



P o l i c e D e p a r t m e n t
I n t e r - O f f i c e C o r r e s p o n d e n c e

DATE: **June 18, 2018**

TO: **All Sworn Personnel**

FROM: **Joel F. Fitzgerald, Ph.D.**
 Chief of Police

SUBJECT: **After Arbitration Review 2018-AA-02**

This information is intended for training purposes. Personnel still employed by the City will be referred to by their rank and/or role in the case.

Incident Summary

While on duty in October, 2016, an officer went to a gas station and entered the men's restroom. The officer observed a private citizen using a urinal with his pants and underwear down, exposing his buttocks while holding his shirt up. The officer activated his city issued Axon body-worn camera and captured the event which showed the male facing the urinal, unaware that he was being recorded. The officer then utilized the city electronic mail system to transmit the recording to a Sergeant. Although the citizen in a subsequent interview chose to not pursue criminal charges against the officer, his conduct may have constituted a violation of the Texas Penal Code section, 21.15 Invasive Visual Recording. An offense under this section is a state jail felony.

The following allegations were brought against the officer:

FORT WORTH POLICE DEPARTMENT GENERAL ORDERS / CODE OF CONDUCT

General Order 322.02- Use of Video Cameras

A. The use of all video equipment shall be for official police business only and conducted in a professional manner. No joking or unprofessional use of the video camera, equipment, or product shall be tolerated.

General Order 703.00- Professional Conduct

C. No officer shall engage in any personal conduct which could result in justified unfavorable criticism of that officer or the department.

Findings & Disposition

All allegations were sustained. The officer violated departmental General Orders by intentionally and knowingly recording a private citizen's naked buttocks while in a restroom. The officer's unprofessional behavior caused unfavorable criticism upon himself and the department. These actions were not consistent with the conduct expected of a Fort Worth Police Officer.

The facts as stated indicated that the above cited sections of the Firefighters' and Police Officers' Civil Service Rules and Regulations of the City of Fort Worth, and the Fort Worth Police Department General Orders/Code of Conduct, were in fact violated by the officer.

Based upon the officer's violations of the General Orders/Code and Civil Service Rules cited above, he was suspended for three (3) calendar days. The officer appealed the suspension.

Arbitration Action

The officer appealed the 3-day suspension to the City of Fort Worth Firefighters' and Police Officers' Civil Service Commission. On April 18, 2018, both parties appeared through counsel and the arbitration hearing was conducted.

Findings

The hearing examiner issued a finding that stated in part:

There was an investigation, the officer had a chance to tell his side of the story, and the charges were proven. The penalty was not unreasonable.

Therefore, the hearing examiner issued the following decision:

- 1. The City met the procedural requirements of Chapter 143 of the Texas Local Government Code and the Meet and Confer Agreement of the parties.*
- 2. The City met its burden of proof that the Officer violated the relevant sections of the Code and the Meet and Confer Agreement.*
- 3. The three day suspension was for cause and was not inconsistent with suspensions imposed on fellow officers for any somewhat similar instances.*

Disposition

The appeal was denied.