



ICMS #: 2021-0060

February 5, 2021

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

I was recording my husband while the police had him pinned up against the car and I was on the side walk where I was asked to stand and police officer [REDACTED] a woman cop pepper sprayed me and a friend. I also have the recoding.

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):

110.4.4 INSUBORDINATION

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence.

200.1.3 DUTY TO INTERCEDE

Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor.

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.

200.2.1 ASSESSMENT 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.

206.4.1 CHEMICAL AGENT GUIDELINES - PROHIBITED USES

The following are prohibited uses of chemical agents:

- (a) To torture, psychologically torment, elicit statements or inflict undue pain on any individual.
- (d) When a subject exhibits only verbal and/or passive resistance to arrest or authority.

301.1 RESPONSIBILITY TO COMMUNITY - 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 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.

302.1 PUBLIC RECORDING OF OFFICIAL ACTS - PURPOSE AND SCOPE

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.

302.2 INTERACTION WITH COMMUNITY

(b) In areas open to the public, officers shall allow bystanders the same access for photography as is given to members of the news. Officers shall be aware that:

1. A bystander has the same right to take photographs or make recordings as a member of the media, as long as the bystander has a legal right to be present where he or she is located.
2. A bystander has the right under the First Amendment to observe and record officers in the public discharge of their duties.
3. Public settings include parks, sidewalks, streets, and locations of public protests; but that protection extends also to an individual's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present.
4. The fact that a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

(c) As long as the photographing or recording takes place in a setting at which the individual has a legal right to be present and does not interfere with an officer's safety or lawful duties, officer's shall not inform or instruct people that photographing or recording of police officers, police activity or individuals who are the subject of police action (such as a Terry stop or an arrest) is not allowed; requires a permit; or requires the officer's consent. Additionally, officers shall not:

1. Order that person to cease such activity;



2. Demand that person's identification;
3. Demand that the person state a reason why he or she is taking photographs or recording;
4. Detain that person;
5. Intentionally block or obstruct cameras or recording devices; or
6. In any way threaten, intimidate or otherwise discourage an individual from recording officer's enforcement activities.

303.3 DEPARTMENT ISSUED BODY WORN CAMERA

BWC equipment is to be used primarily by uniformed personnel as authorized per assignment by the Department and must be used unless otherwise authorized by a Commander or above.

321.2.1 RESTRAINT GUIDELINES

2. In case of advanced age, injury, physical disability, or other circumstances where arrested persons are incapable of placing their hands behind their back, but circumstances warrant restraint, the officer may:

- (a) Use flex cuffs.
- (b) Apply handcuffs with the hands to the front.
- (c) Choose not to use a restraining device. If the prisoner is not restrained, two officers should be used to transport the prisoner as safely as possible.

321.2.3 WARNING ABOUT POSITIONAL ASPHYXIA

Positional asphyxia occurs when the physical position of the body interferes with normal respiration. Such a position can be induced by the use of one or more restraints. Officers in control of a restrained person must be alert to the physical position of the person in order to minimize the possibility of positional asphyxia.

321.3 TRANSPORTING ARRESTED PERSONS

The law imposes a duty of care on the transporting officer to protect prisoners from injury

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.

900.4.1 DISCRETION AND REQUIREMENT TO TAKE ACTION

Sworn employees are charged with the responsibility to enforce the law, preserve the peace, and to protect lives and property.

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.