



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: May 30, 2013

SUBJECT: Indefinite Suspension of Police Officer Manuel Garcia #1371
Internal Affairs Control Number 2013-0115

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 Manuel Garcia #1371 from duty as a police officer of the City of Austin, Texas, effective May 31, 2013.

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

On February 2, 2013 at approximately 7:16 p.m., Officer Manuel Garcia was detained by Austin Police officers at Fiesta Gardens on Comal Street. Officer Garcia's vehicle was parked in a dark, unlit area of the parking lot in an area known for drug use and prostitution. When APD officers detained Officer Garcia, Teresa Gail Little, a known prostitute and narcotics user, was with Officer Garcia in his vehicle. When questioned by the officers, Officer Garcia stated that he knew Ms. Little, and had seen her several times. Officer Garcia stated that he was taking Ms. Little to get her something to eat, and that he has tried to help her out in the past because she was going through hard times. When the officers told Officer Garcia that the officers knew that Ms. Little was a prostitute and drug user, Officer Garcia stated that he knew that she was a prostitute but did not know that she was a drug user. During the stop, Officer Garcia was questioned by the officers and was not truthful with the officers about where he worked or about the weapon in his vehicle.

The officers questioned Ms. Little about what she and Officer Garcia were doing in the vehicle. Ms. Little stated that she knew Officer Garcia as "Luis," and that they had "dated" several times. Ms. Little admitted that she and Officer Garcia had agreed that she would perform oral sex on him for ten dollars. The officers contacted arrest review and were advised that they did have probable cause to make an arrest for prostitution. Officer Garcia was arrested for prostitution. Little was arrested for warrants and transported to Austin Police Department's Main headquarters where she gave a sworn statement containing details of the arrangement she had with Officer Garcia.

Both the Special Investigations Unit and the Internal Affairs Unit of the Austin Police Department investigated Officer Garcia's conduct for potential criminal and policy violations. During his Internal Affairs interview, Officer Garcia stated that he lied to the officers when he told them that he knew Ms. Little. Officer Garcia told Internal Affairs that he had never seen Ms. Little before she suddenly jumped into his truck and would not get out. Officer Garcia also admitted lying to the officers when he told them that he was not currently working anywhere, and that he did not have a weapon in his vehicle. Despite evidence to the contrary, including but not limited to, the ten dollar bill that was found folded up in the air conditioning vent of his truck when he was arrested, Officer Garcia denied to Internal Affairs that he had an arrangement with Ms. Little for her to perform oral sex on him. Instead Officer Garcia claimed that the officers "put that into" Ms. Little's mind and "obviously" "lead her on."

By these actions, Officer Garcia 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 900.1.1: 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.

To Wit:

Texas Penal Code Section 43.02: Prostitution

- (a) A person commits an offense if he knowingly:
 - (1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or
 - (2) solicits another in a public place to engage with him in sexual conduct for hire.
- (b) An offense is established under Subsection (a)(1) whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) whether the actor solicits a person to hire him or offers to hire the person solicited.
- (c) An offense under this section is a Class B misdemeanor, unless the actor has previously been convicted one or two times of an offense under this section, in which event it is a Class A misdemeanor. If the actor has previously been convicted three or more times of an offense under this section, the offense is a state jail felony.
- (d) It is a defense to prosecution under this section that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02.

➤ **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.

➤ **Austin Police Department Policy 900.3.2: General Conduct and Responsibilities: 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

➤ **Austin Police Department Policy 900.3.3: General Conduct and Responsibilities: Prohibited Associations**

900.3.3 Prohibited Associations

- (a) Employees will not establish an external social relationship with a known victim, a known witness, or a known suspect of a crime while such case is being investigated by this Department or prosecuted as a result of such an investigation.
- (b) Employees will not establish social and/or business dealings with persons they know, or should know, are likely to adversely affect the employee's or Department's credibility. Employees will not associate with convicted felons. Provisions of this section do not apply to association based on kinship or the discharge of official duties.
- (c) Employees will not knowingly loan money, accept as pawn any item, or enter into any type of business arrangement with a suspect of a criminal violation, a person under arrest or detention, a person known to have a criminal record or unsavory reputation, or a person known to be engaged in, or planning to engage in, criminal activity.

- (d) Employees will not affiliate with any organization or body, the constitution or regulations of which would in any way prevent or hinder performing departmental duties.
- (e) Employees will not knowingly associate with any person or organization which advocates hatred, prejudice, or oppression of any person or group or which disseminates such material.
- (f) Employees will not become a member of any organization, association, movement, or group which advocates the commission of acts of force or violence to deny others their rights under the Constitution of the United States or which seeks to alter the form of government of the United States by unconstitutional means.

In determining the appropriate discipline in this case, I took into consideration the fact that Officer Garcia's actions constitute criminal conduct, the serious nature of his policy violations, and the negative impact of Officer Garcia's conduct on the Austin Police Department and the City of Austin. The citizens of Austin expect and deserve police officers who know and comply with the law. Further, APD policy also requires that officers be truthful and conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City of Austin. Officer Garcia's actions destroy public confidence in and respect for the Department and is prejudicial to the good order, efficiency or discipline of the Department.

Further, Officer Garcia failed to tell the truth regarding his actions both to the officers on the scene and to Internal Affairs during the investigation of this incident. Not only did Officer Garcia fail to tell the truth to Internal Affairs but Officer Garcia impugned the integrity of his fellow officers in an attempt to conceal, divert or mitigate his true culpability in the incident in further violation of APD's honesty policy. As stated in APD's policy, honesty is of the utmost importance in the police profession. Dishonesty is a serious policy violation for which indefinite suspension is mandated by the Discipline Matrix. Officer Garcia, 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, 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 Garcia 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 Garcia 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.



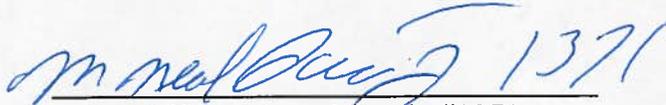
ART ACEVEDO
Chief of Police

5/30/2013

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 Manuel Garcia #1371

5-30-13

Date