

**CIVILIAN POLICE OVERSIGHT AGENCY**

**Police Oversight Board** *Leonard Waites, Chair* *Chantal M. Galloway, Vice Chair*

*Joanne Fine*

*Dr. William J. Kass*

*Valerie St. John*

*Chelsea Van Deventer*

Edward Harness, Executive Director

**POLICE OVERSIGHT BOARD AGENDA**

**Thursday, February 14, 2019 – 5:00 PM**

**Vincent E. Griego Chambers**

- I. Welcome and call to order.**
- II. Pledge of Allegiance – *Valerie St. John***
- III. Mission Statement – *Leonard Waites, Chair***

*“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 from January 10, 2019**
- VII. Reports from City Staff**
  - a. APD
  - b. City Council
  - c. Mayor’s Office
  - d. City Attorney
    1. Selection Criteria
    2. Candidate Scoring
  - e. CPC
  - f. APOA
  - g. CPOA – *Edward Harness, Executive Director*
- VIII. Reports from Subcommittees**
  - a. Community Outreach Subcommittee – *Joanne Fine*
  - b. Policy and Procedure Review Subcommittee – *Dr. William Kass*
  - c. Case Review Subcommittee – *Valerie St. John*
  - d. Personnel Subcommittee – *Chantal Galloway*
- IX. Discussion**
  - a. 2017 Annual Report
  - b. 053-18 Non-Concurrence
  - c. 132-18 Chiefs Memo
  - d. Oversight Ordinance CS/2 O-18-23

- X. **Consent Agenda Cases:**
  - a. **Administratively Closed Cases**

169-18	201-18	217-18	233-18	256-18
276-18	278-18	279-18		
  - b. **Sustained**  
229-18
  - c. **Unfounded and Not Sustained**  
085-18
- XI. **Non-Consent Agenda:**
  - a. **Unfounded and Not Sustained**  
186-16
  - b. **Exonerated/Sustained not based on original complaint**  
128-18
- XII. **Review of Appeals**
- XIII. **Serious Use of Force/Officer Involved Shooting Cases:**
  - a. **C45-2018**
  - b. **I-6-2017**
- XIV. **POB's Review of Garrity Materials:**
- XV. **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**
    - i. **Pending Litigation to include *Arasim v. CPOA et al.*, D-202-CV-2018-08758**
  - b. **Limited personnel matters pursuant to NMSA 1978, Section 10-15-1(H)(2)**
    - ii. **Executive Director Contract**
- XVI. **Other Business**
- XVII. **Adjournment- Next Regularly scheduled POB meeting will be on March 14, 2019 at 5:00 p.m. in the Vincent E. Griego Chambers.**

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

**Police Oversight Board**

*Joanne Fine*

*Chelsea Van Deventer*

*Leonard Waites, Chair*

*Dr. William J. Kass*

*Chantal M. Gallardo, Vice Chair*

*Valerie St. John*

Edward Harness, Executive Director

February 15, 2019  
Via Certified Mail  
7016 0340 0000 0323 7651

**Re: CPC #169-18**

Dear Ms. C

Our office received the complaint you filed on July 23, 2018 against two unidentified Albuquerque Police Department (APD) Officers, regarding an incident which occurred on approximately June 30, 2018. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

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

Albuquerque

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

### **I. THE COMPLAINT**

Ms. C complained that on or around June 30, 2018, while she and a friend were at Tingley Beach talking, two unknown APD officers walked up to them and asked for their identification. She gave them her identification and the two officers drove off without returning her identification. She said she went to 2<sup>nd</sup> and Montano to retrieve her license but was told it was not there. She wants her driver license and money to get all her documents back.

## II. THE INVESTIGATION

The CPOA Investigator was unable to obtain more information from you regarding this complaint, as you did not provide a phone number, or email address; therefore the Investigator reviewed your complaint and a CADS report dated June 30, 2018. The CADS showed that at 0006 hours a passerby called to report a Disturbance between a male and a female at Tingley Beach. According to the passerby, a child was also with the couple. At 0046 hours, Officer C.R. was dispatched to Tingley Beach but was preempted to another call and the call was placed on hold. At 0205 hours, Officer F.R. was dispatched and was unable to locate any of the subjects described by the passerby and cleared the call at 0222 hours.

## III. CONCLUSION

Based on the aforementioned information, the CPOA has made the decision to **ADMINISTRATIVELY CLOSE** your complaint because the evidence showed that no APD officer made contact with you, or anyone in your party.

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

**CIVILIAN POLICE OVERSIGHT AGENCY**

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Edward Harness, Executive Director

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*Chantal M. Galloway, Vice Chair*

*Valerie St. John*

February 15, 2019

Via Certified Mail

7016 0340 0000 0323 7668

**Re: CPC #201-18**

Dear Ms. W

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint against Officers of the Albuquerque Police Department (APD) on August 28, 2018, regarding an incident that started on November 5, 2013.

**I. THE COMPLAINT**

Ms. W submitted an online complaint regarding her allegation that Detective O took her children. Ms. W was upset that the incident started over a man inappropriately touching her minor daughter and yet he was released on his own recognizance. She wanted as an outcome a variety of things:

- her children back
- Detective O fired
- a public apology for slandering her name
- an explanation of why her children were taken from her.

**II. INVESTIGATION**

The CPOA Investigator interviewed Ms. W to obtain more information about her complaint. Ms. W stated the incident started when a client of her sister's was home with her children and touched her daughter so she called police. She had a conversation with a detective about taking her daughter for an interview, but could not take her the date the officer said because she had to work. Ms. W stated the next thing that occurred was that Detective O and CYFD took her children on November 21, 2013, but she received no paperwork. The police report said her children were given to her mother for custody, but she claimed other paperwork said her mother was not eligible so she did not know where her children were. She did not think her failure to take her daughter for an interview was just cause to take her children. Ms. W stated Detective O and CYFD came to her home. The one phone conversation and the home visit were the only times she talked to Detective O. However, when confronted with the fact that a recording existed with her talking to a detective back in June of 2013 she then wondered if she ever talked to Detective O on the phone because she claimed she only had one

phone conversation ever with any detective. Ms. W also expressed frustration that the suspect that touched her daughter was released on his own recognizance and she blamed Detective O for failing to follow through on the case. Ms. W complained about being slandered in paperwork, but agreed that was an issue with CYFD and not APD. Ms. W stated she waited five years to file the complaint because she has been fighting with CYFD and her attorney all this time.

At the time of her interview, Ms. W provided numerous court documents. The CPOA Investigator reviewed police reports, recordings, and the court documents she provided. After reviewing the complaint, the associated documentation, the applicable SOP being from 2011 due to Ms. W delayed filing of the complaint, and she complained of issues being focused on CYFD the CPOA Investigator asked Detective O some questions although it was not a formal interview.

The CPOA Investigator's synopsis of the investigation into the issues was as follows. The issues with Ms. W started in June of 2013 when there was a physical altercation between Ms. W and her grandfather while her children were present. When officers responded to that incident, one of the children mentioned an incident of possible sexual abuse between her and her great grandfather that occurred possibly sometime in 2009. CACU was called out and Detective Q contacted Ms. W to take her daughter to a Safe House interview for that incident, but Ms. W did not comply. A CYFD caseworker was assigned to the case as well. The DA also could not get cooperation from Ms. W concerning the case. Even though there were recordings of Ms. W and Detective Q, she denied she made any failures to comply with an investigation or that anything was even reported at that time. In her CPOA interview, she seemed confused about there being any reported incident in June of 2013 other than the physical assault, for which her grandfather was charged. According to the DA, Ms. W lack of cooperation and failure to bring her daughter for an interview prevented any additional charges from being pursued against Ms. W grandfather. According to Detective Q's report, Ms. W home appeared to be a satisfactory living environment for the children and Ms. W grandfather would no longer be living in the home therefore the APD case was closed pending further leads.

On November 5 2013, Ms. W children were left with her sister while she was at work. Ms. W sister was a caregiver and had a client in her home. The children were left unattended with the client while Ms. W sister left to pick Ms. W up from work. Ms. W daughter alleged this client inappropriately touched her over clothing. Field officers contacted CACU regarding that allegation.

Detective E was the CACU detective on call for that case, but Detective O took over as she had more availability to work the case. According to Detective O, the first Safe House interview was scheduled for November 6, 2013, but Ms. W failed to show. Detective O communicated with the same CYFD caseworker, which still had an open case from June of 2013. A second Safe House interview was scheduled for November 19, 2013 with notice given to Ms. W on November 18, 2013. Ms. W failed to show. Detective O and the CYFD caseworker discussed the possibility of a 48-hour hold for Ms. W, failure to protect. The CYFD

caseworker informed Detective O the school was concerned over the tardiness of the children in attending school. Detective O along with CYFD's involvement initiated a 48-hour hold on November 21, 2013. They picked up Ms. W two daughters from school and took the girls to Safe House interviews that day. In the interviews, the girls described what happened with their aunt's client. Neither daughter disclosed the earlier alleged sexual abuse with their great grandfather.

Detective O and the CYFD caseworker went to Ms. W home on November 21, 2013 and informed Ms. W the children were being placed with Ms. W mother for the time being and the reasons why. Ms. W attended a CYFD family meeting the next day, which provided more information. CYFD expressed their concerns in the meeting and laid out a plan of action. Detective O completed the case against the listed offender from the incident on November 5, 2013 and forwarded it to the DA. Detective O explained further action for the case is up to the DA and the alleged offender's release on his own recognizance was up to the Judge. The case with APD was closed as being cleared by arrest.

Ms. W claimed several court papers conflicted with the APD report. She highlighted differing dates and lack of certain dates on some of the paperwork. In reviewing the paperwork, the CPOA Investigator noted a difference of one day between the affidavit for ex parte custody order written by the CYFD caseworker and the police report regarding the date of the first appointment for the interview in November. The CPOA Investigator attempted to reach the CYFD caseworker for clarification on some issues, but the caseworker did not return the messages left for her. The affidavit written by the CYFD caseworker described the home meeting and information about Ms. W mental health issues. Ms. W in her CPOA interview, stated the statements made by the CYFD caseworker were the slanderous items, which she referred to in her complaint. She agreed that complaint was with CYFD and not APD. The CYFD caseworker also expressed concerns about the condition and safety of the home at that time. According to the CYFD caseworker, the 48-hour hold was initiated due to Ms. W failure to take provide a safe environment. Ms. W alleged her mother was denied custody contrary to the police report, but the documentation she provided did not say specifically that her mother did not have custody. Detective O could not speak for after November 21, 2013, but on that day, the children were left with their maternal grandmother. Ms. W complained she received no notice or information of her children being taken yet she provided several court documents that provided that specific information. Ms. W complained she was not aware of hearings yet the paperwork provided said she attended the hearings. Ms. W stated in her CPOA interview that her lawyer or someone falsified her signature showing her participation in hearings. This is outside of the scope of APD. According to the court documents she provided, it was determined that the children should continue to be out of Ms. W custody. Ultimately, she lost parental rights with extensive information detailed as to why. The actions of CYFD and the decisions of the Court are outside of APD and the CPOA's jurisdiction.

### III. CONCLUSION

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint, as the various complaints she had involve CYFD and the DA's office and not APD. Ms. W did not provide information that supported a violation of the applicable SOPs at the time.

The CPOA Investigator discussed the status of the complaint with Ms. W. Ms. W explained she is currently in an appeals process with CYFD and her lawyer. She will pursue with the DA regarding the case against the alleged offender from November 2013.

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

cc: Albuquerque Police Department Chief of Police



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*Leonard Waites, Chair*

*Dr. William J. Kass*

*Chantal M. Galloway, Vice Chair*

*Valerie St. John*

February 15, 2019

Via Email

**Re: CPC #217-18**

Dear Mr. S

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint against Officers of the Albuquerque Police Department (APD) on September 12, 2018, regarding an incident that occurred on August 20, 2018.

### **I. THE COMPLAINT**

D S submitted two online complaints a couple of days apart about the same incident. Mr. S claimed all three officers present were rude and inappropriate towards him and his brother, L L. Mr. S alleged the officers threatened Mr. L by placing their hands on their belts beside their guns in the other complaint he wrote the placed their hands on their guns. Mr. S complained that the officer had his car towed outside of the city and logged under someone else's name so he could not retrieve the car. Mr. S wrote his car was illegally searched. Mr. S wrote Officer R called him on the phone, since he was not present, and made rude, disrespectful comments towards me regarding his car. Mr. S alleged the officers detained his brother for too long and no reason to pull him over.

### **II. INVESTIGATION**

The CPOA Investigator reviewed the CAD, the police report, and the lapel videos. Officer R was the primary officer and Officers S and M rode two-man as backup. Per the police report and confirmed by the video, the vehicle driven by Mr. L was stopped due to no license plate or temporary tag being displayed. Mr. L explained the vehicle belonged to Mr. S, who was not present, and Mr. L was just borrowing it. The video showed officers were not rude with Mr. L. At one point, Mr. L questioned why there were three officers and Officer R told him he did not have a say in how many officers were present, but her tone was neutral. Mr. L said he did not feel well and Officer R asked if he desired medical attention. The video showed while Mr. L looked for insurance he pulled out other citations from the glove box, which he showed to officers. They were for Mr. S not having registration or insurance previously. Officer R informed Mr. L that she would call Mr. S and if he did not have insurance, she would likely tow the car. The videos showed Officer R spoke to Mr. S on the phone. She introduced herself and was polite. She asked Mr. S if he had insurance. Since he said no, she informed him she would tow the car and he needed to have the car insured and registered. Officer R told him that he had more than enough opportunity to get that taken care of. According to the police report, the previous citations were from March. Officer R provided the

tow sheet to Mr. L saying where the car was being towed, which was a company in Albuquerque on Broadway. Officer R explained to Mr. L that the car was not showing as belonging to Mr. S so it would be logged under the current registered owner's name and advised Mr. S to bring a title or bill of sale proving ownership.

The lapel videos showed Officer S had almost no contact with Mr. L and Officer M had some contact. Officer M engaged Mr. L in some small talk. The conversations were casual and there was nothing aggressive. The officers were not messing with their weapons based on their reflections that could be seen in the car or they had items in both hands such as flashlights and notebooks. Other times at least Officer M was seen with his hand resting on his belt on the same side as his firearm in a natural resting position, but not gripping the firearm. The videos showed much of the time Mr. L did not even look at the officers and Mr. S was not there. Mr. L decided to walk home so he took his property from the vehicle, including opening the trunk to retrieve something. An inventory search pursuant to towing is authorized and within policy and not an illegal search of the car as Mr. S claimed. The videos showed no one was rude or inappropriate to Mr. L or Mr. S. Mr. L never asked for keys to be separated from the car keys. The total time Mr. L was detained was less than an hour.

### III. CONCLUSION

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint, as there was no minimal substantiation to the allegations based on the available evidence.

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.

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The Civilian Police Oversight Agency by



Edward Harness, Esq.  
Executive Director

cc: Albuquerque Police Department Chief of Police

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*Chantal M. Galloway, Vice Chair*

*Valerie St. John*

February 15, 2019

Via Certified Mail

7016 0340 0000 0323 7675

**Re: CPC #233-18**

Dear Ms. Z

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint against Officers of the Albuquerque Police Department (APD) on September 19, 2018 regarding an incident that occurred on or about an undisclosed date.

**I. THE COMPLAINT**

Ms. Z submitted a written complaint without a date or time of incident. She complained about Officers K and S. Her complaint stated she was “railroaded and assaulted” by police and by the MDC guard. Ms. Z wrote the police broke her shoulder and illegally stated a person’s disability on a police report. As an outcome, she sought damage money and a removal of illegal arrests. She mentioned there were five arrests.

**II. INVESTIGATION**

The CPOA Investigator reviewed the NM court case detail on the website for cases involving Ms. Z. Only two had anything to do with Albuquerque Police. One case did involve Officer K from August of 2011, but Officer S was not part of this call. Ms. Z and another individual were arrested for trespassing at a red-tagged apartment with several notices of no trespassing posted. The belt tape that existed for this case was destroyed prior to the filing of the complaint due to the length of time since the date of incident.

A previous complaint was located from Ms. Z in 2016. In that complaint she alleged Officer K and his partner caused her injuries. She alleged the incident took place in 2009, but did not offer a specific date. In that complaint Ms. Z wrote, she told officers right away her shoulders were “messed up” before they approached her. Officer K was not employed with APD until 2010, which her complaint had been closed in 2016 due to a lack of information to continue the investigation.

The CPOA Investigator contacted Ms. Z in order to make an appointment for an interview. Ms. Z thought she submitted more information with our office than she actually did. She did not have the date of incident when the CPOA Investigator spoke to her. She stated she was

sitting at her daughter's residence waiting for a ride when officers approached her. She said she was on crutches. She claimed there were hearsay statements made in the report. She talked about additional arrests and complained about MDC as well. An appointment was set, which she did not show up for and did not respond to additional attempts to reschedule. She talked about various places she filed complaints such as court, with lawyers, and the DOJ, but nothing was done.

### III. CONCLUSION

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint, as the age of the complaint and the lack of substantive information did not provide enough to continue with the investigation, especially since the few facts she verbally stated did not match the situation in 2011. She claimed the incident took place at her daughter's and the 2011 incident took place at a red-tagged, abandoned building. There were no additional statements made by anyone in 2011 other than the owner of the building said no one had permission to be in the property. Her previous complaint was about the same officer with a year of incident a year before he was employed with the department. The one officer she accused was not part of the incident in 2011 and there was no court information that officer was involved in her other arrest in Albuquerque. It was not safe to assume the incident found in August of 2011 is the incident she intended to complain about as there were too many inconsistencies and she did not participate in the investigative process. Ms. Z stated multiple times she was owed "damage money," but it was explained to her that our office did not have any role in monetary payouts.

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

cc: Albuquerque Police Department Chief of Police

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*Dr. William J. Kass*

*Chantal M. Galloway, Vice Chair*

*Valerie St. John*

February 15, 2019

Via Certified Mail

7016 0340 0000 0323 7682

**Re: CPC #256-18**

Dear Ms. J

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint against Officers of the Albuquerque Police Department (APD) on November 5, 2018 regarding an incident that occurred on October 9, 2018.

**I. THE COMPLAINT**

V J submitted a written complaint regarding her allegations that officers surrounded her, yelled at her, and pulled her out of the car while guns were drawn. Ms. J complained that one officer held her while another officer searched her bra. Ms. J claimed officers told her, "shut the fuck up." Ms. J alleged a female officer threw her to the ground and then yanked her up hard. Ms. J found out later the officers were looking for a dark Dodge Challenger with one headlight while she drove a silver Dodge Avenger.

**II. INVESTIGATION**

The CPOA Investigator reviewed the CAD, the police report for Ms. J stop as well as the original police report for the shooting, and the lapel videos for the stop. The original police report described more than one possible vehicle description based on various witnesses. The report did not mention anything about there being only one headlight as Ms. J claimed. The color was often described as gray, but there were some variations. It was identified as a Dodge Challenger. The suspect passenger was described as wearing a white or gray hoodie. The lapel videos showed the vehicle driven by Ms. J was gray/silver in color. The report for Ms. J stop identified the vehicle as a Dodge Challenger. The video showed it looked to be a different model. The CAD clarified the model. The video showed Ms. J passenger was wearing a gray hooded jacket or hoodie. The location of the stop was a potential based on the information they had of time and distance.

The lapel videos showed officers shouted instructions to Ms. J and her boyfriend. Based on the statements from the officer in the video Ms. J was not following the instructions given. The videos showed Ms. J was not pulled out of the car as she claimed; she got out

on her own. Ms. J claimed the female officer asked her about hypodermic needles in her car. The lapel videos showed Officer M asked Ms. J about needles on her person. Ms. J claimed she was held by one officer while another searched her bra. The video showed Officer P held her arm since she kept moving and reaching for what turned out to be a wallet in her bra. Officer M was trying to determine that the object in her bra was not a weapon. The lapel videos showed the officers were not rough with Ms. J but due to her pre-existing injuries from an accident a few days before she was sensitive. The lapel videos showed officers never told her to "shut the fuck up." The lapel videos showed Officer M never threw Ms. J down to the ground or yanked her back up. Ms. J lowered herself to the ground at her choice while Officer M steadied her. The videos showed no excessive force or force occurred. Ms. J wrote officers profiled her or were racist. The videos showed several times it was explained to both parties the only reason they were stopped was that the vehicle seemed to match the suspect vehicle. The videos showed Ms. J kept saying she was "brown with tattoos," but the officers never said anything like that or that her appearance played a factor in the stop.

### III. CONCLUSION

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint, as there was no minimal substantiation to her allegations after reviewing the available evidence.

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

cc: Albuquerque Police Department Chief of Police

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*Chantal M. Galloway, Vice Chair*

*Valerie St. John*

February 15, 2019

Via Email

**Re: CPC #276-18**

Dear Ms. G

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint against Officers of the Albuquerque Police Department (APD) on December 19, 2018, regarding an incident that occurred on September 11, 2018.

### **I. THE COMPLAINT**

S G submitted an online complaint regarding her arrest at the RV park across from the Route 66 Casino. She alleged a male officer grabbed her hands, lifted them above her head, reached in her bra, and grabbed her breast when he pulled her ID and money card from her bra. She never received her ID back. The rest of her submitted complaint comprised of complaints about unspecified incidents with law enforcement over the last twelve years.

### **II. INVESTIGATION**

The location Ms. G stated this took place was not in APD jurisdiction. The CPOA Investigator reviewed the NM court case detail on the website for the arrest of Ms. G. Ms. G was correct on the date and there was a case listed in the court website, but the arresting officer is not APD.

### **III. CONCLUSION**

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint, as the available evidence showed the complaint did not involve the Albuquerque Police Department.

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.

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Letter to Ms. G  
February 15, 2019  
Page 2

Sincerely,  
The Civilian Police Oversight Agency by

A handwritten signature in black ink, appearing to read 'E. Harness', with a stylized flourish at the end.

Edward Harness, Esq.  
Executive Director

cc: Albuquerque Police Department Chief of Police



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*Valerie St. John*

February 15, 2019

Via Certified Mail

7016 0340 0000 0323 7699

**Re: CPC #278-18**

Dear Ms. E

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint against Officers of the Albuquerque Police Department (APD) on December 19, 2018, regarding an incident that occurred on October 1, 2018.

### **I. THE COMPLAINT**

L. E submitted a written complaint regarding her allegation that Officer Jason B should not have written her a ticket for driving while having an animal in her lap. She believed Officer B misunderstood because she would never risk the life of her animals. Her desired outcome was for the tickets to be dismissed except for the one about not having her license in her possession.

### **II. INVESTIGATION**

The CPOA Investigator reviewed the NM court case detail on the website, the report, the CAD, and the lapel videos. Ms. E hit a parked car on the side of the road. The lapel videos showed Ms. E admitted to both the PSA and Officer B that the dog got in her way while she was driving and she was trying to push it back. Based on her statements the dog was a contributing factor to the accident and the careless driving charge. The lapel videos showed at least two dogs unrestrained in the car. The lapel videos showed Ms. E admitted she did not have her license on her person. The lapel videos showed Officer B considered the totality of the situation and chose the lowest level of enforcement action, which benefitted Ms. E.

### **III. CONCLUSION**

The place to resolve her issues with the tickets is court, not the CPOA. The fact that Ms. E does not like the citations and their implication to her is not a violation of SOP. The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint, as there was there was no minimal substantiation to her complaint based on the available evidence.

Letter to Ms. E  
February 15, 2019  
Page 2

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

cc: Albuquerque Police Department Chief of Police

**CIVILIAN POLICE OVERSIGHT AGENCY**

**Police Oversight Board**

*Joanne Fine*

*Chelsea Van Deventer*

Edward Harness, Executive Director

*Leonard Waites, Chair*

*Dr. William J. Kass*

*Chantal M. Galloway, Vice Chair*

*Valerie St. John*

February 15, 2019

Via Email

**Re: CPC #279-18**

Dear Ms. G

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint against Officers of the Albuquerque Police Department (APD) on December 20, 2018, regarding an incident that occurred on November 28, 2018.

**I. THE COMPLAINT**

D G submitted an email complaint regarding her allegation that officers never responded to her significant other's call to 911 after someone kicked in their next-door neighbor's front door. Ms. G stated her neighbor was not at home and people were in and out of the apartment.

**II. INVESTIGATION**

The CPOA Investigator contacted the Communications Manager regarding the issue of a 911 response. The call and the CAD for the incident were reviewed. The call was handled and prioritized appropriately as a priority two since there were no subjects present at the time of the call. Officers responded over an hour and 45 minutes later due to call volume and staffing levels, but they did respond. Officer spent approximately an hour trying to determine who could secure the location. After numerous calls trying to get maintenance, on site security, and a manager the officer left a voicemail for the complex manager.

The Communications Manager spoke to C L, the significant other Ms. G mentioned, explained the information, and answered any questions. Mr. L stated they likely had fallen asleep prior to the officers' arrival. He expressed concerns about the complex management. Mr. L was appreciative of the follow-up.

**III. CONCLUSION**

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint, as the available evidence showed the situation was responded to as appropriately as it could be and has been resolved by the supervisor.

Letter to Ms. G  
February 15, 2019  
Page 2

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

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

Sincerely,  
The Civilian Police Oversight Agency by



Edward Harness, Esq.  
Executive Director

cc: Albuquerque Police Department Chief of Police

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board

Joanne Fine

Chelsea Van Deventer

Leonard Waites, Chair

Dr. William J. Kass

Chantal M. Galloway, Vice Chair

Valerie St. John

Edward Harness, Executive Director

February 15, 2019

Re: CPC # 229-18

Dear Ms. J

Our office received the complaint you filed on September 7, 2018 against Officer A. regarding an incident that took place September 5, 2018. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

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

Albuquerque

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

Ms. J wrote on September 5, 2018 as a paramedic for Albuquerque Ambulance Service, she arrived to a call to 911 for a male threatening suicide. Ms. J wrote that when she arrived Officer A stood extremely close to her, making her feel uncomfortable. Ms. J writes while she was talking to the patient Officer A interrupted her several times, making it difficult to do her job and that he argued with her about a decision to take the patient to the ER.

Ms. J stated that Officer A rode with them to the hospital and during the ride, Officer A made a joke about OBGYN's and anal sex, he talked about naked women he has seen on the job and that he winked at Ms. J multiple times and his body language and tone of voice were very inappropriate. Ms. J also wrote that Officer A made inappropriate comments about a recent accident an ambulance had with a motorcycle resulting in the motorcyclist's death.

Ms. J also wrote that when they arrived at the hospital Officer A made multiple comments about her body while he walked behind her. Ms. J wrote that her partner and another paramedic heard some of the comments Officer A made. Ms. J wrote she felt bullied and sexually harassed.

Ms. Ji was interviewed in person and reiterated the statements made in the written complaint.

## **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, the Complaint, lapel video's, interviews and reports regarding the incident.

A) The CPOA reviewed APD Standard Operating Procedure (SOP) 1-1-4 (D. 16.), which states:

### ***D. On Duty Conduct***

***16. Police officers and Department employees are expected to conduct themselves in a professional manner at all times. Personnel are discouraged from using any language that could be considered profane, derogatory, or disrespectful toward any person. In certain situations, profanity may be acceptable, subject to review on a case-by-case basis.***

Ms. J complained that Officer A stood extremely close to her during an incident in which Ms. J an Albuquerque Ambulance employee, was dispatched to a call for service. Ms. J also stated Officer A made lude jokes about the ambulance service having been in a deadly crash with a motorcyclist; jokes about lawyers and anal sex, winked and smiled at her and made comments about her body in which her co-workers overheard. Ms. J stated she felt bullied, harassed, offended and completely uncomfortable by the incident and experience with Officer A.

The investigation showed, through witness statements and interviews, that in some form, these statements and/or jokes were made to and around Ms. J. Witnesses that were involved in the situation inside the ambulance and at the hospital spoke about the comments made about Ms. J size and stature by Officer A. One witness, M W also stated she felt uncomfortable for Ms. J and also herself when she took a statement made by Officer A as to be sexual in meaning. One of the jokes was also corroborated during the investigation's interview of Officer A.

Comments or jokes may be deemed innocent by some but may also be taken offensively by individuals. The investigation showed that Officer A violated the SOP by not remaining professional at all times.

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

B.) The CPOA reviewed APD Standard Operating Procedure (SOP) 2-8-5 (8. h.), which states:

**8. Mandatory Recording Incidents**

*h. Contacts with subjects who (1) are not complying with officers' commands; (2) appear to pose a current threat to themselves or others; or (3) are known to the officer to have a history of being a threat to themselves or others based on either personal knowledge or notification from an APD resource.*

Officer A. was dispatched to a call for service on a male wanting to commit suicide and/or making comments about having the police kill him. This type of call for service should have been recorded by Officer A. under the requirements of the SOP. Officer Arbogast had no recordings made for any portion of the incident.

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

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

You have the right to appeal this decision.

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

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

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

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

Letter to Ms. J  
February 15, 2019  
Page 4

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

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

Sincerely,  
The Civilian Police Oversight Agency by



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

cc: Albuquerque Police Department Chief of Police



# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board

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Chelsea Van Deventer

Leonard Waites, Chair

Dr. William J. Kass

Chantal M. Galloway, Vice Chair

Valerie St. John

Edward Harness, Executive Director

February 15, 2019

Via Certified Mail

7016 2140 0000 1857 1173

**Re: CPC #085-18**

Dear Mr. B

Our office received the complaint you filed on March 30, 2018 against Albuquerque Police Department (APD) Pawn Detective (Det.) S. regarding alleged illegal seizures of property from your business, Valley Pawn. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

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

Albuquerque

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

Mr. B , who is the CEO/President of Valley Pawn in Albuquerque, complained that APD Pawn Det. S. has illegally seized/confiscated items from his business, has refused to remove police holds on items that were placed on hold years ago, has refused to help his business in situations where police assistance is needed, and is intercepting investigations for cases in which Valley Pawn is the victim, in order to make sure the cases are not followed up by any other detective. He complained that Det. S. has also sent APD officers to illegally seize items from his business. Additionally, Mr. B complained that Det. S. has misrepresented facts to the Albuquerque Pawnbroker Association (APA), other pawn brokers

and city council members, and has lied to others about him. He said this has become personal for Det. S. and is not professional.

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

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the Complaints, the CADS reports, police reports, specialized units reports, lapel videos and interviews.

A) The CPOA reviewed APD SOP 5-11-2(F)(3)(iv), which states:

### ***5-11-2 PROPERTY CRIMES SECTION RULES AND REGULATIONS***

#### ***F. Pawn Shop Detail***

##### ***3. Recovered Stolen Property***

***iv. Rental property items alleged to be stolen and clear proof of ownership has not been established; will not be recovered by the Pawn Detail; it will become a civil issue. Detectives shall document these incidents and a police hold may be placed on the items pending civil actions.***

APD SOPS, the Memorandum of Understanding (MOU) between APD and the APBA from 1997, recorded interviews, supplemental emails, and police reports and lapel videos from involved cases were reviewed. The evidence showed that Det. S. and other APD officers allegedly sent in her stead, have seized property from Valley Pawn that was identified as having been stolen or illegally obtained by the person pawning/selling the item(s) to Valley Pawn. The items were identified as stolen by victims, and/or the databases used to support APD and pawn shops, such as LEADS on-line or NCIC.

In one specific case (18-0013914), Mr. B. alleged that APD Officer A. took it upon himself to be lawmaker, law enforcer and judge in a civil matter between Rent-A-Center and Valley Pawn, wherein someone pawned 5-6 laptops owned by RAC to Valley Pawn for a \$3,250 loan. The evidence showed that Officer A. was dispatched to Valley Pawn on a call for service for a RAC representative who reported that they rented several laptops to one individual, who failed to return them to RAC, and instead pawned them at Valley Pawn. Officer A. acknowledged this as a civil issue and was there to assist in filing a report about the incident; however, a Valley Pawn employee voluntarily gave the laptops back to the RAC representative without Officer A. asking him to do so. Officer A. wrote a report and listed the recovered property on property receipts to show Valley Pawn acted in good faith in returning the laptops.

In another case (18-0002205), wherein Mr. B alleged a pawned circular saw was confiscated but was not listed on a police report as having been stolen from the victim, the evidence showed the circular saw was indeed listed on a supplemental report as having been stolen from the victim.

There are several other cases in which Mr. B has alleged illegal confiscation on the part of Det. S. and/or APD; however, the evidence was able to show that Det. S. was not the responding officer in many of these cases, and Det. S. received guidance and direction from the District Attorney's office regarding disposition of some of the cases; therefore, the property seizures that took place were legitimate. The evidence showed Det. S. sent a request to J V of Valley Pawn, asking her to complete a restitution form to be included in a case file but Ms. V did not complete the form. The evidence showed Det. S. did not violate any APD SOPS as alleged in the complaint, or violate the MOU, established in 1997 by the APBA and APD. It should be noted that the MOU is not an APD SOP.

The CPOA finds Det. S.'s conduct **UNFOUNDED** regarding the allegation of a violation of this SOP, which means the investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer.

B) The CPOA reviewed APD SOP 1-1-4(D)(15), which states:

***1-1-4 PERSONNEL CODE OF CONDUCT - RULES OF CONDUCT***

***D. On Duty Conduct***

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

Mr. B complained that Det. S. misrepresented facts about his business to the APBA, other pawn brokers and city council members, and has lied to others about him and this has become personal for Det. S., and is not professional.

Mr. B identified the following pawn shop owners as witnesses to this alleged behavior: M S owner of Osuna Pawn and former President of the APBA; V D the current President of the APBA, and P S, the current Valley Pawn police liaison. Each of the witnesses provided written statements, via email, to the CPOA Investigator regarding this allegation. Of the three statements, Mr. S and Ms. D claim Det. S. spoke with them about other pawn shops and their owners, specifically about Valley Pawn, and how they were the problem because they bought and pawned stolen goods. Mr. S Valley Pawn's police liaison, denied Det. S. made any such derogatory statements about Mr. E or other pawn shops and their owners.

Det. S. denied misrepresenting facts about pawn shops, in general, and specifically about Valley Pawn. Det. S. called Mr. B to personally invite him and other pawn shops to meetings regarding city and APBA partnerships and denied trying to keep the APBA from

having Mr. B business. Det. S. said other pawn shops have lodged complaints to Det. S. about Valley Pawn and asked why they haven't been shut down. Det. S. said the Crime Analysis Team obtained the statistics which were presented to City Council regarding all the pawn shops, and Valley Pawn was not singled out.

The CPOA finds Det. S.'s conduct **NOT SUSTAINED** regarding the allegation of a violation of this SOP, which means the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred.

It should be noted that as of May 1, 2018, Valley Pawn had not reported any transactions to APD for three weeks, which is a violation of the City Ordinance and the MOU.

Your complaint and these findings are made part of Det. S.'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

**Letter to Mr. B**  
**February 15, 2019**  
**Page 5**



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

**cc: Albuquerque Police Department Chief of Police**

## **CIVILIAN POLICE OVERSIGHT AGENCY**

**Police Oversight Board**

*Joanne Fine*

*Chelsea Van Deventer*

Edward Harness, Executive Director

*Leonard Waites, Chair*

*Dr. William J. Kass*

*Chantal M. Galloway, Vice Chair*

*Valerie St. John*

February 15, 2019

Via Certified Mail

7017 2680 0000 5951 8313

**Re: CPC #128-18**

Dear Mr. A

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint against Officers of the Albuquerque Police Department (APD) on June 7, 2018, regarding an incident that occurred on May 27, 2018. 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 AND INVESTIGATION**

Mr. A claimed he did not call the police to come to his home; he only wanted to file a report over the phone regarding internet issues. He talked about "kicking the ass" of the people responsible for the internet issues. When the police showed up he claimed the officers attacked him, slammed him to the ground, and he received several scrapes and bruises. Mr. A also expressed irritation he was taken to the mental health hospital, which he believed was unnecessary.

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the complaint, the Computer Aided Dispatch (CAD), the police report, the recorded call to APD, interviews of Officers M, C, T, interview of Sgt. S, interview of Lt. P and lapel videos from all APD present. Mr. A did not participate in a full interview, but did answer some questions over the phone.

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

A) The CPOA reviewed Standard Operating Procedural Order 2-52-4H1&3b and e regarding Officer M's conduct, which states:

*1. Officers may use force consistent with this policy to accomplish lawful objectives. (3b) To gain control of a combative subject and (3e) To defend an officer or person from the physical acts of another.*

Mr. A claimed he did not call for police to come to his home and was busy so he expected the officers to allow him to do yard work. Mr. A described that Officer M grabbed him when he took hold of a tool so he jumped up in response. Mr. A stated he defended himself when he was "attacked." He claimed the officers slammed him to the ground and his head slammed into gravel. He claimed he had several bruises and scrapes.

Officer M stated when officers first arrived Mr. A was very aggressive. They also had the knowledge of the CIT alerts so when Mr. A insisted on grabbing a tool Officer M felt for everyone's safety he needed to remove the tool and restrain Mr. A. Officer M grabbed Mr. A's hand and ordered him to drop the tool. Mr. A at first refused and struggled against him. Mr. A released the tool, but continued to struggle when other officers also grabbed Mr. A and placed him on the ground to handcuff him. No one slammed or dropped Mr. A.

The lapel videos showed Mr. A was agitated by the officers' presence. The lapel videos showed Mr. A did not listen to officers to stand still and not move about the yard, which contained several knives and other garden implements that could be used as improvised weapons. Mr. A grabbed hold of a tool despite Officer M's instruction not to pick up the tool. Mr. A refused to drop the tool when ordered. Officer M grabbed hold of Mr. A's arm to prevent him from using the tool against officers. When Officer M grabbed Mr. A, the video showed Mr. A resisted and pulled away from Officer M. Officer M and other officers took Mr. A to the ground and handcuffed him for everyone's safety. The lapel videos showed Mr. A was not slammed to the ground, his head was not slammed into the gravel, and even after being asked several times, Mr. A reported no injuries or need for medical. The force used as observed on the lapel videos was within policy.

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

Some recommendations regarding the policy and training were included with investigative file.

B) The CPOA reviewed Standard Operating Procedural Order 2-19-11A3 regarding Officer M's conduct, which states:

*In accordance with NMSA 43-1-10, an officer may detain a person for emergency evaluation and care at a hospital, mental health facility, or an evaluation facility in the absence of a valid court order*

*only if 3. The officer, based on personal observation and investigation, has reasonable grounds to believe the person, as a result of a mental disorder, presents a serious threat of harming himself or herself or others and immediate detention is necessary to prevent such harm. This includes possible harm to himself or herself through grave passive neglect.*

Mr. A claimed he did not call police in order for officers to respond. He simply wanted the Operator to take his report about an ongoing issue with his devices being hacked. He admitted he made the statement that if the officers did not resolve the situation he would have to take care of it. He believed the Operator improperly took his statement as a threat. The officers showed up and took him to UNM mental health, which was unnecessary.

Officer M reviewed comments on the call that Mr. A threatened to "beat someone to death." Officer M assessed Mr. A as being very agitated. Mr. A claimed someone, likely his neighbor, was downloading child pornography on his devices to make him look guilty. Mr. A was bothered with police presence. While they were in the yard, Officer M took note of several knives stuck into the ground around the property. Given Mr. A threat that if police did not take care of the situation, Mr. A would beat his neighbor to death, Officer M did not feel it was safe to leave Mr. A at his home without an evaluation. Officer M told Mr. A his statements were threatening, to which Mr. A tried to claim the Operator took his statements the wrong way. Officer M believed Mr. A threats were credible because he expressed dissatisfaction with the way officers were handling the situation and that he would have to take matters into his own hands. Officer M decided to have Mr. A transported for a mental health evaluation given the homicidal statements he made.

The call to police and the lapel videos indicated Mr. A expected the Operator to take his report about someone accessing pornography through his internet. The recorded call showed Mr. A insisted he wanted someone to look into that because he was tired of it and if he had to; he was going to "beat them to death." Mr. A became very agitated over the phone with the Operator. When the officers responded and discussed his threats, Mr. A tried to say it was just a figure of speech. Mr. A statements were threatening and he did have access to weapons.

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

**Additional issue reviewed, but not charged against the officer due to the Acting Lt. deciding the situation was not a reportable use of force:**

Officer M: APD Procedural Order 2-54-5A1 states:

The primary officer shall complete a uniform incident report providing an accurate, detailed account of the incident, from the officer's perspective. Officers should use descriptive language detailing their observations of the event rather than judgments, generic, or conclusory statements. Officers shall not merely use "canned" or "boilerplate" language. Officers should be aware of the requirements for supervisory force investigations and should articulate all aspects of the incident, which are relevant to the supervisory investigation. At a minimum, officers' accounts must include these elements:

a. The justification for police contact with the subject



- b. All circumstances which led to the decision to use force, including a specific description of the subject's behavior
- c. The amount and type(s) of force used, including a specific description of the officer's actions and any physical contact with the subject
- d. A specific description of any resistance by the subject
- e. The officer's justification for the amount and type of force used
- f. A specific description of any de-escalation tactics employed by the officer
- g. The identity of all officers, witnesses, subjects, and any other involved parties
- h. The nature of medical aid provided

Officer M's report complied with most of the requirements listed in the policy; however, the nature of the medical aid provided was not listed even though medical was called and assessed Mr. A. The identity of all the officers was not written out in the narrative of the report. These items were not specifically required unless the situation was categorized as a use of force.

Some recommendations regarding the policy and training for Officer M were included with investigative file.

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

A) The CPOA reviewed Standard Operating Procedural Order 2-52-4H1&3b and e regarding Officer C's conduct, which states:

*1. Officers may use force consistent with this policy to accomplish lawful objectives. (3b) To gain control of a combative subject and (3e) To defend an officer or person from the physical acts of another.*

Mr. A.                claimed he did not call for police to come to his home and was busy so he expected the officers to allow him to do yard work. Mr. A                described Officer M grabbed him when he took hold of a tool so he jumped up in response. Mr. A                stated he defended himself when he was "attacked." He claimed the officers slammed him to the ground and his head slammed into gravel. He claimed he had several bruises and scrapes. His written complaint stated he was not complaining against Officer C, but the lapel video showed all four officers were involved in the control and takedown of Mr. A

Officer C stated when officers first arrived Mr. A                was very aggressive. They also had the knowledge of the CIT alerts so when Mr. A                insisted on grabbing a tool Officer M and Sgt. S grabbed Mr. A                hands. Officer C did not recall his specific actions. He believed someone performed a leg sweep, but he did not recall which officer did it. All of officers held Mr. A                so he did not hit the ground. No one slammed or dropped Mr. A

The lapel videos showed Mr. A                was agitated by the officers' presence. The lapel videos showed Mr. A                did not listen to officers to stand still and not move about the yard, which contained several knives and other garden implements that could be used as improvised weapons. Mr. A                grabbed hold of a tool despite Officer M's instruction not to pick up the tool. Mr.

A refused to drop the tool when ordered. Officer M grabbed hold of Mr. A's arm to prevent him from using the tool against officers. When Officer M grabbed Mr. A the video showed Mr. A resisted and pulled away from Officer M. Officer C joined the other officers who took Mr. A to the ground and handcuffed him for everyone's safety. The lapel videos showed Mr. A was not slammed to the ground, his head was not slammed into the gravel, and even after being asked several times, Mr. A reported no injuries or need for medical. The force used as observed on the lapel videos was within policy although Officer C could not recall his actions.

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

**Additional issue reviewed, but not charged against the officer due to the Acting Lt. deciding the situation was not a reportable use of force:**

Officer C: APD Procedural Order 2-54-5A2 states:

All officers who are present and/or involved during a use of force incident must complete supplemental incident reports detailing the above information, including their own actions and their observations of other officers' actions.

Sgt. S was surprised Officer C did not complete a supplemental report; however, he was not the regular supervisor of these officers and only working overtime for this shift. This was not specifically required unless the situation was categorized as a use of force.

Some recommendations regarding the policy and training for Officer C were included with investigative file.

#### **IV. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER T'S CONDUCT**

A) The CPOA reviewed Standard Operating Procedural Order 2-52-4H1&3b and e regarding Officer T's conduct, which states:

*1. Officers may use force consistent with this policy to accomplish lawful objectives. (3b) To gain control of a combative subject and (3e) To defend an officer or person from the physical acts of another.*

Mr. A claimed he did not call for police to come to his home and was busy so he expected the officers to allow him to do yard work. Mr. A described Officer M jumped him when he took hold of a tool so he jumped up in response. Mr. A stated he defended himself when he was "attacked." He claimed the officers slammed him to the ground and his head slammed into gravel. He claimed he had several bruises and scrapes. His written complaint stated he was not complaining against Officer T, but the lapel video showed all four officers were involved in the control and takedown of Mr. A.

Officer T stated when officers first arrived Mr. A was very aggressive. Officer T had dealt with Mr. A before. Mr. A has reacted angrily in the past to officers and it took a

while to calm Mr. A down in his experience. They had the knowledge of the CIT alerts so when Mr. A insisted on grabbing a tool Officer M grabbed Mr. A hand. Officer T grabbed his other arm. Officer M told him to drop the shovel, but Mr. A verbally refused and continued to hold the tool briefly. The other officers assisted in grabbing Mr. A arms. He did not remember Mr. A pulling away, but he was verbally resistive. He did not recall if Mr. A tensed up. No pain compliance holds were used to force him to drop the tool. He characterized the resistance as passive. They placed him on the ground in order to handcuff him because they could not get a good handcuff position on him while he stood. Officer T stated they did not need to perform a leg sweep or arm bar to get him to the ground. He recalled Mr. A was going to the ground himself. Mr. A was not pushed or dropped; he was lowered to the ground. Once he was on the ground, they were able to handcuff him. He did not remember Mr. A struggling against them while on the ground.

The lapel videos showed Mr. A was agitated by the officers' presence. The lapel videos showed Mr. A did not listen to officers to stand still and not move about the yard, which contained several knives and other garden implements that could be used as improvised weapons. Mr. A grabbed hold of a tool despite Officer M's instruction not to pick up the tool. Mr. A refused to drop the tool when ordered. Officer M grabbed hold of Mr. A arm to prevent him from using the tool against officers. When Officer M grabbed Mr. A, the video showed Mr. A resisted and pulled away from Officer M. Officer T joined the other officers who took Mr. A to the ground and handcuffed him for everyone's safety. The lapel videos showed Mr. A was not slammed to the ground, his head was not slammed into the gravel, and even after being asked several times, he reported no injuries or need for medical. The force used as observed on the lapel videos was within policy.

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

**Additional issue reviewed, but not charged against the officer due to the Acting Lt. deciding the situation was not a reportable use of force:**

Officer T: APD Procedural Order 2-54-5A2 states:

All officers who are present and/or involved during a use of force incident must complete supplemental incident reports detailing the above information, including their own actions and their observations of other officers' actions.

Sgt. S was surprised Officer T did not complete a supplemental report; however, he was not the regular supervisor of these officers and only working overtime for this shift. This was not specifically required unless the situation was categorized as a use of force.

Some recommendations regarding the policy and training for Officer T were included with investigative file.

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

A) The CPOA reviewed Standard Operating Procedural Order 2-52-4H1&3b and e regarding Sgt. S' conduct, which states:

***1. Officers may use force consistent with this policy to accomplish lawful objectives. (3b) To gain control of a combative subject and (3e) To defend an officer or person from the physical acts of another.***

Mr. A claimed he did not call for police to come to his home and was busy so he expected the officers to allow him to do yard work. Mr. A described Officer M grabbed him when he took hold of a tool so he jumped up in response. Mr. A stated he defended himself when he was jumped. He claimed the officers slammed him to the ground and his head slammed into gravel. He claimed he had several bruises and scrapes.

Contrary to officer instructions, Mr. A picked up a tool so in response, Officer M took hold of Mr. A hand. Mr. A rose up and started to thrash and resist. Sgt. S and the other two officers moved in to assist Officer M in controlling Mr. A. Sgt. S told Mr. A to calm down, but Mr. A did not listen. Officer M told him to drop the shovel, but Mr. A verbally refused and continued to hold the tool briefly. Mr. A maintained his tenseness and physically resisted them. Sgt. S instructed the officers to take him to the ground in order to handcuff him. Officers lowered Mr. A to the ground on his back. They did not slam him; trip him, arm-bar him, or any other technique. He did not recall a leg sweep. He might have blocked Mr. A leg with his, but he was not sure and in reviewing his report did not see that mentioned. A leg sweep in his definition is to kick a person's legs out from under him. The four of them essentially picked Mr. A up and then placed him on his back on the ground.

Mr. A did not listen to officers to stand still and not move about the yard, which contained several knives and other garden implements that could be used as improvised weapons. Mr. A grabbed hold of a tool despite Officer M's instruction not to pick up the tool. Mr. A refused to drop the tool when ordered. Officer M grabbed hold of Mr. A arm to prevent him from using the tool against officers. When Officer M grabbed Mr. A he resisted and pulled away from Officer M. Sgt. S and the other officers took Mr. A to the ground and handcuffed him for everyone's safety. The lapel videos showed Mr. A was not slammed to the ground, his head was not slammed into the gravel, and even after being asked several times, he reported no injuries or need for medical. The force used as observed on the lapel videos was within policy.

The CPOA finds Sgt. 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 Procedural Order 2-54-4A1 regarding Sgt. S' conduct, which states:

***All officers will immediately notify their on-duty supervisor following any use of force, prisoner injury, allegation of any use of force, or a show of force where an officer points a firearm at a subject or uses an ECW to point a subject. In all cases, officers will notify an on-duty supervisor prior to leaving the scene of the use of force or show of force incident.***

Sgt. S stated the situation could be classified as a use of force or not a use of force depending on the responding supervisor. Acting Lt. P's decision that it was not a reportable use of force did not surprise him due to the different and conflicting information, but he erred on the side of caution and called as if it was a reportable use of force. Sgt. S met his responsibility in calling for a supervisor.

The CPOA finds Sgt. S' conduct to be EXONERATED where the investigation determined that the alleged conduct did occur, but did not violate APD policies, procedures, or training.

C) The CPOA reviewed Standard Operating Procedural Order 2-19-7A regarding Sgt. S' conduct, which states:

*In responding to an individual experience a behavioral health crisis, an officer will attempt to de-escalate and calm the situation if feasible, until a supervisor or ECIT or MCT arrives to control the scene and direct operations.*

Mr. A claimed officers did not consider his mental health condition and could have de-escalated the situation.

The officers had the benefit of historical information, which consisted of knowledge about his accessibility to weapons and threats made. The police response consisted of a supervisor, an ECIT officer, and two other officers, one of which had dealt with Mr. A before. Officers followed the additional guidelines in 2-19-7 in dealing with Mr. A

The CPOA finds Sgt. S' conduct to be EXONERATED where the investigation determined that the alleged conduct did occur, but did not violate APD policies, procedures, or training.

#### **VI. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING ACTING LT. P'S CONDUCT**

A) The CPOA reviewed Standard Operating Procedural Order 2-54-4A7 regarding Lt. P's conduct, which states:

*The responding supervisor shall make a determination whether or not a use of force or investigable show of force has occurred in accordance with the SOP 2-52 – Use of Force.*

Lt. P had been to three different supervisory force-training sessions. His last one was December 2017. He arrived on scene and talked to Sgt. S as to why Sgt. S believed the situation was a use of force. He interviewed the other officers separately and reviewed the videos. Lt. P observed the four officers, two on each side of Mr. A pulled him to the ground, put him in a seated position before they rolled him to his stomach, and placed him in handcuffs. Lt. P stated he believed the definition in 2-52 regarding escort techniques applied in this situation. When Mr. A grabbed the shovel, the officers needed to take the tool away from him. Lt. P agreed officers grabbed Mr. A to get him to drop the tool or remove it from his grasp. Lt. P explained a leg sweep would have been to take the legs out from under the person such as a forceful kick, but in this case, blocking his leg and lowering

him to the ground was not a leg sweep. The controlled descent was different from a slamming to the ground type of situation. Lt. P believed the definition of “de minimis force” applied and was his justification for not conducting a supervisor force investigation. The officers used physical actions to separate, guide, or control Mr. A but it was not likely to have caused harm. According to Lt. P, the probability of injury or claim of injury makes the distinction in whether force was used. Since neither a probability of injury or claim of injury existed, he believed the situation did not need to be a supervisory force investigation. If Mr. A had injuries or complained of injuries then it would have been a supervisory investigation. Instead he wrote a memo discussing that force was used, but did not result in visible injury, complaint of injury, and the technique used would not likely cause injury. His interpretation of 2-55 allowed for a memo to be written. The trainer that completed the supervisor use of force class in December of 2017 confirmed if a supervisor believed no true force occurred then a memo documenting the incident was sufficient and the burden fell to the Commander to decide if more needed to be done.

Lt. P wrote a memo to the Valley Commander. Lt. P justified his decision that it was not a reportable use of force by citing two aspects in the use of force suite of policies. Lt. P claimed that low-level control escort techniques were used and de minimis force was used that was physical interaction mean to separate, guide, and/or control a subject. In reviewing the lapel videos of the officers’ actions, Lt. P overextended the definitions. Low-level control tactics as defined refer to officer presence, verbal communications, escort techniques, applications of handcuffs to a compliant individual. Mr. A did not respond to verbal orders and he was not compliant while being handcuffed; there was a scuffle on the ground. The de minimis force definition of policy 2-55 is mostly in conflict with the intermediate force definition in policy 2-52 and the DOJ settlement agreement. In this instance Mr. A took hold of a tool/improvised weapon against officers’ orders. Officer M initially grabbed Mr. A who pulled away until all the officers grabbed him. Sgt. S hooked Mr. A leg with his own, preventing Mr. A from continued stable footing. Since all officers had hands on Mr. A he did not fall to the ground and was lowered on his back. Mr. A resisted handcuffing and even the officers on video said he was resisting. The officers managed to roll him to his stomach and handcuff him. According to policy, intermediate force requires a use of force report. The elements that were present in this situation were grabs and that Mr. A was taken to the ground, although it was in a controlled manner. Lt. P believed a leg sweep was a violent kicking out of a person’s legs and therefore this situation did not qualify. The policy does not define whether kicking out a leg or hooking a leg and bracing or moving it out from under the person be considered a leg sweep. The settlement agreement defines force as “physical effort to compel compliance by an unwilling subject above unresisted handcuffing.” The level of force used was appropriate, but needed to be investigated and documented as a supervisory use of force investigation.

The CPOA finds Lt. P’s conduct to be a SUSTAINED VIOLATION NOT BASED ON ORIGINAL COMPLAINT where the investigation determined that the misconduct did occur that was not alleged in the original complaint, but that was discovered during the misconduct investigation.

Some recommendations regarding the policy and training for Lt. P were included with investigative file.

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



Ed Harness  
Executive Director

cc: Albuquerque Police Department Chief of Police