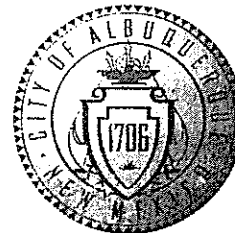


CITY OF ALBUQUERQUE



POLICE OVERSIGHT COMMISSION

Matthew Archuleta, Chair

Bambi Folk, Vice Chair

David Adkins

Hank Cadena

Scott Carreathers

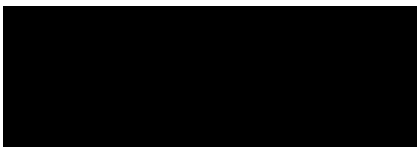
Bob Francis

Linda Martinez

Don Peterson

William W. Deaton, Independent Review Officer

January 13, 2011



Subject: CPC # 183-10

Dear Ms. [REDACTED],

The complaint you filed was received in our office on September 7, 2010. Based on the complaint and the investigation by APD's Internal Affairs Unit, we have determined whether the Standard Operation Procedures (SOPs) listed below have been violated. You will be referred to below as 'the citizen' or by name.

A summary of the investigation and my findings are below.

THE COMPLAINT

NM 87103

Complainant is a Metropolitan Detention Center Officer named [REDACTED]. [REDACTED] alleges that she received a harassing telephone call from APD Transport Officers A and E. [REDACTED] alleges that Officer A threatened to commit a battery against [REDACTED] and that Officer E yelled over the telephone at [REDACTED] and told her to keep her (E's) name out of her "fucking mouth."

Since the officers are compelled to cooperate in the investigation, Sections 9-4-1-13 and 9-4-1-14 of the Police Oversight Ordinance state that these statements will not be made public. I am only allowed to summarize the conclusions I reached from their compelled statements.

Your complaint has been thoroughly and impartially investigated. We make findings based on a preponderance of the evidence. A preponderance of the evidence means that one side has a greater weight of evidence that is more credible and convincing than the other side. Another way of saying it is more than 50% of the credible evidence. If the credible evidence is 50-50, the proper finding is Not Sustained.

ISSUES, FACTS AND CONCLUSIONS

Officer A

1. Did Transport Officer A (Hereinafter, simply Officer A) comply with Albuquerque Police Department General Order 1-04-1 C which mandates:

Personnel shall obey all misdemeanor criminal laws of the United States of America, and of any state and local jurisdiction in which they are present. Indictment, information, or other formal criminal charge for the violation of any misdemeanor law shall be prima facie evidence of a violation of this section.

At approximately 0144 hours [REDACTED], an MDC employee, received a telephone call from Officer A. Officers A's and Officer E's remarks and conduct during and after that call are the basis for this complaint. Actions recorded on a video tape corroborated much of the narrative given by Corrections Officer C.

Before the call by Officer A, Corrections Officer C received a phone call from an unidentified female seeking Officer A. C sought and found Officer A who took the call and was within Officer C's hearing. C heard Officer A say into the phone "I can't believe she would say something like that and talk behind my back." Officer A hung up the phone and asked C if he knew where [REDACTED] was. C made a radio call to [REDACTED], who was in a remote part of the facility, and asked where she could be reached by phone. C gave the extension number to Officer A who wrote it on the back of her hand and said that she was going to have a talk with [REDACTED]. Officer A, followed by C, went to a telephone in the Law Enforcement part of the PTU and called [REDACTED]' extension. Officer C related that Officer A told [REDACTED] to stop talking about her behind her back and that she told [REDACTED], "the next time I see you, I am going to stick my fist in your mouth." Officer E was in the same area and was told of [REDACTED]' alleged remarks about Officer A as Officer A was walking to the phone. Officer E put the conversation between Officer A and [REDACTED] on the speakerphone. Officer E admitted telling [REDACTED] to keep Officer E's name out of her mouth. After encouraging Officer A to discontinue the conversation with [REDACTED], Officer E hung up the phone while Officer A and [REDACTED] were still talking.

When the conversation between Officers A and E and [REDACTED] ended, Officers A and E jumped around in an agitated way, stomped their feet, and hit their hands together in front of various corrections officers and prisoners.

[REDACTED] submitted a written statement to the police department and a State of New Mexico Uniform Incident Report was filed by the officer who was dispatched in response to the report filed by [REDACTED] who also filed a complaint in Internal Affairs. The subject of the Incident Report was Use of Phone to Terrify in violation of NMSA 30-2—12, a misdemeanor.

I find this issue to be sustained.

2. Did Officer A comply with Albuquerque Police Department General Order 1-04-1 F which mandates:

Personnel shall conduct themselves both on and off-duty in such a manner as to reflect most favorably on the department.

**The narrative above sets out sufficient facts to make a finding on this SOP.
I find this issue to be sustained.**

3. Did Officer A comply with Albuquerque Police Department General Order 1-04-4 B which mandates:

Personnel shall not engage in any activity or personal business that may cause them to neglect or be inattentive to duty.

**The narrative above sets out sufficient facts to make a finding on this SOP.
I find this issue to be sustained.**

4. Did Officer A comply with Albuquerque Police Department General Order 1-04-4 W which mandates:

Personnel shall truthfully answer all questions specifically directed to them, and narrowly related to the scope of employment and operations of the department.

Officer A went to see her supervisor, Sgt. R, on the day following the incident. Officer A told Sgt. R that she had been processing prisoners before the incident when the phone rang and she answered. The caller, ██████████, asked for Christine, and Officer A indicated that she was Christine. ██████████ told Officer A to leave a certain married male alone and Officer A indicated that she presently had nothing to do with that male. Sgt. R asked Officer A if anything else had occurred and Officer A indicated, "No." A short time after Sgt. R had spoken with Officer A, he was contacted by Lt. R who told him of the complaint ██████████ had filed against Officers A and E. Lt. R told Sgt. R to talk to Officer E about what had happened the night before. Officer A's recounting of the incident to Sgt. R. was untrue, as was her denial to the Internal Affairs investigator of the "put her fist in her (██████████) mouth" portion of the telephone conversation with ██████████.

I find this issue to be sustained.

Officer E

1. Did Transport Officer E (Hereinafter, simply Officer E) comply with Albuquerque Police Department General Order 1-04-1 C which mandates:

Personnel shall obey all misdemeanor criminal laws of the United States of America, and of any state and local jurisdiction in which they are present. Indictment, information, or other formal criminal charge for the violation of any misdemeanor law shall be prima facie evidence of a violation of this section.

At approximately 0144 hours [REDACTED], an MDC employee, received a telephone call from Officer A. Officers A's and Officer E's remarks and conduct during and after that call are the basis for this complaint. Actions recorded on a video tape corroborated much of the narrative given by Corrections Officer C.

Before the call by Officer A, Corrections Officer C received a phone call from an unidentified female seeking Officer A. C sought and found Officer A who took the call and was within Officer C's hearing. C heard Officer A say into the phone "I can't believe she would say something like that and talk behind my back." Officer A hung up the phone and asked C if he knew where [REDACTED] was. C made a radio call to [REDACTED], who was in a remote part of the facility, and asked where she could be reached by phone. C gave the extension number to Officer A who wrote it on the back of her hand and said that she was going to have a talk with [REDACTED]. Officer A, followed by C, went to a telephone in the Law Enforcement part of the PTU and called [REDACTED]'s extension. Officer C related that Officer A told [REDACTED] to stop talking about her behind her back and that she told [REDACTED], "the next time I see you, I am going to stick my fist in your mouth." Officer E was in the same area and was told of [REDACTED]'s alleged remarks about Officer A as Officer A was walking to the phone. Officer E put the conversation between Officer A and [REDACTED] on the speakerphone. Officer E told [REDACTED] admitted telling [REDACTED], "Leave my name out of your fucking mouth." After encouraging Officer A to discontinue the conversation with [REDACTED], Officer E hung up the phone while Officer A and [REDACTED] were still talking.

When the conversation between Officers A and E and [REDACTED] ended, Officers A and E jumped around in an agitated way, stomped their feet, and hit their hands together in front of various corrections officers and prisoners.

[REDACTED] submitted a written statement to the police department and a State of New Mexico Uniform Incident Report was filed by the officer who was dispatched in response to the report filed by [REDACTED] who also filed a complaint in Internal Affairs. The subject of the Incident Report was Use of Phone to terrify in violation of NMSA 30-2—12, a misdemeanor. Officer E acted in concert with Officer A in the phone call described above.

I find this issue to be sustained.

2. Did Transport Officer E (Hereinafter simply Officer E) comply with Albuquerque Police Department General Order 1-04-1 F which mandates:

Personnel shall conduct themselves both on and off-duty in such a manner as to reflect most favorably on the department.

Officer E admitted this violation in her interview by Internal Affairs. The facts set out in the preceding section support the finding below.

I find this issue to be sustained.

3. Did Officer E comply with Albuquerque Police Department General Order 1-04-4 B which mandates:

Personnel shall not engage in any activity or personal business that may cause them to neglect or be inattentive to duty.

Officer E admitted this violation in her interview by Internal Affairs.

The narrative above under "1", sets out sufficient facts to make a finding on this SOP.

I find this issue to be sustained.

4. Did Officer E comply with Albuquerque Police Department General Order 1-04-4 W which mandates:

Personnel shall truthfully answer all questions specifically directed to them, and narrowly related to the scope of employment and operations of the department.

After Sgt. R had interviewed Officer A, he learned from his Lieutenant that [REDACTED] had filed a complaint against Officers A and E for harassment. Sgt. R. was directed to talk to Officer E. When Sgt. R spoke to Officer E, he asked what had happened in connection with the incident the night before; and Officer E said nothing had happened. Sgt. R asked if anything strange or out of the ordinary had happened and Officer E said, "No." Sgt. R. asked Officer E a third time including "was there anything involving a girl named [REDACTED]?" Officer E replied with, "This fucking bitch." Officer E then proceeded to give the details of the incident including her having told [REDACTED] over the phone, "Leave my name out of your fucking mouth."

Before finally telling Sgt. R what had happened during the telephone call Officer A made to [REDACTED], Officer E answered untruthfully two times when questioned by Sgt. R. Apparently, this was an unrecorded, informal conversation.

I find this issue to be sustained.

Chief Schultz agrees with these findings.

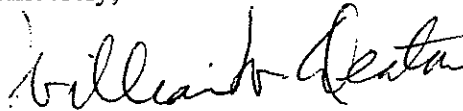
Your complaint and these findings are made part of the officer's permanent record.

You have the right to appeal this decision. §9-4-1-9(A) of the Police Oversight Ordinance allows any person who has filed a citizen complaint and who is dissatisfied with the findings of the IRO or the Chief may appeal that decision to the POC within ten business days of receipt of this letter. Please promptly communicate your desire to appeal in a signed writing to the undersigned. Include your CPC number.

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

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

Sincerely,



William W. Deaton
Independent Review Officer
505-924-3774
Police Oversight Commission
P. O. Box 1293
Albuquerque, New Mexico 87103

CC: Police Oversight Commission
(W/O names)

Assign to L.H. Smith 9/7/2010

**ALBUQUERQUE POLICE DEPARTMENT
CITIZEN POLICE COMPLAINT FORM**

Official Use Only:

Date/Time Received: 9.7.10 11:15a

Received By: *Jessie Howell*

CPC#: _____

Assigned To: _____

09-07-10A11:15 RCVD

INSTRUCTIONS:

This form should only be completed if you wish to initiate a complaint against the Department or an employee(s). According to City Ordinance, written complaints must be filed within ninety (90) calendar days of the incident to be accepted. If you would rather attempt to resolve this issue with the employee's supervisor, you may contact the employee's supervisor directly. For assistance, please contact the Internal Affairs Unit at (505) 768-2880 during business hours.

IF YOU DECIDE TO FILE A COMPLAINT:

Please complete the complainant information and statement portions below. Once the form is completed and signed it may be delivered to the Independent Review Office/Police Oversight Commission at 600 2nd St. NW, Room 813, Albuquerque, NM, 87102, or mailed to PO Box 1293, Albuquerque, NM 87103. Please notify the Independent Review Office if your address or phone number changes prior to the resolution of your complaint.

COMPLAINANT INFORMATION

NAME: [Redacted] (First) [Redacted] (Middle) [Redacted] (Last)

ADDRESS: [Redacted] (Street Name and Number)

[Redacted] (City) [Redacted] (State) [Redacted] (Zip Code)

TELEPHONE: Home: _____ Cell/Work: [Redacted]

Date and Time of Incident: 9/7/10 at or about 1:44 am

Address where incident happened: (Bermdc) 100 John Dantis Rd SW 87151

NOTE: This complaint form along with other necessary documentation will be forwarded to the Independent Review Office for evaluation and investigative direction. Your complaint may be investigated by the Independent Review Office or assigned to APD's Internal Affairs Unit for investigation. The Independent Review Office also will review the completed investigation and will submit findings to the Chief of Police. You will be notified by certified mail, at your above-listed address, of the final disciplinary findings (normally within 60 days after the complaint has been filed.)

STATEMENT

Please describe both the incident and the specific nature of your complaint as completely as possible. Be sure to give the names, addresses and phone numbers of any witnesses of which you are aware. Be as specific as possible about the details such as exactly what was said, time and dates of incident. Identify the exact location of the incident, identification of the officers involved, if known. If officer's names are not known, please include detailed descriptions of officers. Be specific, it is important to provide as much information as possible. Attach additional sheets if necessary. Please feel free to include any other relevant information or items (pictures, witness statements, etc.)

I [REDACTED] am filing a harassment complaint on Christine Apodaca and Melanie Espinosa. At an unknown time an MDC officer who was assigned to RDT was requested by APD transport officer, to contact me via radio to request my location, after stating my location I then received a harassing phone call, while I was at work at Bernalillo County Metropolitan Detention Center at approximately 1:44 am on September 7, 2010.

I answered a phone call at approximately 1:44am in my assigned unit from extension [REDACTED] LEA (Law enforcement Area) Christine Apodaca was on the other line asking "is this [REDACTED]?" I said "yes it is" She then said "You better stop talking shit about me." and I told her "What are you talking about?" She replied "I never had a problem with you but now I do and the next time I see you" I will be putting my fist in your mouth.

(Statement continued)

I told her "Okay let me tell you what was said. I told [REDACTED] to tell you to stay out of my relationship because I don't get into yours" I also added "I still have all the emails from [REDACTED]" She then said "that it wasn't any of my business what her and [REDACTED] do if she is fucking her then that is their problem and none of my concern" I said "exactly I can care less what you and [REDACTED] do" Then she said "That all the people who I think have my back here don't that they laugh and talk shit" while Melanie Espinosa in the back was saying "why are you explaining yourself to a little [REDACTED] year old" Then Christine said "You know who Melanie is right [REDACTED]'s girlfriend?" I said "yes" Melanie then stated "yeah so keep our names out of your mouth" I replied "I don't even talk about you guys or mention your names and I am actually happy for Melanie and [REDACTED]" Christine says "She said she is happy for you and [REDACTED] Melanie" Melanie then says "didn't I just

(Statement continued)

say for you to keep our names out of your mouth and you still keep talking" Then Christine starts saying "well it's funny how you are fucking a married man and how he was on my nuts last month and still emails me and texts me so you are the stupid one, he is never going to leave his wife and that he has also told her he never will and laughs about it" She then said "That I look like a fool" I said "okay" and then she hung up. Then at approximately 1:47 am. Christine called back and I answered she said "[REDACTED]?" I said "what" she said "saw those emails from [REDACTED] so I can see them" I said "k" and hung up. I then immediately notified the BDT supervisor.

(Statement continued)

WITNESSES:

Name: MDC officer that was approached by PTC officer's
Address: to ask for my location. I believe I recognized
the voice to be [REDACTED] (MDC officer)
Phone Number: _____

Name: Facility under constant video surveillance
Address: _____
Phone Number: _____

Name: _____
Address: _____
Phone Number: _____

(If more, please list on a separate sheet.)

Names of officers you are complaining about: Christine Apodaca (PTC)
Melanie Espinosa (PTC)
Would you be interested in mediation to resolve this complaint: depending

End of Statement

The information provided in this statement is true and factual to the best of my knowledge. I understand that I may be required to appear in the Independent Review Office or the Internal Affairs Office for further interview or to provide other investigative assistance as necessary.

[REDACTED]

Complainant's Date of Birth: [REDACTED]