



OFFICE OF
POLICE OVERSIGHT

MEMORANDUM

TO: Brian Manley, Chief of Police
FROM: Farah C. Muscadin, Director - Office of Police Oversight
DATE: August 12, 2020
SUBJECT: Protest Complaints

The Office of Police Oversight (OPO) has grave concerns about how the Austin Police Department Internal Affairs Division (IA), specifically the protest investigation team, is processing complaints related to the protests that began in May of this year. The purpose of this memo is to bring your attention to these concerns and update you on the status of some of these complaints. I trust that after these issues are brought to your attention you will intervene.

The OPO strongly objects to the manner in which the IA protest team is currently handling complaints. It appears that the team of investigators assigned to handle the protest complaints are limiting their investigations to those officers and allegations that have been specifically identified rather than conducting a full and thorough investigation of each incident.

For example, if there is a complaint that a subject officer and a witness officer, while in a moving vehicle, sprayed protesters with a chemical agent while the protesters were standing behind a guardrail on IH-35, the OPO strongly believes that both the witness officer and the subject officer should be fully investigated. IA has disagreed with this position and has stated that it would be imprudent to investigate the witness officer because there is no policy that explicitly prohibits the deployment of chemical agents from a moving vehicle.

Summary of IA Determinations

As of August 11, 2020, the OPO has been notified of the following:

- **2 protest complaints closed with D memos.** These memos are written when APD believes that none of the allegations rise to the level of a policy violation and believes that the allegation is not true.
- **1 protest complaint closed via the Officer Final Classification Agreement (OFCA) option with informal discipline.** The stated purpose of the OFCA option is “to shorten the investigative and discipline process time for minor complaints.”

- **An additional 4 protest complaints that IA has administratively closed.** Here, this means that there has been no investigation and APD either (1) believes that the allegations do not rise to the level of a general order violation or (2) is closing the complaint at the discretion of the Chief of Police or a designee.

The OPO Strongly Objects to the Determinations Made by IA in Each of These Seven Incidents.

- Complaint Closed via the OFCA Option
The complaint that was closed via the OFCA option involved allegations from a female protester that an APD officer in full uniform looked her up and down and blew her a kiss during the protests. She expressed that this made her feel sexually assaulted and scared. The alleged conduct of this subject officer constituted a potential policy violation under more than one policy that would have made the officer ineligible for the OFCA option. IA did not investigate this incident; instead, the officer's chain of command (COC) allowed the officer to handle the allegation via the OFCA option and addressed this conduct as a violation of only the Customer Service and Community Relations policy. The COC disciplined the officer with an oral reprimand (i.e., informal discipline), which the OPO objected to. The officer then retired a few days after the reprimand was given. The actions of this officer's COC likely thwarted the complaint process to facilitate the officer's unobstructed transition into retirement.
- Complaints Closed as D Memos
Neither of the incidents closed as D memos were investigated; the allegations were reviewed by IA and closed.
 - One incident involved a woman who was arrested and allegedly touched inappropriately.
 - Another incident alleged that two officers in front of APD headquarters were behaving inappropriately while on protest duty.
- Complaints Closed Administratively
IA has chosen to administratively close four complaints. The OPO objects to the administrative closure of these complaints due to the lack of investigation.
 - One complaint was closed because the complainant hired an attorney and stopped cooperating.
 - Another complaint was closed because the video that the complainant provided did not identify any specific APD officer.
 - A third complaint was closed because the name of the identified officer provided by the complainant did not match records on that exact date.
 - The fourth complaint was closed because IA determined it was a third-party complaint, ignoring the initial allegations that the complainant made about his own experience and injuries sustained during the protests.

Procedural Justice

People formulate their opinions about systems based upon the extent to which they perceive that system's processes to be fair. APD has an opportunity in this moment to rebuild trust with the community by demonstrating that the complaint process works and that APD can thoroughly and fairly investigate its own employees. The only way to do that, though, is to ensure that these complaints are actually investigated.

APD should handle all complaints through the lens of procedural justice and the pivotal role it plays. Such a lens is especially important when the complaints being processed relate to encounters that community members had with APD officers while protesting issues surrounding police misconduct. The manner in which IA is currently handling community complaints will do the exact opposite of achieving procedural justice and instead solidify an already pervasive belief that fair investigations cannot happen when officers are investigating other officers.

The OPO has submitted over 300 formal complaints to IA related to the protests. As a result, your intervention into the IA protest team's handling of these complaints is urgently necessary in order to appropriately address the concerns we have raised and ensure that each of these complaints is judiciously processed. I look forward to hearing from you about the immediate steps that will be taken to ensure that all complaints are investigated thoroughly and fairly. Thank you for your attention to this matter.

Sincerely,



Farah C. Muscadin, Director
Office of Police Oversight

cc: Spencer Cronk, City Manager
Nuria Rivera-Vandermyde, Deputy City Manager
Rey Arellano, Assistant City Manager