

CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board *Joanne Fine, Chair* *Vice Chair, Vacant*
Johnny J. Armijo *Susanne Brown* *Eric H. Cruz*
Dr. William J. Kass *Valerie J. St. John* *Rev. Dr. David Z. Ring III*
Leonard Waites
Edward Harness, Executive Director

POLICE OVERSIGHT BOARD AGENDA

Thursday, October 12, 2017 – 5:00 PM
Vincent E. Griego Chambers

- I. Welcome and call to order.
- II. Pledge of Allegiance – *Dr. William J. Kass*
- III. Mission Statement – *Joanne Fine*

*“Advancing Constitutional policing and
accountability for APD and the Albuquerque
Community.”*
- IV. Approval of the Agenda
- V. Public Comments
- VI. Review and Approval of Minutes
- VII. Discussion:
 - a. Elect POB Vice Chair
 - b. Chief’s Letters
 - c. Citizens Police Academy
 - i. Ride along form
- VIII. Consent Agenda Cases:
 - a. Administratively Closed Cases
087-17 145-17 159-17
 - b. Cases investigated
089-15 035-17 110-17 142-17
 - c. CIRT Cases
- IX. POB’s Review of Garrity Materials
 - a. OIS I-50-15, I-119-14
- X. Reports from Subcommittees
 - a. Community Outreach Subcommittee – *Dr. Ring*
 - b. Policy and Procedure Review Subcommittee – *Dr. William Kass*
 - c. Case review Subcommittee – *Leonard Waites*
 - 1. Appeals
 - d. Personnel Subcommittee
 - i. Select Chair

ii. Director Evaluation

XI. Reports from City Staff

- a. APD**
 - 1. CIRT Case formatting update**
 - 2. OIS upload**
- b. City Council**
- c. Mayor's Office**
- d. City Attorney**
- e. CPOA – Edward Harness, Executive Director**

XII. Meeting with Counsel re: Pending Litigation or Personnel Issues:

Closed Discussion and Possible Action re: Pending Litigation or Personnel Issues

- a. Matters subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant pursuant to NMSA 1978, Section 10-15-1(H)(7); and**
- b. Limited personnel matters pursuant to NMSA 1978, Section 10-15-1(H)(2)**

XIII. Other Business

XIV. Adjournment- *Next Regularly scheduled POB meeting will be on November 9, 2017 at 5 p.m. in the Vincent E. Griego Chambers.*

(POB will be taking a dinner break prior to Committee Reports, if possible.)

CITY OF ALBUQUERQUE



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Edward Harness, Executive Director

October 13, 2017

Via certified mail

Re: CPC #089-15

Dear Ms.

Our office received the complaint you filed on June 4, 2015 against Officer T and Officer M. regarding an incident that took place through June 2, 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

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

Ms. [redacted] complained that an altercation occurred between herself and a neighbor. Ms. [redacted] stated she called police due to a juvenile spray painting mailboxes and sidewalks in the neighborhood. Ms. [redacted] stated she had called police prior to this date due to the issue being a continuous problem. Ms. [redacted] boyfriend, [redacted], observed the juvenile tagging and began following him until the juvenile entered a residence. Ms. [redacted] stated while they waited for police a man and woman came out of the residence and began arguing with them. Ms. [redacted] stated the male "got in her boyfriend's face" and she was afraid the situation would escalate. Ms. [redacted] stated she took her boyfriend's cell phone and began

recording the incident. At that time, Ms. _____ says the female from the residence ran up and slapped the phone out of her hand, also swiping the side of her face.

Ms. _____ stated the female, mother of the juvenile, told the boy to leave the premises prior to the police arriving. Ms. _____ stated the police did finally arrive and the parents told the officers the juvenile had left to calm down. Ms. _____ stated the officer said “haven’t we talked about this before” to the mother. Ms. _____ stated she told the officer that she and her boyfriend were verbally assaulted and that the phone was knocked out of her hand. Ms. _____ stated she felt assault, battery and damage to property occurred, yet the officers did nothing about it.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER T.'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 and reports regarding the incident.

A) The CPOA reviewed APD Standard Operating Procedure (SOP) 2-24-3 (B-1), which states:

Officers will conduct thorough preliminary investigations and forward their findings to the appropriate specialized unit for follow-up investigations.

Ms. _____ complained that she was assaulted, battered and a juvenile left the scene of a crime. Ms. _____ stated she felt the officers did nothing about the incident that had occurred.

The investigation showed that Officer T. and Officer M. were dispatched to a graffiti call. Upon arriving Officer T. made contact with Ms. _____. Ms. _____ informed Officer T. that she recorded the incident and the phone was slapped out of her hand and that she was hit in the face. Officer T. did a preliminary investigation in which there were no marks on Ms. _____ and no one at the scene corroborated the information that Ms. _____ had been hit in the face, even after speaking with Mr. _____ Ms. _____’s boyfriend. Officer T. did look at the cell phone and there was no damage. The investigation showed the entire incident was a misdemeanor out of Officer T.’s presence and without proof or corroboration he could not file assault or battery charges. Officer T. did file the appropriate paperwork regarding the juvenile by forwarding the case to juvenile probation. Officer T. followed up with his report to ensure juvenile probation contacted the juvenile and his family and they had.

The CPOA finds Officer T.’s conduct EXONERATED, where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures or training.

III. 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 and reports regarding the incident.

A) The CPOA reviewed APD Standard Operating Procedure (SOP) 2-24-3 (B-1), which states:

Officers will conduct thorough preliminary investigations and forward their findings to the appropriate specialized unit for follow-up investigations.

Ms. _____ complained that she was assaulted, battered and a juvenile left the scene of a crime. Ms. _____ stated she felt the officers did nothing about the incident that had occurred.

The investigation showed that Officer T. and Officer M. were dispatched to a graffiti call. Upon arriving Officer M. made contact with the mother of the alleged juvenile committing the crime. The investigation showed Officer M. never made contact with Ms. _____ and determined by his and Officer T.'s preliminary investigation that the offense was a misdemeanor out of their presence. Officer M. along with Officer T. filed the appropriate report and forwarded that report to juvenile probation as per policy.

The CPOA finds Officer M.'s conduct EXONERATED, where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures or training.

Your complaint and these findings are made part of Officer T.'s and Officer M.'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.

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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Leonard Waites
Edward Harness, Executive Director

October 13, 2017

Gorden Eden Jr., Chief of Police
C/O Internal Affairs Unit
Albuquerque Police Department
400 Roma NW
Albuquerque, NM 87102

Re: CPC # 035-17

Dear Chief Eden:

I do not concur with the investigative findings in this case. After my review of the investigation; I find the allegations against the officer should be **UNFOUNDED**.

PO Box 1293

This conclusion is reached because I find the complainant not credible. This complainant was so fearful that her son was being abused by his Father (during the divorce), yet ultimately she abandoned her son giving full custody to the officer so she could go marry her new man in Hawaii. The medical records indicate suspicions the complainant suffered from a possible mental disorder. Therefore, I do not concur with IA findings of not sustained.

Albuquerque

NM 87103

Please ensure the findings are placed in the officer's retention file.

Please contact me if there are questions or concerns.

www.cabq.gov

Sincerely,

Edward Harness, Esq.
Executive Director
Civilian Police Oversight Agency
(505) 924-3770

Findings

1. Did [REDACTED] W [REDACTED] comply with Albuquerque Police Department General Orders 1-1-4B(2), which mandates:

1-1-4 Rules of conduct.

B. Compliance with Laws, Rules, and Regulations.

2. Personnel will obey all federal, state, and local laws, rules, and regulations, and enforce those lawful directives while protecting the rights of individuals, as established in the constitution of the United States and the Constitution of the state of New Mexico. This includes, but is not limited to, obeying all felony, misdemeanor, and traffic laws, and local ordinances, as well as all lawfully issued civil orders of any jurisdiction.

This violation would be a sanction 1-7.

After reviewing the facts of this case, there is no evidence to support the allegations made by [REDACTED] against Officer [REDACTED] W [REDACTED]. At this time there is no evidence to prove or disprove Officer Ward committed domestic violence against his wife at the time. There is no evidence that shows that Officer W [REDACTED] committed child abuse. After many CART exams and visits to UNMH pediatric emergency room and After Hours Pediatric clinic, no medical physician was able to find any evidence of child abuse. The Internal Affairs Section that this issue to be:

“NOT SUSTAINED” which means the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred.

2. Did [REDACTED] W [REDACTED] comply with Albuquerque Police Department General Orders 1-1-4B(7)(a), which mandates:

1-1-4 Rules of conduct.

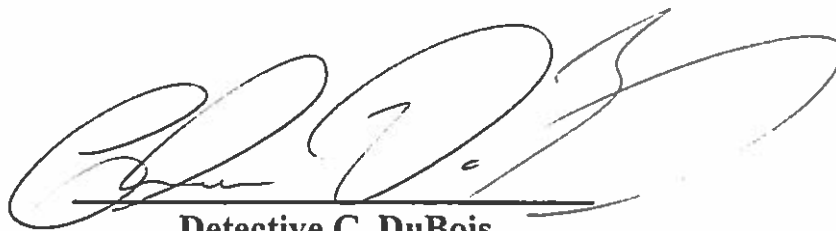
B. Compliance with Laws, Rules, and Regulations.

7. Personnel will conduct themselves both on duty and off duty in a manner that reflects favorably on the department. Conduct unbecoming an officer or employee of APD includes:
- a. Conduct that could bring disrepute, shame, dishonor, disgrace or embarrassment to the department.

This violation would be a sanction 5-6.

After reviewing the facts of this case, there is no evidence to support any allegations of misconduct against Officer W [REDACTED]. It appears he and [REDACTED] were in the midst of a contentious separation/custody battle. At this point in time of the investigation the Internal Affairs Section finds this issue to be:

“NOT SUSTAINED” which means the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred.



**Detective C. DuBois
Internal Affairs Section**

CITY OF ALBUQUERQUE



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Rev. Dr. David Z. Ring III

October 13, 2017
Via Certified Mail

Re: CPC #087-17

Dear Mr:

Our office received the complaint you filed on April 14, 2017 against an unknown Albuquerque Police Department (APD) Officer with the last name beginning with "L." regarding an incident which occurred on April 12, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

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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.

www.cabq.gov

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.

I. THE COMPLAINT

Mr. _____ said he was at St. Martin's shelter when this unknown Officer L. arrived. He complained Officer L. was cussing belligerently, intimidating shelter clients and physically assaulted him and four other citizens without provocation. He complained that Officer L. didn't make any arrests because he was the only one committing crimes. He complained that he asked Officer L. for his name and badge number but Officer L. refused to give it to him. Mr. _____ complained that instead of providing this information, Officer L. wrenched his arm for no reason and called him a white American piece of garbage and said he'd be hung in his country. Mr. _____ alleged that Officer L. was high on steroids and is a radical Muslim terrorist.

II. THE INVESTIGATION

A CPOA Investigator reviewed your complaint and attempted to contact you for more information in an effort to correctly identify Officer L.; however was unable to contact you. As a result, a CADS search was requested for the date and time you provided, which was April 12, 2017 at 3:00 PM. and two related CADS were obtained () and (). These CADS showed that 4 APD officers and two APD Sergeants (Sgt.) responded to a call at St. Martin's during that time, to include an Officer with the last name beginning with the letter "L". The CADS showed the incident involved two male subjects fighting and one of the males had a knife in his back pocket. The CADS showed no arrests were made and at least one subject was checked out by medical personnel but that subject ultimately refused transport to a hospital.

The CPOA Investigator learned that the Manager of St. Martins remembered that on April 14, 2017, that you, Mr. (), were one of the two parties involved in the fight to which APD officers, to include Officer L., responded and this fight involved one of the subjects possessing a weapon. The Manager also remembered that you left the shelter that day before APD officers arrived on scene. The Manager said you are a frequent guest of the shelter and you were involved in another fight with another guest involving a weapon. Lastly, the Manager said you have a history of filing complaints on police officers in an effort to get them in trouble.

III. CONCLUSION

Based on the aforementioned information, the CPOA has made the decision to **ADMINISTRATIVELY CLOSE** your complaint because no APD SOPs were violated as a result of the incident.

Administratively closed complaints may be re-opened if additional information becomes available. Please contact the CPOA in regards to your Civilian Police Complaint if you can provide further details and wish to have the complaint re-opened.

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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Edward Harness, Executive Director

October 13, 2017

Via Certified Mail

Re: CPC #110-17

Dear Mr.

Our office received the complaint you filed on April 12, 2017 against Officers M. and A. of the Albuquerque Police Department (APD) regarding an incident that occurred on April 10, 2017. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

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.

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.

I. THE COMPLAINT

Mr. _____ said that on April 10, 2017, he was involved in a vehicle accident at Juan Tabo and Haines and two unknown Albuquerque Police Department (APD) Officers responded. These officers were later identified as Officer M. and Officer A.. Mr. _____ complained that the officers failed to interview him and get his side of the story and they failed to remain on scene until both vehicles were removed from the scene. He added that their failure to remain on scene left the tow truck driver without any traffic control, which could have caused another accident. He said Officer #1 (Officer M.) left the scene before Officer #2 (Officer A.) and complained that Officer A. said he was leaving because it was too

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hot outside. Mr. [redacted] also complained that the accident report was incorrect regarding his direction of travel.

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; the accident report; the interviews, and lapel video.

A) The CPOA reviewed APD SOP 2-46-4(A)(2)(h), which states:

2-46-4 RESPONSE TO TRAFFIC CRASHES PROCEDURES

A. Reported or Observed Traffic Crash

2. First Responding Officer and/or PSA will take these actions:

h. Ensure removal of vehicles and debris from the roadway.

Mr. [redacted] said he was involved in a vehicle accident and Officer M. failed to remain on scene until both vehicles were removed from the scene, which could have caused another accident.

The complaint, the CADS report, the police report, interviews with the complainant, a witness, and the two officers, and the lapel video were reviewed. The evidence revealed that Officers M. and A. responded to the vehicle crash. When they arrived they observed Mr. [redacted] vehicle on the median between the sidewalk and the post office parking lot; hence off the roadway, while the second involved vehicle remained in the roadway. A tow truck was requested by the officers for the second vehicle involved and Mr. [redacted] requested a private tow from one of his friends. The CADS showed the private tow was requested at 15:31 hours. Mr. [redacted] first friend could not respond so Mr. [redacted] called another friend to tow it. As Mr. [redacted] waited for his tow truck to arrive, the tow requested by the officers arrived on scene and towed the second vehicle out of the roadway. The evidence showed that Officer M. cleared the scene at 16:00 hours to respond to a Priority 1 Domestic Dispute call (see CADS [redacted]).

The CPOA finds Officer M.'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.

B) The CPOA reviewed APD SOP 2-46-4(A)(3)(a), which states:

2-46-4 RESPONSE TO TRAFFIC CRASHES PROCEDURES

A. Reported or Observed Traffic Crash
3. Investigation Responsibility

- a. The responsibility for conducting the investigation and submitting reports shall rest with the first patrol or traffic officer dispatched to handle the crash unless otherwise specified in this section.**

Mr. _____ complained that Officer M. was negligent in his duties because he didn't ask Mr. _____ for his side of the story.

The lapel video showed Officer M. contacted Mr. _____ upon his arrival and asked Mr. _____ what happened, and obtained his version of events.

The CPOA finds Officer M.'s conduct **UNFOUNDED** regarding the allegation of a violation of this SOP, which means the investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer.

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

A) The CPOA reviewed APD SOP 2-46-4(A)(2)(h), which states:

2-46-5 RESPONSE TO TRAFFIC CRASHES PROCEDURES

B. Reported or Observed Traffic Crash

4. First Responding Officer and/or PSA will take these actions:

- h. Ensure removal of vehicles and debris from the roadway.**

Mr. _____ said he was involved in a vehicle accident and Officer A. failed to remain on scene until both vehicles were removed from the scene, which could have caused another accident.

The aforementioned evidence revealed that Officers A. and M. responded to the vehicle crash and when they arrived they observed Mr. _____ vehicle on the median between the sidewalk and the post office parking lot; hence off the roadway, while the second involved vehicle remained in the roadway. A tow truck was requested by the officers for the second vehicle involved and Mr. _____ requested a private tow from one of his friends. The CADS showed the private tow was requested at 15:31 hours. Mr. _____ first friend could not respond so Mr. _____ called another friend to tow it. As Mr. _____ waited for his tow truck to arrive, the tow requested by the officers arrived on scene and towed the second vehicle out of the roadway. Officer M. cleared the call due to a Priority 1 call and Officer A.

remained on scene to wait with Mr. [REDACTED] for the second tow, but left at 16:23 hours due to other calls for service. When Officer A. left, Mr. [REDACTED] vehicle was still out of the roadway and not a traffic hazard.

The CPOA finds Officer A.'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.

B) The CPOA reviewed APD SOP 2-46-4(A)(3)(a), which states:

2-46-5 RESPONSE TO TRAFFIC CRASHES PROCEDURES

B. Reported or Observed Traffic Crash

5. Investigation Responsibility

- a. The responsibility for conducting the investigation and submitting reports shall rest with the first patrol or traffic officer dispatched to handle the crash unless otherwise specified in this section.***

Mr. [REDACTED] complained that Officer A. was negligent in his duties because he didn't ask Mr. [REDACTED] for his side of the story.

The lapel video showed Officer A.'s partner, Officer M., contacted Mr. [REDACTED] upon his arrival and asked Mr. [REDACTED] what happened, and obtained his version of events. Officer M. then gave this information to Officer A. for his report.

The CPOA finds Officer A.'s conduct **UNFOUNDED** regarding the allegation of a violation of this SOP, which means the investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer.

C) The CPOA reviewed APD SOP 2-60-4(A)(5)(f), which states:

2-60-4 PRELIMINARY AND FOLLOW-UP CRIMINAL INVESTIGATIONS PROCEDURES

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.

Mr. complained that the accident report was inaccurate about his direction of travel.

The evidence showed that in his original report Officer A. wrote that both drivers were traveling northbound on Juan Tabo; however he later submitted a supplemental report to correct the mistake.

The CPOA finds Officer A.'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 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 that Officer A. left the scene because it was "too hot outside."

There is no video evidence to prove whether, or not these allegations are truthful; however, the April 2017 Weather Summary from the National Weather Service reported the average temperatures in Albuquerque in April 2017 to have been 57 degrees Fahrenheit (see: <http://www.weather.gov/abq/climonhighapr2017wxsum>).

The CPOA finds Officer A.'s conduct **UNFOUNDED** regarding the allegation of a violation of this SOP, which means the investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer.

Your complaint and these findings are made part of Officer M.'s and Officer A.'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,

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- 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

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Valerie St. John

Vacant, Vice Chair

Eric H. Cruz

Rev. Dr. David Z. Ring III

October 13, 2017

Anonymous

Re: CPC #142-17

Dear Anonymous:

Our office received the complaint you filed on July 28, 2017 against Officer O. regarding an incident that took place through June and July of 2017. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

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.

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.

I. THE COMPLAINT

Anonymous complainant wrote that Officer O., an Aviation Police Officer assigned at the Sunport, would not leave her alone. The complainant stated she met Officer O. through a Craigslist personals ad she posted and Officer O. answered. The complainant stated she and Officer O. started talking and then met in person while Officer O. was on duty and that they engaged in sexual relations. The complainant stated Officer O. told her he knew where to meet where there were no cameras and the location was in the area of the Sheraton Hotel by the airport. The complainant stated Officer O. met her in his marked police unit, in full uniform while on duty on 2 occasions to have sexual intercourse. The complainant stated on the second occasion Officer O. was rough with her and that he slapped her, put his hands around her neck and left bruises, however the complainant stated it was consensual. The complainant stated that she and Officer O. were together approximately 3 hours on July 4, 2017 and after they had sex Officer O. got a call from his Sergeant to check an open trunk on a vehicle.

The complainant stated Officer O. put an “app” on his city owned work computer so that they could communicate back and forth while Officer O. was working. The complainant stated she had numerous photos of Officer O. and she did provide those to Sergeant H. The photos show Officer O. in full uniform with his penis out of his pants. Sergeant H. noted in the complaint that some of the pictures appear to be at the Sunport restrooms, which he detailed the tiles in those restrooms.

The complainant stated she is now pregnant by Officer O. and she would like him to leave her alone. The complainant stated she knew Officer O. was married and contacted Officer O.’s wife to apologize. The complainant stated Officer O. sees her drive by on University and messages her through the “app” on his computer. The complainant is fearful of Officer O. because she does not know what he will do, she stated he is emotional and is worried about his family and his job.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER O.'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 and its attachments and the Unit History of Officer O.

A) The CPOA reviewed APD Standard Operating Procedure (SOP) 1-1-4 (D-2), which states:

Personnel will not engage in any activity or personal business that may cause them to neglect or be inattentive to their official duties, or create an actual or potential conflict of interest with their employment at the Department.

The anonymous complainant stated she met with and engaged in sexual activities with Officer O. while he was on duty. The investigation showed that sexual activities and non-sexual activities did occur between the complainant and Officer O. while Officer O. was on duty, in uniform and logged in during his regularly scheduled work hours. The investigation showed that on more than two occasions these meetings lasted approximately two to three hours. Officer O. neglected his duties to engage in these meetings with the complainant and clearly lead to a dereliction of duty due to the fact Officer O.’s supervisor was to presume Officer O. was conducting patrols of his assigned beat area.

The CPOA finds Officer O.’s conduct **SUSTAINED**, where the investigation determines, by a preponderance of the evidence that the alleged misconduct did occur.

B) The CPOA reviewed APD Standard Operating Procedure (SOP) 1-1-4 (B-7 a.), which states:

Personnel will conduct themselves both on and off duty in a manner that reflects favorably on the Department. Conduct unbecoming an officer or employee of APD includes:

a. Conduct that could bring disrepute, shame, dishonor, disgrace or embarrassment to the Department.

The anonymous complainant stated sexual activities and meetings occurred while Officer Michael O. was on duty, in uniform and that Officer O. would arrive at a location where he knew there were no cameras. The complainant stated Officer O. would arrive in his marked police vehicle during these encounters. The complainant provided graphic photographs of Officer Michael O. in full uniform with the Albuquerque Police Department insignia and his badge of office and name tag appearing in the photographs. In several of the photographs, Officer O.'s penis is out of his uniform pants. The investigation showed that some of these photographs were taken while on duty in Officer O.'s assigned work area, in particular, the restroom of the Albuquerque Sunport. The actions Officer O. involved himself in while on duty could clearly bring disrepute, shame, dishonor and disgrace to the Albuquerque Police Department.

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

C) The CPOA reviewed APD Standard Operating Procedure (SOP) 2-5-3 (K-3), which states:

All employees assigned an APD vehicle will exercise good judgement in utilizing it, and will not drive or use the vehicle so as to cause unfavorable comment or reflect discredit on the Department.

The anonymous complainant stated that during her and Officer O.'s meetings, Officer O. would arrive on duty in his marked police unit. The investigation showed that Officer O. did use his police vehicle, while on duty to arrive and park in a secluded area. During these meetings the investigation showed that Officer O. engaged in sexual and non-sexual activities while his marked police unit was next to the vehicle the encounters were occurring in. This type of behavior could cause unfavorable comment and reflect poorly upon the department.

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

D) The CPOA reviewed APD Standard Operating Procedure (SOP) 2-9-4 (F-2), which states:

Personal software, games or any software not related to city business will not be loaded on department-owned computers. Violations will immediately be reported to a supervisor.

The anonymous complainant stated that Officer O. downloaded an application (app) to his work computer for the purpose of communicating with each other. The investigation showed that Officer O. utilized an app called Blue stacks, which allowed his computer to

communicate like an android device. The investigation showed Officer O., utilizing Blue stacks was then able to download the app KIK in which Officer O. communicated via messaging with the complainant. The investigation showed these messages were sexually graphic in content and also included sexually graphic photographs received by Officer O.

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

D) The CPOA reviewed APD Standard Operating Procedure (SOP) 1-1-4 (E-10)), which states:

Retaliation by any member of the Department is expressly prohibited. Retaliation includes intentional adverse conduct towards any individual or group not otherwise authorized by law or policy in response to the individual or group.

Retaliation includes, but is not limited to, threats, intimidation, coercion, or other adverse action against any person in the workplace or community.

The anonymous complainant stated Officer O. would not leave her alone after the conclusion of their extra-marital affair. The complainant stated she became pregnant from Officer O. and once he was aware of this, Officer O. would continue to communicate through the KIK app attempting to talk with her. The complainant stated Officer O. would see her going to work on University Avenue and would then try to message her.

The computer of Officer O. was seized by the investigator. The investigator attempted to contact the Regional Computer Forensics Laboratory (RCFL) to forensically image Officer O.'s computer. Commander M. of the Albuquerque Police Department, also holds a supervisory role at the RCFL, informed the investigator that RCFL would no longer conduct computer forensics for the Civilian Police Oversight Agency. The investigator also contacted the City of Albuquerque IT department and was informed they would not know how to conduct that type of imaging. Due to the lack of available resources the investigator could not determine if the messages continued in attempts to contact the complainant by Officer O.

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

Your complaint and these findings are made part of Officer O.'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.

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

Civilian Police Oversight Agency
EXECUTIVE DIRECTOR'S
Recommendation Form

Employee Involved: Aviation Police Officer [REDACTED] O. [REDACTED]

SOP Violation(s): 1-1-4(D-2), 1-1-4(B-7.a.), 2-5-3(K-3), 2-9-4(F-2), 1-1-4(E-10)

Date and Time of Incident: 07/04/2017 at 1:00 p.m.

Investigating Officer: Chris Davidson

Date Investigation Completed: 9/19/17

Completed Case Reviewed by _____ Date: _____

Date to A/C: _____ Date Returned From Chief's Office: _____
Date to CPOA: _____ Date Returned From CPOA: _____

- 1. **Sustained** The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred 1-1-4(D-2), 1-1-4(B-7.a.), 2-5-3(K-3), 2-9-4(F-2)
- 2. **Not Sustained** The investigation was unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred. 1-1-4(E-10)
- 3. **Sustained Violation not based on original complaint** The investigation determined, by a preponderance of the evidence, that misconduct occurred that was not alleged in the original complaint but discovered during the investigation ----->
- 4. **Unfounded** The investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer ----->
- 5. **Exonerated** The investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training: ----->
- 6. **Administratively Closed** The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, ----->

7. **FIREARM DISCHARGE** Will be classified as:
 JUSTIFIED UNJUSTIFIED ACCIDENTAL

RECOMMENDATIONS

- NO DISCIPLINARY ACTION VERBAL REPRIMAND
 - WRITTEN REPRIMAND SUSPENSION 80 HOURS
 - TERMINATION OTHER: _____
- 1 CLASS 7 1st - 1 CLASS 6 1st, 2 CLASS 5 2nd

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board

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Dr. William J. Kass

Leonard Waites

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Joanne Fine, Chair

Susanne Brown

Valerie St. John

Vacant, Vice Chair

Eric H. Cruz

Rev. Dr. David Z. Ring III

October 13, 2017

Via certified mail

Re: Citizen Police Complaint 145-17

Dear Mr. _____

On May 1, 2017 we received a complaint that you mailed to our office.

I. THE COMPLAINT

You complained that on March 2, 2017 you were sitting inside a Recreational Vehicle (RV) that was parked in front of 705 Colombia. You wrote in your complaint that you were visiting a friend of a family member in the RV, when APD Officers knocked on the door a few times. You alleged that the officers just entered the RV without announcing they were coming in and they made entry without having a valid warrant or exigent circumstances to enter the RV. You stated in your complaint that the APD Officers were checking out a complaint that the RV had been parked there for some time. You complained that the officer's entry to the RV was a violation of your 4th Amendment rights. You requested that the officers be disciplined. You also stated in your complaint that you wanted to file a tort claim, that you want all charges filed against you dismissed, and that you wanted a copy of our response to your complaint. Your complaint was assigned to a CPOA Investigator for investigation.

II. THE INVESTIGATION

The CPOA Investigator sent you a certified letter to notify you that your complaint was going to be investigated and that you would be interviewed. When you filed your complaint you were incarcerated at the Metropolitan Detention Center. They sent the letter back saying that you were no longer in custody. The CPOA Investigator conducted a preliminary investigation into the matter by obtaining copy of the Computer Assisted Dispatch (CAD Report), a copy of the police report, and a copy of one of the responding officer's lapel video camera recording of the encounter. The CAD report showed that a man called the APD on the day you were

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arrested to complain that people had been living in that RV and that the people living in the RV had been throwing trash in the caller's back yard. When the man went out to get the license plate off the RV, one of the occupants of the RV covered the license plate with cardboard. The police report indicated that an officer arrived and the officer knocked on the door of the RV. The report indicated that you came out of the RV. You told the officer that the RV belonged to a friend. The officer ran your information that you provided to him through NCIC and the information returned that you had two outstanding felony warrants and an outstanding misdemeanor warrant. You were arrested and searched and then booked without incident. The arresting officer told the CPOA Investigator that neither he, nor his assisting officer, entered the RV to make contact with you. Both officers indicated that you came out of the RV on your own. There was no one else in the RV but you. The arresting officer's lapel video showed that you were contacted outside the RV.

III. CONCLUSION

The preliminary investigation into your complaint showed that you were the only one in the RV when the officers knocked and announced their presence. You came out of the RV and provided the officers with your identifying information. You were wanted by another jurisdiction on two felony warrants and one misdemeanor warrant. The investigation showed the officers did not enter the RV as you alleged. Our office has no authority to dismiss charges and you were not charged as a result of this incident. APD cannot drop charges against you that were filed in another jurisdiction. You may file a tort claim with the City of Albuquerque's Risk Management Division if you so desire. Because the preliminary investigation showed that there was no Standard Operating Procedure violation committed by the responding officers, we are Administratively Closing your complaint and no further investigation into the matter will take place. Administratively Closed complaints may be re-opened if additional information becomes available.

Sincerely,



Edward Harness, Esq.
Executive Director
(505) 924-3774

CC: Albuquerque Police Department, Chief of Police

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board

Johnny J. Armijo

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Joanne Fine, Chair

Susanne Brown

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Vacant, Vice Chair

Eric H. Cruz

Rev. Dr. David Z. Ring III

October 13, 2017
Via Certified Mail

Re: CPC #159-17

Dear Mr.

Our office received the complaint you filed on May 26, 2017 against unknown Albuquerque Police Department (APD) Officers regarding an incident which occurred on May 28, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

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.

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.

I. THE COMPLAINT

Mr. _____ filed an extensive complaint against APD and the New Mexico District Attorney's Office (NMDAO). In his complaint, he essentially stated that he was arrested as a juvenile on May 28, 2016 on Armed Robbery charges and was ultimately found to be incompetent to stand trial. He complained that APD officers arrested the wrong person and arrested him on false charges, which ultimately lead to false imprisonment. He complained officers would not allow him to obtain video surveillance, which would have shown he was incorrectly identified. He complained this action was a deprivation of his rights and caused double jeopardy. He complained of "racial and hate discrimination" and said he was treated in a biased fashion.

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In addition to his complaints against APD, Mr. [REDACTED] lodged a complaint against the NMDAO for “procuring an indictment on false charges, false identifying the characteristics within the discovery that clearly shows that it is the wrong person to whom is being falsely accused for this crime in this case that occurred on/around February 14, 2016.” Additionally, he claimed the NMDAO defamed, slandered and assassinated his character as his case was shown in the news. (See original complaint for more details.)

II. THE INVESTIGATION

A CPOA Investigator reviewed your complaint and read police reports, CADS reports, and court documents related to the cases you mentioned in your complaint. The evidence showed that on February 9, 2016, two young African-American males were involved in a robbery of a handgun from an 86-year-old man as he was leaving Ron Peterson’s Guns .

An investigation into this robbery and a separate shooting investigation involving Mr. [REDACTED] brother, [REDACTED], resulted in the positive identification of [REDACTED] as the suspect in this robbery. After having been positively identified as a suspect in this crime, [REDACTED] was ultimately arrested and the case was forwarded to the Bernalillo County Juvenile District Attorney’s Office for review and prosecution.

On May 29, 2016, [REDACTED] was arrested on three separate charges: Battery Against a Household Member, Domestic Violence and Criminal Damage Under \$1000

[REDACTED]. He was booked into the Metropolitan Detention Center and then on February 20, 2017, the charges were dismissed by the Prosecutor – Prosecution Unable to Proceed, and Michael was found not guilty of these charges.

On November 22, 2016, [REDACTED] was arrested on three separate charges of felony Child Abuse and one felony charge of Embezzlement of a Motor Vehicle. As of June 1, 2017, the Court ordered a Competency Psychiatric/Diagnostic Evaluation of [REDACTED]. As of the writing of this letter, this case is still pending and there is a Compliance Hearing scheduled for September 20, 2017 and a Status Conference scheduled for October 4, 2017.

III. CONCLUSION

Based on the aforementioned information, the CPOA has made the decision to **ADMINISTRATIVELY CLOSE** your complaint because no APD SOPs were violated as a result of the incident. Additionally, the CPOA does not have jurisdiction over the Bernalillo County District Attorney’s Office so we are unable to address your allegations/complaint(s) against them. Please contact their office directly in order to learn how to file a grievance against them.

Administratively closed complaints may be re-opened if additional information becomes available. Please contact the CPOA in regards to your Civilian Police Complaint if you can provide further details and wish to have the complaint re-opened.

Letter to Mr. --- , CPC 159-17
October 13, 2017
Page 3

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