



OFFICE OF POLICE OVERSIGHT

NOTICE OF FORMAL COMPLAINT

ICMS: 2021-0851

August 17, 2021

Complaint: The OPO received a complaint, via email, from [REDACTED], Attorney at Law alleging:

This is a complaint against Austin Police Department Interim Police Chief Joseph Chacon and Assistant Chief of Police Richard (Rich) Guajardo. This complaint is based on information and belief after interviewing multiple credible witnesses who are officers or employees of the Austin Police Department and examining the affidavit of Austin Police Detective [REDACTED].

Detective [REDACTED] is the lead detective in the criminal case against U.S. Army Sergeant [REDACTED]. [REDACTED] is indicted for Murder, Aggravated Assault and Deadly Conduct in connection with the death of [REDACTED]. The case is styled State of Texas vs. [REDACTED], cause number [REDACTED]. [REDACTED] was called as a witness before the Grand Jury in this case and will be a witness when the case goes to trial.

On or about [REDACTED], elected District Attorney Jose Garza became aware that Detective [REDACTED] provided defense attorneys with a sworn affidavit alleging that the Travis County District Attorney's Office committed the criminal offense of Tampering with a Witness ([REDACTED]) and suppressed exculpatory evidence from the Grand Jury. [REDACTED]'s actions in providing the affidavit demonstrated great personal courage while complying with the law and all APD policies. After learning about the [REDACTED] affidavit, District Attorney Jose Garza called Interim Police Chief Joseph Chacon, presumably to complain about [REDACTED]'s actions and to pressure Chacon to silence [REDACTED]. Chief Chacon is a candidate for permanent police chief and likely did not want to anger the elected district attorney.

Interim Police Chief Chacon ordered Assistant Chief Guajardo to pressure Detective [REDACTED] to stop talking to and cooperating with Defense Attorneys. After receiving Chief Chacon's orders, Assistant Police Chief Richard Guajardo went to Detective [REDACTED]'s cubicle and accosted him. Guajardo threatened [REDACTED] with an internal affairs complaint if he didn't retract his affidavit. He further gave [REDACTED] a direct order to cease speaking with the defense attorneys representing [REDACTED]. Apparently, Guajardo made significant remarks to the crowd of detectives in the work-space adjacent to [REDACTED]'s cubicle consistent with the threats he made to [REDACTED]. All detectives present to hear Guajardo's comments are witnesses in this matter.

As some point later, Chief Chacon thought to seek legal guidance from Assistant City Attorney [REDACTED]. Presumably, [REDACTED] informed Chacon that everything that had transpired violated criminal and civil statutes and subjected the City of Austin to liability.



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In ordering Assistant Chief Guajardo to silence Detective [REDACTED] Interim Chief Chacon committed (at a minimum) the following criminal offenses:

- Tampering with a Witness (Texas Penal Code Section 36.05)
- Obstruction or Retaliation (Texas Penal Code Section 36.06)
- Official Oppression (Texas Penal Code Section 39.03)
- Abuse of Official Capacity (Texas Penal Code Section 39.02)
- Coercion of a Public Servant (Texas Penal Code Section 36.03)

In addition to criminal law violations, Interim Chief Guajardo violated multiple APD Policies. In threatening Detective [REDACTED] with an internal affairs case and ordering to never again speak with the defense attorneys again, Guajardo committed (at a minimum) the following criminal offenses:

- Tampering with a Witness (Texas Penal Code Section 36.05)
- Obstruction or Retaliation (Texas Penal Code Section 36.06)
- Official Oppression (Texas Penal Code Section 39.03)
- Abuse of Official Capacity (Texas Penal Code Section 39.02)
- Coercion of a Public Servant (Texas Penal Code Section 36.03)

In addition to criminal law violations, Assistant Chief Guajardo violated multiple APD Policies.

Administrative Policies to Review:

The OPO recommends an independent investigation into the actions of Assistant Chief Guajardo, Interim Chief Chacon and Detective [REDACTED]

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 equitable 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.

(a) Employees will not express or otherwise manifest any prejudice concerning race, religion, national origin, age, political affiliation, sex, or other personal characteristics in 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.



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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.

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.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.

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.

- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD directives which pertain to their assigned duties.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines and will consult their immediate supervisor for clarification and explanation.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

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

The OPO is not recommending a classification. The OPO is recommending an independent investigation into the actions of Assistant Chief Guajardo, Interim Chief Chacon and Detective

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