



NOTICE OF FORMAL COMPLAINT

ICMS #: 2021-1100

November 5, 2021

Complaint: The complainant alleges:

“I am including below an email previously sent to Austin City Council Members regarding the events that unfolded in [REDACTED] on [REDACTED]. A full investigation into each aspect is warranted.

Good afternoon,

On [REDACTED] I was having a 504 meeting with [REDACTED] when I received notification of a large amount of police in my neighborhood following a potential shots fired call. I asked [REDACTED] if they had been made aware and they confirmed they had and would be in secure status. At this time, we weren't aware what was unfolding next door and the situation developed throughout the day.

When driving past between [REDACTED] and my home, I saw multiple SWAT tanks driving throughout the neighborhood and a large police and EMS presence. This prompted an emotional response from me concerned about what was developing and, as is always a concern, police handling of the situation. Hoping for a peaceful end, I drove home and stayed there throughout the day. I checked on my neighbors and learned that code enforcement and APD came to [REDACTED] to serve an administrative warrant and mow the grass. The person within the home discharged a weapon and police did not know if it was in the air or at the individual(s). One man prompted massive amounts of police, SWAT, and other emergency responders. Several roads were closed off and we were “encouraged” to stay inside with surrounding schools and daycare facilities on secure status. The standoff lasted for more than 5 hours before [REDACTED] was shot as he exited his home. I'm sure you're familiar with the incident but am sharing as a [REDACTED] resident. I am also somebody that has almost 20 years of professional experience with consulting, management, and development of neighborhoods, condominiums, commercial projects, and various types of associations. Among other things, I am familiar with code, compliance, dedicatory instruments, working with the city, “self help” measures and the concerns they bring, etc. In my personal life, I spend countless hours as an advocate — for families, domestic violence, children, minorities, and our communities. I believe my training and advocacy guides me and brings important perspective to the discussion.



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I want to take a moment of your time to express my feelings about what has happened to date and encourage the right thing(s) happen forward. I think this is important. [REDACTED] [REDACTED] has had a few code complaints over the years for grass and the yard was force mowed “without incident” at the end of [REDACTED]. A fine of \$596.42 was levied and the property was promptly liened for this \$596.42 fine. Another complaint came at the end of [REDACTED] and code was back out [REDACTED] to make good on their promise to force mow again. That’s pretty quick turnaround time for the city code compliance to come back out here to [REDACTED] with enforcement, to mow this lawn. I can say with some certainty that the \$596.42 city of Austin lien was not helpful to de-escalating circumstances on this follow up force mow. As an aside, \$596.42 to mow a struggling citizen’s yard doesn’t, to me, seem reasonable. So quickly liening somebody’s property (their home) also seems problematic to me.

I would like for you to take a look at a sampling of code compliance cases to review the response and handling as well as looking at this one closely. Please also take a look at [REDACTED], a yard complaint called in approximately [REDACTED]. ([REDACTED] was in this same timeframe, for reference) This was not the first code violation for [REDACTED]. In fact, they had a code violation just a month or two prior. The [REDACTED] complaint was closed on [REDACTED] after coming into compliance on [REDACTED]. The timeline alongside the difference in handling these two complaints is interesting. As one small reference.

I would also like to point your attention to city owned/maintained property. Specifically, we can discuss [REDACTED]’ many drainage ponds, surrounded by residential houses. I lived one street over from one of these ponds ([REDACTED]) for years. Ponds that subjected my home and street to flooding, turtle friends misplaced into my front yard, snakes, mosquito infestations, and more. The city is required to maintain the ponds, but they simply don’t. There are to be a minimum of 4 mows annually (additional as needed) and it’s a wonder if 1 or 2 mows happen, and it’s a high effort exchange to have even that happen if it does. The negligence of the city’s responsibilities causes flooding, snakes, wildlife, and other concerns — particularly given that these are drainage ponds that have consistently been neglected by the city. There are drainage and grading issues. I have spent years working, begging, and fighting with the city of Austin (emails can be provided) seeking city of Austin remediate and maintain their responsibilities. In my professional career, I have had many instances of many challenges with the city of Austin maintaining their responsibilities — vacant lots, ROW, ponds, any and every circumstance you can think of. I was motivated at [REDACTED] this morning to get my infant in the car and drive a mile up the street from [REDACTED] to take photos of the pond that



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plagued me for the years I lived in and managed [REDACTED]. It is peculiar, to me, that the city of Austin can be so aggressive with its residents while shirking its responsibilities.

Switching focus back to the incident that occurred [REDACTED] in [REDACTED] — The police have shared in multiple public statements that they were aware there was possible mental health and other concerns related to [REDACTED]. I have not found any criminal charges or anything in public records available to me to support this claim. This may have been their opinion and it could have been unfounded but, nonetheless, they stated they were previously concerned about mental health and possibly violence. Concerned enough to escalate code enforcement actions beyond what is typical — to ensure this force mow happened but no effort to attempt any appropriate actions to mitigate or help this individual. Did he, or his actions or behaviors, simply bother or irritate (blind) neighbors and code enforcement/APD to the point of this egregious response? That's a question in my mind.

If we look at these circumstances openly I believe we will find some significant areas for improvement. And this is important, for my neighborhood and for our society. We have spent a significant amount of time discussing mental health and appropriate responses to mental health circumstances. I am discouraged that we are still talking about talking about mental health. Best practices certainly weren't followed in this instance. To be clear, I am not stating that this was a mental health challenge, I am responding to the police statements that there were prior concerns — about his well being, about his mental health, and about potential violence. Were these "concerns" substantiated or were these rumors from my [REDACTED] neighbors or opinions of those that didn't appreciate this resident or his grass? Was code enforcement weaponized against one of my neighbors by another of my neighbors? That's a valid concern. Is there anything to support this suspicion or is it opinion of the code enforcement and/or police department? We don't know.

What's important here is that they have openly claimed to be aware of concerns and did nothing to mitigate those concerns, instead escalated to the point of the occurrences on [REDACTED] in our residential neighborhood directly next to several schools/preschools/daycare facilities that my children attend. I imagine this also cost our city quite a bit of money which I do feel was entirely avoidable.

Another interesting piece is that [REDACTED] purchased his home in [REDACTED] when this was a MUD and prior to annexation. [REDACTED] didn't agree to the covenants for the homeowner's association when he purchased his home so it is challenging if owners



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and/or the HOA are contacting the city code compliance based on perceived HOA violations. Perhaps a city violation existed since the end of [REDACTED] when this grass was last mowed but city violations are abundant and I question how “bad” it could have possibly been. As a reference, I last mowed my own grass on [REDACTED] and didn’t mow it again until [REDACTED]. Aside from a patch of weeds at the corner of my property, the grass hadn’t grown and was short enough that I didn’t receive even a warning letter from our HOA.

I believe that an opportunity existed here to support in an appropriate way, and intervene in an appropriate way if that must happen. Family outreach, social workers, and less aggressive measures could and should have happened.

Moving beyond the measures that could have taken place from the time of the code violation, the initial force mow, the egregious fine and lien, and to the aggressive actions in the second attempted force mow, I would like to address the police response and behaviors. We had a massive amount of law enforcement, swat, equipment, weapons, and various first responders. I am not the most qualified to say with certainty that this was inappropriate, but I question the level of response in this instance. There are claims that he shot from within his residence around [REDACTED]. I don’t know with certainty if that was ammunition going off in the fire, flash bangs from the front, or whatever method the robot used to enter the residence — it didn’t pick the lock. I don’t know for certainty what caused the fire and if [REDACTED] set the fire or if it was from flash bangs or the robot’s method of entrance into the building. I do believe, from police statements, that the time of the fire coincides with the flash bangs and robot’s entrance. I am also aware the most significant fire damage is at the front entrance, the same location of aforementioned police activity.

In all of that, we had surrounding neighbors that were allowed to stand on the street directly across from a “shots fired” and 5+ hour stand off apparently necessitating tanks and a military scene in our typically quiet, albeit entitled, [REDACTED] Austin neighborhood. I believe those two are contradictory... We need two SWAT tanks and more than half the police force, but we don’t need to clear neighbors to safety? I guess I am confused. I believe that there was ample opportunity (and certainly ample responders) in the 5+ hours to clear the surrounding homes to prepare for [REDACTED] to exit his home, as he was being asked to do. I am surprised that we can potentially excuse away actions taken claiming a danger to society and not take measures to protect them. In any scenario, whether it’s shots fired from within the home or [REDACTED] emerging and whatever we might opine during those 5+ hours would unfold, people standing directly in front of, to



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the side, and across from the home is going to be problematic for all. Perhaps they could, and should, have alleviated the potential danger(s) to the neighbors as well as the distraction so they could more appropriately address the situation. Perhaps, had they done so, ██████████ could have had the opportunity to exit his residence without being shot to death. The account from the police department is that he emerged with his weapon, they did not say he pointed the weapon or fired the weapon at that point. I imagine the excuse is a fear that he would shoot the officers or endanger neighbors. We had SWAT tanks on scene for the officers. The accounts I am hearing from my neighbors are of the police standing around sharing information with neighbors lined up like they're waiting on snocones at a ██████████ block party.

The police surrounded this house for hours yelling through a bull horn "we have you surrounded, we aren't leaving..." I am not the expert, but I don't think this is the most appropriate message. The police deployed flash bangs (whatever their technical term is) and breached the premises with a robot in some unknown manner at the same time as a fire breaks out. We have a man possibly having a mental health emergency, that certainly would have only exacerbated in these circumstances, surrounded by military style weapons and equipment, who has been disoriented by flash bangs, fire, and smoke inhalation and he exits his residence. It's reasonable to think that he was disoriented at that point. It's also reasonable to think those two SWAT tanks might have helped to protect our officers. We don't know if we could have peacefully taken ██████████ alive because he was promptly shot dead upon attempting to exit his home. Even with weapon in hand, if so, the police have not ever said he aimed or fired at them at that time. A valid question here is does walking out holding a weapon (on your property in Texas) present clear and present danger? We move to the next argument that he fired shots previously. The police stated they did not know if he fired at others or fired within the home. We also don't know if ammunition was later going off in a fire or (again) how that fire was set — by the resident or police action. What I do feel like I know is that if somebody discharges a weapon hours before and I see them later and shoot them dead, a DA is not likely to accept that as self defense. Even given the circumstances, I believe there was an opportunity to use less lethal force here and that there were many missteps. I also question the handling of this (start to finish) and the response to this concern in an affluent ██████████ Austin neighborhood vs incidents perhaps in other areas of town.

This is an extreme and unfortunate ending to alleged overgrown grass resulting in loss of property, loss of life, and a lot of trauma — to the deceased's family and to the residents in our neighborhood. Perhaps our responses and handling of the situation caused (and/or



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escalated) the situation at hand and that's a reality that we need to review. Somehow I don't feel like we improved the circumstances for this man, this neighborhood, or the community. I am concerned about the events that unfolded and the ways in which they were handled, based on my information. I am also concerned that we don't have more information and transparency that is necessary and required. This impacts me not only as a [REDACTED] but as a citizen in Austin, Texas, USA. While there was quite a display and chaos on [REDACTED], it has been quiet since that time. I do not see teams busily investigating the scene and I am confused as to why. The city was so aggressive to resolve a grass concern, we are now staring at a crumbling structure and crime scene. Does the structure present a danger to the surrounding homes? I suppose that's a concern.

There should be an investigation into the events leading up to these circumstances, a full, appropriate investigation into the cause of the fire as well as the ongoing investigation into the use of force. The bodycam videos need to be released and the public deserves more information and oversight into what occurred on this day. If we can receive an appropriate response and promise to adequately review all aspects of this, it alleviates necessity to rally the neighborhood and community to call upon the city, APD, AFD, and additional organizations to fairly and adequately investigate each aspect of these events.

I look forward to hearing from you.”

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):

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

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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 ASSESSMENT 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 them.

211.6 LEVEL 1 AND IN-CUSTODY DEATH INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

Level 1 force incidents require an inquiry be conducted by SIU and may also concurrently be investigated by IA. In-custody deaths occurring prior to or within 24 hours after booking require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject. The following sections explain the responsibilities in Level 1 force incidents and in-custody deaths for:

- (a) Supervisors,
- (b) Special Investigations Unit (SIU),
- (c) Lieutenants,



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(d) Chain-of-command, and

(e) Internal Affairs (IA).

412.1 PURPOSE AND SCOPE

Hostage situations and barricaded suspects present unique problems for law enforcement. The protection of the public and law enforcement personnel is of the utmost importance. Proper planning and training will tend to reduce the risks involved with these incidents. The Critical Incident Negotiation Team's (CINT) sole purpose is to facilitate the professional resolution of hostage and/or barricaded subject incidents.

For purposes of this document, "professional resolution" means utilizing nationally recognized law enforcement negotiation techniques which focus on saving human life during critical times involving emotionally disturbed persons and/or criminal subjects. Professional resolution further means recognizing the importance of safety and inter-unit communication and cooperation with regard to the overall success of critical incident resolution.

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

The OPO recommends this complaint receive an A classification.