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## MEMORANDUM

### **Austin Police Department** *Office of the Chief of Police*

**TO:** Joya Hayes, Director of Civil Service

**FROM:** Brian Manley, Chief of Police

**DATE:** June 15, 2020

**SUBJECT:** Agreed Temporary Suspension of Police Officer Jeffrey Teng #8443  
Internal Affairs Control Numbers 2020-0039

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 Jeffrey Teng #8443 from duty as a City of Austin, Texas police officer for a period of thirty (30) days. The agreed temporary suspension is effective beginning on June 16, 2020 and continuing through July 15, 2020.

I took this action because Officer Teng 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 Teng in violation of Rule 10:

On December 4, 2019, Officer Teng, while on duty, responded to a report of a Family Disturbance on East Riverside Drive. Officer Teng made contact with the complainant and the suspect at the complainant's residence. Officer Teng learned that the complainant and the suspect were in a dating relationship. The complainant informed Officer Teng that she had been assaulted by the suspect. The complainant described to Officer Teng pain and injuries she sustained during the assault.

Officer Teng did not arrest the suspect, even though he had probable cause to do so. Because Officer Teng had probable cause that the suspect had committed family violence, General Orders mandated that he arrest the suspect. By his own admission to Internal Affairs the suspect should have been arrested at the scene.

Moreover, during the response to this call, Officer Teng admittedly failed to take appropriate action and conduct a proper initial investigation by neglecting his duty in failing to follow APD General Orders and training, including but not limited to the following:

- Officer Teng did not take the complainant's statement completely outside the presence of the suspect.
- Officer Teng did not take photographs of the complainant's described injuries.
- Officer Teng did not complete an Assault Victim Statement. The complainant should have been offered the opportunity to fill out an Assault Victim Statement, which could have resulted in an Emergency Protective Order.
- Officer Teng did not offer victim services to the complainant.
- Officer Teng did not conduct a proper mental health evaluation of the suspect and/or the complainant.
- Officer Teng failed to attempt to speak with neighbors or locate all possible witnesses.
- Officer Teng provided inadequate details to his supervisor and did not completely detail significant facts to him.
- Officer Teng failed to properly title his offense report and document all of the relevant details within the report.

By these actions, Officer Teng 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 401.5: Preliminary Field Investigations: Secure and Identify Witnesses**

**401.5 Secure and Identify Witnesses**

Officers should attempt to locate any witnesses to an offense when warranted by the seriousness of the case. Since potential witnesses to an incident may be lost or the integrity of statements compromised with the passage of time, officers should take reasonable steps to promptly coordinate the following tasks with on-scene personnel:

- (a) Separate witnesses from the public, media and other subjects on-scene as the situation and personnel allow.
- (b) Obtain necessary identification from witnesses and an account of what they observed.
  - 1. Any potential witness who is unwilling or unable to remain available for a formal interview or who refuses to be identified should not be detained absent reasonable suspicion to detain or probable cause to arrest.
  - 2. When feasible, a recorded statement should be obtained from witnesses present at the time the incident occurred, regardless of whether they actually saw something.
- (c) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where an investigator may obtain a recorded statement. Such witnesses, if willing, may be transported by Department personnel.
  - 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness in a Department vehicle.
  - 2. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- (d) Record witness information and statements in an incident report or supplement.

➤ **Austin Police Department Policy 418.2.1: Family Violence: Arrest Requirement for Assaultive Offenses**

**418.2.1 Arrest Requirement for Assaultive Offenses**

- (a) Officers are required to make an arrest for incidents involving family violence when:
  - 1. An assault has occurred that resulted in a minimum of bodily injury or complaint of pain; or where an officer can articulate facts from which a reasonable person could infer that the victim would have felt pain due to:
    - (a) The manner in which the suspect made contact with the victim, or
    - (b) the nature of observable physical marks on the suspect's body allegedly caused by the suspect's contact with the victim, and
  - 2. The suspect is still on-scene; and
  - 3. The assault meets the definition of "family violence" or "dating violence."
- (b) If both parties have been assaulted, officers shall make reasonable efforts to identify the primary aggressor. Arrests of both parties should be avoided unless warranted.
  - 1. If officers at the scene cannot determine the primary aggressor, an on-duty supervisor shall be contacted to make the determination.
  - 2. If the on-duty supervisor cannot determine the primary aggressor and there is adequate and articulable probable cause to believe that each person contributed to the violence, supervisors may authorize officers to make multiple arrests.
    - (a) Officers shall write probable cause affidavits for each of the arrests and direct file the charges.
    - (b) The name of the supervisor authorizing a multiple arrest situation shall be included in the incident report.
- (c) Officers shall not use mediation at the scene as a substitute for appropriate reporting and enforcement action when physical violence has taken place.
- (d) Officers shall arrest for assault by threat or assault by contact if no physical violence has occurred that resulted in bodily injury, but circumstances reasonably show that further violence is likely to

happen. Supervisor approval is required when the arrest is made from inside a residence.

- (e) Supervisors may authorize an exception to an arrest if there are articulable facts that lead a reasonable person to believe the alleged suspect was acting in self-defense. The facts leading to the decision for an exception shall be fully documented in the incident report, along with the name of the supervisor approving the exception.
- (f) In felony incidents involving family violence the on-call investigator from the Domestic Violence Unit shall be contacted by a supervisor when:
  - (a) Serious or life-threatening injuries are sustained, regardless of whether an arrest is made; or
  - (b) A crime scene is complex and may require a response and/or the assistance of a unit detective (ex. search warrant, high profile cases, etc.).

Notification simply due to a felony offense occurring or a felony arrest being made is not required. Should an officer or supervisor determine or feel that a notification to the Domestic Violence Unit in these situations is necessary, such notification should be made via email at [family.violence@austintexas.gov](mailto:family.violence@austintexas.gov).

➤ **Austin Police Department Policy 418.2.3: Family Violence: Family Violence Involving Mental Illness**

**418.2.3 Family Violence Involving Mental Illness**

If there is reason to believe a suspect that is still on-scene suffers from a mental illness, an on-duty patrol officer that is a certified Crisis Intervention Team (CIT) officer shall be requested to the scene.

- (a) A Peace Officer Emergency Commitment (POEC) may be used to remove a suspect from the scene for the purpose of a psychiatric evaluation and/or treatment in lieu of a custodial arrest. The discretion to use a POEC rests solely with the on-scene CIT officer.
- (b) It is recommended that a suspect in a family violence offense only be placed in protective custody pursuant to a POEC when sufficient psychiatric bed space is available and has been confirmed at the proper psychiatric facility by the CIT officer prior to transport. Under no condition will a suspect in protective custody pursuant to a POEC be transported to a hospital ER for a family violence offense when no psychiatric beds are available in lieu of filing criminal charges.

- (c) If the CIT officer determines the subject fits the criteria for a POEC, the CIT officer may transport the subject to a psychiatric facility on the POEC.
  - 1. Once at the facility, the CIT officer will remain with the subject pending the physician's evaluation.
    - (a) If the facility admits the subject, the CIT officer shall complete all required family violence documentation but will not file any charges on the subject. Additional charges may be filed at a later time.
    - (b) If the facility does not admit the subject, the CIT officer will place the subject under arrest for the family violence criminal offenses(s) committed. Once arrested, the CIT officer shall complete all documentation and use direct file procedures for the filing of charges at the time of booking.
- (d) This section does not:
  - 1. Remove the requirement to complete an Assault Victim Statement (AVS) and make any applicable notifications as outlined in this order.
  - 2. Supersede an officer's authority to arrest for a felony offense at the scene in accordance with Department General Orders.

➤ **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.

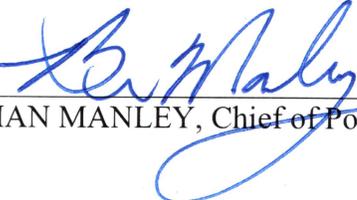
In addition to this agreed temporary suspension, Officer Teng agrees to the following terms and conditions:

1. Officer Teng shall attend any training specified by his chain of command.
2. Officer Teng 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 Officer Teng returns to duty after completing his agreed suspension. Should Officer Teng 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. Officer Teng 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. Officer Teng 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, regulation, 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. Officer Teng 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.

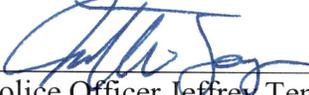
By signing this Agreed Discipline, Officer Teng understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Officer Teng waives all right to appeal this agreed suspension and the additional terms and conditions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

  
\_\_\_\_\_  
BRIAN MANLEY, Chief of Police

6-15-2020  
\_\_\_\_\_  
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.

  
\_\_\_\_\_  
Police Officer Jeffrey Teng #8443

6/15/2020  
\_\_\_\_\_  
Date