BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

RESPONDENT.)	(CR No. 1017419)
CITY OF CHICAGO,)	
STAR No. 16146, DEPARTMENT OF POLICE,)	
POLICE OFFICER THOMAS A. ROBINSON,)	No. 12 PB 2815
IN THE MATTER OF CHARGES FILED AGAINST)	

NAMES AND ASSOCIATION OF CHARLES AND ASSOCIATION

FINDINGS AND DECISION

On August 7, 2012, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Thomas A. Robinson, Star No. 16146 (hereinafter sometimes referred to as "Respondent"), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 14: Making a false report, written or oral.
- Rule 38: Unlawful or unnecessary use or display of a weapon.

The Police Board caused a hearing on these charges against the Respondent to be had before Jacqueline A. Walker, Hearing Officer of the Police Board, on October 16 and 18, 2012.

Following the hearing, the members of the Police Board read and reviewed the record of proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Walker made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

- 1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.
- 2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.
- 3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.
- 4. The Respondent filed a Motion to Dismiss, requesting that the charges filed against him be stricken and the case dismissed for the following reasons: (a) the failure to bring timely charges violates the due process rights of the Respondent; (b) the charges should be barred by laches; (c) the investigation by the Independent Police Review Authority (IPRA) failed to follow Chicago Police Department General Orders; and (d) the IPRA investigation violated Section 2-57-070 of the Municipal Code of Chicago. The Respondent's Motion to Dismiss is **denied** for the reasons set forth below.
- a. <u>Due Process</u>. Citing *Morgan v. Department of Financial and Professional Regulation*, 374 Ill.App.3d 275, 871 NE2d 178 (1st Dist 2007), and *Lyon v. Department of Children and Family Services*, 209 Ill.2d 264 (2004), the Respondent claims that the Constitution precludes such a lengthy delay in the investigation of the Respondent's alleged misconduct. *Morgan* and *Lyon*, however, involved a delay in *adjudication* of allegations of misconduct after the respective

plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making.

The Respondent's case before the Police Board is different from *Morgan* and *Lyon*, as the Respondent in his Motion is complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try him once the charges were filed and he was suspended without pay. This difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their name. Here, the Respondent was working and was being paid his full salary and benefits during the entire period of the investigation and up to the filing of charges with the Police Board. The Due Process clause precludes a state or local government from "depriving any person of life, liberty or property [i.e. a public job] without due process of law." Here, the Respondent was not suspended without pay from his job until *after* the charges against him were filed. Therefore, the Respondent was *not* deprived of his job prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondent's due process rights.

We recognize that the Circuit Court of Cook County, in *Orsa v. City of Chicago Police Board*, 11 CH 08166 (March 1, 2012) found that the protections of the Due Process clause are triggered by an unreasonable delay in the investigation of a matter, even if the officer retains his

job, salary and benefits during the investigation. The Court cited Stull v. Department of Children and Family Services, 239 Ill.App.3d 325 (5th Dist. 1992). Stull involved a teacher accused of sexually abusing two of his students. The statute and regulations governing DCFS investigations of child abuse provided strict time limits on the length of any investigation and on the time within which a hearing must be conducted and a decision entered if the adult found to have abused children sought a hearing. The Stull court found that DCFS had grossly violated these time limits and required expungement of the adverse finding against the teacher, even though the administrative appeal found that he had been properly "indicated" as an abuser. The Stull court did find that the teacher's due process rights had been infringed, but it was not because of a delay in DCFS's investigation of the case. The court held that due process was violated by the more than one-year delay in adjudicating the teacher's appeal because during that period of time there was an indicated finding of child abuse lodged against the teacher and this finding prohibited him from working, see 239 Ill.App.3d at 335, thus triggering the kind of deprivation that is not present in the Respondent's case. Cavaretta v. Department of Children and Family Services, 277 Ill.App.3d 16 (2nd Dist. 1996), also cited by the Circuit Court, is identical to *Stull*, which it relies upon. The Cavaretta court was quite careful to find that due process was not implicated until DCFS (after its investigation was complete) "indicated" the teacher as a child abuser and placed the teacher's name in the state's central registry, which directly deprived the teacher of the ability to work.1

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¹ The Circuit Court also cited *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), but only in general terms. There was no issue in *Loudermill* that a deprivation, for due process purposes, had occurred as it involved the discharge of school district employees.

b. <u>Laches</u>. The Respondent argues that the doctrine of laches should apply here in supporting the dismissal of charges, for he argues that the delay in bringing the charges against him resulted in prejudice to him in losing his employment and in hampering his ability to locate witnesses and counter evidence years after the fact to defend against the charges.

Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced by the delay. Private parties and public agencies are not on an equal footing when it comes to the application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85, 630 NE2d 830 (1994), hold that laches can only be invoked against a municipality under "compelling" or "extraordinary" circumstances. In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1st Dist. 1992). Under Illinois law, the Respondent must demonstrate that the Superintendent's unreasonable delay caused material prejudice to the Respondent; the Respondent must submit evidence in support of his claims of prejudice (for example, testimony that witnesses could no longer recall what happened, or affidavits stating that records had been lost or destroyed during the intervening years). *Nature Conservancy v. Wilder*, 656 F.3d. 646 (7th Cir. 2011).

The Respondent has made no specific showing of any prejudice that resulted from a delay in bringing charges before the Police Board. He argues that had the charges been brought in a timely manner, he would have been able to locate witnesses who could have been favorable to his defense, as well as witnesses whose memories had not faded with the passage of time. The

Respondent made no showing that he attempted to locate such witnesses or evidence but was

unable to do so because of the passage of time. Consequently, any argument that there may be

other witnesses out there, or that material evidence was overlooked and is now unavailable, is

speculative.

The Respondent here has not demonstrated any "compelling" or "extraordinary"

circumstances warranting a dismissal of his case, and has not carried the burden of proving that

he was prejudiced by a delay in the bringing of charges.

c. General Order 93-03. The Respondent argues that the Police Department's own

General Order requires a prompt and thorough investigation, and that the Department failed to

fully comply with the provisions of this General Order.

In fact, the General Order does not set an absolute deadline within which investigations

must be completed, but provides that if they last more than 30 days, the investigator must seek

and obtain an extension of time within which to complete the investigation. Here, there is no

evidence that the investigator failed to regularly seek, and was granted, extensions of time, in

compliance with the General Order.

Once the investigator completed the process of gathering evidence, the matter is reviewed

at several levels to ensure that a thorough investigation was conducted, as required by the

General Order.

There was no substantial violation of the General Order in this case. Even if, however, the

General Order was violated, there is no provision in the General Order requiring the

extraordinary remedy of dismissal of the case as a sanction for such a violation. The Board

declines to extend the reach of the General Order in this manner.

d. Municipal Code Section 2-57-070. The Code provides that if the Chief Administrator

of the Independent Police Review Authority (IPRA) does not conclude an investigation within

six months after its initiation, the Chief Administrator shall notify the Mayor, the City Council,

the complainant, and the accused officer. The Respondent argues that IPRA did not comply with

this provision of the Code.

The record is not clear as to whether IPRA made the required notifications. However,

even if this provision of the Code was violated, neither Section 2-57-070 nor anything else in the

Code states that dismissal of a Police Board case is the sanction for failing to make the report to

the Mayor, the City Council, the officer, and the complainant. It is unpersuasive that such an

extreme sanction would automatically follow, particularly where the alleged misconduct under

investigation is as serious as it is here. Without any basis or cited authority, and none is given by

the Respondent, there is no basis for the Board to dismiss the charges pursuant to Section 2-57-

070, and the Board declines to extend the reach of the ordinance in this manner.

5. The Respondent, Police Officer Thomas A. Robinson, Star No. 16146, charged herein,

is **guilty in part, and not guilty in part**, of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its

policy and goals or brings discredit upon the Department,

in that:

Count I: On or about June 16, 2008, at approximately 1800 hours, in the vicinity of 9620

South Leavitt Street, Chicago, while off duty, Police Officer Thomas A. Robinson engaged in

an altercation with a citizen, John McMullen, during which Officer Robinson verbally abused

McMullen, physically maltreated McMullen, threatened to shoot McMullen, and displayed a weapon without lawful justification, thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

Convincing testimony was obtained from John McMullen, Michael Sallis, Suzanne McLaughlin and Mary Mesterharm that on the date charged, and at 9620 South Leavitt, Officer Robinson swerved his car in close proximity to McMullen while McMullen was on his bike, verbally abused McMullen, and punched or hit McMullen in his face or neck, as well as pulled on McMullen's shirt and pushed him while McMullen was backing away. There was also testimony that Officer Robinson was tussling on the ground with McMullen.

There was further testimony that Officer Robinson was yelling and cursing at McMullen.

All of the actions of Officer Robinson that were testified to brought discredit upon the

Department.

The Department failed to present sufficient evidence that Officer Robinson threatened to shoot McMullen, or that he displayed his weapon without lawful justification. Credible testimony was presented that Officer Robinson did not remove his gun from his holster, nor that he threatened to shoot McMullen.

(Board Members Conlon, Foreman, and Fry dissent from the above finding of guilt, for they voted to find the Respondent not guilty of the Rule 2, Count I charge.)

- 6. The Respondent, Police Officer Thomas A. Robinson, Star No. 16146, charged herein, is **not guilty** of violating, to wit:
 - Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count II: On or about July 14, 2008, between approximately 0800 and 0900 hours, Police Officer Thomas A. Robinson, while off duty and traveling northbound on Interstate 90/94, followed a citizen, John McMullen, engaged in a verbal altercation with Mr. McMullen during which he threatened Mr. McMullen, and called 911 claiming that a previously arrested offender had threatened him, thereby impeding the Department's efforts to achieve its policy and/or bringing discredit upon the Department.

There was insufficient evidence presented by the Department that Officer Robinson would have knowledge as to what vehicle McMullen drove in order to follow McMullen on Interstate 90/94. There was also insufficient evidence presented that Officer Robinson engaged in a verbal altercation with McMullen, or that he threatened McMullen.

- 7. The Respondent, Police Officer Thomas A. Robinson, Star No. 16146, charged herein, is **guilty** of violating, to wit:
 - Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count III: On or about July 17, 2008, at approximately 1800 hours, in the vicinity of 9418 South Oakley Avenue, Chicago, while off duty, Police Officer Thomas A. Robinson confronted Michael Sallis, a witness to the June 16, 2008, altercation between Officer Robinson and John McMullen, and made remarks intended to intimidate Mr. Sallis, thereby impeding the Department's efforts to achieve its policy and/or bringing discredit upon the Department.

Uncontradicted evidence was obtained that Officer Robinson approached Michael Sallis, a witness to the altercation that occurred on June 16, 2008, while Sallis was in front of his house, inquired as to whether Sallis resided at the location where they were, told Sallis that he, Officer Robinson, should have beaten McMullen to the extent McMullen would have to be hospitalized,

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and finally told Sallis that he, Officer Robinson, carried a gun at all times. This action on the

part of Officer Robinson was of an intimidating nature, and therefore brought discredit to the

Department.

8. The Respondent, Police Officer Thomas A. Robinson, Star No. 16146, charged herein,

is guilty in part, and not guilty in part, of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty,

in that:

On or about June 16, 2008, at approximately 1800 hours, in the vicinity of 9620 South Leavitt Street, Chicago, while off duty, Police Officer Thomas A. Robinson, engaged in an altercation with a citizen, John McMullen, during which Officer Robinson verbally maltreated McMullen and physically maltreated McMullen in that he poked, choked, and/or punched him, displayed his weapon without lawful justification, and/or threatened to shoot McMullen.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

(Board Members Conlon, Foreman, and Fry dissent from the above finding of guilt, for they voted to find the Respondent not guilty of the Rule 8 charge.)

9. The Respondent, Police Officer Thomas A. Robinson, Star No. 16146, charged herein,

is **guilty** of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while

on or off duty,

in that:

<u>Count I</u>: On or about June 16, 2008, at approximately 1800 hours, in the vicinity of 9620 South Leavitt Street, Chicago, while off duty, Police Officer Thomas A. Robinson engaged in

South Leavitt Street, Chicago, while off duty, I once Officer Thomas A. Roomson engaged i

an unjustified verbal altercation with a citizen, John McMullen, during which Officer Robinson told Mr. McMullen to "shut the fuck up," and/or directed other profane language and demeaning remarks at Mr. McMullen, and/or argued with Mr. McMullen.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

(Board Members Conlon, Foreman, and Fry dissent from the above finding of guilt, for they voted to find the Respondent not guilty of the Rule 9, Count I charge.)

10. The Respondent, Police Officer Thomas A. Robinson, Star No. 16146, charged herein, is **guilty in part**, and not guilty in part, of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,

in that:

Count II: On or about June 16, 2008, at approximately 1800 hours, in the vicinity of 9620 South Leavitt Street, Chicago, while off duty, Police Officer Thomas A. Robinson, engaged in an unjustified physical altercation with a citizen, John McMullen, during which Officer Robinson poked, choked, and/or punched McMullen and/or displayed a weapon without lawful justification, and/or threatened to shoot McMullen.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

(Board Members Conlon, Foreman, and Fry dissent from the above finding of guilt, for they voted to find the Respondent not guilty of the Rule 9, Count II charge.)

11. The Respondent, Police Officer Thomas A. Robinson, Star No. 16146, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

<u>Count I</u>: On or about February 9, 2009, at 10 West 35th Street, Chicago, Police Officer Thomas A. Robinson provided the Independent Police Review Authority with a false statement regarding his knowledge and his actions/inactions during the incident which occurred at 9620 South Leavitt Street on June 16, 2008, when Officer Robinson claimed that John McMullen punched him and spit on him.

Credible evidence was given that Officer Robinson did not intentionally make a false statement to the Independent Police Review Authority (IPRA) on February 9, 2009, regarding the incident that occurred at 9620 S. Leavitt.

12. The Respondent, Police Officer Thomas A. Robinson, Star No. 16146, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

<u>Count II</u>: On or about February 9, 2009, at 10 West 35th Street, Chicago, Police Officer Thomas A. Robinson provided the Independent Police Review Authority with a false statement regarding his knowledge and his actions/inactions during the incident which occurred in the vicinity of 1200 South I90/94 on July 14, 2008, when Officer Robinson claimed that McMullen tailgated him and threatened to kick Robinson's car again.

Further credible evidence was presented that Officer Robinson did not intentionally make a false statement to IPRA regarding the incident that occurred on I 90/94 on July 14, 2008.

13. The Respondent, Police Officer Thomas A. Robinson, Star No. 16146, charged herein, is **not guilty** of violating, to wit:

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Rule 38: Unlawful or unnecessary use or display of a weapon,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

On or about June 16, 2008, at approximately 1800 hours, in the vicinity of 9620 South Leavitt Street, Chicago, Police Officer Thomas A. Robinson displayed a weapon to a citizen, John McMullen, without lawful justification or necessity.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

14. The Police Board has considered the facts and circumstances of the Respondent's conduct, the evidence presented in defense and mitigation, and the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A. The Board finds and determines that a suspension is the appropriate penalty in this case.

Robinson engaged in an unjustified altercation with John McMullen and maltreated him, and subsequently made remarks intended to intimidate a witness to the altercation. Nonetheless, the Board finds that discharging Robinson from the Chicago Police Department is not warranted. His conduct is mitigated by McMullen's own inappropriate behavior during the incident. Based on the totality of the circumstances, the Board finds that a suspension is a more fitting punishment on the facts of this particular case.

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes.

By a unanimous vote, the Board denies the Respondent's Motion to Dismiss the charges.

By a vote of 6 (Carney, Davis, Ballate, McKeever, Miller, Rodriguez) to 3 (Conlon, Foreman, Fry), the Board finds the Respondent guilty of violating Rule 2 (Count I), Rule 8, and Rule 9 (Counts I and II), in that the Respondent engaged in an unjustified verbal and physical altercation with John McMullen on June 16, 2008.

By a unanimous vote, the Board finds the Respondent not guilty of the parts of the Rule 2 (Count I), Rule 8, Rule 9 (Count II), and Rule 38 charges pertaining to displaying a weapon without lawful justification and threatening to shoot John McMullen on June 16, 2008.

By a unanimous vote, the Board finds the Respondent not guilty of violating Rule 2 (Count II).

By a unanimous vote, the Board finds the Respondent guilty of violating Rule 2 (Count III).

By a unanimous vote, the Board finds the Respondent not guilty of violating Rule 14 (Counts I and II).

As a result of the foregoing, the Police Board, by a vote of 6 (Carney, Davis, Conlon, Foreman, Fry, McKeever) to 3 (Ballate, Miller, Rodriguez), hereby determines that cause exists for suspending the Respondent from his position as a police officer with the Department of Police, and from the services of the City of Chicago, from August 18, 2012, to and including December 3, 2012.

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NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer

Thomas A. Robinson, Star No. 16146, as a result of having been found guilty of charges in

Police Board Case No. 12 PB 2815, be and hereby is suspended from his position as a police

officer with the Department of Police, and from the services of the City of Chicago, for a period

from August 18, 2012, to and including December 3, 2012.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 15th DAY

OF NOVEMBER, 2012.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ William F. Conlon

/s/ Ghian Foreman

/s/ Rita A. Fry

/s/ Susan L. McKeever

Attested by:

/s/ Max A. Caproni Executive Director

Police Board

DISSENT

We concur with the majority's findings regarding the Respondent's guilt. However, based on the serious nature of the Respondent's misconduct, we find that a longer suspension is a more appropriate penalty on the facts of this particular case.

/s/ Melissa M. Ballate

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

RECEIVED A COPY OF	
THE FOREGOING COMMUNICATION	
THIS DAY OF	_, 2012.
SUPERINTENDENT OF POLICE	

http://crystal1.chicagopolice.local/businessobjects/enterprise115/infoview/viewers/rpt/DHTMLViewer.aspx?skin=skin_default&s... 8/6/2012

BUREAU OF INTERNAL AFFAIRS RECORDS SECTION

3 August 2012

TO:

COMMANDING OFFICER UNIT 113-IPRA

FROM:

RECORDS SECTION

BUREAU OF INTERNAL AFFAIRS

SUBJECT:

PREVIOUS SUSTAINED DISCIPLINARY HISTORY OF:

ROBINSON THOMAS A._ 16146 004/166 NAME (LAST, FIRST M.I.) STAR UNIT

 $M_{\underline{}}$

SEX

RACE

EMPLOYEE#

REFERENCE:

COMPLAINT REGISTER #

1017419

THE PREVIOUS DISCIPLINARY RECORD OF THE SUBJECT HAS BEEN REQUESTED IN YOUR NAME BY:

> DEPUTY CHIEF ERIC MELLENBACH RANK NAME STAR

113/IPRA UNIT

RELATIVE TO A SUSTAINED FINDING IN THE INVESTIGATION OF THE ABOVE REFERENCED COMPLAINT REGISTER NUMBER.

THE RECORDS SECTION, BUREAU OF INTERNAL AFFAIRS,, DISCLOSES THE FOLLOWING DISCIPLINARY ACTION(S) ADMINISTERED TO THE SUBJECT ACCUSED, FOR THE PAST FIVE (5) YEARS.

VERIFIED/PREPARED BY:

P.A. CHRISTINA FABIAN#17699 FOR: COMMANDING OFFICER RECORDS SECTION BUREAU OF INTERNAL **AFFAIRS**

SPAR-SEE ATT'D CR-NONE



Chicago Police Department

Internal Affairs Division

SPAR HISTORY REPORT (Sustained Findings)

Employee# Position ROBINSON, THOMAS A 16146 004/166 POLICE OFFICER BLACK

History: Total No. SPAR's: 1

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Log#	Incident Date	Completed Date	Disciplinary Action	Transgression Type	Suspension Dates
528123	25-APR-2012	26-JUL-2012	1 DAY OFF	022 - FAILURE TO PERFORM ANY DUTY	23-JUL-2012 to 23-JUL-2012
				Oice	
For Offi CLEAR,	cial Police Purpos Personnel Suite: A	es Only! This informitutomated SPAR Appli	ation is confidential and shou	ld not be disseminated for reasons other than i 3-AUG-2012 10:47:05 Printed By : PCOK983	its intended purpose. 1 of 1