



MEMORANDUM

Austin Police Department Office of the Chief of Police

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City of Austin
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Human Resources Dept

TO: Joya Hayes, Interim Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: February 23, 2016

SUBJECT: Indefinite Suspension of Police Officer Carlos Saldivar #3674
Internal Affairs Control Number 2015-0774 and 2016-0100

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 Carlos Saldivar #3674 from duty as a City of Austin, Texas police officer effective February 23, 2016.

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

Internal Affairs Case 2015-0774

On July 27, 2015 Officer Saldivar was issued a counseling memo for Insubordination. The memo addressed three separate incidents that occurred in May and June, in which Officer Saldivar was insubordinate.

On August 25, 2015, Lieutenant David New sent an email to all Learned Skill Unit instructors, informing them leaving early was not acceptable and would not be tolerated. The email also stated officers needed to get supervisor approval before leaving early. Officer Saldivar acknowledged receipt of the email, which reads:

“With recent issues within our unit, I have learned that some or all of you may be leaving before your shift ends without prior supervisor approval. This is NOT acceptable and will not be tolerated. Policy is very clear and this is a policy violation that some might constitute this as a criminal violation as well. We expect you to work the entire shift and if you want or need to leave early we expect you to get supervisor approval BEFORE leaving by taking vacation, sick or comp time. Everyone is responsible and I know this will not be a problem moving forward.”

On August 31, 2015, Officer Carlos Saldivar was on duty at the Austin Police Academy for a scheduled work shift from 7:00 a.m. to 5:00 p.m. An APD officer contacted Officer Saldivar about getting a ride to the Police Academy, where the officer’s personal vehicle was parked, from the Austin Bergstrom International Airport. Officer Saldivar left the Academy to pick up the officer at the airport, prior to his shift ending. After driving the officer to the Academy to pick up their vehicle, Officer Saldivar left for the day. Officer Saldivar failed to inform his supervisors prior to leaving early and failed to obtain permission to do so, which constitutes insubordination. Furthermore, when questioned about his absence by Corporal Gareth Singleton, Officer Saldivar was evasive as to the exact time he left in an attempt to mitigate his culpability in the situation.

When Officer Saldivar was questioned by Internal Affairs about the email from Lieutenant New, he acknowledged receiving the email and considered it a lawful direct order. Officer Saldivar also stated his failure to get supervisor approval before leaving early was insubordination.

The evidence in this case documenting the events related to Officer Saldivar’s insubordination show a pattern of behavior that demonstrates his outright refusal to follow orders from his supervisors. In spite of the department’s attempt to address this issue at the lowest level of discipline possible in July, Officer Saldivar knowingly disregarded a direct order from his lieutenant the following month.

This pattern of behavior is one Officer Saldivar has demonstrated in the past, in a previous insubordination investigation. In June of 2007 Officer Saldivar was engaging in a sexual relationship with the corporal of his shift, which is prohibited by policy. Officer

Saldivar was counseled by his sergeant and lieutenant about the relationship they suspected. Officer Saldivar lied about the relationship and told them it was not true. In January 2008 Officer Saldivar was questioned again by his sergeant about the relationship with his corporal. Officer Saldivar responded with anger and profanity and vehemently denied the relationship. A formal complaint was subsequently filed by his chain of command, and was investigated by Internal Affairs. During the IA investigation Officer Saldivar and his corporal admitted they engaged in a sexual relationship. Officer Saldivar received a 90 agreed upon suspension for Honesty and Insubordination in that case. Officer Saldivar signed a last chance agreement upon receiving the 90 day suspension stating in the suspension letter "Officer Saldivar is put on notice that any future violations of policy will result in his indefinite suspension".

Internal Affairs Case 2016-0100

Officer Saldivar was interviewed on October 15, 2015 by Austin Police Department (APD) Internal Affairs (IA), regarding a complaint he filed alleging Commander Andrew Michael threatened him during a meeting at the APD Training Academy on August 11, 2015. Officer Saldivar alleged Commander Michael told him at the meeting, that "*if Sergeant Smyth went to IA, he wouldn't be the only one going to IA.*" Officer Saldivar stated Lieutenant Michael Early was present at the meeting and heard Commander Michael's comment.

On August 11, 2015, Commander Michael held a short meeting with Officer Saldivar to address issues that were brought to his attention. Lieutenant Early was present as a witness. Commander Michael told Officer Saldivar he wasn't going to make any personnel changes and was going to handle the problem internally. Commander Michael told Officer Saldivar he was *free to go to IA*, but wanted Officer Saldivar to understand IA would thoroughly investigate every aspect of the case. Both Commander Michael and Lieutenant Early deny that Commander Michael made the statement that Officer Saldivar attributed to him. In fact Lieutenant Early characterized the meeting as cordial and did not detect Officer Saldivar as being upset or feeling threatened.

During Officer Saldivar's IA interview on February 9, 2016, he was explicitly asked if the quote he attributed to Commander Michael was told to him verbatim. He maintained that it was and even expounded by saying it was not something he may have perceived.

Officer Saldivar mentioned in his interview that he kept notes on the "threat" by Commander Michael. He was ordered to give the notes to IA. Upon examining the notes, IA investigators observed notations in parenthesis "*(something to that effect)*" next to Officer Saldivar's documentation regarding Commander Michael's remarks.

IA then asked Officer Saldivar and his attorney if he would submit to further questioning about Officer Saldivar's notes. When confronted with his note, "*something to that effect*" Officer Saldivar was left with no choice but to admit his assertion that Commander Michael's "threat" being verbatim was untrue. In sum, Officer Saldivar falsely accused Commander Michael of threatening him to create a false retaliation claim.

By these actions, Officer Saldivar 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 110.4.3: Organizational Structure and Responsibility: Obedience to Orders**

110.4.3 Obedience to Orders

The Department is an organization with a clearly defined hierarchy of authority. This is necessary because obedience of a superior's lawful command is essential for the safe and prompt performance of law enforcement operations. This section also applies to orders received by an employee in the field training program from a Field Training Officer (FTO).

- (c) Employees will promptly obey any lawful order from a supervisor of higher rank, regardless if the supervisor is outside of the employees' chain-of-command.
 - 1. Employees will obey any lawful order from a supervisor even if the order is relayed through an employee of a lower rank.

➤ **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 900.3.1(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 955.2: Attendance and Leave: General Attendance and Guidance**

955.2 General Attendance and Guidance

- (a) Employees will not be absent from work without prior approval from an immediate supervisor.
- 2. Employees who fail to report to work at the assigned place and time, or who leave work or an assignment without proper authorization will be subject to disciplinary action.

In determining the appropriate discipline, I took into consideration the fact that Officer Saldivar has been suspended on four (4) previous occasions. In 2008, Officer Saldivar was suspended for ninety-days (90) and five-days (5). With respect to the ninety day suspension, Officer Saldivar was given a direct order to discontinue an affair with a superior officer and he deliberately disobeyed that order, making this his second sustained charge of insubordination. In addition, in 2005 and 2001 Officer Saldivar was suspended for one (1) day. The one (1) day suspension in 2005 included a sustained dishonesty related allegation, making this his third sustained dishonesty related charge. This suspension is Officer Saldivar's fifth suspension during his career with APD. In addition, Officer Saldivar has received two written reprimands. This disciplinary history demonstrates a pattern of conduct on the part of Officer Saldivar of deliberately refusing to comply with Department policies and procedures, and his failure to learn from prior discipline, including the case I could have indefinitely suspended him for in 2008. Given the nature of the allegations in these investigations, the repeated violations' of insubordination and dishonesty, and Officer Saldivar's prior disciplinary history, indefinite suspension is appropriate.

By copy of this memo, Officer Saldivar 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 Saldivar 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

FEB 23, 2016
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 Carlos Saldivar #3674

2.23.16.

Date