



ICMS #: 2020-0296

May 4, 2020

**Complaint:** Mr. [REDACTED], complainant, alleges that Austin Police Department (APD) officers may have violated policy during an interaction with him. In particular, [REDACTED] states, “APD beat me up. I went to the hospital in an ambulance.”

*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):**

**110.4.4 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.

**200.2 DE-ESCALATION OF POTENTIAL FORCE ENCOUNTERS**

When safe and reasonable under the totality of circumstances, officers shall use de-escalation techniques to reduce the likelihood for force and increase the likelihood of voluntary compliance.

**200.2.1 ASSESSMENT AND DE-ESCALATION**

As officers arrive on the scene, observe conditions, and interact with the persons there, they should continue to gather additional relevant information and facts. These assessments, along with reasonable inferences help to develop an understanding of the totality of the circumstances of the incident.

**200.3 RESPONSE TO RESISTANCE**

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this order.

**200.3.1 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE**

Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him.



### 200.3.2 USE OF FORCE TO AFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH

An officer is justified in using reasonable force when the officer reasonably believes the use of such force is immediately necessary (Tex. Penal Code § 9.51(a)):

- (a) To make or assist in a detention or an arrest, or to conduct a search that the officer reasonably believes is lawful;
- (b) To prevent or assist in preventing escape after an arrest, provided the officer reasonably believes the arrest or search is lawful

### 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.

### 318.2 GENERAL POLICY

- (a) Officers will identify themselves when they initiate a duty-related contact with a person, when practicable, unless their identity is obvious.
- (b) Officers will explain the reason for the contact and the purpose of anticipated police action, when practicable.
- (c) Officers will act with as much restraint and courtesy toward persons interviewed, detained or arrested as is possible under the circumstances.

### 318.5 FIELD INTERVIEWS, STATEMENTS AND CONFESSIONS

The basis of a statement or confession is to corroborate the elements of an incident. Written and oral statements or confessions should not be utilized as the sole basis for filing charges; any statement or confession should be corroborated by other legally obtained evidence or verified in an appropriate manner. Officers should keep in mind the following things when interviewing/interrogating a subject:

- (a) During a non-custodial interview, an officer will usually allow a subject to leave after taking the statement or confession. A warrant can be obtained at a later time to take the subject into custody.
- (b) There may be occasions when information is disclosed that changes the focus of the investigation toward the subject, where the facts and circumstances of the case dictate that he is no longer free to leave changing the non-custodial interview to a custodial interrogation.
- (c) When an officer begins accusatory questioning of a subject who is not free to leave, the subject would generally be considered under "arrest" and the interview/interrogation would be "custodial."
- (d) Once a subject requests to speak with an attorney or indicates a desire for legal representation, the interview/interrogation will cease.



### 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.

(b) The Miranda Warning will be recorded by audio/video recording (e.g., in-car Mobile Audio Video Recording system, Body-Worn Cameras) using the following process:

1. Read the Miranda card to the subject in its entirety; and
2. Ensure the subject acknowledges, understands, and voluntarily waives his rights by:
  - (a) Write the officer's name and the date, time, and incident number on the face of the card; and
  - (b) If practical, request the subject to initial next to each Miranda right and sign the card. If the subject has verbally acknowledged understanding and waiving his rights but does not sign the card, the interview/interrogation may still continue.
3. Officer safety should not be compromised during a field interview/interrogation in order to record acknowledgment of rights.

### 402.2 INCIDENT REPORTING

A well-written report can help make a case just as easily as a poorly written report can ruin a case. Employees have the responsibility to write clear, factual, and complete reports.

#### 402.2.2 REPORT WRITING

- (a) All reports shall accurately reflect:
1. The identity of the persons involved.
  2. All pertinent information seen, heard, or assimilated by any other sense.
  3. Any action(s) taken.

### 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.

### 900.3.4 PERSONAL CONDUCT

- (a) Employees will not knowingly enter a location engaged in prostitution, illegal gambling, or any establishment wherein laws are being violated.
- (b) Supervisors will not place themselves under financial obligation to a subordinate.
- (c) While on-duty or on the premises of City facilities, employees will not:
1. Use loud, indecent, profane, harsh, derogatory language, or use belittling term in any communications.



2. Ridicule, mock, taunt, embarrass, humiliate, or shame any person, nor do anything that might incite that person to violence.

*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.**

