



7142 Trask Avenue  
Playa del Rey, CA 90293  
323-821-0586  
OIRGroup.com

TO: City of Eureka  
FROM: OIR Group  
DATE: June 5, 2023  
RE: Review of Administrative Investigation – “Texting Case”

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## Introduction

In its role as the City of Eureka’s Independent Police Auditor, OIR Group reviews internal investigations completed by the Eureka Police Department (EPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case differs from our usual scope of work: due to the high-profile nature of this particular case and potential involvement of command staff, EPD and the City appropriately determined that this case would be best investigated outside of the Department. The City hired a third-party investigator to conduct the investigation, which we reviewed in its entirety, along with the Department’s ultimate findings and disciplinary actions.

While part of our work is to assess whether the investigation was thorough and objective, and whether the involved employees were appropriately held accountable by the Department, in this case we also find it important to look forward and report on the actions taken by the Department intended to ensure this type of incident does not occur in the future. With one exception set out in further detail below, we found that the Department’s response was appropriate, and that the accountability was commensurate with each employee’s actions. More critically, we found that the Department’s actions because of this incident – changes to staffing, policy updates, and increased individual and Department-wide training – show a renewed commitment to accountability and risk management.

## Case Summary

From January to March of 2020, eight EPD officers and one supervisor participated in “group chat” texting on their personal phones that included misogynistic, violent and vulgar messages. Many of these texts were sent while the employees were on duty and using their personal phones. Two employees – the supervisor and one officer – authored the majority of these texts and were most active on the group chat. Three other employees authored texts that, though fewer in quantity, were equally vulgar and offensive.

Three employees participated minimally in the group chat, only using it for duty-related communication, such as sharing information related to assignments or ongoing cases; none of their texts contained offensive or vulgar language. One employee was on the group chat but did not contribute any text messages at all.

An employee from the group chat reported the texts to a news media outlet. The media outlet released a story about this text thread and published screenshots of some of the messages.

Among these texts were commentary related to the physical appearance of females, both in general and in specific; descriptions of vulgar or inhumane actions on the unhoused population; commentary related to those experiencing mental health crises; obscene commentary regarding masturbation, sex, and prostitution; and degrading references to female EPD employees.

On the same day, EPD publicly identified two involved employees – the supervisor and an officer – who had contributed the most nefarious content and placed them on administrative leave. The City then hired a third-party investigator to investigate.

The City directed the nine employees who had been identified as members of the group chat to submit any text messages or other documents. Seven of the employees responded that they did not have the messages any longer; some disclosed that they had previously deleted the messages. Of the two that provided their text messages, only one had participated in the group chat during the timeframe under investigation; the other joined the chat after this time.

On May 17, 2021, EPD publicly reported that they had placed a member of its command staff on administrative leave but did not report why. The investigation later revealed that a witness employee – who had been interviewed as part of the third-party investigation – reported that this person had sent her unwelcomed texts of a sexual nature and that he retaliated against her when she refused his advances. While these

texts were not part of the group chat texts, the third-party investigator determined that they were sufficiently related to fold those allegations into the initial investigation.

## Third-Party Investigation and EPD Findings

The third-party investigator interviewed 20 individuals and reviewed over 1500 pages of documentation for this case. The investigator framed allegations against three named employees - the officer, supervisor, and command staff member - for harassment and retaliation.

While the investigation was still pending, the publicly identified officer was terminated for an unrelated allegation of violation of policy.

The third-party investigator submitted the investigation and recommended findings to the then-Chief for his review and final disposition.

After reviewing the investigation, the then-Chief added allegations related to use of personal devices while on duty. He determined that the supervisor and command staff member's behavior warranted termination.

The then-Chief also framed formal allegations against one additional employee for that employee's involvement in the group chat. He informally counseled another employee who also had contributed to the inappropriate messages in the thread.

In all, five employees were held accountable for their actions.

While final imposition of these disciplinary actions was still pending, the then-Chief retired.

EPD's new Chief reviewed the entirety of the investigation and the former Chief's findings. The Chief held three Skelly hearings<sup>1</sup> during which the accused employees were offered an opportunity to present any additional facts or arguments. As a result of the Skelly hearings, the Chief upheld the former Chief's findings and discipline.

On March 28, 2022, EPD publicly reported that, while disciplinary action was still pending, "a captain and a sergeant" requested immediate retirement from EPD.

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<sup>1</sup> After an employee is served with a notice of intent to discipline, he or she has the right to present additional facts and arguments to the Department as to why the findings or disciplinary decision should be modified at what is referred to as a "Skelly hearing." Following this, the "Skelly officer" makes a final disciplinary recommendation which can be accepted, rejected, or accepted in part by the hiring authority at which time the discipline is formally imposed.

During the investigative process, two other involved employees who had not been publicly identified resigned voluntarily from EPD. One was recently re-hired by EPD; that employee had not actively participated in the troubling content of the group chat.

## OIR Group Review

The City provided OIR Group with the complete case file. OIR Group reviewed the case documents and audio files of the investigator's interviews, as well as all documentation related to the Skelly hearings and the Chiefs' findings.

The third-party investigation itself was lengthy with well-documented supporting evidence. The interviews of 20 employees were recorded, detailed and of high quality. And the investigator considered "witness credibility" carefully, including considering the motives of all parties.

At the same time, though, there was a basis for further scrutiny of potential accountability. The investigator did not explicitly frame all allegations where they were clearly warranted; in particular, the investigator did not identify the potential misconduct of two employees who actively participated in the inappropriate conversation in group chat.

For example, the first of these employees texted about Governor Newsom and his issuances of a COVID-19 executive order in a profane and insulting way and another text sexualizing a fellow EPD member. The second employee's troubling texts dealt with additional comments about EPD members that were misogynistic and another that was racially insensitive in nature.

Remarkably, the second employee was not even interviewed as a subject despite contributing these inappropriate texts.

To his credit, the then-Chief identified the failure of the investigator to identify the misconduct on behalf of additional employees. In the case of the first of these two employees, the Chief added formal allegations based on inappropriate text messaging and made accountability findings. We found the remediation to be fair and commensurate with that employee's actions.

The then-Chief took a less formal approach regarding the second employee, giving informal counseling rather than making formal allegations and accountability findings. However, a review of the available evidence showed that the second employee's text messages were deeply concerning, misogynist, racially charged, and hurtful to the colleagues that were referenced and certainly deserving of more formal accountability.

And as noted above, the failure to interview this employee prevented EPD from learning this employee's motivation and the degree to which the employee accepted responsibility for the inappropriate texting. While EPD overall did an admirable job of resolving the incident and holding most involved in the misconduct accountable, there was both an investigative and accountability breakdown regarding the fifth involved employee.

## Looking Forward

Since 2022, the Department has taken positive steps to increase officer accountability and supervision, two areas that were lacking at the time.

The first of these are changes to staffing; specifically, to the rank structure of the organization. Upon joining EPD, the current Chief noted that the organizational structure lacked sufficient "middle management"-type ranks. This left a gap between the field and command, and contributed to field officers' perception that command would not act on reported misconduct. Since late 2022, the Chief worked to remedy this in the following ways:

- Promoted five employees to the rank of sergeant for better supervision of field / patrol operations. The lack of sufficient, day-to-day, direct supervision in the field, opined the Chief, may have contributed to a situation in which EPD employees believed they could text inappropriate comments about the public and their own members with impunity.
- Replaced the rank of captain with the rank of "commander," a hybrid of a captain and field lieutenant; the captain rank alone was overworked with too many tasks that included both field operations and administrative management. The creation of a commander rank, the equivalent of a "middle-management" position, provides a more direct line between field supervisors and command staff that the Chief found to be missing in EPD's structure. The commander's role is operational management, with an emphasis on oversight, training, and mentoring of employees.
- Created an Assistant Chief position and filled the role with an experienced captain. The Assistant Chief, like the Chief, is focused on command of the Department, including administrative oversight (e.g., the internal accountability process).

Second, the Chief identified areas of Department policies and procedures that were unclear or lacking sufficient guidance. These updates were directly related to issues identified during the investigation. They also now allow EPD to hold officers directly accountable, including for any failure to report others' misconduct. These include:

- Updated **Policy 702: Personal Communication Devices**. At the time of the texting incident, the majority of EPD employees used personal devices to conduct business while on-duty; this was allowed per the Department's policy at the time with little direction or guidance. The investigation revealed that some involved employees believed, for example, that they had an expectation of privacy on their personal devices (for example, that their group chat texts were not subject to discovery).

As a result of this incident, the Chief updated Policy 702 to provide clear guidance on use of personal devices while on-duty. Most importantly, the Chief added language to *limit* the use of personal communication devices; namely, that employees cannot use a personal device for work/business purposes or on-duty unless exigent circumstances warrant its use. And the Chief clarified that all communication regarding EPD business or while on-duty, whether on a personal or Department-owned device, is subject to monitoring and discovery.

The Department also purchased additional Department-owned devices (e.g., "work phones") for use by employees while on duty.

- Created an affirmative requirement to report misconduct in **Policy 339: Standards of Conduct**. While nine employees were aware of the content group chat over the course of several months, and some later admitted that it was inappropriate, none reported their peers' misconduct to Department leadership.

When asked why they did not report, involved employees commented that they did not think that command staff or supervisors would take any action. Further, they reported that reporting the misconduct might have had negative repercussions on them, their assignments, or their reputation in the organization. Some even stated that they did not know that it was their duty to report misconduct.

The Chief determined that, while several policies discussed an employee's duty to intervene and report, the affirmative duty to report misconduct – regardless of one's rank – was not explicit in the Department's policies. The Chief added this language to Policy 339, which now states:

*Members of the Eureka Police Department shall immediately report misconduct by another member. For the purpose of this policy, "misconduct"*

*is defined as conduct that causes risk to the health and safety of the public, or any member of the EPD, impairs the operation and efficiency of the Department or member, or brings into disrepute the reputation of the member or the Department. The conduct could involve a violation of any law, statute, ordinance, Department policy or procedure, act of moral turpitude or ethical violation.*

*In this context, misconduct involves a willful act done with a wrong intention and is more than mere negligence, error of judgment or innocent mistake. If any member has credible knowledge of another member's misconduct, they shall take immediate, reasonable action to stop the misconduct, and the member shall report the misconduct to a supervisor as soon as possible.*

The Department has also shown a continued commitment to fostering a culture of trust and well-being. Immediately following the first news coverage of the texts, the then-Chief held an “all hands” meeting for employees to voice their concerns and frustrations. Following this, the then-Chief directed every Department employee to attend a one-hour counseling session: an opportunity to speak with a clinician and check-in on mental health.

Counseling, while becoming more acceptable, often still holds a stigma in the law enforcement community. But the current Chief hopes that continued emphasis on mental health and well-being will slowly reduce this stigma. To that end, EPD extended its contract with an outside clinician to provide all employees with a compulsory, annual counseling session, and the opportunity to attend fully covered follow-up sessions as needed on a voluntary basis. EPD also instituted a peer support program to encourage employees to support one another and foster trust. The Chief reported that this appears to be effective; Department morale is much higher across all ranks.

The Department also continues to provide mandated annual training on workplace harassment, sexual harassment, and bias. This training was, and will continue to be, provided by outside counsel with expertise in delivering the training material.

## Conclusion

This case, which was widely covered by the media, was by all accounts a “dark chapter” in EPD’s history. We heard during our review that employees experienced low morale and loss of confidence in their then-leadership, while the community lost trust in their police department. The investigation revealed some troubling cultural issues within the Department, with employees openly sharing vulgar and misogynistic views while others stood silent, either out of fear of retaliation if they reported their fellow employees’ conduct or the resignation that any reports would be met with supervisors’ apathy.

EPD's new Chief has tackled these cultural issues head-on, with new policies and training, realigned supervision, and an emphasis on officer wellness. We share the Chief's optimism about these efforts and look forward to our continued role in monitoring the Department's progress.