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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: January 9, 2012

SUBJECT: Indefinite Suspension of Police Officer Scott Garner #4632
Internal Affairs Control Number 2011-0910

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 Police Officer Scott Garner #4632 from duty as a police officer of the City of Austin, Texas, effective January 9, 2012.

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

On July 24, 2011, at approximately 6:15 a.m., Austin Police Department officers were dispatched to North Mopac and Northland drive in reference to a check welfare call. The call stated that there was a 25 year-old male intoxicated inside the car with the car in neutral. The caller stated that the car was under the bridge at Northland and North Mopac. Night shift officers were in route to the call as the Baker 200 day shift was coming out of show up. Night shift Officers Michael Crossen, Corey Jewell and Rahim Heath arrived on scene to find the subject being tended to by EMS in the EMS van. EMS personnel transported the subject to Seton Hospital and Officer Crossen followed.

Sergeant Jeff Stone told Officer Scott Garner to go to Seton Hospital along with his Austin Police Cadet William Costello. Sergeant Stone told Officer Garner to meet with Officer Crossen at Seton Hospital and to call arrest review to determine if it would be a good DWI arrest. Sergeant Stone advised Officer Garner that this call would be perfect for Officer Garner to handle because he was a Field Training Officer and he had a Police Cadet whose training could benefit from handling a DWI call. Sergeant Stone also told Officer Garner about the information in the call that said that the subject had the vehicle in neutral. Sergeant Stone told Officer Garner to arrest the subject for Driving While Intoxicated or Public Intoxication, depending on what Officer Garner found out after he arrived at the hospital. Officer Garner arrived at the hospital and talked to the officer on scene. Deliberately refusing to obey Sergeant Stone's order to arrest the subject for either DWI or PI, Officer Garner then decided to take the intoxicated subject home and release him to the subject's mother.

Officer Garner conducted the HGN test and handcuffed the suspect prior to placing the subject in the patrol unit. Despite the fact that the subject failed the HGN test and was obviously intoxicated and contrary to his supervisor's direct order, Officer Garner drove the subject home. Deciding that he would teach the suspect a lesson, Officer Garner did not advise the subject that he did not intend to arrest him. Sergeant Stone saw Cadet Costello a few hours later on another call and asked him if they were able to arrest the subject for DWI or PI. Cadet Costello told Sergeant Stone that they had taken the subject home and had not arrested him. Sergeant Stone met with Officer Garner to retrieve his in-car video of the incident. Officer Garner told Sergeant Stone that he had not done his pre-shift inspection on the morning in question. Officer Garner also admitted to turning off his MVR on arrival at the house while the suspect was still handcuffed in the back seat of the patrol unit.

At the Disciplinary Review Hearing on January 4, 2012, Officer Garner was provided an opportunity to present facts or evidence that he deemed pertinent to the investigation and discipline process. Officer Garner admitted that the suspect was intoxicated but stated that Sergeant Stone did not give him a direct order to arrest the subject for either DWI or PI. Officer Garner also stated that he did not have probable cause to arrest the subject for DWI because he had not been provided information from any source that could place the suspect behind the wheel of the car even though the suspect admitted to Officer Garner

that he was driving. The subject driver's admission to the driving was in of itself, sufficient probable cause to place the subject behind the wheel and to conduct an appropriate DWI investigation. These statements are inconsistent with testimony and evidence adduced in the investigation. Officer Garner also provided statements inconsistent with testimony and evidence obtained during the investigation on several other subjects, including but not limited to, statements allegedly made to him by Officer Crossen, whether and why Officer Garner checked to see if a DWI unit was logged on, the reason why Officer Garner placed the suspect in handcuffs, and the reasons that Officer Garner provided Cadet Costello for his failure to arrest the suspect. The inconsistency between Officer Garner's statements at the DRH and the evidence and statements obtained during the investigation, including in many instances Officer Garner's own prior statements, lead to the conclusion that Officer Garner was either not truthful during the investigation, at the DRH or both. He also accused another officer of lying when a preponderance of the evidence shows that he (Officer Garner) is the one who has not been truthful.

By these actions, Officer Garner 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 General Orders Policies and Procedures
A201a.02.A(1)(3): General Conduct: Honesty**

.02 Individual Responsibilities

A. Honesty

Employees will speak the truth at all times. All reports and written communications from any member of the Department shall also reflect the truth.

1. Any statement or omission of pertinent information which intentionally, knowingly, or recklessly misrepresents facts or misleads others will be considered a false statement.
3. Employees shall not attempt to conceal, divert, or mitigate their true culpability in a situation, nor shall they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

➤ **Austin Police Department General Orders Policies and Procedures
A201c.01.D: Responsibility to the Department: Insubordination**

.01 Responsibility to the Department

- D. 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 General Orders Policies and Procedures
A201c.01.J(9)(a-d): Responsibility to the Department: Neglect of Duty**

.01 Responsibility to the Department

- J. Requirements of Duty
9. Neglect of Duty
Employees shall 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.

➤ **Austin Police Department General Orders Policies and Procedures
A306b.01B(1) & E: Mobile Video Recorder Operation**

**.01 Operation of Police Vehicles Equipped with Mobile Video/Audio
Recording Equipment**

- B. Officers driving MVR-equipped vehicles during field duty assignments where the required use of the MVR is likely (e.g., patrol, metro-tactical shifts, traffic enforcement) will test the equipment by making a MVR recording while giving their name, date, and time. Officers will review the recording to verify the in-car and body microphone was operational during the test. Officers will test the MVR, ensuring the date and time is accurate:
1. At the commencement of their tour of duty.
- E. Officers driving MVR equipped vehicles will activate the MVR equipment when the officer has detained or arrested a person, is attempting to arrest or detain a person, or by nature of the call for service the officer is likely to detain or arrest a person. This requirement applies to the primary unit as well as any additional unit(s) responding to the scene to assist the primary officer.
1. Examples of when the MVR must be activated include but are not limited to:
 - a. Traffic stops;
 - b. Investigatory stops when the subject is on foot or in a vehicle;
 - c. Sobriety tests;
 - d. Pursuits, until completion of enforcement action;
 - e. Domestic Violence calls; and
 - f. Warrant Service.

In determining the appropriate discipline, I took into consideration the fact that honesty is of utmost importance in the police profession. Officer Garner neglected his duties as a police officer when he failed to arrest an obviously intoxicated suspect for either DWI or PI. Further, Officer Garner was insubordinate when he failed to obey a direct order from his sergeant to make an arrest. Officer Garner committed additional serious violations of APD policies and procedures when he failed to perform a pre-shift inspection of his MVR equipment and intentionally turned the MVR off while an obviously intoxicated suspect remained handcuffed in his patrol unit. Officer Garner compounded his multiple violations of APD policies and procedures by failing to honestly participate in the

investigation and discipline process by making numerous inconsistent and untruthful statements during the investigation and at his Disciplinary Review Hearing. While the seriousness of Officer Garner's multiple violations of APD policies and procedures in and of themselves could warrant the imposition of an indefinite suspension, Officer Garner's dishonesty by itself is a policy violation for which indefinite suspension is mandated by the Discipline Matrix.

Consequently, under all of the fact and circumstances of this case, indefinite suspension is warranted and appropriate, which is the chain of command's unanimous recommendation to me.

By copy of this memo, Officer Garner 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) 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 Garner 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

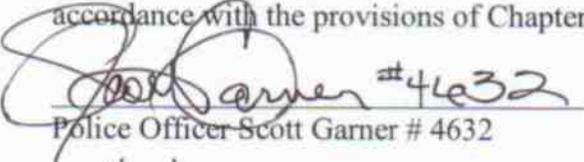
Chief of Police

Date

01/09/2012

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.

 #4632
Police Officer Scott Garner # 4632

1/9/2012
Date