



## NOTICE OF FORMAL COMPLAINT

ICMS #: 2021-1170

November 29, 2021

**Complaint:** The complainant alleges:

### **“Summary of Complaint**

Austin Police broke open the door of a closed-for-renovation non-profit office and seized the non-profit’s entire security footage recording apparatus, including weeks of confidential video recordings, instead of simply emailing a subpoena for the relevant two hours and five minutes of footage to the organization’s Executive Director.

In other words, Austin Police sent five armed officers in at least four separate city-owned vehicles to raid a non-profit for evidence that could have been collected faster, cheaper, and more precisely via a proper email.

This intimidating show of force targeted at the [REDACTED] has further damaged Austin Police’s already shaky relationship with the immigrant community. And it belies Austin Police claims about understaffing.

Most troubling of all, Austin Police appear to have no clue why their decision to dramatically bust open the door of an immigrant workers’ rights and legal services non-profit was so problematic. Supervisors at the scene rudely dismissed attorneys who pleaded with Austin Police to display some respect and compassion for the community that [REDACTED] serves.

Finally, Austin Police needlessly traumatized and detained two of the non-profit’s administrative employees who were packing boxes and removing wall fixtures inside the closed offices when armed officers broke into the building.

### **The evidence sought was subject to confidentiality rules**

Austin Police sought video footage of an alleged attempted assault that occurred in the non-profit’s parking lot on [REDACTED]. The cameras record everyone who enters and exits the building. The video footage—which could show the organization’s legal services clients entering and exiting the building—is subject to important confidentiality and privacy restrictions.

[REDACTED] provides legal services to immigrant working families. It is, in other words, a law firm. The attorneys and staff who work for the non-profit must follow ethical and statutory rules regarding the confidentiality of information related to legal representation.



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The Texas Disciplinary Rules for Professional Conduct of attorneys broadly and clearly define the types of information that attorneys cannot release without the client's consent or a court order:

**Confidential information includes both privileged information and unprivileged client information.** Privileged information refers to the information of a client protected by the lawyer-client privilege. Unprivileged client information means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

The attorneys at the [REDACTED] could lose their law licenses if they simply handed Austin Police confidential information about their legal clients. This information can only be released with the consent of the client or under a court order.

### What should have happened

The alleged attempted assault occurred on [REDACTED].

A subpoena for two hours and five minutes of the non-profit's video footage was obtained on [REDACTED]. The subpoena should have been emailed on [REDACTED] to [REDACTED] Executive Director [REDACTED] with an electronic return acknowledgement requested.

The Texas Code of Criminal Procedure (art. 24.04(a)) is clear: A subpoena is served by:

- (1) reading the subpoena in the hearing of the witness;
- (2) delivering a copy of the subpoena to the witness;
- (3) electronically transmitting a copy of the subpoena, acknowledgment of receipt requested, to the last known electronic address of the witness; or
- (4) mailing a copy of the subpoena by certified mail, return receipt requested, to the last known address of the witness

Next, the officer who emailed the subpoena to the organization's Executive Director should have filed a return of service documenting that he properly served the subpoena. Again, the Code of Criminal Procedure (art. 24.04(b)) is quite clear:

The officer having the subpoena shall make due return thereof, showing the time and manner of service, if served under Subsection (a)(1) or (2) of this



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article, the acknowledgment of receipt, if served under Subsection (a)(3) of this article, or the return receipt, if served under Subsection (a)(4) of this article. If the subpoena is not served, the officer shall show in his return the cause of his failure to serve it.

Had Austin Police served the subpoena on [REDACTED], organization attorneys would have pulled the footage, reviewed it for attorney-client privilege, and turned over the responsive information to Austin Police by [REDACTED].

Instead, Austin Police waited until [REDACTED] to conduct a raid and seize an unknown number of days of confidential footage stored on the recording device's hard drives.

Ironically, the [REDACTED] footage sought by Austin Police was likely automatically recorded-over when it was 21 days old on [REDACTED]. This was three days AFTER Austin Police would have obtained the footage had they served the subpoena and ten days BEFORE they raided the non-profit.

### **List of Complaints**

Austin Police obtained a subpoena for two hours and five minutes of a non-profit's private video footage but then failed to even attempt to serve the subpoena.

Austin Police either do not know or do not care how to properly serve a subpoena. Texas Code of Criminal Procedure 24.04(a) states that a subpoena can be hand-delivered, read aloud, emailed with a return acknowledgement, or mailed certified mail.

Austin Police failed to prepare a return of service as required by Texas Code of Criminal Procedure 24.04(b).

Austin Police misled non-profit staff about the organization's legal obligations regarding the department's investigation of an alleged attempted assault that occurred in the parking lot.

Austin Police do not understand or purposely misrepresented the differences between a search warrant that is signed by a Judge and a Grand Jury subpoena that is signed by an Assistant District Attorney.

Austin Police said they would come in person to serve the subpoena on [REDACTED] and [REDACTED] but to [REDACTED] knowledge failed to show up both days.

Austin Police misrepresented the status of the subpoena to Austin Municipal Court Judge [REDACTED] and obtained a search warrant from her under the false pretense that a subpoena had been served.



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Austin Police wasted city resources when they sent five armed officers in at least four separate city-owned vehicles to execute a search warrant instead of simply emailing a subpoena.

Austin Police at the scene expressed contempt for immigrant communities' anxiety regarding law enforcement. The officers' statements directly contravene the department's stated values about equity, cultural competency, and community engagement.

Austin Police escalated the confrontation with [REDACTED] attorneys in the parking lot by shamming that two women attorneys were a threat. By way of example, one officer slowly circled an attorney's minivan while she argued with police supervisors at the scene. He peered intently in the open windows as if contraband were hidden among the car seats and kid detritus. By way of another example, officers hassled the second attorney when she tried to park her car in the organization's parking lot.

Austin Police escalated the confrontation by preposterously and falsely accusing a non-profit employee—who was removing bathroom fixtures with a drill—of tampering with evidence.

Austin Police damaged the non-profit's front door when they broke in to conduct the raid.

Austin Police left the non-profit without a functional security system when they seized the entire DVR.

Austin Police inappropriately profiled a non-profit employee inside the building. The first words they spoke to the employee were "Do you speak English?"

Austin Police failed to wear face masks even through there were visible signs calling for masking and the two staff people inside the building were appropriately masked.

Austin Police needlessly drew their weapons after entering the building. At every stage, they escalated instead of de-escalating.

Austin Police improperly continued to search the non-profit's building even after seizing the security footage recorder authorized under Judge [REDACTED] search warrant.

Even after seizing the evidence authorized by the search warrant and even though non-profit staff had unlocked each room that they were requested, Austin Police broke into an additional locked room, which contained attorney-client privileged legal files in a filing cabinet.



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Austin Police escalated the encounter with non-profit staff inside the building by refusing to allow staff to observe while Austin Police searched the office which contained attorney-client privileged files.

### Timeline of events leading up to execution of the search warrant

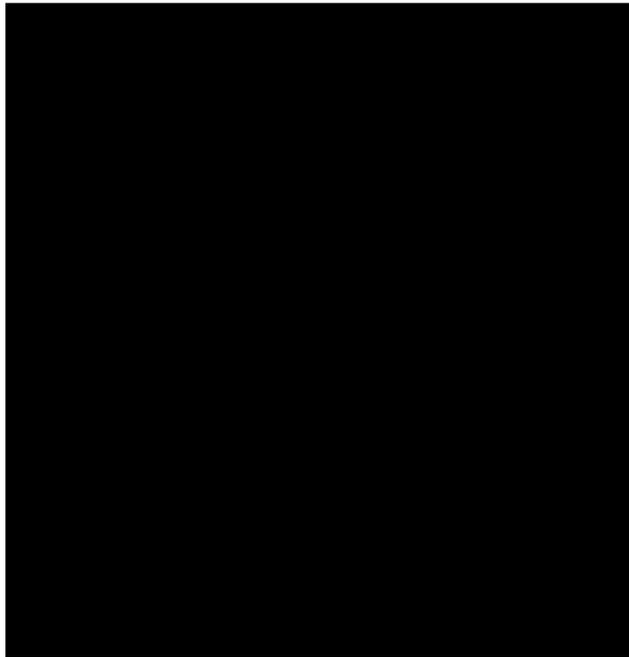
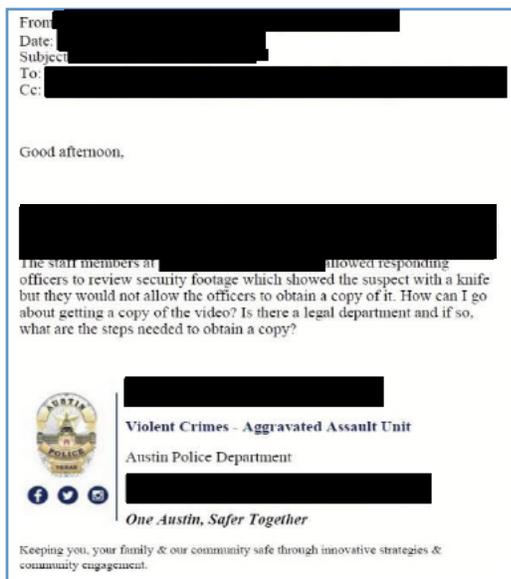
[REDACTED]

Austin police responded to a call for service regarding an alleged attempted assault that had occurred near the [REDACTED] parking lot.

[REDACTED]

Austin Police emailed the [REDACTED] Communications Director and the general-use "[REDACTED]" email account and asked for advice on how to obtain the non-profit's security footage. This was after Austin Police were already informed on the day of the alleged attempted assault that non-attorney non-profit staff were not authorized to decide when or how to release confidential information.

Austin Police must have obtained these two email addresses from the [REDACTED] "Contact Us" page. It is not clear why a trained detective would expect legal advice about obtaining confidential information from a communications professional listed as the contact person "For Press Inquiries."

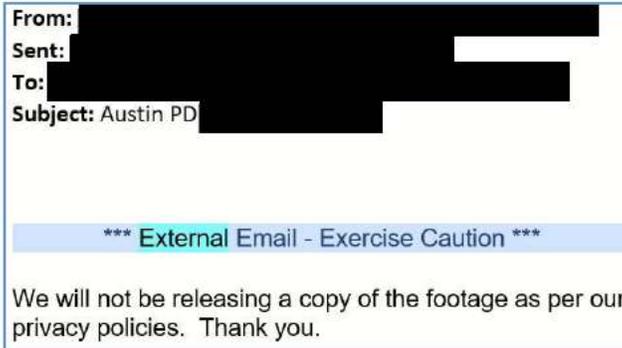




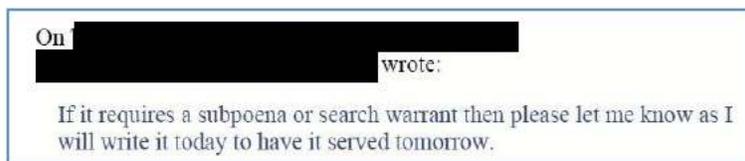
# OFFICE OF POLICE OVERSIGHT

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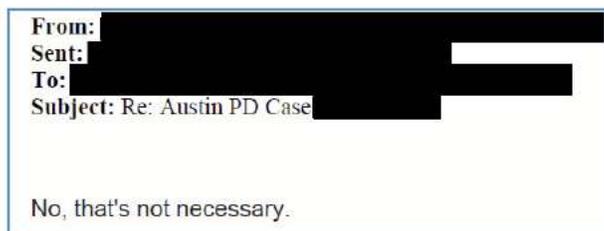
██████████  
The ██████████ Director of HR and Operations promptly responded to Austin Police and informed them that ██████████ had policies disallowing the organization from disseminating confidential information.



It is unacceptable for Austin Police to respond to “we can’t just hand you confidential info” with a wink and a nod asking for advice on how to circumvent the privacy policy. That is what happened next.



██████████  
██████████ staff responded with the straight-forward truth. The non-profit organization did not need or “require” anything from Austin Police.



The detective responded that he had “spoken with a judge” and that a “court order is being drafted now.”

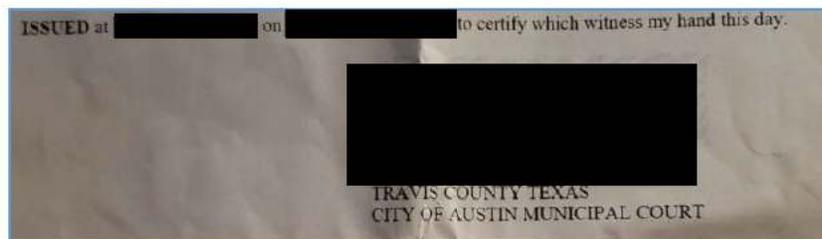


# OFFICE OF POLICE OVERSIGHT

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On [REDACTED] [REDACTED] wrote:  
Unfortunately it is since you have already told me the video will not be released. I have already spoken with a judge and the court order is being drafted now.

This is a lie. The only Order obtained from a judge was not signed until [REDACTED] at [REDACTED].



A reasonably well-trained detective would understand the differences between a search warrant and a subpoena and would recognize why those differences are significant. Austin Police spoke with an Assistant District Attorney (not a judge) and obtained a subpoena signed by the Assistant District Attorney (not an order signed by the Court).

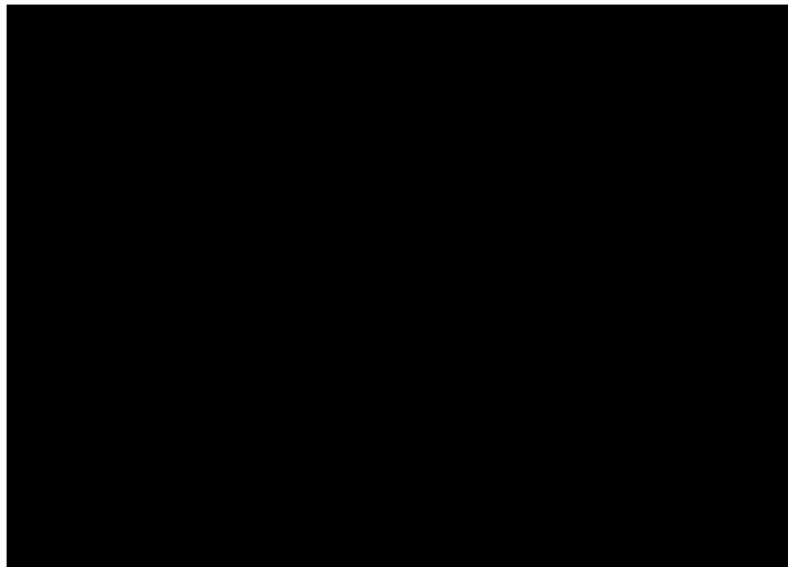
The subpoena sought security footage from the organization's parking lot cameras only and limited the amount of footage to the relevant two hours and five minutes when the alleged attempted assault occurred. This is significant because Austin Police vastly expanded the evidence they sought to seize when they later obtained a search warrant.

NOW COMES, Assistant District Attorney, Travis County, Texas, who states to that the testimony of:  
**CUSTODIAN OF RECORDS**  
[REDACTED]  
is believed to be material in behalf of the State in certain matters required to be inquired into by the Grand Jury of Travis County. Wherefore said Assistant District Attorney asks that a subpoena duces tecum be issued for the said CUSTODIAN OF RECORDS to appear before the Travis County Grand Jury FORTHWITH and that CUSTODIAN OF RECORDS bring with him/her and produce in said Grand Jury, at the said time and place, certain instruments in writing, desired as evidence in said criminal investigation, as follows:  
Original or clear copies of surveillance video of the parking lot on [REDACTED] from [REDACTED]  
[REDACTED]



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The [REDACTED] subpoena was never served on the organization. It is not clear that there was ever even any *attempt* to serve the document to the [REDACTED] Executive Director or its registered agent. (Both roles are filled by [REDACTED] a fact easy searchable on the Texas Secretary of State website and the organization website).



[REDACTED]

The only reason that the non-profit ever even learned about the existence or contents of the subpoena is because organization staff requested a courtesy copy of the search warrant that did not exist but about which Austin Police had lied about having obtained.

Having heard nothing from Austin Police since the weirdly threatening “I have already spoken with a judge” email, non-profit staff asked “will you please send us a courtesy copy of the search warrant? Please note that I am not authorized to accept services, but we would like a copy to review.”



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From: [REDACTED]  
Sent: [REDACTED]  
To: [REDACTED]  
Subject: Re: Austin PD Case [REDACTED]

Will you please send us a courtesy copy of the search warrant? Please note that I am not authorized to accept service, but we would like a copy to review.

Austin Police then emailed the subpoena to the non-profit staffer and said he would “be by today to pick up the video”:

From: [REDACTED]  
Date: [REDACTED]  
Subject: RE: Austin PD Case [REDACTED]  
To: [REDACTED]

Attached is the subpoena issued by Travis County ADA [REDACTED] I will be by today to pick up the video

The organization took this to mean that Austin Police intended to come by to serve the subpoena in person that day. In hindsight, it appears that Austin Police may have believed that the subpoena had already been served and so the ten-day clock to comply had already expired.

Regardless, Austin Police never came by that day or any day to [REDACTED] knowledge until [REDACTED] when they raided the office to execute a searchwarrant.

[REDACTED]  
The next confusing communication between the non-profit and Austin Police was an email apologizing for not yet serving the subpoena (“Sorry I have not made it over to the business”) and stating that the organization would have ten days to comply from [REDACTED] (“we are going to honor the 10 days you have to comply with the court order before issuing a search warrant”).



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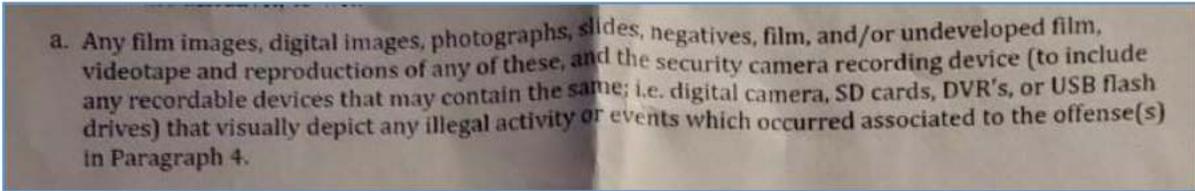
From: [REDACTED]  
Date: [REDACTED]  
Subject: RE: Austin PD Case [REDACTED]  
To: [REDACTED]

Sorry I have not made it over to the business, we are going to honor the 10 days you have to comply with the court order before issuing a search warrant. If the video is ready before the 10 days then please let me know so I can collect it. If it is not, then we will proceed with the search warrant for the seizure of the surveillance system.

It was not clear what court order this email was referencing or when Austin Police expected to “make it over to the business” to serve the subpoena. The only thing that was clear was that no subpoena, search warrant, or court order had been served on the organization and thus the organization had no legal obligations regarding the investigation.

[REDACTED]

Despite never having “made it over” to [REDACTED] to serve the subpoena, Austin Police obtained a search warrant on [REDACTED] at [REDACTED] from Austin Municipal Court Judge [REDACTED]. The search warrant was *significantly* broader than the never-served-subpoena signed by Assistant District Attorney [REDACTED] on [REDACTED].



a. Any film images, digital images, photographs, slides, negatives, film, and/or undeveloped film, videotape and reproductions of any of these, and the security camera recording device (to include any recordable devices that may contain the same; i.e. digital camera, SD cards, DVR's, or USB flash drives) that visually depict any illegal activity or events which occurred associated to the offense(s) in Paragraph 4.

Austin Police’s probable cause affidavit is highly misleading because it incorrectly gives the impression that a Grand Jury subpoena was served. Yes, the subpoena was “sent” to non-profit staff. But it was only sent in response to a request from the non-profit for a courtesy copy because they had been waiting to be properly served and were confused about what Austin Police were doing.

The fact that the staffer had informed Austin Police that she was not authorized to accept service of process on behalf of the organization was not disclosed to Judge [REDACTED].



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On [REDACTED] a Grand Jury Subpoena was sent to [REDACTED] for the requested surveillance footage. Your Affiant advised [REDACTED] the court order would allow the business ten days to produce the video. After ten days, the business has not produced the video and they have not attempted to contact your Affiant.

Your Affiant believes the surveillance video will be located on a Digital Video Recorder (DVR) inside of the business located at [REDACTED] Austin, Travis County, Texas. Affiant knows through experience that many businesses with a surveillance system has it connected to a DVR which stores the recordings captured by the cameras it is connected to.

**Wherefore.** Affiant asks for issuance of a warrant that will authorize him to search said suspected place and premises for said evidence and seize the same.

The probable cause affidavit is written in an accusatory tone that makes it appear Austin Police need training on the constitutional limits of their authority. “They have not attempted to contact your Affiant” is a lie but more importantly, it implies that non-profit staff had some legal obligation to contact Austin Police, which they did not.

On [REDACTED], the Austin offices of the [REDACTED] were closed for renovations.

Around [REDACTED], two administrative staff—who were inside the building packing boxes, moving furniture, and removing items from the walls—heard knocking on the front door of the office. Because the office was closed to the public, they continued about their work. It later became clear that it was Austin Police who were knocking on the side doors and windows but the officers did not identify themselves or their purpose for banging on the building at this time.

Around [REDACTED], Austin Police moved one of their four vehicles to face the front of the building and used the public address system. (Originally, there were four Austin Police vehicles: two unmarked sedans and two marked patrol SUVs.) The officers identified themselves as Austin Police and stated for the first time that they were there to execute a search warrant. Officers used the public address system to make additional statements, but they were unintelligible. As some officers used the public address system, others hopped the fence to the backyard, thereby surrounding the building in what felt like a needless but scary display of tactical aggression.

Around [REDACTED] [REDACTED], an attorney representing the non-profit in this matter, arrived at the parking lot. Even though Austin Police were expecting [REDACTED] to arrive, they acted like her minivan turning into the parking lot was a threat and they tried to make her stay in the car.



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██████████ and Austin Police's confrontation was heated and it escalated as the parties failed to find common ground. ██████████ tried unsuccessfully to convince the Austin Police that they did not need to break in the door and terrify the people inside but rather should simply serve the subpoena. ██████████ eventually did convince the Austin Police supervisor at the scene that mistakes had been made with the subpoena. He was so angry at that point that he told her he did not care and they were going in the front door anyway.

██████████ tried to inform an Austin Police supervisor at the scene that the search warrant had likely been obtained under the false pretense that a subpoena had been served and that the search warrant was therefore improper on its face. ██████████ begged Austin Police to consider the impact that their unnecessary show of force would have on the community and its already troubled relationship with Austin Police.

Around ██████████ the ██████████ staff attorney (i.e., the non-profit's in-house attorney) arrived at the office and joined ██████████ in discussing this matter with Austin Police in hopes of understanding what could possibly necessitate a raid on the nonprofit's office.

Austin Police then intensely escalated the situation by claiming that non-profit staff inside the building were seen destroying evidence near or on a media tower. They made the two attorneys believe that this had turned into an exigent emergency. It turned out that Austin Police who had hopped the fence and were peering in windows saw a staffer using a drill to remove the toilet paper and paper towel dispensers from the wall in preparation for painting the bathroom. Austin Police were spying into a bathroom (believable) and mistook a bathroom shelf for a media tower (not believable).

This unequivocally false claim that organization staff were tampering with evidence alarmed the two attorneys outside. They feared this escalation would lead to someone inside being injured and so they stopped trying to reason with Austin Police about the subpoena and search warrant and instead focused on ensuring that the staff inside knew how to conduct themselves when Austin Police broke in the door.

The ██████████ staff attorney—in an attempt to forestall physical violence against the two staff inside and to help the officers feel safe and unthreatened, instructed the staff inside to stand in the entryway with their hands visible. She informed officers that two people would be standing in the entryway with their hands visible.

Around ██████████, Austin Police used a crowbar to break into the ██████████ office. The Austin Police who initially entered the building did not wear masks to protect staff from the spread of COVID19. Throughout the raid, only one of the five Austin



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Police officers wore any face covering inside the [REDACTED] office. All the while, both non-profit staffers, who do not receive taxpayer dollars to protect and serve, wore face masks to protect Austin Police officers from their potential breakthrough infections of COVID19.

The first thing an Austin Police supervisor said when he walked in was to ask one of the non-profit staffers if he spoke English. He does. The other staffer was not asked if she spoke English, but unlike the first, she is white.

The staffers answered Austin Police questions about the location of the security system and unlocked the server room where it is stored when asked to. Staff unlocked two other doors when demanded. One officer opened the door to the server room and began removing the security system. Two other officers **drew and raised their firearms** and performed dramatic sweep of the office's other rooms, presumably looking for non-existent threats.

Even after completing their search, officers paraded through the open areas of [REDACTED] office with their firearms drawn. Austin Police refused to allow non-profit staff to observe the search, but they could see some of the officer's actions from where they were detained up against a wall in the building's lobby area. Both staffers saw Austin Police take pictures inside the buildings offices. The security system was in the server room and not in the offices.

Therefore, any photos the officers took inside the office was entirely unrelated to the search warrant and should be destroyed.

Taking photos of items unrelated to the search warrant is especially alarming as the officers searched [REDACTED] legal department's office, which contains case files and other confidential materials subject to attorney-client privilege. The legal department's office is not one of the three doors that Austin Police demanded the staff open and it is on the opposite end of the building. Staff alerted Austin Police that the room was the legal department's office and that nothing related to the security system was in there. Officer's broke in and searched the office anyway. They did not give staff an opportunity to unlock the door.

Staff became alarmed that officers were in the legal office for longer than it would take to sweep the room. One staffer who was still detained in the entryway, moved a step to the side to obtain a better view of the officers searching the legal department's office. Even though she was in the entryway, well away from the doorway to the legal office, they barked at her to get back.

Eventually Austin Police gave the non-profit staff a receipt for the seized security recording device, and they left.



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### Conclusion

The events of [REDACTED] 1 could have been avoided. Austin Police could have, quite simply, properly served the subpoena. Upon arriving at the [REDACTED] office and speaking with the non-profit's legal representative, Austin Police could have negotiated a peaceful resolution to obtaining the security footage. Instead, five Austin Police wasted their time and the taxpayers' dollars terrorizing [REDACTED] staff.

Austin Police paraded through the non-profit's building, including its legal services office, with their guns drawn and raised. Neither [REDACTED] nor its staff members have been accused of a violent crime (or any crime for that matter). The staff inside complied with every command, unlocked offices, and answered questions regarding the security footage recording system. Yet, Austin Police behaved as if they were interacting with dangerous individuals in dangerous circumstances instead of two young people who were at work. Most importantly, this event has further eroded the very limited trust the immigrant community has in Austin Police. We, therefore ask that the Office of Police Oversight investigate the actions of Austin Police leading up to and on [REDACTED] and take all steps within its authority to ensure that such an injustice does not reoccur.”

*This notice of formal complaint is a request for Internal Affairs to initiate an investigation to determine if the employee conduct is within compliance of APD policy, Civil Service Rules, and Municipal Civil Service Rules.*

### **Recommended Administrative Policies to Review (to include but not limited to):**

#### 301.1 PURPOSE AND SCOPE

All persons deserve protection by fair and impartial law enforcement and should be able to expect similar police response to their behavior wherever it occurs. Employees will serve the public through direction, counseling, assistance, and protection of life and property. Employees will be held accountable for the manner in which they exercise the authority of their office or position. Employees will respect the rights of individuals and perform their services with honesty, sincerity, courage, and sound judgment.

#### 301.2 IMPARTIAL ATTITUDE AND COURTESY

Employees shall provide equal and fair protection of all rights under local, state, and federal law for all members of the community. Law enforcement will be conducted in an impartial and equitable manner. In an effort to create an organizational culture that is inclusive and nondiscriminatory, employees shall act professionally, treat all persons fairly and equally, and strive to interact with the community in a positive manner. Employees will perform all duties objectively and without regard to personal feelings, animosities, friendships, financial status, occupation or employment status,



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sex, disability status, housing status, mental health or ability, citizenship, language, national origin, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity, gender expression, ethnicity, or social or ethnic background. Employees will endeavor to understand and respect cultural, national, racial, religious, physical, mental, and other differences.

### 306.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This order provides general guidelines for Austin Police Department personnel to consider when dealing with search and seizure issues.

#### 900.1.1 RESPONSIBILITY TO KNOW AND COMPLY

The rules of conduct set forth in this order do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

#### 900.3.2 ACTS BRINGING DISCREDIT UPON THE DEPARTMENT

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

Recommended Classification: *The OPO is permitted to make a preliminary recommendation on the classification of administrative cases.*

***The OPO recommends this complaint receive a B classification.***