

**CIVILIAN POLICE OVERSIGHT AGENCY**

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

**POLICE OVERSIGHT BOARD AGENDA**

Thursday, November 10, 2016 – 5:00 PM  
Vincent E. Griego Chambers

- I. Welcome and call to order.
- II. Pledge of Allegiance – *Johnny Armijo*
- III. Mission Statement – *Beth Mohr*  

*“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. Status Conference with Judge Brack
  - b. Monitor’s Report
    - i. Discussion of the Monitor’s redacted report
  - c. Letters to the Chief
  - d. POB Communicating through APD
- VIII. Hearings on Request for Reconsideration: CPC 251-15
- IX. Consent Agenda Cases:
  - a. Administratively Closed Cases  
247-15     011-16     106-16     129-16     133-16  
135-16
  - b. Cases investigated  
075-16     083-16     107-16     114-16     123-16  
127-16     131-16
  - c. CIRT Cases  
C-006-16
- X. POB’s Review of Garrity Materials
- XI. Reports from Subcommittees
  - a. Community Outreach Subcommittee – *Dr. Ring*
    - i. Next meeting date is November 28, 2016 from 5 p.m. to 6 p.m.

- b. Policy and Procedure Review Subcommittee – *Susanne Brown***
  - i. Selection, Authority, and Responsibility of the Chief of Police Policy 3-1**
  - ii. APD’s Protocol or policy for processing rape kits**
- c. Case review Subcommittee – *Leonard Waites***
  - i. Appeals**
    - 1. CPC 081-16**
    - 2. CPC 121-16**

**XII. Reports from City Staff**

- a. APD**
- b. City Council**
- c. Mayor’s Office**
- d. City Attorney**
- e. Community Policing Councils**
- f. CPOA – *Edward Harness, Executive Director***
  - i. 2017 POB Meeting Dates**
    - 1. Select a May 2017 date**
    - 2. IA Pro**

**XIII. Meeting with Counsel re: Pending Litigation & Personnel Issues:**

**Closed Discussion and Possible Action re: Pending Litigation & 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)**

**XIV. Other Business**

- a. CABQ email for POB Members**

**XV. Adjournment- *Next Regularly scheduled POB meeting will be on December 8, 2016 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



## CIVILIAN POLICE OVERSIGHT AGENCY

**Police Oversight Board**    *Beth Mohr, Chair*

*Johnny J. Armijo*

*Dr. Susanne Brown*

*Joanne Fine*

*Dr. Carlotta A. Garcia*

*Rev. Dr. David Z. Ring III*

Edward Harness, Esq., Executive Director

*Leonard Waites, Vice Chair*

*Eric H. Cruz*

*Dr. Lisa M. Orick-Martinez*

November 14, 2016

Via certified mail

**Re:    Citizen Police Complaint 247-15**

Dear Ms.

On December 16, 2015, at about 11:30 PM, APD Officer T., and APD Officer H, were dispatched to your home in reference to a disturbance and a fight in progress. A ten year old child in the home had called the police to report that you and the child's Aunt were in a fight and that it sounded violent. When Officers arrived on scene, you could still be heard screaming. The neighbors, who also heard you screaming, directed the officers to your home. The officers lapel video showed that everyone in the apartment, except you, were cooperative with the officers. The lapel video showed that you were irate and continued shouting. You appeared to be extremely intoxicated and you refused to acknowledge any of the officer's directives. Officer T. repeatedly tried to get your attention by speaking with you and he shined his flashlight on you. The lapel video showed you slapping Officer T.'s hand in a downward motion. The officer pushed you back but still tried to calm you down. You did not calm down and you remained agitated as Officer T. tried to control your hand movements. The lapel video showed that the officer held you with your back against the wall and you then balled your fist and threatened to punch Officer T. in the face. Your husband intervened and assisted Officer T. in sitting you down on the couch. You continued shouting at Officer T. and Officer T. exited the room to speak with the woman whom you were physically fighting prior to the officer's arrival. While Officer T. was in the other room, you continued to shout and you threatened that you were going to shoot Officer T. in the face. When Sergeant T. arrived on scene, you told her that you wanted to complain against Officer T. and Officer H. and that you had been injured by Officer T.'s actions. You showed Sergeant T. what appeared to be a small rug burn on your left knee. Sergeant T. summoned a Rescue Unit to check your alleged injury but you refused to speak with the Emergency Medical responders. A Field Investigator (FI) from the APD did photograph your injury. You were then arrested and booked for battering Officer T.

The complaint was filed by Sergeant T. on your behalf. Sergeant T. conducted a thorough and comprehensive investigation into the matter and determined that there was no way that you could have received the injury to your knee as the result of any officer action.

PO Box 1293

Albuquerque

New Mexico 87103

[www.cabq.gov](http://www.cabq.gov)

## I. THE COMPLAINT

When you complained to Sergeant T., you stated that your cousin had come to your house and for no reason the two of you began to fight in the living room. You stated that your cousin held you down and that when the officers arrived the two of you were separated. You later changed your statement and told Sergeant T. that the officers did not separate you. You stated that you were “manhandled” by the officer but you did not elaborate further. The lapel video showed that you accused Officer T. of throwing you to the ground. You then stated that Officer T. threw you against the wall. You later accused Officer H. of throwing you to the ground. You also stated that you were thrown to the couch by one or both of the officers. You told Officer H. that the officers held you on the ground so your cousin could beat you up. You stated that the officers treated you “like a man” but you did not elaborate on that statement when Sergeant T. asked you about it.

## II. THE INVESTIGATION

Even though the video and the evidence showed that you were extremely intoxicated, you denied consuming alcohol. Sergeant T. gave you a complaint packet so that you could fill out a written statement in your own words as to how you were treated by the officers but you refused to provide a written statement to Sergeant T.

Sergeant T. interviewed [redacted] told Sergeant T. that he was at work when he received a call from your cousin and your cousin asked him if he was coming home. [redacted] stated as he was driving home, he saw the police entering the apartment complex. [redacted] believed that the police were going to your apartment. [redacted] stated that as he entered the apartment, he saw your cousin holding you down on the ground and you were trying to fight her off. [redacted] said that he separated you and your cousin but you continued to shout obscenities and you were upset. [redacted] told Sergeant T. that you were more intoxicated than usual and he believed that the alcohol was the reason why you were so irate. [redacted] said that he was somewhat successful in trying to get you to calm down. [redacted] never said anything to Sergeant T. about any officer throwing or pushing you around.

Sergeant T. interviewed [redacted]. She told Sergeant T. that she had gone to your home because she had received a call from your ten year old son. He called [redacted] because he was afraid of you. When [redacted] arrived to check on your son, she noticed that you were extremely intoxicated. She said that you were calling your son “stupid” and you directed profanity at him. [redacted] said that when she intervened to stop the verbal abuse, you became aggressive with her and you tried pushing past her so you could get to your son who was now in his room. [redacted] said that she held you back and pushed you down on the couch and tried to hold you there but you responded by pulling her hair and wriggled out of her hold. The two of you continued to fight on the floor of the living room until [redacted] arrived and separated the two of you. While [redacted] spoke to you, [redacted] went to stay with [redacted]. [redacted] stated that she did not witness any interaction between you and the police officers.

Sergeant T. interviewed your son. He said that you consumed between 7 and 9 shots of liquor and that you were very drunk. He told Sergeant T. that he was afraid of you and that you were

shouting at him. That was when he called \_\_\_\_\_ over to the house. It was your son who called the police when he saw you fighting and hitting \_\_\_\_\_. He had gone to his room and stayed there and he did not see the initial interaction between you and the police officers who responded to your home.

Sergeant T. and the CPOA Investigator also reviewed Officer T.'s and Officer H.'s lapel videos. Neither video showed either officer throwing you against the wall, the ground, the couch, or any other object. Neither video showed officers holding you down so your cousin could beat you up. Additionally, neither video showed you ever going to your knees while the officers were there. There was no way that you obtained the scrape on your knee from any officer action.

Officer H.'s video did not capture most of the initial contact until you were seated on the couch.

Officer T.'s video showed that upon entry to your home, Officer T. illuminated you with his flashlight. The video clearly showed that you then slapped Officer T.'s wrist in a downward motion. It was at that point that Officer T. pushed you back to create distance from your attack, and he did grab your hands and move you against the wall to control your actions. When Officer T. tried to control your movements, you threatened to punch Officer T. in the face. \_\_\_\_\_ assisted Officer T. in trying to calm you down and they were able to get you to sit on the couch. The video then showed Officer T. leaving the room.

The CPOA Investigator reviewed the police reports submitted by the officers in this case. The police officers reported that they had been dispatched to your home in reference to a disturbance. As they were walking to the apartment, they were stopped by neighbors who told the officers that two females were involved in a physical altercation in the apartment and that they could hear a female yelling and screaming. As they approached the door, one of the officers saw \_\_\_\_\_ talking to you and \_\_\_\_\_ was telling you to calm down. You and \_\_\_\_\_ were asked to step inside the apartment. Once inside, the officers attempted to get you to calm down and sit on the couch but you refused. In fact, you started to yell even louder. Officer T. reported that he flashed his flashlight at you to gain your attention and at that time you yelled at Officer T. not to flash the light at you and you then slapped Officer T.'s wrist with enough force to make his arm drop. Officer T. reported that he quickly pushed you back and then grabbed your arms and held you against the wall. Officer T. told you not to hit him and to calm down. You responded by raising your right hand and you formed a closed fist. You told Officer T. that you were going to punch him in the face. \_\_\_\_\_ was able to grab you by the arm and you were escorted to the couch. You were later arrested for Battery on a Peace Officer.

In a further effort to assist you, The CPOA Investigator called you and asked you to come in for an appointment to discuss your concerns over the incident. You scheduled an appointment for an interview with the CPOA Investigator for 10:00 AM on July 21, 2016. You also asked the CPOA Investigator to contact your attorney and you provided the CPOA Investigator with your attorney's contact information. The CPOA Investigator called and left a message for your attorney, but your attorney never returned the phone call. On July 21, 2016 at 9:30 a.m., the CPOA Investigator received a call from your attorney. He said that he had just been

November 14, 2016

Page 4

handed the case and requested the interview to be rescheduled. The new appointment was reset for August 2, 2016 at 8:30 a.m.; however, the law firm called and cancelled that interview and rescheduled for August 22, 2016 at 11:00 a.m. The CPOA Investigator called your attorney back to confirm the rescheduled date of August 22, 2016; however your attorney never called the CPOA Investigator back. You and your attorney failed to show up for the rescheduled interview on August 22, 2016, and no one from the law firm ever contacted the CPOA Investigator to cancel the interview.

Because of your attorney's non response and repeated rescheduling of interviews that were cancelled, this investigation has passed all time limits afforded by City Ordinance and by the Albuquerque Police Officer's Association contract for investigation. The preliminary investigation of all the available evidence shows that there was no Standard Operating Procedure violation committed by either officer. Furthermore, your credibility is undermined by the physical evidence. The lapel video showed clearly and convincingly that no misconduct by the APD officers on scene occurred.

### **III. CONCLUSION**

Your complaint was investigated to the furthest extent possible based on the information that was provided. You and your attorney have failed to cooperate in the investigation and because of the rescheduling and cancellation of several appointments with our office, the investigative timelines have passed. There was sufficient information contained in the investigation to conclude that no misconduct by the APD officers occurred. At this time we are administratively closing your complaint and no further investigation will be conducted.

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

Please contact me if you have any questions or concerns.

Sincerely,



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

CC: Albuquerque Police Department, Chief of Police

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

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

November 14, 2016  
Via certified mail

**Re: Citizen Police Complaint 011-16**

Dear

On January 10, 2016 you submitted a complaint to our office. Your complaint was assigned to a Civilian Police Oversight Investigator for investigation.

### **I. THE COMPLAINT**

PO Box 1293

Albuquerque

New Mexico 87103

[www.cabq.gov](http://www.cabq.gov)

You wrote in your complaint that on January 10, 2016 at 11:50 AM, you witnessed an attack by a mentally unstable woman upon a man at 3128 Central Avenue, SE. You stated that the two were engaged in a brutal struggle of fist and claws. You reported that you called 911 but the dispatcher did not send anyone out. You stated that 5-6 minutes passed and the assailant returned to the area, chased you across the street into a bar, and then the mentally unstable woman assaulted you and your girlfriend in front of a restaurant full of people. You called the police again and demanded someone be sent to your location and it took the officer 24 minutes to get there. When the officer got there, he allegedly downplayed the situation. You wrote that you were disgusted and astounded that three blocks from a police station that someone could assault someone else and it took over a half an hour for the police to respond. You stated that 8 minutes after the first officer arrived on scene that you saw four other police cars speed past the restaurant that you were in. You stated that was a ridiculous show of force and asked where those four officers were when you first called the police. You asked why those four police units were able to arrive at a location at the same time and you asked if the four police cars left from the same location at the same time. You asked if it was city policy to leave the most tourist friendly location in the city unable to receive police assistance for over thirty minutes.

### **II. THE INVESTIGATION**

In an effort to assist you, the CPOA Investigator requested reports from APD Records and the APD Research and Recording Unit. There were no documents found indicating a 911 call from you and there were no records found of any APD officer being dispatched to the location you reported around the date and time you reported the incident allegedly occurring. There is

Letter to \_\_\_\_\_, CPC 011-16

November 14, 2016

Page 2

no report on file with your name on it with APD. While the incident may have occurred as you reported, there is simply not enough information contained in your complaint to identify the officer or to even verify that the event took place.

### **III. CONCLUSION**

Your complaint was investigated to the furthest extent possible based on the information provided. There was insufficient information contained in the complaint to warrant any further investigation. If you are able to provide our office with more detailed information that may help the investigator determine where and when the incident occurred, who was involved, the name of the officer, the Computer Assisted Dispatch (CAD) number or report number or anything like that, we can re-open your complaint to try to answer some of the questions posed in your complaint. However, at this time, we are administratively closing your complaint and no further investigation will be conducted.

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

Please contact me if you have any questions or concerns.

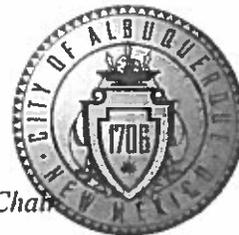
Sincerely,  
The Civilian Police Oversight Agency by



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

CC: Albuquerque Police Department, Chief of Police

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

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

November 14, 2016  
Via Certified Mail

16

**Re: CPC #075-16**

Dear

Our office received the complaint you filed on April 13, 2016 against Sergeant (Sgt.) C. and Officer M. of the Albuquerque Police Department (APD) regarding an incident that occurred on December 12, 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.

www.cabq.gov

### I. THE COMPLAINT

said that on December 12, 2015, he was working at his academic advisor's (Mrs. P.) home at NE when he was confronted by Mr. B. and his son T., who live at said as Mr. B. and T. approached him from across the street, Mr. B. pointed a gun at him and yelled at him to get on the ground. said he complied and as he was lying on the ground, Mr. B. thrust a knee into his back and put the gun to his head as T. called 911. said Mrs. P.'s mother, Mrs. D., came out of her house and explained was working there; however, Mr. B. continued to hold on the ground with the gun to his head. Mr. B. finally let Mr.

up and was so upset and fearful he fled on foot. After hearing about the incident, Mrs. P. encouraged to call Albuquerque Police Department (APD) to report it and Sgt. C. and Officer M. responded. complained the officers did not charge Mr. B. for his actions, and he wants Mr. B. to be prosecuted to the full extent of the law for pulling a gun on him and putting it to the back of his head and falsely arresting him.

## **II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING SGT. C.'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 interviews with the complainant, Sgt. C and Officer M., as well as the CADs reports, the written report by Officers M., and lapel videos from Sgt. C.

A) The CPOA reviewed APD Standard Operating Procedure (SOP) 1-02-2 (B)(1), which states:

### ***1-02-2 ENFORCEMENT OF LAWS, ORDINANCES, AND POLICE REGULATIONS***

***B. Officers shall familiarize themselves with and have working knowledge of all laws of the State of New Mexico and the Ordinances of the City of Albuquerque which they are required to enforce. Officers shall:***

***1. Take appropriate action and render assistance in any instance coming to their attention whether on or off duty.***

complained Sgt. C. did not charge Mr. B. for pulling a gun on him and putting it to the back of his head and falsely arresting him.

was interviewed and essentially repeated what was in his written complaint. Sgt. C. and Officer M. were interviewed. The CADS reports, written report and lapel videos were reviewed. The evidence showed Sgt. C. responded with Officer M. to the second call to this residence on December 12, 2015. Upon his arrival, Sgt. C. contacted Officer M. who was interviewing Both officers then interviewed both parties involved in this incident and Mrs. D., who was a witness. The evidence showed there was conflicting information regarding whether or not, a gun was used in the incident. After the interviews, Sgt. C. contacted the on-call Violent Crimes Assistant District Attorney (ADA) Less to ask if charges could be filed against Mr. B. for detaining. ADA Less told Sgt. C. that Mr. B. acted in good faith when he detained and had his son, T., call APD 911 right away. ADA Less said Mr. B. would not be charged for the detention, whether or not, Mr. B. had a gun in his possession at the time of the detention because the incident fell under the Citizen Arrest Clause. The evidence showed Sgt. C. explained this to and the others present at the house at the time and while did not agree with the outcome, he seemed to understand what was said. The evidence showed Sgt. C. took the

appropriate actions necessary in this situation, to include verifying with ADA Less about the circumstances surrounding the incident, and did not violate this SOP.

The CPOA finds Sgt. C.'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.

### **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 interviews with the complainant, Sgt. C and Officer M., as well as the CADs reports, the written report by Officers M., and lapel videos from Sgt. C.

A) The CPOA reviewed APD Standard Operating Procedure (SOP) 1-02-2 (B)(1), which states:

#### ***1-02-2 ENFORCEMENT OF LAWS, ORDINANCES, AND POLICE REGULATIONS***

***B. Officers shall familiarize themselves with and have working knowledge of all laws of the State of New Mexico and the Ordinances of the City of Albuquerque which they are required to enforce. Officers shall:***

***1. Take appropriate action and render assistance in any instance coming to their attention whether on or off duty.***

\_\_\_\_\_ complained Officer M. did not charge Mr. B. for pulling a gun on him and putting it to the back of his head and falsely arresting him.

\_\_\_\_\_ was interviewed and essentially repeated what was in his written complaint. Sgt. C. and Officer M. were interviewed. The CADS reports, written report and lapel videos were reviewed. The evidence showed Officer M. responded to the residence twice on December 12, 2015; the first time alone and the second time with Sgt. C.. The officers interviewed both parties involved in this incident and after the interviews Sgt. C. contacted ADA Less to ask if charges could be filed against Mr. B. for detaining \_\_\_\_\_. ADA Less said Mr. B. acted in good faith when he detained \_\_\_\_\_ and had his son, T., call APD 911 right away so he would not be charged for the detention, whether, or not he had a gun in his possession at the time of the detention as the incident fell under the Citizen Arrest Clause. The evidence showed Officer M. helped Sgt. C. explain this to \_\_\_\_\_ and the others present at the house at the time and while \_\_\_\_\_ did not agree with the outcome, he seemed to understand what was said. The evidence showed Officer M. took the appropriate actions necessary in this situation and did not violate this SOP.

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.

Your complaint and these findings are made part of Sgt. C.'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



## CIVILIAN POLICE OVERSIGHT AGENCY

### Police Oversight Board

Johnny J. Armijo

Joanne Fine

Rev. Dr. David Z. Ring III

Edward Harness, Esq., Executive Director

*Beth Mohr, Chair*

*Dr. Susanne Brown*

*Dr. Carlotta A. Garcia*

*Leonard Waites, Vice Chair*

*Eric H. Cruz*

*Dr. Lisa M. Orick-Martinez*

November 14, 2016

Via Certified Mail

**Re: CPC #083-16**

Dear

Our office received the complaint you filed on February 25, 2016 against Officers of the Albuquerque Police Department (APD), regarding an incident that occurred on February 24, 2016. The complaint was originally to be handled through the Alternative Dispute Resolution Mediation, but the Mediation was not successfully completed. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on May 18, 2016. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

Albuquerque

New Mexico 87103

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 AND INVESTIGATION**

Earlier a local company located and repossessed Mrs. [redacted]'s vehicle from Rio Rancho. There was no police involvement in the repossession. The company that conducted the repossession called police because Mr. [redacted] and his wife arrived at the business later that night. The repossession company wanted the police to stand by because Mr. [redacted] contested the repossession and one of the items of personal property in the vehicle was a firearm. Mr. [redacted] spoke to the responding officers first to gain their assistance in retrieving his vehicle. Mr. [redacted] felt it was clear the officers should have assisted him by returning his vehicle to him. Mr. [redacted] stated the officers avoided their duty to assist him

by wrongfully claiming the situation was civil. Mr. [REDACTED] believed the officers were biased against him and instead acted as agents for the bank. Mr. [REDACTED] also complained at least two officers did not properly identify themselves when he asked. Mr. [REDACTED] complained that when the officer turned his firearm the officer searched his trunk.

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the complaint, the police report, the Computer Aided Dispatch (CAD), the Officer's Oath, the Fair Debt Collection Practices Act, Mr. [REDACTED]'s interview, the tow company employee's interview, Officer M's interview, Officer J's interview, Officer B's interview, and lapel videos from all three officers.

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

A) The CPOA reviewed Standard Operating General Order 1-2-2B1 regarding Officer M's conduct, which states:

*Officers shall familiarize themselves with and have working knowledge of all laws of the State of New Mexico and the Ordinances of the City of Albuquerque, which they are required to enforce. Officers shall: 1. Take appropriate action and render assistance in any instance coming to their attention whether on or off duty.*

Mr. [REDACTED] told the officers the bank that seized his wife's car had no authority to do so and explained several reasons he believed supported his position. According to Mr. [REDACTED], the bank and the repossession company committed a theft by taking his car. Mr. [REDACTED] also advised the officers there were some fraudulent actions with bonds in connection with the car. Mr. [REDACTED] insisted the issue was not civil and the officers had a duty to protect his property by returning it to him or at least impounding the vehicle with the police for additional investigation. Mr. [REDACTED] stated the officers disregarded their oaths of office by not assisting him. Mr. [REDACTED] also mentioned his wife at two firearms in the repossessed car, but they only received one back.

Officer M explained his jurisdiction was in state and municipal law, not federal with the exception of basic Constitutional rights. The situation involved Mr. [REDACTED]'s disagreement with a bank and therefore fell in the civil realm, not criminal. He would not take the car into police custody because there was no criminal investigation to justify taking it. Mr. [REDACTED] never mentioned fraud involving bonds or that there was a second missing gun. The only thing he recalled about fraud was Mr. [REDACTED] alleged the bank changed paperwork on him. There was only one firearm in the repossessed car, which was returned to Mr. [REDACTED]. The repossession company showed paperwork authorizing the seizure of the car due to lack of payment. Mr. [REDACTED] showed some paperwork about how he was contesting the bank's position. Reviewing the paperwork in detail and deciding the right of ownership was not something officers would resolve, it would be the courts.

Mr. mentioned numerous times while dealing with the officers 15 U.S.C. §1692 as the justification for officers to take action on his behalf. This U.S. Code is the Fair Debt Collection Practices Act, which according to the text is enforced by the Federal Trade Commission or other specifically mentioned agencies in the act. The Albuquerque Police Department does not fall under the categories of one of these agencies. The State of NM law that covers this subject matter refers to the licensing required by debt collectors, which is enforced by the Attorney General's Office. This would not be the responsibility of APD. The situation is civil because civil law is a body of rules that delineate private rights and remedies, and govern disputes between individuals in such areas as contracts, property, and Family Law, which in this case Mr. is disputing a property right with a financial institution. This situation as a civil dispute is covered by SOP 3-14-2B, which specifically states officers should limit their response to restoring order and instructs not to remove personal property from one party and give it to another if there is a dispute over ownership. Policy states the officers should advise the parties to seek legal advice and permit the courts to determine rights to the property. The oath of office an officer takes is to support the Constitutions of the U.S. and the State of NM, enforce state laws, and ordinances of the city, not a federal administrative act. U.S. Code is not the same as the U.S. Constitution. The lapel videos showed Mr. never mentioned fraud allegations concerning bonds. The lapel videos showed Mr. did not bring proof of a second firearm and the repossession company had a signed property receipt.

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

B) The CPOA reviewed Standard Operating General Order 1-02-3A regarding Officer M's conduct, which states:

*Offices 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 the withholding of such information is necessary for the performance of police duties. 2. When it is authorized by proper authority.*

Mr. stated Officer M did not identify himself properly when he asked the officer for a business card and man number. Mr. stated he asked about three times, but was ignored. The officers shifted his focus to something else to distract him.

The lapel videos showed Mr. mentioned twice while speaking to Officer M that he wanted business cards from the officers. However, Mr. said this without pausing in the conversation. Mr. mentioned it while saying a multitude of other statements such as the officers were "not on their oaths" and that their decisions did not work for him. At the conclusion of the call Mr. got in his car and left without reminding Officer M he desired a business card. The lapel videos showed Officer M did not refuse and the policy does not require all actions cease until the information is provided. The lapel videos

showed both Officer M and Mr. [REDACTED] moved onto other things in the conversation and both parties appeared to have forgotten the request. The oversight does not rise to a violation of policy. Officer M was in full uniform with his nametag in response to Mr. [REDACTED]'s statement he was not sure if the officers were in fact real officers.

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

C) The CPOA reviewed Standard Operating General Order 1-04-4N regarding Officer M's conduct, which states:

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

Mr. [REDACTED] claimed Officer M ignored his position and was either ignorant in the Constitution and his oath of office or Officer M was biased on behalf of the bank. Mr. [REDACTED] believed it was a simple lack of interest on the part of Officer M to review his documentation. Officer M showed his bias when he said he did not deal with that type of law. Mr. [REDACTED] stated Officer M did not look at his paperwork and when he found out Officer M reviewed the paperwork from the bank he felt even more convinced of a bias. Mr. [REDACTED] got the impression all the officers treated him as "scum that doesn't pay." Mr. [REDACTED] stated the officers allowed him to get personal property from the car, but the officers hurried him out.

Officer M denied he favored the bank's position. Officer M skimmed what Mr. [REDACTED] showed him. Officer M agreed he reviewed the paperwork from the bank a little more because it was more straightforward. He noticed one document that Mr. [REDACTED] had, which was unsigned and therefore Mr. [REDACTED] claimed this showed there was no lien, was the same document the repossession company had, but signed. Nothing about the paperwork gave him concern the car was improperly seized.

The lapel videos showed the interaction was for the most part very congenial. The lapel videos showed the officers did not rush Mr. [REDACTED] to get personal property from the vehicle. The officers engaged in small talk with Mr. and Mrs. [REDACTED]. The officers explained their limitations as to actions they could take, but no one was denigrating towards Mr. [REDACTED]. Mr. [REDACTED] shook the officers' hands at the end.

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

D) The CPOA reviewed Standard Operating General Order 1-02-2B2 regarding Officer M's conduct, which states:

*Officers shall familiarize themselves with and have working knowledge of all laws of the State of New Mexico and the Ordinances of the City of Albuquerque, which they are required to enforce. Officers shall: 2. Make only those arrests, searches, and seizures, which they know or should know, are legal and in accordance with departmental procedures.*

Mr. [REDACTED] complained officers gathered around the back of his car and went through his trunk. Mr. [REDACTED] claimed Officer M rifled through his property and he had to tell Officer M to get out of his trunk.

The lapel videos showed that no one looked through Mr. [REDACTED]'s property in the trunk. Officer M believed he had handled the firearm, but in watching the lapel video, it was not Officer M that placed the firearm in the trunk; a third uninvolved officer did. The lapel video showed the officer set the firearm in the corner of the trunk and did nothing else. The lapel video showed Mr. [REDACTED] said nothing about the officer's actions. Since the return of the firearm did not happen as Mr. [REDACTED] recalled the unidentified officer was not targeted.

The CPOA finds Officer M's conduct to be **Unfounded** where the investigation determined 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 J'S CONDUCT**

A) The CPOA reviewed Standard Operating General Order 1-2-2B1 regarding Officer J's conduct, which states:

*Officers shall familiarize themselves with and have working knowledge of all laws of the State of New Mexico and the Ordinances of the City of Albuquerque, which they are required to enforce. Officers shall: 1. Take appropriate action and render assistance in any instance coming to their attention whether on or off duty.*

Mr. [REDACTED] told the officers the bank that seized his wife's car had no authority to do so and explained several reasons he believed supported his position. According to Mr. [REDACTED], the bank and the repossession company committed a theft by taking his car. Mr. [REDACTED] also advised the officers there were some fraudulent actions with bonds in connection with the car. Mr. [REDACTED] insisted the issue was not civil and the officers had a duty to protect his property by returning it to him or at least impounding the vehicle with the police for additional investigation. Mr. [REDACTED] stated Officer J disregarded his oath of office by not assisting him. Mr. [REDACTED] also mentioned his wife at two firearms in the repossessed car, but they only received one back.

Officer J explained their jurisdiction was in state and municipal law, not federal with the exception of basic Constitutional rights. The situation involved Mr. [REDACTED]'s disagreement with a bank and therefore fell in the civil realm, not criminal. Officer J would not take the car into police custody because there was no criminal investigation to justify taking it. Mr. [REDACTED]

[REDACTED] never mentioned fraud involving bonds or that there was a second missing gun. There was only one firearm in the repossessed car, which was returned to Mr. Officer J understood from Officer M that the repossession company showed paperwork authorizing the seizure of the car due to lack of payment. Mr. [REDACTED] showed some paperwork about how he was contesting the bank's position. Reviewing the paperwork in detail and deciding the right of ownership was not something officers would resolve, it would be the courts.

Mr. [REDACTED] mentioned numerous times while dealing with the officers 15 U.S.C. §1692 as the justification for officers to take action on his behalf. This U.S. Code is the Fair Debt Collection Practices Act, which according to the text is enforced by the Federal Trade Commission or other specifically mentioned agencies in the act. The Albuquerque Police Department does not fall under the categories of one of these agencies. The State of NM law that covers this subject matter refers to the licensing required by debt collectors, which is enforced by the Attorney General's Office. This would not be the responsibility of APD. The situation is civil because civil law is a body of rules that delineate private rights and remedies, and govern disputes between individuals in such areas as contracts, property, and Family Law, which in this case Mr. [REDACTED] is disputing a property right with a financial institution. This situation as a civil dispute is covered by SOP 3-14-2B, which specifically states officers should limit their response to restoring order and instructs not to remove personal property from one party and give it to another if there is a dispute over ownership. Policy states the officers should advise the parties to seek legal advice and permit the courts to determine rights to the property. The oath of office an officer takes is to support the Constitutions of the U.S. and the State of NM, enforce state laws, and ordinances of the city, not a federal administrative act. U.S. Code is not the same as the U.S. Constitution. The lapel videos showed Mr. [REDACTED] never mentioned fraud allegations concerning bonds. The lapel videos showed Mr. [REDACTED] did not bring proof of a second firearm and the repossession company had a signed property receipt.

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

B) The CPOA reviewed Standard Operating General Order 1-02-3A regarding Officer J's conduct, which states:

*Offices 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 the withholding of such information is necessary for the performance of police duties. 2. When it is authorized by proper authority.*

Mr. [REDACTED] stated Officer J did not identify himself properly when he asked he asked the officer for a business card and man number. Mr. [REDACTED] stated he asked about three times, but was ignored. The officers shifted his focus to something else to distract him.

The lapel videos showed Officer J introduced himself to Mr. \_\_\_\_\_ at the beginning of the contact. The lapel videos showed Mr. \_\_\_\_\_ said three times while speaking to Officer J or within earshot of Officer J's lapel that he wanted business cards from the officers. However, Mr. \_\_\_\_\_ said this without pausing in the conversation. Mr. \_\_\_\_\_ mentioned it while saying a multitude of other statements such as the officers were "not on their oaths" and that their decisions did not work for him. At the conclusion of the call Mr. \_\_\_\_\_ got in his car and left without reminding Officer J he desired a business card. Officer J was not in the immediate vicinity when Mr. \_\_\_\_\_ left. The lapel videos showed Officer J did not refuse and the policy does not require all actions cease until the information is provided. The lapel videos showed both Officer J and Mr. \_\_\_\_\_ moved onto other things in the conversation and both parties appeared to have forgotten the request. The oversight does not rise to a violation of policy and in the case of Officer J; Mr. \_\_\_\_\_ had been informed of his name. Officer J was in full uniform with his nametag in response to Mr. \_\_\_\_\_'s statement he was not sure if the officers were in fact real officers.

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

C) The CPOA reviewed Standard Operating General Order 1-04-4N regarding Officer J's conduct, which states:

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

Mr. \_\_\_\_\_ claimed Officer J ignored his position and was either ignorant in the Constitution and his oath of office or Officer J was biased on behalf of the bank. Mr. \_\_\_\_\_ believed it was a simple lack of interest on the part of Officer J to review his documentation. Officer J showed his bias when he said he did not deal with that type of law. Mr. \_\_\_\_\_ stated Officer J did not look at his paperwork. Mr. \_\_\_\_\_ got the impression all the officers treated him as "scum that doesn't pay." Mr. \_\_\_\_\_ stated the officers allowed him to get personal property from the car, but the officers hurried him out.

The lapel videos showed the interaction was for the most part very congenial. The lapel videos showed the officers did not rush Mr. \_\_\_\_\_ to get personal property from the vehicle. The officers engaged in small talk with Mr. and Mrs. \_\_\_\_\_. The officers explained their limitations as to actions they could take, but no one was denigrating towards Mr. \_\_\_\_\_. Mr. \_\_\_\_\_ shook the officers' hands at the end.

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

#### **IV. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER B'S CONDUCT**

A) The CPOA reviewed Standard Operating General Order 1-2-2B1 regarding Officer B's conduct, which states:

*Officers shall familiarize themselves with and have working knowledge of all laws of the State of New Mexico and the Ordinances of the City of Albuquerque, which they are required to enforce. Officers shall: 1. Take appropriate action and render assistance in any instance coming to their attention whether on or off duty.*

Mr. [REDACTED] told the officers the bank that seized his wife's car had no authority to do so and explained several reasons he believed supported his position. According to Mr. [REDACTED], the bank and the repossession company committed a theft by taking his car. Since the two field officers were not following their oaths of office, he requested a supervisor. Mr. [REDACTED] also advised the officers there were some fraudulent actions with bonds in connection with the car. Mr. [REDACTED] insisted the issue was not civil and the officers had a duty to protect his property by returning it to him or at least impounding the vehicle with the police for additional investigation. Mr. [REDACTED] also mentioned his wife at two firearms in the repossessed car, but they only received one back.

Officer B responded as the acting sergeant that night. After hearing all the information, he assessed that the situation was a civil matter between the banking institution and Mr. [REDACTED]. Mr. [REDACTED] disagreed and wished to discuss it further. He allowed Mr. [REDACTED] to explain further, but his opinion was still that it was a civil matter and any dissatisfaction Mr. [REDACTED] had would have to be taken up with the bank. His understanding from Officer M, who reviewed the paperwork, was that the towing company had paperwork to show they had authorization to take the car. It was not an auto theft, but a civil repossession. Police do not get involved with law when it pertains to civil matters. Officer B explained there were no criminal aspects to the fair debt practices U.S. Code that Mr. Damron frequently cited. They would not take the car into police custody because there was no criminal investigation to justify taking it. Mr. [REDACTED] never mentioned fraud involving bonds or a second missing gun. There was only one firearm in the repossessed car, which was returned to Mr. [REDACTED]. Officer B concluded that they were not going to agree and the proper place for Mr. [REDACTED] to argue the point was court, not the street.

Mr. [REDACTED] mentioned numerous times while dealing with the officers 15 U.S.C. §1692 as the justification for officers to take action on his behalf. This U.S. Code is the Fair Debt Collection Practices Act, which according to the text is enforced by the Federal Trade Commission or other specifically mentioned agencies in the act. The Albuquerque Police Department does not fall under the categories of one of these agencies. The State of NM law that covers this subject matter refers to the licensing required by debt collectors, which is enforced by the Attorney General's Office. This would not be the responsibility of APD. The situation is civil because civil law is a body of rules that delineate private rights and remedies, and govern disputes between individuals in such areas as contracts, property, and Family Law, which in this case is Mr. [REDACTED] disputing over a property right with a financial institution. This situation as a civil dispute is covered by SOP 3-14-2B, which specifically states officers should limit their response to restoring order and instructs not to remove personal property from one party and give it to another if there is a dispute over ownership. Policy states the officers should advise the parties to seek legal advice and

permit the courts to determine rights to the property. The oath of office an officer takes is to support the Constitutions of the U.S. and the State of NM, enforce state laws, and ordinances of the city, not a federal administrative act. U.S. Code is not the same as the U.S. Constitution. The lapel videos showed Mr. \_\_\_\_\_ never mentioned fraud allegations concerning bonds. The lapel videos showed Mr. \_\_\_\_\_ did not bring proof of a second firearm and the repossession company had a signed property receipt.

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

B) The CPOA reviewed Standard Operating General Order 1-04-4N regarding Officer B's conduct, which states:

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

The officers ignored his position and were either ignorant in the Constitution and their oaths of office or the officers were biased on behalf of the bank. Mr. \_\_\_\_\_ believed it was a simple lack of interest on the part of the officers to review his documentation. Officers showed their bias when they said they did not deal with that type of law. Mr. \_\_\_\_\_ got the impression all the officers treated him as "scum that doesn't pay."

Officer B denied they acted as the bank's agent and were not dismissive with Mr. \_\_\_\_\_. Just because Mr. \_\_\_\_\_ asserted something did not make it true. It was not up to the officers to take sides. Officer B stated police were not compelled to take action because Mr. \_\_\_\_\_ felt he was wronged.

The lapel videos showed the interaction was for the most part very congenial. The officers explained their limitations as to actions they could take, but no one was denigrating towards Mr. \_\_\_\_\_.

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

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

cc: Albuquerque Police Department Chief of Police

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

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

November 14, 2016  
Via Certified Mail

**Re: CPC #106-16**

Dear Ms. '

Our office received the complaints you filed on May 16, 2016 Albuquerque Police Department (APD) regarding incidents dating back to 2007 through 2012.

PO Box 1293

### **I. THE COMPLAINT**

The complaint alleges that you unfairly were forced to take medical disability due to a motor vehicle accident you were involved with when serving as an Albuquerque Police Officer, back in 2007. Your complaint also states the Department has failed to assist you with your civil action under the Americans with Disabilities Act against the City of Albuquerque.

Albuquerque

### **II. INVESTIGATION**

New Mexico 87103

On or about July 20, 2016, The Director of the CPOA spoke with you regarding your complaint to clarify the duties of the Agency. Additionally, I spoke with you regarding our lack of ability to help you with your complaint because it lacks the specificity necessary to begin an investigation.

www.cabq.gov

### **III. CONCLUSION**

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint. The complaint fails to identify an Albuquerque Police Officer.

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



## CIVILIAN POLICE OVERSIGHT AGENCY

**Police Oversight Board**    *Beth Mohr, Chair*

*Johnny J. Armijo*

*Dr. Susanne Brown*

*Joanne Fine*

*Dr. Carlotta A. Garcia*

*Rev. Dr. David Z. Ring III*

Edward Harness, Esq., Executive Director

*Leonard Waites, Vice Chair*

*Eric H. Cruz*

*Dr. Lisa M. Orick-Martinez*

November 14, 2016

Via email

**Re: CPC #107-16**

Dear \_\_\_\_\_,

Our office received the complaint you filed on August 3, 2016 against Detective B. of the Albuquerque Police Department (APD) regarding an incident that occurred on August 24, 2015. 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**

An anonymous complaint was submitted to the CPOA office via email. The email address the complaint came from was \_\_\_\_\_. The complaint stated Detective B. had taken part in an online petition demanding that the officers involved in the shooting and killing of James Boyd get their jobs back with the Albuquerque Police Department.

The complaint also stated that Detective B. arrests and attempts to prosecute citizens for petty, worthless, non-violent crimes for such things as possession of a controlled substance and/or forgery cases. The complaint goes on to state that the writer finds it disgraceful that officers would support the officers on trial and the writer feels it is absurd and a disgrace to the community.

## **II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING DETECTIVE B.'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 interview of Detective B.

A) The CPOA reviewed APD Standard Operating Procedure (SOP) 1-44-2 (B4), which states:

*Posting the following types of criminal justice information to social networking sites is explicitly prohibited:*

- a. Confidential, sensitive or copyrighted information to which you have access due to your employment with the City.*
- b. Data from criminal or administrative investigations including photographs, videos or audio recordings.*
- c. Photographs of suspects, arrestees or evidence.*
- d. Personal statements about any investigation that are not included in an official police report.*
- e. Comments related to pending investigations and/or prosecutions.*

The complaint stated Detective B had taken part in an online petition demanding that the officers involved in the shooting and killing of James Boyd get their jobs back with the Albuquerque Police Department. The complaint went on to state that the writer found it disgraceful that officers would support the officers on trial and the writer felt it is absurd and a disgrace to the community.

The investigation showed that Detective B digitally signed a public petition which was authored by someone other than Detective B. The investigation showed that Detective B did not make any comments about or within the petition. Detective B did not state anything about the officers or the status of the case and Detective B had no relation to that particular case. The evidence in the investigation showed Detective B did not violate APD policy.

The CPOA finds Detective B.'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.

Your complaint and these findings are made part of Detective 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 letter. Include your CPC number.

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

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

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

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

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

Sincerely,  
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

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

November 14, 2016  
Via Certified Mail

**Re: CPC #114-16**

Dear Ms.

Our office received the complaint you filed on June 17, 2016 against Sgt. D. and Officer J. of the Albuquerque Police Department (APD) regarding an incident that occurred on October 8, 2015. Your complaint was investigated by Internal Affairs of the Albuquerque Police Department because of criminal allegations alleged in your 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.

Enclosed is a copy of the letter dated October 25, 2016 from the CPOA Executive Director Harness concurring with the Internal Affairs Investigator. We have also enclosed a copy of the redacted findings for your information.

Your complaint and these findings are made part of Sgt. D.'s and Officer J.'s Internal Affairs record.

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.

PO Box 1293

Albuquerque

New Mexico 87103

[www.cabq.gov](http://www.cabq.gov)

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

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

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

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

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

Sincerely,  
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

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

October 25, 2016

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

**Re: CPC # 114-16**

Dear Chief Eden:

We concur with the findings of Internal Affairs Investigator \_\_\_\_\_ in this case. This complaint will be presented to the Police Oversight Board for final review and, if approved, the attached public record findings will be mailed to the citizen. These findings are now considered final. If any changes to these findings are ever contemplated, inform the POB and the CPOA immediately.

PO Box 1293

Albuquerque

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

Please contact me if there are questions or concerns.

New Mexico 87103

[www.cabq.gov](http://www.cabq.gov)

Sincerely,

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

---

## FINDINGS

SGT. [REDACTED] D [REDACTED]

1. Did Sgt. [REDACTED] D [REDACTED] comply with Albuquerque Police Department Procedural Orders Crimes Against Children 2-33-2B3, which mandates:

*Officers will conduct a complete and thorough preliminary investigation and will write reports (using the State of New Mexico Uniform Incident Report) on all cases (confirmed or suspected) of child abuse, neglect, abandonment, or cruelty to children. Per state statute 32A-4-3 officers will immediately notify CYFD when they have reasonable suspicion that a child is abused or neglected.*

According to dispatch logs for incident P152771070, Sgt. D [REDACTED] was dispatched to this incident in reference to Fuentes-Jones complaining [REDACTED] advised her Det. J [REDACTED] pushed her and held her to the ground while upset over [REDACTED] Facebook account. The call indicates the relationship is father/daughter between Det. J [REDACTED] and [REDACTED], his 14-year old daughter. The dispatch is prima facie evidence causing this incident to be investigated as a Crimes Against Children case; thereby, qualifying the above issue of concern.

The evidence in this case, as it pertains to this issue of concern, is beyond preponderance and is absolutely conclusive. Sgt. D [REDACTED] performed all of the duties mandated by this section:

- Conduct a complete and thorough preliminary investigation
- Write a report
- Notify CYFD (if reasonable suspicion exists)

According to multiple sources, the accepted definition of "preliminary investigation" is a process that takes place immediately after a crime has been committed, in which police or investigators determine whether there is sufficient evidence or cause to charge the defendant or suspect. Sgt. D [REDACTED] clearly satisfied this definition as indicated by his report and interviews. Sgt. D [REDACTED] interviewed the complainant, Fuentes-Jones, and clearly documented her concerns. Sgt. D [REDACTED] interviewed the "victim," [REDACTED], and clearly documented her recollection of the incident. He even asked clarifying questions and documented those when [REDACTED] stated she "blacked out." Sgt. D [REDACTED] sought out and interviewed a witness, [REDACTED] and documented her recollection of events. Sgt. D [REDACTED] called for a Crime Scene Specialist to document the lack of physical evidence on [REDACTED]. After Sgt. D [REDACTED] interviewed the complainant, victim, and witness and noted the evidence, he contacted the suspect, Det. J [REDACTED]. Sgt. D [REDACTED] interviewed Det. J [REDACTED] at his residence and obtained his recollection of this incident. Additionally, even though the evidence did not support it, Sgt. D [REDACTED] erred on the side of caution by notifying CYFD of this incident and explained to them what had occurred. Finally, Sgt. D [REDACTED] correctly determined there was not enough evidence to reach probable cause for an arrest. In fact, Sgt.

---

D [REDACTED] correctly surmised the evidence supports a parent's right to discipline their child. See Det. J [REDACTED] findings for more detail on why this is justifiable parental discipline.

Sgt. D [REDACTED] clearly wrote a report and it is included in this case. See APD case #150091724

Sgt. D [REDACTED] was required to notify CYFD if he had reasonable suspicion that a child was abused or neglected. All of the evidence indicates that was not the case; however, he chose to err on the side of caution and notified them anyway.

Fuentes-Jones complained Sgt. D [REDACTED] failed to call CYFD. The CYFD report clearly documents Sgt. D [REDACTED] notified them on October 04, 2015, at 2340 hours. Dispatch logs indicated he cleared the call on October 05, 2015, at 0017 hours, 37-minutes later. The evidence is conclusive Sgt. D [REDACTED] notified CYFD before clearing the call. However, Sgt. H [REDACTED] investigation revealed why the record was hard to obtain. Nonetheless, Sgt. D [REDACTED] was truthful and factually correct when he documented that he notified CYFD.

Fuentes-Jones complained APDs Crimes Against Children Unit was never informed of the case. Sgt. D [REDACTED] correctly identified no crime occurred and therefore, there was no reason to send CACU the case.

Fuentes-Jones complained Sgt. D [REDACTED] took it upon himself to close the case. It is Sgt. D [REDACTED] job to act upon the evidence and closing the case was proper with a complete lack of evidence to support the allegation. In fact, Sgt. D [REDACTED] s conclusion of parental discipline is correct and supported by case law. See Det. J [REDACTED] findings for detail.

Fuentes-Jones complained she has not been able to contact anyone at APD (the Southwest Area Command, Internal Affairs, or Sgt. D [REDACTED] s lieutenant). This is impossible to verify; however, it is doubtful considering the hyperbolic nature of the complaint with its proven false allegations. Fuentes-Jones had no problem contacting me through Internal Affairs after I left her a message. Finally, it is completely impractical to target the Southwest Area Command and Internal Affairs for a broad and sweeping investigation into a missed phone call in the 8-months from the time of this incident to the filing of the complaint. This part of the complaint was not pursued.

For the above reasons, the allegations against Sgt. D [REDACTED] are UNFOUNDED which means the investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer.

---

Internal Affairs Unit

---

## FINDINGS

DET. [REDACTED] J [REDACTED]

1. Did Det. J [REDACTED] violate SOP section 1-04-1B, which mandates:

*Personnel shall obey all felony criminal laws of the United States of America, and of any state and local jurisdiction in which they are present.*

The original complaint filed by Fuentes-Jones stated, Det. J [REDACTED] pushed "[REDACTED] down and [sic] almost choking her to unconsciousness by applying force across her chest and neck with his arm." Additionally, the fact that [REDACTED] is the juvenile daughter of Det. J [REDACTED] is prima facie evidence to indicate felony child abuse. Child Abuse is a felony crime thereby qualifying the above issue of concern. However, the crime of Battery, Battery on a Household Member, and Abandonment and Cruelty to Children (City Ordinance) must also be considered and will be addressed in these findings.

Fuentes-Jones does not have first-hand personal knowledge of the incident and her account of the incident is most damning and the least credible. [REDACTED]'s account of what occurred is given the most weight as well as the physical evidence, which does not support Fuentes-Jones' complaint. Hernandez' statement is also weighted heavily with her experience and knowledge in child abuse investigations including this case.

Sgt. D [REDACTED] documented in his report [REDACTED] stated "she blacked out" and couldn't breathe. [REDACTED] clarified under questioning she became "so mad her brain shut off." [REDACTED] stated she only observed Det. J [REDACTED] grab [REDACTED]'s wrist as he took the phone away.

Sgt. D [REDACTED] recalled in his CPOA interview that [REDACTED] wasn't choked; however, she stated there was pressure on her chest to keep her from moving. Sgt. D [REDACTED] further stated there were no signs of injury. Sgt. D [REDACTED] recalled [REDACTED] saying she had the wind knocked out of her to CSS Oates.

[REDACTED] stated to Sgt. H [REDACTED] she was sitting on an air mattress and Det. J [REDACTED] used his forearm to push her back. [REDACTED] also stated she felt like she stopped breathing for a second because she fell back so quick and hard. [REDACTED] added it was "a big blur because I was so mad. But, I didn't say I blacked out." Sgt. H [REDACTED] challenged [REDACTED] by asking how she knew what happened. [REDACTED] said, "Because I came back into consciousness. It's not that quick."

Det. J [REDACTED] denied ever pushing [REDACTED] back and he only recalls grabbing the phone.

Hernandez stated in her investigation the allegation of child abuse was unsubstantiated. Hernandez stated [REDACTED]'s inconsistent recollection and lack of evidence lead to her findings. Finally, Hernandez stated the J [REDACTED] children lie to be with Fuentes-Jones and she has had to counsel Fuentes-Jones and Det. J [REDACTED] for making false allegations.

CSS O [REDACTED] photographs document the lack of physical evidence supporting the allegation.

[REDACTED]'s changing accounts of what happened make it difficult to determine the exact circumstances of this incident; however, based on the totality of the investigation and reviewed favorably to [REDACTED]'s recollections, it's reasonable to conclude [REDACTED] was sitting on the bed refusing to return the phone. Det. J [REDACTED] retrieved the phone by pushing [REDACTED] back with his forearm across her chest and then he grabbed the phone out of her hand. [REDACTED] fell back onto the air mattress from a sitting position while Det. J [REDACTED] retrieved the phone. It is unreasonable to believe she became unconscious from this event when she has total recall of everything that happened immediately following the forearm to the chest. Again, Det. J [REDACTED] clearly denied the forearm to the chest and [REDACTED] stated she only saw Det. J [REDACTED] grab the phone.

The relationship between Det. J [REDACTED] and [REDACTED] has to be defined. Parents have certain privileges with children that others do not. Det. J [REDACTED] is not the biological father of [REDACTED]. However, all parties refer to him as the father. Additionally, he has visitation rights in the divorce decree as stated by both Fuentes-Jones and Det. J [REDACTED]. Det. J [REDACTED] further claims paying child support for [REDACTED] and has been the "father" to [REDACTED] since she was about 1.5-years old, roughly the past 11.5-years.

According to the 2011 CYFD Child Welfare Handbook, page 44. "The word "parent" in the New Mexico Children's Code "includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child." §32A-1-4(O). This definition reflects the holdings of a line of cases from the *U.S. Supreme Court that declare that the right to parent is not a mere incident of biology, but requires some sort of familial relationship.*" The evidence is undisputed; Det. J [REDACTED] has a "familial relationship" with [REDACTED].

This is important because these findings are based on Det. J [REDACTED] having a familial relationship with [REDACTED] as a parent. This gives Det. J [REDACTED] parental privileges under law that may not normally be given to a biological parent's significant other. Therefore, for all intents and purposes, Det. J [REDACTED] is a parent to [REDACTED].

New Mexico law allows for a parent to use force to discipline a child with limitations as set by State v. Lefevre, 2005-NMCA-101, 138 N.M. 174. Defendant was prosecuted for battery for using physical force to discipline his child. **The Court of Appeals held that a parent has a privilege to use moderate or reasonable physical force, without criminal liability,**

---

when engaged in the discipline of his or her child. Id. ¶16. Discipline involves controlling behavior and correcting misbehavior for the betterment and welfare of the child. *"An isolated instance of such force that results in nothing more than transient pain or temporary marks or bruises is protected under this parental discipline privilege Id. ¶21."*

██████████ complained of being so mad her brain shut off and chest pain where she was pushed. There were no bruises or marks. Taking State v. Lefevre under consideration and Det. J. ████████ parental role, there is no charge for the crime of battery.

State v. Stein is a case where a father was charged with Battery on a Household member for striking his daughter. However, the New Mexico Court of Appeals overturned Stein's conviction by stating, on its face, the statutory definition of "household member" would appear to encompass a child of the accused. The definition includes "a family member," "a relative," and "a person with whom a person has had a continuing personal relationship." *"A closer examination, however, reveals that the legislative intent was to exclude children."* The court further wrote, "First, we find it noteworthy that the statutory definition omits a specific reference to children. It mentions "spouse" and "former spouse," even "stepparent" and "co-parent of a child." When the types of domestic abuse that have received the most media attention are spousal abuse and child abuse, one can infer that the Legislature acted purposefully when its definition explicitly mentions the former but not the latter. Therefore, there can be no charge for Battery on a Household Member.

The City of Albuquerque Ordinance 12-5-1(B)(3) Abandonment and Cruelty to Children states cruelty to children consists of any parent, guardian or other person having care of or custody of any child who willfully tortures, torments, or cruelly punishes, or injures the child is guilty of a misdemeanor.

The facts of this case fail to meet the City Ordinance. It is unreasonable to believe that being pushed backwards from a sitting position, onto an air mattress, by a forearm across the chest, that leaves no marks or bruising, would constitute torture, tormenting, cruel punishment, or injury. The complete absence of evidence indicative of injury, Det. J. ████████' denial he pushed ██████████, and A. ████████'s account of only seeing Det. J. ████████ grab the phone, accompanied by ██████████'s changing recollection, only further leads a reasonable person to believe this event did not occur. Nonetheless, if it had, Det. J. ████████' alleged behavior fails to meet the elements of this ordinance. Finally, the ordinance appears to be in conflict with State v. Lefevre.

New Mexico state statute 30-6-1D describes Child Abuse as a person knowingly, intentionally or negligently, and without justifiable cause, causes or permits a child to be tortured, cruelly confined or cruelly punished.

---

There is no question torture and cruelly confined are not applicable to these allegations. However, cruelly punished is the element that is applicable. In an Albuquerque Journal article dated January 6, 2013, Assistant District Attorney for Bernalillo County, Lemuel Martinez, was quoted, *"Our office draws the line within the confines of the law," he said. "In order for us to prosecute a case as child abuse, it has to endanger the health and welfare of a child. It has to go beyond corporal punishment."*

Merriam-Webster defines corporal punishment as "punishment that involves hitting someone." It is unreasonable to believe being pushed back onto an air mattress and having a phone taken out of your hand as cruelly punished or *beyond* corporal punishment.

In summary, Det. J [REDACTED] was acting in the capacity of a father with parental privilege when [REDACTED] was pushed back onto an air mattress and had her phone removed. [REDACTED] suffered no physical injury. New Mexico law allows parents or guardians to use corporal punishment as a form of discipline and the facts of this case fail to meet the elements of any possible crime.

For the aforementioned reasons, the allegations against Det. J [REDACTED] are **EXONERATED** which means the investigation determined, by a preponderance of the evidence, that the alleged conduct in the underlying complaint did occur but did not violate APD policies, procedures, or training.

Internal Affairs Unit

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

### Police Oversight Board

Johnny J. Armijo

Joanne Fine

Rev. Dr. David Z. Ring III

Edward Harness, Esq., Executive Director

Beth Mohr, Chair

Dr. Susanne Brown

Dr. Carlotta A. Garcia

Leonard Waites, Vice Chair

Eric H. Cruz

Dr. Lisa M. Orick-Martinez

November 14, 2016

Via Certified Mail

Re: CPC #123-16

Dear Mr:

Our office received the complaint you filed on April 14, 2016 against Officers of the Albuquerque Police Department (APD), regarding an incident that occurred on April 12, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on July 6, 2016. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

Albuquerque

New Mexico 87103

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 AND INVESTIGATION

Mr. [redacted] drove just after leaving his girlfriend's house and picked up a friend to take her to work. Mr. [redacted] stated he observed an unmarked truck pass him, driven by Detective M. Mr. [redacted] continued on his way when Detective M and Detective A pulled him over by the New Mexico Veterans Memorial. Mr. [redacted] claimed the stop was simply harassment because the only thing said by the detectives was that they knew he did not have a license and nothing else about a possible driving infraction. Mr. [redacted] stated Detective M asked him questions about drugs and weapons; Detective M's manner was intimidating. Mr. [redacted] stated Detective M tried to pressure him to allow the detectives to search his car. Mr. [redacted]

claimed Detective M threatened to take him to jail, search and/or tow his car, take his girlfriend to jail, and search his mother's house.

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the complaint, Mr. ' s' interview, Detective M's interview, Detective A's interview, and Detective M's lapel video.

## **II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING DETECTIVE M'S CONDUCT**

A) The CPOA reviewed Standard Operating Procedural Order 2-18-2S3a regarding Detective M's conduct, which states:

*If an authorized unit is unavailable, the officer/detective in the unmarked unit will not conduct a traffic stop.*

Mr. ' saw a regular civilian truck go by him with no markings or government plate. That same vehicle pulled him over, driven by Detective M. Detective M and Detective A pulled him over because at least one of the vehicles had flashing emergency lights.

Detective M acknowledged that his vehicle was a normal truck in appearance and did not have a government plate. His truck did have emergency lights, a siren, and a PA system to utilize in stops. Since their vehicles had emergency lights and sirens, he and Detective A initiated a traffic stop. Detective M believed if the department did not have an intention of him making stops in his vehicle then the vehicle would not be equipped in the manner that it is.

Detective M did not recall with certainty if they checked for a marked unit to be available. Detective A believed he had, but there was no CAD information to support that assertion. A CAD search by APD Communications staff revealed no information matching that time and location. In order for the vehicle to be in compliance for traffic stops, the vehicle had to have a government plate. Additionally, the officers would have to have been in uniform to conduct the stop. Both detectives stated they were in civilian clothing, but did put on a tactical police marked vest.

The CPOA finds Detective M's conduct to be **Sustained** where the investigation determined that the alleged misconduct did occur.

B) The CPOA reviewed Standard Operating Procedural Order 2-47-2A1a regarding Detective M's conduct, which states:

*Officers initiating traffic stops for observed violations shall: a. Advise Communications of the impending stop, giving violator's vehicle information (license plate, description of the vehicle, and/or occupants etc. ) and location.*

Detective M explained the gang unit operates on a secured, non-recorded channel. He provided the information about his stop in that manner; his sergeant would have been aware of their stop.

The policy is clear that a traffic stop shall be documented by Communications. There was no CAD of this incident. Advising a non-recorded channel of an impending stop does not satisfy the requirements of this SOP. Not only is calling out the stops for officer safety, but also important information such as the officer's identity, length of detention, and other pertinent information is recorded.

The CPOA finds Detective M's conduct to be a **Sustained violation not based on the original complaint** where the investigation determined that misconduct did occur that was not alleged in the original complaint, but that was discovered during the misconduct investigation.

C) The CPOA reviewed Standard Operating General Order 1-02-2B2 regarding Detective M's conduct, which states:

*Officers shall familiarize themselves with and have working knowledge of all laws of the State of New Mexico and the Ordinances of the City of Albuquerque, which they are required to enforce. Officers shall: 2. Make only those arrests, searches, and seizures, which they know or should know, are legal and in accordance with departmental procedures.*

Mr. [REDACTED]; stated that the detectives pulled him over for the purposes of harassment. Neither officer told him he committed a driving infraction. Mr. [REDACTED]; stated Detective M questioned the legitimacy of his license even though he showed a valid license. Mr. [REDACTED] stated he corrected his license issue. Detective M ordered him out of the car. Detective M asked him questions about drugs and weapons. Detective M asked if he were to search him or his car would he find anything. Mr. [REDACTED] emptied his pockets out of frustration, but did not allow the officers to search his car. He had nothing to hide, but out of principal refused. Detective M put his head in the car window and visually searched. Detective M kept him between thirty minutes to an hour.

Detective M stated he and Detective A were conducting surveillance in an area and in particular a business reported by field officers to have high narcotics and gang activity. Detective M and Detective A observed a dark colored vehicle in the area, but it did not come from that business that day. Detective M described that the driver conducted counter surveillance measures such as pulling to the side of the road and stopping more than once. The driver also exited the neighborhood, went onto main roads, but then circled back into the neighborhood. Detective M stated narcotics buyers, traffickers, and gang members often engaged in that type of behavior and in his training and experience, the driver's actions were typical indicators of someone committing trafficking or burglary/robbery. At one point Detective M observed the vehicle roll through a stop sign, however Detective M stated in his opinion it was nothing citable. Detective A then recognized the driver as Mr. [REDACTED], whom Detective A had arrested before for weapons and drug violations. Detective A knew Mr. [REDACTED] did not have a valid license from the previous arrest. Detective M explained Mr. [REDACTED] was not the target of their surveillance, but happened to be part of the scene. The totality of the situation factored into their decision to stop Mr. [REDACTED]. Detective M stated once they

contacted Mr. \_\_\_\_\_ that they smelled marijuana in the car. Both Mr. \_\_\_\_\_ and his passenger denied knowledge of marijuana. Detective M spoke to Mr. \_\_\_\_\_'s girlfriend on the phone who claimed the marijuana was hers. Since he and Detective A did not see signs of impairment, they never asked to search the car, but could have obtained a warrant if they wished. Detective M said the stop was five or ten minutes.

Mr. \_\_\_\_\_ stated he was going about normal business when he was pulled over. Detective M characterized Mr. \_\_\_\_\_'s actions as counter surveillance driving behaviors in an area of known criminal activity. Once Mr. \_\_\_\_\_ was identified, the detectives used their past knowledge of Mr. \_\_\_\_\_ not having a valid license as final justification to initiate a traffic stop. Even though Detective M contended the stop was based on more than a hunch, his description of the stop justification seemed to hinge on Mr. \_\_\_\_\_'s previous charges and not on that day's activities. The articulable justification provided did not support reasonable suspicion. Detective M mentioned a rolling stop, which would have provided justification for a traffic stop, but even Detective M considered it as something not citable. Detective M said in his interview during the final comments with the representative that he was not saying Mr. \_\_\_\_\_ was going to commit a crime. Additionally, the decision to make a traffic stop while conducting undercover surveillance is counter-productive to their stated purpose. Both parties agreed the car was not searched; a visual look at whatever was in plain view would be within policy. The detectives' assessment of how long the stop lasted appeared to be more accurate as Detective M's lapel was about five and a half minutes long. Mr. \_\_\_\_\_'s witnesses did not cooperate with the investigation.

The CPOA finds Detective M's conduct to be **Sustained** where the investigation determined that the alleged misconduct did occur.

D) The CPOA reviewed Standard Operating General Order 1-04-1F regarding Detective M'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.*

Mr. \_\_\_\_\_ stated Detective M was trying to intimidate him by asking questions about drugs and weapons; his tone was very stern. Mr. \_\_\_\_\_ stated Detective M accused him of being a drug dealer because of how he dressed and carried himself. Detective M insisted he had information and would go to jail if he did not answer the way Detective M thought he should. Detective M threatened to have the car towed, threatened to go after his girlfriend, and threatened to search his mother's house.

Detective M denied he threatened to arrest him, tow the car, or search his mother's house. Detective M stated the detectives could have obtained a search warrant for the vehicle so that would not have been a threat. They had no probable cause to get a warrant to search his mother's house. Detective M claimed Detective A dealt with Mr. \_\_\_\_\_ more than he did.

The phone conversation Detective M had with Mr. \_\_\_\_\_'s girlfriend was captured on video. Detective M did not threaten to search the girlfriend's car, tow her car, or say anything about the girlfriend going to jail. The majority of the conversation from Mr. \_\_\_\_\_ was about the previous arrest complaining he did not receive some property back. Mr. \_\_\_\_\_ complained he was being treated as a "big time drug dealer." On the video Detective M told Mr. \_\_\_\_\_, they did not think of Mr. \_\_\_\_\_ as importantly as Mr. \_\_\_\_\_ claimed they did. Detective M, in a matter of fact manner, stated Mr. \_\_\_\_\_; went to jail last time because he broke the law. Despite Detective M's claim that he spoke to Mr. \_\_\_\_\_ very little, Mr. \_\_\_\_\_ said the majority of his contact was with Detective M and did not say much about Detective A's tone with him. The lapel video showed the two detectives were together during the portion recorded. Mr. \_\_\_\_\_ was inaccurate in his description of what occurred during the portion captured on video, his witnesses did not cooperate, and he did not follow-up to explain why he did not return with his witness.

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

### **III. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING DETECTIVE A'S CONDUCT**

A) The CPOA reviewed Standard Operating Procedural Order 2-18-2S3a regarding Detective A's conduct, which states:

*If an authorized unit is unavailable, the officer/detective in the unmarked unit will not conduct a traffic stop.*

Mr. \_\_\_\_\_ saw a regular civilian truck go by him with no markings or government plate. That same vehicle pulled him over, driven by Detective M. Detective M and Detective A pulled him over because at least one of the vehicles had flashing emergency lights. Mr. \_\_\_\_\_ stated Detective A's vehicle did not have emergency lights and only had flashing hazards.

Detective A acknowledged that his vehicle was a normal truck in appearance and did not have a government plate. His truck did have emergency lights, a siren, and a PA system to utilize in stops contrary to Mr. \_\_\_\_\_'s belief. Since their vehicles had emergency lights and sirens, he and Detective M initiated a traffic stop. Detective A believed if the department did not have an intention of him making stops in his vehicle then the vehicle would not be equipped in the manner that it is. Detective A stated they checked for available marked units, but there were none available in the area.

Detective A stated he had checked for an available marked unit, but there was no CAD information to support that assertion. Detective M did not recall with certainty if they checked for a marked unit to be available. A CAD search by APD Communications staff revealed no information matching that time and location. In order for the vehicle to be in compliance for traffic stops, the vehicle had to have a government plate. Additionally, the

officers would have to have been in uniform to conduct the stop. Both detectives stated they were in civilian clothing, but did put on a tactical police marked vest.

The CPOA finds Detective A's conduct to be **Sustained** where the investigation determined that the alleged misconduct did occur.

B) The CPOA reviewed Standard Operating Procedural Order 2-47-2A1a regarding Detective A's conduct, which states:

*Officers initiating traffic stops for observed violations shall: a. Advise Communications of the impending stop, giving violator's vehicle information (license plate, description of the vehicle, and/or occupants etc. ) and location.*

Detective A explained the gang unit operates on a secured, non-recorded channel. He provided the information about his stop in that manner; his sergeant would have been aware of their stop.

The policy is clear that a traffic stop shall be documented by Communications. There was no CAD of this incident. Advising a non-recorded channel of an impending stop does not satisfy the requirements of this SOP. Not only is calling out the stops for officer safety, but also important information such as the officer's identity, length of detention, and other pertinent information is recorded.

The CPOA finds Detective A's conduct to be a **Sustained violation not based on the original complaint** where the investigation determined that misconduct did occur that was not alleged in the original complaint, but that was discovered during the misconduct investigation.

C) The CPOA reviewed Standard Operating General Order 1-02-2B2 regarding Detective A's conduct, which states:

*Officers shall familiarize themselves with and have working knowledge of all laws of the State of New Mexico and the Ordinances of the City of Albuquerque, which they are required to enforce. Officers shall: 2. Make only those arrests, searches, and seizures, which they know or should know, are legal and in accordance with departmental procedures.*

Mr. [REDACTED] stated that the detectives pulled him over for the purposes of harassment. Neither officer told him he committed a driving infraction. Mr. [REDACTED] stated he had more interaction with Detective M than he did with Detective A. Mr. [REDACTED] stated he corrected his previous license issue. He was ordered out of the car. He was asked questions about drugs and weapons. Detective M asked if he were to search him or his car would he find anything. Mr. [REDACTED] emptied his pockets out of frustration, but did not allow the officers to search his car. He had nothing to hide, but out of principal refused. The detectives kept him between thirty minutes to an hour.

Detective A stated he and Detective M were conducting surveillance in an area and in particular a business reported by field officers to have high narcotics and gang activity. Detective A and Detective M observed a dark colored vehicle in the area, but it did not come from that business that day. Detective A recognized the driver as Mr. \_\_\_\_\_, whom Detective A had arrested before for weapons and drug violations. Detective A knew Mr. \_\_\_\_\_ also did not have a valid license previously. Since Detective A knew Mr. \_\_\_\_\_ had been involved in narcotic activity previously and suspected his license was not valid, they decided to initiate a traffic stop. Detective A did not remember if there was any additional reason to stop Mr. \_\_\_\_\_.

\_\_\_\_\_ s. Detective A stated once they contacted Mr. \_\_\_\_\_ that they smelled marijuana in the car. Both Mr. \_\_\_\_\_ and his passenger denied knowledge of marijuana. Detective A decided to have Mr. \_\_\_\_\_ step out of the car to avoid Mr. \_\_\_\_\_ from concealing or messing with things in case they decided to get a warrant. Detective A visually looked in the car while he spoke to the passenger, but he did not search it. Since he and Detective M did not see signs of impairment, they never asked to search the car, but could have obtained a warrant if they wished. Detective A said the stop was just a couple of minutes.

Mr. \_\_\_\_\_ stated he was going about normal business when he was pulled over. Once Mr. \_\_\_\_\_ was identified, the detectives used their past knowledge of Mr. \_\_\_\_\_ not having a valid license as final justification to initiate a traffic stop. Detective A's description of the stop justification seemed to hinge on Mr. \_\_\_\_\_' previous charges and not on that day's activities. The articulable justification provided did not support reasonable suspicion. Additionally, the decision to make a traffic stop while conducting undercover surveillance is counter-productive to their claimed purpose. Both parties agreed the car was not searched; a visual look at whatever was in plain view would be within policy. The detectives' assessment of how long the stop lasted appeared to be more accurate as Detective M's lapel was about five and a half minutes long. Mr. \_\_\_\_\_' witnesses did not cooperate with the investigation.

The CPOA finds Detective A's conduct to be **Sustained** where the investigation determined that the alleged misconduct did occur.

D) The CPOA reviewed Standard Operating General Order 1-39-4B6b&c regarding Detective A's conduct, which states:

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

Detective A stated he ran his recording during the incident and would provide it. After several requests for the video, Detective A mentioned an attorney had his lapel camera for a different case, which contained the video related to this case. The CPOA Investigator spoke to the attorney Detective A mentioned. The attorney stated he never had possession of the camera, but believed BCSO had the camera. The CPOA Investigator contacted a Captain at BCSO who researched the issue. The BCSO Captain confirmed BCSO was able to retrieve the video needed for their investigation, but never took possession of the lapel camera. APD

Property was contacted and they do not track the non-Taser cameras. Detective A had a responsibility to ensure the video was available as the incident where his camera was seized occurred two months after this incident.

The CPOA finds Detective A's conduct to be a **Sustained violation not based on the original complaint** where the investigation determined that misconduct did occur that was not alleged in the original complaint, but that was discovered during the misconduct investigation.

You have the right to appeal this decision.

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

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

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

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

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

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

Sincerely,  
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

### Police Oversight Board

Johnny J. Armijo

Dr. Susanne Brown

Joanne Fine

Dr. Carlotta A. Garcia

Rev. Dr. David Z. Ring III

Edward Harness, Esq., Executive Director

*Beth Mohr, Chair*

*Leonard Waites, Vice Chair*

*Eric H. Cruz*

*Dr. Lisa M. Orick-Martinez*

November 14, 2016

Via Certified Mail

**Re: CPC #127-16**

Dear Ms. \_\_\_\_\_:

Our office received the complaint you filed on June 17, 2016 against Officers of the Albuquerque Police Department (APD), regarding an incident that occurred on June 15, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on July 7, 2016. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

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

Albuquerque

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.

www.cabq.gov

### **I. THE COMPLAINT AND INVESTIGATION**

Ms. \_\_\_\_\_ is the Director of \_\_\_\_\_. One of her caseworkers worked with a family for several months. Things developed to where the caseworker assisted in removing a woman and her children for their safety. The caseworker called 242-COPS to advise he was going to be assisting the family. Ms. \_\_\_\_\_ believed the purpose of the caseworker's call was to alert police of the situation if a second call proved necessary during the relocation of the family. The relocation went smoothly. However, the next day the husband and alleged abuser called police to report his family as missing. Ms. \_\_\_\_\_ stated the APD Operator that received the call revealed information to the husband that his family went to a shelter

and that the caseworker assisted them. Ms. \_\_\_\_\_ explained this created a dangerous situation for the caseworker as the husband demanded more information, was visibly angry, and was known to have violent tendencies. Ms. \_\_\_\_\_ did not understand why the APD Operator revealed information to the caller.

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the complaint, the Computer Aided Dispatches (CAD), the 911 calls, Ms. \_\_\_\_\_'s interview, Mr. \_\_\_\_\_'s interview, Operator P's interview, and Supervisor F's interview.

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

A) The CPOA reviewed Standard Operating General Order 1-4-4E8 regarding Operator P's conduct, which states:

*Personnel will always treat the official business of the Department as confidential. Information regarding official business will be disseminated only to those for whom it is intended, in accordance with established Department procedures.*

Director \_\_\_\_\_ stated Operator P endangered her caseworker's safety by revealing information from a previous advisement call the caseworker made to police. The caseworker assisted a family in relocating away from an alleged abuser. When the alleged abuser contacted police, Operator P informed the caller his family left him, went to a shelter, and informed the caller the caseworker was responsible for assisting the family. As a result, the individual angrily contacted the caseworker and Director \_\_\_\_\_'s agency was fearful for the caseworker's safety.

Operator P stated he received a call from an individual reporting that his family was missing. Operator P asked some clarifying questions and then searched for any calls involving the address. Operator P located an "advise" call from the day prior. Operator P believed he provided minimal information to the caller. Operator P stated he believed he followed protocol and conveyed what should have been given, which was why it was in the system. Operator P did not dispatch an officer for a missing persons' call, as the family was in fact not missing.

Supervisor F stated Operator P's release of information was inappropriate and a violation. Supervisor F stated the Communications training is that information is not released. Supervisor F stated the appropriate way to have handled the call was to dispatch an officer and allow the officer to reveal appropriate information and/or handle the call. The recording of the call showed that Operator P did not give the caseworker's full name or contact information; however, Operator P did refer the caller back to the caseworker for more information. The CAD information indicated that the caller has been violent with the family before so sharing information that the family had left him and gone to a shelter was not appropriate. Operator P bluntly informed the caller his wife was leaving him. Referring the

caller back to the caseworker only served to focus the caller's anger on the caseworker. An officer should have been dispatched to explain the situation to the caller, which would have potentially avoided repercussions on the caseworker.

The CPOA finds Operator P's conduct to be **Sustained** where the investigation determined that the alleged misconduct did occur.

You have the right to appeal this decision.

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

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

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

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

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

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

Sincerely,  
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

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

November 14, 2016  
Via certified mail

2  
**Re: CPC #129-16**

Dear Mr.

Our office received the complaints you filed on July 14, 2016 Albuquerque Police Department (APD) regarding an incident that took place on July 10, 2016.

### **I. THE COMPLAINT**

The complaint alleges that you were unfairly placed on a “medical hold” against your will which is illegal. In your complaint you state the officer responded to a dispute between you and the upstairs neighbor. While speaking with the officer you were upset and began referencing criminal acts that occurred during 1982-1983. You also referenced the anti-Christ and seeing people’s spirits. The officer called for paramedics. You end your statement by saying you agreed to allow the paramedics to transport you for medical treatment.

### **II. INVESTIGATION**

The CPOA reviewed your complaint and could not identify any police misconduct.

### **III. CONCLUSION**

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint. The complaint fails to identify any police misconduct.

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>.

Letter to Mr. , CPC 129-16

November 14, 2016

Page 2

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



detrimental to marriages and there should be something in place to better protect the entire family of officers.

## **II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER W.'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, time logs and interviews of Officer W., Ms. Q and Mrs.

A) The CPOA reviewed APD Standard Operating Procedure (SOP) 1-4-4(B7), 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.*

Mrs. [redacted] complained that her husband, an Albuquerque Police Officer has been verbally and mentally abusing her for over 2 years. Mrs. [redacted] stated Officer W. has had affairs and refuses to divorce her. Mrs. [redacted] wrote Officer W. has had affairs with co-workers during shifts of overtime where he is assigned. The investigator was shown a video of Officer W. working overtime at [redacted] and conducting himself in an unprofessional manner during time on duty.

The CPOA finds Officer W.'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) 1-4-3(E4), which states:

### ***E. Fraternalization***

*The Department training policy and other policies forbid improper fraternization between employees and Police Cadets. Fraternization relates to prohibited personal relationships between Department employees of different ranks and positions. Fraternization involves improper relationships, ranging from overly casual relationships to friendships to romantic relationships. When fraternization occurs between employees of different hierarchical pairing, it can potentially undermine the chain of command, order and discipline. Not all contact between employees and officers or subordinates and superiors is prohibited; however the following is directly prohibited:*

*4. Any relationship that in reality or appearance of improper influence between two or more Department employees.*

Mrs. complained that Officer W. and Supervisor Ms. Q. were having an affair since approximately November 2015. The investigations showed that both parties were and are as of the interviews having a romantic relationship. Although Officer W. is a field officer and does have a Sergeant, when assigned to a different assignment in an overtime role, Officer W. is under the supervision of that department's supervisors. Ms. Q. is the daytime supervisor and on 20 occasions from November 2015 through August of 2016 has worked directly in a supervisory capacity of Officer W. while he was working overtime at the . Ms. Q., in her role, is directly responsible for the scheduling and hours assigned to Officer W. Ms. Q. is also the direct supervisor while on duty for officers assigned to that post.

The CPOA finds Officer W.'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) 1-4-4(D20), which states:

Personnel will truthfully answer all questions specifically directed to them that are related to their employment and to all operations of the Department.

Mrs. showed a video to the investigator of Officer W., in uniform, on duty working overtime at The investigation determined Officer W. was questioned about unprofessional behavior while working overtime at the location with a female associate. Based on a preponderance of the evidence the investigator physically saw and heard during interviews, Officer W. was untruthful in regards to his conduct while on duty during the incident mentioned. Officer W. had knowledge of the surveillance cameras in the Loss Prevention office, yet there was still, observed unprofessional behavior.

The CPOA finds Officer W. SUSTAINED, violation not based on original complaint, where the investigation determines, 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 RTCC SUPERVISOR MS. Q.'S CONDUCT

B) The CPOA reviewed APD Standard Operating Procedure (SOP) 1-4-3(E4), which states:

E. Fraternalization

The Department training policy and other policies forbid improper fraternization between employees and Police Cadets. Fraternization relates to prohibited personal relationships between Department employees of different ranks and positions. Fraternization involves improper relationships, ranging from overly casual relationships to friendships to romantic relationships. When fraternization occurs between employees of different hierarchical pairing, it can potentially undermine the chain of command, order and discipline. Not all

*contact between employees and officers or subordinates and superiors is prohibited; however the following is directly prohibited:*

**4. Any relationship that in reality or appearance of improper influence between two or more Department employees.**

Mrs. \_\_\_\_\_ complained that Officer W. and \_\_\_\_\_ Supervisor Ms. Q were having an affair since approximately November 2015. The investigations showed that both parties were and are as of the interviews having a romantic relationship. Ms. Q. is the \_\_\_\_\_ daytime supervisor and on 20 occasions from November 2015 through August of 2016 has worked directly in a supervisor capacity of Officer W. while he was working overtime at the \_\_\_\_\_ Ms. Q., in her role, is directly responsible for the scheduling and hours assigned to Officer W. Ms. Q. is also the direct supervisor while on duty for officers assigned to that post.

The CPOA finds \_\_\_\_\_ Supervisor Ms. Q.'s conduct **SUSTAINED**, where the investigation determines, by a preponderance of the evidence that the alleged misconduct did occur.

Your complaint and these findings are made part of Officer W.'s and \_\_\_\_\_ Supervisor Ms. Q.'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> .

Letter to Mrs.  
November 14, 2016  
Page 5

, CPC 131-16

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

Sincerely,  
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

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

November 14, 2016  
Via Certified Mail

**Re: CPC #133-16**

Dear Mr.

Our office received the complaint you filed on July 7, 2016 against Albuquerque Police Department (APD) Communications Operator G. for an incident which occurred on April 21, 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.                    said he was in a verbal altercation with his brother, APD Communications Operator G. on April 21, 2016, during which Operator G. became confrontational and threatened him. Mr.                    said a second incident occurred on July 7, 2016 between him and Operator G., wherein Operator G. became confrontational with him, again. Mr.                    said both incidents occurred while both men were at home and not while Operator G. was on duty or on City of Albuquerque time. Mr.                    wanted a psychological evaluation done on Operator G., as well as anger management classes and counseling because it is his understanding that Operator G. is applying to the APD to become a police officer.

## II. THE INVESTIGATION

A CPOA Investigator reviewed your complaint and researched the matter so that we could obtain more information about the incident you complained of. Operator G. was interviewed and provided his version of the events. The CPOA Investigator spoke with you over the phone to get your version of the events and obtain more information regarding the events of which you spoke in your written complaint.

The CPOA Investigator learned that Operator G. has not applied to become an APD officer, and assured you that in the event he had, or will in the future, APD has safeguards in place to determine a potential officer's physical and psychological fitness for duty. The CPOA Investigator determined these alleged incidents did not occur while Operator G. was working in an APD Operator capacity. Additionally, there were two versions of events and there was not a preponderance of evidence to substantiate the allegations. Lastly, these incidents were a family matter over which the CPOA office has no jurisdiction.

The CPOA Investigator shared the aforementioned information with you and you agreed with the determination to administratively close your complaint.

## III. CONCLUSION

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** your complaint, as agreed upon during your telephone interview.

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



## CIVILIAN POLICE OVERSIGHT AGENCY

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

November 14, 2016  
Via EMail

Dee Baca

**Re: CPC #135-16**

Dear Ms. —

Our office received the complaints you filed on July 25, 2016 Albuquerque Police Department (APD) regarding an incident that took place on July 22, 2016.

### **I. THE COMPLAINT**

The complaint alleges that the driver of an unmarked gray Impala license plate: harassed you and drove in an unsafe manner as you traveled southbound on I-25.

PO Box 1293

### **II. INVESTIGATION**

The CPOA contacted Albuquerque Police Department Motor pool to trace the license plate information you provided. APD does not have a vehicle in its fleet that matches that description or license plate number. Therefore, we cannot identify the driver of the vehicle you describe.

Albuquerque

New Mexico 87103

### **III. CONCLUSION**

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint. The complaint fails to identify an Albuquerque Police Officer.

www.cabq.gov

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> .

Letter to Ms. CPC 135-16  
November 14, 2016  
Page 2

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