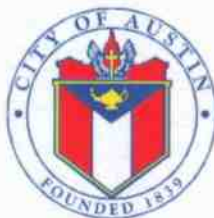


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MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Karen Sharp, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: July 27, 2009

SUBJECT: Temporary Suspension of Police Detective Robert Bowers # 2082
Internal Affairs Control Number 2009-0321

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 temporarily suspended Police Detective Robert Bowers # 2082 from duty as a police officer for the City of Austin, Texas for a period of two (2) days. The temporary suspension is effective beginning on 17th August, 2009, and continuing through 18th August, 2009.

I took this action because Detective Bowers 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 Detective Bowers in violation of Rule 10:

On February 27, 2009, Detective Bowers was assigned to the Northwest Detectives Unit, which was located at the North Substation. As part of an ongoing Departmental reorganization of the Area Commands, the Department was considering consolidating the Northwest Detectives Unit into the North Bureau Detectives Unit. The North Bureau Detectives Unit would now be comprised of Detectives from Central West, Northwest, and the Downtown Area Command, and would be physically located at the Main Headquarters building at 715 E. 8th Street. Detective Bowers did not support this reorganization or relocation and without the knowledge or approval of his chain of command, he obtained the e-mail addresses of several homeowners associations and e-mailed them his concerns and objections. In the e-mail, Detective Bowers identified himself by name, rank, and affiliation with APD. He stated, among other things, that "Recently the Chief of Police and his staff have decided on some unusual reorganizational changes to our department. These changes will adversely affect all the detectives in the Northwest area of command as well as some civilian employees of the Austin Police Department...The move alone promises to be chaotic at best, with Detectives being focused, not on investigating crime and their assigned cases, but moving their equipment....Detectives will be forced to [be] less responsive." Detective Bowers told Internal Affairs that he inadvertently sent the message before it was completed but the fact remains he intended to send it. One of the homeowners responded and Detective Bowers sent him a response on February 27th that was further critical of the reorganization and the chain of command. The second e-mail stated in part, "I, along with my co-workers believe this will be detrimental to the citizens and detectives of Northwest Austin...I believe the move is unwise and unhealthy for everyone in Northwest Austin." It should be noted that in the second e-mail, Detective Bowers acknowledges that the move may not even occur ("there is a good possibility that our unit might be moved in the near future...").

Department reorganizations are within the purview of the Chief of Police. In these e-mails, Detective Bowers was speaking as an employee, not a citizen. In fact, in the second e-mail and during his Internal Affairs interview he repeatedly expressed his opinions in the first person: "I thought," "I didn't feel," "I believe." Furthermore, he told Internal Affairs that he sent the e-mails because it was important that the community know the truth, and he attended the March 31, 2009 Commanders Forum at the Northwest Fellowship Church to ensure that his chain of command "tells the people the truth about the reorganization." Detective Bowers recklessly accused his chain of command of the intent to lie to the community about the reasons for and effect of this reorganization. I am also concerned that Detective Bowers never told his chain of command he sent these e-mails and never gave them the opportunity to review the veracity of what he said before the Commanders

Forum, potentially having the chain of command blindsided during this community meeting by any false or inaccurate information he may have provided.

Detective Bowers' e-mails lead the reader to believe the Chief of Police and the Department does not have the best interests of the residents of Northwest Austin in mind. These e-mails criticized the Department, its employees, and its policies; they tend to interfere with or undermine the effectiveness of the Department and the public services it provides; they tend to adversely affect the confidence of the public in the integrity of the Department and its employees; they tend to impair the reputation of the Department, and; they tend to damage the efficiency of the Department.

By these actions, Detective Bowers violated Rule 10.03(L) of the Civil Service Rules, to wit, he violated the following rules and regulations of the Austin Police Department.

➤ **Austin Police Department General Orders, Policies and Procedures – A201c.01(F)(1)(2): Responsibility to the Department: Criticism of the Department/ Criminal Justice System**

Employees are at all times individually responsible for conducting themselves in a professional and ethical manner and for treating coworkers with respect and dignity. The intent of this policy is to clearly state that unprofessional behavior will not be tolerated in the workplace. Employees shall maintain loyalty to the Department as is consistent with the law and personal ethics.

F. Criticism of the Department/Criminal Justice System

1. Employees will not directly or indirectly, in any manner that makes them easily identifiable as an employee of the Department, publicly criticize or ridicule the actions or orders of a member of the Department, a judge, a prosecuting attorney, or other public official(s). This in no way infringes upon the rights of employees to act in their capacity as private residents in this regard.
2. Employees shall not criticize or ridicule the Department, its policies, or employees by speech, writing, or other expression, when such speech, writing, or other expression:
 - b. Tends to interfere with or to undermine the effectiveness of the Department to provide public services;
 - d. Tends to adversely affect the confidence of the public in the integrity of the Department and/or its employees;
 - e. Improperly damages or impairs the reputation and efficiency of the Department; or
 - f. Is made with reckless disregard for truth or falsity.

By copy of this memo, Detective Bowers is hereby advised of this temporary suspension and that the suspension may be appealed to the Civil Service Commission by filing with

the Director of Civil Service, within ten (10) calendar 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, Detective Bowers 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.

In addition, if this disciplinary suspension is for three (3) days or less, Detective Bowers is advised of the following provisions of Article 18, Section 1, of the Meet and Confer Agreement:

The parties agree that when an officer is suspended for 1, 2, or 3 days the officer may choose one of two methods of dealing with the suspensions as listed below.

- a) **Suspensions that may not be appealed.** *The officer may choose to use vacation or holiday time to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, promotion, or any other purpose. The officer must agree that there is no right to appeal if this method of suspension is chosen.*
- b) **Suspensions that may be appealed.** *The officer may appeal the suspension to arbitration or the Civil Service Commission. If the officer chooses to appeal the suspension, the arbitrator or Civil Service Commission's authority is limited to ruling on whether or not the charges against the officer are true or not true. If the arbitrator or Civil Service Commission finds the charges to be true, there is no authority to mitigate the punishment. If the arbitrator or Civil Service Commission finds the charges to be not true, the officer shall be fully reinstated with no loss of pay or benefit.*

Arbitration Costs on Appealable Suspensions

In the event that an officer appeals a 1, 2 or 3 day suspension to arbitration, it is agreed that the party that loses the arbitration shall be responsible for all costs of the arbitrator, including travel and lodging if necessary.

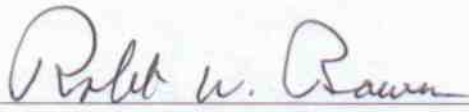
To facilitate such payment on the part of the officer he shall submit, at the time of appeal, a signed payroll deduction agreement that if the arbitrator rules in favor of the City he authorizes up to one hundred dollars (\$100.00) per month to be deducted from his regular pay until such time as what would usually be the City's portion of the arbitrator's costs have been satisfied.


ART ACEVEDO, Chief of Police

8/6/2009
Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of temporary 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. I also acknowledge the options set forth in this memorandum of temporary suspension, including my right to waive an appeal of a suspension of three (3) days or less, and my financial and contractual obligations under the Meet and Confer Agreement if I elect to appeal a suspension of three (3) days or less and do not prevail.


Police Detective Robert Bowers # 2082

8/10/09
Date