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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: February 14, 2012

SUBJECT: Agreed Temporary Suspension of Sergeant Mark Breckenridge #2257
Internal Affairs Control Number #2011-1018

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 Sergeant Mark Breckenridge #2257 from duty as a City of Austin, Texas police officer for a period of twenty (20) days. The agreed temporary suspension is effective beginning on February 15, 2012, and continuing through March 5, 2012.

I took this action because Sergeant Breckenridge 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 Sergeant Breckenridge in violation of Rule 10:

On August, 31, 2011, Officer Michelle Gish responded to the termination point of a pursuit. Officer Gish began assisting EMS in securing an intoxicated and uncooperative female onto an EMS gurney. As Officer Gish was securing the female on the gurney, the female spit on Officer Gish and Officer Gish struck the female at least once in the head. Officer Gish was forcibly removed from the suspect by another officer and had to be restrained until she was calm enough for EMS to assist in rinsing off her face.

Internal Affairs began an investigation into the incident and noted the Response to Resistance inquiry may not have been thorough enough to form a conclusion regarding whether any policy violations had occurred.

On September 12, 2011, Sergeant Breckenridge submitted a Response to Resistance Level 2 inquiry memorandum to Commander Nyert. In the memorandum, Sergeant Breckenridge stated the strike by Officer Gish was justified and within Austin Police Department policy guidelines. During his Internal Affairs interview, however, Sergeant Breckenridge stated that he did not identify any witnesses to the spit/slap incident nor did he direct any officers to locate and identify any witnesses. Officer Breckenridge admitted that he did not review Officer Gish's incident report and he hardly read any of the officers' supplements for the case. Sergeant Breckenridge further stated that he did not recognize the incident as a Level 2 incident until his lieutenant brought it to his attention. Sergeant Breckenridge acknowledged in his interview that now knowing all of the facts of the incident, that Officer Gish's response to resistance was not reasonable or appropriate. Sergeant Breckenridge also admitted that his failure to adequately investigate Officer Gish's Response to Resistance rises to the level of a policy violation.

By these actions, Sergeant Breckenridge 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 211.2.2: Response to Resistance Inquiry, Reporting and Review: Level 2 Force Incidents**

211.2 Determining the Correct Force Level

Force levels are broken up into three types: Level 1, Level 2, and Level 3. Each level is defined below by the response to resistance used in the incident. These levels are established for inquiry, reporting, and review purposes only. If there is uncertainty about which level to designate a particular incident then the higher level shall be used.

211.2.2 Level 2 Force Incidents

- (a) Any strike to the head by an employee with any weaponless technique.

➤ Austin Police Department Policy 211.3.2: Response to Resistance Inquiry, Reporting and Review: Policy Violation

211.3.2 Policy Violation

- (a) If there is **any credible evidence** a policy violation may have occurred by the officer then the incident shall be handled as follows:
 - 2. Level 2 and Level 3 force incidents - If the original incident would have been handled as a Level 2 or a Level 3 force incident, supervisors shall notify IA of the possible policy violation and handle the response to resistance inquiry as a Level 2 force incident. Supervisors shall document the date and time IA was notified in the supervisor's supplement.
- (b) Internal investigations of policy violations shall be handled as outlined in Policy 902 (Administrative Investigations).

➤ Austin Police Department Policy 211.7.1: Level 2 Incident Inquiry, Reporting, And Review Requirements: Supervisor Responsibilities In Level 2 Force Incidents

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. In such incidents, an alternate safe location shall be designated by the supervisor.

- (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. Conduct a reasonable canvass in an effort to identify and interview witnesses in the proximity of the incident. Employees who were not involved with the force incident may be used to assist with locating witnesses. Witness information shall 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. Identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video.

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.

In addition to this agreed suspension, Sergeant Breckenridge agrees to attend leadership training as ordered by his chain of command. Sergeant Breckenridge further agrees to a probationary period of one (1) year, with the additional requirement that if, during that probationary period, he commits the same or a similar act(s) of misconduct for which he is being suspended for 20 days, he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, or to District Court. The one year period begins on the day Sergeant Breckenridge returns to duty after completing his 20 day suspension.

By signing this Agreed Discipline, Sergeant Breckenridge understands and agrees that I am forgoing my right to demote him for the conduct described above and that by agreeing to the suspension, Sergeant Breckenridge waives all right to appeal this disciplinary action, including the additional terms and conditions cited herein, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, or to District Court.


ART ACEVEDO, Chief of Police

2/14/2012
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 demote me for the conduct described above and that by agreeing to the suspension, I have no right to appeal this disciplinary action or the additional terms and conditions cited herein, to the Civil Service Commission, to the District Court, or to an Independent Third Party Hearing Examiner.

Mark D Breckenridge #2257
Sergeant Mark Breckenridge #2257

2/14/2012
Date