



Memorandum

To: Chief Dave Hayes
From: Deputy Chief Jeff Fisher
Date: August 21, 2020
Re: Administrative Investigation Report, Class 1 Professional Standards Investigation 20-2

Introduction

Initial Date: August 12, 2020

Initial Source of Complaint: Department members [REDACTED] and [REDACTED].

Witnesses: [REDACTED] and [REDACTED] Employees of [REDACTED]

Subject: Trainee Officer Juan Garcia

Assigned Investigator: Deputy Chief Jeff Fisher

Synopsis

On August 12, 2020, Trainee Officer Juan Garcia confessed to Field Training Officer [REDACTED] he had accessed the Lumen law enforcement database and queried his ex-girlfriend and himself while off-duty. Trainee Officer Garcia also confessed he initiated an unauthorized undercover prostitution investigation at [REDACTED] in Louisville. [REDACTED] notified [REDACTED] who notified Command Staff.

Summary

The possible policy violations under investigation are:

[REDACTED]

1) Policy 319 *Standards of Conduct*.

- 319.3 DIRECTIVES AND ORDERS

Members shall comply with written and verbal, lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

Summary of Evidence: Trainee Officer Garcia acknowledged in an administrative interview with me that [REDACTED] trained him in the use of Lumen. Trainee Officer Garcia told me [REDACTED] instruction and training included an admonishment that Lumen was a law enforcement database and is to be used for official law enforcement purposes only. There is a preponderance of evidence to indicate Trainee Officer Garcia violated this lawful directive by a person of authority (a Department instructor) when he accessed Lumen to query his ex-girlfriend, [REDACTED], her ex-boyfriend, [REDACTED], and himself.

- 319.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and Colorado Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority. Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Summary of Evidence:

Trainee Officer Garcia admitted in an administrative interview with me that he conducted an unauthorized, self-initiated undercover investigation at [REDACTED]. During this investigation, he conducted a search of a trash can, a cabinet and an air vent in an attempt to locate evidence of criminal activity (condoms, condom wrappers, surveillance cameras). Trainee Officer Garcia admitted he did not notify a supervisor – or any other department member – of this investigation. Trainee Officer Garcia did not have a search warrant or consent to conduct the searches at [REDACTED]. I believe there is a preponderance of evidence to indicate Trainee Officer Garcia violated this policy as his activities violated the United States Constitution, the Colorado Constitution and Department policy and procedure.

- 319.5.1 LAWS, RULES AND ORDERS

(a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement.

(c) Violation of federal, state, local or administrative laws, rules or regulations.

Summary of Evidence:

Trainee Officer Garcia admitted in an administrative interview with me that he conducted an unauthorized, self-initiated undercover investigation at [REDACTED]. During this investigation, he conducted a search of a trash can, a cabinet and an air vent in an attempt to locate evidence of criminal activity (condoms, condom wrappers, surveillance cameras). Trainee Officer Garcia admitted he did not notify a supervisor – or any other department member – of this investigation. Trainee Officer Garcia did not have a search warrant or consent to conduct the searches at [REDACTED]. I believe there is a preponderance of evidence to indicate Trainee Officer Garcia violated this policy as his activities violated the United States Constitution, the Colorado Constitution and Department policy and procedure.

- 319.5.8 PERFORMANCE

(d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.

(i) Any act on- or off-duty that brings discredit to this department.

Summary of Evidence:

In an August 17, 2020 administrative interview with me, and in response to my questions, Trainee Officer Garcia reported he accessed the Lumen law enforcement database with his Department-issued cell phone while off duty. Trainee Officer Garcia reported this activity to FTO [REDACTED]. Trainee Officer Garcia told [REDACTED] he conducted a Lumen query on his ex-girlfriend and himself. Trainee Officer Garcia told me he “briefly” opened up Lumen and conducted a query of his girlfriend, but “immediately” closed out the search because he realized he was violating Department policy. Trainee Officer Garcia then admitted he also ‘clicked on’ [REDACTED] in Lumen, who was listed as an associate of his ex-girlfriend’s.

In response to another question, Trainee Officer Garcia told me he had accessed Lumen for 2-3 minutes.

In a follow up administrative interview with Trainee Officer Garcia on August 20, 2020, and in response to my questions, Trainee Officer Garcia told me he had accessed Lumen for approximately 15-20 minutes. Trainee Officer Garcia told me he did not access records from ADCOM/Tri-Tech (and did not know what that was), Jefferson County, Thornton or Westminster, but admitted he queried his own name in Longmont records.

A query audit of Lumen records indicate Trainee Officer Garcia had accessed Lumen from 23:53 hours on August 11, 2020 to 01:39 hours on August 12, 2020 – approximately 106 minutes. The query audit indicated Trainee Officer Garcia conducted 8 queries and viewed records from numerous law enforcement agencies in the system, including ADCOM/Tri-Tech, Jefferson County, Thornton, Westminster and Longmont.

I asked Trainee Officer Garcia if I conducted a forensic search of his Department issued cell phone, would the results be consistent with what he told me. Trainee Officer Garcia's response was, in part, "I believe so...I mean, I say that because there's always an uncertainty with anything...I'm trying to be as truthful as possible."

I believe there is a preponderance of evidence to indicate Trainee Officer Garcia was untruthful and made false, misleading statements in his responses to my questions during my administrative interviews with him

- 319.5.9 CONDUCT

h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.

Summary of Evidence:

I believe the facts outlined in the above listed summary of evidence under 319.5 *Performance* substantiate a preponderance of evidence to indicate Trainee Officer Garcia engaged in criminal, dishonest and disgraceful conduct while off-duty, which adversely affects his relationship with this department.

2) Policy 341 *Off-Duty Law Enforcement Actions*

- 341.2 POLICY

Officers generally should not initiate law enforcement action while off-duty.

Summary of Evidence:

During an administrative interview with me, Trainee Officer Garcia admitted he conducted a self-initiated, undercover investigation while off-duty. I believe there is a preponderance of evidence to indicate Trainee Officer Garcia violated this policy.

- 341.5 REPORTING

Any officer, prior to taking any off-duty enforcement action, shall notify and receive approval of a supervisor (or other applicable law enforcement authority if acting outside the jurisdiction of the Louisville Police Department). If prior contact is not reasonably possible, an officer shall notify the applicable local law enforcement agency as soon as reasonably practicable. The officer shall, within 24 hours of the incident, prepare a report detailing their involvement and submit an overtime form for compensation for the event.

Summary of Evidence:

During an administrative interview with me, Trainee Officer Garcia admitted he conducted a self-initiated, undercover investigation while off-duty. Trainee Officer Garcia told me no one directed him to conduct the investigation, nor did he notify – or receive approval from – a supervisor of his investigation. I believe there is a preponderance of evidence to indicate Trainee Officer Garcia violated this policy.

3) *Policy 805 Protected Information*

- 805.2 POLICY

Members of the Louisville Police Department will adhere to all applicable laws, orders, regulations, use agreements and training related to the access, use, dissemination and release of protected information.

Summary of Evidence:

I believe the facts outlined in the summary of evidence under Policy 319.5.8 *Performance* demonstrate a preponderance of evidence to indicate Trainee Officer Garcia violated this policy by accessing the Lumen database in violation of applicable orders, regulations, use agreements and training related to the access and use of protected information.

4) *Policy 423 Portable Audio/Video Recorders*

- 423.5 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

Summary of Evidence:

During an administrative interview with me, Trainee Officer Garcia admitted he conducted an unauthorized, self-initiated investigation into suspected prostitution activity at [REDACTED]. Trainee Officer Garcia conducted this investigation while off duty in a non-uniformed capacity. Trainee Officer Garcia admitted he did not have in his possession a body worn camera at the time; however, he reported he had his personal cell phone with him.

The cell phone was capable of video and audio recording. Trainee Officer Garcia told me the phone was in his pocket and he did not wear it in a conspicuous manner. Trainee Officer Garcia told me he did not conduct any recording at [REDACTED]. While Trainee Officer Garcia's investigation was not authorized or lawful, he had the capability to record audio and video; however, there is no information to indicate he made any recordings. I do not believe there is a preponderance of evidence to indicate Trainee Officer Garcia violated this policy.

- RULES

1. Compliance with Values, Rules, and General Orders - Except as otherwise approved by the Chief of Police, members of the department perform their duties in accordance with city and department rules, policies, and procedures, and conduct themselves within the framework of the department's values.

2. Conformance with Laws - Members obey the laws of the United States of America and of any state or local jurisdiction. Employees have a duty to report any custodial arrest, criminal summons or receipt of a restraining/protection order they are served to an on-duty supervisor. A

conviction for violation of law is prima facie evidence of a violation of this rule.

3. Truthfulness - Members are truthful in matters associated with or related to department business or responsibilities, except as recognized for legitimate investigative purposes.

Summary of Evidence:

I believe the summaries of evidence noted in each policy in this document indicate a preponderance of evidence to indicate Trainee Officer Garcia violated Louisville Police Department Rules 1, 2 and 3.

Evidence

The evidence supporting the alleged policy violations in this case is outlined in the summaries of evidence under each of the above-listed Louisville Police Department Policies and Rules.

Exhibits

- A) Recording of administrative interview conducted on August 17, 2020
- B) Recording of administrative interview conducted on August 20, 2020
- C) Lumen audit report provided by CISC & Lexis Nexis
- D) Administrative memo from [REDACTED]
- E) Administrative memo from [REDACTED] Blackney

Conclusion

I believe the facts of the investigation indicate there is a preponderance of evidence to indicate Trainee Officer Garcia violated the following Louisville Police Department Policies and Rules:

- Policy 319 *Standards of Conduct*
- Policy 341 *Off-Duty Law Enforcement Actions*
- Policy 805 *Protected Information*
- Louisville Police Department Mission Statement, Values and Rules.

I do not believe the facts of the investigation indicate there is a preponderance of evidence to indicate Trainee Officer Garcia violated the following Louisville Police Department Policy:

- Policy 423 *Portable Audio/Visual Recorders*

Suggested disposition: Chief Hayes, I have reviewed the summary, the summary of evidence and the exhibits listed in this case. I believe the summaries of evidence noted in each policy in this document indicate a preponderance of evidence to indicate Trainee Officer Garcia violated Louisville Police Department Rules 1, 2 and 3. I believe the facts of the investigation would indicated a preponderance of evidence that Trainee Officer Garcia violated the following Louisville Police Department Policies and Rules:

- Policy 319 *Standards of Conduct*
- Policy 341 *Off-Duty Law Enforcement Actions*
- Policy 805 *Protected Information*

I do not believe that the investigation indicated a preponderance of evidence to support Trainee Officer Garcia violated Policy 423 *Portable Audio/Visual Recorders*.

Suggested action to be taken: Based upon the totality of facts and circumstances revealed in this in this investigation I recommend that Trainee Officer Garcia be removed from the FTO Program and that his probationary status with the Louisville Police Department be terminated.

Ops. Div. Commander

Date

Suggested dispositions:

SUSTAINED violations of Policies 319, 341, 805 and the Louisville Police Department Mission Statement, Values and Rules.

NOT SUSTAINED violation of Policy 423 *Portable Audio/Visual Recorders*

Suggested action to be taken: Termination of Probationary Employment.

Jeff Fisher
Deputy Chief

August 21, 2020
Date

Disposition:

Action to be taken:

Chief of Police

Date
