



## OFFICE OF POLICE OVERSIGHT

# NOTICE OF FORMAL COMPLAINT

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ICMS #: 2021-0946

October 5, 2021

**Complaint:** OPO received a complaint via email from Attorney [REDACTED] alleging potential misconduct on the part of APD personnel as it relates to a complaint from [REDACTED] involving Detective [REDACTED]. This Notice of Formal Complaint addresses the allegations against APD Executive Staff. Allegations against Detective [REDACTED] chain of command, Internal Affairs, and witness officers are addressed in ICMS #2021-1011.

Below is the complaint submitted by Attorney [REDACTED]:

“To whom it may concern:

This is a complaint against Austin Police Department Interim Police Chief Joseph Chacon, Chief of Staff Troy Gay, and Assistant Chief Richard Guajardo. This complaint is based on personal knowledge along with information received by Austin Police Department personnel who are credible witnesses.

The Office of Police Oversight (OPO) completed a Notice of Formal Complaint against Detective [REDACTED] on [REDACTED] based on an anonymous online complaint alleging several serious policy violations. A second anonymous complaint was submitted to the OPO on [REDACTED]. It is clearly evident that both complaints were submitted by the same person, an Austin Police Department employee.

Sgt. [REDACTED] with Internal Affairs conducted an investigation and interviewed twenty- one officers and two civilians. Sgt. [REDACTED] concluded that none of the witnesses recalled Det. [REDACTED] ever saying anything they would consider racially insensitive or racist; however, Chief Chacon, Asst. Chief Gay, and Asst. Chief Guajardo (commonly known as the fifth floor) insisted on sustaining a violation of APD Policy 900.5(a)(1) without regard to the investigative findings that convincingly prove Det. [REDACTED] did not violate this policy. Against the wishes of Det. [REDACTED] entire chain of command, the “fifth floor” insisted Det. [REDACTED] receive a written reprimand. This written reprimand is a textbook example of disparate discipline. After reviewing the entire internal affairs case file, I confirmed that several other employees admittedly used the same term as Det. [REDACTED] however, they did not receive a sustained finding nor did they receive a written reprimand. In fact, one detective admitted to using the term first when referring to the hair on the toilet. Furthermore, a meme was made of a silverback gorilla with Det. [REDACTED] face on it. At minimum, this is a violation of APD General Order

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301.2 Impartial Attitude and Courtesy as the fifth floor did not treat Det. [REDACTED] fairly and equally nor did they perform their duties objectively and equally.

The three fifth-floor members continued their Nonimpartial Attitude and Discourtesy by violating APD Policy 902.2.4 Anonymous Complaint: “Employees may be investigated based on an anonymous complaint. Anonymous complaints shall be treated as an internal complaint for documentation purposes.” This policy was in place when the complaints were filed. On [REDACTED], while this case was considered to be under investigation but six months after Det. [REDACTED] interview with Internal Affairs, 902.2.4 was deleted from the policy manual. Instead, 902.2.3 was amended to state: Anonymous complaints received by the OPO will be classified as external complaints. The chiefs unilaterally decided to make the policy retroactive to cover Det. [REDACTED] complaint. Surely the chiefs know that the policy in place at the time of the complaint is the controlling policy. A quick conversation with city legal would surely inform them of their inappropriate behavior. On [REDACTED] much to the chagrin of her chain of command, Det. [REDACTED] was issued a notice of sustained allegations and listed the specific allegation: You referred to an unknown city employee as an animal in a joking manner. The specific allegation as a policy violation is preposterous. Nonetheless, Chief Gay issued a written reprimand to Det. [REDACTED] despite the evidence. On [REDACTED], I confirmed with Internal Affairs that Det. [REDACTED] anonymous complaint was in fact classified as external. It is evident that members of the fifth floor believe the saying, “rules are for thee but not for me.” Just because they are in a command staff position does not mean they should not be held accountable for adhering to policy just like every officer beneath them. As an attorney that represents law enforcement and former APD officer, I could have never imagined filing a complaint on another police officer; however, the unfair treatment these police officers are receiving from their administration needs to stop. I am filing this complaint, because it is the right thing to do and not at the request of Det. [REDACTED] Rest assured, should she see retaliation for my complaint, I will take further action.

Other policies to consider:

900.4.3 Neglect of Duty

900.3.2 Acts Bringing Discredit to the Department

900.1.1 Responsibility to Know and Comply



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### 900.5.1 Supporting Fellow Employees

Witnesses with personal knowledge:

The entire fifth floor command staff

Det. [REDACTED] chain of command up to and including Commander [REDACTED]

Sgt. [REDACTED] in Internal Affairs”

*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):**

#### **301.2 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, 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.

#### **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.

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- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD directives which pertain to their assigned duties.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines and will consult their immediate supervisor for clarification and explanation.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action

### **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.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.

### **900.3.4 PERSONAL CONDUCT**

While on-duty or on the premises of City facilities, employees will not:

- 3. Post or display derogatory, offensive or lewd pictures which degrade or lower the self-esteem of fellow employees and would undermine the goal of professionalism within APD.

### **900.4.3 Neglect of Duty**

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (a) Lack of knowledge of the application of laws required to be enforced.
- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.
- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.

### **900.5 Responsibility to Coworkers**

Cooperation among employees of the Department is essential to effective law enforcement.

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### **900.5.1 Supporting Fellow Employees**

(a) Employees will not knowingly aid, abet, or assist another Department member in violating any Department directive or order.

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

***The OPO is not recommending a classification. The OPO is recommending an independent investigation into the alleged actions of Chief Joseph Chacon, Chief of Staff Troy Gay, and Assistant Chief Richard Guajardo.***