



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: August 28, 2013

SUBJECT: Temporary Suspension of Police Detective Ricky Jones #4846
Internal Affairs Control Number 2013-0290

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 Officers' Civil Service Commission, I have temporarily suspended Police Detective Ricky Jones #4846 from duty as a police officer of the City of Austin, Texas, for a period of ten (10) days. The temporary suspension is effective beginning on September 2, 2013, and continuing through September 11, 2013.

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

On March 15, 2013, Detective Jones, while on-duty, was being filmed by a citizen and was asked to identify himself. Detective Jones failed to identify himself and instead asked the citizen for his identification. Detective Jones also made statements that Detective Jones admitted could be perceived as threats towards the citizen. Detective Jones admitted that the citizen had a legal right to stand on public property and film him.

By these actions, Detective Jones 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 302.2: Public Recording of Official Acts: Interaction with Community**

302.2 Interaction with Community

(a) Officers are reminded that photography, including videotaping, of places, buildings, structures and events are common and normally lawful activities.

1. If a person is taking photographs or recording from a place where he or she has a right to be, officers are reminded that this activity by itself does not constitute suspicious conduct.

(b) In areas open to the public, officers shall allow bystanders the same access for photography as is given to members of the news. Officers shall be aware that:

1. A bystander has the same right to take photographs or make recordings as a member of the media, as long as the bystander has a legal right to be present where he or she is located.

2. A bystander has the right under the First Amendment to observe and record officers in the public discharge of their duties.

3. Public settings include parks, sidewalks, streets, and locations of public protests; but that protection extends also to an individual's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present.

4. The fact that a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

- (c) As long as the photographing or recording takes place in a setting at which the individual has a legal right to be present and does not interfere with an officer's safety or lawful duties, officer's shall not inform or instruct people that photographing or recording of police officers, police activity or individuals who are the subject of police action (such as a Terry stop or an arrest) is not allowed; requires a permit; or requires the officer's consent. Additionally, officers shall not:
1. Order that person to cease such activity;
 2. Demand that person's identification;
 3. Demand that the person state a reason why he or she is taking photographs or recording;
 4. Detain that person;
 5. Intentionally block or obstruct cameras or recording devices;
or
 6. In any way threaten, intimidate or otherwise discourage an individual from recording officer's enforcement activities
- (d) Nothing in this policy prohibits officers from questioning or detaining individuals they reasonably suspect have committed, are committing, or are about to commit any crime.
- (e) Officers are reminded that a person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law.
1. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of officers or their ability to perform their duties, an officer may direct the person to move to a position that will not interfere. However, an officer shall not order the person to stop photographing or recording.
 2. If a person is photographing or recording police activity from a position that impedes or threatens the safety of members of the public, the officer shall direct the person to move to a safe position. However, officers shall not order the person to stop photographing or recording.
 3. A person's recording of officer's activity from a safe distance, and absent any attendant action that obstructs the activity or

threatens the safety of the officers, does not constitute interference.

4. A person has the right to express criticism of the police activity being observed. As long as that expression does not jeopardize the safety of any officer, suspect or bystander; and so long as that expression does not violate the law or incite others to violate the law, the expression does not constitute interference.

(f) Evidence on a Camera or Recording Device

1. If an officer has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the officer shall request that the person either:

- (a) allow the officer to listen to or view the recording
- (b) Voluntarily provide the device or recording medium (e.g., the memory chip) to the officer; or
- (c) Where possible and practicable, and in the presence of the officer, voluntarily transmit the images or sound via electronic mail to the officer's official government electronic mail account.
- (d) Consent to view or take possession of a recording device or medium must be given voluntarily and in accordance with APD policy 306.4 Consent to Search.

2. If the person provides the device or recording medium to the officer, the officer shall:

- (a) Exercise due care and caution with any of the individual's property or electronic device(s);
- (b) Enter the item into evidence
- (c) Document the officer's request and the individual's response in the narrative of the report
- (d) Contact the on-call Detective responsible for the highest charge and notify them of the media evidence. Officers shall not attempt to view, download, or otherwise access any material contained on the device.

3. If the individual declines to voluntarily provide the device or recording medium, or to electronically transmit the sound and/or images where possible and practicable, and the officer believes that exigent circumstances exist insofar as the

evidence of criminal activity will be lost absent an immediate seizure of the device, the officer shall take control of the device and contact a supervisor.

(a) The Supervisor shall, in consultation with the officer, determine whether exigent circumstances permit the seizure of the device without a warrant. Warrantless seizure is permissible only when:

1. There is probable cause to believe that the property holds contraband or evidence of a crime; and
2. The exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present.

(g) Viewing/Listening to Evidence on a Camera or Recording Device

1. Absent exigent circumstances, officers shall obtain a search warrant before viewing photographs or listening to recordings on a camera or memory chip that has been seized as evidence.
2. In exigent circumstances, where there is reason to believe that an immediate search of the seized material is necessary to prevent death or injury, officers shall contact a supervisor for authorization to review photographs or recordings without a warrant.
3. Photographs or recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed.

(h) Officers shall not, under any circumstances, erase or delete, or instruct or require any other person to erase or delete, any recorded images or sounds from any camera or other recording.

➤ **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 900.4.4: General Conduct and Responsibilities: Duty to Identify**

900.4.4 Duty to Identify

- (a) Unless doing so would jeopardize an undercover officer or a covert operation, employees will furnish the name and identification number of any employee, including themselves, to any person requesting such information regarding matters in which the employee was acting in an official capacity. Names of employees will be given in sufficient form to fully identify the employee.
- (b) Sworn employees taking police action while not in uniform will, as soon as possible, display their police badge or APD ID and state the purpose for taking police action.
- (c) Employees will provide the name and business telephone number of their immediate supervisor upon request by any person.

By copy of this memo, Detective Jones 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) 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.

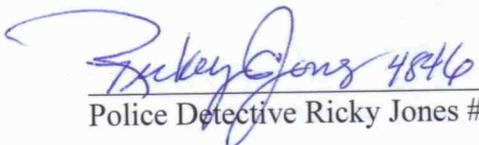
By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Detective Jones is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance 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

8/29/2013
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 Detective Ricky Jones #4846

8-28-13
Date