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Human Resources Dept

MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: June 12, 2015

SUBJECT: Indefinite Suspension of Police Officer Anthony Nolen #6475
Internal Affairs Control Number 2014-1122 and 2015-0512

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 Police Officer Anthony Nolen #6475 from duty as a City of Austin, Texas police officer effective June 12, 2015.

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

Officer Nolen began a relationship with Ms. H in 2011. On February 14, 2012 Officer Nolen and Ms. H went to a PetSmart location and purchased a dog. In March of 2012 Ms. H moved into Officer Nolen's residence. Sometime at the end of the summer of 2014 Ms. H moved out of Officer Nolen's residence, however a tumultuous relationship continued, whereby Ms. H continued to stay in Officer Nolen's residence on occasion through the end of the calendar year. From March 2014 through December 2014 the Williamson County Sheriff's Office (hereafter referred to as WCSO) responded to Officer Nolen's residence eight times for calls/disturbances involving Officer Nolen and Ms. H. Some of the calls revolved around alleged threats of suicide, family violence, as well as an alleged burglary. Near the end of the 2014 calendar year two different Sergeants from the WCSO independently contacted an Austin Police Department Watch Commander on two separate occasions regarding Officer Nolen's conduct and the surrounding circumstances. The officers were tired of dealing with Officer Nolen's situation and called to complain about him. Moreover, Officer Nolen was utilizing their time and resources to make baseless claims. The fact that other law enforcement agencies were calling to complain about Officer Nolen brings discredit upon the Austin Police Department. Moreover during the same timeframe, a coworker of Officer Nolen's relayed to an immediate supervisor that he overheard Officer Nolen state the following to Ms. H referencing her male friend, with whom he believed she was having a romantic relationship: "I get paid to train to do this, and if he thinks he is going to shoot me, I guarantee...I'll draw quicker." Statements of this nature were made repeatedly by Officer Nolen during a nearly hour long conversations while on duty for the APD.

Officer Nolen and Ms. H became involved in a verbal argument on December 12, 2014 concerning their dog, amongst other issues. Officer Nolen surreptitiously recorded the event and Ms. H was unaware he did so or that the recording existed until being advised by Internal Affairs. That recording clearly shows that Officer Nolen became increasingly angry and volatile to the point that he pushed Ms. H causing her to fall and injure her right ankle (there were visible injuries observed and documented by the police in the police report Ms. H filed on December 13th). Officer Nolen recklessly caused bodily injury to Ms. H. At a minimum, he intentionally or knowingly caused physical contact with her when he knew or should have reasonably believed that Ms. H would regard the contact as offensive or provocative. The fact that Ms. H didn't know the incident was being recorded and her excited utterance that he assaulted her lends credibility to her version of the events. Although Ms. H decided at that time not to prosecute Officer Nolen for the assault, that decision does not alter the fact that the evidence supports a finding that an assault committed by Officer Nolen did occur.

On the same day after the assault/family violence incident occurred, Officer Nolen called WCSO to report that Ms. H had burglarized his home. He claimed that she did not have permission to enter his residence, he did not give her his current access code, and she somehow managed to crack the 4-digit code (all false statements to the police). Given the possible code permutations, his claim is not credible. Both Officer Nolen and Ms. H indicated that she had personal belongings in the residence and Officer Nolen had shared

the code to his residence and given Ms. H access to his residence during the time frame from March 2014 through the end of 2014. Moreover, Officer Nolen still maintained the key to Ms. H's apartment through December 13, 2014 and Ms. H contended she utilized the code given to her by Officer Nolen on the day in question and was authorized to be in the residence. Three different Deputies from the WCSO found Officer Nolen's version of the events surrounding the purported "burglary/theft" (the alleged theft of "his" dog) to be incredulous and determined he was being dishonest with them regarding their criminal investigations.

In addition to making a false report about a burglary, Officer Nolen also made a false report by alleging that Ms. H stole "his" dog. The receipt Officer Nolen presented to Internal Affairs from Valentine's Day 2012 supports Ms. H's contention of joint ownership of the dog. Moreover, Officer Nolen's own statement that they bought the dog together on their anniversary to the WCSO also supports that the dog was a mutual pet, not his sole, personal property.

Moreover, on December 13, 2014, Officer Nolen called the Round Rock Police Department, where Ms. H resided, after WCSO would not make a burglary report listing Ms. H as the suspect. He yet again asserted his home was burglarized by Ms. H and the Round Rock Police Department (RRPD) reached the same conclusion that the WCSO did: no burglary occurred and this was a civil matter. The RRPD Officer indicated he told Officer Nolen not to contact Ms. H and to resolve his issues civilly. In spite of this warning, Officer Nolen contacted Ms. H yet again on December 13, 2014 and then he called RRPD to report that Ms. H was suicidal. The police contacted Ms. H and determined she was not suicidal. Officer Nolen called the WCSO on December 25, 2014 to report Ms. H was once again trying to break into his house and WCSO determined that no crime had occurred.

Officer Nolen was dishonest with Internal Affairs, WCSO, RRPD, and/or his chain of command during his disciplinary hearing on June 12, 2015 regarding the following matters (not an all-inclusive list):

- He lied when he denied he assaulted Ms. H on December 12, 2014;
- He lied when he reported to WCSO and RRPD that Ms. H burglarized his residence on December 12, 2014, including the claim that that she did not have permission to be in the house and did not have his current access code.
- He lied and mislead both WCSO and RRPD in their investigations.
- He lied when he stated that he did not lie to WCSO or RRPD;
- He lied when he reported that Ms. H stole his dog;
- He lied when he claimed the relationship was over;
- He lied when he claimed Ms. H had no lawful right to be in his residence;
- He lied when he claimed Ms. H did not have the current access code;
- He lied when he claimed Ms. H was suicidal as a justification for the police responding to her residence.

Also, on December 6, 2014 at 8:54 am, Officer Nolen used the Austin Police Department's Versadex system to conduct a query on Ms. H for a non-law enforcement purpose and opened a report that he found.

Finally, on January 9, 2015 and February 27, 2015, Internal Affairs issued Officer Nolen a Notice of Allegations & Garrity Warning. This was a lawful order that stated the following:

“You are specifically directed not to discuss this complaint or investigation with any witness, potential witness, or with any other officers, employees or volunteers of the Department.

You are directed not to contact the witnesses or other persons either directly or through third-party means. This includes but is not limited to: personal, telephonic, or electronic contact of any nature being related to this complaint or investigation. This notice does not restrict you from cooperating with a criminal investigator, conducting a criminal investigation, outside of this administrative investigation.”

After receiving both Notices of Allegations, Officer Nolen admits that he spoke with Ms. H on multiple occasions regarding her Internal Affairs interview and the specifics of the investigation. This includes but is not limited to February 20, 2015, as well as April 3, 2015, when he signed his Internal Affairs interview transcript and they discussed the fact that Ms. H had not yet signed her Internal Affairs transcript. Officer Nolen told her to “leave it alone” as that might work in his favor if he has to go to arbitration. Officer Nolen was tampering with a witness by advising her not to contact Internal Affairs about signing her statement as doing so would likely benefit him at a subsequent appeal. Ms. H also discussed her prior association with the assigned investigator, Sergeant Graham. Officer Nolen also admits that on June 4, 2015, after he received his Notice of Sustained Allegations, he discussed the investigation, including the specific allegations that were recommended to be sustained against him and that he was facing termination.

Officer Nolen repeatedly violated both the January 9th and February 27th administrative orders when he discussed the investigation, including specific details, with Ms. H who he knew was a witness in the case. This conduct constitutes insubordination and warrants indefinite suspension on its own as Officer Nolen's conduct has the potential of impugning the integrity of the Internal Affairs investigation. In fact, he was actually encouraging and advising a witness not to cooperate with Internal Affairs by not signing her sworn statement, an act he believed would benefit him should he be suspended and appeal.

By these actions, Officer Nolen 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 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

➤ **Austin Police Department Policy 900.1.1(a)(c): 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.

- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

To Wit: Assault: Texas Penal Code 22.01(1)(3) & Texas Family Code Section 71.0021: Dating Violence:

- Sec. 22.01. ASSAULT.** (a) A person commits an offense if the person:
- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
 - (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.
- (b) An offense under Subsection (a)(1) is a Class A misdemeanor
- (c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor

Sec. 71.0021. DATING VIOLENCE. (a) "Dating violence" means an act, other than a defensive measure to protect oneself, by an actor that:

- (1) is committed against a victim:
 - (A) with whom the actor has or has had a dating relationship; or
 - (B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
 - (2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.
- (b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:
- (1) the length of the relationship;
 - (2) the nature of the relationship; and
 - (3) the frequency and type of interaction between the persons involved in the relationship.
- (c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b).

Sec. 37.08. FALSE REPORT TO PEACE OFFICER, FEDERAL SPECIAL INVESTIGATOR, OR LAW ENFORCEMENT EMPLOYEE. (a) A person commits an offense if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation and makes the statement to:

- (1) a peace officer or federal special investigator conducting the investigation; or
 - (2) any employee of a law enforcement agency that is authorized by the agency to conduct the investigation and that the actor knows is conducting the investigation.
- (b) In this section, "law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.
- (c) An offense under this section is a Class B misdemeanor.

➤ **Austin Police Department Policy 900.3.1(a)(c): 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) 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.

➤ **Austin Police Department Policy 900.3.2(a): 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 1000.3.1(a): Department Technology Use: Prohibited Use of Department Technology**

1000.3.1 Prohibited Use of Department Technology

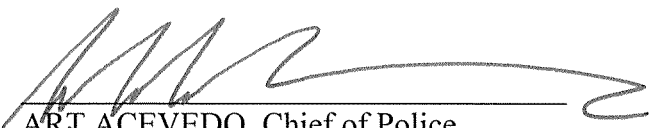
Prohibited uses of any Department Technology include, but are not limited to, the following:

- (a) Use for private gain or profit, or to solicit for political, religious, or other non-business purposes.

In determining the appropriate discipline, I took into consideration the fact that Officer Nolen committed an assault, family violence. The Department has zero tolerance for family violence. Officer Nolen lied to WCSO, RRPD, Internal Affairs, and his chain of command when he denied that he committed an assault (among his other lies). He also lied to WCSO and RRPD by filing a false burglary/theft report. Dishonesty, to wit, lying to an investigator conducting an administrative or criminal investigation is an indefinite suspension under the APD Disciplinary Matrix. Officer Nolen's continuous disturbances with his girlfriend have caused repeated responses by other law enforcement actions and generated complaints filed with the Watch Commander, which has brought discredit to the Austin Police Department.

By copy of this memo, Officer Nolen 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) 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.

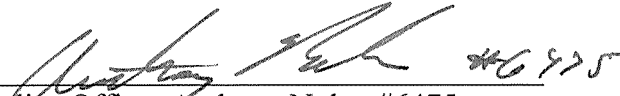
By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Officer Nolen is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance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

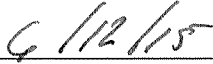
June 12, 2015
Date

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 Anthony Nolen #6475



Date