



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Joseph Chacon, Chief of Police

DATE: June 21, 2022

SUBJECT: Temporary Suspension of Police Officer Ryne Kirchberg #9241
Internal Affairs Control Number 2022-0067

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have temporarily suspended Police Officer Ryne Kirchberg #9241 from duty as a City of Austin, Texas police officer for a period of twelve (12) days. The temporary suspension is effective beginning on June 22, 2022, and continuing through July 3, 2022.

I took this action because Ofc. Kirchberg violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Ofc. Kirchberg in violation of Rule 10:

On January 16, 2022, Internal Affairs (IA) received an Internal Complaint Memorandum from Ofc. Kirchberg's Lieutenant that stated the following:

On December 29, 2021, Ofc. Kirchberg was involved in a vehicle pursuit. During the incident, [he] may have violated department policy by intentionally deactivating his BWC [Body Worn Camera] while he was involved in the vehicle pursuit, failing to use caution, good judgment, due care while operating his vehicle, and using a personally owned device to record and disseminate to the public official actions.

While the BWC was deactivated, the 30 second "buffer", or pre-audio recording portion of the BWC video feature, captured Ofc. Kirchberg using a cell phone to video/photograph the pursuit he was engaged in. Moreover, it appears that Ofc. Kirchberg utilized a social media app to make a live video recording while engaged in the pursuit. He is also seen typing on the cell phone while engaged in the pursuit. Ofc. Kirchberg re-activated the BWC after discontinuation of the cell phone use.

In the early investigative phase, IA reviewed the BWC and compared the visible social media application (app) seen on Ofc. Kirchberg's smartphone to the Snapchat service.¹

On February 25, 2022, Ofc. Kirchberg met with IA and produced the following:

- Text Message – Ofc. Kirchberg sent a text message on December 29, 2022, at 11:52 pm concerning the pursuit. The text message was sent to the same unauthorized recipient as the Snapchat message. It was later determined that the unauthorized recipient was Ofc. Kirchberg's girlfriend.
- Axon Evidence.com BWC Video – Ofc. Kirchberg had on his personal smartphone, a copy of a video from his BWC taken from the Axon Evidence.com website. The BWC video recording was of this pursuit.

Also, in the early investigative phase, IA believed the presence of a BWC video on a personal smartphone was a potential General Order (GO)/policy violation. Ofc. Kirchberg's Chain-of-Command (COC) was contacted regarding this development and a subsequent complaint was generated by the COC.

IA interviewed Ofc. Kirchberg as part of its investigation. During his interview, Ofc. Kirchberg took full responsibility for his conduct by admitting he did everything referenced in the COC's complaints. He also admitted to violating each of the following GOs:

- 303.3.3 When Department Issued BWC System Deactivation is Authorized
- 303.6 Review of All BWC System Recordings

¹ Snapchat is a multimedia instant messaging application app and service. One of the principal features of Snapchat is that pictures, videos, and messages are usually only available for a short time before they become inaccessible to their recipients.

- 804.2 General Operation of Department Vehicles

More specifically, Ofc. Kirchberg stated his act of recording and sharing the BWC video for non-law enforcement purposes was *“a lapse in judgment and I turned my body camera off...I took... a one second Snapchat to send to my girlfriend to show her what I was doing at that time...”* Ofc. Kirchberg admitted he did not exercise good judgement, due care, or caution as he took/shared this clip while operating his vehicle Code 3 (lights and sirens) and while traveling at 73mph. Additionally, he admitted that he downloaded the Axon BWC video of the vehicle pursuit on his cell phone and then shared that video with his girlfriend. Ofc. Kirchberg concluded his IA interview by stating: *“I made a very immature decision...I realize that it was wrong and I wouldn't do that again.”*

By these actions, Ofc. Kirchberg violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

- **Austin Police Department Policy 303.3.3: Body Worn Camera Systems: When Department Issued BWC System Deactivation is Authorized**

303.3.3 When Department Issued BWC System Deactivation is Authorized

Once the BWC system is activated it shall remain on until the incident has concluded or until deactivation is permissible in accordance with this order.

- (a) For purposes of this section, conclusion of an incident has occurred when:
 1. All arrests have been made and arrestees have been transported; and
 2. No further law enforcement action is likely to occur (e.g., waiting for a tow truck or a family member to arrive.)
- (b) Employees may choose to discontinue a recording currently in progress for any non-confrontational encounter with a person, including an interview of a witness or victim.
- (c) Employees shall adhere to posted policies of any Law Enforcement, Court, or Corrections entity that prohibit the use of BWC systems therein (i.e. TCSO, Courts, Juvenile Detention Centers).
- (d) Employees may deactivate the audio portion by engaging the mute button on the body worn camera, for administrative reasons only, as follows:
 1. The reason for audio deactivation must be recorded verbally prior to audio deactivation; and
 2. After the purpose of audio deactivation has concluded, employees will reactivate the audio track.

- (e) For purposes of this section, an “administrative reason” refers to:
 1. Personal conversations unrelated to the incident being recorded;
 2. Employee to employee training (e.g., when a Field Training Employee or Field Training Supervisor wishes to speak to an employee enrolled in the Field Training Program about a training issue);
 3. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall be stated prior to the audio deactivation.

➤ **Austin Police Department Policy 303.6 Body Worn Camera Systems: Review of All BWC System Recordings**

303.6 Review of All BWC System Recordings

- (e) Employees shall not obtain, attempt to obtain, or convert for their personal use or for the unauthorized use of another person, any information from Department video files or the confidential files of any other agency.
- (f) Employees shall not make personal copies or attempt to upload recordings to social networking sites (e.g., YouTube, Facebook).

➤ **Austin Police Department Policy 804.2: Department Vehicles: General Operation of Department Vehicles**

804.2 General Operation of Department Vehicles


- (a) Employees will operate Department vehicles in a careful and prudent manner within the guidelines of the law and Department General Orders. Unsafe or negligent driving is prohibited.
 1. Vehicles will be operated in such a manner and at a rate of speed that the driver, by use of ordinary care, can avoid colliding with another vehicle, object, or person.
- (d) The use of a Personal Communication Device (PCD), such as a mobile phone, PDA, or wireless two-way communication device while driving can cause unnecessary distractions and presents a negative image to the public.
 1. Employees operating emergency vehicles should restrict the use of these devices while driving to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to complete the call.

2. Except in the case of an emergency, employees who are operating non-emergency vehicles will not use PCDs while driving unless it is specifically designed and configured to allow hands-free listening and talking. Such use should be restricted to business-related calls or calls of an urgent nature.

By copy of this memo, Ofc. Kirchberg is hereby advised of this temporary suspension and that the suspension may be appealed to the Civil Service Commission by filing with the Director of Civil Service, within ten (10) days after receipt of a copy of this memo, a proper notice of appeal in accordance with Section 143.010 of the Texas Local Government Code.

By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Ofc. Kirchberg is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third-party hearing examiner, in accordance with the provisions of such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided by Subsection (j) of Section 143.057 of the Texas Local Government Code. That section states that the State District Court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction, or that the order was procured by fraud, collusion or other unlawful means. In order to appeal to a hearing examiner, the original notice of appeal submitted to the Director of Civil Service must state that appeal is made to a hearing examiner.

By copy of this memo, Ofc. Kirchberg is hereby advised that this temporary suspension may be taken into consideration in my determination as to whether a valid reason may exist to bypass Ofc. Kirchberg for promotion in accordance with APD GO 919.


JOSEPH CHACON, Chief of Police

6/21/2022
Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of temporary suspension, and I have been advised that if I desire to appeal that I have ten (10) calendar days from the date of this receipt to file written notice of appeal with the Director of Civil Service in accordance with the provisions of Chapter 143 of the Texas Local Government Code.


Police Officer Ryne Kirchberg #9241

6/21/2022
Date