

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

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

## POLICE OVERSIGHT BOARD AGENDA

Thursday, March 16, 2017 – 5:00 PM  
Vincent E. Griego Chambers

- I. Welcome and call to order.
- II. Pledge of Allegiance – *Rev. Dr. David Z. Ring III*
- III. Mission Statement – *Joanne Fine*  

*“Advancing Constitutional policing and  
accountability for APD and the Albuquerque  
Community.”*
- IV. Approval of the Agenda
- V. Public Comments
- VI. Review and Approval of Minutes
- VII. Discussion:
  - a. Councilor Davis’ Resolution regarding Officer-Involved Shootings and In-Custody deaths.
  - b. POB/CPOA Communications
  - c. Chief’s response letters
  - d. Judge Brack status conference
  - e. City Council Study Session
- VIII. Consent Agenda Cases:
  - a. Administratively Closed Cases  
094-16
  - b. Cases investigated  
152-16                     153-16                     169-16
  - c. CIRT Cases – None
- IX. OIS – Ramiro Armendariz I-169-15
- X. POB’s Review of Garrity Materials
- XI. Reports from Subcommittees
  - a. Community Outreach Subcommittee – *Dr. Ring*
  - b. Policy and Procedure Review Subcommittee – *Susanne Brown*
    1. Letter to Chief Eden regarding the purpose and function of the Office of Policy Analysis

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**2. Summary of Drug Testing Compliance Report by Dr. Miriam Verploegh**

- c. Case review Subcommittee – *Leonard Waites***
  - 1. Appeals:**
    - 132-16**

**XII. Reports from City Staff**

- a. APD**
- b. City Council**
- c. Mayor's Office**
- d. City Attorney**
- e. CPOA – *Edward Harness, Executive Director***
  - 1. CIRT Cases**
  - 2. Force Review Board**

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

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

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

**XIV. Other Business**

- a. Ordinance Amendments**
- b. Addressing Open Meetings Act Complaint**
  - 1. Election of Vice-Chair**
  - 2. Approval of January 12, 2017 Minutes**
  - 3. Consent Agenda**
    - i. Administratively Closed cases**

012-16	044-16	151-16	187-16
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    - ii. Cases Investigated**

098-16	142-16	174-16
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  - 4. OIS I-001-15**
  - 5. Commendation for Lt. S. arising out of OIS I-37-15**
  - 6. Summary of other comments and proposals**

**XV. Adjournment- *Next Regularly scheduled POB meeting will be on April 13, 2017 at 5 p.m. in the Vincent E. Griego Chambers.***

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

# CITY OF ALBUQUERQUE



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*Eric H. Cruz*

*Leonard Waites*

March 17, 2017

Via Certified Mail

**Re: Citizen Police Complaint 094-16**

Dear Ms.

On April 25, 2016 you filed a complaint via e-mail with our agency. On June 1, 2016, your complaint was assigned to a Civilian Police Oversight Investigator for review.

### **I. THE COMPLAINT**

You wrote in your complaint that on April 17, 2016 at about 9:30 PM, you were on your way home and you noticed police activity in the area. You wrote that when you pulled into your driveway and activated your automatic garage door opener, a man emerged from the bushes in your neighbor's yard and attempted to get into your passenger door. The man was unsuccessful in doing so because you took evasive action by backing out of your driveway and you laid on your horn to attract the officers who were in the area. You believed that the man who attempted to get into your car was trying to carjack you and you suspected that the man was involved in the incident where there police were. When you arrived at the location of where the police were, you stated that you were greeted by angry officers who accused you of trying to run their police barricade. You notified the officers that your garage door was still open and you suspected that the man may have gone inside your home. APD Officer W. informed you that a neighbor was the victim of a home invasion and the neighbor had been stabbed. That was the reason for the 15 or so police officers who were in the area. Later, Officer W. came to your home and he asked you to accompany him to the corner of Lomas and San Pedro where the police had man detained. The police wanted to see if the man they had detained was the same man who had tried to carjack you. You stated that you had to sit in the back seat of the police car because the front seat was too full of items to have you sit up front. You complained that there were no officers patrolling the area looking for the suspect of the stabbing and they didn't notify the neighbors of any impending danger. You felt that had the officers done that, they would have likely found the man who had tried to carjack you. You complained that because the officers all had their police radios blaring they could not hear you honking your horn and they did not even look around when the man had committed

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a crime virtually in front of them. You complained that all of the officers congregating as they did was dangerous. You complained that a victim of a crime should never be made to sit in the back seat of a police car. You felt that the police failed to protect and serve. You complained that even though fingerprints were taken from your car, no one had called to let you know as to whether or not those prints lead to a perpetrator being identified. You requested that APD protocol be changed. You requested protection and services from officers. You requested that you should not have been seated where criminals sit in a police car especially when you were the victim and you pay tax dollars for that police car. You requested APD conduct courtesy follow ups just to check on victims to see how they are doing and to update them on any progress made on their cases.

## **II. THE INVESTIGATION**

The CPOA Investigator conducted a preliminary investigation examining the facts of the case. The investigation revealed that there had been a stabbing that occurred at 1109 Florida Street which is 2 city blocks away from your home. The stabbing victim was located at Marble and Florida Streets. Police Officers quickly established a perimeter and they searched the area attempting to locate the offender who was also accompanied by a female. It was during that time that you approached the police and informed them of what had taken place at your home. Several APD Officers immediately went to your home and conducted a security sweep of the interior and they did not locate anyone hiding in your home. Officers searched the area looking for the man who tried to open your car door but they did not find anyone in the area. A Field Investigator was called to your home and processed your vehicle for latent prints. Those latent prints were tagged into evidence. Later on, APD Officers detained a man whom they believed was responsible for the stabbing. The stabbing victim, who had been released from the hospital, positively identified the man whom the police had detained as the man who stabbed him. You were asked to accompany Officer W. to the area where the stabbing suspect had been detained to see if that man was the same man who had tried to get into your car. You told Officer W. that the man who had been detained, (the stabbing suspect) was NOT the same man who had attempted to get into your car. The stabbing suspect was arrested and charged with stabbing the man who lives two blocks from your home. The stabbing suspect lives several miles from your home.

## **III. CONCLUSION**

The evidence reviewed by the CPOA Investigator showed that the police were not just congregating unsafely at a certain spot but that they were actively involved in the investigation of a stabbing and they were actively looking for the suspect. The police officers had a perimeter set up so they could protect the crime scene and control anyone who was leaving the area or coming into the area. A police officer standing on a perimeter may not look like he or she is doing anything but standing there, but they are responsible for protecting the integrity of a crime scene and controlling the possible escape of the suspect or suspects.

March 17, 2017

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There is no proof that the officers had their radios blaring so loud that they could not hear you honking your horn from two blocks away. Once you informed the officers of what had happened to you, you received an immediate response to your home. The officers searched your home and the immediate area for the man who tried to get into your car. An investigator came out and took latent prints. At this time, there are no suspects to match those prints to. The evidence in this case showed that the police responded very rapidly to the stabbing and to the situation that occurred at your home. Because the police continued working on the case until the very early morning hours of the next day, the APD officers located, identified, detained, arrested, and charged a man who stabbed another man. They didn't catch the man who tried to get into your car, but the evidence showed that the man who tried to get into your car was not the man who stabbed the other man. Lastly, you complained that you should not have had to ride in the back seat of a police car. The evidence showed that at the time you were asked to accompany the officer, you did not object to riding in the back seat. Even if you did object, there is no Standard Operating Procedure that states that the back seat of a police car is reserved only for people who are being detained or under arrest.

The investigation revealed that there was no Standard Operating Procedure violation by Officer W. or any of the other officers on the scene.

Because of that we are administratively closing your complaint and no further investigation will occur. Administratively closed complaints may be re-opened if additional information becomes available.

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

Please contact me if you have any questions or concerns.

Sincerely,



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

CC: Albuquerque Police Department, Chief of Police

# CITY OF ALBUQUERQUE



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*Leonard Waites*

March 17, 2017

Via Certified Mail

**Re: CPC #152-16**

Dear Mr.

Our office received the complaint you filed against Albuquerque Police Department (APD) Officer R. on September 30, 2016 regarding an incident that occurred on July 25, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on November 3, 2016. The CPOA made findings of whether the Albuquerque Police Department (APD) Officer involved violated Standard Operating Procedures (SOPs) based on a preponderance of the evidence. A preponderance of the evidence means that one side has a greater weight of evidence that is more credible and convincing than the other side. Another way of saying it is more than 50% of the credible evidence. If the credible evidence is 50-50, the proper finding is Not Sustained.

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

### I. THE COMPLAINT

Mr. [redacted] wrote in his complaint that 3-6 times a week he provides transportation for his friend, [redacted], and he takes her to the Methadone Clinic located near Monroe and Central. On July 25, 2016, at about noon, Mr. [redacted] and Ms. [redacted] were leaving the clinic when a verbal confrontation ensued between Ms. [redacted] and another female. Mr. [redacted] pulled over and he noticed a man headed towards his car and the man had his hand in his pocket. Mr. [redacted], fearing that he was going to be attacked by the man, got out of his car and told the man to stop coming towards him or he was going to hurt the man. The man did not stop so Mr. [redacted] began to give the man "the beating of his life." Suddenly and without warning, Mr. [redacted] was plowed into from behind by APD Officer R. who outweighed him by at least 100 pounds. Mr. [redacted] rolled to the ground from being plowed into and he suffered injuries. He alleged that his right shoulder was scraped, that the skin

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from several of his fingertips was torn off, and he was bleeding. He said that his shirt was torn as well.

The officer allegedly yelled at Mr. [REDACTED] that he was going to jail. After the officer conducted his investigation, the officer told Mr. [REDACTED] that he was not going to jail.

Mr. [REDACTED] said that the officer did not do a report on the incident. He complained that the officer who had plowed into him was having lunch at Dion's Pizza when the officer and his partner saw the fight and came out to stop it. Mr. [REDACTED] complained that the officer should have given him a warning or announced his presence before plowing into Mr. [REDACTED]. Mr. [REDACTED] felt that his civil rights had been violated.

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

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable Standard Operating Procedures (SOPS), the Complaint, the Computer Assisted Dispatch (CAD) report, and interviews with Officer R. and Officer A.. Mr. [REDACTED] and Ms. [REDACTED] were not interviewed because they failed to keep three appointments that were scheduled for them.

A) The CPOA reviewed Standard Operating Procedure 2-52-3 (4) regarding APD Officer R.'s conduct, which states:

*When force is necessary and objectively reasonable, Officers must strive to use the minimum amount of force necessary in the available objectively reasonable force options.*

Mr. [REDACTED] complained that he was plowed into from behind by APD Officer R.. He complained that as a result of that action, Mr. [REDACTED] rolled to the ground and suffered injuries. Mr. [REDACTED] complained that Officer R. should have given him a warning or announced his presence before plowing into Mr. [REDACTED]. Mr. [REDACTED] complained that Officer R. failed to write a report on the incident. Mr. [REDACTED] felt that his civil rights had been violated.

Mr. [REDACTED] and his witness were scheduled to be interviewed by the CPOA Investigator on three different dates. Mr. [REDACTED] failed to call or show up for the first scheduled interview. He called the next day and said that he had fallen asleep and missed the interview. The interview was rescheduled. Mr. [REDACTED] called just prior to that interview and he stated that both he and his witness had been ill and they would not be able to come in for the interview. The interview was rescheduled for 5 days later and Mr. [REDACTED] and his witness failed to show or call to let the Investigator know they were not coming to the interview. This investigation was conducted on the written complaint, the review of two lapel videos, the CAD report, and the officer's statements.

The reasonableness inquiry in reviewing an officer's use of force is an objective one; the question is whether the officer's actions are objectively reasonable in light of the facts and

circumstances confronting the officer at the time of the incident. The reasonableness of a use of force must be judged from the perspective of a reasonable officer on the scene. The reasonableness must account for the fact that officers are often forced to make split second judgments in circumstances that are tense, uncertain, and rapidly evolving. Officers are permitted to use force to accomplish lawful objectives. A lawful objective would be to prevent a member of the public from being harmed by the physical acts of another. The level of control must be proportionate to the circumstances and level of resistance encountered by the officer. Officers should use the minimum amount of force necessary under the circumstances for the situation and bring it under control in a safe and prudent manner. The minimum amount of force necessary is defined as lowest level of force within the range of objectively reasonable force that is necessary to achieve a lawful objective. A low-level control tactic is defined as a tactic that is neither intended nor likely to cause injury. A low level control tactic does not require a use of force report.

The investigation in this case revealed that Officer R. and Officer A. had properly checked out for lunch at a nearby restaurant. They were approached inside the establishment by a man who told them that there were people outside fighting. The CAD report showed that the officers notified dispatch that they would be out with a fight and they responded to the fight going on outside. When the officers went outside they saw two fights. One fight was between Mr. \_\_\_\_\_'s witness and another female. The other fight that was ongoing was a physical fight between Mr. \_\_\_\_\_ and another man. By all accounts, Mr. \_\_\_\_\_'s account included, Mr. \_\_\_\_\_ was beating the other man heavily.

Officer R. handled the fight between the males and Officer A. handled the fight between the females.

According to both officers, warnings were given to the males to "break it up", but Mr. \_\_\_\_\_ either did not hear or did not heed the warnings. What is disputed is how Officer R. broke up Mr. \_\_\_\_\_ and the man whom Mr. \_\_\_\_\_ was fighting. Mr. \_\_\_\_\_ alleges that he was "plowed into" full force from behind. Officer R. disputed that and said that he pushed the two men away from one another and Mr. \_\_\_\_\_ lost his footing and balance and fell to the ground. Officer A. did not witness Officer R.'s interaction with Mr. \_\_\_\_\_ and only saw Mr. \_\_\_\_\_ sitting after Mr. \_\_\_\_\_ and the other man were separated. Mr. \_\_\_\_\_'s witness was not available for an interview. Officer R. did note, and the video evidence did show, that Mr. \_\_\_\_\_ had a ripped shirt and minor injuries. Mr. \_\_\_\_\_ was involved in a physical altercation on an asphalt street and was beating the other man heavily prior to the officer breaking up the fight. Mr. \_\_\_\_\_ maintains that his injuries came from being plowed into from behind, but it is just as likely that he got his injuries from fighting on the street with the other man.

In this case, Officer R. was confronted with two men fighting in public and Mr. \_\_\_\_\_ was beating the other man. That fact is undisputed. Officer R. had a lawful objective to accomplish and that objective was to separate the men and to stop them fighting. The act of pushing the men apart was a low-level control tactic that was neither intended to, nor likely to, cause injury. In fact, the other man was not injured by the officer's intervention.



Separating the men by pushing them back was the minimum amount of force necessary under the circumstances for the situation to bring it under control in a safe and prudent manner.

Mr. \_\_\_\_\_ was engaged in a crime. Officer R. used the minimum amount of force necessary to stop that crime. Mr. \_\_\_\_\_ certainly could have been arrested but the man who he was fighting with gave minimal information or cooperation to the police and the man refused to press any charges. The women involved in their own fight also refused to press charges on one another. The lapel videos showed that Mr. \_\_\_\_\_ was asked repeatedly if he wanted medical assistance and Mr. \_\_\_\_\_ repeatedly declined those offers.

In this case, the low-level tactic used on Mr. \_\_\_\_\_ did not require a use of force report. The situation of two men and two women fighting for various reasons also did not require a report especially when the victims refused to pursue any criminal charges against their perpetrators.

Officer R.'s actions were objectively reasonable under the circumstances and there was no SOP violation.

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

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

You have the right to appeal this decision.

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

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

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

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

Letter to Mr. \_\_\_\_\_, CPC 152-16  
March 17, 2017  
Page 5

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

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

Sincerely,  
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police

# CITY OF ALBUQUERQUE



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*Dr. Carlotta Garcia, Vice Chair*

*Eric H. Cruz*

*Leonard Waites*

March 17, 2017

Via Certified Mail

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**Re: CPC #153-16**

Dear Mr.

Our office received the complaint you filed on September 30, 2016 against Officers of the Albuquerque Police Department (APD), regarding an incident that occurred on September 21, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on November 1, 2016. The CPOA thoroughly and impartially investigated the complaint.

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

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

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

Mr. [redacted] called police to report a suspicious vehicle and provided the license plate. Mr. [redacted] has called police before with similar information and each time before the Operators just take the information. However, on September 21, 2016, he called police and Operator S was very argumentative and unprofessional.

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 phone recordings, and Operator S' interview. Mr. [redacted] could not be reached for an interview, his

number would not accept the call, but he had extensively explained his position to the Communications Supervisor, which was recorded.

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

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

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

Mr. [REDACTED] told the Communications Supervisor, who also wrote a complaint for him, that he felt like Operator S treated him as a piece of trash and it was "horrifying" to be spoken to in that manner. Operator S did not listen to Mr. [REDACTED] and accused Mr. [REDACTED] of profiling and wasting the department's time. Mr. [REDACTED] simply wanted to give the plate number of a suspicious vehicle and Operator S fought him every step of the way.

Operator S explained when Mr. [REDACTED] called, Operator S was attempting to probe about the situation and determine why Mr. [REDACTED] felt the particular situation was suspicious. However, Operator S admitted he went about his query the wrong way and was argumentative. Operator S admitted his approach was wrong and admitted he put Mr. [REDACTED] down when Mr. [REDACTED] was just calling for help. Operator S realized he should have just created the call and provided the information he was given.

The recording of the call showed Operator S was confrontational with Mr. [REDACTED] while Mr. [REDACTED] tried to report suspicious activity. Operator S, upon hearing the call later, realized he handled the call incorrectly. As Communications Order 2-01-10A1 talks about, it is the responsibility of the 911 Operator to obtain information necessary for the proper handling of a call. The 911 Operator is the first contact for a citizen and a professional response is important. Operator S acknowledged he did not have a professional attitude during that call, but is striving for improvement.

The CPOA finds Operator 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

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*Dr. Carlotta Garcia, Vice Chair*

*Eric H. Cruz*

*Leonard Waites*

March 17, 2017

Via email

**Re: CPC #169-16**

Dear Mr.

Our office received the complaint you filed on July 2, 2016 against Officers of the Albuquerque Police Department (APD), regarding an incident that occurred on July 2, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on October 28, 2016. The CPOA thoroughly and impartially investigated the complaint.

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

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

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

Mr. [redacted] waited along the curb at the Dion's parking lot. A personal use vehicle, later identified as being driven by Sgt. S, whipped around the corner at a high rate of speed. Sgt. S continued to drive in a reckless manner in the parking lot. Officer S came up behind Mr. [redacted] in a marked police unit and Mr. [redacted] believed Officer S saw the unsafe driving of Sgt. S. Mr. [redacted] confronted Sgt. S about his driving. Officer S sided with Sgt. S and said Mr. [redacted] was in the wrong. Officer S became argumentative with him and when Mr. [redacted] asked Officer S for identification, Officer S did not willingly provide it. Mr. [redacted] determined the two were married, which explained why Officer S defended Sgt. S. Officer S should have called another officer since there was a conflict of interest. After Officer S left, Sgt. S came back out and confronted Mr. [redacted].

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 physical scene, Mr. Lundquist's interview, Officer S' interview, and Sgt. S' interview.

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

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

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

Mr. [REDACTED] stated he was parked along the curb without markings prohibiting parking initially. Sgt. S' careless driving in the parking lot startled him so he pulled forward some, which at that time he might have been in the crosswalk. When Officer S sounded her air horn he pulled forward more and at that time his vehicle might have been in the fire lane. Mr. [REDACTED] confronted Sgt. S to bring Sgt. S' poor driving behaviors to his attention. While he and Sgt. S argued, Officer S approached. Officer S focused on Mr. [REDACTED] being in the wrong by being in the fire lane and ignored Sgt. S' poor driving. Mr. [REDACTED] was upset that Officer S covered the whole thing up and intended on doing nothing. He suspected and then confirmed that Officer S was married to Sgt. S, which explained why she did nothing. Mr. [REDACTED] stated if in fact he violated the law then Officer S should have issued him a citation. Mr. [REDACTED] expected Officer S should have summoned another officer to the scene since there was a conflict of interest. Mr. [REDACTED] stated Officer S should have explained the situation thoroughly and she did not act professionally since she did nothing about the laws being broken.

Officer S stated she did not observe poor driving behaviors from Sgt. S. Officer S stated a vehicle in the fire lane made it difficult to park, especially when Sgt. S was trying to back into the space. Officer S observed Mr. [REDACTED] angrily closing distance on her husband and child using profanity. Officer S stepped between Mr. [REDACTED] and her husband and told Mr. [REDACTED] he needed to move his vehicle because he had been in the fire lane. Officer S stated Mr. [REDACTED] disregarded her authority, continued to argue with Sgt. S, and said, "I'm not talking to you, I'm talking to him." Officer S agreed she told Mr. [REDACTED] a few times he was in the wrong because he was in the fire lane. Officer S could have issued Mr. [REDACTED] a citation for being in the fire lane, but used her discretion and did not. Officer S did not feel it necessary to call another officer because Sgt. S disengaged and left the scene; she could handle the situation.

Mr. [REDACTED] claimed he parked in an unmarked area of the curb. The only area not marked as fire lane is the actual curve around the building. The site visit revealed if Mr. [REDACTED] were parked along that unmarked area, he would have completely blocked the drive-through lane. Also in this location, getting around the corner would have been extremely difficult or possibly impassable depending on the types of vehicles. Therefore, either Mr. [REDACTED] created a complete obstruction or he was in the fire lane the entirety of

the encounter when he was not parked in a space. Mr. [REDACTED] had different options to handle the situation. He could have directly approached Officer S instead of confronting an unknown individual, he could have called the police himself to report the incident, or he could have left. Instead, Mr. [REDACTED] initiated a verbal confrontation with to his knowledge just another citizen. Officer S could have issued a citation to Mr. [REDACTED], but she used her discretion as permitted in SOP 3-13-3B4 and did not, which was to Mr. [REDACTED]'s benefit. Officer S stated she did not see the alleged driving behaviors of Sgt. S. The parking layout would have made it difficult to see and the driving unlikely to have occurred as described.

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

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

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

Mr. [REDACTED] stated Officer S was professional initially, but quickly became more "hateful" towards him. Officer S told him several times he was in the wrong and asked several times, "Are we done here?" Mr. [REDACTED] felt nothing he said mattered and he did not want to argue with Officer S anymore since she refused to do anything.

Officer S stated Mr. [REDACTED] initiated the confrontation and used profanity as he addressed Sgt. S. Mr. [REDACTED] disregarded her authority as a police officer and was dismissive with her, as he wanted to continue arguing with Sgt. S. Officer S agreed she told Mr. [REDACTED] he was improperly in the fire lane. Mr. [REDACTED] continued to argue so she told him he should leave as his business was concluded at the restaurant. She denied her tone was nasty or hateful; Mr. [REDACTED]'s demeanor was "off the wall."

Mr. [REDACTED] stated Officer S disregarded his statements, was accusatory, and "hateful." Mr. [REDACTED] instigated the confrontation with Sgt. S. Officer S stated Mr. [REDACTED] was disrespectful towards her and continued to be argumentative. There was no independent witness or parking lot footage. The situation was impromptu and Officer S was on a meal break so there was no lapel video of her interaction with Mr. [REDACTED]. Officer S, like most APD cars, did not have dash cam recording.

The CPOA finds Officer S' conduct to be **Not Sustained** where the investigation was unable to determine whether the alleged misconduct occurred.

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



*Without contempt, officers shall furnish their name and employee number to any person requesting such information while they are on duty or while they are acting in an official capacity, with the following exceptions: (exceptions did not apply in this case)*

Mr. [REDACTED] asked for Officer S' name and man number. Mr. [REDACTED] claimed Officer S' initial response was that she did not need to provide that information. Officer S said he could obtain it off her vehicle, but eventually she gave her last name. Mr. [REDACTED] did not understand her and asked her to spell her name, but she told him she did not need to do that.

Officer S stated Mr. [REDACTED] demanded her business card. Officer S explained she did not have a card, but provided her name, spelled it out, and provided her man number. Officer S denied telling Mr. [REDACTED] she did not need to provide the information. Mr. [REDACTED] complained he did not have the means to write the information down so she suggested he enter the information into his phone. He said again that he wanted a card. She told him he could easily gain her information by taking down her car number. Sgt. S stated he could hear from the door of the restaurant Mr. [REDACTED] loudly asking for Officer S' name. Sgt. S heard Officer S tell Mr. [REDACTED] to get out his phone and she would spell it for him. He never heard her say Mr. [REDACTED] did not need to know that information. Mr. [REDACTED] asked for a card and she told him she did not have any. She pointed to her car and gave him the car number as a way of identifying her.

Mr. [REDACTED] received at least the last name of the officer and obtained the car number for the complaint. It is disputed as to how the information was provided. Mr. [REDACTED] described Officer S was contemptuous while Officer S and Sgt. S stated Officer S provided the information willingly.

The CPOA finds Officer S' conduct to be **Not Sustained** where the investigation was unable to determine whether the alleged misconduct occurred.

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

A) The CPOA reviewed Standard Operating General Order 1-1-4B7a regarding Sgt. S' conduct, which states:

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

Mr. [REDACTED] complained that Sgt. S drove unsafely when Sgt. S' personal vehicle "whipped" around the corner at a high rate of speed in the Dion's parking lot. Mr. [REDACTED] said as he moved forward Sgt. S cut in front of him as Sgt. S was trying to back into a parking space. Then in order to straighten, Sgt. S pulled forward quickly, came within inches of his passenger door, and then completed parking. Mr. [REDACTED] parked to check his vehicle for damage although he acknowledged there had been no contact. Mr. [REDACTED]

stated he politely advised Sgt. S about his unsafe driving behaviors. Instead, Sgt. S took no responsibility for his driving behaviors and instead tried to shift blame on him for being parked in a fire lane, which Mr. [REDACTED] admitted he was at the very end of the incident, but it did not excuse Sgt. S' actions. Mr. [REDACTED] stated after Officer S went inside, Sgt. S came back outside. Mr. [REDACTED] claimed Sgt. S cursed at him and taunted him for going back to his car instead of confronting him further.

Sgt. S drove into the Dion's parking lot in his personal vehicle with his daughter. When he rounded the curve, the vehicle driven by Mr. [REDACTED] was parked in the fire lane. Sgt. S denied he sped or drove recklessly. Sgt. S honked his horn once to indicate Mr. [REDACTED] should move, as it was difficult to get by. Sgt. S stated Mr. [REDACTED] crept up a foot at a time until he could get by. He initiated parking by backing into a space. As he pulled forward to reverse in the space, Mr. [REDACTED] pulled forward, which Sgt. S interpreted as Mr. [REDACTED]'s way of showing annoyance. Sgt. S agreed when he needed to straighten, the vehicles were in close proximity because Mr. [REDACTED] was parked improperly in the fire lane. Sgt. S denied he parked rapidly or recklessly. When Officer S came around the corner, she sounded her air horn once. When Sgt. S got out of his car, Mr. [REDACTED] closed distance "aggressively" and yelled, "Do you have a fucking problem?" They argued about Mr. [REDACTED] being in the fire lane since Mr. [REDACTED] denied it. Officer S stepped between them and told them to stop arguing. Mr. [REDACTED] disregarded Officer S, who was in uniform, and continued to argue. Sgt. S entered the restaurant, as he was not on duty and knew to leave the situation to Officer S, a uniformed officer. After Officer S concluded dealing with Mr. [REDACTED], he observed Mr. [REDACTED] head directly to the back of Sgt. S' personal vehicle. Sgt. S did not know Mr. [REDACTED]'s intentions and thought Mr. [REDACTED] might cause damage to the vehicle so he went outside. He did not confront Mr. [REDACTED], but when Mr. [REDACTED] saw him, Mr. [REDACTED] asked him what his problem was, possibly using profanity. Sgt. S denied he used profanity or tried to bait Mr. [REDACTED] into an altercation. Mr. [REDACTED] was very taunting when he said he was going to complain about his wife, Officer S. Mr. [REDACTED] then left.

Sgt. S was in his personal vehicle, off duty. There was no video of the parking lot to show what type of driving behaviors occurred. No contact or damage occurred between the vehicles. A site visit revealed if Mr. [REDACTED] were parked along that area, he would have completely blocked the drive-through lane. Also in this location, getting around the corner would have been extremely difficult or possibly impassable depending on the types of vehicles. Therefore, either Mr. [REDACTED] created a complete obstruction or he was in the fire lane the entirety of the encounter when he was not parked in a space. Mr. [REDACTED] initiated the confrontation with Sgt. S, not knowing at the time Sgt. S was an officer. There were no independent witnesses or video to show Sgt. S' behaviors. Both accused the other of being argumentative and aggressive.

The CPOA finds Sgt. S' conduct to be **Not Sustained** where the investigation was unable to determine whether the alleged misconduct occurred.

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