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MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Joseph Chacon, Interim Chief of Police

DATE: August 30, 2021

SUBJECT: Agreed Temporary Suspension of Police Officer Brian O'Quinn #6813
Internal Affairs Control Number 2021-0251

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have temporarily suspended Police Officer Brian O'Quinn #6813 from duty as a City of Austin, Texas police officer for a period of twenty (20) days. The agreed temporary suspension is effective beginning on August 31, 2021 and continuing through September 19, 2021.

I took this action because Officer O'Quinn violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Officer O'Quinn in violation of Rule 10:

On March 11, 2021, Officer Brian O'Quinn was the first of several officers to respond to a call for service. Ofc. O'Quinn made contact with the complainant, who advised him that she had been sexually assaulted. She also identified the suspect to Ofc. O'Quinn. The suspect was detained by other officers during the on-scene sexual assault investigation. Ofc. O'Quinn proceeded with the investigation and spoke with the on-call Sex Crimes detective. The call concluded when the Sex Crimes detective told Ofc. O'Quinn that they would not be responding to the scene and the suspect was released from custody.

On March 11, 2021, the Office of Police Oversight (OPO) received an external complaint from the complainant. The complaint read, "*An APD officer was rude and acted like he didn't believe her when she was trying to report a sexual assault and did not arrest the perpetrator.*" This matter was referred to the Internal Affairs Division (IA) to conduct an administrative investigation to determine if any Department policy, Civil Service rules, or state law violation had been committed by Ofc. O'Quinn.

The IA investigation revealed that Ofc. O'Quinn failed to take multiple required steps throughout his field investigation and did not conduct himself in accordance with APD standardized training and tactics, as well as multiple APD general orders. Ofc. O'Quinn admittedly failed to interview the complainant with the appropriate amount of dignity and respect. Of specific note, Ofc. O'Quinn displayed doubts to the complainant and others regarding her statements by questioning the legitimacy of her claims.

Of further significance, Ofc. O'Quinn failed to relay pertinent information to the on-call Sex Crimes detective. He also admittedly failed to contact the Crime Scene Unit or take steps to secure the scene and ensure that evidence at the scene was collected. Moreover, Ofc. O'Quinn failed to take photographs of the scene or ask the suspect any questions about the incident. Because of his actions, evidence of the sexual assault was not submitted for analysis. Ofc. O'Quinn's failure to conduct a proper investigation, collect evidence, relay, and document this incident will likely hinder any potential efforts to prosecute this case.

During his IA interview, Ofc. O'Quinn accepted responsibility and expressed tremendous regret as to his mishandling of this on-scene investigation: "*...just by watching myself on video I don't think I was fair and impartial towards her at all. Like I said, it should have been face value and just - and do what you need to do.*" Ofc. O'Quinn concluded by stating: "*I'm just literally disappointed in how I acted on this call.*"

By these actions, Officer O'Quinn violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

➤ **Austin Police Department Policy 301.1: Responsibility to the Community: Scope and Purpose**

301.1 Scope and Purpose

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.

➤ **Austin Police Department Policy 301.2: Responsibility to the Community: Impartial Attitude and Courtesy**

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.

- (a) Employees will not express or otherwise manifest any prejudice concerning any of the categories or characteristics listed in this section in a context or manner that would cause a reasonable person to question the employee's fairness or impartiality related to the performance of their duties.
 - 1. Employees will respect the rights of individuals and will not engage in discrimination, oppression, or favoritism whether by language, act, or omission.
 - 2. The use of remarks, slurs, epithets, words or gestures, which are derogatory or inflammatory in nature to or about any person or group of persons is strictly prohibited.
- (b) Employees will be tactful in the performance of their duties, control their tempers, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.

- (c) Employees will treat all persons with dignity, will be courteous and respectful toward all persons, showing consideration for the welfare of all persons with whom they interact.
- (d) Employees will not ridicule, mock, taunt, embarrass, humiliate, belittle, or shame any person, nor do anything that might incite that person to violence.
- (e) Employees will not use indecent or profane language or gestures while interacting with, or in the vicinity of, members of the community.
- (f) Officers shall not encourage, condone, or ignore any of the behaviors described in subsections (a)-(e).

➤ **Austin Police Department Policy 401.4.1(c): Preliminary Field Investigations: Crime Scene Processing and Evidence Collection**

401.4.1(c) Crime Scene Processing and Evidence Collection

Employees will ensure that items identified as evidence are not tampered with in any way prior to being photographed and collected.

- (c) At all other crime scenes:
 1. If a crime scene technician responds to the scene, the technician will be responsible for processing the scene.
 2. If a crime scene technician is not available or is not requested, the primary officer or designee will be responsible for:
 - (a) Processing the crime scene as outlined in this order; and
 - (b) Evidence collection as outlined in General Order 618 (Property and Evidence Collection Procedures).
 3. Employees will identify any possible sources of video or photos of the scene and determine if they may contain any pertinent evidence. Any information regarding sources of pertinent evidence shall be documented in the employee's supplement.

➤ **Austin Police Department Policy 420.2 Investigation Considerations**

➤ **Austin Police Department Policy 420.2.1 (c): Sexual Assault: Initial Interview with the Victim**

420.2.1(c) Initial Interview with Victim

Officers shall adhere to the following guidelines when conducting an initial interview of a victim involved in a sexual assault.

- (c) Officers shall conduct the interview of the victim with dignity and respect, being mindful that the victim has experienced a traumatic event.
 - 1. Officers should make every attempt to maintain the victim's privacy and protect the integrity of the investigation.
 - 2. Officers should not interview a victim 12 years of age or younger; these interviews shall be done by an investigator from the appropriate Investigative Unit. However, if the victim made an "outcry" statement to an adult, the officer should identify and interview the adult, if possible.
 - 3. Officers will not ask a victim if they want to prosecute (the suspect / crime); this inquiry is premature.

➤ **Austin Police Department Policy 900.4.3: General Conduct and Responsibilities: Neglect of Duty**

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.
- (e) Absence without approved leave.
- (f) Repeated poor evaluations.
- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.
- (i) Employees are expected to be truthful at all times in the performance of their duties. However, there may be instances where, initially, the employee has not been truthful; but, before the investigation is complete, the employee provides an accurate and detailed accounting of their true culpability in a situation, and accepts full responsibility for their actions. In those cases, the Chief may consider each case on a fact-specific basis.

In addition to this agreed temporary suspension, Officer O'Quinn agrees to the following terms and conditions:

1. Ofc. O'Quinn shall attend any training specified by his chain of command.
2. Ofc. O'Quinn agrees to a probationary period of one (1) year, with the additional requirement that if, during the probationary period, he commits the same or a similar act of misconduct for which he is being suspended (the determination whether an act is the same or similar is solely within the purview of the Chief of Police and is not subject to review by the Civil Service Commission, an Independent Third Party Hearing Examiner, or District Court), he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, and to District Court. The one-year period begins on the day Ofc. O'Quinn returns to duty after completing his agreed suspension. Should Ofc. O'Quinn commit the same or similar violation outside the one-year period, he will be indefinitely suspended but retains the right to appeal that suspension.
3. Ofc. O'Quinn understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass him for a future promotion in accordance with APD Policy 919.11.
4. Ofc. O'Quinn agrees that he, and all others claiming under him named herein or not, fully discharge, release and waive any and all known or unknown claims or demands of any kind or nature whatsoever that he now has, or may have in the future, including without limitations, claims arising under any federal, state or other governmental statute, regulations, or ordinance relating to employment discrimination, termination of employment, payment of wages or provision of benefits, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act, the Fair Labor Standards Act, and the Texas Commission on Human Rights Act, against the City of Austin, the Austin Police Department, or their respective agents, servants and employees, arising from the above-referenced incident, and any actions taken as a result of that incident, including but not limited to, the negotiation and execution of this agreed temporary suspension.
5. Ofc. O'Quinn acknowledges that he had the opportunity to discuss this agreed suspension and additional terms and conditions set forth herein with a representative of his choosing prior to signing his acceptance, where indicated below.

By signing this Agreed Discipline, Ofc. O'Quinn understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Ofc. O'Quinn waives all right to appeal this agreed suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third-Party Hearing Examiner, and to District Court.

Joseph Chacon for Chief Chacon
JOSEPH CHACON, Interim Chief of Police

8-30-21
Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing memorandum of agreed temporary suspension and I understand that by entering into this disciplinary agreement the Chief forgoes his right to indefinitely suspend me for the conduct described above and that by agreeing to the suspension, I have no right to appeal this disciplinary action, as well as the additional terms and conditions, to the Civil Service Commission, to an Independent Third-Party Hearing Examiner, and to District Court.

Brian O'Quinn 6813
Police Officer Brian O'Quinn #6813

8-30-21
Date