



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: July 27, 2012

SUBJECT: Indefinite Suspension of Police Officer Elias Osegueda # 5951
Internal Affairs Control Number 2012-0280

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighter's and Police Officer's Civil Service Commission, I have indefinitely suspended Police Officer Elias Osegueda #5951 from duty as a police officer of the City of Austin, Texas effective July 28, 2012.

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

On March 24, 2012, Officer Osegueda was arrested at his home in Buda, Texas by the Hays County Sheriff's Office for Assault with Injury/Family Violence and Interference with an Emergency Telephone Call. Both charges are Class A Misdemeanors. In addition to engaging in conduct that constitutes a criminal offense, Officer Osegueda's conduct violated several policies of the Austin Police Department. Additionally, Officer Osegueda was not truthful during the Internal Affairs investigation into the incident. Despite evidence to the contrary, Officer Osegueda denied both to the Hays County Sheriff's Office and to Internal Affairs that he struck or hit [REDACTED]. Rather, Officer Osegueda would only admit that he and [REDACTED] had a struggle and "it was possible" that something other than his hands caused the injuries to [REDACTED]'s face. Officer Osegueda's failure to tell the truth during the investigation into this incident is a violation of APD's honesty policy.

By these actions, Officer Osegueda 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 900.1.1: General Conduct and Responsibilities: Responsibility to Know and Comply**

900.1.1 Responsibility to Know and Comply

The rules of conduct set forth in this policy 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.

To Wit:

Texas Penal Code: Section 22.01: Assault with Injury/Family Violence

- (a) A person commits an offense if the person:
 - (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
 - (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or

- (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

➤ **Austin Police Department Policy 900.3.1: General Conduct and Responsibilities: Honesty**

900.3.1 Honesty

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

- (a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":
 - 1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations.
 - 2. Verbal or written statements made by an officer in connection with their official duties to:
 - (a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.
 - (b) A supervisor conducting an inquiry into the officer's use of force.
 - (c) A fact finder in an administrative, civil, or criminal proceeding in which the officer testifies.
- (c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

➤ **Austin Police Department Policy 900.3.2(a): General Conduct: Acts Bringing Discredit Upon The Department**

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

In determining the appropriate discipline, I took into consideration the seriousness of the offenses for which Officer Osegueda is charged as well as his failure to tell the truth during the Internal Affairs investigation. Officer Osegueda's conduct has brought discredit to the name and reputation of the Austin Police Department. Further, honesty is of utmost importance in the police profession and the Discipline Matrix mandates indefinite suspension for any violation of the Department's honesty policy. Officer Osegueda's conduct on March 24, 2012 and his lack of honesty during the investigation constitute violations of APD policy. Under these circumstances, indefinite suspension is warranted and appropriate, which is the chain of command's unanimous recommendation to me.

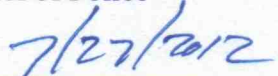
By copy of this memo, Officer Osegueda is hereby advised of this indefinite suspension and that the suspension may be appealed to the Civil Service Commission by filing with the Director of Civil Service, within ten (10) days after receipt of a copy of this memo, a proper notice of appeal in accordance with Section 143.010 of the Texas Local Government Code.

By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Officer Osegueda is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance with the provisions of such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided by Subsection (j) of Section 143.057 of the Texas Local Government Code. That section states that the State District Court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion or other unlawful means. In order to appeal to a hearing examiner, the original notice of appeal submitted to the Director of Civil Service must state that appeal is made to a hearing examiner.



Art Acevedo

Chief of Police



Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of indefinite suspension and I have been advised that if I desire to appeal that I have ten (10) days from the date of this receipt to file written notice of appeal with the Director of Civil Service in accordance with the provisions of Chapter 143 of the Texas Local Government Code.

Eli Osegueda 5951
Police Officer Elias Osegueda # 5951

07/27/12
Date