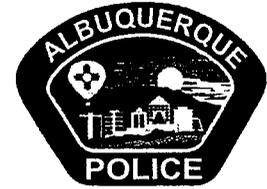


Tim Keller
Mayor

City of Albuquerque

Albuquerque Police Department



Michael J. Geier
Chief of Police

Interoffice Memorandum

May 1, 2019

To: Ed Harness, Director, Citizen Police Oversight Agency
From: Michael J. Geier, Chief of Police *MJG*
Subject: Response to CPC 275-18

SOP Alleged Violations:

3-20-2A (6):

6. Restrictions - Officers cannot sign-up for or accept an assignment for overtime if:
- On "on-call status"
 - The Honor Guard team and ERT will be exempt from this.
 - Applies only to Chief's Overtime assignments

1-1-4 B 7 c:

7. Both on duty and off duty, personnel will conduct themselves in a manner that reflects favorably on the Department. Conduct unbecoming an officer or employee of APD includes the following:
- Conduct that could bring disrepute, shame, dishonor, disgrace, or embarrassment to the Department.
 - Conduct that interferes with or compromises the efficiency of personnel and employees.
 - Conduct that impairs the operation or efficiency of the Department

Significant Highlights/Takeaways of this Investigation:

- The CPOA found no evidence of criminal activity.
- This investigation arose out of some articles in the ABQ Report questioning Off. D ; high pay based on questionable or possibly fraudulent overtime accrued during 2018. Most of these concerns were refuted by Mr. Skotchdopole's investigation. He refers to a key misconception being the terms "billed" versus "worked."
- No evidence was found to show that Off. E failed to work any of the activities for which he submitted overtime. Nor was there any indication that the actual hours he worked did not match the hours for which he claimed for overtime.

4. Mr. Skotchdopole indicated that APD “scarcely follows” SOP 3-20, which covers Overtime, Compensatory Time and Work Shift Designation.
5. This policy shows the following status:
 - a. It was published March 10, 2016.
 - b. It was subject to annual review on March 10, 2017.
 - c. It’s currently being shown as “Undergoing Amendment.”
6. An independent audit from 2016 stated that “APD does not follow SOP for pre-approving or recording overtime” and “APD fails to follow its own overtime policy.” It was also noted that APD no longer uses the PD-4019¹ form for recording overtime as mentioned in policy PD-4019. The Telestaff system does not record each overtime entry and there is minimal accountability or justification noted with these on the timesheet. Currently overtime is just added to the Telestaff entry with little oversight or control measures.
7. APD responded to the concerns set forth in the 2016 audit and related that it would fix this problem by June 30, 2017. APD originally said that Fiscal would fix the problem by March 31, 2017. There was mention of reconciliation between timekeeping and payroll systems put in place. As for issues with Chief’s Overtime discrepancies, the Chief’s Overtime Coordinator said that these were related to system errors. In reality, the majority were found to be data entry errors, not system errors. The policy was never modified and these problems were not addressed.

The audit recommended that APD should follow specific practices and controls to identify and prevent unauthorized overtime. These would include tracking and monitoring apparent for irregular activity or excessive patterns or practices for officers with high amounts of overtime or comp time earned. It was suggested that that task be assigned to the supervisor and management personnel to be that first line of accountability in that process. The audit called for a review process to look for possible collusion between officers and supervisors regarding overtime practices. These recommendations were also never implemented.

8. The current APD and City administration were not made aware of the 2016 audit or the status of corrective action. APD and the City are currently reviewing overtime policies and practices.
9. APD is reviewing Mr. Scotchdople’s recommendations regarding: (1) potential subjects for negotiation with the Albuquerque Police Officer’s Association (APOA); or (2) where the recommendation is a management right, implementation of appropriate policy revisions. These recommendations include:

¹ The PD-4019 form was a separate document to be attached to an officer’s timesheet that was used for reporting overtime or comp time earned, comp time, vacation or sick leave used and the like. Overtime needed to be recorded by a certain code (i.e. court, holdovers, tact plan, grant, etc.) and the time started and finished with a total time added for each day and the week. Court OT required a time stamp. This form required a signature by both a sergeant and a lieutenant when submitted to payroll and had to match the information on the timesheet itself.

- a. Changing the definition of what is considered “time worked” along with requiring that comp time be used within 180 days or be paid out.
- b. Having no exceptions to the ability to work Chief’s OT while in “on-call” status. Currently both ERT and Honor Guard are granted this exception per SOP.
- c. Expanding the overtime cap set by Special Order in December 2018 to ensure that it caps ALL Overtime at 25 hours, without exceptions.
- d. Prohibiting officers from using paid time off or leave to work Chief’s Overtime assignments.
- e. Requiring supervisors to research any Chief’s Overtime submissions for accuracy and to ensure they do not violate the provision in section 10.d above.

Findings Regarding the Allegations Against Off. D

SOP 3-20-2A(6) - While I concur with the finding of the CPOA, I do not concur with the Recommended Disciplinary Actions of termination of employment, for the following reasons:

1. The recommended discipline is unfair and excessive. To my knowledge, the process of computing progressive discipline for separate and multiple counts of low-level sanctioned violations has never been applied to this magnitude, to result in termination.
2. Off. D has served APD honorably for approximately 20 years. I reviewed his disciplinary file and only found a few sustained incidents noted where minor corrective action was taken. Those actions range from a written reprimand for an on-duty car accident in 2001 to a verbal reprimand in 2014 for a low level policy infraction unrelated to the use of overtime. He also received a red light camera violation in 2011 where he paid the fine and no other action was taken.

Off. D has been recognized throughout his career for his exemplary performance. He has recently been nominated for one of APD’s highest awards “Courage Under Fire” for his actions during the C C incident a few years ago in which four police officers were shot in the line of duty. He has a reputation as one of the hardest workers in our Department.

3. There are serious concerns with the existing overtime policy as noted not only by the independent audit and the CPOA investigator, but also by the current administration. This policy has been expired for over two years and has not as yet been revised. The current administration is in discussion with the APOA regarding its interpretation. There are multiple examples of practices approved and accepted by former APD Administrations that have been in effect for years despite being contrary to the stated policy. This seriously undermines the ability to hold people accountable when the internal practice and habits have become an accepted informal policy.

4. It appears that Special Orders issued by a former administration in 2015 may violate the overtime policy. This has led to confusion and misunderstanding for the officers, and their supervisors, as to exactly what the policy is. This has also led to possible, although unintentional, abuse in the Department. No training or special orders have been implemented or introduced in recent years to rectify this confusion.
5. There is no doubt that Off. D [redacted] was on call during the times he worked the Chief's Overtime (COT) assignments. Besides exempt personnel in APD, he is perhaps the only officer who is asked to be on-call 24/7. Our policy recognizes exceptions to the restriction regarding not working COT or other similar overtime details while on call for the Emergency Response Team and the Honor Guard. It would only make sense to allow a full-time PIO that same privilege.

SOP 1-1-4(B((7)(c)) - I do not concur with the findings of the CPOA for the following reasons:

The main premise of this particular section is that personnel will conduct themselves in a manner that reflects favorably on the Department. I do not believe there is any evidence or testimony presented that establishes that Off. S D [redacted] does not represent APD in an exemplary manner. He often acts as the "face" of our Department and is well known and respected throughout our city. He constantly goes above and beyond the call of duty to assist the Department and its personnel.

The specific section that the CPOA contends supports the premise that conduct unbecoming an officer or employee of APD includes actions under subsection "c" which refers to impairment of the operation or efficiency of the Department. Although Mr. Scotchdople implies that a violation of this apparent magnitude under SOP 3-20 impairs the fiscal efficiency of APD, I fail to see any objective or anecdotal evidence to support this proposition.

A single example was presented regarding an incident during one of Off. D [redacted] Chief's Overtime (COT) assignments at a Target store. In that case, he was in an on-call status and left to respond to a critical incident where APD officers were shot at and a massive search was underway for the armed suspect. Off. D [redacted] responded both as the Public Information Officer and a police officer to assist in the containment and search efforts. Off. D [redacted] worked at the Target for about an hour before advising the store management and leaving that assignment to respond to the high priority call. He did not receive any payment for his services and the store expressed no concern about that incident. I believe that rather than impair the efficiency of the Department, his decision to leave the assignment actually improved the efficiency and lead to the ultimate success of that operation. Nevertheless, it did highlight the concern regarding an overlap of on-call and Chief's Overtime.

There was a valid complaint regarding the issue of running with the cadets on comp time. Off. D [redacted] was given permission to do so for special events such as the cadet final graduation run or the Browder Memorial run. He was also permitted to run at other times to obtain video footage of each cadet class for a compilation of their Academy experiences in a graduation video. However it seems he claimed comp time for other instances of running with the cadet without receiving prior authorization.

Otherwise, there were no specific examples presented to show where an “impairment of efficiency” happened. No factual basis was provided to establish, by a preponderance of evidence, exactly where the Department’s efficiency was objectively impaired. It was never established that Off. D actions caused specific financial problems for APD.

We appreciate having these credible concerns regarding overall fiscal responsibility and accountability brought to our attention. However these were more associated to supervisory, management, and system failures than due to the decisions of a single individual, S D

Nonetheless, there is a great need for improvement and APD needs to address the wide range of issues uncovered during this comprehensive investigation. The investigator clearly invested a great deal of time and effort to produce and analyze a large volume of raw data that will be extremely valuable in reconciling the many issues and concerns brought to the forefront in this investigation. These include not only ways to reduce overtime expenditures, but also to introduce policy changes and develop better systems of accountability.

General Recommendations and Proposed Actions:

1. APD will undertake a comprehensive review of SOP 3-20 and take appropriate action to address needed change, including engaging negotiations with the APOA where required. Mr. Skotchdopole’s recommendations, in particular, will be given careful consideration. Once any revisions of this policy are complete and any collective bargaining issues addressed, APD will provide training to all officers to ensure that the policy is understood by all.
2. The Department need to continue to review on any and all areas where potential overtime abuse practices and procedures could be occurring. APD had conducted an internal review this year on the financial impact of the increasing overtime expenditures over the last several years. There were 25 recommendations that were developed to address overtime issues and these will be presented to City staff and members of the City Council during this budgetary review process for FY20. Implementation has already been underway for several of these recommendations. (See Appendix A.)
3. The New Mexico State Auditor’s Office recently requested all documents related to this investigation and will assist APD in a comprehensive follow-up review to the CPOA investigation and in any policy recommendations.
4. Supervisors will be held accountable for reviewing overtime submittals each week and for identifying any irregular patterns of overtime usage.
5. The new policy will address the issues with on-call status and provide clear direction in this regard.

6. APD will develop a clear, accurate process for recording of overtime to provide strict accountability at different user levels (i.e. from officer to supervisor to executive levels to data entry and payroll management.).
7. Payroll will provide listings identifying the area commands or other divisions with the highest overtime usage each pay period. They will also provide similar listings on the top 25 officers with the highest overtime accruals (including Chief's Overtime.) Supervisors will review these for accuracy and potential policy infractions, along with an interest in monitoring the health and well-being of their personnel.
8. A matrix will be developed and included in the new SOP 3-20 to establish the required approval process for the different categories of overtime.
9. Personnel evaluations and assessments will evaluate any correlation between performance and overtime accruals. These will be addressed during the quarterly checkpoints and annual final evaluation report.
10. Training will be offered to all personnel on personal financial management so as to avoid people living beyond their means causing unnecessary fiscal burdens leading to reliance on working overtime. Perhaps APD can continue to work with local banks and businesses to provide first responders with low cost loans, car and home mortgages or even day care services to alleviate these concerns for officers and their families. The City already offers such seminars with credit unions and deferred compensation saving plans. These can be presented during biennium training or roll-call briefings for the convenience of our officers.

Recommendations and Proposed Actions for Off. S D

The key question to ask is whether punitive disciplinary action is the appropriate response to the issues involving Off. D . The investigation uncovered an overall agency failure to abide by the existing policy. Off. D had a responsibility to be aware of the only policy section that he actually violated, but there are many mitigating circumstances in his defense. As noted in the CPOA's investigative summary, he demonstrated no intent to defraud APD or the City.

His job description and expectations were not clear. This is an administrative shortcoming. The system itself was broken and the continual practice of non-compliance with policy created an "informal policy" over a period of time. To hold a single person accountable when the rules are unclear is unfair and difficult to defend. To that end, I would recommend alternative measures to address Off. D as APD moves forward to acknowledge our failures, create clear direction and establish fiscal accountability regarding overtime practices.

Effective as of May 1, 2019, Off. D will be placed on administrative assignment, reporting directly to the Deputy Chief of Staff. This will enable APD administration to monitor Off.

D use of time and ensure a balance between duties related to communications and duties related to field work. The Deputy Chief of Staff will be considered Off. I direct supervisor and responsible for approving overtime for Off. D in accordance with applicable policy.

APD is in the process of reviewing the PIO position to determine what additional support is needed to best effectuate the goals of the position. Clearly, expecting one person to handle all of these duties is not effective. Effective as of May 1, 2019, the Deputy Chief of Staff will work with the Director of Communications to develop a plan for additional personnel (including themselves) to take on the responsibilities previously held by Off. D in his position as PIO. Future overtime usage and approval for the PIO and relevant additional personnel will also be addressed in this review.

Off. D has offered to surrender his existing "comp bucket" to repay the Department for the comp time he earned on days he worked a Chief's Overtime assignment or for unauthorized times he ran with the cadets. The Department accepts this offer as a show of good faith and acknowledgement of the problems raised in the CPOA report.

Conclusion.

APD strives to achieve transparency in its decisions regarding overtime operations, personnel issues, and internal policies and practices. We welcome the insight provided from any outside perspective and appreciate the hard work and effort Mr. Skotchdopole invested in this investigation. His comprehensive review will be invaluable toward APD's strategic plans to address the multiple internal failures outlined in the CPOA report. We intend to provide updates on our progress to the CPOA and the Police Oversight Board as we move forward. We will take these recommendations seriously and work to improve the many components of a "broken system." As Chief, I will take personal accountability to improve the issues brought to our attention. Thank you for your assistance in helping APD become a professional, successful and respected law enforcement organization.



Chief Michael J. Geler