



OFFICE OF POLICE OVERSIGHT

NOTICE OF FORMAL COMPLAINT

ICMS #: 2020-0897

June 8, 2020

Complaint: Ms. [REDACTED], complainant, emailed the Office of Police Oversight stating the following:

“I stand with the protesters against police brutality around the country, and particularly in Austin. As a white person, I absolutely believe that the institutions of our society are unjustly geared against minorities. I’ve always known this, but the governmental and police responses to these protests has brought it into stark relief.

A few weeks ago, I watched aggressive, armed white people harass and threaten government officials in Michigan. No riot police intervened. No teargas was fired. No “less lethal” weapons were brought to bear. And now, while black people peacefully protest the actions of the police-- specifically against minorities-- they are met with indiscriminate violence and excessive force. It’s extremely difficult to see this as anything but the actions of overtly prejudiced and deeply corrupt systems of local, state, and federal law enforcement.

Police have to be held accountable. When evidence of their misconduct is presented, they must face the same repercussions that any of us would. Anyone using force against unarmed and non-violent citizens needs to be arrested and charged with assault. Those with the power to enforce the law (or to break it with the expectation of immunity) need to be held to a higher standard BECAUSE of their power. If we allow police or any government institution to violate our constitutional rights to freedom of speech and assembly, then those rights mean nothing. There will be nothing to stop those in power from attacking us in our neighborhoods, at the voting booth, or in our homes.

We can’t let this institutional violence continue. You must act to root out the culture of racism and immunity to consequences that has metastasized within law enforcement. Even if you believe that these are the actions of a few “bad apples,” then prove it by taking decisive action against them and their enablers. Hold them accountable. Discipline, fire, arrest, and charge them as appropriate, just as you would to any citizen. Get rid of the leaders that permit this kind of culture and behavior.

We demand justice. For Freddie Gray’s murder. For The protesters at Lafayette Square being gassed for a presidential photo opportunity. For 16-year-old [REDACTED] broken skull and brain injury, doled out for the crime of standing peacefully on a hill [see [REDACTED]]. For all of us who are entitled to EQUAL protection under the law.”

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.

The City of Austin is committed to compliance with the American Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.



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.