

APPENDIX 2
FACTUAL BACKGROUND DETAIL¹

A. Documentary Evidence

Plaintiff alleges that Defendant Granlund engaged in improper sexual contact with him on several occasions in the fall of 2010.² (Doc. 28 ¶ 12.) In his August 20, 2015, Declaration, Defendant Granlund denies all allegations against him. (Doc. 68 at 10-11.)

The record contains an "Official Inmate Grievance" addressed to "Ms. Lamas Warden's Office" on October 19, 2010. (Doc. 63-1 at 3.) In the grievance, Plaintiff expressed appreciation for Defendant Lamas's help and that of Defendant Granlund regarding a misconduct hearing and stated that he wanted to make Defendant Lamas "aware of what has been going on for some time now . . . it's now necessary . . . under Policy (DC-ADM 008)³ to let you . . . know that Mr. Granlund is to much

¹ To attempt a coherent presentation of the multiple internal DOC filings, responses to inmate requests/grievances and other relevant information is indented and italicized immediately following the summary of the request/grievance rather than being presented in chronological order. Where relevant, information from the Automated Inmate Grieving Tracking System summary chart ("Grievance Chart") (Doc. 60-5 at 2) is presented in the same way.

² Plaintiff testified that he created all documents at or about the time they are dated. (Doc. 83 at 12.)

³ Although DC-ADM 008 later addressed grievances dealing with allegations of sexual abuse and harassment (see www.cor.pa.gov/About%20Us/.../008%20Prison%20Rape%20Elimination%20Act.pdf), the record does not show what impact the policy had at the relevant time or if, in fact, it existed.

thuchy[sic]/feely with me at the coper [sic] and in his office when his secretary goes out to smoke." (Doc. 63-1 at 3.)

Plaintiff goes into greater detail and also asserts that "C/O Pice" saw sexual misconduct and told Plaintiff it was best just to request a move to a different unit and not tell about the conduct. (*Id.*) Although the document contains a signature attributed to the Facility Grievance Coordinator, Jeffrey Rackovan (who held that position at the relevant time) testified that he never received or signed the grievance and there is no other indicia that the grievance was received or reviewed by any official. (Doc. 81 at 15, 20.) Plaintiff testified that he addressed the grievance to Defendant Lamas because "I took her more than a supervisor, you know, because I would see her and her mother in the church. And I talked to her. She was very helpful to me . . . at the times where I needed her." (Doc. 83 at 13.) When asked whether he knew he was supposed to address a grievance to Defendant Lamas or the general grievance system, he responded "just the general grievance system" and added that he wanted it to go to her. (*Id.* at 14.)

No October 19, 2010, Grievance appears on the Grievance Chart. (Doc. 60-5 at 223.)

Plaintiff testified that he again complained to Defendant Lamas about Defendant Granlund's sexual misconduct with another Official Inmate Grievance dated October 26, 2010, and he specifically told her that Defendant Granlund, who was his unit

manager, was sexually touching him and he "had to do stuff for him in the office" and had "urges to watch him masturbate and stuff like that." (Doc. 83 at 18 (citing Doc. 63-1 at 4)⁴.) Plaintiff said he never got a response to this. (*Id.* (citing Doc. 63-1 at 19).) He said he asked Defendant Lamas about this while he was in the RHU and she responded that she could not respond to every grievance. (*Id.*)

No October 26, 2010, grievance appears on the Grievance Chart submitted by Defendants. (Doc. 60-5 at 2.)

Plaintiff alleges that he sent another Official Inmate Grievance to Mr. Walonen at OPR on November 8, 2010, regarding Defendant Granlund's sexual misconduct. (Doc. 83 at 19 (citing Doc. 63-1 at 5)⁵.) The document contains no legible verification of receipt and no evidence of record indicates Mr. Walonen received the document. Plaintiff testified that he sent this document to Mr. Walonen pursuant to DC-ADM 001. (Doc. 83 at 20.) When asked by his attorney why he addressed it to Mr. Walonen, Plaintiff responded:

They give you a book . . . in the jail. It's a handbook. If you read the book, . . . it gives you the status number of the policies and what you have to do to follow this to make everything right with the grievance

⁴ The reproduction of this document is largely illegible. (See Doc. 63-1 at 4.)

⁵ This document is only slightly more legible than the October 26, 2010, grievance. (See Doc. 63-1 at 5.)

process. I wasn't getting any responses back in Rockview.

So I had to take it a step further - people say you got to wait. I said, I can't wait anymore because if I wait anymore, the 15 days are going to be up and I have to start doing stuff on my own. So I would make my own paperwork and grievance on top, put appeal and send it straight to the head office.

(Doc. 83 at 20.)

No November 8, 2010, grievance appears on the Grievance Chart submitted by Defendants. (Doc. 60-5 at 2.)

In Official Inmate Grievance number 345827 dated December 3, 2010, addressed to Mr. Rackovan, Plaintiff described an incident where another inmate called Plaintiff out of his cell to get some coffee that the other inmate had put on the table at the cell door for him. (Doc. 60-6 at 10.) His grievance provides the following information: many other inmates were out walking on the unit at the time but Plaintiff was the only one called to go to the back room to see Defendant Granlund who asked Plaintiff whether he thought he was at a Holiday Inn; Plaintiff said he was only getting his coffee and questioned why Defendant Granlund only called him; and Defendant Granlund's response included the statement that "the Italians are just like the niggars." (*Id.*) Plaintiff added that he was "now writing my attorney and Camp Hill" and "I also feel this man somehow has it out for me and I don't know why." (*Id.*)

In the Official Inmate Grievance Initial Review Response to Grievance 345827 dated December 15, 2010, Mr. Rackovan said he reviewed the statement Plaintiff alleged Defendant Granlund had made and concluded "Mr. Granlund made no unprofessional or derogatory statement." (Doc. 60-6 at 11.) Explaining that loitering on the housing unit was not allowed and a violation of a rule in the DOC Inmate Handbook, Mr. Rackovan found no violation of policy occurred and the grievance was denied. (Id.) The Grievance Officer for this grievance was Major James D. Morris who signed the response on December 15, 2010. (Id.)

An Inmate's Request to Staff Member to "Mr. Marsh Deputy Superintendent" dated December 3, 2010, and date stamped "Program Review Committee" indicates that Plaintiff repeated what Defendant Granlund allegedly said earlier in the day, and he asked Mr. Marsh to take immediate action concerning Defendant Granlund's "racist committs" [sic]. (Doc. 63-1 at 8.) In the Request, Plaintiff also referred to a letter he mailed out to his attorney and Mr. Michael P. Wolanin at OPR "with copys [sic] of my grievance to Mr. Rackovan and to Ms. Lamas." (Id.)

The undated response states "You had a misconduct on this issue and filed a grievance. As we told you its [sic] being investigated." (Id.)

In Official Inmate Grievance number 346858 dated December 10, 2010, addressed to Mr. Rackovan, Plaintiff alleged that Defendant Granlund hit him in the mouth on December 6, 2010, and he was taken to medical as a result and given something for pain in his back and falling on the floor. (Doc. 60-6 at 12.) In

this grievance Plaintiff also said he had told the PD on A/C unit that his jaw hurt, he could not eat because of the pain, and he needed better pain medication for his back and the PD said Plaintiff would get help. (*Id.*) He added that he had not gotten the help promised and he was "in the box in a cold cell with no heat and in pain."⁶ (*Id.*) The grievance file-stamped receipt date is December 13, 2010. (*Id.*) Handwritten notations at the bottom say "Excessive Force" and "Capt Eaton 12/30." (*Id.*)

The Initial Review Response to Official Inmate Grievance number 346858 is dated January 3, 2011. (Doc. 60-6 at 13.) The response stated "[i]n accordance with DC-ADM 001, your allegation will be investigated by the Security Office and the results forwarded to the DOC Office of Professional Responsibility." (Id.) Defendant Eaton signed as the Grievance Officer. (Id.) Mr. Rackovan's initials appear just after the statement and the response indicates copies were sent to him and Defendant Eaton. (Id.)

The Grievance Chart provided by Defendants indicates the following: grievance number 346858 for excessive force was received on December 15, 2010; Disposition was "Grievance Denied"; and the Complete Date was January 3, 2015. (Doc. 60-5 at 2.)

In Plaintiff's Official Inmate Grievance dated December 15, 2010, and numbered 347374, Plaintiff again complained of Defendant Granlunds's December 6, 2010, conduct. (Doc. 60-6 at

⁶ Following his December 9, 2010, misconduct hearing, Plaintiff was confined to the RHU for a period of ten months as a result of the December 6, 2010, altercation with Defendant Granlund. (Doc. 28 ¶ 24.)

14.) The grievance file-stamped receipt date is December 18, 2010. (*Id.*) In this grievance, Plaintiff adds background information to the December 6, 2010, event:

I asked Mr. Granlund why did he lie in his write up he gave me on 12-3-2010. Granlund got mad and loud at me. I then told Granlund this is why he lost (2) good jobs. He then got more mad and got up and hit me in my mouth.

(*Id.*) Plaintiff added "my jaw hurts back hurts from the fall I took on the floor and sick call has not called me down and I put in (3) time." (*Id.*) Handwritten notations at the bottom say "Excessive Force" and "Capt Eaton 1/4." (*Id.*)

The Initial Review Response to Official Inmate Grievance number 347374 is dated January 6, 2011. (Doc. 60-6 at 15.) It stated "[i]n accordance with DC-ADM 001, your allegation will be investigated by the Security Office and the results forwarded to the DOC Office of Professional Responsibility" and Defendant Eaton again signed as the Grievance Officer. (Id.) Mr. Rackovan's initials appear just after the statement and the response indicates copies were sent to him and Defendant Eaton.

The Grievance Chart provided by Defendants indicates the following: grievance number 347374 for excessive force was received on December 20, 2010; Disposition was "Grievance Denied"; and the Complete Date was January 5, 2015. (Doc. 60-5 at 2.)

Plaintiff addressed "Inmate's Request to Staff Member" to Captain Eaton on January 7, 2011.⁷ (Doc. 63-1 at 13.) In this

⁷ The document is dated January 7, 2010, but Plaintiff testified that the date is incorrect and should read January 7,

request, Plaintiff reviewed a visit to his cell made by Defendants Eaton and Lamas on December 8, 2010, and stated that he specifically asked them to call the state police so he could file charges against Defendant Granlund for the December 6, 2010, assault but they indicated they would not do as he asked but Defendant Eaton gave him "a paper with Rule 113(b) to mail the DA on the matter the day I saw you at my hearing on 12/9/2010 and I did so but no one got back to me." (*Id.*) Plaintiff further stated that he was

now also requesting you to please call the state police so I can file my charges lawfully because Granlund is gay and at times I had to go up to his office and masterbait [sic] for him to let him watch. It was that or to the hole and being I'm in the hole I want everyone to know this for the record. Now please call the state police.

(*Id.*)

*In her undated response, Defendant Eaton told Plaintiff "you need to fill out Rule 113(b) paperwork and mail it to the DA @ Bellafonte PA 16823. The DA will decide which direction to take. I told you this on 1/10/11 in the R.H.U." (*Id.*)*

In a two-page letter dated January 7, 2010, (with a later-corrected date of January 7, 2011)⁸ addressed to James Barnacle, "Director, Officer" at "S-I-A-I, D.O.C.," in Camp Hill, Plaintiff

2011. (Doc. 83 at 152 (citing Doc. 63-1 at 13).) The Inmate Request does not indicate a receipt date but the Court notes that receipt is verified with Defendant Eaton's response.

⁸ See *supra* n.7.

indicates that the correspondence is "Re: relief all is exhausted." (Doc. 63-1 at 39-40.) The letter is date-stamped indicating that it was received by the Office of Special Investigations and Intelligence on January 10, 2011.

As you can review in my paper work with this letter my appeal was denied by Ms. Lamas and its ok because that comes with coverup at Rockview.⁹ Hoping it will help out with the lawsuit I'm filing on Mr. K. Granlund, Unit Manager/pscyh for assaulting me in his office on 12/6/2010.

In over (3) years I never got one writeup at Rockview or any prison I been at but the day I told Granlund to back off from coming on to me at my cell he told me he will make it hell for me. I'm now in a cold cell with no heat Granlund told nothing but lies in the writeup he gave me and now I'm in the hole with (1) year time for opening up my cell door to get my coffee. . . . All I ask of you is to look at my record because I don't do things like that and please help me out of the hell that Granlund put me in for not doing sex acts in his office as to beting off to let him see me do it. . . . My appeals are all exhausted. Please help me with some relief.

(R. 39-40.)

Records from the Office of Special Investigation and Intelligence ("OSII") Tracking System Summary indicate that on January 10, 2011, "the Centre County DA's Office referred correspondence from Inmate Thomas Moore . . . alleging abuse by staff. ~ Letter was sent to Stacy Parks Miller, DA, advising that

⁹ The record does not contain the referenced paperwork. (See Docs. 60, 63-1, 65, 68, 82, 89-1, 91-1, 95-1.)

Inmate Moore's allegations are currently being investigated and Inmate Moore will be advised of the outcome. x-Ref. 10-A-520 (ROC)."¹⁰ (Doc. 63-1 at 51.)

The OSII Summary also indicates that on January 10, 2011, "Inmate Moore alleges he received a misconduct report from UM Granlund for not having sex acts with him in his office. ~ Complaint faxed to Capt. Eaton to include with their pending abuse investigation. x-Ref. 10-A-520 (ROC)." (Doc. 63-1 at 51.)

In an undated document, Rockview Lieutenant R.L. Greene completed a Predication Report concerning case number 2010-A-520. (Doc. 68 at 3; see also 83 at 129.) He stated that the investigation was predicated on grievance number 346858 and subsequently a letter sent to the Office of Professional Responsibility by Plaintiff.¹¹ (*Id.*) He also stated that "[t]his grievance/complaint was written on December 10, 2010 alleging that staff member Kurt Granlund (U/M CB Unit) assaulted him in

¹⁰ Documents referenced in the OSII Tracking System Summary are not included in the record currently before the Court. (See Docs. 60, 63-1, 65, 68, 82, 89-1, 91-1, 95-1.)

¹¹ The only letter in the record to OPR from December 10, 2010, through January 10, 2011, is the January 7th letter date-stamped January 10, 2011. (Doc. 63-1 at 39-40.) This is presumably the source of the allegation noted in the OSII Tracking System Summary relating to "a misconduct report from UM Granlund for not having sex acts" which was faxed to Captain Eaton to include in the pending investigation. (Doc. 63-1 at 51.) However, because Lt. Greene does not mention the sexual conduct allegations set out in the letter in the Predication report (Doc. 68 at 3), the Court notes it is uncertain what letter Lt. Greene references.

the face with his right fist during an incident in the Unit Manager's office in Building CB on December 6, 2010--thus beginning said event." (*Id.*)

A Memorandum of Interview on case number 2010-A-520 dated January 10, 2011, indicates that CO III Greene and CO III Vance interviewed Plaintiff at 12:30 hours. (Doc. 68 at 4.) The Memorandum states that Plaintiff had a good recollection of the December 6, 2010, events and he provided a detailed verbal statement. (*Id.*)

Moore stated that on December 6, 2010 he patiently waited for Mr. Granlund (CB Unit Manager) to come on the unit for the day. He stated that at approx. 1045 hours, Mr. Granlund did report to the unit for the day and that he immediately followed Mr. Granlund to his office wishing to engage in conversation about a misconduct report that he received a few days prior. Mr. Granlund stated to . . . Moore "Not now . . . I'll talk to you later about this"!! . . . Moore further stated that at approx. 1530 hours, he finally met with Mr. Granlund in regards to the misconduct issue previously mentioned. He went on to state that the conversation began to heat up and that he got upset and began to verbally attack Mr. Granlund about his former position as Deputy at SCI Forest and telling him that he was a "has been"!! . . . Moore alleged that it was at that point that Mr. Granlund assaulted him while he was seated on a chair in his office by striking him in the face with his right fist. . . . Moore continued on by stating at this point he was on the floor and the following staff responded to the commotion in the U/M's office: COI's Anthony and Cecil, Counselor Jackson and the secretary Ms. McGarvey. Shortly thereafter, he stated that the SCIR Medical Dept responded and transported him to

medical via the medical car. At this point, Lt. Vance questioned . . . Moore as to whether there were any witnesses to this assault? . . . Moore stated that he and Mr. Granlund were the only ones present in the office at the time of the alleged assault. There were no further questions asked and the interview concluded at 1255 hours.

(*Id.*)

In an undated "Investigation Insert[,] Review of . . . Thomas Moore's Complaint written on 1-7-2011 and received by OSII on 1-10-2011" on case number 2010-A-520, Lt. Greene stated that the

investigation was originally predicated on a grievance (#346858) submitted to the Security Office at SCI Rockview and subsequently a letter sent to the Office of Professional Responsibility by Inmate Thomas Moore This grievance/complaint was written on December 10, 2010 alleging that staff member Kurt Granlund . . . assaulted him by striking him in the face with his right fist during an incident in the Unit Manager's office in Building CB on December 6, 2010--thus beginning said event.

While closing this investigation, Capt. Eaton (SCI Rockview Intelligence Captain) received a subsequent letter of complaint from GY 5490 Thomas Moore to OSII written on January 7, 2011 and received by the OSII on January 10th, 2011. This complaint was reviewed by Lt. Greene (Investigating Lieutenant). In this letter, . . . Moore complains about the misconduct hearing appeal process and further complains about Mr. K. Granlund (U/M CB Unit) in regards to the alleged CB unit on December 6th, 2010. Pursuant to ADM 001 and all reports as set forth during the investigation, these complaints are not warranted and this

investigation shall stand as written.¹²

(Doc. 68 at 5.)

Regarding the January 10, 2011, investigation interview, Plaintiff testified at the April 16, 2016, evidentiary hearing that he was not asked about the sexual assault at the interview, he was only asked about the physical assault. (Doc. 83 at 43.) In the course of questioning about the investigation at the evidentiary hearing, Plaintiff stated that he was never asked about the sexual assault and added that he "wasn't allowed to talk about the sexual assault." (*Id.*) When asked by his attorney who had told him he was not allowed to talk about it, he responded "Captain Eaton at the hearing." (*Id.*) At his March 5 2015, deposition, Plaintiff testified that he recalled the January 10, 2011, meeting with investigators including Lt. Vance and he briefly said something to Lt. Vance about the sexual incidents and Lt. Vance said "I don't want to hear about that." (Doc. 60-7 at 18.) In answer to the question at the evidentiary hearing of whether OPR (OSII) ever followed up on the sexual allegations, Plaintiff testified that nothing had been done and "they didn't get back to me," indicating that he never got any notification of what OPR (OSII) did with the investigation. (Doc. 83 at 44.)

¹² The record does not contain the document(s) to which this Memorandum refers.

In an Official Inmate Grievance number 349821 addressed to Mr. Rackovan dated January 10, 2011, and date-stamped January 11, 2011, Plaintiff requested help keeping Defendant Granlund away from him when he was out of the RHU. (Doc. 60-6 at 16.) He also stated "for the record" that

Mr. Granlund is gay and at times I had to go up to his office so he can watch me maserbait [sic]. I was told by Granlund if I tell anyone or don't do what he wants he will see to it that my life is hell at Rockview and put me in the hole and tell my family when they call Mr. Summers that I was having sex in the cell with a man and it's why I'm in the hole. I can not put everything on grievances because the C/O's don't give them out. How I'm now in the hole and I'm not that much in fear no more to let Rockview know all about Mr. Granlund/sickoh.

(*Id.*)

On January 11, 2011, Mr. Rackovan responded to the January 10, 2011, grievance number 349821 with a Grievance Rejection Form which stated that the grievance was being returned to Plaintiff because Plaintiff did not comply with DC-ADM 804 for three reasons: (1) "Grievances related to the following issues shall be handled according to procedures specified in the policies listed and shall not be reviewed by the Facility Grievance Coordinator: (a) DC-ADM 801 - Inmate Disciplinary and Restricted Housing Unit Procedures"; (2) "Grievances based upon different events shall be presented separately"; and (3) "The grievance was not submitted within fifteen (15) working days after the events upon which claims are based." (Doc. 60-6 at 17.)

In Official Inmate Grievance number 354666 dated February 14, 2011, date-stamped February 16, 2011, and addressed to Mr. Rackovan, Plaintiff stated that he was "in need of one on one

help with a psy that can help me.” (Doc. 60-6 at 16.) Plaintiff further explained

I filed my grievance and a letter to Ms. Lamas on 10/26/2010 telling her how I was being sexually abused by Mr. Granlund on C/B unit in his office as I was forced by threats to let him masterbait me and then myself. I never got nothing back from Lamas asking her to put a stop to Granlund. I now ask you to help me with a PSY that I can see as one on one and not at cell door.

(*Id.*)

Plaintiff received a response to Grievance number 354666 on March 1, 2011. (Doc. 60-6 at 21.) The Initial Inmate Grievance Initial Review Response was signed by Grievance Officer Robert Marsh and stated that the allegations regarding UM Granlund were addressed in grievance number 349821, the psychology/psychiatry department visits the RHY five times a week, absent a special need Plaintiff would be interviewed in his cell, and there was no need to change his PSS assignment. (Id.)

In Official Inmate Grievance number 355506 dated February 18, 2011, date-stamped February 23, 2011, and addressed to Mr. Rackovan, Plaintiff requested that either Mr. Rackovan or Ms. Lamas “tell C/O’s Pekrs and C/O Hagg to let me have my food. At 12 pm today on 2/18/2011 C/O Hagg and Fisher would not give me my food.” (Doc. 60-6 at 22.) He added that CO Pekrs had done the same thing on January 2, 2011, and another CO had told him “all this coming from Mr. Granlund.” (Doc. 60-6 at 22.)

Grievance number 355506 was denied with the Official Inmate Grievance Initial Review Response signed by CO3 G. Dyke on March 8, 2011. (Doc. 60-6 at 23.) The summary of findings indicated that

when Officers Hagg, Fisher, and Perks were interviewed, all stated Plaintiff was given his meals and review of all records reflected the same. (Id.) The response noted that Plaintiff failed to name the CO who told him about Mr. Granlund's alleged directive. (Id.) The response contained the statement: delusional and should be referred to the Psychology staff. (Id.)

In Official Inmate Grievance number 355976 dated February 23, 2011, date-stamped February 23, 2011, and addressed to Mr. Rackovan, Plaintiff complained about not getting food from COs Hall, Fisher, and Perks at noon on February 19, 2011. (Doc. 60-6 at 24.) He said he hit his cell for help to eat after which COs Hall, Fisher, and Perks poured chemical cleaner at his cell door, moved it back into his cell, CO Hall said "now try that out," and the three covered the door. (Id.) Plaintiff added that he became sick and threw up by 1:30 p.m., he fell on the floor, and at 2 p.m. CO Hook came in, saw him on the floor and called Lt. Nixon who sent him to medical. (Id.) At the beginning of his statement, Plaintiff asks to see the cameras for proof of his allegations. (Id.) Mr. Rackovan received the form, signed it on March 1, 2011, and made two notations: "Problem w/staff" and "Lt. Dyke 3/22." (Id.)

*A Grievance Withdrawn document related to grievance number 355976 dated March 21, 2011, contains the following typewritten statement:
. (Doc. 60-6 at 25.) The form was signed by Lt. Dyke and Plaintiff. (Id.) It indicates copies were sent to .*

The Grievance Chart provided by Defendants

indicates the following: grievance number 355976 for problems with staff was received on March 1, 2011; the "Disposition" and "Complete" columns are blank as are all others except the "Initial" column containing the word "yes." (Doc. 60-5 at 2.)

Plaintiff testified at the April 29, 2016, evidentiary hearing that he did not sign the form though Lt. Dyke requested that he do so.¹³ (Doc. 83 at 60-62.) Plaintiff said that Lt. Dyke became upset with Plaintiff, said he did not need Plaintiff's signature, he would take care of it himself, he took Plaintiff's blanket, and then he walked out. (Id.) When asked about Lt. Dyke's testimony that Plaintiff had voluntarily withdrawn the grievance, he said he "absolutely" did not sign the grievance. (Id. at 61.)

Lt. Dyke testified that in general if he was assigned a grievance by Mr. Rackovan, he would ask an inmate, after discussion and in the course of the investigation report, if he would be willing to withdraw the grievance and, if so, that's what would generate the withdrawal form. (Doc. 81 at 53.) Lt. Dyke had no recollection of why Plaintiff withdrew his grievance but said he did not pressure Plaintiff to do so. (Id. at 53-55.)

A March 2, 2011, OSII Tracking System Summary indicates the following: "Centre County DA's office referred correspondence from Inmate Moore alleging abuse by staff. ~ Complaint filed without action as his allegations are currently being investigated and the DA has been notified of this. X-Ref: 10-A-520 (ROC)." (Doc. 63-1 at 51.)

¹³ Plaintiff's testimony on the matter was somewhat convoluted but he consistently maintained he had no intention of withdrawing the grievance concerning the February 19, 2011, chemical incident. (See, e.g., Doc. 83 at 60-63.)

In Official Inmate Grievance number 356701 dated March 3, 2011, date-stamped March 7, 2011, and addressed to Mr. Rackovan, Plaintiff stated that he had been seeking medical help from Dr. Symons for over two months and his statement referenced the alleged actions of COs Hall, Fisher, and Perks of February 19, 2011. (Doc. 60-6 at 26.)

Grievance number 356701 was denied with the Official Inmate Grievance Initial Review Response signed by W. Williams, RN, CHCA, on March 28, 2011, which stated that Plaintiff was seen and appropriately treated for multiple complaints between January 4, 2011, and March 3, 2011, and he had an appointment scheduled with Dr. Symons in the near future. (Doc. 60-6 at 27.)

In Official Inmate Grievance number 359874 dated March 9, 2011, date-stamped March 10, 2011, and addressed to Mr. Rackovan, Plaintiff stated that he was seeking to review the video camera on B-1-18 cell in the RHU for February 19, 2011, and February 20, 2011, at 12 p.m. to show proof that the COs Hall, Perks, and Fisher did not give him his food. (Doc. 60-6 at 30.) Plaintiff added that he "needed action in this matter. I'm far from delusional or crazy overall the camera don't lie." (*Id.*)

In a Grievance Rejection Form dated April 1, 2011, Mr. Rackovan rejected grievance number 359874 in which he sought to review the video camera because "[t]he grievance does not indicate that you were personally affected by a Department or facility action or policy," and "[t]he grievance was not submitted within fifteen (15) working days after the events upon which claims are based." (Doc. 60-6 at 31.) The response added "this is not a grievance. If anything, it

appears to be a request for you or staff to review camera footage. What is this in regards to?" (Id.)

On the Inmate's Request to Staff Member dated March 20, 2011, and addressed to Ms. Shirley Moore, Secretary, D.O.C. Camp Hill, the date-stamp is illegible except for the year 2011. (Doc. 63-1 at 22.) Plaintiff states he had not been able to get help at SCI-Rockview and specifically complains of COs Hall, Perks, and Fisher taking his food trays, mopping chemicals into his cell "in violation of DC-ADM 001 and DC-Adm 008 for the sexual acts I was forced to do for Unit Manager Granlund that then also hit me in my mouth." (Id.)

Although this document was apparently received based on the date stamp, the Court could not find a correlated response.

In Official Inmate Grievance number 359868 dated March 25, 2011, date-stamped March 28, 2011, and addressed to Mr. Rackovan, Plaintiff stated that (1) he had filed a grievance on or about February 25, 2011 regarding the February 19, 2011, allegations concerning COs Hall, Perks, and Fisher and (2) Mr. Horton never got back to him concerning his DC-135A form request concerning the February 19th matter and nothing was done to the officers involved. (Doc. 60-6 at 28.) Plaintiff added that he was filing a lawsuit and wanted all of his copies sent back to him. (Id.)

In the Grievance Rejection Form dated April 1, 2011, Mr. Rackovan rejected grievance number 359868, because "[t]he grievance does not indicate that you were personally affected by a Department or facility action or policy," and the issues presented were reviewed and addressed previously

in grievance numbers 355506 and 355976.¹⁴ (Doc. 60-6 at 29.) Mr. Rackovan added that these two identified previously filed grievances were answered, Plaintiff was sent a copy of the responses, and Plaintiff had the opportunity to appeal if he was dissatisfied. (Id.) Plaintiff notes on the bottom of the rejection form that he appealed to Ms. Lamas but she never got back to him and he mailed letters and appeals to Camp Hill on April 1, 2011. (Id.)

In the Inmate's Request to Staff Member dated March 30, 2011, date-stamped March 31, 2011, and addressed to Defendant Lamas, Plaintiff stated that Defendant Lamas had told him about two weeks earlier that she would look into his allegations about the food trays and chemical incident, that he had asked Deputy Horton to see it all on the video camera as proof, that he sent Deputy Horton a request and filed a grievance about "not doing nothing to the officers" and not getting back to him about his request as per DOC policy. (Doc. 63-1 at 26.) Plaintiff stated that what the officers did was "clearly in violation of DC-ADM 001." (Id.)

"What would be done is internal" was the apparent response at the bottom of the page. (Id.)

In Official Inmate Grievance number 360139 dated March 30, 2011, date-stamped April 4, 2011, and addressed to Mr. Rackovan, Plaintiff stated that he was gay and was seeking equal protection rights under the Fourteenth Amendment. (Doc. 60-6 at 32.) Plaintiff's statement

¹⁴ The grievances referenced are the original grievances complaining of food and chemical matters of February 18th and 19th (Doc. 60-6 at 22, 24.)

reiterated complaints about not getting food trays on February 18th and 19th, the chemical incident of February 19th, and nothing being done by Defendant Lamas or anyone else. (*Id.*) Plaintiff added that "the state, Ms. Lamas and the officers and Mr. Granlund needs to pay me \$2-million-dollars. See DC-ADM 001." (*Id.*) At the top of the page is the notation "Violation of (DC-ADM 001)." (*Id.*)

In a Grievance Rejection Form dated April 4, 2011, Mr. Rackovan rejected grievance number 360139 in which Plaintiff sought monetary relief for alleged wrongdoing, Mr. Rackovan indicated that the issues presented in the grievance were reviewed and addressed previously in grievance number 355976 dated March 1, 2011.¹⁵ (Doc. 60-6 at 33.)

In Inmate's Request to Staff Member dated April 1, 2011, date-stamped March 31, 2011, and addressed to Defendant Eaton, Plaintiff stated that he was requesting her, as he had requested Defendant Lamas, to move him back to the AC unit because he feared CO Hall who would not give him grievance forms or covers in the cold cell. (Doc. 63-1 at 28.) He also asked Defendant Eaton to please get back to him regarding his request "under D.O.C. rules of this DC - 135A form because you or Lt. Vanes has not got back to me before."¹⁶ (*Id.*)

¹⁵ Grievance number 355976 was dated February 23, 2011, and complained of the February 19, 2011, chemical incident following food tray deprivation (Doc. 60-6 at 24) for which a Grievance Withdrawn form dated March 21, 2011, indicated that Plaintiff elected to withdraw the grievance (Doc. 60-6 at 25).

¹⁶ Form DC-135A is the Inmate's Request to Staff Member form.

The response stated the following: "I notified the RHU of your concerns. I am still looking into your claims against COI Hall but see no reason to move you at this time." (Id.)

An April 4, 2011, OSII Tracking System Summary entry indicates that "Inmate Moore claims staff is not feeding him, staff has poured chemicals under his door and that he fell out on the floor and no one helped him or called medical (grievance 355506 - denied, grievance 355976 - withdrawn). ~ Inmate advised his allegations are being investigated and he will be advised of the outcome. X-Ref: 11-A-134 (ROC)." (Doc. 63-1 at 51.)

In Official Inmate Grievance number 362304 dated April 18, 2011, date-stamped April 20, 2011, and addressed to Mr. Rackovan, Plaintiff stated that he was seeking medical care pursuant to DC-ADM 001 and wanted to see an outside doctor due to injuries which he apparently related to the February 19th incident. (Doc. 60-6 at 34.)

The April 26, 2011, Initial Review Response to grievance 362304 signed by W. Williams, RN CHCA, indicates that there was no reason to believe Plaintiff was treated inappropriately, and the grievance was without merit and denied. (Doc. 60-6 at 35.)

On the unnumbered Official Inmate Grievance form dated April 28, 2011, date-stamped as received on May 3, 2011, and addressed to Defendant Lamas, Plaintiff reviewed and/or referred to several previous allegations and stated that he needed help "not to run out of time" to file his 1983 and to get out of his cell for one hour a day. (Doc. 63-1 at 32.)

No response to this request is found in the record.

On Official Inmate Grievance number 365677 dated May 17, 2011, date-stamped May 19, 2011, and addressed to Mr. Rackovan, Plaintiff again stated that he was in need of medical care because of the February 19th assault by COs Hall, Fisher, and Perks. (Doc. 60-6 at 36.) Plaintiff also said when he was taken to medical, he was told he had suffered a concussion, and he was denied an outside MRI in violation of DC-ADM 804 and the assault was in violation of DC-ADM 001. (*Id.*)

The Initial Review Response dated May 17, 2011, denied grievance number 365677. (Doc. 60-6 at 37.) Signed by W. Ted Williams, CHCA, the response stated that Plaintiff's medical records reveal a different version of events related to the claimed injury related to the alleged February 19th chemical incident. (Id.)

You were seen on 2/19/11 by a nurse and complained of chest pain from officers throwing bleach under your door. No mention was made at that time of passing out and hitting your head. . . . You have had very conflicting versions of events in regards to this issue. You have been seen many times for these complaints and have rarely complained of headaches. An MRI has not been indicated If there was an indication for it, you would be ordered one. I have no reason to believe you have been treated inappropriately in regards to this matter.

(Id.)

In Inmate's Request to Staff Member dated June 30, 2011, and addressed to Defendant Eaton, Plaintiff stated that she had come to

see him at the hospital on June 9, 2011, explaining

you told me not to talk to the Dr. and anyone at the hospital about how I was also sexually abused by UM Granlund. You see on 10/26/10 I even filed a grievance to Ms. Warden Lamas about how Granlund would force me to come up to his office at times so he can masterbait me. I did it only in fear because Granlund told me he has a good friend at the State Parole Board that will stop me from going home on parole so in fear I did what Granlund wanted. Ms. Lamas never got back to me on my grievance back then and no one likes to get in to the matter much at Rockview when I write them. You said you will take care of the matter as soon as I get back to Rockview and I now request you do so because I will also soon write the newspaper of the matter.

(Doc. 63-1 at 33.)

Defendant Eaton responded: "All of your allegations either were or are being addressed." (Id.)

In Official Inmate Grievance number 371781 dated June 30, 2011, date-stamped July 1, 2011, and addressed to Mr. Rackovan, Plaintiff stated that he was asking Rockview for an investigation against UM Granlund for sexual abuse. (Doc. 60-6 at 38.) Plaintiff noted that he filed a grievance on October 26, 2010, to Ms. Lamas regarding masturbation incidents and she never got back to him. (Id.) Plaintiff also stated that some of the grievances related to the December 6, 2010, incident "never got back to me as Rockview's response on the matter." (Id.) He then asked to be sent "copies of responses on the matters above." (Id.) Plaintiff added that he was contacting OPR on the matter. (Id.)

On July 6, 2011, Mr. Rackovan completed a

Grievance Rejection Form indicating that grievance number 371781 was being returned because "[t]he grievance does not indicate that you were personally affected by a Department or facility action or policy," and "[t]he grievance was not submitted within fifteen (15) working days after the events upon which claims are based." (Doc. 60-6 at 39.) In a note at the bottom of the page, Mr. Rackovan stated "[i]f you want an investigation, contact the Security Office." (Id.)

In a letter dated July 4, 2011, and received by OSII on July 7, 2011, Plaintiff repeated his allegations about the December 6, 2010, physical assault by Defendant Granlund and the October 2010 sexual assault. (Doc. 63-1 at 42-43.) He said he had filed a grievance about the sexual assault to Defendant Lamas but she did not get back to him and neither Defendant Lamas nor Defendant Eaton called the state police about the physical assault when he asked them to do so. (Doc. 63-1 at 43.) Plaintiff also said

[s]ome time pass by and someone told me about OPR so I mailed you but got nothing back because now I feel that the mailroom is not giving me all my mail I don't know. . . . I now ask of you at OPR what will you now do in this matter? Because all Rockview did is overlook it at best.

I will await your response on this matter and I hope you will please take some action on my behalf this time.

(Doc. 63-1 at 43.)

In Official Inmate Grievance number 372264 dated July 6, 2011, date-stamped July 8, 2011, and addressed to Mr. Rackovan, Plaintiff stated Defendant Eaton had come to the hospital on June 9, 2011, and

told him to stop talking to the doctors about Defendant Granlund's sexual abuse and she would investigate the matter when Plaintiff got back to Rockview.¹⁷ (Doc. 60-6 at 40.) Plaintiff further explained

when I get back to Rockview, I mailed Ms. Cap. L. Eaton a request form on the matter but she has not got back to me. Moreover when I was assaulted by Granlund on 12/6/10 about 30 days pass by and Mr. Lt. Vanes saw me and took a statement for me I also stated to Lt. Vanes how UM Granlund would force me to let him masterbait [sic] me and so on. I have asked Lt. Vanes for a copy of the statement but I never got one. Will Granlund get away with this?

(Doc. 60-6 at 40.)

Mr. Rackovan provided an Initial Review Response to grievance number 372264 on July 11, 2011, indicating that the grievance was denied. (Doc. 60-6 at 41.) He stated that

Captain Eaton did go to the outside hospital to tell you to stop telling non-Rockview staff your allegations regarding Mr. Granlund. Those allegations have been addressed through appropriate DC-ADM 001 and 804 procedures. The request you sent to Captain Eaton regarding your second allegation was answered by her and sent to you on June 30, 2011. Both of your allegations have now been investigated by the Security Office and reviewed by OSII.

(*Id.*)

¹⁷ Nittany Valley Hospital records show that Plaintiff was admitted on June 5, 2011, where he had a cardiac evaluation, thyroid testing, and treatment for chronic back pain. (Doc. 63-1 at 69.) Records show that Plaintiff complained to nursing staff about some past sexual abuses and a psychiatry consult was placed. (*Id.*) The provider noted, however, that Plaintiff clinically improved and psychiatry care was available at Rockview so care could be continued there. (*Id.*)

The OSII Tracking System contains an entry dated July 7, 2011. (Doc. 63-1 at 51.) "Inmate Moore alleges he was assaulted by UM Granlund. ~ Letter sent to inmate advising him his allegations were investigated and unsubstantiated. X-ref: 2010-A-520 (ROC)." (*Id.*)

The OSII Tracking System contains an entry dated August 17, 2011. (Doc. 63-1 at 51.) "Inmate Moore alleges abuse by UM Granlund. ~ Complaint filed without action; his allegations were previously investigated and he was advised of the outcome. X-Ref: 2010-A-520 (ROC)." (*Id.*)

In Official Inmate Grievance number 391365 dated November 30, 2011, date-stamped December 1, 2011, and addressed to Mr. Rackovan, Plaintiff stated that he was in fear for his life because he was seeing CO Perks, one of the officers who allegedly assaulted him in the RHU on February 19, 2011, on the A/C Unit and he wanted the three officers involved in that incident to be kept away from him until he left Rockview. (Doc. 60-6 at 44.)

The Initial Grievance Response to grievance number 391365, signed by the Unit Manager and dated December 23, 2011, stated "Mr. Moore you were transferred to SCI-Albion on December 6, 2011. Therefore, your concerns about staff have been resolved and this grievance is denied." (Doc. 60-6 at 45.)

The OSII Tracking System Summary contains an entry dated December 5, 2011. (Doc. 63-1 at 51.) "Inmate Moore requests that OSII inform Supt. Lamas to keep certain officers away from him. He also requests a transfer. ~ Complaint filed without action as the

inmate has since been transferred to SCI Albion. (ROC).” (*Id.*)

The OSII Tracking System Summary contains a final entry of record dated December 28, 2011. (Doc. 63-1 at 51.) “Inmate Moore alleges SCI Rockview failed to assist him with retrieving his legal work from another inmate prior to his transfer. In addition, he alleges he “fed Rule 60(b)” was cut up and an officer told him that is what happens for filing paperwork. ~ Complaint forwarded to Supt. Lamas & Supt. Harlow for review. (ALB).” (*Id.*)

B. Hearing and Deposition Testimony

Jeffrey Rackovan, the Rockview Grievance Coordinator at the relevant time, was asked whether he had “seen any evidence whatsoever that the Security Office did an investigation of the sexual allegations in the case” and he answered that he had not. (Doc. 81 at 31.) He later confirmed that he had not seen any evidence that OSII did an investigation of the sexual allegations. (Doc. 81 at 32.)

Mr. Kertes testified that OSII was aware that Plaintiff was alleging sexual abuse at Rockview. (Doc. 83 at 98.) He also confirmed that Plaintiff had written OSII about physical abuse with Granlund and the alleged dumping of chemicals. (Doc. 83 at 109.)

At her deposition held on November 21, 2014, Defendant Eaton, SCI-Rockview’s intelligence captain, testified that she did not know when or under what circumstances she learned that Plaintiff alleged that Defendant Granlund had sexual contact with him. (*See, e.g.,*

Doc. 63-1 at 78.) She also indicated that she did not remember whether she ever heard about or knew of a sexual assault of Plaintiff and did not remember if she had ever received "a report, a written report of any kind that alleged that Moore had had sexual contact with Granlund." (*Id.* at 79.) Defendant Eaton clarified that if an inmate made an allegation about improper sexual conduct on the part of a staff member, the inmate would be interviewed but she had no recollection of interviewing Plaintiff or Defendant Granlund. (*Id.* at 81.)

Plaintiff's counsel asked about a June 30, 2011, response to Inmate's Request to Staff Member dated June 30, 2011, in which Plaintiff reiterated allegations of sexual misconduct by Defendant Granlund, referenced Defendant Eaton's statement that she would look into the matter, and asked Defendant Eaton to do so, and Defendant Eaton responded: "All of your allegations either were or are being addressed" (Doc. 63-1 at 33). (Doc. 63-1 at 83.) Defendant Eaton said she would have referenced the security office log for her response but she did not remember what was done to address the allegations of sexual abuse. (*Id.*) She also confirmed that at the time she wrote her response "it looks like" she would have been familiar with Plaintiff's allegations of being sexually abused and she believed at the time that the allegations were being or had been addressed but she had no idea at the time of her deposition how they had been addressed. (*Id.* at 84-86.)

At her January 16, 2015, deposition, Defendant Lamas said that the mechanism in place in 2010 was that receipt of an allegation of sexual assault "would involve the security office with oversight by OSII." (Doc. 63-1 at 55.) She testified that her office would have received something concerning Plaintiff's allegations of sexual misconduct by Defendant Granlund "at some point" based on the documents she had reviewed. (*Id.*) Defendant Lamas agreed that Plaintiff's January 2011 letter received by OSII included allegations of Defendant Granlund's sexual misconduct and, when asked whether anyone at DOC investigated the sexual allegations, she responded that "they investigated the letter, which is inclusive of that." (Doc. 63-1 at 57.) When again asked specifically whether she could point to "any document in DOC's possession that indicate . . . that anyone at DOC investigated the sexual allegations that Moore raised against Granlund, Defendant Lamas stated "I can point to the close of the investigation report." (*Id.*) Defendant Lamas then confirmed that she could not point to any interviews, contacts, notes of contacts, or any other records that indicated that DOC investigated the sexual allegations. (Doc. 63-1 at 58.)

Defendant Lamas indicated DOC "closed out the investigation of the incident date of December 6, 2010" in March, about two months after OSII received Plaintiff's letter on January 10, 2011. (Doc. 63-1 at 56, 58.) She also said the "case was closed according to the tracking system on January 31st, 2011." (*Id.* at 59.) Defendant Lamas

was asked to take some time to review an OSII file to see if anything indicated OSII investigated sexual abuse. (Doc. 63-1 at 63.) After further review of documents, Defendant Lamas referenced "a letter of January 31st from Director Barnacle to DA Miller . . . [which] states that it had yet to be completed. . . . And then, again, it goes on the full letter. And it states that then the documents were closed on . . . 3/15. So in my interpretation, it means they investigated . . . the entire letter." (*Id.* at 65.)