

Civilian Police Oversight Agency

Police Oversight Board

POB Meeting date: January 14, 2016

Consent Agenda -Non-Concurrence cases:

CPC 149-15

CPC 160-15

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

**Police Oversight Board** Leonard Waites, Chair  
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Eric H. Cruz Joanne Fine Rev. Dr. David Z. Ring III  
Edward Harness, Executive Director

January 15, 2016  
Via Certified Mail

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

**Re: CPC #149-15**

Dear Ms. [REDACTED]

Our office received the complaint you filed on August 18, 2015 against Officers of the Albuquerque Police Department (APD) regarding an incident that occurred on July 4, 2015. 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

New Mexico 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

Ms. [REDACTED] said that on July 4, 2015, she and her family were at her house lighting fireworks when a male neighbor, later identified as Mr. [REDACTED], came to her home yelling and cursing at her and her family. Ms. [REDACTED] said she told Mr. [REDACTED] to stop cursing because there were children present and Mr. [REDACTED] pulled out a loaded gun from the front of his pants, cocked it and pointed it at her and her family. She called Albuquerque Police Department (APD) to report the incident and Officer M. and Sergeant (Sgt.) B. responded. Ms. [REDACTED] complained that after Sgt. B. spoke to Mr. [REDACTED] Sgt. B. asked Ms. [REDACTED] if she would be willing to go to mediation with Mr. [REDACTED]. Ms. [REDACTED] said she cooperated that night out of fear and she and her family are still traumatized by the event. She complained that Mr. [REDACTED]'s actions should not have been tolerated and he should have been arrested for Negligent Use of Weapons and Assault. Ms. [REDACTED] complained Officer M.'s report contained several

discrepancies, which she feels were intentional as a way to cover up the fact that Mr. [REDACTED] should have been arrested but was not.

## **II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER M.'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, Officer M.'s report, Officer M.'s lapel videos, and interviews with the Complainant and Officer M.

A) Did Officer M. comply with Albuquerque Police Department (APD) General Order 2-24-3 (A)(5)(f)? General Order 2-24-3 (A)(5)(f) states:

### ***A. Preliminary Investigations***

***5. Steps to be followed in conducting preliminary investigations that may include but are not limited to:***

***f. Report the incident fully and accurately.***

Ms. [REDACTED] complained Officer M.'s report contained discrepancies such as who was present during the incident and that she said Mr. [REDACTED] only pointed the gun at her.

The interviews, lapel videos and Officer M.'s report were reviewed and revealed Ms. [REDACTED] told Officer M. that her brother, [REDACTED], and her step-mother, [REDACTED], were present during the incident but neither person/witness was listed in Officer M.'s report. Additionally, the investigation revealed that Ms. [REDACTED] made statements that Mr. [REDACTED] pulled the gun, cocked it and pointed it at her and her family but she did not say Mr. [REDACTED] only pointed the gun at her as is written in Officer M.'s report. The investigation revealed Officer M. did not report the incident fully and accurately.

The CPOA finds Officer M.'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) Did Officer M. comply with APD General Order 1-04-4 (O)? General Order 1-04-4 (O) states:

***O. In the performance of their duties, personnel shall maintain a neutral and detached attitude without indicating disinterest or that a matter is petty or insignificant.***

Ms. [REDACTED] complained Officer M. should not have tolerated Mr. [REDACTED]'s behavior, and should have found Mr. [REDACTED] in violation of State of New Mexico laws and City of Albuquerque ordinances; Negligent Use of Weapons and Assault.

The interviews, lapel videos and Officer M.'s report were reviewed and revealed Ms. [REDACTED] told Officer M. and Sgt. B. she was nervous and concerned for her safety and that she feared retaliation by Mr. [REDACTED] after he came to her home with a gun and cocked it in response to her

and her family lighting fireworks. The investigation revealed back-up Officer M. said Ms. [REDACTED] appeared to be scared and/or in fear of Mr. [REDACTED] and gave the perception she was afraid because of Mr. [REDACTED]'s actions. The investigation revealed Mr. [REDACTED] admitted to officers he had a gun in his waistband when he went to the [REDACTED] home. The investigation was not able to determine whether or not Mr. [REDACTED] pointed the gun at anyone, which according to Officer M., is a requirement if he were to arrest Mr. [REDACTED] or issue him a summons for Negligent Use of Weapons or Assault. The investigation revealed that Mr. [REDACTED]'s actions caused Ms. [REDACTED] to be fearful enough for her safety and that of her family that she called APD to report the incident. The investigation revealed Officer M. treated the matter and Ms. [REDACTED]' fear of Mr. [REDACTED]'s actions as petty when he failed to take appropriate action against Mr. [REDACTED].

The CPOA finds Officer M.'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.

C) Did Officer M. comply with APD General Order 1-04-4 (N)? General Order 1-04-4 (N) states:

*N. Personnel will not act officiously or permit personal feelings, animosities, or friendship to influence their decisions.*

Officer M.'s lapel video showed obvious familiarity between Officer M. and Mr. [REDACTED] when Officer M. asked Mr. [REDACTED] to fill out a statement and the following interaction took place:

Officer M.: "Hey, would you mind..."

Mr. [REDACTED]: "This is f\*\*\*ing embarrassing. D\*\*\*, it's me, [REDACTED]."

There's a silent pause and then Mr. [REDACTED] throws his head back and says, "Sorry. I apologize."

Officer M.: "So, if you can ahh... fill this out for me please."

Despite this apparent recognition and familiarity, Officer M. denied any personal knowledge of Mr. [REDACTED]. The investigation revealed that Mr. [REDACTED] initially denied knowing Officer M. at all but when the CPOA Investigator questioned him about the familiarity witnessed on the lapel video, Mr. [REDACTED] admitted he knew "D\*\*\*" (i.e. Officer M.) from working with him when he towed cars for APD, but he didn't know him personally. I asked Mr. [REDACTED] if he knew Sgt. B. by his first name and he said he did not know his first or last name and only knew him to be a Sgt. Mr. [REDACTED] added he knew a lot of officers by their first names because of the amount of tow truck work he did with the department; however, when asked to recall officers other than Officer M. by first name he could only recall Officer W.'s first name because he went to school with Officer W. The lapel video showed back-up Officers G. and M., and Officer M. and Sgt. B. stood on Mr. [REDACTED]'s driveway talking to him when one of the officers asked Mr. [REDACTED] for identification. Mr. [REDACTED] stated it was in his house and all four officers allowed him to enter his home unaccompanied while they stood on the driveway until

he returned. The investigation revealed the officers knew the call involved a threat with a gun, yet all of the officers allowed Mr. [REDACTED] to enter his home alone, despite an obvious officer safety concern. Coupled with the apparent familiarity seen on the video between Officer M. and Mr. [REDACTED], it appears that Officer M. gave Mr. [REDACTED] favorable treatment as a result of his personal relationship with Mr. [REDACTED].

The CPOA finds Officer M.'s conduct to be a **SUSTAINED VIOLATION NOT BASED ON ORIGINAL COMPLAINT** for this allegation, 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.

D) Did Officer M. comply with APD General Order 1-4-4 (W)? General Order 1-4-4 (W) states:

*Personnel shall truthfully answer all questions specifically directed to them which are related to the scope of employment and operations of the department.*

The investigation revealed that Officer M. was untruthful to the CPOA Investigator when asked if he knew Mr. [REDACTED] personally. During his interview, Officer M. stated he did not know Mr. [REDACTED] personally but said he may have met him before but he did not know him. Officer M.'s lapel video showed obvious familiarity between Officer M. and Mr. [REDACTED] when Officer M. asked Mr. [REDACTED] to fill out a statement and the following interaction took place:

Officer M.: "Hey, would you mind..."

Mr. [REDACTED]: "This is f\*\*\*ing embarrassing. D\*\*\*, it's me, [REDACTED]."

There's a silent pause and then Mr. [REDACTED] throws his head back and says, "Sorry. I apologize."

Officer M.: "So, if you can ahh... fill this out for me please."

Despite this apparent recognition and familiarity, and Mr. [REDACTED] admitting he knew "D\*\*\*\*" (i.e. Officer M.) from working with him when he towed cars for APD, Officer M. told the CPOA Investigator he did not know Mr. [REDACTED].

The CPOA finds Officer M.'s conduct to be a **SUSTAINED VIOLATION NOT BASED ON ORIGINAL COMPLAINT** for this allegation, 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.

### **III. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING SERGEANT B.'S CONDUCT**

A) Did Sergeant (Sgt.) B. comply with Albuquerque Police Department (APD) General Order 1-04-4 (O)? General Order 1-04-4 (O) states:

*O. In the performance of their duties, personnel shall maintain a neutral and detached attitude without indicating disinterest or that a matter is petty or insignificant.*

Ms. [REDACTED] complained Sgt. B. should not have suggested mediation between her and Mr. [REDACTED], and Sgt. B. should have found Mr. [REDACTED] in violation of State of New Mexico laws and City of Albuquerque ordinances; Negligent Use of Weapons and Assault.

The interviews, lapel videos and report were reviewed and revealed that Ms. [REDACTED] told Officer M. and Sgt. B. she was nervous and concerned for her safety and that she feared retaliation by Mr. [REDACTED] after he came to her home with a gun and cocked it in response to her and her family lighting fireworks. The investigation revealed back-up Officer M. said Ms. [REDACTED] appeared to be scared and/or in fear of Mr. [REDACTED] and gave the perception she was afraid because of Mr. [REDACTED]'s actions. The investigation revealed Mr. [REDACTED] admitted to officers he had a gun in his waistband when he went to the Ornelas home. The investigation revealed that Mr. [REDACTED]'s actions caused Ms. [REDACTED] to be fearful enough for her safety and that of her family that she called APD to report the incident. The investigation revealed Sgt. B. treated the matter and Ms. [REDACTED]' fear of Mr. [REDACTED]'s actions as petty when he suggested mediation between her and Mr. [REDACTED].

The CPOA finds Sgt. B.'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) Did Sergeant (Sgt.) B. comply with APD General Order 3-18-3 (G)? General Order 3-18-3 (G) states:

**3-18-3 SUPERVISOR'S DUTIES AND RESPONSIBILITIES ARE TO:**

*G. Inspect work of subordinates for effectiveness, efficiency, and adherence to established policies and procedures.*

The interviews revealed that Sgt. B. was the senior officer on scene at the time of the incident and was responsible for ensuring Officer M. followed all APD Policies and Procedures; however he failed to do so when Officer M. treated the incident as petty or insignificant.

The CPOA finds Sgt. B.'s conduct to be a **SUSTAINED VIOLATION NOT BASED ON ORIGINAL COMPLAINT** for this allegation, 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 M.'s and Sgt. B.'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 notice. Include your CPC number.
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 Albuquerque'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/iro/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 W. Harness, Esq.  
Executive Director

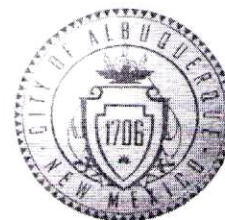
cc: Albuquerque Police Department Chief of Police

# CITY OF ALBUQUERQUE

Albuquerque Police Department



Gorden E. Eden, Jr., Chief of Police



January 31, 2016

Edward W. Harness, Esq., Executive Director  
Civilian Police Oversight Agency  
600 2<sup>nd</sup> NW  
Room 813  
Albuquerque, NM 87102  
505-924-3770

RE: CPC 149-15      Citizen: [REDACTED]  
                                 Officer: D [REDACTED] M [REDACTED]  
                                 Sgt. J [REDACTED] B [REDACTED]

Dear Mr. Harness:

CPC 149-15 was re-reviewed and the recommendations for the non-concurrence are detailed.

**OFFICER D [REDACTED] M [REDACTED]**

**SOP Violation 2-24-3A**

Upon re-review of the reports, video, CPOA investigation and statements I will concur that Officer M [REDACTED] failed to record two of the people that were at the scene and did fail to get statements from them. It should be considered that Officer M [REDACTED] listed several individuals on his report and interviewed several other witnesses. The SOP section listed refers to Officer M [REDACTED] reporting the incident fully and accurately. It does not refer to listing all individuals on a report. Officer M [REDACTED] reported this incident as fully and accurately as he possibly could with the information he was able to obtain at the time. This violation will be **SUSTAINED, VERBAL REPRIMAND.**

**SOP Violation 1-04-4 O**

I still find that there is insufficient evidence to demonstrate that Officer M [REDACTED] failed to maintain a neutral and detached attitude and that he did not indicate or show that he was disinterested or that the matter was petty or insignificant. Preponderance of evidence shows that Officer M [REDACTED] was professional and polite and just because he did not arrest the other party, based on his training, knowledge and experience, does not equate to a violation of this section. Furthermore, this incident was turned over to an investigative unit, NE IMPACT, for follow up investigation. The detective assigned concurs that no crime was committed. This violation is **NOT SUSTAINED**

**SOP Violation 1-04 N**

There is insufficient evidence to demonstrate that Officer M [REDACTED] let his personal feelings, animosities or friendship influence his decisions. Preponderance of evidence shows that Officer M [REDACTED] was polite and professional to all parties involved. Officer M [REDACTED] and his supervisor, Sgt. J [REDACTED] B [REDACTED] even took the time to talk to Ms. [REDACTED] after the call to discuss her son on an unrelated issue.

400 Roma NW

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Mr. [REDACTED] is a tow truck operator and has done work for the city of Albuquerque. Just because Mr. [REDACTED] previously worked for a company that does on call contract work for the Albuquerque Police Department does not equate to a personal relationship between Mr. [REDACTED] and Officer M [REDACTED]. Officer M [REDACTED] never mentions or gives any indication in any of the videos provided that there is a relationship, nor does it appear that Officer M [REDACTED] is trying to downplay or give any of the persons involved a break because he knows them. This violation is **NOT SUSTAINED**

**SOP Violation 1-04-4 W**

It is stated in the investigative report that Officer M [REDACTED] was untruthful to the CPOA investigator when asked if he knew Mr. [REDACTED] personally. During that interview, Officer M [REDACTED] stated that he did not know Mr. [REDACTED] personally but said he may have met him before. The investigator interviewed Mr. [REDACTED] and in his statement Mr. [REDACTED] clearly states that he does not know Officer M [REDACTED] personally and went on to say that he knows a lot of cops because he is a tow truck operator. Mr. [REDACTED] also states that he and Officer M [REDACTED] are not friends and does not know the Officer's last name. Just because Mr. [REDACTED] called Officer M [REDACTED] by his first name is not evidence that they are personal friends. An allegation of untruthfulness is very serious and in this case, just because Mr. [REDACTED] referred to Officer M [REDACTED] by his first name is not enough evidence to sustain this alleged violation. **NOT SUSTAINED**

**SERGEANT J [REDACTED] B [REDACTED]**

**SOP Violation 1-04-4 O**

Preponderance of evidence shows that Sgt. B [REDACTED] was professional and polite, even taking time to talk to Ms. [REDACTED] after the call about her son on an unrelated incident. There is no evidence to sustain that Sgt. B [REDACTED] failed to maintain a neutral and detached attitude without indicating disinterest or that the matter was petty or insignificant. This case was referred to the NE IMPACT Team for follow up and possible prosecution, and detectives determined that the case lacked merit and that no crime had been committed.

**NOT SUSTAINED**

**SOP VIOLATION 3-18-3G**

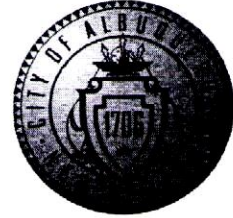
There is insufficient evidence to show that Sgt. B [REDACTED] failed to inspect Officer M [REDACTED]'s work for effectiveness, efficiency and adherence to established policies. Officer M [REDACTED] did an investigation and was unable to determine if a crime had been committed based on the totality of the situation. This case was referred to an investigative unit for follow up investigation and subsequently declined. Sgt. B [REDACTED] did what was required of him by reviewing all reports and documents submitted for accuracy and completeness and based on the available information presented to him, Sgt. B [REDACTED] approved the reports. Further, since SOP Violation 1-04-4 O is not sustained for reasons mention above, I find that SOP 3-18-3G was adhered to and no violation occurred. **NOT SUSTAINED**

Sincerely,



Robert I. Huntsman  
Assistant Chief of Police

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

**Police Oversight Board**     *Leonard Waites, Chair*  
*Beth Mohr, Co-Vice Chair*     *Jeffery Scott Wilson, Co-Vice Chair*  
*Dr. Moira Amado-McCoy*     *Dr. Jeannette Baca*     *Dr. Susanne Brown*  
*Eric H. Cruz*     *Joanne Fine*     *Rev. Dr. David Z. Ring III*  
Edward Harness, Executive Director

January 15, 2016  
Via Certified Mail

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Re: CPC #160-15**

Dear Mr. [REDACTED]

Our office received the complaint you filed on August 27, 2015 against Officer G. of the Albuquerque Police Department (APD) regarding an incident that occurred on September 1, 2015. 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

New Mexico 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

Mr. [REDACTED] wrote in his complaint that on August 27, 2015 that Officer G. showed up at their place of business with an Independent Contractor to the business who had been harassing Mr. [REDACTED] and Mr. [REDACTED] about her last check not being received. Mr. [REDACTED] and Mr. [REDACTED] had told the contractor four times over the phone that her check had been mailed to her. The officer and the contractor came into the business and the contractor and the officer asked in a loud voice about the contractor's last check. Mr. [REDACTED] told the pair that the check had been mailed. Mr. [REDACTED] wrote that he asked the officer to lower his voice and he refused. Mr. [REDACTED] told the officer that the contractor was not allowed on the property

and they asked him to give the contractor a Criminal Trespass Notice but the officer refused to do so. The officer then turned and walked away. Mr. ██████████ followed Officer G. outside, repeatedly calling to the officer, "Sir? Sir?" The officer turned and told Mr. ██████████, "Do not yell at me." Out in the parking lot, the officer told Mr. ██████████ to go back inside his business. When Mr. ██████████ asked for the officer's name, the officer refused to give it and said, "I don't have to tell you anything." Mr. ██████████ wrote that when he told the officer that he does not make the laws and that he was there to make sure the laws were upheld, the officer responded that the reason he came on the call was because he knew how they (the business owners) were. Mr. ██████████ told the officer that he was going to call the Mayor's office and the officer said, "Good! I'm calling my Sergeant." Mr. ██████████ wrote that they had problems with Officer G. in the past but did not provide dates and times or details of what happened on those calls.

## II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER G.'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), a review of the Citizen Police Complaint, an interview with Mr. ██████████ and an interview with Officer G. The police and Computer Assisted Dispatch reports were also reviewed. Officer G.'s lapel video of the incident was also reviewed.

Mr. ██████████ was interviewed over the phone. He basically repeated what he had written in his complaint, but made some additional allegations. The lapel video was reviewed, as it recorded everything and some time had passed since Mr. ██████████ made the complaint. The following is a summary of what the lapel video showed.

The lapel video showed Officer G. meet with Ms. ██████████, the woman who complained of money being owed to her. She explained to him that she had until recently been working for Mr. ██████████ and Mr. ██████████. On August 14, 2015 she was asked to leave the business. When she went back into the business on that day to return the keys to the business, Mr. ██████████ threatened to call the police because she was trespassing. She left. The next payroll date was August 21. On August 19, she called and left a message asking how she was supposed to get her last check. She did not receive a response. She called again on the 20<sup>th</sup> and spoke with another employee who told her that the check was probably going to be mailed to her. Ms. ██████████ called back again on the 21<sup>st</sup> of August to confirm the check was being mailed. She did not get an answer so she left a message. She never received a call back. Ms. ██████████ told Officer G. that she called again on that day, August 27, and she spoke with woman who told her that her check may be there at the business. She was put on hold but no one ever picked up the phone again. She called back again and Mr. ██████████ answered the phone. Mr. ██████████ told her that the check was going to be mailed to her and not to ever call the store again. Mr. ██████████ told Ms. ██████████ that he would file a restraining order against her if she continued to call. She called back yet again to ask what date the check had been mailed. Once again, Mr. ██████████ told her that she was harassing him. Ms. ██████████ said that she had witnesses who listened in on her calls. Ms. ██████████ said on the video that ██████████ and ██████████ are difficult and "oppressive" people.

Officer G. said, "I don't know what their issue is but they don't even like law enforcement. And they are very rude people. They're very...they're not respectful, to anyone." Ms. [REDACTED] said that Mr. [REDACTED] was abusive to her and that Mr. [REDACTED] had accused her of stealing money. Officer G. asked Ms. [REDACTED] if she thought that Mr. [REDACTED] and Mr. [REDACTED] had the check and she said that she believed that they did. Ms. [REDACTED] said that if they had mailed the check the previous Friday she would have received it already. Ms. [REDACTED] told Officer G. that she felt that her check was being held up. Ms. [REDACTED] said that she understood that a Judge would give the business a "grace period" to mail the check. Officer G. then asked Ms. [REDACTED] how he could help her. Ms. [REDACTED] said that he wanted to go into the business to see if the check was there or if they had mailed it. If they had mailed it, she wanted to see if she could get the date that the check was mailed. She said that was all she could do and the rest she would have to deal with the labor board.

Officer G. told Ms. [REDACTED] that he would accompany Ms. [REDACTED] to the store but that he was only going to keep the peace. He said, "I already know how this guy is. He's had a couple of run-ins with me and my supervisor so he doesn't like me. I hate getting called back there. So I'm not going to say anything. If he starts to get aggressive or combative towards you, then I'll step in. I'm basically there to keep the peace." Officer G. told Ms. [REDACTED] that she could tell the owners whatever she wanted to but that if they asked her to leave the property they would have to back out.

Once inside the store, the lapel video showed that Officer G. did stay back from where Mr. [REDACTED] was and Ms. [REDACTED] confronted Mr. [REDACTED] and raised her voice at Mr. [REDACTED]. Ms. [REDACTED] told Mr. [REDACTED] that she was trying to get information on when her paycheck was mailed. She told Mr. [REDACTED], "You're trying to intimidate other employees by saying that I stole 150.00 dollars from you!" Ms. [REDACTED] raised her voice as Mr. [REDACTED] walked away and said, "That's a lie!" The video showed that Ms. [REDACTED] was so loud and accusatory that Officer G. had to get her attention and remind her that she needed to calm down. He told her, "Clam down. Chill out. Relax. That's not the way to do this. I thought we had an understanding that you were going to come in here and be civil. I don't want you raising your voice. We're trying to get your check and we'll be out of here. If he wants to make those claims, let him." The video showed customers in the store near where Officer G. and Ms. [REDACTED] waited. Mr. [REDACTED] returned and asked of Officer G., "Sir? Can I talk to you?" Mr. [REDACTED] asked in broken English for Ms. [REDACTED] to be warned or given a no trespass notice. Officer G. pointed at Mr. [REDACTED] and said, "Okay, there's information that she needs from you guys and I'm not gonna do that unless you give her that information. That's not how..." Mr. [REDACTED] then said, "The check is mailed." Ms. [REDACTED] asked when the check was mailed and said that they never told her when it was mailed. Mr. [REDACTED] then appeared in the camera range. Officer G. asked, "What date was it mailed?" Mr. [REDACTED] said, "It was mailed on Tuesday or Friday." Mr. [REDACTED] then told Officer G., "She's not allowed in the store." Officer G. asked, "It was mailed Tuesday or Friday?" Mr. [REDACTED] said, "Thursday or Friday." Officer G. asked, "Of last week?" Mr. [REDACTED] said, "End of last week." Officer G. said, "Okay. That's the information you need." Ms. [REDACTED] said, "Okay." Mr. [REDACTED] then told Officer G. that he now needed trespassing paperwork. The video showed Ms. [REDACTED] heading

toward the door and Officer G. ignored Mr. [REDACTED]. On the video, Officer G. can be seen walking away while Mr. [REDACTED] is saying, "Sir! Sir?! Sir? Sir?" and finally loudly yelling, "Sir!" Officer G. started to put on his sunglasses, turned toward Mr. [REDACTED] and said, "Don't raise your voice to me. Do not raise your voice to me." Mr. [REDACTED] asks Officer G. something inaudible but Officer G. continues walking and said, "No." Officer G. got about half way to his car in the parking lot when Mr. [REDACTED] comes out and says something inaudible. Officer G. points at Mr. [REDACTED] and said loudly and in a commanding tone, "Go back inside! Go back inside!" Mr. [REDACTED] then yelled, "No, no, no, no, no. What is your name?" Officer G. directed Ms. [REDACTED] to leave the premises. Officer G. then turned back towards Mr. [REDACTED] and loudly said, "I escorted her here because of this reason. Because I know how you guys are because we've had several dealings with you guys. So I knew exactly what this situation was gonna happen." In the background you can hear Mr. [REDACTED] repeatedly asking in a loud voice, "What is your name sir? What is your name sir? Officer G. said loudly back, "You know who I am! You know who I am!" Mr. [REDACTED] yelled, "You do not make the law! What is your name?" Officer G. said, "This is a civil issue. She requested..." Mr. [REDACTED] yelled again, "What is your name?" Officer G. responded, "Don't yell at me." Mr. [REDACTED] asked again, "What is your name?" Officer G. responded, "Don't yell at me. I don't have to give you anything. Do not yell at me." The video showed Officer G. walking to his car trying to reach a Supervisor over his portable radio. Mr. [REDACTED] yelled something inaudible and Officer G. yelled back across the parking lot, "Go ahead! My Sergeant is on his way." He then tells Ms. [REDACTED], "I knew this was gonna happen." Officer G. then told Ms. [REDACTED] to leave the property. The video showed her driving away. Officer G. again tries to reach a supervisor on the radio. He does get ahold of a Supervisor and requests that the Supervisor meet with him at that location. Officer G. called the dispatcher and told the dispatcher that she would probably be getting a call from that location because the person was disruptive. The dispatcher responded that she already had contact from the business. The rest of the video showed Officer G. driving out of the parking lot and then waiting nearby for his supervisor to get there. The video ended shortly after that.

The video showed Officer G. did not yell at Mr. [REDACTED] when he was inside the business with Ms. [REDACTED] as Mr. [REDACTED] had alleged.

The video showed that Officer G. did not speak condescendingly to Mr. [REDACTED] when Officer G. asked when the check was mailed to Ms. [REDACTED]

The video showed that Officer G. did not yell at Mr. [REDACTED] or Mr. [REDACTED] while Officer G. was in the store.

Mr. [REDACTED] alleged that Officer G. told him that he volunteered for the call because Officer G. knew how Mr. [REDACTED] and Mr. [REDACTED] were. The video showed Officer G. showed that was not what Officer G. said.

A) The CPOA reviewed Standard Operating Procedure 3-14-2-C regarding Officer G.'s conduct, which states:

***It is the policy of the Albuquerque Police Department to respond to calls involving civil disputes primarily for the purpose of restoring order...The officer should advise the parties to seek legal advice and permit the courts to determine their respective rights to the property.***

The evidence in this case showed that this was entirely a civil matter. A woman had called the police in an effort to collect her last paycheck from the complainant and his business partner. The woman was not even present at the business that allegedly owed her money. The evidence showed that she was in the parking lot of a nearby business when she met with Officer G. There was no disorder to restore at that point. There was no immediacy that existed requiring a police presence. This was not a Domestic Violence dispute. The woman told Officer G. that she had been told that her last check had been mailed. The woman also told Officer G. that between the 20<sup>th</sup> of August and the 27<sup>th</sup> of August, she had called the business no less than six times inquiring about her check. The lapel video showed that the woman told Officer G. that if she did not get her final check, that she could file a complaint with the labor board to try to recover the wages owed to her. There were legal and institutional remedies available to the woman that did not involve the police. Officer G. should have not involved himself or the Albuquerque Police Department in this civil matter.

The CPOA finds Officer G.'s conduct to be **SUSTAINED**, where the investigation determined by a preponderance of the evidence that the alleged misconduct did occur.

B) The CPOA reviewed Standard Operating Procedure 1-04-1-F regarding Officer G.'s conduct, which states:

***Personnel shall conduct themselves both on and off duty in such a manner as to reflect most favorably on the department.***

The lapel video evidence showed that when Officer G. went to the business with the woman that at first he did stand back and not say anything. When one of the business owners asked Officer G. to issue a criminal trespass notice to the woman Officer G. inserted himself into the situation and became an active negotiator for the information that she was demanding of the business owner. The lapel video showed Officer G. pointing at the business owner and saying, "Okay, there's information that she needs from you guys and I'm not gonna do that unless you give her that information. That's not how..." Mr. [REDACTED] then said, "The check is mailed." Ms. [REDACTED] asks when the check was mailed and said that they never told her when it was mailed. Mr. [REDACTED] then appears in the camera range. Officer G. asked, "What date was it mailed?" Mr. [REDACTED] said, "It was mailed on Tuesday or Friday." Mr. [REDACTED] then told Officer G., "She's not allowed in the store." Officer G. asked, "It was mailed Tuesday or Friday?" Mr. [REDACTED] said, "Thursday or Friday." Officer G. asked, "Of last week?" Mr. [REDACTED] said, "End of last week." Officer G. said, "Okay. That's the information you need." Ms. [REDACTED] said, "Okay." Mr. [REDACTED] then told Officer G. that he now needed trespassing paperwork. The lapel video showed Officer G. ignored Mr. [REDACTED] the business owner, completely. The lapel video showed that Mr. [REDACTED] repeatedly called out to Officer G. and Officer G.'s only response at that time was, "Don't raise your voice to me. Do not raise your

voice to me." Mr. [REDACTED] is one of the owners of the business that Officer G. escorted the woman into. Officer G. took an active role in negotiating for the information that the woman sought. Mr. [REDACTED] was right to request to speak with the officer who had escorted a former employee into the business, yet Officer G. just ignored Mr. [REDACTED]. The video showed an ongoing yelling match across a parking lot between Mr. [REDACTED] and Officer G. which culminated in Officer G. refusing to provide his name telling Mr. [REDACTED], "I don't have to give you anything."

The lapel video showed that when Officer G. initially met with the woman in the Smith's parking lot, he told the woman about the business owners, "I don't know what their issue is but they don't even like law enforcement. And they are very rude people. They're very...they're not respectful, to anyone." He also said, "I already know how this guy is. He's had a couple of run-ins with me and my supervisor so he doesn't like me. I hate getting called back there." It was not professional conduct to make comments about the business owners to another person.

Even knowing that there was a high likelihood that there was going to be conflict at the business, Officer G. went ahead and went over there anyway on a purely civil matter.

The CPOA finds Officer G.'s conduct to be **SUSTAINED**, where the investigation determined by a preponderance of the evidence that the alleged misconduct did occur.

C) The CPOA reviewed Standard Operating Procedure 1-02-3 A regarding Officer G.'s conduct, which states:

***Officers shall cordially furnish their name and employee number to any person requesting such information when they are on duty or while acting in an official capacity...***

The lapel video evidence was clear. It showed Mr. [REDACTED] repeatedly asking Officer G. [REDACTED] for his name and Officer Garcia refused to provide it.

The CPOA finds Officer G.'s conduct to be **SUSTAINED**, where the investigation determined by a preponderance of the evidence that the alleged misconduct did occur.

Your complaint and these findings are made part of Officer G.'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 notice. Include your CPC number.
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 Albuquerque's Chief

Letter to Mr. [REDACTED] & Mr. [REDACTED]  
January 15, 2016  
Page 7

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/iro/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

Albuquerque Police Department



Gorden E. Eden, Jr., Chief of Police



January 28, 2016

Edward W. Harness, Esq., Executive Director  
Civilian Police Oversight Agency  
600 2<sup>nd</sup> NW  
Room 813  
Albuquerque, NM 87102  
505-924-3770

RE: CPC 160-15

Citizen: [REDACTED]  
Officer: A [REDACTED] G [REDACTED]

Dear Mr. Harness:

CPC 160-15 was re-reviewed and the recommendations for the non-concurrence are detailed below.

400 Roma NW

### 3-14 Civil Disputes

- *It is the policy of the Albuquerque Police Department to respond to calls involving civil disputes primarily for the purpose of restoring order.*

Albuquerque

### 3-14-2C Resolution Referrals

- *1. The officer should advise the parties to seek legal advice and permit the courts to determine their respective rights to the property.*

New Mexico 87102

www.cabq.gov

Upon re-review of the reports, video, CPOA investigation and statements it is clear that this call for service could have been handled in a more professional manner, that would have minimized the likelihood of a hostile interaction between the caller and the business owner. It is my opinion that after Officer G [REDACTED] spoke to the caller he should not have allowed her to enter the business with him. Officer G [REDACTED] has had previous interactions with Mr. [REDACTED] and knew, or should have known that escalation not de-escalation would result. I do believe that Officer G [REDACTED] should have entered the business without the caller to attempt to get Mr. [REDACTED]'s side of the story. However, had Mr. [REDACTED] begun to escalate, Officer G [REDACTED] could simply leave the business and inform the caller that she would have to seek resolution through the courts.

Officers do have a duty to respond to all calls for service and to provide a service that is satisfactory to all parties involved. Had Officer G [REDACTED] simply told the caller that he could not help her, this would likely have resulted in the caller filing a complaint also.

Officer G [REDACTED]'s choice of resolution fell short and for this reason I concur with the CPOA that this violation is **SUSTAINED**.

1-02-3 **Furnishing Name and Employee Number to the Public**

- A. *Officers shall cordially furnish their name and employee number to any person requesting such information when they are on duty or while acting in an official capacity except:*
- 1 *When withholding of such information is necessary for the performance of police duties.*
  - 2 *When authorized by proper authority.*

SOP section 1-02-3A requires officers to **CORDIALLY** furnish their name and employee number to any person requesting such information...

I do not believe that this would have been possible due to the situation and the elevated emotions displayed at the time. Officer G [REDACTED] did the next best thing by providing the information to Mr. [REDACTED] through his sergeant, M. M [REDACTED]. This in turn allowed the situation to de-escalate as required by the settlement agreement.

This call had escalated to a point that it was necessary for Officer G [REDACTED] and Mr. [REDACTED] to separate before other issues of concern arose. Even though Officer G [REDACTED] did not furnish his name and employee number immediately upon request, he did have his sergeant provide it for him. It is my opinion that this was the correct process in light of the DOJ Settlement agreement and the months of negotiations with the U.S. Attorney's Office for the District of New Mexico. The Albuquerque Police Department is said to have a culture of aggression and a pattern and practice of excessive use of force. Officer G [REDACTED] simply wanted the situation to de-escalate and to avoid any possibility for the use of force.

After re-review of the reports, video, CPOA investigation and statements, and taking into consideration the settlement agreement, the hundreds of hours spent working with the U.S. Attorney and DOJ Civil Rights Division, Washington D.C. I still believe that Officer G [REDACTED]'s action were correct and de-escalated the situation. I do not concur with the CPOA that this violation is sustained and stand by the original finding of **EXONERATED**.

Sincerely,



Robert I. Huntsman  
Assistant Chief of Police