



OFFICE OF POLICE OVERSIGHT

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March 13, 2020

Brian Manley, Chief of Police
Austin Police Department
715 E 8th St.
Austin, Texas 78701

Dear Chief Manley,

Please consider this letter a formal objection from the Office of Police Oversight (OPO) to the recent changes made to the Austin Police Department General Orders 902 – Administrative Investigations (GO 902). These changes are detrimental to the investigative process and are essentially inconsistent with both the letter and spirit of both the Meet and Confer Agreement and City Manager Spencer Cronk’s Memorandum issued November 2, 2018 (Memo). The revisions to GO 902 undermine the OPO’s ability to provide oversight of administrative investigations and transparency to the public. Included herein are recommendations that I expect will lead us to expeditiously and effectively arrive at an appropriate solution.

BACKGROUND

General Order 902

GO 902 governs how APD handles administrative investigations of officer misconduct. The OPO monitors these investigations to ensure investigations are conducted in accordance with the Meet and Confer Agreement and the City Manager’s Memo. In addition to this monitoring function, the OPO may also advise on APD policy and procedure to ensure alignment with the Meet and Confer Agreement and the Memo.

On January 21, 2020, the OPO received formal notification that APD was considering changes to GO 902. APD requested that the OPO respond within 24 hours with feedback regarding the proposed changes. The OPO advised that 24 hours was not sufficient time to consider or respond to the proposed policy changes. However, the OPO prioritized this request from APD and convened; concerns and recommendations from the OPO were sent to APD on January 24, 2020. Based on communications I received directly from APD executive staff, it was my understanding that the changes being considered for GO 902 were still being discussed between the OPO and APD. In actuality, APD completely disregarded OPO feedback and the objectionable revisions were made to the General Orders on February 6, 2020. The OPO strongly objects to this practice.

Joint Standard Operating Procedures

Under my leadership, the OPO has consistently demonstrated a commitment to collaboration in the name of greater transparency to benefit the public, the Police Department, and the City of



Austin. In service of this goal, the OPO has been in discussions with APD since June 18, 2019 regarding the development of Joint Standard Operating Procedures (SOP) between Internal Affairs and the OPO. The Joint SOP was created in good faith and collaboration in order to provide consistency for both departments to effectively serve the public. In addition, this document was intended to halt the obstructionist tendencies of the Internal Affairs (IA). This Joint SOP has yet to be signed by APD—a step that is required for implementation.

Rather than signing a document that would help facilitate a cohesive and respectful working relationship between IA and the OPO, APD instead chose to leave this document unsigned, continued to allow investigators in IA to obstruct oversight staff, and, most importantly, made unnecessary and harmful revisions to GO 902. The OPO has numerous concerns regarding the unilateral changes that APD made to GO 902, the manner in which they were changed, the method through which the OPO was informed, and certainly the fact that the OPO was ostensibly consulted and then summarily ignored.

Issue #1: Lack of Alignment

Paramount among OPO's numerous concerns is the contradictory direction of APD's revised GO 902 when compared to the City Manager's Memo. The OPO strongly urges APD to reevaluate what appear to be new obstacles designed to trivialize substantive complaints and disguise them under newly created categories that APD has created against OPO's recommendation. The OPO contends that this is a clear contradiction to several sections of the City Manager's Memo that delineate the OPO Director's roles and responsibilities. For example, the City Manager's Memo requires that the OPO prioritize transparency in sharing information with the public. These obstacles will limit the OPO's ability to share information with the public and contradict previous communications made to the public, thereby reducing the level of transparency.

Issue #2: Administrative Investigation Classifications

There were duplicative and damaging additions made to the GO 902 policy without proper consideration given to the OPO's feedback, community needs, or the explicit directives of the City Manager's Memo. For example, the officer final classification agreement (OFCA) process allows for consideration of "minor policy violations" and the handling of such identified internal and external complaints. With APD's revisions to GO 902, there is now the OFCA option as well as the option to identify complaints as "information incidents". This new category is completely unnecessary. Furthermore, the OPO contends that this new category is detrimental to the established process and attempts to minimize complaints from the public. The OPO recommends that "minor policy violations" continue to be handled through the OFCA process already outlined in APD policy.

Issue #3: Changes Impacting External Complainants

Complaints that are received and processed through the OPO fall into the following three categories: Formals, Supervisor Referrals, and Citizen Concerns. This three-tier categorization allows OPO to easily communicate complaints and findings to the City Manager's Office, City



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Council, APD, and all other external and internal stakeholders. Now, as a direct result of APD's changes to GO 902

- Citizen Concerns are now identified and recorded as "External Information;"
- Supervisor Referrals are now identified and recorded under a "Citizen Concern" category;
- A new category called "Minor Policy Violations" are categorized as Supervisor Referrals; and
- Formal complaints will now only consist of complaints receiving an A or B classification (versus A, B, C or D).

The OPO asserts that this unnecessary change and filtering of complaint data will mislead the public and continue to feed a false narrative that complaints filed with the OPO against APD are not rigorously assessed. More importantly, it will leave complainants without any meaningful resolution or sense of procedural justice. Due to the unnecessary restructuring and categorization of complaints, the OPO strongly urges APD to reverse course and adhere to the three historical categories: Formals, Supervisor Referrals, and Citizen Concerns. Restructuring complaints will negatively impact what the OPO can communicate to complainants and to the general public.

OPO Recommendations:

1. Provide the OPO with appropriate time to respond to proposed policy changes.
2. Reverse APD GO 902 changes made to administrative classifications.
3. Revise APD GO 902 to closer align with the City Manager's November 2, 2018 memo.
4. Adopt the attached revised Joint SOP that better serves all stakeholders.

At this time, I am formally requesting a meeting between the OPO, the City Manager's Office, and APD command staff in order to resolve the issues outlined above.

Sincerely,

Farah C. Muscadin
Director

**JOINT STANDARD OPERATING PROCEDURE
OFFICE OF POLICE OVERSIGHT & AUSTIN POLICE DEPARTMENT**

PURPOSE

This Standard Operating Procedure (SOP) defines standards and expectations for The Office of Police Oversight (OPO) and the Austin Police Department. All OPO staff members and Internal Affairs (IA) staff, specifically complaint specialists and sergeants are expected to adhere to the professional standards described herein as it relates specifically to the complaint process.

PREEMPTION

This document will supersede any section of the APD General Orders as well as any internal document or practice of either the OPO or IA that is found to be in conflict with this SOP.

ROLES AND RESPONSIBILITIES

OPO Director

The OPO Director retains full authority of establishing SOP in accordance with City Council Ordinance No. 20181115-016 which grants the OPO Director full authority to supervise and direct all operations of the OPO.

IA Commander

The IA Commander is responsible for planning, supervising and coordinating the activities of the Internal Affairs Division in accordance to APD General Orders and this SOP.

IA Investigators, Supervisors, and Staff

All IA investigators, supervisors, and staff are required to acknowledge and abide by the professional standards described in this SOP.

OPO Staff

All OPO staff are required to acknowledge and abide by the professional standards described in this SOP.

AMENDMENTS TO THIS SOP

Proposed amendments to this SOP must be made in writing to the OPO Director and IA Commander or their designees. Final approval of any amendment may occur only with the agreement of the OPO Director and IA Commander or their designees. Any proposed amendments shall be made in good faith. Any discussions regarding proposed amendments shall occur in good faith.

ORIENTATION

An orientation of OPO and IA procedures shall be held upon the new staff joining the OPO department and IA division.



WHAT HAPPENS ONCE OPO RECIEVES A COMPLAINT?

OPO initiates Preliminary Review – OPO identifies potential policy violation

- OPO review includes:
 - Items provided by complainant. May include videos, pictures, any additional information and phone conversations. The OPO does not gather evidence. The OPO does seek clarification from a complainant in an effort to understand the full scope of the complaint.
 - Items from IAD
 - Evidence.com, DMAV, BWC, Versadex report, Visinet report, CAD report, 911 call
 - OPO sends request to IA in writing
 - IA to send requested information to OPO within 3 business days if officer is known, within 5 business days if officer is not known. If additional evidence or documentation is discovered or located after IA responds to and fulfills the initial request, the newly discovered or located evidence must be shared with the OPO within 24 hours of its discovery.
- OPO review for APD potential policy violations in addition to any the complainant identifies. The potential policy violations are not limited to what is identified by the CS during the preliminary review.
- The OPO strives to complete preliminary reviews within 14 business days of receiving materials from IA.
- At the conclusion of Preliminary Review the OPO will staff the case with OPO director designee.

After a Preliminary Review has been conducted a complaint will proceed as follow:

Option 1: No potential policy violation was found.

- OPO Contacts complainant and documents in ICMS
- Complaint will be closed
- If complainant has specific questions OPO cannot answer, an SR will be created to give APD opportunity to address

Option 2: Possible policy violation.

- Complaint is forwarded to IA as a “Citizen Concern” or “Supervisory Referral”
- OPO CS will upload all information in the shared link for IA access

Option 3: Possible policy violation.

- OPO Director will forward Notice of Formal Complaint (Notice) to IA Commander
- OPO CS will upload all information in the shared link for IA access
- IA Commander or designee shall notify the OPO Director of receipt of the Notice within one business day.

- The Notice of Formal Complaint notifies IA an investigation is compulsory
- IA Commander or designee shall assign an investigator within 5 business days of receiving the Notice of Formal complaint.



- The investigation shall commence within 7 business days of receiving the Notice of Formal Complaint.

Regarding Classification and Allegation(s):

If an agreement cannot be reached the matter will be elevated to either the Assistant Chief over APD's Headquarters Bureau or to the APD Chief of Staff.

WHAT HAPPENS WHEN A COMPLAINT GOES TO IA?

PROCEDURE FOR CITIZEN CONCERN

- OPO will follow intake process & document in ICMS
- OPO will notify IA designee via email
- OPO will verify appropriate officer is noted in ICMS and close
- IAD must acknowledge a CC was received

PROCEDURE FOR SUPERVISORY REFERRALS

- OPO will follow intake process & document in ICMS
- OPO will notify IA designee via email
- IA will forward to Officer COC to make direct contact with complainant within 30 days
- IA will alert OPO of SR completion within 3 business days of return of SR to IA
- OPO CS will review SR and may contact complainant
- OPO and IAD should note conclusion in ICMS

Note: In the event the COC makes a decision to show a complainant any video including but not limited to body worn camera or DMAV that OPO shall be notified at least 3 business days in advance to attend.

CCF PROCEDURE:

IA receives all notices of Complainant Contact Forms (CCF)

- If CCF indicates the complainant is satisfied = IA will close the CCF and no notification is made to OPO.
- If CCF indicates the complainant is not satisfied = IA will review the CCF for any potential policy violations. If IA identifies potential policy violation(s) OPO will receive notice of the CCF and IA will notify the COC. At this time the OPO will conduct a preliminary review and staff complaint with OPO Director or designee. If IA does not identify any policy violations the OPO will not be notified of the CCF.

PROCEDURE FOR FORMAL COMPLAINTS

- OPO CS will follow intake process & document in ICMS
- Upon concurrence of classification and allegation IA will communicate to OPO Director designee the assigned SGT within 3 business days
- IA may only send shared link to COC Commander.
- IA shall investigate all formal complaints in accordance with this SOP, the Meet and Confer Agreement, and General Orders striving to meet the 180 day statutory time frame.



- OPO time spent in IA must be preapproved by OPO director designee
- IA SGT will work with OPO director designee to schedule interviews (phone, in person or travel)
 - IA SGT will provide the assigned CS the interview questions within 5 business days of the interview being scheduled. If the interview is scheduled to occur in fewer than five business days, IA SGT will provide the CS with the interview questions no fewer than three business days in advance of the interview. Questions shall be shared with the CS in the shared link in Citrix.
 - Interview requests should be sent to Police Oversight resource account at least 3 business days in advance (policeoversight@austintexas.gov)
 - All IA staff shall access OPO calendar for scheduling purposes
 - Any and all scheduling conflicts must be brought to OPO Director's designee
 - Interviews for multiple cases assigned to the same CS shall not be scheduled to occur at the same time.
 - Subject or witness officer review of documentation for an interview shall occur prior to the interview's scheduled time. IA shall schedule with the officer, their legal representation, as well as their Austin Police Association representative a time for the officer to complete their review prior to the scheduled interview. In scheduling time for review, IA should ensure that the officer has sufficient time to complete the review.

WHEN THE FORMAL INVESTIGATION IS COMPLETE:

- IA SGT will notify OPO Director and send completed investigation summary to OPO resource account
- Upon notice from COC of sustained allegations, the OPO Director shall send discipline recommendation to the respective officer(s) Commander and copy the Assistant Chief within ten business days.

DISCIPLINE HEARINGS/MEETINGS

Notification must be sent to the OPO Director and OPO resource account 5 business days in advance of all DRHs and DMs scheduled.

PROCEDURE FOR OFCA

Notification regarding OFCA consideration shall be sent to the OPO Director Designee and OPO resource account, policeoversight@austintexas.gov

- Within 3 business days of the IA notification, OPO shall notify the IA designee regarding OPO concurrence or disagreement
- If an agreement cannot be reached the matter will be elevated to the Assistant Chief over APD's Headquarters Bureau or APD Chief of Staff
- All information regarding the concurrence shall be documented in ICMS



PROCEDURE FOR CLOSE OUT MEETINGS

Close Out meetings:

- CS will draft notice of close out for OPO Director to notify APD Chief of Police
- Complainant agreement or dissent to IA presence in close out will be noted in ICMS and notice sent to IA Commander
- Close out meeting must be recorded and saved in shared OPO/IA folder

OPO – Office of Police Oversight
CS – Complaint Specialist
CC – Citizen Contact
DM – Disciplinary Meetings
DRH – Disciplinary Review Hearing
IA – Internal Affairs
COC – Chain of Command

NOSA – Notice of Sustained Allegation
SR – Supervisory Referral
OPO resource account –
policeoversight@austintexas.gov
ICMS – Internal Case Management System
SGT – Sergeant

Approved by:

Farah Muscadin, Director – Office of Police Oversight

Date

Brent Dupre, Assistant Chief – APD

Date