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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: Art Acevedo, Chief of Police

DATE: October 21, 2016

SUBJECT: Agreed Temporary Suspension of Police Lieutenant Allen Hicks #3530
Internal Affairs Control Numbers 2016-0793

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 temporarily suspended Police Lieutenant Allen Hicks #3530 from duty as a City of Austin, Texas police officer for a period of 45 days. The temporary suspension is effective beginning on October 22, 2016 and continuing through December 5, 2016. In addition Lieutenant Hicks has agreed to accept a voluntary demotion to the rank of Corporal/Detective effective October 22, 2016.

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

In connection with a Response to Resistance (R2R) incident that occurred on March 17, 2016, Lieutenant Hicks neglected his duties by not initially completing a R2R review of that incident. He finally did so after receiving a directive to do so by his Commander on May 9, 2016. Internal Affairs received a signed complaint requesting an administrative inquiry for the Chain of Commands' review of that incident and similar incidents over a 4 month time frame from March – July 2016. The inquiry revealed Lieutenant Hicks directed Sergeant Stanfield not to complete a review of the March 17, 2016, incident.

The inquiry of similar incidents revealed Lieutenant Hicks neglected and failed to perform his duties on several R2R's. Specifically, Lieutenant Hicks acknowledged he failed to document policy and training issues and neglected to properly supervise his subordinates and review the progress of several of his administrative tasks, including several R2R incidents. Lieutenant Hicks also failed to follow protocol by not notifying his Commander of more than one incident.

Internal Affairs discovered that Lieutenant Hicks was also neglectful in his duties when he changed title codes of R2R incidents without doing a thorough review of the information available to him. The purpose of the R2R title code designation is to enable the identification of use of force reports to facilitate the internal auditing process for supervisors of R2R incidents. By changing the codes without a proper review, Lieutenant Hicks hindered the ability of supervisors responsible for R2R's from auditing or reviewing their outstanding R2R reviews according to policy.

Lieutenant Hicks' failure to properly perform tasks, thoroughly document, completely review, adequately counsel, recognize and implement corrective measures of subordinates contributed to a chain reaction. The statistical review of use of force situations and notifying one's Chain of Command are pre-designed internal audit mechanisms to implement corrective actions. By neglecting his duties and negligently changing R2R title codes, Lieutenant Hicks not only insufficiently supervised his subordinates, but he also prevented his supervisors from uncovering and resolving any deficiencies.

By these actions, Lieutenant Hicks 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 General Conduct and Responsibilities**

900.1 PURPOSE AND SCOPE

It is the policy of the Austin Police Department that employees conduct themselves at all times in a manner that reflects the ethical standards consistent with APD written directives. This policy shall apply to all sworn and civilian members, including

volunteer, part-time, auxiliary, and nonpaid civilians affiliated with the Department through a Department-sponsored program while under the direction of a Department employee.

This policy is intended to guide employees in conducting themselves and their affairs, both on duty and off-duty, in a manner that reflects the professionalism required of Department personnel. Furthermore, this policy is intended for internal use only and shall not be construed to increase or establish an employee's civil or criminal liability, nor shall it be construed to create or establish a higher standard of safety or care.

➤ **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 110.1 Organizational Structure and Responsibility**

110.1 PURPOSE AND SCOPE

The organizational structure of this department is designed to create an efficient means to accomplish our mission and goals and to provide for the best possible service to the public.

➤ **110.2.4 LIEUTENANT**

Lieutenants exercise line command and provide advice and guidance to those employees assigned to them, as well as being responsible for keeping the respective commander informed about the activities and accomplishments of those employees.

➤ **Austin Police Department Policy 211.5: Designation of Supervisor to Conduct the Inquiry**

The supervisor of the employee involved in the force incident shall typically be the primary supervisor conducting the force inquiry.

➤ **Austin Police Department Policy 211.7.1: Supervisor Responsibilities in Level 2 Force Incidents**

Level 2 force incident inquiries are conducted by the designated inquiry supervisor. A supervisor shall respond to the scene of all Level 2 force incidents unless a hostile crowd or other conditions make such a response impracticable.

- (a) Supervisors should secure and manage the scene upon arrival and:
 - 1. Ensure involved personnel, subjects, and witnesses are identified, separated, and advised that communication regarding the incident with other people is prohibited.
 - 2. Verbally review the general circumstances of the incident individually with the involved personnel, subjects, and witnesses. Ensure the reporting level is consistent with the facts and assess whether injuries, if present, are consistent with the force applied.
 - 3. Ensure a perimeter is established if needed.
 - 4. Locate injured subjects and ensure medical services have been requested as needed.
 - 5. Assess the need for additional resources and make appropriate notifications.
 - 6. Identify the number of subjects involved. Coordinate the apprehension of subject(s) outstanding.
 - 7. Personally interview the subjects upon whom the force was used, or alleged to have been used, and obtain a statement. The statement should be captured using a MAV recording system. If a statement is not obtained by video or audio, the supervisor shall thoroughly document the information in their inquiry memorandum and explain the circumstances that prevented the recording.
 - 8. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to on scene supervisor as soon as practical and shall be

documented in the employee's supplement. Witness information shall also be documented in the supervisor inquiry memorandum.

- (a) Witness statements should be captured using a MAV recording system. If a statement is not obtained by video or audio, the supervisor shall thoroughly document the information in their inquiry memorandum and explain what circumstances prevented the recording.
9. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any sources of pertinent video should be provided to on scene supervisor as soon as practical and shall be documented in the employee's supplement.
10. Ensure digital images or photographs are taken of:
- (a) The physical condition of the subject and involved personnel to record the presence or lack of injuries.
 - (b) The scene where the response to resistance incident occurred.
 - (c) Other relevant evidence.
11. Supervisors shall ensure all MAV media is turned in as evidence if it contains any information or statements related to the incident.
- (b) Once the scene has been cleared, supervisors shall be responsible for the following:
- (a) Send email notifications with the incident report number prior to the end of the tour of duty to the:
 - (a) Involved employee's chain-of-command up to the commander.
 - (b) Reviewing supervisor's chain-of-command up to the commander, if not already included.
 - (c) Commander of the area where the incident took place, if not already included.
 - (d) IA (Internal.Affairs@austintexas.gov) if the inquiry indicates there is any credible evidence a violation

of law or policy may have occurred concerning the officer's use of force that may reasonably lead to formal discipline.

- (b) Supervisors shall review the primary reporting employee's response to resistance incident report and change the 8400 title code to 8402 for Level 2 force incidents.
- (c) Complete a response to resistance inquiry memorandum. The inquiry memorandum shall include:
 - (a) The incident number of the involved employee's response to resistance incident report.
 - (b) A description of any injury to the subject and/or APD personnel including the medical assistance that was provided.
 - (c) Any relevant information revealed in interviews with personnel, subjects involved, and witnesses at the scene.
 - (d) Information on the digital images or photographs that were taken. If none were taken then the reason why.
 - (e) Whether statements were taken and in what format (e.g., MAV, written). If a statement was not taken, or if the statement was not captured on video or audio, the reasons should be documented.
 - (f) Detailed information on any circumstances that delayed or prevented response to the scene.
 - (g) Identify Department or individual equipment, training, and tactical issues and make recommendations for corrective action, when appropriate.
 - (h) Whether the response to resistance was objectively reasonable and within Department Policy.
- (d) Prepare a response to resistance inquiry packet that includes the following documents:
 - (a) A Level 2 inquiry control sheet.

- (b) Supervisor inquiry memorandum.
- (c) CAD sheet of the incident.
- (d) Any ancillary documentation (e.g. Taser downloads and audio wave files).
- (e) Electronically store the response to resistance inquiry packet in the Level 2 Response to Resistance Inquiry folder in the G drive (\\ausps.org\Data\Groups\R2R Level 2 Inquiry Packets) within a folder titled by the case number. A physical folder is no longer required.
- (f) Complete and forward the response to resistance inquiry packet link via email to the next level in the chain-of-command under which the involved employee was working when the incident occurred, within four work days from the time the incident occurred.

➤ **Austin Police Department Policy 211.8: Level 3 Incident Inquiry, Reporting, and Review Requirements**

Level 3 force incidents require the involved employees to document the incident in a report and notify their supervisors. Supervisors shall conduct a review of Level 3 force incidents as outlined below but may upgrade any Level 3 force incident to a Level 2 force incident in order to conduct a more extensive review.

- (a) Supervisors shall respond to the scene of any Level 3 incident involving:
 1. Use of OC spray or other chemical agent on a subject.
 2. Use of a TASER Device. See the "Report of Use" section of Policy 208 (TASER® Guidelines) for specific information to be included in the report.
 3. Use of an impact weapon.
 4. Any incident resulting in injury or complaint of pain beyond the temporary discomfort of un-resisted handcuffing. Supervisors shall review the general circumstances of the incident with the involved personnel and ensure the reporting level is correct based on the facts.

- (b) Supervisors shall review the primary reporting employees' response to resistance incident report:
 - 1. Incomplete or inadequate reports shall be returned for additional details or clarification.
 - 2. Supervisors shall change the 8400 title code in the Versadex incident report and detail page to 8403 for Level 3 force incidents.
 - 3. Supervisors shall add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident.
- (c) If a TASER Device is used in the force incident, the data report shall be downloaded and a copy scanned into the image section of the Versadex incident report or submitted into evidence with the spent cartridge for retention.
- (d) Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure completeness, accuracy, and quality. Each level of the chain-of-command, up to the lieutenant, shall review.
- (e) Level 3 incidents that involve the use of OC, Taser, or weaponless strikes on a restrained subject will be forwarded to the Force Review Board for their review.

➤ **Austin Police Department Policy 900.4.3: General Conduct and Responsibilities: Neglect of Duty**

900.4.3 Neglect of Duty

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (a) Lack of knowledge of the application of laws required to be enforced.
- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.

- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.
- (e) Absence without approved leave.
- (f) Repeated poor evaluations.
- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.
- (i) Employees are expected to be truthful at all times in the performance of their duties. However, there may be instances where, initially, the employee has not been truthful; but, before the investigation is complete, the employee provides an accurate and detailed accounting of their true culpability in a situation, and accepts full responsibility for their actions. In those cases, the Chief may consider each case on a fact-specific basis.

In addition to this agreed suspension, Lieutenant Hicks agrees to the following additional terms and conditions:

- 1) Lieutenant Hicks will accept a voluntary demotion to the rank of Corporal/Detective effective October 22, 2016 and shall within 48 hours of signing this Agreement send written notification of that voluntary demotion to the Civil Service Director.
- 2) Lieutenant Hicks will not be able to sit for the Sergeant's promotional examination for 24 months calculated from the date he returns from serving this suspension.
- 3) Lieutenant Hicks shall attend any training specified by his Chain of Command.
- 4) Lieutenant Hicks agrees to a one (1) year probationary period to begin on the day he returns to duty after serving this agreed suspension. Lieutenant Hicks agrees that if during that one year period the Chief of Police sustains another violation involving the same or similar conduct (Lieutenant Hicks agrees that the Chief of Police has the final decision whether the conduct is the same or similar and that decision is not subject to review or appeal), he will be indefinitely suspended without the right to appeal that indefinite suspension to the to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.
- 5) Lieutenant Hicks understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass him for a future promotion in accordance with APD Policy 919.
- 6) Lieutenant Hicks may not appeal this agreed suspension or any of these additional terms and conditions to the Civil Service Commission, to an Independent Third

Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.

- 7) Lieutenant Hicks agrees to waive any claims he may have against the City or its employees related to this investigation, suspension, and voluntary demotion, including but not limited to claims under Title VII, the ADA, or the FMLA.
- 8) Lieutenant Hicks acknowledges that he had the opportunity to discuss this agreed suspension and additional terms and conditions set forth herein with the attorney of his choice prior to signing his acceptance where indicated below.

By signing this Agreed Discipline, Lieutenant Hicks understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Lieutenant Hicks waives all right to appeal to this agreed suspension to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.


ART ACEVEDO, Chief of Police

10/21/2016
Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing memorandum of agreed temporary suspension and I understand that by entering into this disciplinary agreement the Chief forgoes his right to indefinitely suspend me for the conduct described above. I further understand and agree that by entering into this agreement, I have no right to appeal this suspension to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to the District Court, and I may not file a grievance under Article 20 of the Meet and Confer Agreement.


Police Lieutenant Allen Hicks #3530

10/21/16
Date