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Human Resources Dept

MEMORANDUM

Austin Police Department
Office of the Chief of Police

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: October 21, 2014

SUBJECT: Indefinite Suspension of Police Lieutenant Jason Disher #3933
Internal Affairs Control Number 2014-0384

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have indefinitely suspended Police Lieutenant Jason Disher #3933 from duty as a City of Austin, Texas police officer effective October 21, 2014.

I took this action because Lieutenant Disher 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 Lieutenant Disher in violation of Rule 10:

On April 22, 2014, Lieutenant Jason Disher entered the detective area at the South sub-station, and requested that Detective Nash take his report for harassment. Lieutenant Disher told Detective Nash that, for the past 8-9 years, Lieutenant Disher had been in a relationship with a married woman, Mrs. Doe, and that her husband had recently begun to harass him. Lieutenant Disher provided Detective Nash with text messages and information regarding telephone calls from Mr. Doe. Lieutenant Disher advised Detective Nash that he did not wish to pursue criminal charges at the time but just wanted to document the incidents. On April 25, 2014, Lieutenant Disher informed Detective Nash of two new incidents. On the same day, based on the information obtained from Lieutenant Disher, Detective Nash presented an affidavit for the warrant of arrest and detention of Mr. Doe, which was signed by Municipal Court Judge Solomon.

On May 23, 2014, Mrs. Doe made a complaint to the Office of Police Monitor alleging that Lieutenant Disher made false statements to Detective Nash in an effort to have her husband arrested. The Internal Affairs Division of the Austin Police Department conducted separate investigations into the conduct of Lieutenant Disher and Detective Nash.

In her complaint, Mrs. Doe provided evidence in support of her allegations that statements in the affidavit were false. The arrest affidavit stated:

Disher stated that the harassment began on 3/24/14, at approximately 12:00 p.m., when [Mr. Doe] called Disher, on his personal cell phone, to confront him on his relationship with [Mrs. Doe]. [Mr. Doe] attempted to meet Disher in person, and was very confrontational in the phone call. Disher then got off the phone due to the hostile nature of the phone call.

In her statement, Mrs. Doe alleged that the characterization of the telephone conversation on March 24 as "harassment," "confrontational" and "hostile" are false statements because the affidavit omits the fact that Lieutenant Disher told Mr. Doe that he would call him back, and in fact did so. Mrs. Doe provided the telephone records of Mr. Doe reflecting that Lieutenant Disher called Mr. Doe, and the two spoke for seven minutes. Internal Affairs obtained telephone records from Lieutenant Disher which also confirmed the seven-minute conversation.

During his interview with Internal Affairs on September 4, 2014, Lieutenant Disher stated that he was in his office when he received the phone call from Mr. Doe on March 24, 2014. Lieutenant Disher admitted that he ended this call because he received another business call, and that he called Mr. Doe back shortly thereafter. Lieutenant Disher further admitted that Mr. Doe did not make any threats during this conversation, and told Lieutenant Disher that he did not want to fight him because Lieutenant Disher had a gun.

In her complaint and Internal Affairs interview, Mrs. Doe also provided evidence that the following statements in the arrest affidavit regarding the April 24, 2014 incident are false:

10:38 p.m. – Disher received a phone call, while Benjamin was in front of his residence, from whom sounded like Benjamin, stating 'if you had any balls, you would come outside.'

Mrs. Doe stated that Mr. Doe never called Lieutenant Disher on April 24 but rather that telephone records establish that the only call to Lieutenant Disher's telephone that night was from her son. Additionally, Lieutenant Disher's own statements to Internal Affairs regarding the alleged telephone call contradict the statements in the arrest affidavit. During his initial interview with Internal Affairs, Lieutenant Disher stated that he handed his cellphone to Mrs. Doe, and that she answered the call. Contrary to the statement in the arrest affidavit, Lieutenant Disher admitted to Internal Affairs that Lieutenant Disher never heard the person on the other end of the call, and that he did not remember if Mrs. Doe told him whether it was Mr. Doe or her son on the line.

As the complainant, Lieutenant Disher did not have access to the incident report and told Internal Affairs that he did not review the arrest affidavit prior to it being filed. During his initial interview with Internal Affairs on September 4, 2014, Lieutenant Disher was provided a copy of the arrest affidavit and questioned regarding its content. At no time during that interview did Lieutenant Disher notify Internal Affairs of any "inaccuracy" in the arrest affidavit. During his second Internal Affairs interview on October 2, 2014, Lieutenant Disher admitted that the above-referenced statement in the arrest affidavit was not true, but denied that he provided that information to Detective Nash. Lieutenant Disher told Internal Affairs that Detective Nash must have "inferred" it "cause that's not what happened." Lieutenant Disher further stated that he "wouldn't have told [Detective Nash] that," and "didn't tell [Detective Nash] that." Contrary to Lieutenant Disher's statements to Internal Affairs, Detective Nash told Internal Affairs that he obtained the information regarding the alleged April 24 telephone call from Lieutenant Disher, and that Lieutenant Disher told him "exactly" what Detective Nash wrote in the affidavit. Detective Nash further stated that he wrote the information down as Lieutenant Disher told it to him and, after writing the information, Detective Nash confirmed the information with Lieutenant Disher.

Additionally, Lieutenant Disher, having had a copy of the affidavit for nearly one month, could not explain to Internal Affairs or at his Disciplinary Review Hearing why he had failed to notify anyone that an arrest affidavit had been filed which contained false information. Lieutenant Disher told Internal Affairs that he did not "recognize it as being a false statement" until after being served with "new allegations" and then stated "reviewing everything again it's a problem." During his Disciplinary Review Hearing, however, Lieutenant Disher provided contradictory statements regarding when he first noticed the inaccuracy, and ultimately acknowledged that he was aware of it prior to his initial Internal Affairs interview on September 4. Lieutenant Disher admitted that he was aware of inaccuracies in the affidavit, and failed to correct these inaccuracies despite being given an opportunity to do so by Internal Affairs. Lieutenant Disher further

admitted that he had the responsibility to report the inaccuracies, and has no explanation for his failure to do so.

Mrs. Doe also provided evidence that the following statements in the arrest affidavit are false:

9:00 a.m.- Disher was backing out of his driveway, on his way to work, when Benjamin drove past Disher's residence, in a very slow and methodical manner, with his driver side window rolled down, and stared at Disher in a very intimidating way.

Mrs. Doe told Internal Affairs that these are false statements because Mr. Doe was on Lieutenant Disher's street on April 25 for the purpose of photographing Mrs. Doe picking up the rental car that she left parked there on the previous night. Mrs. Doe further stated that Lieutenant Disher told her that he did not see Mr. Doe on April 25. Additional evidence obtained by Internal Affairs supported the stated purpose of Mr. Doe's presence on Lieutenant Disher's street. Additionally, Lieutenant Disher admitted that he later learned that Mr. Doe was there "looking at the car that she had parked down the street," and that Mrs. Doe told him that she was Mr. Doe's only interest and that Mr. Doe was not targeting Lieutenant Disher.

Lieutenant Disher described the April 25 incident as the "most threatening action that [he] encountered in this whole thing," and stated that he thought that he "was gonna take a bullet to the back of the head." Yet, Lieutenant Disher could not explain why, if that were true, and Lieutenant Disher was in uniform and on his police motorcycle, Lieutenant Disher did not call for assistance on his police radio. Nor could Lieutenant Disher explain why, after this alleged incident, he went to the car wash to wash his motorcycle prior to heading to the South sub-station to update his harassment report to include this incident.

Despite the fact that the arrest affidavit states that "Disher states that the harassment began" on March 24, 2014, Lieutenant Disher did not make the harassment report against Mr. Doe until April 22, 2014, the day after Mr. Doe contacted APD to make a complaint against Lieutenant Disher. Lieutenant Disher was asked what prompted him to make the harassment report on April 22 as opposed to April 19 (the day that he received the last text messages from Mr. Doe), April 20, or April 21, and Lieutenant Disher admitted that he did not "really have a specific reason why [he] waited."

By these actions, Lieutenant Disher 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 900.2.2: General Conduct and Responsibilities: Retaliation Prohibited**

900.2.2 Retaliation Prohibited

Employees will not, in any way, cause or conspire to cause retaliatory action against any individual who has been involved in any such investigation or subsequent proceeding as a defendant, complainant, witness, victim, investigator, or any other capacity. While the Department wishes to avoid reassigning an employee while a complaint or grievance is being investigated, this policy does not prohibit the Department from doing so, including the complainant/victim, while the complaint or grievance is under investigation should an assistant chief determine that a reassignment is in the best interest of the Department and/or the employee.

- **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.
   (b) Employees who obtain their employment by willful misrepresentation or false statements may be dismissed from the Department.

(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.

(d) Employees will not use any improper or dishonest means to affect the outcome of any official test, process, or procedure.

(e) Employees will not falsely report themselves ill or injured, or otherwise deceive or attempt to deceive the Department as to the condition of their health.

In determining the appropriate discipline, I took into consideration Lieutenant Disher's failure to tell the truth both in his reporting of the alleged harassment, and during the Internal Affairs investigation. 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 APD's Discipline Matrix. Of equal concern is Lieutenant Disher's lack of explanation for his admitted failure to correct the record even after becoming aware that a person was subject to a pending criminal charge based on an affidavit that contained inaccuracies. Not only does APD policy require employees to "speak the truth at all times," Lieutenant Disher admitted that it was his responsibility under his Oath of Office and the Canons of Police Ethics to report the inaccuracies in the affidavit, and he failed to do so. Lieutenant Disher, having been found to be dishonest, can no longer be a credible witness for the prosecution of criminal cases, and therefore can no longer serve the citizens of Austin as a police officer.

Consequently, indefinite suspension is not only warranted and appropriate but mandated under all of the facts and circumstances of this case, and is the unanimous recommendation to me.

By copy of this memo, Lieutenant Disher 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, Lieutenant Disher 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

10/21/2014
Date

Administered by. Deering Chief Raul [illegible] 1132 10/21/14

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.

3933
Police Lieutenant Jason Disher #3933

10-21-14
Date