

CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board

Dr. Susanne Brown

Dr. Carlotta Garcia

Rev. Dr. David Z. Ring III

Edward Harness, Esq., Executive Director

Beth Mohr, Chair

Eric H. Cruz

Dr. Lisa M. Orick-Martinez

Leonard Waites, Vice Chair

Joanne Fine

POLICE OVERSIGHT BOARD AGENDA

Thursday, April 14, 2016 – 5:00 PM

Vincent E. Griego Chambers

- I. Welcome and call to order.**
- II. Pledge of Allegiance- Dr. Lisa M. Orick-Martinez**
- III. Approval of the Agenda**
- IV. Public Comments**
- V. Review and Approval of Minutes**
- VI. Consent Agenda Cases:**

142-15 150-15 173-12 176-14 182-13 186-14 190-13
198-14 202-14 204-14 207-14 210-14 213-14 215-14
216-14 218-14 221-14 222-14 223-14 224-14 225-14
232-14 249-13 255-13 257-13 228-14 229-14
- VII. Case to be heard by the POB:** 234-15, 248-15
- VIII. Reports from Sub-Committees**
 - a. Outreach Sub-committee – Leonard Waites**
 - i. POB Mission statement**
 - ii. Brochure design review**
 - iii. Community Policing Councils**
 - b. Policy and Procedure Review Sub-Committee – Susanne Brown**
 - i. Letter to Chief Eden re: Use of Force**
 - ii. Letter to City Council re: Policy**
 - iii. Ordinance changes**
 - c. Case review Sub-committee – Joanne Fine**
 - i. Ordinance changes – Statute of Limitations on complaints**
 - ii. Officer Involved shootings**
- IX. Reports from City Staff**
 - a. APD**
 - b. City Council**
 - c. Mayor's Office**
 - d. City Attorney**
 - e. CPOA – Edward Harness, Executive Director**

- X. Meeting with Counsel re: Closed session to discuss matters subject to the attorney-client privilege pertaining to threatened or pending litigation in which the CPOA is or may become a participant- Board Attorney Mark Baker.**

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).

- XI. Other Business**

- XII. Adjournment- *Next Regularly scheduled POB meeting will be on May 17, 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* *Leonard Waites, Vice Chair*
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

April 15, 2016
Via Certified Mail
7010167000009215852

[REDACTED]

Re: CPC # 234-15

Dear Ms. [REDACTED]:

Our office received the complaint you filed on December 4, 2015 against Officers of the Albuquerque Police Department (APD) regarding an incident that occurred on November 30, 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

[REDACTED] complained that while she was driving home on the evening of November 30, 2015 she observed Albuquerque Police Department vehicle R38 occupied with an officer, texting on his cell phone and watching YouTube videos on his computer as he was driving the vehicle.

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

The investigation included review of the Complaint, SOPs, Interviews Officer L. and Ms. [REDACTED]

(A) The CPOA reviewed Standard Operating General Order 1-19-2 (J, 3) in reference to Officer L.'s conduct, which states:

All employees assigned an APD vehicle will exercise good judgement utilizing it and will not drive or use the vehicle so as to cause unfavorable comment, or reflect discredit on the Department. When practical all employees will not use their radio or MDT while operating an APD vehicle. Officers will pull over before using an MDT except in emergency situations.

[REDACTED] complained that she observed APD vehicle R38 driving while the computer inside the vehicle was showing YouTube videos.

The investigation determined that Officer L. was using the City issued computer inside his APD vehicle to show YouTube videos to his children while transporting them home. Use of City owned computers used for entertainment purposes of the officer's children while transporting them from day care to home did cause unfavorable comments from the public and causes discredit upon the business purpose of the Albuquerque Police Department. The Albuquerque Police Department's policy on take home vehicles is clear and a violation of that policy did occur in this case.

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

(B) The CPOA reviewed Standard Operating General Order 1-04-4 (Z, 2-A) in reference to Officer L.'s conduct, which states:

Except for emergency communication, the use of hand-held cellular telephones or electronic devices is prohibited while operating a city vehicle.

[REDACTED] complained she observed APD vehicle R38's driver texting on his cell phone while driving.

Officer L. was identified as the driver of APD vehicle R38. The investigation could not determine if Officer L. was in fact texting during the time he was driving the vehicle. Without clear evidence supporting Officer L. or Ms. [REDACTED] complaint there could not be a solid conclusion.

April 15, 2016

Page 3

The CPOA finds Officer L's conduct **NOT SUSTAINED**, where the investigation is unable to determine, by a preponderance of the evidence 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 notice. Include your CPC number.
2. If you are not satisfied with the final disciplinary decision of the Chief of Police you can request a review of the complaint by the Albuquerque's Chief Administrative Officer. Your request must be in writing and within 30 days of receipt of this letter. Include your CPC number.

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

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

Sincerely,
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police

Civilian Police Oversight Agency
EXECUTIVE DIRECTOR'S
Recommendation Form

Employee Involved: L

SOP Violation(s): 1-19-2 (J.3), 1-04-4 (Z, 2-A)

Date and Time of Incident: 11/30/2015 at 2120 hrs

Investigating Officer: Chris Davidson

Date Investigation Completed: March 2, 2016

Completed Case Reviewed by _____ Date: _____

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: _____

- 1. **Sustained** The investigation determined, by a preponderance of the evidence, 1-19-2(J.3) the alleged misconduct occurred ----->
- 2. **Not Sustained** The investigation was unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred. ----->
- 3. **Sustained Violation not based on original complaint** The investigation determined, by a preponderance of the evidence, that misconduct occurred that was not alleged in the original complaint but discovered during the investigation ----->
- 4. **Unfounded** The investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer ----->
- 5. **Exonerated** The investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training; ----->
- 6. **Administratively Closed** The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, ----->

7. **FIREARM DISCHARGE** Will be classified as:

JUSTIFIED UNJUSTIFIED ACCIDENTAL

RECOMMENDATIONS

- NO DISCIPLINARY ACTION
 - WRITTEN REPRIMAND
 - TERMINATION
 - VERBAL REPRIMAND
 - SUSPENSION _____ HOURS
 - OTHER: _____
- LEVEL 1 2nd OFFENSE WITHIN 1 YEAR

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board *Beth Mohr, Chair* *Leonard Waites, Vice Chair*
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

April 15, 2016
Via Certified Mail
7010 1670 0000 0921 4800

[REDACTED]
[REDACTED]
Albuquerque, NM [REDACTED]

Re: CPC #248-15

Dear Ms. [REDACTED]:

Our office received the complaint you filed on December 21, 2015 against Personnel of the Albuquerque Police Department (APD), regarding an incident that occurred on November 11, 2015 and November 19, 2015. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on December 23, 2015. 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. [REDACTED] has a domestic violence restraining order against an individual. This individual repeatedly left vulgar and often threatening messages on her work phone. According to Ms. [REDACTED], previous officers instructed her to call police every time the individual violated the order by contacting her. Previous officers had no issue with taking her police reports until November 11, 2015 when Officer B responded. Ms. [REDACTED] claimed Officer B called her a nuisance because she called so often. Officer B said she should save up her incidents and only call police once a week to report the violations. Ms. [REDACTED] took from Officer B's statements that police could not come out every time. Officer B's attitude and decision that

she was not in danger bothered her; Ms. █████ felt if it was Officer B's loved one he would not have said those things. Ms. █████ had a second issue when she called police on the non-emergency number November 19, 2015. Ms. █████ waited almost a whole week before calling police because of what Officer B told her on November 11, 2015. Her ex left a very disturbing message on Thursday and so Ms. █████ felt compelled to call police again. Operator M took her call. Ms. █████ told Operator M that the offender was extremely agitated that day in comparison to the other days. Operator M told her he was not sending officers because she called too often. Ms. █████ agreed she hung up on Operator M, but not before she told him, "I hope today is not the day."

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 reports, the recording of the non-emergency call, the citizen interview, the officer interview, the operator interview, and the lapel videos.

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

A) The CPOA reviewed Standard Operating General Order 1-04-40 regarding Officer B's conduct, which states:

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

Officer B denied he called Ms. █████ a nuisance and misinterpreted what he said. Officer B agreed he told Ms. █████ to notate the times her ex called and lump the incidents together instead of calling police every time for a single violation.

Ms. █████ and Officer B have different versions of what was said. The lapel videos showed Officer B listened to what Ms. █████ said and took the information. His tone with her at that time was not dismissive. However, Officer B had turned his recording off when he went to the car for the report number and did not turn it back on when he returned. This is when the disputed conversation occurred. Ms. █████ had a detective assigned to her case, but according to Ms. █████, the detective never told her not to call. The recorded evidence showed Ms. █████'s recollection of the conversation she had with the operator was somewhat different so it is unknown if the conversation with Officer B was also somewhat different.

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

B) The CPOA reviewed Standard Operating General Order 1-39-2B regarding Officer B's conduct, which states:

All sworn department personnel will record each and every contact with a citizen during their shift that is the result of a dispatched call for service, arrest warrant, search warrant service or traffic stop. Personnel will activate the recorder prior to arriving at the call or prior to citizen contact on non-dispatched events (within the safety parameters of 1-39-1B) and will record the entirety of citizen contact. Uniformed civilian personnel issued digital recorders will also comply with this section. The recordings will be saved for no less than 120 days.

Officer B stated he turned off his recorder when he went to the car and neglected to turn it back on when he returned. He did not think he needed to record because the relevant evidence was already collected. Officer B did not record the interaction in its entirety.

The CPOA finds Officer B's conduct to be a **Sustained Violation Not Based on Original Complaint.**

III. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OPERATOR M'S CONDUCT

A) The CPOA reviewed Standard Operating General Order 1-04-4Q regarding Operator M's conduct, which states:

Personnel shall obtain information in an official and courteous manner, and act upon it in a proper and judicious manner, within the scope of their duties, and consistent with established department procedures whenever any person requests assistance or advice, or makes complaints or reports, either by telephone or in person.

Operator M took Ms. [REDACTED]'s incoming call. Operator M noticed in comments of previous calls that an officer told her to call once a week instead of every day. He recalled he had taken one of her previous calls. Operator M agreed operators have been instructed not to tell citizens that there is a work force shortage or that there were not enough officers to respond.

The recording of the call started out normally. Operator M asked a couple of clarifying questions that seemed to irritate Ms. [REDACTED]. Ms. [REDACTED] told Operator M she called every time there was a violation. Operator M told her the police could not come out every time the person called; there were not enough officers for that. Ms. [REDACTED] said fine and hung up the phone. Ms. [REDACTED] did not tell him she hoped this was not the day.

The COPA finds Operator M's conduct to be **Sustained**, as the investigation determined that the alleged misconduct did occur.

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

You have the right to appeal this decision.

April 15, 2016

Page 4

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.
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/iro/survey>.

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

Sincerely,
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police

Civilian Police Oversight Agency
EXECUTIVE DIRECTOR'S
Recommendation Form

Employee Involved: Operator [REDACTED] M [REDACTED]

SOP Violation(s): General Order 1-04-40

Date and Time of Incident: November 19, 2015 0807

Investigating Officer: Diane McDermott

Date Investigation Completed: March 7, 2016

Completed Case Reviewed by Internal Affairs Lieutenant Jennifer Garcia Date: _____

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: _____

- 1. **Sustained** The investigation determined, by a preponderance of the evidence, 1-04-40 the alleged misconduct occurred ----->
- 2. **Not Sustained** The investigation was unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred. ----->
- 3. **Sustained Violation not based on original complaint** The investigation determined, by a preponderance of the evidence, that misconduct occurred that was not alleged in the original complaint but discovered during the investigation ----->
- 4. **Unfounded** The investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer ----->
- 5. **Exonerated** The investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training; ----->
- 6. **Administratively Closed** The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, ----->

7. **FIREARM DISCHARGE** Will be classified as:

- JUSTIFIED UNJUSTIFIED ACCIDENTAL

RECOMMENDATIONS

- NO DISCIPLINARY ACTION
- WRITTEN REPRIMAND
- TERMINATION
- VERBAL REPRIMAND
- SUSPENSION 32 HOURS
- OTHER: _____

3rd Level 7 violation within 1 year. Additionally has already served 24 hr suspension for other violations

Civilian Police Oversight Agency
EXECUTIVE DIRECTOR'S
Recommendation Form

Employee Involved: Officer [REDACTED] B [REDACTED]

SOP Violation(s): General Order 1-04-40 & General Order 1-39-2B

Date and Time of Incident: November 11, 2015 0807

Investigating Officer: Diane McDermott

Date Investigation Completed: March 7, 2016

Completed Case Reviewed by Internal Affairs Lieutenant Jennifer Garcia Date: _____

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: _____

1.	Sustained The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred ----- <u>1-39-2B</u> ----->	<input checked="" type="checkbox"/>
2.	Not Sustained The investigation was unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred. ----->	<input type="checkbox"/>
3.	Sustained Violation not based on original complaint The investigation determined, by a preponderance of the evidence, that misconduct occurred that was not alleged in the original complaint but discovered during the investigation ----->	<input type="checkbox"/>
4.	Unfounded The investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer ----->	<input type="checkbox"/>
5.	Exonerated The investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training; ----->	<input type="checkbox"/>
6.	Administratively Closed The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, ----->	<input type="checkbox"/>
7.	FIREARM DISCHARGE Will be classified as:	
	<input type="checkbox"/> JUSTIFIED	<input type="checkbox"/> UNJUSTIFIED
		<input type="checkbox"/> ACCIDENTAL
RECOMMENDATIONS		
<input type="checkbox"/>	NO DISCIPLINARY ACTION	<input type="checkbox"/>
<input type="checkbox"/>	WRITTEN REPRIMAND	<input checked="" type="checkbox"/>
<input type="checkbox"/>	TERMINATION	<input checked="" type="checkbox"/>
		VERBAL REPRIMAND
		SUSPENSION <u>8</u> HOURS
		OTHER: <u>TRAINING</u>
	<u>3rd level 6 violation within 1 year</u>	
	<u>Recommend training for officer at Family Advocacy Center</u>	