



ICMS #: 2020-0373

March 27, 2020

**Complaint:** Mr. [REDACTED], complainant and retired [REDACTED] officer, alleges that his car was searched without his consent and without cause. Mr. [REDACTED] further alleges that he was unlawfully detained. Additionally, Mr. [REDACTED] stated that he requested a supervisor and none was sent.

*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):**

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.



### 306.8 PROBABLE CAUSE

#### (b) Vehicles:

1. Officers may conduct a warrantless search of a readily movable vehicle (e.g., automobile, mobile home, boat or airplane) if there is probable cause to believe that evidence or contraband is inside and the search cannot safely be delayed in order to obtain a warrant.

### 318.3 DETENTIONS

Detentions are “seizures” under the Fourth Amendment. Officer may stop and question individuals when reasonable suspicion that the person may be involved in past, present or future criminal activity exists.

#### 318.3.1 HANDCUFFING DETAINEES

- (a) As a practice, officers should not handcuff lawfully detained individuals. However, situations may arise where it may be reasonable to handcuff a lawfully detained individual.
- (b) Some factors reasonable causing an officer to handcuff a detained individual include, but are not limited to:
  1. physical resistance;
  2. verbal threats against the officer or others nearby;
  3. investigation of a violent crime or a crime involving weapons; or
  4. reliable information that the person is armed (without appropriate license), the person is violent, or is a flight risk.
- (c) Officers should weigh the safety interests of all involved individuals against unreasonable intrusion upon a detainee when deciding to place handcuffs on a detainee.

#### 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.**