

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board *Joanne Fine, Chair* *Dr. Carlotta A. Garcia, Vice Chair*
Johnny J. Armijo *Susanne Brown* *Eric H. Cruz*
Dr. Lisa M. Orick-Martinez *Rev. Dr. David Z. Ring III* *Leonard Waites*
Edward Harness, Executive Director

April 14, 2017
Via Certified Mail

Re: CPC #005-17

Dear Mr.

Our office received the complaint you filed on January 4, 2017 against the Albuquerque Police Department regarding an incident that occurred on December 25, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint on March 6, 2017.

PO Box 1293

I. THE COMPLAINT

Albuquerque

NM 87103

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filed a complaint regarding the response of two officers to an activation of his alarm while he was out of town. Mr. expressed his frustration that the officers did not thoroughly clear the house and put his neighbor, who was house sitting, at risk by allowing her to go through the house first. The officers' assessment of the situation was flawed when the officers seemed to think the front door opened by the wind. The officers did not notice the broken window in a bedroom. A second call for service was required to get a report when his neighbor checked the house more thoroughly and found the broken window. She also had video evidence of the perpetrator obtained by his surveillance system that officers seemed uninterested in collecting. Mr. claimed the officers asked his neighbor what she wanted them to do. Mr. indicated his neighbor had to be the one to request a field investigator to the house. Mr. was also upset with the dismissive response he received from the person at the substation when he called to speak to a supervisor.

II. INVESTIGATION

The CPOA Investigator spoke with Mr. first who indicated he had a satisfactory discussion with Lt. R. Mr. indicated the situation was resolved, but at the same time was concerned not enough had been done and the severity impressed upon the officers. Mr. indicated he did not want his neighbor inconvenienced by being interviewed. Mr. also indicated he did not want necessarily to see the officers punished or the complaint go on their records. The CPOA Investigator explained to Mr. the formal investigative process, which would result in the complaint being on the officers' records as well as if a violation was determined then discipline and possibly retraining would occur.

Mr. _____ was satisfied with the CPOA Investigator confirming with Lt. R what follow-up had occurred.

The CPOA Investigator contacted Lt. R who explained he reviewed the lapel videos and then spoke to both officers. Lt. R agreed with Mr. _____'s concerns over the safety of his neighbor in allowing her to proceed through the house prior to the officers clearing it for intruders. According to Lt. R, both officers agreed that was improper and would adjust their actions in the future. The CPOA Investigator also discussed with Lt. R the concerns Mr. _____ had with the SE substation employee's attitude. Lt. R stated he would advise the lieutenant over the administrative staff of the concerns. Lt. R received Mr. _____'s video evidence of the perpetrator and circulated it through the appropriate channels. Lt. R also ensured the false alarm notification was removed from Mr. _____ address.

The CPOA Investigator reviewed the lapel videos of both officers. The lapel videos showed the field investigator was requested at the officer's initiation, not the neighbor's request. The lapel videos showed the officers did not ask the neighbor what she wanted them to do. The officers informed the neighbor they would call a field investigator and write a report for breaking and entering as the neighbor did not think anything was taken so they could not put burglary. The videos showed the neighbor showed the officers the video of the perpetrator, which they watched. The neighbor did not offer to provide a copy and the police report notated the neighbor was unable to provide a copy at that time.

III. CONCLUSION

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint as the complaint had been handled through informal resolution with the supervisor. Mr. Binder agreed a formal, full investigation would not provide additional outcomes from what had already been done by the supervisor.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey> .

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by



Edward Harness, Esq.
Executive Director
(505) 924-3770

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

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Edward Harness, Executive Director

Dr. Carlotta Garcia, Vice Chair

Eric H. Cruz

Leonard Waites

April 14, 2017

Via certified mail

Re: Citizen Police Complaint 006-17

Dear Mr.

On January 4, 2017 you called our office and filed a complaint over the phone. You complained that a Police Service Aide (PSA) was rude to your wife who had pulled her car to the shoulder of the road because she was having car trouble. Your complaint was assigned to a Civilian Police Oversight Investigator for investigation on March 3, 2017.

PO Box 1293

I. THE COMPLAINT

Albuquerque

When you telephoned our office you stated that your wife's car had overheated on the freeway so she pulled over to the shoulder. While she was there, an unidentified Police Service Aide pulled in behind her, turned on his lights, and then sat there for about ten minutes. The PSA then pulled up next to your wife's car, rolled down his passenger window, and then the PSA allegedly used profanity while telling your wife to move her car or to get her car out of the way. You stated that your wife did move the car and her moving the car possibly damaged the engine. You stated that you had an Attorney and you were going to sue the PSA. Your wife did not get a car number of the car that the PSA was driving, but she did describe the PSA as a young Hispanic male.

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II. THE INVESTIGATION

The CPOA Investigator researched the matter and found that there was a major accident in the area where the incident took place and there were three PSA's who responded to that accident. The CPOA Investigator obtained facial photos of each of the PSA's in the area at the time. The CPOA Investigator called the phone number you provided in your complaint for your wife on 3/21/17 at 9:45 AM. She did not answer her phone but the CPOA Investigator left a detailed message requesting that she contact the Investigator so an interview could be conducted where she could view the photos and possibly identify the offending PSA. Your wife did not return the Investigator's call. The CPOA Investigator again called your wife at the phone number you provided for her on March 23, 2017 at 9:05 AM. A similar voicemail message was left and again, your wife did not return the phone call. In an effort to assist you,

April 14, 2017

Page 2

The CPOA Investigator sent you an e-mail on March 23, 2017 and that e-mail stated that the Investigator had been trying to reach your wife with no success. The e-mail asked you to have your wife call the Investigator so that an interview and a viewing of the photos could take place. The CPOA Investigator did not receive a response to that e-mail and to date, your wife has not contacted the CPOA Investigator.

III. CONCLUSION

There is simply not enough information provided in your complaint to identify who the offending PSA might have been. Every effort has been made by our agency to assist you, but we need your wife's cooperation to continue the investigation. Without more information from her, the investigation cannot proceed any further. At this time we are administratively closing your complaint and no further investigation will occur. Administratively closed investigations may be re-opened if more information becomes available.

If you have a computer available, we would greatly appreciate you completing our client survey form at <http://www.cabq.gov/cpoa/survey> .

Please contact me if you have any questions or concerns.

Sincerely,



Edward Harness, Esq.
Executive Director
(505) 924-3770

CC: Albuquerque Police Department, Chief of Police

CITY OF ALBUQUERQUE



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Eric H. Cruz

Leonard Waites

April 14, 2017

Via certified mail

Re: Citizen Police Complaint 010-17

Dear Ms

On January 29, 2017 you filed two separate complaints only minutes apart that stated the same thing. You wrote in your complaints, "6 mo old grandson in imminent danger. Father alcoholic medseeker drunk drives with baby. APD no help." You stated that the outcome you were seeking was punishment. You offered no other information such as the father's name, the child's name, where the incident was occurring or even a date and time that the incident took place. Despite the lack of information, your complaint was assigned to a Civilian Police Oversight Investigator for review.

PO Box 1293

Albuquerque

I. THE INVESTIGATION

The CPOA Investigator called the phone number you provided in your complaint and left two separate voicemail messages asking you to call him. Those calls were placed on March 6, 2017 and March 21, 2017. You did not return the investigator's calls. On March 21, 2017, the CPOA Investigator sent you an email requesting that you contact him so that he could obtain more information from you regarding your complaints. You did not respond to that email. The CPOA Investigator looked up the address that you provided as a contact address and the address that you listed is an apartment complex and you did not list what apartment you live in. The CPOA Investigator also tried to search the APD call history for the address that you provided around the dates and times that you provided but the search proved fruitless.

NM 87103

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II. CONCLUSION

There is simply not enough information provided in your complaints to act upon. Because of the lack of information provided in your complaints and because you have not assisted the CPOA Investigator by providing further information, we are administratively closing your complaint and no further investigation will occur. Administratively closed investigations may be re-opened if more information becomes available.

Letter to Ms. , CPC 010-17
April 14, 2017
Page 2

If you have a computer available, we would greatly appreciate you completing our client survey form at <http://www.cabq.gov/cpoa/survey> .

Please contact me if you have any questions or concerns.

Sincerely,



Edward Harness, Esq.
Executive Director
(505) 924-3770

CC: Albuquerque Police Department, Chief of Police

CITY OF ALBUQUERQUE



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Eric H. Cruz

Leonard Waites

April 14, 2017

Via Certified Mail

Re: CPC #157-16

Dear Mr.

Our office received the complaint you filed on September 19, 2016 against Officer F. of the Albuquerque Police Department (APD) regarding an incident that occurred on September 7, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

Upon completion of the investigation the CPOA determined, based on a preponderance of the evidence, whether or not the APD Officer(s) involved violated Standard Operating Procedures (SOPs). A preponderance of the evidence means that one side has demonstrated a greater weight of evidence (more than 50%) that is more credible and convincing than the other side. If the credible evidence is 50-50, the proper finding is Not Sustained.

Albuquerque

NM 87103

Please be aware, the contract between the Albuquerque Police Officers' Association (APOA) and the City of Albuquerque requires that officers cooperate in the investigation; therefore, the officer's statements may not be made public. Below is a summary of the complaint, the CPOA's investigation and findings.

www.cabq.gov

I. THE COMPLAINT

Mr. _____ said that on September 7, 2016, he was driving Eastbound on Lomas Boulevard at approximately 0109 hours when he was pulled over by APD Officer F.. He complained he asked Officer F. why he was stopped and Officer F. said it was illegal to have paint on the tail lights of a vehicle. He told Officer F. it was not illegal and complained that Officer F. laughed in his face and said he knows everything before stumbling away laughing and telling Mr. _____ he didn't know why he was arguing Officer F.. Mr. _____ complained Officer F. failed to introduce himself and say why he was pulled over upon initial contact. Mr. _____ complained Officer F. was power-hungry, didn't know the

vehicle code and cited him based on Officer F.'s own interpretation of the law and not based on a violation of the law. Mr. _____ believes his vehicle was within code.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER F.'S CONDUCT

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the Complaint, the City of Albuquerque Traffic Ordinances, Officer F.'s lapel video and an interview with Officer F..

It should be noted that Mr. _____ was not interviewed as he did not/would not contact the CPOA Investigator; therefore the investigation was completed based upon his written complaint.

A) The CPOA reviewed APD SOP 2-41-2(A)(1)(c), which states:

2-41-2 TRAFFIC STOPS

A. Traffic Stops

1. Officers initiating traffic stops for observed violations shall:

- c. Greet violator in a civil manner, using the appropriate title, advise the reason for the stop when feasible, and advise they are being recorded.***

Mr. _____ complained Officer F. failed to introduce himself and tell him why he was pulled over when he first contacted Mr. _____.

The interview with Officer F. and the lapel video were reviewed. The lapel video showed only the second half of the contact with Mr. _____. The lapel video showed that after signing the citation, Mr. _____ asked Officer F. why he didn't introduce himself, nor say why he pulled Mr. _____ over upon initial contact, to which Officer F. replied, "Sorry." Officer F.'s statement that he was sorry for that inaction was interpreted as an admission of guilt.

The CPOA finds Officer F.'s conduct **SUSTAINED** regarding the allegation of a violation of this SOP, which means the investigation determined, by a preponderance of the evidence that the alleged misconduct did occur.

B) The CPOA reviewed APD SOP 3-13-3(B)(2), which states:

3-13-3 OFFICER'S DUTIES AND CONDUCT

Procedures

B. Enforcing Laws, Ordinances, and Police Regulations.

2. *Officers shall familiarize themselves with and have working knowledge of the laws of the State of New Mexico, the ordinances of the City of Albuquerque, and relevant federal statutes. They also shall have an understanding of the goals and the requirements contained within the Department of Justice Settlement Agreement.*

Mr. _____ complained Officer F. didn't know the vehicle code and cited him based on his own interpretation of the law and not based on a violation of the law. Mr. _____ believes his vehicle was within code.

A review of the City of Albuquerque Traffic ordinance code 8-6-10A showed Officer F. cited the correct vehicle code and did not use his own interpretation of the law when he cited Mr. _____ as alleged in the written complaint.

The CPOA finds Officer F.'s conduct **EXONERATED** regarding the allegation of a violation of this SOP, which means the investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training.

- C) The CPOA reviewed APD SOP 1-1-4(D)(15), which states:

1-1-4 PERSONNEL CODE OF CONDUCT

Rules of Conduct

D. On-Duty Conduct

15. Personnel will treat the public with respect, courtesy and professionalism at all times.

Mr. _____ complained Officer F. laughed in his face, said he knows everything, was "power-hungry", and stumbled away laughing.

The evidence revealed that Officer F. did not laugh in Mr. _____'s face, did not state he knows everything, was not acting "power-hungry", and did not appear to stumble away laughing. The lapel video revealed Officer F. was professional and courteous in his contact with Mr. _____.

The CPOA finds Officer F.'s conduct **EXONERATED** regarding the allegation of a violation of this SOP, which means the investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training.

- D) The CPOA reviewed APD SOP 2-8-4(B)(6)(c), which states:

2-8-4 USE OF ON-BODY RECORDING DEVICES/MANAGEMENT OF RECORDINGS

Rules and Responsibilities

B. Use of OBRD

6. Mandatory Recording Incidents:

Subject to the limitations included in paragraph 1-39-4-B-5 below, department personnel shall use Department-issued OBRDs to document the incidents listed below:

c. Traffic Stops.

During the investigation it was noted that only the second half of Officer F.'s contact with Mr. was recorded.

The evidence revealed Officer F. routinely records his entire contacts with citizens although in this case, only half of the contact was captured. The loss of the video file was attributed to equipment defect or malfunction, which reportedly affects Officer F.'s lapel videos approximately one time per month.

The CPOA finds Officer F.'s conduct **SUSTAINED VIOLATION NOT BASED ON ORIGINAL COMPLAINT** regarding the allegation of a violation of this SOP, which means the investigation determined, by a preponderance of the evidence, that misconduct did occur that was not alleged in the original complaint but that was discovered during the misconduct investigation.

Your complaint and these findings are made part of Officer F.'s Internal Affairs records.

You have the right to appeal this decision.

1. If you are not satisfied with the findings of the CPOA, please request an appeal in a signed writing to the undersigned within 30 days of receipt of this letter. Include your CPC number.

The POB may grant a Request for Reconsideration only upon the complainant offering proof that:

- A) The APD policy or APD policies that were considered by the POB were the wrong policies or they were used in the wrong way; or,
- B) The APD policy or APD policies considered by the POB were chosen randomly or they do not address the issues in your complaint; or,
- C) The findings of the POB had no explanation that would lead to the conclusion made by the POB; or,
- D) The findings by the POB were not supported by evidence that was available to the POB at the time of the investigation.

Letter to Mr.
April 14, 2017
Page 5

CPC 157-16

2. If you are not satisfied with the final disciplinary decision of the Chief of Police, you can request a review of the complaint by the city's Chief Administrative Officer. Your request must be in writing and within 30 days of receipt of this letter. Include your CPC number.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey> .

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by



Edward Harness, Esq.
Executive Director
(505) 924-3770

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



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Rev. Dr. David Z. Ring III

Leonard Waites

Edward Harness, Executive Director

April 14, 2017

Via Certified Mail

Ms.

Re: CPC #193-16

Dear Ms.

Our office received the complaint you filed against Albuquerque Police Department (APD) Officer K. on October 12, 2016 regarding an incident that occurred on August 26, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on December 8, 2016. The CPOA made findings of whether the Albuquerque Police Department (APD) Officer involved violated Standard Operating Procedures (SOPs) based on a preponderance of the evidence. A preponderance of the evidence means that one side has a greater weight of evidence that is more credible and convincing than the other side. Another way of saying it is more than 50% of the credible evidence. If the credible evidence is 50-50, the proper finding is Not Sustained.

Please be aware, the contract between the Albuquerque Police Officer's Association (APOA) and the City of Albuquerque requires that officers cooperate in the investigation; therefore, the officer's statements may not be made public. Below is a summary of the complaint, the CPOA's investigation, and findings.

I. THE COMPLAINT

Ms. [redacted] wrote in her complaint that on August 26, 2016 at about 11:17 PM, she was stopped by Albuquerque Police Department (APD) Officer K. for a driving infraction at Menaul and Eubank. Ms. [redacted] said that she was stopped because she did not turn on her signal when she made a lane change. Ms. [redacted] received a citation for that infraction and a citation for not having a valid registration. Ms. [redacted] insisted that her registration was in fact valid and that she had the paperwork to prove it. Ms. [redacted] had to take a day off work and drive to Albuquerque to prove that her registration was valid. The ticket was later dismissed.

Ms. _____ alleged that the officer should not have cited her for not having a valid registration when in fact it was valid. She alleged that the officer was rude when he spoke with her and lastly, she alleged that officer discriminated against her because of her race.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER K.'S CONDUCT

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable Standard Operating Procedures (SOPS), the Complaint, the Computer Assisted Dispatch (CAD) report, and interviews with Officer K. and Ms. _____.

A) The CPOA reviewed Standard Operating Procedure 1-4-3 A 1 regarding APD Officer K.'s conduct, which states:

Biased based policing and/or profiling by any member of this Department are prohibited. Investigative detentions...traffic stops...will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution.

Ms. _____ claimed that Officer K. discriminated against her because of her race. She claimed that Officer K. gave her a hard time and it seemed to her that Officer K. was just finding anything that he could to make the incident more difficult for her. She felt that Officer K. only did that because of her race.

The investigation showed that Ms. _____ admitted that she committed a traffic violation when she failed to signal when changing lanes. She admitted it to Officer K., she admitted it to the Court, and she admitted it to the CPOA Investigator.

Officer K. made the traffic stop based on probable cause. The MVD computer database at the time showed that Ms. _____'s registration was expired or that it had been revoked. Even though she had a valid registration in hand and had a valid license plate, the database showed that the registration was expired.

There are a number of reasons why that could happen. Often people will obtain insurance just so they can get a vehicle registered. During the registration period, if a person's insurance policy expires, or if a person changes insurance companies, the MVD will administratively revoke a registration and MVD will update the database to show the registration to be expired. The registration will remain that way until either the owner provides proof to MVD that the vehicle has insurance or the insurance company provides proof to MVD that the vehicle is insured.

It is entirely possible then to have paperwork in hand that shows that a vehicle has a valid registration when in fact it does not. APD relies on MVD to provide accurate records in their database. In this case, when the MVD database showed the plate to be expired, Officer K., who was working a traffic enforcement detail, had no choice but to issue the citation in order for Ms. Irigoyen to get the problem sorted out either through the court or through MVD.

The CPOA finds Officer K's conduct to be **UNFOUNDED**, where the investigation determined by clear and convincing evidence, that the alleged misconduct did not occur.

B) The CPOA reviewed Standard Operating Procedure 3-13-3 B (3b) regarding APD Officer K.'s conduct, which states:

Officers shall...make only those arrests, searches and seizures which they should know are lawful and do so in accordance with related departmental procedures.

Ms. complained that she should not have been cited for not having a valid registration when in fact, she had a valid registration in her vehicle at the time of the traffic stop. As explained above, registrations can be canceled or revoked by the MVD at any time for a variety of reasons. The investigation revealed that the MVD database showed at the time that Ms. 's registration was expired. An expired registration by law requires a mandatory court appearance. Citing Ms. into court for the offense was proper and within policy even though it was inconvenient for Ms. to make the mandatory court appearance.

The CPOA finds Officer K.'s conduct to be **EXONERATED**, as the investigation determined by a preponderance of the evidence that the alleged conduct did occur but it did not violate APD policies, procedures, or training.

C) The CPOA reviewed Standard Operating Procedure 1-1-4 B 7 regarding APD Officer K.'s conduct, which states:

Personnel will conduct themselves both on and off duty in a manner that reflects most favorably on the department.

Lastly, Ms. complained that Officer K. was rude during his contact with Ms. . Officer K. said that he conducted himself professionally and courteously throughout the traffic stop.

There is no independent evidence that can help the CPOA make a determination either way. Ms. 's husband recorded the contact on his cell phone but that video no longer exists. It is troublesome that Ms. i never mentioned that they had a recording in her complaint but that doesn't necessarily mean that the video would not have been detrimental to the officer. APD retention policy on video that is not considered evidence is 120 days. APD video of the stop was deleted before the investigation even began.

Both Ms. and Officer K. seem equally credible and there isn't any evidence to prove that either party was deceptive or ill-intentioned with their actions.

April 14, 2017

Page 4

The CPOA finds Officer K.'s conduct to be **NOT SUSTAINED**, where the investigation was unable to determine by a preponderance of the evidence whether the alleged misconduct occurred.

Your complaint and these findings are made part of Officer K.'s Internal Affairs file.

You have the right to appeal this decision.

1. If you are not satisfied with the findings of the CPOA, please request an appeal in a signed writing to the undersigned within 30 days of receipt of this letter. Include your CPC number.

The POB may grant a Request for Reconsideration only upon the complainant offering proof that:

- A) The APD policy or APD Policies that were considered by the POB were the wrong policies or they were used in the wrong way; or,
- B) The APD Policies or APD Policies considered by the POB were chosen randomly or they do not address the issues in your complaint; or,
- C) The findings of the POB had no explanation that would lead to the conclusion made by the POB; or,
- D) The findings by the POB were not supported by the evidence that was available to the POB at the time of the investigation.

2. If you are not satisfied with the final disciplinary decision of the Chief of Police, you can request a review of the complaint by the City's Chief Administrative Officer. Your request must be in writing and submitted within 30 days of this letter. Include your CPC number.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey> .

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by



Edward Harness, Esq.
Executive Director
(505) 924-3700

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



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Edward Harness, Executive Director

Dr. Carlotta Garcia, Vice Chair

Eric H. Cruz

Leonard Waites

April 14, 2017

Via Certified Mail

-

Re: CPC #171-16

Dear Mrs.

Our office received the complaint you filed on August 26, 2016 against Officers of the Albuquerque Police Department (APD), regarding an incident that occurred on August 25, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on October 28, 2016. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

Upon completion of the investigation, the CPOA determined, based on a preponderance of the evidence, whether or not the APD Officer(s) involved violated Standard Operating Procedures (SOPs). A preponderance of the evidence means that one side has demonstrated a greater weight of evidence (more than 50%) that is more credible and convincing than the other side. If the credible evidence is 50-50, the proper finding is Not Sustained.

Albuquerque

NM 87103

Please be aware, the contract between the Albuquerque Police Officers' Association (APOA) and the City of Albuquerque requires that officers cooperate in the investigation; therefore, the officer's statements may not be made public. Below is a summary of the complaint, the CPOA's investigation, and findings.

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I. THE COMPLAINT AND INVESTIGATION

Mrs. _____ was home in the shower when she heard someone opening her window. She feared someone was breaking in so she started to call police, but the person at the window said he was an officer and to come to the door. Mrs. _____ did not understand why Officer S did not knock at her door first and assumed Officer S followed the request or order of _____ who is a former APD officer and also outside her home with his family. She is in a legal dispute over the proper care of her mother-in-law who is Mr. _____'s mother-in-law as well. Mrs. _____ felt Officer S treated her

rudely and was kinder to Mr. Mrs. -- also wrote some property was damaged in the course of Officer S opening the window.

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the complaint, the police report, the Computer Aided Dispatch (CAD), Mrs. --'s interview, Officer S' interview, Officer R's interview, and both officers' lapel videos.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER S' CONDUCT

A) The CPOA reviewed Standard Operating Administrative Order 3-13-3B3b regarding Officer S' conduct, which states:

Officers shall abide by the following principles: b. make only those arrests, searches, and seizures, which they know or should know, are lawful and do so in accordance with related departmental procedures.

Mrs. -- did not understand why Officer S did not try to knock on her door before resorting to opening her window and peering inside. She had been in the shower, hastily needed to grab a towel, and called police because she thought someone was breaking in. Her mother-in-law was also distressed by Officer S's actions. Mrs. -- knew no one had tried to knock first as she did not hear it and her dog did not react. Mrs. -- claimed there was no planned event for lunch for her mother-in-law.

Officer S was dispatched to a priority one welfare check. Officer S stated when he arrived there were several family members outside who claimed there had been no response at the door or the phone when they called. They claimed their visit had been prearranged and so they were concerned for their elderly mother's safety and health.

The lapel video showed before going to the window, Officer S asked the family members what they had tried first. The family told Officer S that their visit was prearranged and that they tried to reach someone inside by knocking and calling on the phone. Officer S then went to a window, opened it, and made contact with an elderly woman, but she did not react. Then Mrs. -- appeared and Officer S asked her to go to the door, which she did. The lapel video showed the dog did not react to any of the commotion and it was not until much later in the video the dog even made an appearance. The lapel video showed the elderly woman did not seem to react to the officers' presence. It is unknown if the family knocked and the dog did not react nor did Mrs. -- hear it or if the family did not knock and lied to the officer. Mrs. -- agreed she missed a call while she was in the shower and the family had tried to reach her husband, but he was not home at the time. Mrs. --'s irritation and surprise is understandable from her perspective. However, Officer S acted in good faith to check on the welfare of the elderly woman the family claimed could be at risk. APD SOP 2-71-2J provided the officer permission with articulable safety concerns and good faith intention.

The CPOA finds Officer S' conduct to be **Exonerated** where the investigation determined that the alleged conduct did occur, but did not violate APD policies, procedures, or training.

B) The CPOA reviewed Standard Operating General Order 1-1-4D15 regarding Officer S' conduct, which states:

Personnel will treat the public with respect, courtesy and professionalism at all times.

Mrs. [REDACTED] complained that Officer S was rude to her. She claimed his tone was "not nice" when he yelled he was the police in response to her saying, she was calling the police. When she answered the door in only a towel because she had been in the shower, Officer S "sort of growled" when she partially exposed herself. He did not offer any explanations when she asked why he went to her window instead of the door first. He was "not nice at all" and was not approachable as he stood with his arms crossed and scowled the whole time he was in her home.

The lapel video showed when Officer S told Mrs. [REDACTED] "the police were here" it was in a matter-of-fact tone. When Mrs. [REDACTED] left to get dressed, Officer S made no "growls" or indications he was disgusted by Mrs. [REDACTED] and the video briefly captured that Officer S did not seem to be looking in her direction. Officer S's longest time in the house, about twelve minutes, was while Officer R attempted to contact Adult Protective Services. During that time, Mrs. [REDACTED] and Officer S did not interact with each other and Mrs. [REDACTED] was out of the room most of the time. Mrs. [REDACTED] did not ask Officer S any questions. She said something once while watching TV, but it was not clear what she said and did not seem like she was trying to illicit a response from Officer S. Officer S did not explain things as thoroughly as he remembered, but Mrs. [REDACTED] expressed no complaint or asked any questions of Officer S.

The CPOA finds Officer S' conduct to be **Unfounded** where the investigation determined that the alleged misconduct did not occur.

C) The CPOA reviewed Standard Operating General Order 1-1-4D14 regarding Officer S' conduct, which states:

Personnel must not act officiously, abuse their lawful authority, or permit their personal feelings, animosities, or friendships to influence their official decisions.

Mrs. [REDACTED] believed Officer S went to her window first because Mr. [REDACTED] a former APD officer, asked or directed Officer S to do so. Mrs. [REDACTED] claimed Officer S was rude to her, but nice and joking with Mr. [REDACTED]. She claimed Mr. [REDACTED] received preferential treatment. She suspected Mr. [REDACTED] had not called police in the usual way and just summoned a friend of his instead.

Officer S stated he recognized Mr. [REDACTED] as a former police officer, but did not know him socially or work with him directly that he recalled. Mr. [REDACTED] did not direct him or request anything in how to handle the situation. His going to the window was due to several people saying they had already tried knocking and calling so he did not feel it was necessary to duplicate their efforts; he had no reason to think they were lying. Officer S did not know

how Mrs. _____ made claims of preferential treatment or that he was nicer to Mr. _____ when she was never outside of the house to observe them. Officer R did not hear Mr. _____ ask for preferential treatment due to his former position with APD. Officer S did not do anything differently while she was there and she was the primary on the call making the decisions anyway.

The lapel video showed Officer S and Mr. _____ made a few limited comments throughout the call about Mr. _____'s former employment with APD, but they were minimal and innocuous. Mr. _____ never directed or requested officers do anything because he was a former officer. The lapel videos showed Mrs. _____ was not outside with the officers and Mr. _____ to see their interaction. During the interview, Mrs. _____ admitted she did not hear the conversation between Mr. Arrington and Officer S, but made some assumptions based on Mr. _____'s past behavior. Mrs. _____'s assumption was incorrect about how Mr. _____ called police as there was a call and CAD created in the usual way.

The CPOA finds Officer S' conduct to be **Unfounded** where the investigation determined that the alleged misconduct did not occur.

D) The CPOA reviewed Standard Operating Procedural Order 2-02-2B1a-d regarding Officer S' conduct, which states:

When sworn personnel damage civilian property in the course of their official duties: a. The supervisor in charge will ensure that photographs are taken of the damage that was caused. b. The scene will not be left until detailed photographs of the damage have been taken. c. The incident will be documented detailing the exact damage, and a copy shall be forwarded to the Risk Management Division. d. The supervisor shall provide Risk Management's contact information to the property owner.

Mrs. _____ claimed in her written complaint that when Officer S opened the window a couple of her pictures broke. She did not mention it in her interview.

Officer S did not hear anything break although he thought possibly that something fell from the window ledge. Mrs. _____ did not mention anything so he did not think there was anything to report.

The lapel video showed Mrs. _____ moved about the room and occupied herself doing things during the downtime while waiting for Officer R to return. The lapel video showed Mrs. _____ never brought damages to the attention of either officer or made any complaint about things being knocked over. Since Officer S was unaware actual damage occurred, he did not initiate the process to document damage to civilian property.

The CPOA finds Officer S' conduct to be **Exonerated** where the investigation determined that the alleged conduct did occur, but did not violate APD policies, procedures, or training.

You have the right to appeal this decision.

1. If you are not satisfied with the findings of the CPOA, please request an appeal in a signed writing to the undersigned within 30 days of receipt of this letter. Include your CPC number.

The POB may grant a Request for Reconsideration only upon the complainant offering proof that:

- A) The APD policy or APD policies that were considered by the POB were the wrong policies or they were used in the wrong way; or,
- B) The APD policy or APD policies considered by the POB were chosen randomly or they do not address the issues in your complaint; or,
- C) The findings of the POB had no explanation that would lead to the conclusion made by the POB; or,
- D) The findings by the POB were not supported by evidence that was available to the POB at the time of the investigation.

2. If you are not satisfied with the final disciplinary decision of the Chief of Police, you can request a review of the complaint by the city's Chief Administrative Officer. Your request must be in writing and within 30 days of receipt of this letter. Include your CPC number.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey>.

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by



Edward Harness, Esq.
Executive Director
(505) 924-3770

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

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Rev. Dr. David Z. Ring III

Edward Harness, Executive Director

Dr. Carlotta Garcia, Vice Chair

Eric H. Cruz

Leonard Waites

April 14, 2017

Via Certified Mail

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Re: CPC #172-16

Dear Mr. _____

Our office received the complaint you filed on September 14, 2016 against Officers of the Albuquerque Police Department (APD), regarding an incident that occurred on June 15, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on November 1, 2016. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

Upon completion of the investigation, the CPOA determined, based on a preponderance of the evidence, whether or not the APD Officer(s) involved violated Standard Operating Procedures (SOPs). A preponderance of the evidence means that one side has demonstrated a greater weight of evidence (more than 50%) that is more credible and convincing than the other side. If the credible evidence is 50-50, the proper finding is Not Sustained.

Albuquerque

NM 87103

Please be aware, the contract between the Albuquerque Police Officers' Association (APOA) and the City of Albuquerque requires that officers cooperate in the investigation; therefore, the officer's statements may not be made public. Below is a summary of the complaint, the CPOA's investigation, and findings.

www.cabq.gov

I. THE COMPLAINT AND INVESTIGATION

Mr. _____ boarded the bus to go home and during the trip, he was told to leave the bus. Mr. _____ alleged he was ordered to leave for no apparent reason other than because of the actions of another passenger who kept drinking out of the bottle of alcohol he had in his bag. Mr. _____ admitted to some drinking prior to getting on the bus. Transit employees all reported Mr. _____ was highly intoxicated and acting "over the top" by yelling, cussing, and threatening everyone. The transit employees asked Mr. _____ to leave specifically due to his actions, not that of another, but Mr. _____ refused. Transit employees called APD and while waiting for officers, they all stated Mr. _____ physically

came at them. Transit employees stated they took Mr. [REDACTED] to the ground and handcuffed him. Mr. [REDACTED] originally claimed he was the victim of excessive force by transit security, but then changed his story to blame APD officers. Mr. [REDACTED] claimed he was denied medical treatment despite several injuries. Mr. [REDACTED] also complained about some property issues and that he was mistreated.

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the complaint, the police report, the Computer Aided Dispatch (CAD), Mr. [REDACTED]'s interview, Transit employees [REDACTED] and [REDACTED] interviews, Officer L's interview, and Officer L's lapel video.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER L'S CONDUCT

A) The CPOA reviewed Standard Operating Procedural Order 2-52-5C1a-c regarding Officer L's conduct, which states:

- a. Empty Hand Techniques (Intermediate Force) include the use of strikes, grabs, kicks, takedowns, and proper arrest techniques to effect control of an actively resistant subject.*
- b. Officers are prohibited from utilizing neck holds, except where lethal force is authorized.*
- c. Officers are prohibited from using leg sweeps, arm-bar takedowns, or prone restraints, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons, to overcome active resistance, or as objectively reasonable where physical removal is necessary to overcome passive resistance and handcuff the subject.*

Mr. [REDACTED] stated in his interview the transit security officers sat him on the bus stop bench and the next thing he knew APD officers were picking him up off the ground or the bench; he changed which one. He was handcuffed and hogtied, but did not remember this happening. He assumed it was the APD officers because he claimed the transit officers had left. He was thrown into the back of the police car. Mr. [REDACTED] assumed the officers slammed his forehead because he had a bruise on his forehead, two black eyes, and a concussion. He assumed he was placed in a chokehold because he had difficulty talking. Mr. [REDACTED]'s sister said in the interview that her brother lost consciousness even though she was not present for the incident. Mr. [REDACTED]'s statements were very inconsistent and he had few specific memories of the event.

Officer L stated he arrived and Transit Security officers informed him they needed to take Mr. [REDACTED] the ground and handcuff him to avoid imminent harm from Mr. [REDACTED]. Officer L contacted Mr. [REDACTED] who was very intoxicated and verbally abusive. Officer L exchanged handcuffs and ensured they were placed properly. Officer L stated he did not need to carry or drag Mr. [REDACTED] to the police car, Mr. [REDACTED] walked on his own with some assistance. Officer L never restrained Mr. [REDACTED]'s feet.

According to all the employees, Mr. _____ was highly intoxicated. One of the Transit Officers that recognized Mr. _____ as a regular passenger suspected Mr. _____ was possibly being affected by something other than just alcohol given Mr. _____'s behavior. Mr. _____ himself admitted to consuming alcohol and had the bottle with him although he denied being intoxicated and said he had never blacked out on alcohol before. However, Mr. _____ had few specific memories of the event and made several assumptions. During the interview, he did not have a clear distinction between APD officers and Transit security as he described the events. Many of the things he attributed to APD were in fact Transit Security Officers. His confusion may have come from the fact that there were two sets of security individuals. The lapel video showed Mr. _____ blamed the transit officers for "kicking his ass" and asked Officer L who they were. Mr. _____ never complained about being in a chokehold or his head hurting. Mr. _____'s original written complaint also stated that the two bus security officers took him to the ground and handcuffed him. The lapel videos showed Mr. _____ was very aggressive and combative in his speech while in the back of the patrol car. The lapel videos showed Mr. _____ at times complained about the tightness of the handcuffs, but he maintained his highly aggressive and threatening speech throughout the time he was in the back of the police car. One of the transit employees thought Mr. _____'s ankles had been restrained, but he was not sure and thought it reasonable given Mr. _____'s behavior. Everyone else said Mr. _____ had not been restrained other than by handcuffs. Mr. _____ at times kicked in the back of the patrol car so he was not "hogtied" or in a Passive Restraint System. It was not until his interview that he blamed Officer L for any force used. All the transit security personnel stated Mr. _____ was aggressive with them and Transit Officer Martin took Mr. _____ to the ground and both Transit Officers _____ and _____ handcuffed him. Any force used was from Transit Security, which is outside of the CPOA's scope to investigate. Mr. _____'s memories were affected by his level of intoxication.

The CPOA finds Officer L's conduct to be **Unfounded** where the investigation determined that the alleged misconduct did not occur or at least did not involve the subject officer.

B) The CPOA reviewed Standard Operating Procedural Order 2-52-6-D2 regarding Officer L's conduct, which states:

Medical attention shall be requested immediately when an individual is injured or complains of injury following a use of force.

Mr. _____ complained he required medical attention, but no one came and checked him. Mr. _____ claimed he had a bruise on his forehead, two black eyes, and a concussion. Mr. _____ claimed if in fact medical came he did not remember because of the concussion. He believed he was placed in a chokehold because he had difficulty talking.

Officer L stated he called for medical attention because Mr. _____ requested it and he wanted to make sure Mr. _____ was not considered too intoxicated to be booked into jail. He observed no injuries on Mr. Guevara. However, when rescue personnel arrived, Mr. _____ refused to cooperate.

Mr. [REDACTED] offered no evidence of his medical injuries. The CAD showed rescue was called, but all parties stated Mr. [REDACTED] was too combative and uncooperative to be properly assessed. Mr. [REDACTED]'s booking photo does not show any injuries such as black eyes, which he claimed were evident to jail staff. The lapel video showed Mr. [REDACTED] did not make complaints about difficulty talking and yelled the entire time. All the transit employees as well as Officer L stated Mr. [REDACTED] was conscious and verbally abusive the entire time. Medical was called because Mr. [REDACTED] requested it and Officer L had concern over Mr. [REDACTED]'s level of intoxication, not due to any force used.

The CPOA finds Officer L's conduct to be **Unfounded** where the investigation determined that the alleged misconduct did not occur.

C) The CPOA reviewed Standard Operating General Order 1-1-4D15 regarding Officer L's conduct, which states:

Personnel will treat the public with respect, courtesy, and professionalism at all times.

Mr. [REDACTED] claimed he was teased, but he provided no specifics. Mr. [REDACTED] claimed Officer L never told him why he was being arrested despite his demands to know why as he claimed he did nothing wrong.

Officer L stated Mr. [REDACTED] was very intoxicated and verbally abusive the entire time. Officer L tried to talk to Mr. [REDACTED] and explain the charges to him, but Mr. [REDACTED] refused to listen. He did not pay much attention to Mr. [REDACTED]'s ramblings. No one teased him.

Officer L had about an hour and a half of video, which showed Officer L was very professional with Mr. [REDACTED]. Officer L told Mr. [REDACTED] several times why he was being arrested, but Mr. [REDACTED] did not listen. The lapel video showed Mr. [REDACTED] incessantly cursed and threatened Officer L. The jail no longer had their video, as the time was too long from the incident to receipt of the investigation. Mr. [REDACTED]'s memory of events did not match the evidence revealed in the investigation, likely due to his intoxication.

The CPOA finds Officer L's conduct to be **Unfounded** where the investigation determined that the alleged misconduct did not occur.

D) The CPOA reviewed Standard Operating Procedural Order 2-8-4-B-6d regarding Officer L's conduct, which states:

Subject to the limitations included in paragraph 1-39-4-B-5 below, department personnel shall use Department-issued OBRDs to document the incidents listed below: d. Arrests, including the contact leading up to the arrest when department personnel can reasonably foresee an arrest occurring.

April 14, 2017

Page 5

Officer L ran his body recording, but the first portion of contact was a corrupted file according to Evidence.com so it was unavailable. The initial recording was unavailable to due reasons beyond Officer L's control.

The CPOA finds Officer L's conduct to be **Exonerated** where the investigation determined that the alleged conduct did occur, but did not violate APD policies, procedures, or training.

Additional Issue Explored:

Mr. [REDACTED] complained about an additional issue concerning missing property. He claimed transit employees forced him to leave his bicycle on the bus. Mr. [REDACTED] also claimed he had a cell phone in his pocket and a black bag with him. He said something about a ring and an earring were missing as well as some phone numbers, a bus pass, a torn half of a \$20 bill, and his driver's license. He did not know what else might be missing.

Officer L knew nothing about Mr. [REDACTED] having a bicycle. Officer L stated he brought Mr. [REDACTED]'s personal property to jail and it was booked into jail with Mr. [REDACTED] or it was thrown away if it was not something the jail would accept.

Officer [REDACTED] observed Mr. [REDACTED] board the bus and said he did not have a bicycle. None of the other transit employees thought he had a bicycle that night either. The transit supervisor, Mr. [REDACTED] thought Mr. [REDACTED] complained about his bike being missing from a different time, not that night. According to Transit, they did not have a means to track which bus and date any of their unclaimed bicycles originated from, especially after any length of time. Mr. [REDACTED]'s black bag was brought into Transit's lost and found, not taken by APD. The Transit log showed the bag contained food and clothing items. The jail property receipt showed Mr. [REDACTED] had a wallet with various items, a ring, and an earring that were both checked in and signed for upon his release. There was no cell phone, which Mr. [REDACTED] acknowledged when he signed the form. Mr. [REDACTED] mentioned his cell phone had been used since his arrest so likely he lost it either that night or before. The issue of Mr. [REDACTED]'s property was shown to be false based on Mr. [REDACTED]'s jail property list or not the responsibility of APD so there was not an appropriate SOP to utilize. Only his identification could be at issue, but given Mr. [REDACTED]'s poor memory of events it is difficult to say if he had his license with him that night or if it was left in his bag, which was with Transit.

You have the right to appeal this decision.

1. If you are not satisfied with the findings of the CPOA, please request an appeal in a signed writing to the undersigned within 30 days of receipt of this letter. Include your CPC number.

The POB may grant a Request for Reconsideration only upon the complainant offering proof that:

- A) The APD policy or APD policies that were considered by the POB were the wrong policies or they were used in the wrong way; or,
- B) The APD policy or APD policies considered by the POB were chosen randomly or they do not address the issues in your complaint; or,
- C) The findings of the POB had no explanation that would lead to the conclusion made by the POB; or,
- D) The findings by the POB were not supported by evidence that was available to the POB at the time of the investigation.

2. If you are not satisfied with the final disciplinary decision of the Chief of Police, you can request a review of the complaint by the city's Chief Administrative Officer. Your request must be in writing and within 30 days of receipt of this letter. Include your CPC number.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey>.

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by



Edward Harness, Esq.
Executive Director
(505) 924-3770

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

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Eric H. Cruz

Leonard Waites

April 14, 2017

Via Certified Mail

Re: CPC #189-16

Dear Ms. _____

Our office received the complaint you filed on October 20, 2016 against Officers of the Albuquerque Police Department (APD), regarding an incident that occurred on October 19, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on December 8, 2016. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

Upon completion of the investigation, the CPOA determined, based on a preponderance of the evidence, whether or not the APD Officer(s) involved violated Standard Operating Procedures (SOPs). A preponderance of the evidence means that one side has demonstrated a greater weight of evidence (more than 50%) that is more credible and convincing than the other side. If the credible evidence is 50-50, the proper finding is Not Sustained.

Albuquerque

NM 87103

Please be aware, the contract between the Albuquerque Police Officers' Association (APOA) and the City of Albuquerque requires that officers cooperate in the investigation; therefore, the officer's statements may not be made public. Below is a summary of the complaint, the CPOA's investigation, and findings.

www.cabq.gov

I. THE COMPLAINT AND INVESTIGATION

Ms. _____ was shopping at the _____ store when she claimed six APD officers approached her. Ms. _____ complained the officers did not tell her why they were confronting her until she became very distraught and crying. It was then that she found out someone accused her of stealing some eyeglass frames. Ms. _____ complained she was embarrassed and bullied by the officers. Ms. _____ also complained about the fact that her purse was searched out of her presence.

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the complaint, the Computer Aided Dispatch (CAD), Officer R's interview, Officer M's interview, and Officer R's lapel video. Ms. _____ did not participate in the investigative process to be interviewed.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER R'S CONDUCT

A) The CPOA reviewed Standard Operating General Order 1-1-4D15 regarding Officer R's conduct, which states:

Personnel will treat the public with respect, courtesy, and professionalism at all times.

Ms. _____ wrote six officers stormed into the store, surrounded her, and accused her of stealing. Ms. _____ wrote none of the officers told her why they were questioning her until she was in tears when Officer R finally told her someone reported her taking some eyeglass frames. Ms. _____ wrote she was harassed and bullied in the presence of other customers. She wrote she was traumatized by the whole situation, it was an "excessive show of force," and harassing behavior.

The lapel video showed Officer R approached Ms. _____ in a calm manner and used very low tones with her. He brought her to the front of the store, away from other individuals to talk to her. The lapel video showed Officer R told Ms. _____ immediately why they were there. Ms. _____ was not in tears as she described. The lapel video showed Officer R did not harass or bully her and was very respectful with her. The lapel video showed Officer R asked in a genuine way at the end of the contact, "I wasn't too mean to you was I?" Ms. _____ laughed and said no. The lapel video showed towards the end of the contact she was laughing and accepting of the officers' apologies. The total contact with the officers was about seven and a half minutes. Two other officers had arrived and remained very briefly because they originally thought the call was an armed robbery since the business improperly used the hold-up alarm. The lapel video showed there were never six officers present and the two that had been there briefly did not interact with Ms. _____.

The CPOA finds Officer R's conduct to be **Unfounded** where the investigation determined that the alleged misconduct did not occur.

B) The CPOA reviewed Standard Operating Administrative Order 3-13-3B3b regarding Officer R's conduct, which states:

Officers shall abide by the following principles: b. make only those arrests, searches, and seizures which they know or should know are lawful and do so in accordance with related departmental procedures.

Ms. _____ did not cooperate in the investigative process. Ms. _____ complained that she was not told why she was being confronted until she was in tears, as she had done nothing

wrong. Ms. _____; wrote that her purse was searched out of her presence in a back room and questioned the properness of that action.

Officer R responded to what was originally dispatched as a silent alarm and possible armed robbery situation. When he arrived, the employees informed him they observed Ms. _____ put eyeglass frames in her purse. Officer R contacted Ms. _____ based on the allegation made by the employee of the business. Officer R opened her purse and asked if anything would stick or poke him. She responded “no.” Officer R explained he wanted to ensure there were no weapons. Ms. _____ did not express an objection to his looking through the purse when he started. Officer R looked through her purse and did not see any frames. Officer R saw a small gold box and questioned if it belonged to Ms. _____ or the business. He took the purse to the accusing employee to ask if the box belonged to the business and mostly to show the employee it looked like the employee wrongfully accused Ms. _____. The employees agreed the small box did not belong to the business. Officer M recalled Officer R asked Ms. _____’ permission to look in her purse, which she granted. Officer M stated Officer R asked Ms. _____ if he could bring her purse to the back to show the employee there was no stolen merchandise, which she granted. According to Officer M, even if Ms. _____ had not granted permission, they could have looked in her purse as part of their investigation; it was not dependent upon her arrest.

The lapel video showed the employees informed Officer R they observed Ms. _____ putting merchandise in her purse. The lapel video showed that as soon as Officer R approached Ms. _____ he took possession of her purse. The video showed Officer R quickly told Ms. _____ why he contacted her and she was not crying. The video showed her purse was already open when Officer R started rifling through it in front of Ms. _____. The video showed Officer R asked Ms. _____ if there were objects that would poke him. The video showed Ms. _____ responded no; she did not object to Officer R’s search. Officer R had reason to contact and detain Ms. _____ based on the allegations made by the business. However, Ms. _____ had an objectively reasonable expectation of privacy to the contents of her purse. The search of Ms. _____ purse was not within policy. Officer R’s explanation of ensuring she did not have a weapon was not sufficient because there was not a reasonable articulable suspicion that Ms. _____ had a weapon and Officer R had immediate control of the purse; officers cannot presume everyone to be armed. The lapel video showed there was no request to search or consent granted as Officer M believed. The search of her purse did not fall under any of the allowable exceptions such as a search incident to lawful arrest as there was no arrest. Officers did have the right to detain Ms. _____, but Officer R did not have the authority to search her purse as part of the investigation.

The CPOA finds Officer R’s conduct to be **Sustained** where the investigation determined that the alleged misconduct did occur.

III. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER M’S CONDUCT

A) The CPOA reviewed Standard Operating General Order 1-1-4D15 regarding Officer M’s conduct, which states:

Personnel will treat the public with respect, courtesy, and professionalism at all times.

Ms. wrote six officers stormed into the store, surrounded her, and accused her of stealing. Ms. wrote none of the officers told her why they were questioning her until she was in tears when Officer R finally told her someone reported her taking some eyeglass frames. Ms. ; wrote she was harassed and bullied in the presence of other customers. Officer M accused her of stealing her shirt because she had left the store tag on. She wrote Officer M asked invasive questions about whether she was homeless or had a job. She wrote she was traumatized by the whole situation, it was an “excessive show of force,” and harassing behavior.

The lapel video showed Officer R had the majority of the contact with her and Officer M was the back-up officer. The lapel video showed at one point, Officer M pointed out that her shirt still had price tags on it. She said that she just purchased it. Officer M did not accuse her of stealing, but mentioned it was odd. The lapel video also showed Officer M asked her if she was off today or did not work, to which she responded she did not work. There was no question about homelessness captured on the lapel video. When Officer R ran her information, Officer M was alone with her for two minutes and forty-five seconds. There is no video for this portion, but when Officer R returned, Ms. and Officer M were engaged in a congenial conversation with joking and laughing. Officer M apologized for the inconvenience and she said that was ok. The total contact with the officers was about seven and a half minutes. The video showed Officer M was professional with Ms. Two other officers arrived and remained very briefly because they originally thought the call was an armed robbery since the business improperly used the hold-up alarm. The lapel video showed there were never six officers present and the two that had been there briefly did not interact with Ms. .

The CPOA finds Officer M’s conduct to be **Unfounded** where the investigation determined that the alleged misconduct did not occur.

B) The CPOA reviewed Standard Operating Procedural Order 2-8-4B6b regarding Officer M’s conduct, which states:

Subject to the limitations included in paragraph 1-39-4-B-5 below, department personnel shall use Department-issued OBRDs to document the incidents listed below: b. All encounters with individuals who are the subject of a stop based on reasonable and articulable suspicion or probable cause.

Officer M did not have a recording of the call. A search of Evidence.com showed there was only one video from the day that was at a different time than this call. Officer M stated he did not know if his camera was not functioning that day or he just did not record the call. Officer M felt it was something he would have recorded initially since the call was originally coded as a silent alarm.

The CPOA finds Officer R's conduct to be a **Sustained Violation Not Based On The Original Complaint** where the investigation determined that misconduct did occur that was not alleged in the original complaint, but that was discovered during the investigation.

You have the right to appeal this decision.

1. If you are not satisfied with the findings of the CPOA, please request an appeal in a signed writing to the undersigned within 30 days of receipt of this letter. Include your CPC number.

The POB may grant a Request for Reconsideration only upon the complainant offering proof that:

- A) The APD policy or APD policies that were considered by the POB were the wrong policies or they were used in the wrong way; or,
- B) The APD policy or APD policies considered by the POB were chosen randomly or they do not address the issues in your complaint; or,
- C) The findings of the POB had no explanation that would lead to the conclusion made by the POB; or,
- D) The findings by the POB were not supported by evidence that was available to the POB at the time of the investigation.

2. If you are not satisfied with the final disciplinary decision of the Chief of Police, you can request a review of the complaint by the city's Chief Administrative Officer. Your request must be in writing and within 30 days of receipt of this letter. Include your CPC number.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey>.

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by



Edward Harness, Esq.
Executive Director
(505) 924-3770

cc: Albuquerque Police Department Chief of Police