



ICMS: 2019-0856

November 4, 2019

Date of Complaint: 08/20/2019

Complaint:

Per the Internal Affairs Complainant Contact Form, the complainant, [REDACTED], alleged that the Austin Police Department did not have the right to impound his vehicle.

Additional Information: The OPO conducted a preliminary review of the available information regarding this complaint. The OPO has determined that Officer [REDACTED] may have violated Austin Police Department (APD) policy when, after Mr. [REDACTED] was arrested while on foot, Officer [REDACTED] walked around looking for Mr. [REDACTED] vehicle. Officer [REDACTED] may have also violated APD policy when he opened the vehicle, shined his flashlight throughout the front seat, entered the vehicle, and then drove it to another location to be impounded.

Administrative Policies to Review:

306.9 Frisk (Pat-Down) For Weapons

A frisk is a mere pat-down of the outer clothing, area, vehicle or container to which a detained person may have immediate access. The purpose of a limited weapons frisk after an investigatory stop is not to discover crime, but to allow the officer to pursue the investigation without fear of violence. An officer does not need to be absolutely certain that an individual is armed; the issue is whether a reasonably prudent person would justifiably believe that he or others were in danger.

(b) Vehicles

1. A protective frisk may include the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, if the officer possesses reasonable belief that the suspect is dangerous and may gain control of a weapon at any time during the encounter.

306.10 Plain View

Because an individual does not have an expectation of privacy as to items that are in plain view, no search has taken place in a constitutional sense when an object is viewed from a location where the officer has a right to be.

- (a) An item in plain view may generally be seized when all of the following conditions exist:
 1. The object must be in plain view; and
 2. Officers conducting the seizure must lawfully arrive at the position from which the object is plainly seen; and
 3. Officer must have a lawful right of access to the object itself, apart from lawfully viewing the object; and



4. The object's incriminating character must be so immediately and sufficiently apparent that officers have probable cause to believe the object is contraband or evidence of a crime.

350.2.2 Driving a Non-City Vehicle

Non-City vehicles should not be driven by police personnel unless it is necessary to move a vehicle a short distance to eliminate a hazard, prevent the obstruction of traffic or to comply with posted signs.

900.1.1 Responsibility to Know and Comply

The rules of conduct set forth in this order do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD directives which pertain to their assigned duties.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and will consult their immediate supervisor for clarification and explanation.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

Recommended Classification: *The OPO is permitted to make a preliminary recommendation on the classification of administrative cases.*

The OPO recommends that this allegation receive a B classification.