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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: July 30, 2013

SUBJECT: Non-Appealable Indefinite Suspension of Police Officer
William Stewart #4858
Internal Affairs Control Number 2013-0100

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighter's and Police Officer's Civil Service Commission, I have indefinitely suspended, without the right to appeal for the reasons set forth herein, Police Officer William Stewart #4858 from duty as a police officer of the City of Austin, Texas, effective July 30, 2013.

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

On November 13, 2012, Officer William Stewart returned to work after a sixty (60) day agreed suspension. Having been reassigned to a new patrol shift, Officer Stewart received a written direct order from his supervisor, Sergeant Crabb, that set out the "on duty expectations" for his assignment. The November 13, 2012 order required Officer Stewart to keep his DMAV system recording throughout his entire shift to "ensure that [he] satisfactorily perform[s] [his] duties in accordance with policy." Further, Officer Stewart was advised that the "recordings will be used to support or refute any possible allegations of Neglect of Duty." Officer Stewart acknowledged receipt of the order by his signature.

In January 2013, Corporal Leija reviewed Officer Stewart's DMAV recordings to determine whether to approve an overtime slip submitted by Officer Stewart. A review of Officer Stewart's DMAV recording reflected that Officer Stewart turned off his DMAV recorder for approximately two hours while at arrest review, and did not turn it back on when finished, in violation of the November 13, 2012 order.

Internal Affairs conducted an investigation of Officer Stewart's conduct, including a review of approximately 194 of his DMAV recordings covering a period of sixteen (16) work days. A review of these recordings found approximately 58 incidents where Officer Stewart had turned off the DMAV system in direct violation of the November 13, 2012 order. Internal Affairs divided the "gaps" in DMAV recording into three groups and totaled the number of incidents: (1) 0-5 minutes: 7 incidents; (2) 5 minutes to 15 minutes: 31 incidents; and (3) 15 minutes and greater: 20 incidents. The evidence reflected that each recording was stopped by one of the "Stop" buttons being pushed in the vehicle, and Officer Stewart admitted that no one other than he ever stopped the recording.

In his Internal Affairs interview, Officer Stewart admitted that he understood the November 13, 2012 order and that he did not contest it. Officer Stewart further testified that his reasons for stopping the recordings were to classify an incident, and to add a case number or notes. The evidence, however, does not reflect that Officer Stewart stopped the DMAV only after the classification of a video. Further, Officer Stewart admitted that these actions would only take between two and ten minutes, and thus could not explain the greater than 20 incidents of gaps of longer duration. Similarly, Officer Stewart's claim of possible "malfunction" of the DMAV system is not supported by the evidence. Not only did Officer Stewart fail to justify his numerous violations of the November 13, 2012 order, but he also provided false and misleading statements which were contradicted by video and testimonial evidence.

By these actions, Officer Stewart 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 900.4.3: 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:

- (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.
- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.

➤ **Austin Police Department Policy 900.3.1: 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.

