



Chris Harris, President
Rebecca Webber, Treasurer
Alycia Castillo, Secretary

October 1, 2024

Dear Council, Mayor and City Manager,

We understand from the memo issued last night by CM Broadnax that the city does NOT *intend* to “grandfather” g-file-based confidentiality for existing conduct records, based on the requirements of Art. 2-15, the Austin Police Oversight Act (APOA.)

This clarification, alongside public statements made by the Austin Police Association to the contrary, indicate that there is no meeting of the minds in advance of the vote on this provision.

This is a huge problem. There needs to be actual AGREEMENT on this major issue and the words in the contract must clearly reflect that agreement. Otherwise it is not an agreement at all.

The APA has also publicly stated it *wants to proceed and hash out these differences later*. Why would it take that position on something this important? Because **the legal framework after this contract has been signed is far different than the legal framework today.**

Based on statements by APA it is highly likely that a records release will be met with a grievance -- just as they filed in 2021, a grievance that ended the powers of the OPO and led directly to the creation and passage of the APOA -- and just like 2021 the arbitrator will look ONLY to the four corners of the contract.

Such a grievance *should* be impossible. The APOA states that city actions taken in accordance with the voter approved ordinance cannot be grieved. But the grievance provision in this contract -- **in contravention to Art. 2-15-7 of the APOA** -- *authorizes* grievances for actions authorized by the APOA if the issue concerns an action not *also* “consistent with” the agreement. APA will no doubt argue that choosing not to have a g-file is not “consistent with” the agreement, and therefore can be taken to arbitration.

At that point, an arbitrator will interpret this provision without reference to the APOA because it is a simple contract dispute. The arbitrator will apply a “four corners of the

contract” approach. A plain language reading of Art. 16 Sec. 4(b) indicates that the city has made an “exception” to 143.089(g) just for records created during the term of the contract and provides a notice. That makes sense only if other records are subject to g-file protection because the city exercised this option under 143.089 (referenced at 4(a)). This is the only argument the police association will need to make.

There is no excuse for the City to repeat this history, once again plunge our police oversight system into turmoil and undo the will of the voters. The City cannot approve the current agreement because it's clear that no agreement exists, only a path to a change of venue for this dispute that APA no doubt believes is more favorable to their cause of secrecy than the voters or the courts have been.

We would only add at this point, that this is not the only subject matter where the city’s stated intent to comply with APOA is undermined by contract language that will undoubtedly later be “grieved.” We would draw your attention to a deeply unclear but apparent limitation on the role of the Office of Police Oversight with respect to interviews with officers at Art. 16, Sec. 6 a). Under the contract, such interviews “do not constitute an investigation,” (the definition of “investigation” otherwise matches up to the ordinance.)¹ This is critically important. If the officer’s statements are not part of the “investigation” then it is not clear the OPO will have access, and certainly won’t be allowed to pose questions. This could limit the OPO’s ability to make recommendations to the Chief, which is the primary path by which the civilian oversight system intercedes in the otherwise closed disciplinary process.

We would further remind you that the Commission [APOA Art. 2-15-4] has not yet been created. The language of the grievance provision also allows the Association to “grieve” actions clearly allowed under the ordinance if that provision of the ordinance was not yet “in effect upon execution of this agreement.” So any action of the panel that is not “consistent with this agreement” will be grieved regardless of the voter mandate.

These are not small things. They get to the heart of the very reasonable, independent civilian oversight system the voters tried to institute nearly 18 months ago. After more than a year of foot dragging and then a court decision, we believe it is in the city’s best interest to have a contract where the words on the page comport with the ordinance and **both sides have the same opinion about what they mean before they vote on it.**

¹ In this provision, the well understood concept of a Loudermill Hearing has been expanded to include “any other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action.” “Hearing” is an undefined term. Without clarification, it appears that any interview with the officer to collect a statement or ask questions would fall under Sec. 6. and would not be deemed part of the “investigation.” If this is NOT the intent, just as with the g-file, the intent needs to be clear from the words on the page of this contract.

Therefore, this deal must be sent back to the bargaining table, and the current negotiation team, including the contractor Rampage Law, must be replaced. Rampage Law cannot be trusted to negotiate this in light of the City of Austin's priorities. This is the same negotiation leadership that's repeatedly told the City Council that the APOA violated state law. They were wrong. This is the same negotiation leadership that told the City Council a new contract couldn't be negotiated with the APOA in place. They were wrong. This is the same negotiation team that conspired with now-disgraced former City Manager Cronk to rush an incomplete and disastrous contract in order to pressure the City Council to undermine the then-upcoming vote on the APOA. They were wrong then too. This negotiation leadership cannot be trusted and the City must pivot in order to end up with a clear contract about which there need be no future arbitrations and which complies with the will of the voters.

Sincerely, Kathy Mitchell, Chris Harris, Rebecca Webber, Alycia Castillo

On behalf of Equity Action