



OFFICE OF POLICE OVERSIGHT

NOTICE OF FORMAL COMPLAINT

ICMS #: 2020-0902

June 8, 2020

Complaint: Mr. [REDACTED], complainant, submitted an online complaint to the Office of Police Oversight stating the following:

“On [REDACTED] just before [REDACTED] I was standing [REDACTED] on the sidewalk of the [REDACTED]. I was near the corner of the steps where the flagpoles stand. I had been there for approximately twenty minutes berating officers, which I offer not as any sort of confession but as an explanation for their reactionary conduct unbecoming of an officer. For the purposes of identifying me on body camera video, assuming they were actually functioning and you have access to those videos, I am a white male in my twenties with tattoos on my left shoulder and neck, brown hair and beard. I was smoking a cigar when I walked up and I wore no facial covering. I am not particularly proud of my commentary on the officers that evening, but only because it was not particularly funny or caustic enough. Naturally, it is any officer’s responsibility to represent the professionalism of the department by standing there stonefaced even if a citizen would like to be offensive. That is explicitly protected under the First Amendment. It would not be remotely difficult to prosecute the many violations of First Amendment rights that occurred that weekend. This is one such case. I complied with officer orders to stand behind a certain line. I recall seeing [REDACTED] and [REDACTED] on nametapes, although this is only so you can identify the particular shift- those officers behaved respectfully and I have no complaint against them. When an ostensibly drunk protester to my right allegedly began throwing things at the nervous fascists on the steps, one officer near the flagpoles fired less lethal munitions at him. I heard people running, but I stood still at the front. I have heard there was a facebook live feed of this, but I have not seen it. I was stationary and silent for a few seconds, having been obviously offensive but non-threatening and compliant with all orders given for approximately twenty minutes. An unidentified officer reached around another officer during this hectic exchange of fire- which I was not involved in, and intentionally pepper sprayed me in the face. I cannot be sure of who it was or if his body camera was functioning or if it even captured the act because he may have intentionally hidden behind another officer like the coward he is in order to obscure it. I continued to stand there after having been sprayed. I cannot be sure because I was at the front of the protest group, but I imagine any Halo or body camera video would show one guy standing alone right in front of the officers at this moment. That’s me. After a minute or so I shouted back “Do you feel better? Feel like a man?” And after another thirty seconds or so shouted “Im still here.” Then I turned to find someone with water. I walked to my vehicle, cleaned up, and walked back to the same spot to explain to the jumpy boors that any use of force on their part against a non-violent protester is precisely the reason why we are here and that it in no way neutralizes the movement we represent- it reinforces it. When I return, I can probably be seen/heard on any video shouting “Im back you [REDACTED] All in all, I was hesitant to submit any complaint because APD has committed so many more horrible atrocities over the last week that in the grand scheme of things my complaint seems petty and unimportant. That is how thoroughly APD has failed: If you are not currently



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hospitalized by them, your injuries are comparatively minor. That said, I spoke with a very helpful female officer a few nights ago who encouraged me to make use of this presumably powerless and pointless outlet for naive, exasperated citizens and, mainly out of a need for vengeance, but also because your officers need to understand and comply with the goddamned Constitution, I would very much like to see the officer responsible fired. Whether he decided to pepper spray me out of personal offense to something I said, or if he was genuinely so nervous due to the irrelevant less lethal rounds going off that he decided to pepper spray an unrelated, motionless, silent, nonviolent protester, he clearly has no business handling a weapon of any sort, ever. The kind of person who is petty or jumpy enough to disregard the Constitution is not the kind of person we need policing our community. My name is [REDACTED]. I can be reached at [REDACTED]. I do not seriously expect any results from this complaint, but thanks to anyone actually reading and doing something about this.”

This notice of formal complaint is a request for Internal Affairs to initiate an investigation in order 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):

105 PURPOSE AND SCOPE – COMMUNITY POLICING

The purpose of this general order is to identify the tenets of Community Policing, which serves as the basis for this Department’s mission and guiding principles. Community Policing is beyond a philosophy, it is a practice. The Austin Police Department is committed to Community Policing which strives to build mutual respect, collaborative partnerships, fair and impartial policing, and procedurally just behavior with the community that we serve. The Department’s goal is to have an understanding of the traditions, culture, and history of the neighborhoods in which they serve in order to develop proactive solutions to problems and increase overall trust in policing. Likewise, the Department is required to provide information and training to the community so community members gain an understanding of police practices and procedures, as well as an understanding of the traditions and culture of law enforcement.

200.2 DE-ESCALATION OF POTENTIAL FORCE ENCOUNTERS

When safe and reasonable under the totality of circumstances, officers shall use de-escalation techniques to reduce the likelihood for force and increase the likelihood of voluntary compliance. Nothing in this de-escalation policy requires an officer to place themselves in harm’s way to attempt to de-escalate a situation. Recognizing that circumstances may rapidly change, officers may need to abandon de-escalation efforts after they have commenced. Understanding that no policy can realistically predict every situation an officer might encounter, the Department recognizes that each officer must be entrusted with well-reasoned discretion in determining the reasonable de-escalation techniques to use in a situation. This de-escalation policy is intended to



complement, not replace or supersede, other portions of the APD Policy Manual or specific officer training that addresses de-escalation.

200.2.1 ASSESMENT AND DE-ESCALATION

As officers arrive on the scene, observe conditions, and interact with the persons there, they should continue to gather additional relevant information and facts. These assessments, along with reasonable inferences help to develop an understanding of the totality of the circumstances of the incident.

200.3 RESPONSE TO RESISTANCE

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this order.

200.3.1 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him.

206.4 CHEMICAL AGENT GUIDELINES

Chemical agents are devices used to minimize the potential for injury to employees, offenders, or other subjects. They should be used only in situations where such force reasonably appears necessary.

206.4.3 TREATMENT FOR CHEMICAL AGENT EXPOSURE

Subjects who have been affected by the use of chemical agents should be afforded means of cleansing the affected areas as soon as practicable. Those subjects who complain of further severe effects shall be afforded a medical examination by competent medical personnel.

206.5.5 SHOT PLACEMENT AND DEPLOYMENT DISTANCES

Officers should generally follow their training instructions regarding minimum deployment distances and target areas. The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death.

The head and neck should not be intentionally targeted, however any target area or distance may be considered when it reasonably appears necessary to accomplish immediate incapacitation in order to prevent serious injury or death to officers or others.



300.3 CROWDS, EVENTS AND GATHERINGS

Officers may encounter gatherings of people, including but not limited to, civil demonstrations, civic, social and business events, public displays, parades and sporting events. Officers should monitor such events as time permits in an effort to keep the peace and protect the safety and rights of those present. A patrol supervisor should be notified when it becomes reasonably foreseeable that such an event may require increased monitoring, contact or intervention.

Officers responding to an event or gathering that warrants law enforcement involvement should carefully balance the speech and association rights of those present with applicable public safety concerns before taking enforcement action. Officers are encouraged to contact organizers or responsible persons to seek voluntary compliance that may address relevant public safety/order concerns.

Officers should consider enforcement of applicable state and local laws, such as Tex. Penal Code § 42.03 (Obstructing Highway or Other Passageway), when the activity blocks the entrance or egress of a facility or location and when voluntary compliance with the law is not achieved.

301.1 PURPOSE AND SCOPE – RESPONSIBILITY TO THE COMMUNITY

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 are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity or gender expression or social or ethnic background.

301.3 CUSTOMER SERVICE AND COMMUNITY RELATIONS

APD constantly works to establish direct contacts with the community we serve. Without grassroots community support, successful enforcement of many laws may be difficult, if not impossible. Community involvement can be an effective means of eliciting public support, can serve to identify problems in the making, and may foster cooperative efforts in resolving community issues. Input from the community can also help ensure that agency general orders accurately reflect the needs of the community.

302.1 PURPOSE AND SCOPE – PUBLIC RECORDING OF OFFICIAL ACTS

The Austin Police Department recognizes that members of the general public have a First Amendment right to video record, photograph, and/or audio record APD officers while they are



conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.

326.1 PURPOSE AND SCOPE – NEWS AND MEDIA RELATIONS

The purpose of this order is to seek a balance between permitting the free flow of information to the public and the media while protecting both the prosecution's case and the rights of the accused from possible prejudicial publicity. Public information and positive media relations are an integral part of the operation of any public service agency and APD is no exception. Most citizens have little contact with law enforcement and their opinions of the police are often formed by our Department's portrayal in the media. The release of public information and maintenance of good media relations is a crucial element of APD's mission. Employees must maintain a good rapport with the public and the media and deal with them in a courteous manner. The media has a legitimate function in our society and the public trust of the police can be enhanced through media relations.

APD is committed to informing the community and members of the news media of events that are handled by, or involve, the Department. Employees will cooperate fully in meeting the relevant information needs of the public and the news media. Every reasonable effort should be made to obtain requested information, so long as the release of that information conforms to federal and state laws, and follows established Department guidelines.

328.1 PURPOSE AND SCOPE – RACIAL OR BIAS-BASED PROFILING

This order provides guidance to department members and establishes appropriate controls to ensure that members of the Austin Police Department do not engage in racial or bias-based profiling or violate any related laws while serving the community.

328.2 POLICY – RACIAL OR BIAS-BASED PROFILING

The Department strives to provide law enforcement services to our diverse community while respecting the racial, cultural, or other differences of those we serve. It is the policy and practice of the Department to provide law enforcement services and to enforce the law equally, fairly, and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability, or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law.

While the practice of racial or bias-based profiling is strictly prohibited, it is recognized that race or cultural differences may be legitimately considered by an officer in combination with other legitimate factors; to establish reasonable suspicion or probable cause (e.g., subject description is limited to a specific race or group), to establish relevant elements of a crime (e.g. exploitation of an elderly or disabled individual), or to gather evidence relevant to enhanced punishment due to offenses committed because of bias or prejudice.



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.

900.3.4 PERSONAL CONDUCT

- (c) While on-duty or on the premises of City facilities, employees will not:
 - 2. Ridicule, mock, taunt, embarrass, humiliate, or shame any person, nor do anything that might incite that person to violence.

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

The OPO recommends that this allegation receive an A classification.