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MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: February 14, 2012

SUBJECT: Indefinite Suspension of Police Officer Michelle Gish #6649
Internal Affairs Control Number 2011-1018

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 Michelle Gish #6649 from duty as a police officer of the City of Austin, Texas, effective February 15, 2012.

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

On August, 31, 2011, Officer Michelle Gish responded to the termination point of a pursuit. Officer Gish began assisting EMS in securing an intoxicated and uncooperative female onto an EMS gurney. As Officer Gish was securing the female on the gurney, the female spit on Officer Gish and Officer Gish struck the female at least once in the head. Officer Gish was forcibly removed from the female by another officer and had to be restrained until she was calm enough for EMS to assist in rinsing off her face.

Internal Affairs began an investigation into the incident and noted the Response to Resistance inquiry may not have been thorough enough to form a conclusion regarding whether any policy violations had occurred.

In her report, Officer Gish said that she was holding the suspect down by her right shoulder to keep her secured against the gurney when the suspect spit in her face. According to Officer Gish's report, she then "delivered a reactionary/defensive strike with my open right hand to the left side of her face, to stop her from spitting on me again." Officer Gish wrote that she was then pulled away for injury/contact assessment. In her Internal Affairs interview, however, Officer Gish admitted that the female was restrained on the gurney when she spit on Officer Gish. Officer Gish also admitted that she was not consciously trying to prevent the female from spitting on her again when Officer Gish struck the suspect and that her statement in her report was untruthful. Officer Gish also admitted that she was pulled away from the female because she was out of control and not for injury/contact assessment as she had written in her report.

Despite these inconsistencies, Officer Gish stated in her Disciplinary Review Hearing ("DRH") that the statements in her report were not untruthful. Officer Gish admitted to Internal Affairs that her actions in striking a restrained person, even after being spit on, were wrong. Yet, in her DRH, Officer Gish stated that her actions were "justified under the circumstances." Based on witness statements, evidence from the scene and Officer Gish's own admissions, Officer Gish's use of force was unauthorized and violated APD policy. Additionally, Officer Gish's actions and inconsistent statements violated APD's incident reporting and general conduct policies, including APD's honesty policy.

By these actions, Officer Gish 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 200.2.1: Response To Resistance:
Determining The Objective Reasonableness Of Force**

200.2.1 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 him.

- (a) When determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:
1. The conduct of the individual being confronted as reasonably perceived by the officer at the time.
 2. Officer/subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers vs. subjects.
 3. Influence of drugs/alcohol or mental capacity.
 4. Proximity of weapons.
 5. The degree to which the subject has been effectively restrained and his ability to resist despite being restrained.
 6. Time and circumstances permitting, and the availability of other options (what resources are reasonably available to the officer under the circumstances).
 7. Seriousness of the suspected offense or reason for contact with the individual.
 8. Training and experience of the officer.
 9. Potential for injury to citizens, officers and subjects.

10. Risk of escape.
11. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
12. Other exigent circumstances.

➤ **Austin Police Department Policy 402.2.2: Incident Reporting and Documentation: Report Writing**

402.2.2 Report Writing

- (a) All reports shall accurately reflect:
 1. The identity of the persons involved.
 2. All pertinent information seen, heard, or assimilated by any other sense.
 3. Any action(s) taken.
- (b) Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing.

➤ **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.

➤ **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 discipline, I took into consideration the fact that Officer Gish struck a woman restrained to a gurney in violation of APD policy. Significantly, at her DRH, Officer Gish refused to take responsibility for her actions and denied that she was angry when she struck the woman. Further, Officer Gish stated at her DRH, contrary to her statement to Internal Affairs, that her actions were "justified under the circumstances." Officer Gish's unauthorized actions and her failure to acknowledge any wrongdoing demonstrate a serious lack of understanding of APD's policies and of the expectations that the Department has for all of its officers. Striking a woman under these circumstances is not authorized and cannot be justified and these actions alone warrant Officer Gish's indefinite suspension which is the chain of command's unanimous recommendation to me.

Additionally, Officer Gish's lack of truthfulness regarding the incident beginning with her report and continuing through the investigative and disciplinary processes violates several APD policies, including APD's honesty policy. As stated in APD's policy, honesty is of the utmost importance in the police profession and dishonesty is a serious policy violation for which indefinite suspension is mandated by the Discipline Matrix. Officer Gish's unauthorized and unjustified striking of a woman and her failure to truthfully report on and take responsibility for her actions is prejudicial to the good order, efficiency and discipline of the Department.

Consequently, under all of the facts and circumstances of this case, indefinite suspension is warranted and appropriate, and is the chain of command's unanimous recommendation to me.

By copy of this memo, Officer Gish 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 Gish 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

2/14/2012
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.


Police Officer Michelle Gish #6649

02/14/2012
Date