



ICMS #: 2020-0798

August 10, 2020

Complaint: The Office of Police Oversight received a phone complaint from [REDACTED] alleging that Austin Police Department (APD) officers may have violated APD policy. Mr. [REDACTED] states that he was on an Uber ride home after drinking that night and, after interactions with the Uber driver, the Uber driver pulled up next to a police car and told police that Mr. [REDACTED] had a gun. Mr. [REDACTED] states he did not have a gun or a weapon and alleges that an officer yelled for him to put his hands up and then demanded that he open the car door. Mr. [REDACTED] states that he put his hands up and told the officer that he wasn't opening the door, that his hands were up and the officer had told him to put his hands up. Mr. [REDACTED] states that he told the officer to open the door, and alleges that the officer opened the door, pinned him down, and asked for his gun. Mr. [REDACTED] states that he continued to say that he did not have a gun. Mr. [REDACTED] states that the officer put a gun to the back of his head and sat on his back. Mr. [REDACTED] further alleges that officers aggressively touched his groin area and buttocks. Mr. [REDACTED] states that he was eventually taken out of handcuffs and an officer drove him home. Mr. [REDACTED] states that he didn't resist and that if he had resisted, he would have been killed.

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.

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 reasonable deescalation 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 de [REDACTED]. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him.

200.3.2 USE OF FORCE TO AFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH

An officer is justified in using reasonable force when the officer reasonably believes the use of such force is immediately necessary (Tex. Penal Code § 9.51(a)):

- (a) To make or assist in a detention or an arrest, or to conduct a search that the officer reasonably believes is lawful;
- (b) To prevent or assist in preventing escape after an arrest, provided the officer reasonably believes the arrest or search is lawful; or
- (c) To make an arrest or conduct a search under a warrant that the officer reasonably believes is valid.

303.3.1 WHEN DEPARTMENT ISSUED BWC SYSTEM USE IS REQUIRED

This section is not intended to describe every possible situation where the system may be used. In some circumstances it may not be possible to capture images of an incident due to conditions or location of the camera, however the audio portion can be valuable evidence and is subject to the same activation requirements. The BWC should only be activated for law enforcement purposes.

318.5.1 MIRANDA WARNING

- (a) Officers will administer the Miranda Warning to a subject during a custodial interview/ interrogation when questioning begins to focus on the person stopped, becoming accusatory regarding a specific offense.

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.



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.

