

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. William J. Kass *Valerie J. St. John* *Rev. Dr. David Z. Ring III*
Leonard Waites
Edward Harness, Executive Director

POLICE OVERSIGHT BOARD AGENDA

Thursday, August 10, 2017 – 5:00 PM

Vincent E. Griego Chambers

- I. Welcome and call to order.
- II. Pledge of Allegiance – *Dr. Carlotta Garcia*
- 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. Update on Workflow charts
 - b. Policy/Ginger Letter
 - c. CIRT/ OIS Cases?
 - d. Traffic Accident report update
- VIII. Consent Agenda Cases:
 - a. Administratively Closed Cases
004-17 011-17 039-17
 - b. Cases investigated
195-16 007-17 093-17 117-17
 - c. CIRT Cases – None
- IX. POB’s Review of Garrity Materials – C-7-16
- X. Mayoral Forum (starting at 6 p.m .)
- XI. Reports from Subcommittees
 - a. Community Outreach Subcommittee – *Dr. Ring*
 - b. Policy and Procedure Review Subcommittee – *Susanne Brown*
 - 1. HR/APD Supervisor Promotion Policy
 - 2. Domestic Violence Policy
 - c. Case review Subcommittee – *Leonard Waites*

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1. Appeals - None

XII. Reports from City Staff

- a. APD
- b. City Council
- c. Mayor's Office
- d. City Attorney
- e. CPOA – *Edward Harness, Executive Director*
 - 1. City's Action Plan
 - 2. IAPro

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

XV. Adjournment- *Next Regularly scheduled POB meeting will be on September 21, 2017 at 5 p.m. in the Vincent E. Griego Chambers.*

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

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Edward Harness, Executive Director

August 11, 2017

Via Certified Mail

Re: CPC #195-16

Dear Mr.

Our office received the complaint you filed on October 24, 2016 against Officer B. of the Albuquerque Police Department (APD) regarding an incident that occurred on October 16, 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

Mr. [redacted] said that he was assaulted by his neighbor on October 16, 2015, when she used a hose to douse his fire pit and sprayed water on him as he sat in his backyard. APD Officer B. responded to the neighbor dispute and contacted both parties. At the time of the incident Mr. [redacted] did not want to press charges on his neighbor; however, he contacted Officer B. on October 28, 2015 and asked that charges be filed against his neighbor. Mr. [redacted] complained Officer B. failed to appear in court on February 25, 2016 because he was in training, so the Judge reset the hearing for July 6, 2016. Mr. [redacted] said at the July 6, 2016 hearing, the case was dismissed due to a discrepancy in the paperwork filed by Officer B., so the case would be refiled and a hearing reset for another date. Mr. [redacted] complained that Officer B. did not

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notify him of the new date for the hearing, which was scheduled for August 5, 2016, which he found out when he went to Metro Court to inquire about the status of his case. Mr. [redacted] wants his day in court and to get the situation with his neighbor settled.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER 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; interviews with Officer B. and Sgt. D.; the Complaint; the CADS report; Officer B.'s original and supplemental reports; a printed history of the case from nmcourts.gov; and information provided by a Metro Court Judicial Specialist regarding the history of this case.

A) The CPOA reviewed APD SOP 2-01-2(C)(1), which states:

2-01-2 COURT - RULES

C. Court, Pre-trials, MVD Hearing Attendance, and Missed Court

- 1. All personnel directed to appear in court, pre-trials or MVD hearings must appear and be prepared to testify. A special court notice, posted court/MVD hearing notices, or subpoenas are considered an order to appear. For civil case subpoena and conflict of interest case directions, see subsections 2-01-2-F and 2-01-2-H.***

Mr. [redacted] complained Officer B. failed to appear in court on February 25, 2016 in regards to an assault case, because he was in training.

The aforementioned evidence revealed that on January 27, 2016, Officer B. filed the first criminal complaint in court and a hearing was set for March 10, 2016. On March 10, 2016, the case was dismissed without prejudice because Officer B. failed to appear. As a result, Officer B. refiled the case on April 27, 2016 and the hearing was set for July 6, 2016. On July 6, 2016, the case was, again, dismissed without prejudice as an insufficient complaint because it was incorrectly filed by Officer B.. On July 21, 2016, the District Attorney's Officer refiled the case on Officer B.'s behalf and the hearing was set for August 5, 2016. On August 5, 2016, the case was dismissed, again, because Officer B. and Mr. [redacted] failed to appear. The evidence showed Officer B. missed the first hearing due to mandatory DOJ Use of Force training March 7-10, 2016; however, the court was given ample notification he was unavailable during that time so there was no Standard Operating Procedure (SOP) violation in this regard; however, Officer B. admitted he missed court on August 5, 2016 for no valid reason. This was not listed as a complaint by Mr. [redacted] but was discovered as a result of this investigation.

The CPOA finds Officer B.'s conduct a **SUSTAINED violation not based on original complaint**, regarding the allegations of violations of this SOP, which means the investigation determined, by a preponderance of the evidence that misconduct did occur that was not alleged in the original complaint but that was discovered during the misconduct investigation.

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

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

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

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

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

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

Sincerely,
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



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Rev. Dr. David Z. Ring III

August 11, 2017

Via Certified Mail

Re: CPC #004-17

Dear Mr.

Our office received the complaint you filed on February 24, 2017 against Albuquerque Police Department (APD) Operator Z.S. regarding an incident which occurred on February 22, 2017. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

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

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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

Mr. _____ said that on February 22, 2017, he called APD to report suspicious activity in his neighborhood and spoke to Operator S. several times and each time he spoke to Operator S., Operator S. was very rude, wouldn't listen to him and hung up on him.

II. THE INVESTIGATION

A CPOA Investigator contacted you for an interview and you said you would call back to schedule the interview; however never called back to do so. The Investigator reviewed your

complaint and listened to the recorded calls between you and Operator S. about which you complained. The calls revealed that Operator S. was professional throughout each call, he listened to you thoroughly and then hung up after the conversations were completed. The evidence revealed that the statements made in your complaint were not accurate.

III. CONCLUSION

Based on the aforementioned information, the CPOA has made the decision to **ADMINISTRATIVELY CLOSE** your complaint because Operator S. did not violate any APD SOP violations.

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

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August 11, 2017

Gorden Eden Jr., Chief of Police

C/O Internal Affairs Unit

Albuquerque Police Department

400 Roma NW

Albuquerque, NM 87102

Re: CPC # 007-17

Dear Chief Eden:

We concur with the findings of the APD Internal Affairs investigator in this case. This complaint will be presented to the Police Oversight Board for final review on August 10, 2017. If approved, a copy of this letter and the attached 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.

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

Please contact me if there are questions or concerns.

Sincerely,

Edward Harness, Esq.

Executive Director

Civilian Police Oversight Agency

(505) 924-3770

Enclosure

CC:

Findings

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

1-1-4 Rules of Conduct

B. Compliance with Laws, Rules, and Regulations

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

After reviewing the interviews and evidence in this case, the Internal Affairs Section finds no evidence Officer [REDACTED] S[REDACTED] violated A.P.D. General Order 1-1-4(B)(2) which mandates "Personnel will obey all federal, state, and local laws, rules, and regulations, and enforce those lawful directives while protecting the rights of individuals, as established in the Constitution of the United States and the Constitution of the State of New Mexico." This administrative investigation confirmed Mr. [REDACTED] was intoxicated while at the nightclub. Officer's lapel videos showed Mr. [REDACTED] telling officers that he did not have his identification card. In his interview with Internal Affairs, Officer S[REDACTED] advised he did remove a wallet from one of Mr. [REDACTED] back pant pockets, but denied taking anything out of it. In his interview with Internal Affairs, Officer V[REDACTED] advised he was constantly with Officer S[REDACTED] during the call and did not see Officer S[REDACTED] take anything out of Mr. [REDACTED] wallet or from any of his pockets. Lapel Video showed Officer S[REDACTED] had possession of Mr. [REDACTED] wallet for a brief amount of time before placing it back into Mr. [REDACTED] back pocket. Officer S[REDACTED] appeared to make no disguised movements and appeared to be strictly looking for Mr. [REDACTED] identification. Mr. [REDACTED] had his head turned and watched while Officer S[REDACTED] looked through the wallet. At no time did Mr. [REDACTED] mention to the officers anything about keys or money.

This violation would be a Sanction 1 thru 7 violation.

“UNFOUNDED” where the investigation determines, by clear and convincing, evidence, that the alleged misconduct did not occur or did not involve the subject officer.



**Detective Daniel Calt
Internal Affairs Section**

CITY OF ALBUQUERQUE



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Rev. Dr. David Z. Ring III

August 11, 2017
Via Certified Mail

Re: CPC #011-17

Dear Mr.

Our office received the complaint you filed on January 31, 2017 against Albuquerque Police Department (APD) Officer A. regarding an incident which occurred on January 31, 2017. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

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

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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.

I. THE COMPLAINT

Mr. _____ said he was driving 55 mph in a 45 mph zone on Coors Blvd north when he was pulled over by Officer A. Mr. _____ said he gave Officer A. his information and acknowledged guilt of the offense and agreed to remit payment for the ticket via mail. He said Officer A. ordered him to sign the ticket, and in doing so refused to let him acknowledge his guilt and pay by mail, which is his right to do as a citizen of Albuquerque. Mr. _____ viewed this act as a "flat out lie, harassment and discrimination by Officer A.

II. THE INVESTIGATION

A CPOA Investigator reviewed your complaint and attempted to contact you twice at the telephone number listed on the complaint but the number listed was incorrect. You did not provide a mailing address or an email address on the complaint. The CPOA used the address you provided Officer A. the night of the incident; however, the letter sent to you from the CPOA was returned undeliverable due to no mail receptacle and no forwarding address.

The Investigator watched Officer A.'s lapel camera video recording which showed Officer A. contacting you after he stopped you. Officer A. introduced himself and told you that he stopped you for going 55 mph in a 45 mph zone. He asked for your information and walked to his vehicle to type up the citation before he returned to your vehicle. Officer A. told you what citation he issued you and explained the ticket to you. You asked if you could just pay it and Officer A. said you could and told you there was an option on the citation that would tell you how to do so. Officer A. ask you if you had any alcohol that night and you said no but he conducted a brief sitting nystagmus test, and then handed you the citation. He told you where to sign and you asked how much it would cost. Officer A. said he didn't know as the costs change from time to time and that the only way to get an updated price would be to call the number on the ticket. He handed you the ticket and told you to have a safe night before he walked away. The lapel video showed that the statements made in your complaint were untruthful and not accurate.

III. CONCLUSION

Based on the aforementioned information, the CPOA has made the decision to **ADMINISTRATIVELY CLOSE** your complaint because Officer A. did not violate any APD SOP violations.

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

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

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

Sincerely,
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



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Rev. Dr. David Z. Ring III

August 11, 2017

Via Certified Mail

Re: CPC #039-17

Dear Ms.

Our office received the complaint you filed on March 13, 2017 against Albuquerque Police Department (APD) Officer W. regarding an incident which occurred on March 10, 2017. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

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

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

I. THE COMPLAINT

Ms. said that on March 10, 2017, she was in the parking lot of Smith's at Golf Course and Paseo del Norte to exchange custody of her two-year-old son, with Mr. E. when Mr. E. refused to give the child back. Ms. said she called APD to report the incident and while she was on the phone Mr. E. shoved her. She said APD officers arrived and when she told them what happened they didn't seem to care Mr. E. shoved her. She complained that she told these officers that on March 8, 2017, Mr. E. threatened to kill her but they didn't do anything about it. In her written complaint, she stated she had already filed a report regarding the March 8, 2017 incident. Ms. complained that no action was taken against Mr. E. by the officers who responded the night of March 10, 2017.

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II. THE INVESTIGATION

A CPOA Investigator reviewed your complaint, the CADS report, the officer's report, information regarding this case found on www.nmcourts.gov, and the lapel videos. The evidence showed Officers W. and M. responded to the call on March 10, 2017 and Officer W. was the primary officer who wrote the report, and is the officer about which you've complained.

The evidence showed Officers W. and M. spoke to you and Mr. E. about what happened before they arrived on scene, and learned from Mr. E. that he put his forearm up against you in an effort to gain distance from you when you approached his vehicle to get your son. The officers gave you and Mr. E. information and direction regarding handling child custody exchanges in the future and Officer W. provided you with a domestic violence packet. Lapel video showed that prior to leaving the scene Officer W. asked you if you had any questions and you said no, and said you were good. The evidence revealed Officer W. was unable to determine who the primary aggressor was in this incident and that he did not observe nor was he informed of any injuries resulting from this event, so no arrests were made that night. The report indicated that you called back later that night and spoke with Sgt. N. and wanted to know why Mr. E. was not arrested. Sgt. N. contacted Sgt. T. who contacted Officer W. and had Officer W. issue a criminal summons based on your statement to Sgt. N. Officer W. issued a criminal summons for Mr. E. that night, which was filed in Metropolitan Court on March 21, 2017. The case was eventually dismissed by the prosecutor/Nolle Prosequi on April 5, 2017.

III. CONCLUSION

Based on the aforementioned information, the CPOA has made the decision to **ADMINISTRATIVELY CLOSE** your complaint because Officer W. issued a criminal summons for Mr. E. on March 10, 2017, based on your statement to Sgt. N., and this action ultimately accomplished the same result as arresting Mr. E. on site would have.

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.

Letter to M.
August 11, 2017
Page 3

CPC 039-17

Sincerely,
The Civilian Police Oversight Agency by

A handwritten signature in black ink, appearing to read 'EH', is positioned above the typed name.

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

cc: Albuquerque Police Department Chief of Police

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Rev. Dr. David Z. Ring III

August 11, 2017

Via Certified Mail

Re: CPC #093-17

Dear ,

Our office received the complaint you filed against Albuquerque Police Department (APD) Officer D. and Communications Director E. on March 16, 2017. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA made findings of whether the Albuquerque Police Department (APD) Officer involved, and the Civilian Employee 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 and employees cooperate in the investigation; therefore, the officer's or employee's statements may not be made public. Below is a summary of the complaint, the CPOA's investigation, and findings.

I. THE COMPLAINT

V M was found murdered, burned, and dismembered, in her mother's West Side Albuquerque apartment Aug. 24, 2016, the day after her 10th birthday. In November of 2017, the State of New Mexico Children, Youth, and Families Department (CYFD) released a four page summary of their four contacts with V and her younger sibling. None of the contacts made by CYFD Investigators was for sexual or physical abuse. CYFD reported that someone had called CYFD on March 28, 2016 to report that V M ' mother's ex-boyfriend had tried to kiss V The reporting party told the intake worker that Ms. Michelle Martens, the mother, immediately broke up with the ex-boyfriend and he no longer had access to V The reporting party stated that V never made any disclosures of physical or sexual abuse. The reporting party told the intake worker that the ex-boyfriend was

not a parent to, a Guardian of, or a Custodian of V _____ M. _____ Because of that the referral did not fall within CYFD's jurisdiction to investigate the referral, and they did not send the referral to a CYFD Investigator for follow up. Instead, CYFD sent the referral to the Albuquerque Police Department's (APD) Crimes Against Children Unit (CACU) pursuant to the Children's code.

In January of 2017 in a recorded conversation, APD Public Information Officer D. told Albuquerque Journal Reporter Elise Kaplan that he had been provided with information that detectives had gone out on the referral and talked to the family. He specifically told Ms. Kaplan that both V _____, and her mother had been interviewed and "the mom told us he attempted to kiss but would not give us a description of how and V _____ said that it never happened." He went on to say that **Detectives** could not go any further lawfully because if they did so they would be violating M _____ Fourth Amendment rights. Officer D. said that if the police went forward with any further investigation "We would be seizing them for an investigation that we don't have a lawful right to do." When Ms. Kaplan questioned Officer D. further he said, "this is information I got from **my detectives**. These are conversations we have had numerous times about this..." APD Communications and Community Outreach Director (Director) E. just one day later provided Ms. Kaplan similar information. Both Officer D. and Director E. told Ms. Kaplan that there was no probable cause to believe a crime had been committed because an attempted kiss is not against the law. Furthermore, Officer D. and Director E. gave out information to Ms. Kaplan that there were various reasons why a report wasn't written or any documentation of the visit to the Martens' home. On January 27, 2017 the Albuquerque Journal published a story that indicated that APD Detectives had followed up on the referral but there was little they could do. Both Officer D. and Director E. told the reporter that APD policy was followed.

On March 15, 2017, the Albuquerque Journal reported that on March 13, 2017, Director E. told the Journal that in fact, no one from APD ever went out on the referral. Director E. told the Journal that the referral did not meet investigative criteria because APD Standard Operating Procedure (SOP) only calls for follow up if there is report of neglect, abuse, or a crime. Director E. said that an attempted kiss is not a crime. She told the reporter that the incorrect information given to the media in January was due to a miscommunication. Director E. blamed the reporter for misunderstanding what she and Officer D. said in January. Director E. told the reporter that in January Officer D. said that investigators had followed up on the referral and that he was referring to CYFD Investigators and the reporter inferred that it was APD Investigators. Director E. said that she thought that CYFD Investigators went out on the referral and that was who she and Officer D. were referring to. When the reporter asked her why she did not attempt to correct the misinformation until asked about it in March, Director E. replied that they try to answer all questions from the media in a timely and factual manner even under "submersible pressure and copious criticism".

_____ filed a complaint with the Civilian Police Oversight Agency requesting that an independent official investigation be conducted to find out why Officer D. and Director E. provided grossly misleading information to the media regarding APD's response to the referral. _____ asked that the investigation cover whether or not SOPs were violated by

department personnel. stated in his written complaint that the behavior of the APD spokespersons fails to foster mutual trust and cooperation between the police and civilians. In a later written document he summed it up this way:

My complaint is the public must be able to trust the police department to provide truthful and accurate information regarding actions taken or not taken by officers. That trust was violated when the department provided false statements to the public regarding actions or inactions of detectives regarding the CYFD referral and questions remain unanswered about who provided the fictional information and why that information was provided to the public.

----- went on to request that the investigation be conducted so that there could be an assessment of why the events took place and if policies and procedures were violated, the violators are held appropriately accountable, and further identification of policy and procedural refinements may be identified to improve the system.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER D.'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 recorded interviews between Journal Reporter Elise Kaplan and Officer D. and Director E., a recorded conversation with Ms. Kaplan, a review of the Albuquerque Journal articles, an interview with a review of APD Standard Operating Procedures concerning Juvenile investigations, a conversation with the former Crimes against Children Unit (CACU) Commander, Commander R., a conversation with CACU Supervisor Sergeant E., recorded interviews with Officer D. and Director E., a recorded phone message from reporter Elise Kaplan, and reviews of various e-mails, applicable NM State Law regarding Assault and Battery and attempted misdemeanors, applicable recognized federal law regarding consensual encounters between the police and citizens, and various other documents.

A) The CPOA reviewed Standard Operating Procedure 1-1-4 B 7A regarding APD Officer D.'s conduct, which states in part:

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

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

The investigation conducted by the CPOA Investigator revealed that Officer D. knowingly provided Albuquerque Journal Reporter Elise Kaplan with false information.

The investigation revealed that sometime in November of 2016, the Children Youth and Families Department (CYFD) Cabinet Secretary and CYFD Public Information Officer (PIO) held a meeting at a CYFD facility. In attendance were APD Chief E., Officer D., and an APD Crimes Against Children (CACU) Sergeant. At that meeting, CYFD announced that they were going to release a summary of their investigations related to V _____. M: _____ and her siblings. A four page summary of their investigations was provided to Officer D..

The summary showed that there had been five referrals to CYFD regarding V _____ M: _____ and her sibling prior to V _____'s death. All five referrals were cross reported to APD's CACU. Four of the five referrals were investigated by CYFD. Only one referral, the attempted kiss referral, was not investigated by CYFD. APD did not investigate any of the five referrals sent to them by CYFD.

The four page CYFD summary showed that on March 14, 2015 someone called CYFD to report that V _____ M _____ and her sibling had been exhibiting poor hygiene and were wearing dirty clothes, had been improperly disciplined by a grandparent, and the grandparent had consumed alcohol in front of the children. There were no allegations of physical abuse regarding V _____ and no allegations of sexual abuse regarding either child. CYFD Investigators investigated and determined the allegations were unsubstantiated.

A year passed with no referrals to or from CYFD regarding V _____ M _____. On March 28, 2016, a source reported to CYFD that V _____ M _____'s mother, Michelle Martens, had disclosed to the source that that Michelle's ex-boyfriend had tried to kiss V _____. Michelle Martens, according to the source, broke up with the ex-boyfriend and the ex-boyfriend no longer had access to Michelle Martens or the Martens family. The source noted that the information came from Michelle and that V _____ never made any disclosures to the source of physical or sexual abuse. CYFD noted in their report the following information:

The information provided by the reporting party...indicated that the former boyfriend was not a parent...guardian...or a custodian...of V _____ herefore it did not fall within CYFD's abuse and neglect jurisdiction as is provided for in NMSA 1978, Sections 32A-4-2 (B)and (F).SCI, did not send the allegation to an Investigator with the Protective Services Division because the matter fell outside of CYFD's legal authority to investigate. SCI referred the matter to an appropriate local law enforcement agency. The information was sent to CACU of APD pursuant to the Children's Code.

So in November of 2016, Officer D. knew that CYFD Investigators did not go out on the attempted kiss referral.

In May and June of 2016, CYFD received three more calls about the Martens children. Two of the three calls were made to CYFD by Michelle Martens. The third was from another source. The allegations once again ranged from hygiene concerns to the children's biological father leaving the children with and unknown caretaker.

CYFD Investigators interviewed the children on all three referrals and the children were asked about physical and sexual abuse and the children made no disclosures to CYFD Investigators about being physically or sexually abused. Those referrals were also sent to CACU.

The CPOA Investigation revealed that later in November or possibly early December of 2016, another meeting was held in Chief E.'s office regarding the CYFD summary and the follow up that APD CACU did with regards to any of the referrals sent in to them by CYFD. CACU Commander R., a CACU Sergeant, Chief E., and Officer D. were present in that meeting. It should be noted that Director E. was not present in either one of the referenced meetings as she was on vacation at the time.

Commander R. informed the Chief of Police and Officer D. that CACU had received the referral about the attempted kiss but it was not assigned to a detective for follow up because it did not meet the criteria for case assignment. Information was also revealed at that meeting that after V _____ M _____ was murdered, the FBI had come in to help with following up on various aspects of the homicide. The FBI disclosed to the CACU that they had in fact been investigating the ex-boyfriend who had attempted to kiss V _____ M _____

The CPOA Investigation revealed that the CACU receives hundreds of referrals a month and they simply do not have the staff to assign every referral to an investigator for follow up. Cases that are reported to CACU where a CYFD Investigator has gone out and made a determination that the allegations were unsubstantiated normally do not get assigned for follow up. What does get assigned to various units are basically crimes that could be considered felonies. Misdemeanor allegations of child abuse are usually investigated by APD Field Services.

So in late November or early December of 2016, the Chief of Police and Officer D. were informed that no Detectives from CACU ever went out on the attempted kiss referral.

In January of 2017, Elise Kaplan interviewed Officer D.. The recorded interview is full of false information provided by Officer D. and it is clear that Officer D. was referring to APD Detectives and not CYFD Investigators. In fact, documents and conversations with CACU Personnel proved that Officer D. knew that not only did CYFD Investigators not go out on the referral but neither did APD Detectives. Even though Officer D. knew the referral was never investigated he told Ms. Kaplan that it was. In fact, he told in great detail how it was investigated, and then he provided even more false information to Ms. Kaplan about just how and when a police officer can contact a citizen.

Elise Kaplan asked Officer D. if detectives went out and talked to V _____ about the attempted kissing. He replied, "Yes. The mom had told us that there was nothing going on in the home; that she removed the boyfriend. She told him not to return....So she was self-initiating at that point. And when the Detectives spoke to the kids they didn't make any allegations that anything had happened." Officer D. knew this information to be false when he provided it.

Reporter Kaplan asked Officer D. why the detectives didn't write a report. Officer D. said that he did not know why there was not a report written. He said, "I'd have to talk to the **detective, if the detective still works for us**, and find out why." Certainly, he is implying here that an APD Detective followed up on the tip but didn't write a report. Officer D. knew at the time that no APD Detective went out on the attempted kiss referral.

Elise Kaplan asked, "But you are confident that somebody went out and spoke to V and Michelle about it?" Officer D. answered, "We look into a lot more stuff than CYFD actually gives us. We do a lot of secondary investigations on our own without having them ask us to do the investigation because there have been so many balls dropped on their end. A lot of the investigations that we investigate we have to send off on our own because of stuff we've seen in their reports...per State Law they are supposed to report anything they see as a criminal act to us so that we can investigate. If there's no criminal act that's founded then we can't go any further. We don't have the right to go to people's houses and investigate them if they don't want us in the house. CYFD does. We have to actually have probable cause and a warrant in order to do that. If we don't have probable cause we can't go further with our investigation. That's why we rely so heavily on CYFD because they have the right to go into a family's home and investigate...Once they see a criminal act that's when they report to us so we can further. A lot of times we have to go off what they observe in order to have the probable cause in order to do a further investigation. If we don't get that from them, we don't have the right to be in people's homes unless they allow us in or unless we have a warrant. "

This is false and erroneous information. There are three recognized categories of Fourth Amendment police-citizen interaction: Arrests which require probable cause which sometimes require warrants; Detentions which are justifiable by a lower standard of reasonable suspicion; and Consensual Encounters in which the police use no commands, force, lights or sirens, but simply approach a person and engage him in conversation and make plain view observations without any official restraints and for which no level of justification is needed because the encounter is not a seizure of a person. Most arrests based on probable cause, all investigative detentions based on reasonable suspicion, and all consensual encounters do not require a warrant.

Officer D. went on to tell Ms. Kaplan, when he was pressed for more information about what the detective did when he went out to investigate the referral, that he would talk to the detective, "**if he still works for us**" but that because there was no report it would be difficult.

Ms. Kaplan said that she was trying to find out if any APD Detective physically made contact with V and Michelle in reference to the referral over the attempted kiss.

Officer D. responded, "That information was given to me that **Detectives** went and talked to the family. That's where we got the information that the mother had taken care of the situation by telling the boyfriend to leave and not come back. Obviously, the mom was lying to us because she's allowed this person back and she's allowed other people that were harming V around V ."

Elise Kaplan asked Officer D. what would have made the attempted kiss a crime and he said that the act would have had to have been completed. He told Kaplan that under State Law in order for an act to be considered a crime an act has to be completed.

This is not entirely true. There are many attempted crimes on the book including attempt to commit a felony. In New Mexico, there is case law that there is no such thing as an attempted petty misdemeanor. As ludicrous as it seems, the lips are not considered to be an "intimate part" under the law. Kissing someone who doesn't want to be kissed is considered a petty misdemeanor battery under State Law. It would be the unlawful intentional touching when done in a rude, insolent or angry manner. If one were to attempt an unwanted kiss and fail, it would likely be classified as an Assault, which is an attempt to commit a battery. Assault is also a petty misdemeanor. Assault is a crime under the law. A reported assault of a nine year old girl by an adult male warrants an investigation whether or not the perpetrator is still around. APD absolutely should have assigned this referral to a CACU Investigator or any other APD Officer to investigate it. There was a reported crime committed and it should have been investigated.

Officer D. said in his interview with Elise Kaplan, "Based on the information that both Mom and V _____ gave us at the time, there was no act that was completed that we could investigate. Mom said that this guy attempted to kiss her but V _____ never said that." He said, "There's no law that says that you can't attempt to kiss somebody. Now if he would have grabbed her arm or pulled her or done more then that's a battery. That falls under a crime." More untrue information. Arguably, an assault occurred.

When she asked, "What does attempted to kiss mean?" Officer D. responded, "That's exactly what we were trying to find out." She asked, "And what did you find out?"

Officer D. answered, "Both parties that we interviewed, the mom and V _____ told us that. Mom told us that he attempted but didn't give us any description on how and V _____ said that never happened. So based on the information that detectives were getting, we couldn't go further lawfully or we would be violating their fourth amendment rights of illegal search and seizures. Because that's exactly what we would be doing. If we force an investigation that we don't have enough proof to go forward with, we are now seizing them for an investigation which we don't have lawful right to do."

This is more untrue information as discussed above. There is nothing that prevents an officer from approaching a house where a child has allegedly been assaulted, knocking on the door and asking questions about this incident. There is nothing in the law that prevents an officer from speaking with the child and asking the child if something happened to them. There is no "seizure" under the law.

Ms. Kaplan asked, "Do you think this is something that CYFD should have handled?" Officer D. answered yes to that once again confirming that he knew that CYFD Investigators did not go out on the referral. Officer D. then went on to heavily criticize CYFD and said that APD often has to force CYFD to conduct investigations.

Towards the end of the interview Ms. Kaplan asks for some proof of a record or something that would show that Detectives went to the house. Officer D. said that was where the police need to be careful because if the police track information on people that don't have a criminal history or don't have a criminal investigative need, then the police would be "surveillancing people" and it's against the law for the police to do that. She said she was just asking for a record of the call. She told Officer D. that she was skeptical of what he was saying because there was no record of a response to the referral.

Officer D. said, "I would have to talk to **my detectives** because like I said this is information I got from **my detectives, from conversations that we've had numerous times about this.**"

Officer D. went on to say that the police can't just go out and investigate someone because there is an allegation made against them. Untrue. If that was the case, no tip on people breaking the law could ever be followed up on by the police. He said that if a person is investigated and the information turns out to be wrong then the police could be sued for conducting that investigation. He said that there are too many things now that restrict the police from doing their jobs.

Elise Kaplan then asked Officer D. if he could provide her with some kind of proof just to confirm the detectives went out on the referral. Officer D. then said that the information may not be available yet because the investigation was still ongoing. He said, "I don't know if that's what's holding up the full report from being released but that investigation is still active and ongoing. The murder side of it has been closed and turned over to the DA but we're still looking into the sexual abuse and everything that still open in that case. That may be why that's not available yet."

Ms. Kaplan told him that without proof she was going to have to write in her report that Officer D. said that the police responded but there is no proof that APD did. Officer D. then told Ms. Kaplan to file an IPRA request for the report on the contact because if it the file was a protected file, it won't be in the public record. She asked for a case number or something that would help her and Officer D. said, "If you can't get it, they won't give it to me. It has to go through an IPRA request. It has to go through City Legal. I can't, I can't, make that decision."

Ms. Kaplan asked Officer D. if he was willing to talk to his detectives and he said that he would but if the case was still being worked there was nothing he could do. He said, "There's Lieutenants and Sergeants above me that will tell me to beat sand."

Then, in a follow up interview, the following day, Officer D. told Ms. Kaplan that he couldn't release the names of the Detectives who went out and followed up on the referral because, "They work a lot of high profile cases. Some with the FBI. So if their names are released that could compromise other children's cases. We have to make sure that we are not going to re-victimize those victims by their case being dismissed."

Officer D., even in the second interview, continued his deceit with Ms. Kaplan, inferring that he knew the names of the Detectives who went out on the referral but he had to be careful about releasing their names because they work some of their cases with the FBI and releasing the names could compromise other investigations. The CPOA Investigation revealed that there are no CACU Detectives assigned to the FBI. CACU Detectives' names are public record. The names of APD CACU Detectives being released can't jeopardize any child abuse or neglect investigation. They sign the complaints against the perpetrators whom they incarcerate and charge with crimes. Again, documents and other APD Personnel interviewed, proved that Officer D. knew when he gave the first interview that no one from APD ever went out on the attempted kiss referral. He surely knew at the second interview that no APD Detectives ever went out, yet he made up details that simply were not true and embellished the information so that one would think that if he did release the investigating detective's names, somehow other children would be victimized.

All of the above proves that Officer D. intentionally lied to Ms. Kaplan during his interviews with her in January of 2017. Not only did he lie to her about what APD Detectives did to follow up on the referral, he also provided her with false information about Citizen/Police interaction. Those lies about APD following up on the referral were printed, making the citizens believe that APD had in fact followed up on the referral and everything had been done properly. Nothing could be further from the truth.

As _____ complained, "the public must be able to trust the police department to provide truthful and accurate information regarding actions taken or not taken by officers. That trust was violated when the department provided false statements to the public regarding actions or inactions of detectives regarding the CYFD referral."

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

III. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING DIRECTOR E.'S CONDUCT

A) The CPOA reviewed Standard Operating Procedure 1-1-4 B 7A regarding APD Communciations Director E.'s conduct, which states in part:

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

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

The CPOA Investigation determined that Director E. gave Reporter Elise Kaplan, the same wrong and misleading information that Officer D. did. The investigation showed that Director

E. was briefed on the homicide two to three days after it occurred and during that briefing she was made aware that CYFD referrals had been made to the APD but the status of those referrals were not known at that time. At the briefing she was told that CACU detectives would be following up to see what referrals were made and what the department's response was to those referrals.

The investigation showed that Director E. was not present for the meeting that took place at CYFD wherein the four page summary of referrals was provided to Officer D.. Director E. was also not present when a second meeting took place in the Chief's office to discuss what APD's response was to the referrals sent to them.

The CPOA investigation revealed that PIO D. was the lead contact for the media on this case and he was the one who preliminarily provided most, if not all, of the incorrect information to Elise Kaplan.

In January of 2016, when Director E. was getting ready to speak with Elise Kaplan over the phone about APD's response to the referrals, she met with Officer D. and discussed what APD's response was. Officer D. gave her the exact false and erroneous information that he had provided to Ms. Kaplan. Because of their working relationship, Director E. trusted what Officer D. told her and she did not feel the need to re-verify the information before speaking with Ms. Kaplan. Director E. said in her interview that the information that Officer D. provided to her led her to believe that APD Detectives did respond to the referral of the attempted kiss. She believed that Detectives questioned the mother and the girl and there was nothing further that the APD Detectives could have done. She was led to believe that APD Detectives had followed policy and procedure and that APD did everything they could have done in response to the referral. She was also briefed by Officer D. on why APD couldn't do more with the referral and was led to believe that if APD had pursued the matter further they would have been violating the family's rights. All of the information that she provided to Elise Kaplan in that first phone call was provided to her by Officer D..

Director E. does not have a background in law enforcement. She has never been a police officer or attended a police academy. She was TV reporter, and then she took a job as PIO with Santa Fe PD. She later took the Director position with APD. She has never been formally trained in the difference between probable cause and reasonable suspicion, nor has she been formally trained on the types of police/citizen encounters. In her job, she relies heavily on what police officers and detectives tell her and she relies on those officers to tell her what she can and cannot release. She expects the information that she is being provided by the officers to be truthful and factual.

Director E. was contacted by CACU Sergeant E. when the Albuquerque Journal article broke in January 2017, that said that CACU Detectives did go out on the referral. Not only was Sergeant E. shocked to read that, but Sergeant E. had informed PIO D. prior to the printing of the article that APD CACU Detectives never went out on the referral.

Director E. maintained that she questioned Officer D. after she spoke with Sergeant E.. It was only then that Officer D. told her that when he gave Ms. Kaplan the information that he did, he was referring to CYFD Investigators and not APD Detectives. Director E. said that she informed the Chief of Police of the miscommunication with Ms. Kaplan and she said that she contacted Ms. Kaplan to inform her that the information that she had been provided was wrong and that APD never went out on the referral because it did not meet APD's criteria for case assignment. Director E. said that she e-mailed Elise Kaplan and they e-mailed back and forth.

It should be noted that Director E. said she contacted Ms. Kaplan by e-mail and they, she and Ms. Kaplan, e-mailed back and forth. The CPOA Investigator contacted her attorney, Mr. John D'Amato, and requested copies of the e-mail exchange from his client, Director E.. The CPOA Investigator also contacted Ms. Kaplan and asked if an e-mail exchange occurred between her and Director E. regarding the erroneous information being provided to her by Officer D.. Mr. D'Amato told the CPOA Investigator that Director E. was going to look for the e-mails and she would contact the CPOA Investigator directly when she had them in her possession.

Reporter Elise Kaplan said that Director E. did not reach out to her to correct the record as Director E. purported in her interview with the CPOA Investigator. Ms. Kaplan said that she was the one who reached out to Director E. in a March 3, 2017 e-mail and started asking her about APD's response to the referral then. Although e-mails were exchanged between the two, it was only on March 13, 2017 in that recorded interview, that Director E. told Elise Kaplan that APD did not go out on the attempted kiss referral.

Director E. knew at the end of January 2017, possibly as early as the 27th or 28th of that month that APD CACU Detectives did not go out on the referral. She said she had informed the Chief of the miscommunication and she said she e-mailed Ms. Kaplan. The investigation revealed that Director E. did not contact Elise Kaplan by e-mail to inform Ms. Kaplan of the miscommunication but rather it was Elise Kaplan who initiated the e-mail exchange. Even though Director E. had known for at least a month by that time that APD Detectives did not go out on the referral, she waited an additional 10 days for a total elapsed time of almost a month and a half to reveal that fact to Ms. Kaplan. From the evidence, it appears that had the reporter not repeatedly asked about APD's response to the attempted kiss referral, Director E. would have not corrected the record.

Director E. stressed how important transparency was to her and talked about the integrity of her office. Director E. said that the integrity and the transparency of what her office does is held to the highest standard. She said that she in no way ever wanted to mislead anyone and it is her goal to be completely transparent. Yet, even after she was made aware that she and PIO D. had released incorrect and untruthful information to Ms. Kaplan, Director E. waited a month and a half before she corrected the record and she only did it after she was questioned further by Ms. Kaplan on March 13, 2017. Knowing that she provided false information to the media and then waiting a month and a half to correct it even under "submersible pressure and

copious criticism”, flies in the face of transparency and integrity and the conduct reflects badly on her, her division, and APD as a whole.

The CPOA finds Director E.’s conduct to be **Sustained**, as the investigation determined by a preponderance of the evidence that the alleged misconduct did occur.

Further Conclusion and Recommendation

It should be noted that there was no evidence that was uncovered during the investigation that suggested that there was any type of collusion or conspiracy among other members of the department that the false information that was released to Ms. Kaplan was generated by anyone other than Officer D.

What is troubling in reviewing policies and procedures is that APD has no written policy and procedure in place that addresses exactly how CYFD referrals are handled. The way they are currently handled is that a trained civilian reads the referrals and decides if the referral should be assigned for follow up. In this case, the civilian reviewed the referral and based on their training and experience decided that the referral did not warrant follow up. In hindsight, both the CACU former Commander and the Current CACU Sergeant felt that the referral should have been assigned for follow up. There was no review system in place to check the civilian’s work. That is a problem.

Clearly, not every referral can be followed up on and most that are not followed up on were investigated by CYFD before coming to APD. The following recommendation will be made to the Police Oversight Board:

That the Police Oversight Board Policy and Procedures sub-committee address this issue by working with APD to formulate a stand-alone policy that specifically addresses how APD will respond to CYFD referrals.

The CACU, and the Juvenile Section of APD does some outstanding work and their successes are rarely recognized. However, our children are our most precious asset in this community. We have to work together to find a solution. Even one child missed is one child too many.

Your complaint and these findings are made part of Officer D.’s and Director E.’s Internal Affairs files.

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.

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

Enclosures

CC: Albuquerque Police Department Chief of Police

**EXECUTIVE DIRECTOR'S
Recommendation Form**

Employee Involved: Communications and Community Outreach Director ~~XXXX E~~

SOP Violation(s): 1-1-4 B 7 A

Date and Time of Incident: 08/24/2016

Investigating Officer: CPOA Assistant Lead Investigator Paul Skotchdopole

Date Investigation Completed: _____

Completed Case Reviewed by _____ Date: _____

Date to A/C: _____
Date to CPOA: _____

Date Returned From Chief's Office: _____
Date Returned From CPOA: _____

1. Sustained The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred ----->	<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"/> VERBAL REPRIMAND	
<input checked="" type="checkbox"/> WRITTEN REPRIMAND	<input type="checkbox"/> SUSPENSION _____ HOURS	
<input type="checkbox"/> TERMINATION	<input type="checkbox"/> OTHER: _____	
<u>1ST LEVEL 6 VIOLATION</u>		

CIVILIAN POLICE OVERSIGHT AGENCY
EXECUTIVE DIRECTOR'S
Recommendation Form

Employee Involved: Officer [REDACTED] D [REDACTED]

SOP Violation(s): 1-1-4 B 7 A

Date and Time of Incident: 08/24/2016

Investigating Officer: CPOA Assistant Lead Investigator Paul Skotchdopole

Date Investigation Completed: _____

Completed Case Reviewed by _____ Date: _____

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: _____

1. **Sustained** The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred ----->

1-1-4 B 7 A
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

- | | |
|---|--|
| <input type="checkbox"/> NO DISCIPLINARY ACTION | <input type="checkbox"/> VERBAL REPRIMAND |
| <input type="checkbox"/> WRITTEN REPRIMAND | <input checked="" type="checkbox"/> SUSPENSION <u>80</u> HOURS |
| <input type="checkbox"/> TERMINATION | <input checked="" type="checkbox"/> OTHER: <u>REMOVAL FROM POLICE INFORMATION OFFICE</u> |

LEVEL 6 VIOLATION SUSTAINED 2016
THEFORE THIS IS A LEVEL 4 1ST OFFENSE

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board

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Rev. Dr. David Z. Ring III

Edward Harness, Executive Director

August 11, 2017

Via Certified Mail

Re: CPC #117-17

Dear Mr.

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint against Officers of the Albuquerque Police Department (APD) on April 28, 2017, regarding an incident that occurred on March 10, 2017. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

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

Albuquerque

NM 87103

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

www.cabq.gov

I. THE COMPLAINT AND INVESTIGATION

Mr. [redacted] was arrested for domestic violence against his girlfriend Ms. [redacted]. Before he was taken to jail, he gave express instructions that Ms. [redacted] was not to take the car. When he was released from jail, he learned that Officer P gave his car to Ms. [redacted] by coercing his father. Mr. [redacted] believed Officer P did not have the authority to force his father to turn over the car. Both Mr. [redacted] and [redacted] mistakenly identified the arresting officer, Officer A, as the officer that returned to the house. It was the backup officer, Officer P, instead.

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 Dispatches (CADs), Mr. [redacted]'s interview, Mr. [redacted]'s interview,

Officer A's interview, Officer P's interview and the lapel videos from Officer A, Officer P and Sgt. I.

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

A) The CPOA reviewed Standard Operating Field Services Order 4-24-2B regarding Officer P's conduct, which states:

The officer should not attempt to take personal property away from one party and give it to another if there is a dispute over ownership of the property involved.

Mr. [redacted] complained that Officer P decided to give his car to Ms. [redacted] without his permission when he was arrested and taken to jail. Mr. [redacted] also stated his son did not want Ms. [redacted] to take the car.

Officer P stated Mr. [redacted] and Ms. [redacted] discussed arrangements about the car. Officer P ran the plate and determined both Ms. [redacted] and Mr. [redacted] were both registered owners. Officer P heard the agreement between Mr. [redacted] and Ms. [redacted]. Mr. [redacted] agreed to allow Ms. [redacted] to take the car if she paid the money he said she owed. Ms. [redacted] returned with the money later that day and tried to take possession of the car as earlier agreed. However, the tires were flat and damaged so Mr. [redacted] agreed he would repair them since [redacted] gave the money she promised. It was an arrangement between the two of them and he was there as an escort to keep the peace.

The lapel videos showed Mr. Rigel Jr. said several times that Ms. [redacted] was not allowed to take the car. However, Mr. [redacted] also said at least twice that Ms. [redacted] was not allowed to take the car unless she paid his father. The lapel video showed prior to Ms. [redacted] departure that Mr. [redacted] agreed Ms. [redacted] could take the car if she paid the \$125 owed. Officer P later escorted Ms. [redacted] to the house with the money. Mr. [redacted] was upset about owning the bond money and expected Ms. [redacted] to provide that since she was taking the car. Officer P reminded him the agreement was for what she owed on the car; Mr. [redacted] had not added extra conditions earlier. The lapel video showed Mr. [redacted] agreed. Both Mr. [redacted] and Ms. [redacted] were on the registration and the insurance as owners.

The CPOA finds Officer P'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 1-1-4D15 regarding Officer P's conduct, which states:

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

Mr. [REDACTED] stated Officer P coerced his father to give Ms. [REDACTED] the car. Mr. [REDACTED] asked Officer P what he should do and Officer P told him to fix the tires. When Mr. [REDACTED] said Ms. [REDACTED] should have to pay the bail money because she was taking what he was going to use as collateral, Officer P told him he should have said that before, but it was too late for him to alter the arrangement now. Mr. [REDACTED] agreed Officer P made no other threats or statements of what would happen, but Mr. [REDACTED] was very frustrated. Mr. [REDACTED] did not want a problem with police so he complied.

The lapel video showed very clearly that Mr. [REDACTED] said Ms. [REDACTED] could take the car if she paid the money owed. Ms. [REDACTED] called for a police escort to pick up the car since she had the money. Officer P responded and asked if Mr. [REDACTED] could repair the tires since he flattened them. Officer P assisted and put on the license plate. The lapel video showed Officer P was sensitive to Mr. [REDACTED]'s frustrations. The lapel video showed Officer P never told him he should have included the bond money when Mr. [REDACTED] calculated the money owed to him; it was not discussed. The lapel video showed Officer P never forced or coerced Mr. [REDACTED] into giving the car to Ms. [REDACTED] the parties agreed upon it. Mr. [REDACTED] said in his interview that he disliked police, which likely influenced his perception of the interaction.

The CPOA finds Officer P'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>.

Letter to Mr. , CPC 117-17
August 11, 2017
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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