



April 8, 2020

Brian Manley, Chief of Police
Austin Police Department
715 E 8th St.
Austin, Texas 78701

Dear Chief Manley,

Please consider this letter a formal objection from the Office of Police Oversight (OPO) to the March 16, 2020 changes made to Austin Police Department General Order (GO) 903 – Discipline Matrix (GO 903). These changes reduce the discipline level for violations of GO 303 – Body Worn Camera Systems (BWC) and GO 304 – Digital Mobile Audio Video Recording (DMAV).

These changes delegitimize the discipline process by trivializing conduct that has historically been treated as a significant policy violation. In addition to our objection, below you will find recommendations that, if implemented, will resolve this issue.

BACKGROUND

General Order 903

Once APD has sustained allegations against an officer, GO 903 provides a framework for determining the level of discipline an officer receives. The changes to GO 903 as it relates to BWC and DMAV policy are below.

Discipline Matrix Before March 16, 2020

Table with 5 columns: Violation, General Order Reference, 1st Occurrence, 2nd Occurrence, 3rd Occurrence. Row 1: Electronic Recording (DMAV, MAV) violation, 303 & 304-Mobile Audio Video Recording Operation, Written Reprimand to 1-3 days, Increased one level, Increased one level.

Discipline Matrix After March 16, 2020

Table with 5 columns: Violation, General Order Reference, 1st Occurrence, 2nd Occurrence, 3rd Occurrence. Row 1: Electronic Recording (DMAV, MAV) violation, 303 & 304-Mobile Audio Video Recording Operation, Oral Counseling (documented in Field Notes), Conduct Counseling Memorandum, Oral Reprimand to 1-3 Days.

Due to the March 16th changes, an officer’s third sustained violation of the BWC or DMAV policies now results in lighter discipline than an officer used to receive upon their first violation of those policies. Moreover, given that “formal” discipline is defined in GO 902.1.2 as “[a] discipline action at or above



the level of written reprimand,” an officer may violate BWC or DMAV policies three times and still never receive “formal” discipline.

Issue #1: Lack of Alignment—Changes Affecting External Complainants

Paramount among OPO’s concerns is the apparent contradiction between GO 903 and both the City Manager’s Memo and the Meet and Confer Agreement. Both documents highlight the OPO’s role in providing and prioritizing transparency. The changes to the discipline matrix for BWC and DMAV violations create obstacles that will limit the OPO’s ability to share information with the public, thereby reducing the level of transparency.

For example, per the Meet and Confer Agreement, the OPO may publicize its recommendations and the discipline an officer received in external, non-critical incident cases in which an officer received discipline of an oral reprimand or greater. The March 16 changes to GO 903 directly and negatively impact this provision because they now preclude the OPO from making the public aware of any sustained violations of BWC and DMAV policy until an officer has had at least three violations.

Issue #2: Timing and Messaging

APD notified the OPO of the changes to GO 903 on the same day that it took effect. APD’s practice of soliciting feedback on proposed policy changes without providing adequate notice or opportunity to respond is unacceptable and contradictory to APD’s support of civilian oversight.

The OPO is also concerned about the timing of these changes and the message it sends to both officers and the public. The OPO has observed an increase in the number of potential and sustained BWC and DMAV policy violations, so APD’s decision to make policy changes that limit the OPO’s ability to make the public aware of these types of violations is very troubling.

Adherence to BWC and DMAV policies supports the interests of both the public and officers. Reducing discipline levels for BWC and DMAV violations disincentivizes adherence to these policies by imposing functionally equivalent discipline for multiple violations. This demonstrates to officers and the public that APD leadership does not take these violations seriously and is dismissive of the importance of BWC and DMAV footage in police interactions. This change is also inconsistent with the department’s “mission to improve police interactions with the public and to strengthen accountability and transparency, building on local problem-solving and community-based engagement strategies” with the body worn camera program¹.

Discipline must be in proportion to the seriousness of a violation. BWC and DMAV footage frequently provides the only path to a just resolution of a complaint. Thus, the effect of a BWC and DMAV violation can be grave—even on a first occurrence. APD’s discipline matrix should demonstrate the Department’s awareness of this possibility and account for it. By decreasing the level of discipline for these offenses APD is treating these as minor policy violations when they are quite serious.



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OPO Recommendations:

1. Provide the OPO with adequate notice to respond to proposed policy changes.
2. Reverse APD GO 903 changes made related to BWC and DMAV violations.

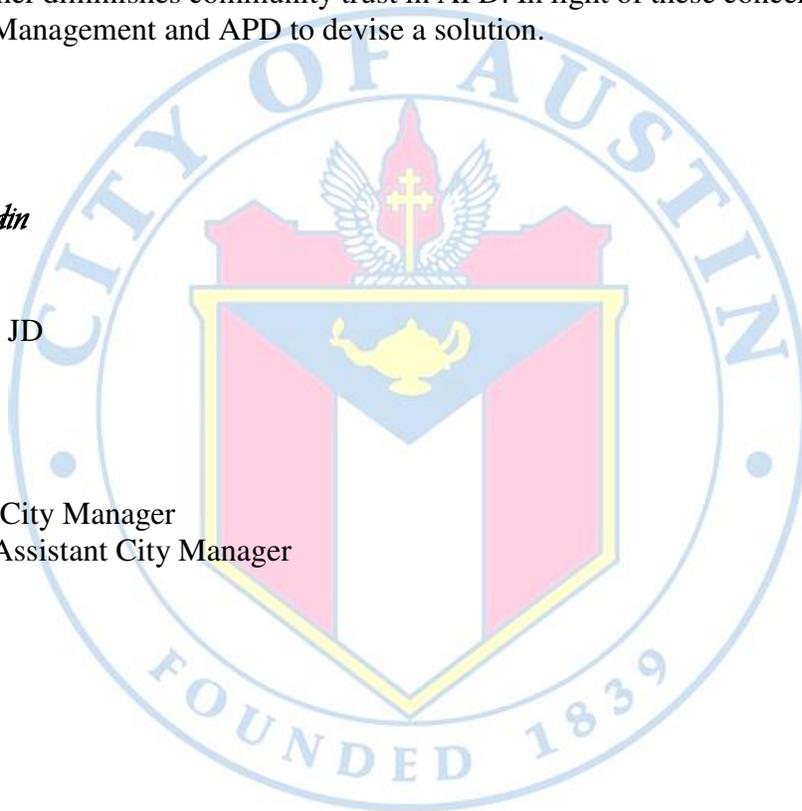
The OPO should be consulted with changes to policy that specifically relate to the function of oversight. APD's actions are counter to the changes that were to expand oversight on November 2018 and expectations of the community, City Council, and City Management. Given APD's own vision of being a "trusted and respected Department," it is imperative that APD not act in opposition to community needs, as well as City Council and City Management directives. Obstruction of oversight through unilateral changes to policy that reduce transparency and accountability hinders the fair resolution of complaints and further diminishes community trust in APD. In light of these concerns, I look forward to working with City Management and APD to devise a solution.

Sincerely,

Farah C. Muscadin

Farah C. Muscadin, JD
Director

cc: Spencer Cronk, City Manager
Rey Arellano, Assistant City Manager



ⁱ https://www.austintexas.gov/sites/default/files/files/Police/Public_Trn_BWC.pdf