



## MEMORANDUM

### Austin Police Department *Office of the Chief of Police*

**TO:** Mark Washington, Director of Civil Service

**FROM:** Art Acevedo, Chief of Police

**DATE:** April 29, 2015

**SUBJECT:** Indefinite Suspension of Police Officer David Silva #6979  
Internal Affairs Control Number 2014-0981

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, Police Officers' and Emergency Medical Services Personnel's Civil Service Commission, I have indefinitely suspended Police Officer David Silva # 6979 from duty as a City of Austin, Texas police officer effective April 29, 2015.

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

On September 25, 2014, Officer Silva and a female friend signed an apartment lease. On the same day Officer Silva signed a Courtesy Officer Agreement with the complex allowing him to receive reduced rent for providing security related duties, as well as management related duties such as letting locked-out residents into their apartments. The Courtesy Officer Agreement did not take effect until October 3, 2014. Officer Silva did not submit the Courtesy Officer Agreement for approval by his chain of command prior to executing that Agreement. Officer Silva moved the woman into the apartment and purchased furniture from the previous Courtesy Officer. Despite signing the lease, Officer Silva continued to live in Kyle, Texas, where he was already bound by an existing lease agreement. Officer Silva used his affiliation with the Austin Police Department to secure a rent reduced apartment for this woman, with whom he was having a personal relationship. The woman confirmed to Internal Affairs that Officer Silva told her he signed the Courtesy Officer Agreement so that she could live there rent reduced. Text messages from Officer Silva to the woman referenced his obtaining the apartment for her, not for the two of them. Officer Silva claimed that he intended to stay in the apartment with the woman 3 or 4 nights a week but the Courtesy Agreement he signed stated he would be "on-site" clearly indicating the apartment management's intent that he would be living there full-time. These facts substantiate the conclusion that Officer Silva obtained the apartment for the benefit of this woman through his affiliation with the Austin Police Department.

During his tenure working as the Courtesy Officer, Officer Silva documented the hours he worked for the apartment management but failed to document on his Police Department overtime logs the hours spent performing these Courtesy Officer duties. Officer Silva told his chain of command he was confused by the policy on secondary employment hours as a Courtesy Officer that had to be reported but the policy explicitly stated he had to provide an estimate of the number of hours worked as a Courtesy Officer. The chain of command concluded that Officer Silva intentionally failed to disclose to them the hours worked as a Courtesy Officer to avoid the chain knowing the total amount of secondary employment hours he was working. Department policy limits the amount of secondary employment and had the chain known the extent of Officer Silva's secondary employment they would have taken action to bring him in compliance with Department policy which could have resulted in his losing the Courtesy Officer reduced rent apartment.

On the morning of November 1, 2014, Officer Silva went to the apartment and found the door ajar. He entered the apartment and found the woman asleep inside. Officer Silva found a baggie of marijuana and paraphernalia inside the apartment. Officer Silva seized the drug related evidence but did not turn the evidence in himself nor call an on-duty officer to retrieve the evidence until November 3, 2014, and then only after being told to do so by a supervisor. During that two day period Officer Silva kept the drugs in the trunk of his car. Officer Silva stated he did not immediately turn the evidence in because he wanted to give the woman the chance to explain the drugs in the apartment. Officer Silva failed to properly dispose of the drug evidence in accordance with Department

policy due to his relationship with this woman, an act that violates several policies including the Department's impartial attitude and evidence policies. In addition, when Officer Silva gave the responding officer the drugs, he was not forthright regarding the circumstances under which the drugs were found. For example, he didn't give the officer the name of the woman or her relationship to him.

Officer Silva admitted that on one or two occasions between September 2014 and November 2014, the woman smoked marijuana in his presence. Despite a crime being committed in his presence, Officer Silva did not arrest the woman or make an official police report that could have been followed-up on by a Detective. Again, Officer Silva failed to take appropriate action upon the commission of a crime due to his relationship with this woman in violation of the Department policies. A police officer being in the presence of others who are breaking the law who continues to associate with those persons brings discredit upon the Department and calls into questions the officer's ethics, integrity, and judgment.

When Officer Silva found the marijuana in the apartment, he also suspected that the woman was having an affair with another man. Believing that the woman had cheated on him, Officer Silva ordered her to leave the apartment and told her he would move her belongings out despite the fact they were both on the lease and he had no legal authority to order her to leave. Officer Silva told his chain of command this was just an idle threat, a claim they did not believe. On November 3, 2014, Officer Silva sent the woman a text message that he was willing to let her remain in the apartment and keep the furniture in exchange for sexual favors. This text message was unethical and coercive. Officer Silva told his chain of command that this text was meant as a joke and he had no intent of forcing the woman to leave the apartment. The chain of command concluded that Officer Silva intended to force the woman to leave the apartment if she did not agree to provide sexual acts in exchange for the ability to remain in the apartment. Furthermore, Officer Silva told his chain of command that he was ending the relationship with this woman due to her drug usage but in the text message chain involving the exchange of sexual favors he stated the woman could remain in the apartment and their relationship would continue.

On November 3, 2014, when the woman was moving out of the apartment, Officer Silva showed up, off-duty. There were APD officers on scene to ensure there was no disturbance (civil stand-by). While at the scene, Office Silva's behavior was described as confrontational and uncooperative by the officers. On February 25, 2015, Officer Silva was interviewed by Internal Affairs. He denied that he was confrontational despite the statements of the two officers that he was.

An officer that is dishonest has credibility issues as a witness in a criminal case. Officer Silva was not honest with Internal Affairs during his interview on February 25, 2015 or with his chain of command during his Dismissal Review Hearing on April 28, 2015. For example, (not an all-inclusive list of every false statement he made):

- He was untruthful when he stated that he did not obtain the Courtesy Officer Agreement to provide the woman with a rent reduced apartment.

- He was untruthful when he stated that he provided complete and accurate information to the officer to whom he turned over the drug evidence.
- He was untruthful when he stated that he was cooperative and non-confrontational with the officers during the civil stand-by.

During his Dismissal Review Hearing on April 28, 2015, Officer Silva admitted numerous violations of APD policy and admitted that he used poor judgment and that his actions have brought discredit upon himself and the Department. Despite those admissions, it was clear to the chain of command that Officer Silva was not being honest with them and mitigating his culpability. The chain of command was unanimous in their lack of trust of Officer Silva and unanimous in their recommendation of indefinite suspension.

The incidents of the woman smoking marijuana in Officer Silva's presence and the actual signing of the apartment lease and Courtesy Officer Agreement occurred more than 180 days prior to the imposition of this suspension and for that reason are not acts for which Officer Silva is being indefinitely suspended. However, those acts are relevant in my determination of the appropriate disciplinary action in that they demonstrate a continued pattern of deliberate and conscious decisions to not comply with Department policies, show favoritism based upon a personal relationship, constitute unethical conduct and dishonesty.

By these actions, Officer Silva 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 900.3.5- Use of badge of office or affiliation with the department**

- (a) Employees will not intentionally use their affiliation with the Department to influence another into offering a gift, gratuity, free or discounted service, reward, or special consideration. This includes:
1. For the personal benefit of self, family, friends, or associates.
  2. For the financial gain of self, family, friends, or associates.

➤ **Austin Police Department Policy 900.3.1: General Conduct and Responsibilities: 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.
- (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 900.1.1- 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.
- (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.

➤ **Austin Police Department Policy 301.2 Impartial Attitude and Courtesy**

Employees are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, or social or ethnic background.

➤ **Austin Police Department Policy 949.5.3- Secondary Employment**

- (a) Employees shall not work more than 16 total regular-duty, department overtime, and LERE hours within a 24 hour period without approval from their commander/manager.
  - 1. A 24 hour period is any consecutive 24 hours, regardless of the time the work started.
  - 2. The employee is responsible for notifying the appropriate supervisor two (2) hours prior to the 16th hour of the 24 hour period. The name of the approving commander/manager will be noted on the employee's overtime assignment form.

➤ **Austin Police Department 900.3.2- Acts bringing discredit**

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.

(c) Employees will not engage in any activity in which there is a potential for conflict of interest or the appearance of a conflict of interest with the lawful duties of the employee.

1. "Conflict of interest" includes any activity which would tend to influence a decision, create a bias or prejudice, or create a gain or loss for any person or agency which would favor one side or the other in conflict with the employee's official duties, or which conflicts with the accomplishment of the Department's mission or goals.

➤ **Austin Police Department Policy 618.1(Purpose and Scope) & 618.4 – Evidence Handling (Evidence Processing and Submission)**

**618.1 Purpose and Scope**

It is the duty and obligation of employees of the Department to properly seize, control, care for, store, process, and dispose of property and evidence that may come into their possession. Employees will adhere to the property handling procedures described in this document. For the purposes of this document, all items that come into police care and control will be considered property or evidence and will be handled equally.

**618.4 Evidence and Processing Submission**

Employees will process and submit all property taken into their custody as expeditiously as possible while following established guidelines.

By copy of this memo, Officer Silva 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 Silva 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

4-29-15  
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) calendar 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 David Silva # 6979

4-29-15  
Date