



ICMS #: 2020-0317

April 6, 2020

Complaint: Mr. [REDACTED], complainant, alleges that Austin Police Department (APD) officers may have violated APD policy during an interaction with him. Mr. [REDACTED] states that he frequents the area of [REDACTED] Street and feeds the people in the area. He alleges that on one occasion while he was in this area, the following transpired:

“Officer [REDACTED] approached my car, asked me to roll my window down, asked me who lived in the house I stopped in front of. I told him no, I just pulled over to pick up food that fell over on the passenger side of my car. I was asked what I was doing at the store. He asked me to roll my window down, so the woman officer searched my car without my permission.”

Mr. [REDACTED] further alleges that multiple officers were around him and asked him what he was doing at the store, stating that the female officer was ask him over and over what he was doing at the store. Mr. [REDACTED] states, “I mentioned that this is racial profiling, then they turned around and said I was just playing with you, you are free to go. They asked at the very end if I would let them search my car after they had done it and released me.”

This notice of formal complaint is a request for Internal Affairs to initiate an investigation in order to determine if the employee conduct is within compliance of APD policy, Civil Service Rules, and Municipal Civil Service Rules.

Recommended Administrative Policies to Review (to include but not limited to):

301.1 PURPOSE AND SCOPE

All persons deserve protection by fair and impartial law enforcement and should be able to expect similar police response to their behavior wherever it occurs. Employees will serve the public through direction, counseling, assistance, and protection of life and property. Employees will be held accountable for the manner in which they exercise the authority of their office or position. Employees will respect the rights of individuals and perform their services with honesty, sincerity, courage, and sound judgment.

301.2 IMPARTIAL ATTITUDE AND COURTESY

Employees are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity or gender expression or social or ethnic background.

306.5 CONSENT

(a) Entry into a location or vehicle for the purpose of conducting a search for any item reasonably believed relevant to any investigation is permitted once valid consent has



been obtained. Officers should be aware that overuse of the consent search can negatively impact the Department's relationship with our community and only request a consent search when they have an articulable reason why they believe the search is necessary and likely to produce evidence related to an investigation. A search by consent is only allowed if the following criteria are met:

1. The officer has explained the reason for the consent search request to their supervisor (or their Corporal/Detective if their supervisor is unavailable) and received their approval prior to requesting consent. If the officer is:
 - (a) Assigned to a specialized unit that has received specific training on consent searches; or
 - (b) The officer has completed the department's Interdiction for the Protection of Children (IPC) training and is actively conducting an IPC investigation; then the officer would not need supervisor approval prior to requesting consent.
2. Consent is voluntary (e.g., clear, specific and unequivocal).
3. Consent is obtained from a person who has the authority to give the consent (e.g., care, custody and control of the location or vehicle).
4. The search does not exceed the scope of the consent given.

(b) Consent must be obtained as the product of a free will. It cannot be obtained through submission to authority, either expressed or implied.

318.5.1 MIRANDA WARNING

(a) Officers will administer the Miranda Warning to a subject during a custodial interview/interrogation when questioning begins to focus on the person stopped, becoming accusatory regarding a specific offense.

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.

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

The OPO recommends that this allegation receive an A classification.