issuance of this probable-cause determination. *See Wis. Admin. Code CVRB § 1.05(8)*.

STATEMENT OF THE CASE

I. VH's complaint.

8. VH states that his car was stolen on May 2, 2021.

9. VH contacted the Police Department about his stolen car. He states he told the Police Department the name of the person who allegedly stole his car and that this person was on parole.

10. VH did not receive information about his rights as a crime victim.

11. VH states that the Police Department did not investigate the alleged theft of his car and did not return his calls.

II. The Police Department's response.

12. Chief Bliven responded on behalf of the Police Department.

13. Chief Bliven states that on May 2, 2021, Officer Josiah Kaetterhenry received a complaint from VH that his car had allegedly been stolen. VH told Officer Kaetterhenry that a friend had stolen his car. VH said that the license plates on the car were not the correct plates for the car and that the car was not registered to VH. VH also told Officer Kaetterhenry that he had proof that he owned the car at his house.

14. During this conversation on May 2, Officer Kaetterhenry asked VH to call him when he had the vehicle identification number for the car. Officer Kaetterhenry also told VH that he would be mailing him a Victim's Information Brochure. Officer Kaetterhenry explained what information would be on the brochure, including the rights and services associated with being a crime victim.

15. This interaction between Officer Kaetterhenry and VH on May 2 was captured by Officer Kaetterhenry's body camera.

16. Officer Kaetterhenry documented in a report filed with the Police Department that, shortly after their initial meeting, Officer Kaetterhenry mailed VH a Victim's Information Brochure.

17. VH later called Officer Kaetterhenry to provide the vehicle information number. Officer Kaetterhenry searched for the vehicle information

number in a government database. This search confirmed that the car was not registered to VH.

18. Officer Kaetterhenry continued to follow up with VH to try to obtain proof of ownership. Proof of ownership was a crucial component of Officer Kaetterhenry's investigation into the alleged car theft.

19. VH sent Officer Kaetterhenry a photograph of the car's title via text message on May 6, 2021. The title was listed to someone else and was not filled out by the registered owner. Officer Kaetterhenry attempted to contact the registered owner but was unable to reach this person.

20. VH also reached out to Officer Kaetterhenry on May 6 regarding a potential location of the car and the suspect. Officer Kaetterhenry dispatched officers to that location, but the vehicle was not found there.

21. Officer Kaetterhenry made several unsuccessful attempts to contact the suspect.

22. On May 31, 2021, Officer Kaetterhenry and his supervisors determined that the car could not be listed as stolen and an arrest could not be made in the case without adequate proof that VH owned the car. They also determined that the case could be reopened if VH provided proof of ownership.

23. VH emailed the Mayor of Wausau on June 29, 2022, expressing his disappointment about the Police Department's investigation into the alleged

theft of his car. The Mayor then reached out to Patrol Captain Todd Baeten to inquire into VH's concerns.

24. On June 30, Captain Baeten emailed VH to reiterate that the Police Department needed proof that VH owned the vehicle to proceed with its investigation. The email also urged VH to “reach out to Officer Kaetterhenry at 715.261.7928 if you have any further information to share regarding ownership of the vehicle or the whereabouts of [the suspect].”

25. On June 30, 2021, Officer Kaetterhenry had contact with VH on an unrelated matter. VH told Officer Kaetterhenry that the person who had allegedly stolen VH's car had called VH to set up a meeting. VH, however, told Officer Kaetterhenry that VH declined to attend the meeting.

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

26. VH's complaint implicates two rights of crime victims'.

27. **Right to written information.** “No later than 24 hours after a law enforcement agency has initial contact with a victim of a crime,” that agency “shall make a reasonable attempt to provide to the victim written information” regarding his or her rights. Wis. Stat. § 950.08(2g); *see also* Wis. Stat. § 950.04 (listing the rights of which a crime victim should be made aware).

28. **Right to information about the status of the investigation.** Crime victims have the right to receive, “[u]pon request,. . . reasonable and

timely information about the status of the investigation and the outcome of the case.” Wis. Const. art. I, § 9m(2)(o).

DETERMINATIONS OF FACT

29. The Board finds no dispute of material fact between the parties.

LEGAL STANDARDS

30. The Board employs a multi-step methodology to analyze the complaint. It asks: (1) whether the complainant was a crime victim; (2) whether the respondent is subject to the authority of the Board; (3) whether the allegations are time-barred; (4) whether the allegations implicate any constitutional or statutory victim rights; and (5) whether the respondent failed to comply with any duty imposed by a constitutional or statutory provision.

31. Whether a person is a crime victim is determined by statute. “A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both.” Wis. Stat. § 939.12. A crime victim is a “person against whom a crime has been committed” or, if that person is a child, the parent, guardian, or legal custodian of that person. Wis. Stat. § 950.02(4)(a)1.–2.

32. Whether a respondent is subject to the Board’s authority is also determined by statute. The Board has authority to review complaints about “public officials, employees or agencies that violate the rights of crime victims.” Wis. Stat. § 950.09(2)(a); *but see Gabler v. Crime Victims Rights Bd.*,

2017 WI 67, ¶ 36, 376 Wis. 2d 147, 897 N.W.2d 384 (holding statute unconstitutional as applied to judges).

33. Whether the allegations are time-barred is determined by the filing requirements in the administrative code. The Board may not consider allegations relating to “conduct that occurred . . . more than 3 years before a complaint was filed with the board or the board was otherwise notified of the conduct,” except that the Board may consider issuing a report and recommendation concerning such conduct. Wis. Admin. Code CVRB § 1.04(5).

34. Probable cause is “a reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint.” Wis. Admin. Code CVRB § 1.02(9). Probable cause is satisfied by a believable or plausible account that the respondent probably has violated or is violating the victim’s rights. *See State v. Sorenson*, 143 Wis. 2d 226, 251, 421 N.W.2d 77 (1988).

35. At the probable-cause stage, the Board evaluates the limited information available to it in the light most favorable to the complainant. The probable-cause determination is not the proper time to debate and resolve credibility issues if essential facts, circumstances, and reasonable inferences are strong enough to warrant a prudent person to believe a violation

probably has occurred or is occurring. *See State ex rel. Huser v. Rasmussen*, 84 Wis. 2d 600, 614, 267 N.W.2d 285 (1978).

PROBABLE CAUSE DETERMINATION

36. The Board finds no probable cause that VH's rights as a crime victim were violated.

37. The Board reaches this conclusion after applying the relevant legal standards to the facts.

38. The first question is whether VH is a crime victim. Assuming as true VH's allegation that his car was stolen, the Board finds that VH was a crime victim during the time relevant to the complaint because this theft could have been punishable by fine or imprisonment or both. *See Wis. Stat. §§ 939.12, 950.02(4)(a)1.*

39. The second question is whether the respondent is subject to the authority of the Board. The Board finds that the Police Department is a public agency subject to the authority of the Board. *See Wis. Stat. § 950.09(2)(a).*

40. The third question is whether any of the allegations in the complaint are time-barred. The Board finds that none of the allegations in the complaint are time-barred because they relate to conduct that occurred within three years before the complaint was filed. *See Wis. Admin. Code CVRB § 1.04(5).*

41. The fourth question is whether the allegations in the complaint implicate a constitutional or statutory victim right. The Board finds that VH's complaint implicates the right to written information, Wis. Stat. § 950.08(2g), and the right to information about the status of the investigation upon request, Wis. Const. art. I, § 9m(2)(o).

42. The final question is whether the respondent violated these rights. The Board addresses each potential violations identified below.

43. **Right to written information.** There is no dispute that VH did not receive written information regarding his rights at the time he reported the alleged crime to Officer Kaetterhenry. However, the Police Department reports that Officer Kaetterhenry told VH during their initial conversation that he would mail the form. The Police Department stated that Officer Kaetterhenry, upon returning to the Department, filled out the brochure and placed it in the outgoing mail. This discharged the Police Department's duty to provide VH written information regarding his rights. The Board also notes that the footage from Officer Kaetterhenry's body camera documenting his initial meeting with VH, which the Board received under seal, shows that Officer Kaetterhenry advised VH verbally of some of his rights as a crime victim. While this verbal advisement does not satisfy VH's right to written information, it is proof that VH's rights were of concern to Officer Kaetterhenry, and lends credence to the Police Department's position that the

written information was timely mailed to VH. Based on these facts, the Board finds no probable cause that the Police Department violated VH's right to written information. Wis. Stat. § 950.08(2g).

44. **Right to information about the status of the investigation.**

After their initial meeting on May 2, 2021, Officer Kaetterhenry made several efforts to contact VH and apprise him of the Police Department's investigation. For example, Officer Kaetterhenry advised VH on May 6 that Officer Kaetterhenry would need proof that VH owned the allegedly stolen vehicle in order to complete the investigation. And on June 30, 2022, Captain Baeten emailed VH to remind him to reach out to Officer Kaetterhenry with information regarding ownership of the car or the whereabouts of the suspect. Also on June 30, Officer Kaetterhenry spoke with VH about the car during contact on an unrelated matter. The Police Department, in short, proactively kept in contact with VH throughout its investigation, encouraging VH to reach out with necessary information. Based on these facts, the Board finds no probable cause that the Police Department violated VH's right to investigatory information. Wis. Const. art. I, § 9m(2)(o).

ORDER

Based on the foregoing, it is hereby ORDERED:

1. That there is no probable cause that a victim-rights violation occurred, so the complaint is dismissed. A finding of no probable cause is a final decision of the Board under Wis. Admin. Code CVRB § 1.05(8).
2. That the Board hereby provides notice to the parties of the right to seek judicial review of this final decision pursuant to Wis. Stat. § 227.52. Attached to this decision is a summary of appeal rights.
3. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–227.59. *See* Wis. Admin. Code CVRB § 1.10.
4. That a copy of this probable-cause determination will be provided to all parties in this proceeding and in accordance with Wis. Admin. Code CVRB § 1.05(8), as identified in the service list below.

Dated this 19th day of December, 2022.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

V.H.

[street address withheld]

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