



OFFICE OF POLICE OVERSIGHT

NOTICE OF FORMAL COMPLAINT

ICMS #: 2021-1095

December 15, 2021

Complaint: The complainant alleges: he was involved in a peaceful protest and filming when security guards followed him around and harassed him. Complainant alleges he asked them to stop so they called APD. Complainant alleges 7 – 8 officers and 3 sergeants showed up, Sgt. [REDACTED], Sgt. [REDACTED] and Sgt. [REDACTED]. Complainant alleges Instead of giving him a ticket for disorderly conduct, they arrested him on a class C misdemeanor and seized his camera and won't give it back. Complainant alleges he spent 6 hours in jail. Complaint alleges Detective [REDACTED] is refusing to give his equipment back until after the trial and after they download all his videos. Complainant alleges this is police retaliation and they did not want him to have his freedom of speech. Complainant alleges Sergeant [REDACTED] told him he needed a permit for the megaphone. Complainant alleges he asked that all his electronics and property be given to his friend, they gave it to her and then took it back. Complainant alleges he talked to several people with APD and still has not been able to get his equipment. Complainant alleges APD harassed him for 45 min or an hour. Complainant alleges the city, OPO, [REDACTED] [REDACTED] and [REDACTED] have not done anything to hold these officers accountable. Complainant alleges APD refuses to give him his chain of custody which would tell him who had access to his equipment the last time he was arrested. Complainant alleges all of his video was deleted twice out of 3 different arrest and that is a felony, obstructing evidence, and if his video is messed with, he is going to be filing felony charges against APD. Complainant alleges OPO needs to secure his rights and defend his life and defend the people and the constitution or they need to quit their job so someone else can do that including [REDACTED]. Complainant alleges under the freedom city polices APD is not supposed to have officer aggression but know and comply under APD policies have a right to film the police without interference. Been without his equipment for 3 days and he Want those officers disciplined - [REDACTED] (OPO)

[REDACTED]

Also to date det. [REDACTED] and APD are keeping my cameras and microphone. Det. [REDACTED] is refusing to return my work product and equipment, violating my first amendment even further. IN an actof punitive retribution for me filming the police in Austin for almost 8 years now. This further violates my rights under the Constitution. Also this prevents me from being able to fully film and document the police interactions with the public and thefts by the city of the unhoused people's gear, threats, harassment and arrests for being "homeless" in Austin. Which occurs every week thanks to City leaders and unconstitutional laws. Det. [REDACTED] needs to be canned and disarmed to protect Citizens of Austin. I will be suing the City for this violation of our Constitutional Rights, to defend the People and the Constitution that he swore an oath to protect, and to make sure everyone is protected from [REDACTED] [REDACTED] [REDACTED] and their Confederates in crimes. Seizing my equipment for 2 weeks so far to blind the people and allow the police to run amuck without



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transparency is only making a law suit more impactful in this case. If my photojournalism equipment, or work product is destroyed you will see more litigation in this case.

I WANT MY EQUIPMENT AND WORK PRODUCT BACK IMMEDIATELY. This is a demand, not a request.

The Government serves the People or it will be held accountable to the People for not protecting us and the Constitutional Rights that are Federal Law. In the past the APD has destroyed evidence and work product off of my work equipment. And they have damaged other filmer's equipment and destroyed their memory cards. If that happens in this case there will be legal consequences. That is a felony destruction of evidence. I will file charges against all involved with the District Attorney's office, who are already aware of the pattern and practice of criminal actions by agents working together at APD. - [REDACTED] (OPO)

This notice of formal complaint is a request for Internal Affairs to initiate an investigation to determine if the employee conduct is within compliance of APD policy, Civil Service Rules, and Municipal Civil Service Rules.

Recommended Administrative Policies to Review (to include but not limited to):

301.1 PURPOSE AND SCOPE

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 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.



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302.2 INTERACTION WITH COMMUNITY

(a) Officers are reminded that photography, including videotaping, of places, buildings, structures and events are common and normally lawful activities. (e) Officers are reminded that a person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law. (f) Evidence on a Camera or Recording Device If an officer has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the officer shall request that the person either: (a) allow the officer to listen to or view the recording (b) Voluntarily provide the device or recording medium (e.g., the memory chip) to the officer; or (c) Where possible and practicable, and in the presence of the officer, voluntarily transmit the images or sound via electronic mail to the officer's official government electronic mail account. (d) Consent to view or take possession of a recording device or medium must be given voluntarily and in accordance with APD General Order 306.4 Consent to Search. If the individual declines to voluntarily provide the device or recording medium, or to electronically transmit the sound and/or images where possible and practicable, and the officer believes that exigent circumstances exist insofar as the evidence of criminal activity will be lost absent an immediate seizure of the device, the officer shall take control of the device and contact a supervisor...

308.3 MISDEMEANOR CITATION USE

Officers shall issue misdemeanor citations as permitted by this order. (a) On-duty officers who decide to take enforcement action on a subject who commits a citation eligible misdemeanor offense shall, except as otherwise permitted by this Order, issue a citation when all considerations outlined in this order have been met, and no disqualifying circumstances exist. (b) Officers shall select the least intrusive or severe method when considering issuing a citation in lieu of arrest, which will: 1. Stop existing criminal conduct; a subject's criminal history should not be a determining factor. 2. Remove the imminent threat of violence or criminal conduct. 3. Prevent persons from endangering themselves or others

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 written 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.



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900.4.1 DISCRETION AND REQUIREMENT TO TAKE ACTION

Sworn employees are charged with the responsibility to enforce the law, preserve the peace, and to protect lives and property. By itself, the mere fact that a minor violation of the law has occurred may not be sufficient reason to justify arrest. Laws generally serve as the tools officers use to protect residents' rights and to maintain peace in the community.

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

The OPO recommends this complaint receive a B classification.