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MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: April 8, 2014

SUBJECT: Temporary Suspension of Police Officer Leonard Wheeler #3900
Internal Affairs Control Number 2013-1039

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 Officer Leonard Wheeler #3900 from duty as a City of Austin, Texas police officer for a period of eleven (11) days. The temporary suspension is effective beginning on April 09, 2014, and continuing through April 19, 2014.

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

On October 13, 2013, while transporting a prisoner from the emergency room of Brackenridge Hospital to Travis County Central Booking, Officer Wheeler failed to secure the prisoner in the rear of the transport van. Officer Wheeler failed to seatbelt the prisoner. Officer Wheeler attempted to engage the rollercoaster bar but it did not work. Officer Wheeler believed that he had latched the handle on the door of the van, but did not check that the door was latched or lock the door. As a result of the failure to secure the prisoner in the transport van, the prisoner escaped from the van. Officer Wheeler failed to notify communications or his chain of command immediately on becoming aware that the prisoner had escaped. Officer Wheeler did not notify his Sergeant of the prisoner's escape until after the prisoner had been recaptured. Officer Wheeler failed to activate his DMAV and leave it activated after the prisoner escaped.

By these actions, Officer Wheeler 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 304.2.2: Digital Mobile Audio Video Recording: When DMAV Use is Required**

304.2.2 When DMAV Use is Required

This policy is not intended to describe every possible situation where the system may be used. In some circumstances it is not possible to capture images of the incident due to conditions or location of the camera however the audio portion can be valuable evidence and is subject to the same activation requirements.

- (a) All units responding to a scene shall activate their DMAV equipment when they:
 - 1. Arrive on-scene to any call for service; or
 - 2. Are attempting to detain or arrest a person; or
 - 3. Have detained or arrested a person; or
 - 4. By nature of the incident, are likely to detain or arrest a person.

- (b) Examples of when the DMAV system must be activated include, but are not limited to:
 - 1. Traffic stops.
 - 2. Pursuits, until completion of enforcement action.
 - 3. DWI investigations including field sobriety tests.
 - 4. Warrant service.
 - 5. Investigatory stops when the subject is on foot or in a vehicle.
 - 6. Any contact that becomes adversarial in an incident that would not otherwise require recording. In those situations, it may be

impractical or unreasonable for officers to activate their DMAV system before taking police action. It is expected that once the immediacy of the situation is over, officers will activate their DMAV system to record the remainder of the incident.

- (c) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

➤ **Austin Police Department Policy 321.3.3: Care and Transport of Prisoners: Escape**

321.3.3 Escape

- (a) In the event an escape occurs while transporting a prisoner, the officer shall immediately notify the dispatcher and request assistance. The officer should provide, at a minimum, the following information:
 - 1. Complete physical description;
 - 2. Direction and method of travel;
 - 3. If any weapons and/or accomplices were used to effect the escape; and
 - 4. The nature of the offense which resulted in the original arrest.
- (b) A supervisor shall be notified.
- (c) A complete search of the area will be conducted. This search may include the following measures:
 - 1. Establishing a perimeter.
 - 2. Requesting canine.
 - 3. Requesting air support.
 - 4. Notifying surrounding agencies, if appropriate.
- (d) The officer shall complete all necessary incident reports to ensure the preparation of an arrest warrant if the prisoner is not located.

➤ **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.


In determining the appropriate discipline, I took into consideration Officer Wheeler's repeated failure to comply with APD policy in the performance of his duties as reflected both in this incident and in his prior disciplinary history. Less than six months ago, I temporarily suspended Officer Wheeler for seven (7) days based on his failure to know and comply with APD policies regarding the care and transport of prisoners. In this incident, Officer Wheeler has again failed to satisfactorily perform his duties with regard to the care and transport of prisoners. Additionally, Officer Wheeler's failure to immediately notify communications of the prisoner's escape as required by APD policy could have unnecessarily placed the public at risk. Under these facts and circumstances, a temporary suspension of eleven (11) days is warranted and appropriate.

By copy of this memo, Officer Wheeler 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, ~~Officer Wheeler 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.~~

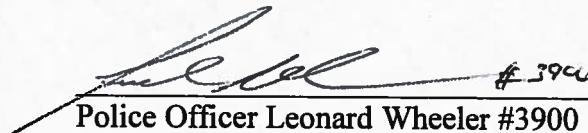
By copy of this memo, Officer Wheeler is hereby advised that this temporary suspension may be taken into consideration in my determination as to whether a valid reason may exist to bypass Officer Wheeler for promotion in accordance with Austin Police Department Policy 919.


ART ACEVEDO, Chief of Police

4-8-14
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 Officer Leonard Wheeler #3900

04-08-14
Date