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Human Resources Dept



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Interim Chief of Police

DATE: July 21, 2017

SUBJECT: Indefinite Suspension of Police Sergeant Richard Davis #5172
Internal Affairs Control Number 2017-0389

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 Sergeant Richard Davis #5172 from duty as a City of Austin, Texas police officer effective July 21, 2017.

I took this action because Sergeant Davis 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 Sergeant Davis in violation of Rule 10:

In 2017, Austin Police Department (APD) Sergeant Richard Davis was assigned to Region 3 Patrol, H700's. In addition to his regular duties, Sergeant Davis was a member of the Special Response Team (SRT), serving as a Squad Leader of the Sierra 1200's.

On January 11, 2017, the SRT was notified via email by Commander Justin Newsom the SRT would be deploying during South by Southwest (SXSW) week on March 17-18, 2017. On January 27, 2017, Sergeant Davis informed his SRT platoon leader, Lieutenant Doug Rice, via email he would be unavailable for that assignment. Sergeant Davis elaborated he would be out of town with his family for spring break, which was on March 12-18, 2017. On February 3, 2017, Sergeant Davis sent a similar email to his H700's supervisor, Lieutenant Anthony Bigongiari regarding his unavailability and plans to be out of town.

However, on or about March 17, 2017, Lieutenant Rice and Commander Newsom observed Sergeant Davis working downtown on a private, secondary-employment contract for the SXSW Safety Team. Sergeant Davis not only worked this private Law Enforcement Related Employment (LERE) overtime with the SXSW Safety Team on March 17, 2017, but he worked several days during spring break, including March 18, 2017. In fact, Sergeant Davis worked at least 80 overtime hours from March 12-18, 2017.

A series of emails between Sergeant Davis and his Chains of Command (both regular and SRT) ensued. These communications discussed Sergeant Davis' assignments, his private LERE overtime work during SXSW, and his prior claims of unavailability. Commander Newsom then initiated a complaint concerning Sergeant Davis' potential dishonest actions and/or communications from January through March 2017 regarding his assignments and/or availability.

The APD Internal Affairs (IA) division established a timeline of relevant events and communications through the course of their investigation. Additionally, Sergeant Davis advised investigators that an SRT assignment is always scheduled during SXSW week, and he was aware of that fact well before receiving the January 11, 2017, email from Commander Newsom.

Timeline & Additional Background

On January 4, 2017, Sergeant James Beck sent an email to Sergeant Davis advising him that SXSW Safety Team overtime sign up was open. On January 5, 2017, Sergeant Davis advised Sergeant Beck via email that he would be available to work this overtime assignment on March 10-12, 2017, and March 16-18, 2017. Sergeant Davis added: *"I'm here to make some money, so plug me in where needed. Plus I'm a Sergeant if that helps on any particular assignments. Thank you."*

On January 10, 2017, Sergeant Davis signed a listing contract to sell his residence, with a listing period from January 9, 2017, to August 31, 2017. During the course of Sergeant Davis' IA interview, he stated that he abandoned his spring break ski plans on the day his

family decided to list their home. On January 11, 2017, a day after signing the listing contract, Commander Newsom sent the aforementioned email to APD SRT personnel, preparing them for a "full" SRT deployment on March 17-18, 2017.

On January 15, 2017, Sergeant Beck sent a follow-up email to Sergeant Davis advising him that overtime shifts on March 12, 2017, and March 15, 2017, were available for the SXSW Safety Team overtime assignment. Sergeant Davis replied later in the day to Sergeant Beck, accepting the two overtime shifts. Minutes later, Sergeant Beck sent another email to Sergeant Davis informing him of additional overtime shifts becoming available for March 17 and 18, 2017. Sergeant Davis immediately responded to Sergeant Beck, accepting the additional overtime shifts. Sergeant Davis added: "...*If you get any openings on the 10th or 11th, go ahead and fill me in. Just let me know!*"

On January 27, 2017, Sergeant Davis (as described above) emailed Lieutenant Rice, advising he would: "*not be available for SRT on SXSW.*" In the same email Sergeant Davis further explained: "*Going out of town with my family on Spring break this year...*"

On February 3, 2017, Lieutenant Bigongiari sent an email to his Sergeants/Corporals, including Sergeant Davis, requesting verification none of their personnel were being deployed for SXSW. Lieutenant Bigongiari stated: "...*Rick, I am clear that you will personally be deployed, but will any of your officers?*" Sergeant Davis responded: "*None of us will be and I'm not working it either. I'll be out of town on our RDOs [regular days off].*" Sergeant Davis clarified during his IA interview that he was referring to March 17-18, 2017 as his RDOs.

On February 19, 2017, Sergeant Davis informed Sergeant Beck that he had registered for his "*SXSW Safety Team OT, meals, and badge.*" Ultimately, Sergeant Davis documented working at least 80 hours during SXSW week. Policy limits an officer to 76 working hours in a week, unless an exception is granted by their Commander.

On March 12-13, 2017, Sergeant Davis worked 16 SXSW overtime hours, and on March 14, 2017, he ultimately documented working 5 overtime hours at the ACL Moody Theater. On March 15-16, 2017, Sergeant Davis worked 16 SXSW overtime hours. During this overtime assignment, Sergeant Davis sent an email to Lieutenant Rice informing him two officers from the Sierra 1200's SRT team would not be available on the March 17-18, 2017, SRT deployment. On March 16, 2017, Sergeant Davis worked 6 SXSW overtime hours and he ultimately documented that he worked 5 overtime hours at the ACL Moody Theater. On March 17-18, 2017, he worked 16 SXSW overtime hours. While on March 18-19, 2017, Sergeant Davis worked 16 more SXSW hours.

On March 23, 2017, after realizing his SRT supervisors had observed him working overtime, Sergeant Davis emailed Lieutenant Rice stating his intent to resign from the SRT in early April 2017.

However, on March 28, 2017, Commander Newsom sent an email terminating Sergeant Davis from SRT effective immediately because he worked overtime for the SXSW Safety Team instead of leading the Sierra 1200's during the SRT deployment.

On March 28, 2017, Sergeant Davis immediately forwarded Commander Newsom's email to Lieutenant Bigongiari, stating: "...I had previous plans with the family that fell through and I choose to work with Sgt Beck..."

On March 28, 2017, 4 hours later, Sergeant Davis responded via email to Commander Newsom "...When SRT email announced the deployment dates, I immediately notified Lt. Rice that I would not be available this year for SXSW deployment..." Sergeant Davis also stated: "...My [REDACTED] was recently diagnosed with cancer (returned) along with several other ailments. I have been working as much of as allowed to compensate my [REDACTED] fixed income as she is a widow and lives alone in Indiana. My [REDACTED] was planning to visit when her plans had changed and she was going to visit other family. During the same time period, I was offered an opportunity to work with the SXSW safety team. I did sign up for as much of as allowed with the intent to send that non-taxed money to my [REDACTED]..."

Internal Affairs Interview

When IA interviewed Sergeant Davis, the IA investigator repeatedly emphasized to Sergeant Davis at the beginning and throughout his interview the following theme: "Your honesty and integrity throughout this interview is paramount. There is nothing more than your honesty." However, Sergeant Davis did not generally heed this warning.

Sergeant Davis admitted to lying and/or intentionally misleading Sergeant Beck by act or omission in the following communications:

- 1) January 5, 2017 email to Sergeant Beck
- 2) January 15, 2017 email #1 to Sergeant Beck
- 3) January 15, 2017 email # 2 to Sergeant Beck
- 4) February 19, 2017 act of registering for the SXSW Safety Team
- 5) February 19, 2017 email to Sergeant Beck

During the course of Sergeant Davis' IA interview he asserted he intended to go on vacation all along. Therefore, he repeatedly advised IA that he intentionally lied to Sergeant Beck through his actions and statements, in January and February 2017. He also stated he intentionally omitted telling Sergeant Beck the truth, claiming the overtime assignments were a backup plan to his ski plans. Sergeant Davis advised IA he lied to Sergeant Beck because if he told him the truth he would never "...have an opportunity to work this kind of overtime for Jim Beck." According to APD policy, a single sustained violation for dishonesty under 900.3.1, warrants an indefinite suspension. Officers are initially apprised of this policy in the academy and are regularly reminded of APD's stance on dishonesty.

Sergeant Davis admitted that his March 28, 2017, emails to Commander Newsom was misleading:

6) March 28, 2017, email to Commander Newsom

Sergeant Davis initially claimed his email to Commander Newsom was truthful. Yet, Sergeant Davis advised IA his [REDACTED] never accepted money from him. He also stated his [REDACTED] did not become ill until on or about February 28, 2017. Thus, his email to Commander Newsom that conveys the opportunity to work the SXSW overtime did not manifest itself until late February/early March 2017 is untruthful. After a lengthy insolent portion of his interview, and when confronted with this fact juxtaposed with the evidence showing that he signed up for overtime in early January 2017, Sergeant Davis was left with no choice but to admit that he misled Commander Newsom in his March 28, 2017 email.

Sergeant Davis admitted that his March 28, 2017 email to Lieutenant Bigongiari was misleading:

7) March 28, 2017, email to Lieutenant Bigongiari

Similarly, Sergeant Davis initially claimed his March 28, 2017, email to Lieutenant Bigongiari was truthful. However, after IA pinpointed the facts to him, he seemed to unknowingly admit both of his emails on March 28, 2017, were misleading.

Sergeant Davis stated *"I mean everything in there is mostly factually true. It's just – without the details."* This statement reveals Sergeant Davis knew all along the emails he sent on March 28, 2017, were intentionally misleading by omission and/or not completely truthful. He even goes on to say, in reference to his email to Commander Newsom, that he knew he *"...was giving different reasons as to why- [he did not work SRT] as opposed to "... the true reasons as to why the whole thing happened."*

However, in spite of all the evidence to subvert the truth and after making these admissions, Sergeant Davis reverted back to claiming that he was being truthful in these emails.

Dishonest acts and/or statements Sergeant Davis never acknowledged:

Despite the IA investigator's admonitions concerning the importance of truthfulness, the investigation shows Sergeant Davis was dishonest by act or omission on several other occasions, including during his IA interview. Any one of the following dishonest/misleading acts and/or statements would also warrant an indefinite suspension:

- 8) Sergeant Davis' January 27, 2017, email to Lieutenant Rice.
- 9) Sergeant Davis' February 3, 2017, email to Lieutenant Bigongiari.
- 10) Sergeant Davis' act of voluntarily providing IA with his [REDACTED] web research, to support the false notion that he still intended to go skiing when he emailed Lieutenant Rice on January 27, 2017.

- 11) Sergeant Davis' false statements to IA that he still had intentions to go skiing during spring break on or after January 27, 2017.
- 12) Sergeant Davis' false statement that he pre-vaccinated his dogs and placed them in a kennel as support of his intent to go on vacation.
- 13) Sergeant Davis changed his overtime log, reducing his total number of hours.
- 14) Sergeant Davis' failure to provide the misleading email he sent to Lieutenant Bigongiari on March 28, 2017, in spite of a direct order from Chief Brian Manley, via IA to provide all relevant emails.

In an attempt to justify his January 27, 2017, email, Sergeant Davis advised IA his intention was to still go skiing on the day he sent the email to Lieutenant Rice. In fact, during Sergeant Davis' IA interview on June 7, 2017, he unknowingly offered statements that reveal the claims regarding the ski plans were untruthful and designed to mislead IA investigators. Moreover, Sergeant Davis also provided documentation of his [REDACTED] vacation computer searches, of their actual ski trip, to perpetuate his deception.

Sergeant Davis advised IA: *"So all through January we were still planning and doing research for the ski trip"* Sergeant Davis also stated *"... When I sent - when I told Doug Rice that I was not going to be available 'cause I planned on being out of town, that was the truth. My intent was to go out of town. My intent was to go skiing with my [REDACTED]"*

Conversely, Sergeant Davis repeatedly asserted to IA that his ski plans were cancelled on or before the day he listed his home for sale. He originally stated this occurred at some point in February, which he proclaimed corroborated he was being truthful to Lieutenant Rice. However, Sergeant Davis candidly indicated that his realtor would be the authority and most equipped to know the exact date of the listing. In point of fact, his realtor testified, and records show, his home was listed for sale on or before January 10, 2017, well before his email to Lieutenant Rice and the day before Commander Newsom's email.

To advance this lie, Sergeant Davis actually admitted to intentionally lying to Sergeant Beck by elaborating: *"... And there's no other explanation other than to say what I told Lieutenant Rice was absolutely, 100%, positively true. And what I told Jim was not..."* Sergeant Davis later told IA, *"I know it looks bad... Yes I mislead Jim Beck."*

Sergeant Davis even went so far as to voluntarily provide his [REDACTED] communications with her family members in an effort to corroborate his assertions. However, he admittedly failed to read through the messages. He claimed to be confounded when he was confronted by the substance of the text messages as the messages actually further revealed that plans to go skiing were abandoned before he sent the email to Lieutenant Rice on January 27, 2017, and well before his February 3, 2017, email to Lieutenant Bigongiari.

By way of example, Sergeant Davis advised IA that he and his [REDACTED] were planning the ski trip with his [REDACTED], [REDACTED] and her husband since December 2016. He also indicated he and his [REDACTED] communicated more frequently about their ski plans in the days leading up to his January 27, 2017, email to Lieutenant Rice. Yet, on January 25, 2017, Sergeant Davis' [REDACTED] sent a text message to [REDACTED] that said: *"What are*

your plans for spring break? Ours is the week of March 13. Thinking of coming to Houston, going to rodeo...." which is actually what occurred.

Moreover, to perpetuate the notion his ski plans were still in flux in February, Sergeant Davis placed blame on his [REDACTED], the [REDACTED], claiming they were last minute planners. He elaborated they usually make plans the week before they go skiing since snowfall is not predictable. Yet, the evidence show [REDACTED] booked their condominium on February 11, 2017, while the [REDACTED] booked their ski lift tickets on February 17, 2017, and their ski vacation began on March 10, 2017. Sergeant Davis also provided the [REDACTED] ski vacation research, yet he could not produce his own research. IA asked Sergeant Davis about this deficiency, and he claimed he had no records to produce from himself nor his [REDACTED] as he purposefully does not store records of his research.

Ironically, Sergeant Davis' [REDACTED] series of text communications with members of her family even revealed additional attempts by Sergeant Davis to divert IA investigators.

By way of example, Sergeant Davis randomly stated *"we even took our dogs and got our dogs kennel cough vaccinated because they were gonna go into the kennel. Which they did."* He brought this up to bolster his statement that he was not planning on working the overtime assignment but was still intending on going on a vacation. He suggested the vaccinations of his dogs were completed in advance of those plans. However, his voluntarily produced records show, he did not have the dogs vaccinated until March 9, 2017, and they were boarded from March 10-15, 2017, while he worked and still did not go on vacation on the dates he identified to Lieutenant Rice and Lieutenant Bigongiari.

Furthermore, Sergeant Davis' [REDACTED] texted her father on March 1, 2017 the following, *"...here's the plan so far...Rick arrives Friday, March 10 in the morning...Rick will leave early Sunday [March 12] morning to go back to work. Boys and I will stay through Tuesday or Wednesday [March 14-15]..."* Even Sergeant Davis conceded to IA that his plans to work overtime and not go on vacation or see his [REDACTED] were abandoned by March 5, 2017, which confirms the random mention of his dogs was yet another attempt to divert IA.

On a separate note, Sergeant Davis admitted to IA that he initially documented working 82/83 overtime hours during spring break and then changed his overtime logs to reflect that he only worked 80 hours. According to the weekly time records Sergeant Davis originally submitted, he worked 8 hours on March 14th and 5.5 hours on March 16th at the ACL Moody Theater, as opposed to 5 hours he listed on each of those days on his amended overtime logs. Sergeant Davis also acknowledged he did not have approval from a Commander to work 80 hours, and that he violated the 76 hour weekly APD policy limit.

Also, on April 19, 2017, Sergeant Davis was given an administrative order from the Chief of Police, Brian Manley, via IA to produce all correspondences related to the 2017 SXSW deployment. However, Sergeant Davis failed to provide the previously mentioned misleading email that he sent to Lieutenant Bigongiari on March 28, 2017. Computer Technology Management (CTM) personnel were able to later discover this email in a subfolder that Sergeant Davis admittedly created and titled "Henry 700's/SRT/ IA/Mine."

Sergeant Davis made an admission to IA that he intentionally misled Sergeant Beck to make the point that he did not lie to Lieutenant Rice. Yet, at his DRH, he recanted that admission. Both of these statements cannot be true. Whether one believes Sergeant Davis lied to Lieutenant Rice, Sergeant Beck, to both, or to what he advised IA versus what he eventually stated at his Disciplinary Review Hearing (DRH), effectuates the same outcome. The rank of the person you lie to does not enhance the penalty as the APD matrix calls for an indefinite suspension for a single sustained violation under Honesty Policy 900.3.1.

During the DRH Sergeant Davis did admit that he was dishonest with IA about the lack of an opportunity to communicate with Lieutenant Rice in the days leading up to the SRT deployment. Surprisingly, Sergeant Davis unknowingly revealed in his DRH, that he lied to Commander Newsom about his [REDACTED] cancer returning. It in fact had not "returned" as he stated in his March 28, 2017, email to Commander Newsom.

Compounding matters even further Sergeant Davis' admissions in the DRH reveal that he was insubordinate on multiple occasions. He violated my "do not discuss" order given to him, by discussing this case with and/or through his [REDACTED] and/or the multiple witnesses he offered to help exonerate him.

In conclusion, Sergeant Davis admittedly lied to Sergeant Beck several times and he reluctantly acknowledged that he misled Lieutenant Bigongiari and Commander Newsom by act and/or omission in late March. He also admitted during his DRH that he lied to IA. The evidence also shows he was untruthful with IA, Lieutenant Rice, and in his initial communication with Lieutenant Bigongiari in early February. A single untruthful statement is considered Brady material, and any one of the omissions, acts/or misleading statements, compromises Sergeant Davis' integrity as an employee and witness in the future.

Sadly, rather than simply taking responsibility by telling the truth during the course of this investigation to give me incentive to forgo my right to indefinitely suspend him, Sergeant Davis chose to continuously attempt to offer "exculpatory evidence" during and after the conclusion of the investigation that substantiated the truth and corroborated his deception. Therefore, Sergeant Davis leaves me with no choice but to indefinitely suspend him.

By these actions, Sergeant Davis 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 900.3.1: 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.
 - (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.
- (d) Employees will not use any improper or dishonest means to affect the outcome of any official test, process, or procedure.

➤ **Austin Police Department Policy 902.4.1: Administrative Investigations: Cooperating with Assigned Investigators**

902.4.1 Cooperating with Assigned Investigators

- (a) Employees will cooperate with any assigned investigator as if they were addressing the Chief. Employees who fail or refuse to cooperate with an assigned investigator will be subject to disciplinary action, up to and including indefinite suspension.
- (b) Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times during interviews with investigators as outlined in Policy 900 (General Conduct).
 - 1. Employees who are found to have given a false official statement are subject to indefinite suspension as outlined in the Discipline Matrix ("Dishonesty - False Official Statements").

➤ **Austin Police Department Policy 949.5.3: Secondary Employment: Limitation on LERE Hours Worked**

949.5.3 Limitation on LERE Hours Worked

- (b) Sworn employees shall not work in excess of 76 combined regular duty, department overtime, and LERE hours per work week without approval from their commander.
 - 1. LERE hours shall not exceed a maximum of 36 hours per week unless the employee has been given approved leave (e.g., vacation, exceptional vacation, comp leave).


➤ **Austin Police Department Policy 110.4.4: Organizational Structure and Responsibility: Insubordination**

110.4.4 Insubordination

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence.

By copy of this memo, Sergeant Davis 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, Sergeant Davis 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.


BRIAN MANLEY, Interim Chief of Police

7-31-17
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) 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 Sergeant Richard Davis #5172

Date July 21, 2017