



18 JAN AM 11:21

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 18, 2012

SUBJECT: Temporary Suspension of Corporal Luis Soler # 3781
Internal Affairs Control Number 2011-0999

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 temporarily suspended Corporal Luis Soler #3781 from duty as a police officer of the City of Austin, Texas, for a period of five (5) days. The temporary suspension is effective beginning on January 19, 2012 and continuing through January 23, 2012.

I took this action because Corporal Soler 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 Corporal Soler in violation of Rule 10:

On July 23, 2011, officers were dispatched to a Disturbance Violence-Hot Shot call at 6115 Manor Rd. #B. Corporal Soler was a backup officer. A woman with felony warrants was subsequently arrested and had her hands cuffed behind her back. During the search incidental to arrest, the woman escaped from custody and ran away on foot. Corporal Soler engaged in a foot pursuit and attempted to deploy his taser on the hand-cuffed suspect in violation of policy.

By these actions, Corporal Soler 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
B101a.08F.7: Response to Resistance: Unlawful Use of CED**

.08 Conductive Energy Devices

Conductive Energy Devices (CED) use electro-muscular disruption technology to cause temporary incapacitation to an individual. A CED is a less-lethal weapon. Its use is not likely to cause injury but does constitute the use of force and it may not be used unless the use of force is objectively reasonable.

F. Unacceptable uses of CED:

7. CED's may not be used on a restrained subject unless the subject is engaged in active, violent resistance.

By copy of this memo, Corporal Soler 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, Corporal Soler 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

1/18/2012

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.



Corporal Luis Soler #3781

01/18/12

Date