



COMBINED LAW ENFORCEMENT ASSOCIATIONS OF TEXAS

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Elaine Hart
Interim City Manager
P.O. Box 1088
Austin, TX 78767

Interim City Manager Hart,

CLEAT has been made aware of the memo sent from your office on December 29, 2017 wherein you informed the Mayor and Council Members of your intention to continue the operation and functions of the Office of Police Monitor (OPM) created by the now expired contract between the Austin Police Association (APA) and the City of Austin (City). We write the letter to express our disagreement with your intended action and to inform you of the legal consequences of such action.

We are also aware the OPM is unique to Austin and is a product of negotiations by the APA and the City under the Meet and Confer agreement. The OPM is a creation of the partners to the M&C Agreement and only existed in the now expired contract between the City and the APA. The APA has worked successfully and tirelessly to set the example for the state regarding transparency and accountability in law enforcement to the citizens the members serve and protect. The failure of the City to negotiate reasonable terms or extend the current contract has put the City in a position where the contract no longer controls the professional dynamic between the officers and the City. The rights of officers now rest in Texas Local Government Code Chapter 143.

Under Local Government Code § 143.089(g), the police department shall not release any information regarding an officer’s personnel file, including an ongoing disciplinary investigation. The negotiated agreement between the APA and the City had allowed for the OPM to have access to information that would otherwise be illegal under state statute. If the intended action of allowing the OPM into the interview or to the personnel files is carried out, the City would be in violation of the law. A mere oath by OPM will not suffice to protect the civil servants targeted by the City’s actions. The OPM is a civilian operation, and the City would be in violation of the law if you carry out this intended course.

Additionally, Government Code § 552.101 provides an exception from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Given the City is a civil service under Local Government Code Chapter 143, Government Code § 552.101 would also protect the personnel records of a civil servant involved in the disciplinary process where no final decision has been rendered. We believe these two sections combined would prevent the OPM from being involved in the internal affairs interviews or having access to any of the investigatory materials before a final decision.

Article 18 Section 16 of the expired contract deals with the effect of contract expiration. Only investigations that have already been assigned a Control Number by the Internal Affairs Division prior to the expiration of the agreement, any disciplinary decision by the Chief prior to the expiration of the agreement, or any appeals of such disciplinary action will be subject to the provisions of the now-expired contract. The OPM will no longer exist or will have no operative action pertaining to investigations beginning after the expiration date.

CLEAT believes the unilateral and arbitrary actions by the City regarding the functions and existence of the OPM would not only fall outside the Meet and Confer requirements for contractual agreements between the APA and the City, but also would violate both Local Government Code § 143.089(g) and Government Code § 552.101. Therefore, we request the City immediately cease from operating the OPM beyond the language of the previously negotiated and now expired contract.

Thank you,

Michael Rickman, CLEAT General Counsel
p.p.
Houston Tower, Staff Attorney