



CIVIL SERVICE COMMISSION

City of Tucson

Minutes

**Brandon Kelley
Appeal of Termination
Tucson Police Department
January 21, 2016**

A quorum of the Civil Service Commission of the City of Tucson met at 9:20 a.m. on Thursday, January 21, 2016, at the Community Resources Center, Sentinel Building, 320 S. Commerce Loop Park in Tucson, Arizona for an Appeal of Termination filed by Brandon Kelley from the Tucson Police Department.

Present were Chair Max Parks, Commission Members David Flaughter and Marion Pickens. Staff present: Barry Corey, Legal Counsel; Betsy Conroy, Interim Human Resources Deputy Director; and Armida Saufley, Executive Assistant of Human Resources (Recording Secretary).

Mr. Michael Storie represented Officer Kelley; Mr. Baird Greene, Principal Assistant City Attorney, represented the Tucson Police Department. Assistant Chief Ramon Batista was also present.

Per Exhibit A, the actions and behaviors of Officer Brandon Kelley #53104 are fully documented in the Internal Affairs file OIA #15-0451 and incorporated herein, providing just cause for termination and are synopsized as follows:

I. Behavior Officer Kelley knew or reasonably should have known would result in disciplinary action.

On July 27, 2014 Officer Kelley, in his official capacity as a sworn police officer, completed a Tucson Police Department Request for Records form (#1552). Officer Kelley filled out one Request for Records from requesting copies of two unrelated police reports, #1406270398 and #1402230356. Officer Kelley wrote only "court" for the documented reason of his request on the form for the listed reports. Based on this request, the TPD records department released both reports to Officer Kelley. Although case #1402230356 was written by Officer Kelley and used by him in a criminal trial, case #1406270398 was not.

Officer Kelley admittedly obtained case #1406270398 only for personal reasons, not for court purposes as documented. This particular case was written by Sergeant Campos. Officer Kelley had absolutely no involvement in the particular investigation nor any related court proceedings.

During his interview, Officer Kelley admitted that at the time he requested the reports, he knew that he was not requesting case report #1406270398 for court purposes. He also acknowledged that based on the way the form was filled out, it was "reasonable" for



someone to surmise he was requesting Sergeant Campos's report for court purposes. When asked why he wrote "court" for both cases even though he knew it was not true, he replied "I don't know". In his interview, Officer Kelley also stated that he believed he was not required to provide a reason when requesting reports, yet admitted that he has always provided one.

Additionally, Officer Kelley stated in his interview he obtained a copy of Sergeant Campos report for personal reasons, specifically for "protection" against Sergeant Campos whom he felt was "picking" on him about his report writing. After receiving Sergeant Campos's report, Officer Kelley kept it at his residence and then several months later turned it over to a member of the public, in this case his attorney. He stated he turned over the report in advance of a civil service hearing held on July 27, 2015. He did not have knowledge of the civil hearing at the time the report was requested and obtained.

The report written by Sergeant Campos documented a domestic violence incident. This report when given to Office Kelley contained unredacted personal information to include dates of birth and home address. Department policy and state law require this information to be redacted upon release to the public. Officer Kelley acknowledged in his interview that the Records Department houses and tracks records releases and is required to redact specific information to protect privacy and stay in accordance with the law. He admitted that he turned the report to his attorney without redacting any information in accordance with department policy and stated after he turned it over "they did whatever they did with it". If this case report had been requested through a Public Records Request, the above mentioned information would have been redacted prior to being disseminated to any member of the public. Department Policy clearly outlines which members of the agency are authorized to release public records; Officer Kelley acknowledged in his interview that he is not authorized to release public records.

II. Violations of Department Policy and General Orders

1330.2 Obedience to General Orders, Procedures and Policies Required

All members shall observe and obey all laws, City Administrative Directives, Department General Orders, Department procedures and policies, as well as any procedures and policies established by their Commanders.

1330.7 General Standards of Expected Conduct

Members shall not engage in any conduct, whether on or off duty, which is unbecoming or detrimental to their duties, position, or the Department.



1330.19 Untruthfulness

- A. No member shall knowingly make an untrue statement about a fact, either orally or in writing, in connection with any investigation, assignment or inquiry.

1330.20 Security and Confidentiality of Department Business Required

- B. Security of Department Records and Paperwork

Members shall not reveal the contents of any Department record or file, including any electronic versions, to any person not entitled to the information. Information shall not be released to the public or media unless authorized and then only by person authorized to make such releases.

- C. Department Records and Paperwork

Members shall not steal, alter, destroy, forge, remove, copy or tamper with any kind of police record, citation, or document, including any electronic version, without proper authority. Members are prohibited from retaining personal copies of official police reports and shall incorporate all notes and working files into the official record maintained in Records.

7011.1 Internal Requests

Members requesting information in person from the Records or Identification Sections shall fill out the appropriate request forms provided by the particular section. Members requesting information by telephone from the Records or Identification Sections shall identify themselves by name and payroll number and, when possible, provide a phone number for call back verification.

7012.1 Release of Public Records

In general, public records shall not be released by any members of the Department other than those assigned to the Human Resources Section, Identification Section and the Office of Internal Affairs. Documents may be released by the Public Information Office, the Office of the Chief of Police, or the Legal Advisors Office. In addition, audio recordings may be released by the Communications Section.

7012.2 Redaction

Prior to release of a record, the following information shall be removed. The information listed below is intended as both a minimum standard and a guideline. If there is additional information which a member believes should be withheld because it falls within the general exceptions noted above, please contact the Legal Advisor's Office to discuss the matter. In general, certain types of information should be removed from records prior to their release: All records of any kind: Dates of birth, suspect information where no arrest has been made, victim addresses and phone numbers.



After reviewing this matter, Lieutenant Turner wrote:

"Officer Kelley released confidential information in TPD case #1406270398 that he accessed through his position as an employee of this department. This act alone has the potential for a critical adverse impact on the professional image of the department, and even opens the department to the potential for litigation by the victim and the suspect. However, Officer Kelley not only obtained this report in his official capacity for a personal matter, but he did so through intentional deception."

Captain Graves added:

"...the only reasonable conclusion I can come to is that Officer Kelley was intentionally and willfully misleading when he requested the aforementioned two case reports and listed the purpose as court. Officer Kelley knew he had no involvement in one of the investigations and that the report was not for court as indicated but for personal reasons..."

"When reviewing the totality of his statement it is clear to me that Officer Kelley's actions were dishonest and in his attempt to justify those actions he has continued to be untruthful."

Assistant Chief Batista concluded:

"By Officer Kelley's own admission to OIA (interview P33/1413) he admits that he falsified the TPD Records Request Form in order to obtain a copy of a police report for personal purposes; moreover, Officer Kelley recklessly disseminated sensitive and normally protected information about a victim of domestic violence to persons that had nothing to do with the criminal justice adjudication of that case."

III. Prior Discipline

Officer Kelley's disciplinary history in the last five years includes the following:

Sustained Type C violation on March 5, 2015 (30 hour suspension) under OIA case #14-0301

Sustained Type E violation on March 5, 2015 (Termination reduced to 808 hour suspension) under OIA case #14-0425

Sustained Type C violation on March 5, 2015 (60 hour suspension) under OIA case #14-0466



IV. Disciplinary Action

Based on a review of the Tucson Police Department Management, the Chief of Police has determined that Officer Kelley violated the above listed General Orders and committed a Type E, Level 8 violation. Office Kelley's actions and listed violation constitute just cause for Termination.

This appeal was held in Open Session; however, the rule was invoked.

Witnesses present were sworn:

Ramon Batista
Harrison Neely
Jennifer Turner
Luis Campos

9:20 – 9:50 City's Exhibits entered as evidence

9:50 – 10:05 Mr. Greene's opening statement

10:05 – 10:13 Mr. Storie's opening statement

City's Exhibits Admitted

Exhibit A Tabs 1 – 3 Admitted with No Objection

Tab 1 – Attachment A

Tab 2 – Notice of Intent to Discharge dated November 4, 2015; Notice of Decision dated November 17, 2015, and related PARF effective November 18, 2015

Tab 3 – Appeal letter from TPOA received November 17, 2015

Exhibit B Tabs 1 – 5 Admitted with No Objection

Tab 1 – Internal Investigation Authorization, Table of Contents and OIA History

Tab 2 – Investigative Summary

Tab 3 – Investigative Documents

Tab 4 – Harrison Neeley's OIA interview transcript (parts 1 and 2)

Tab 5 – Notice of Administrative Internal Investigation Ofc. Kelley's OIA interview transcript

Exhibit C Tabs 1 – 8 Admitted with No Objection

Tab 1 – Lt. Turner's TPD Personnel Report dated September 22, 2015

Tab 2 – Sgt. Williams' TPD Personnel Report dated September 24, 2015

Tab 3 – Capt. Grave's TPD Personnel Report

Tab 4 – Assistant Chief Batista's TPD Personnel Report dated October 8, 2015

Tab 5 – Tucson City Code Chapter 10, Section 10-3, "just cause" defined



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- Tab 6 – TPD Discipline Matrix & Memorandum RE: Revised Matrix
Tab 7 – TPD General Order 1300 Code of Conduct (relevant portions); TPD General Order 7000 Records Policies (relevant portions)
Tab 8 – Arizona Revised Statutes – Title 13 Criminal Code, Chapter 20 Crime Victims' Rights (A.R.S. §13-4401 and A.R.S. §13-4434)

Appellant's Exhibit Admitted

None

City called first witness, Harrison Neeley

10:15 – 10:30 Mr. Harrison Neeley gave testimony

10:30 – 10:32 Mr. Neeley was cross examined; the Commission asked clarifying questions and witness was excused

10:32 – 10:40 Break

City called second witness, Sergeant Luis Campos

10:40 – 11:00 Sgt. Campos gave testimony

11:00 – 11:11 Sgt. Campos was cross examined

11:11 – 11:12 Sgt. Campos gave testimony on redirect and excused

City called third witness, Lieutenant Jennifer Turner

11:12 – 11:32 Lt. Turner gave testimony

11:32 – 11:43 Lt. Turner was cross examined; the Commission asked clarifying questions and witness was excused

11:45 – 12:30 Lunch Break

City called fourth witness, Assistant Chief Ramon Batista

12:30 – 12:44 AC Batista gave testimony

12:44 – 12:51 AC Batista was cross examined and excused

12:51 City Rests

2:51 – 1:00 Break

Appellant called first witness, Officer Brandon Kelley

1:00 – 1:20 Ofc. Kelley gave testimony

1:20 – 1:55 Ofc. Kelley was cross examined; the Commission asked clarifying questions and witness was excused



Appellant Rests

1:55 – 2:00 City Closing Argument

2:00 – 2:11 Appellant Closing Argument

2:11 – 2:17 Rebuttal Argument

During the hearing, the Commission went into Executive Session for legal advice from Legal Counsel Barry Corey pursuant to A.R.S. §38-431.03(A)(3).

At 2:17 p.m. Commissioner Parks made a motion to go into Executive Session, the motion was seconded by Commissioner Flaughner and the Civil Service Commission went into Executive Session. The Commission resumed the open meeting at 2:35 p.m.

2:35 – 2:45 Civil Service Commission Deliberations

In open session, at the conclusion of closing statements, based on the testimony presented and the exhibits admitted into evidence, Commissioner Pickens made a motion that the Commission find the Appellant knew or should have known that his/her conduct could lead to disciplinary action and that the appeal of Brandon Kelley be denied and that the disciplinary action imposed upon him/her be affirmed for the reason that there was just cause for the discipline imposed. Commissioner Flaughner seconded the motion. The vote was unanimous, 3-0.

Hearing Adjourned at 2:45 p.m.

Max Parks, Chair
Civil Service Commission

05/04/16

Date