



CITY OF West Linn

TO: Sergeant Tony Reeves

FROM: Peter Mahuna, Acting Chief of Police

CC: John Williams, Interim City Manager
Elissa Preston, Human Resources Director

RE: Notice of Disciplinary Action

DATE: June 16, 2020

Sergeant Reeves:

This letter notifies you that your employment is being terminated effective today for the reasons stated below.

A. Brady Determination by Clackamas County District Attorney's Office

As you know, the Clackamas County District Attorney's Office (CCDA) issued a report on May 29, 2020 regarding conduct by yourself and other current and former members of the West Linn Police Department (the Department) toward Michael Fesser, an African-American person who was the subject of a criminal investigation by you. In a letter to you, also dated May 29, 2020, Clackamas County District Attorney John Foote stated that the level of misconduct uncovered in CCDA's investigation of the matter was "deeply disturbing and totally unacceptable." Mr. Foote also stated that you were "so compromised by the information in this report" that CCDA needed to take the following immediate action regarding your ability to testify as a witness in cases submitted to that office:

- CCDA will not call you as a witness in any criminal case;
- CCDA will have to dismiss any pending case in which you played a role unless the case can be proven without your testimony; and
- CCDA will conduct a review of approximately 500 closed cases in which you were mentioned or played a role in the investigative process.

Mr. Foote added that this would result in cases you had submitted to that office being dismissed or compromised," and would "negatively impact the citizens of West Linn and the victims in those cases." These documents were publicized in the media and generated a very blistering response from the West Linn community about you and the Department.



CITY OF West Linn

Prior to issuance of the CCDA report on May 29, 2020, you had an opportunity to challenge the information in the CCDA's draft report, which you did by way of a letter submitted by your legal counsel dated May 26, 2020. The CCDA did not change its position after reviewing the letter. You also had an opportunity, on June 15, 2020, to appear before me as the decision-maker in this disciplinary matter and present any arguments or evidence on your behalf that you wanted me to consider, which I have done. You were represented by legal counsel in that meeting, which lasted approximately two hours.

I have studied the CCDA's report and attachments, and I determined that the CCDA's findings and conclusions appear to be well supported by the evidence. Some of the evidence contained in that report was known to the Department when it conducted an internal investigation of your conduct in July 2018. This included the text messages you exchanged with Mr. Benson, who was the alleged "victim" in the case, during the surveillance of Mr. Fesser on the day he was arrested. You received a written reprimand for improper handling of evidence and violating the policy against "use of obscene, indecent, profane, or derogatory language while on duty or in uniform."

The Department's internal investigation of your conduct was prior to my hiring with the Department. I believe that the Department should have imposed much more serious disciplinary action based on the text messages that you exchanged with Mr. Benson, on your City issued work phone, and while actively engaged in a criminal investigation. Those text messages were lewd, derogatory and disrespectful to the trust placed in you by the Department and the public, and showed bias against Mr. Fesser.

Furthermore, while the investigation determined that you did not expressly make any racist comments yourself during the text message exchange, the evidence shows that you continued to engage in the highly offensive banter with Mr. Benson after he made explicitly racist comments. In doing so, you made no effort to discourage him from sending racist comments to you, and gave the appearance that you condoned or agreed with his sentiments.

The Multnomah County DA's office took the case against Mr. Fesser to a Grand Jury based on your investigation, relying on an assumption that it had been fair and thorough. You were a key witness in the Grand Jury proceeding, but you had never disclosed your knowledge of Mr. Benson's racist statements, or his motive for seeking



CITY OF West Linn

Mr. Fesser's arrest in order to counteract a racial discrimination lawsuit that he was expecting Mr. Fesser to assert against him.

The CCDA's report concluded that the Multnomah County DA's office would not have taken the case against Mr. Fesser to a Grand Jury had that office been aware of the text messages. Shortly after the text messages became known, the Multnomah County DA's office determined that Mr. Benson would have credibility problems based on the "racially charged text messages he sent to the detective in relation to the investigation by the detective," and that Mr. Benson would be "very unsympathetic" to a jury. Mr. Benson promptly entered into a civil compromise that included a large settlement paid to Mr. Fesser.

While the Department was aware of the content of the text messages at the time of the internal investigation in 2018, other evidence came to light later as a result of the testimony in Mr. Fesser's civil lawsuit, and the CCDA's report, including the following:

- The CCDA report contains details regarding a biased, hasty and procedurally deficient manner in which you conducted your criminal investigation of Mr. Fesser.
- The report shows that you provided Mr. Benson with a document that you seized from Mr. Fesser's vehicle on the day of his arrest. That document outlined Mr. Fesser's legal claims against Mr. Benson for racial discrimination in the workplace. You wrote in your police report that you returned all of Mr. Fesser's belongings to him, but you did not disclose that you had provided a copy of the letter to Mr. Benson.
- The report also shows that you not only failed to disclose your knowledge of Mr. Benson's racist comments in his text messages, you also intentionally deleted those text messages – approximately 60 pages of them -- from your work phone while the criminal case against Mr. Fesser was pending. In your deposition, you stated that you deleted the text messages because "the case was over," which was not accurate. In your pre-disciplinary meeting with me, you claimed that you deleted the text messages because they were not pertinent to the case against Mr. Fesser, which I also believe is not accurate. The text messages contain information regarding the surveillance of Mr. Fesser just prior to his arrest. In your deposition, you stated that you had "no idea" when you deleted the text messages. I believe it is a reasonable inference that you deleted the text messages because you realized the negative impact they would have if they became public.



CITY OF West Linn

I AGREE WITH THE CCDA'S STATEMENT THAT THE ISSUES DISCUSSED IN THE REPORT "CANNOT BE CONSIDERED IN ISOLATION, BUT MUST BE VIEWED WITH CONSIDERATION TOWARD THEIR CUMULATIVE EFFECT." THE FOLLOWING SERIOUS CONSEQUENCES ARE A DIRECT RESULT OF THE TOTALITY OF YOUR MISCONDUCT AND BREACH OF DUTIES AS OUTLINED IN THE CCDA REPORT:

- The determination by the CCDA that you are barred from testifying in criminal cases brought by that office means that you can no longer perform an essential function of your position as a law enforcement officer in Clackamas County.
- The evidence creates the perception that you caused a member of the public to be arrested and indicted without reasonable justification. The CCDA report concluded that your investigation of Mr. Fesser "lacked transparency, honesty and any sense of fair play." Based on my review of the report and attachments, I believe that perception is supported by the evidence. As an experienced police officer, you knew better than to rely solely on slim evidence, witnesses who lacked credibility, and a complainant who expressed racist sentiments regarding an African-American suspect. The evidence also shows that you knew Mr. Fesser had accused Mr. Benson and his company of racial discrimination in the workplace, creating an obvious motive for Mr. Benson to fabricate allegations and solicit biased witnesses against Mr. Fesser. Nevertheless, you admitted that you accepted information from Mr. Benson, and the witnesses he provided to you, at face value.
- Perceptions of your central role in the arrest of Mr. Fesser, your collaboration with Mr. Benson to create evidence, and your willing participation in text message banter that included racist, homophobic and misogynistic language, have been widely publicized in the media. This brought immeasurable discredit to the WLPD, undermined Department-wide efforts to build the public's trust, and made you unfit to represent the Department in any law enforcement position.

It has also come to my attention that prior to my arrival at WLPD, you were the subject of a previous Brady review by the CCDA, and the subject matter of that review included comments and other conduct by you that was viewed by other members of the Department as having racist undertones. Although the CCDA did not determine that your conduct was Brady material at that time, and while the previous Brady review is not a basis for my disciplinary decision, you were certainly on notice that conduct giving the appearance of racial discrimination could result in you being placed on a Brady list and



CITY OF West Linn

barred from giving testimony in criminal cases. Like all WLPD members, you also completed Daily Training Bulletins that covered the subject of Brady material.

B. Policy Violations (of policies in effect at the time of the conduct)

The conduct which has resulted in your inability to testify in criminal cases, harm to the reputation of the City and the Department, and irreparable loss of trust with the public and the City, also violated the following City and Department policies:

CRIMINAL JUSTICE CODE OF ETHICS

As a criminal justice officer, my fundamental duty is to serve humankind; to safeguard lives and property; to protect all persons against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all people to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. Without compromise and with relentlessness, I will uphold the laws affecting the duties of my profession courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence, and never accepting gratuities.

I recognize my position as a symbol of public faith, and I accept it, as a public trust to be held so long as I am true to the ethics of The Criminal Justice System. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession.

POLICY 104 - OATH OF OFFICE

104.2 Law Enforcement Code of Ethics



CITY OF West Linn

All personnel of the West Linn Police Department are required to subscribe and adhere to the Law Enforcement Code of Ethics as presented in the introduction to this Policy Manual.

You violated the Code of Ethics by failing to protect Mr. Fesser against deception, oppression and intimidation; acting officiously and permitting personal feelings and friendships to influence your decisions; not upholding the laws affecting the duties of your profession courteously and appropriately; and betraying the public's trust in your position.

POLICY 340 - CONDUCT

340.3 Conduct Which May Result in Discipline

340.3.2 Conduct [Effective 6-29-16]

(f) Failure of any employee to promptly and fully report activities on their own part or the part of any other employee where such activities may result in criminal prosecution or discipline under this policy.

(g) Failure of any employee to promptly and fully report activities that have resulted in official contact by any other law enforcement agency.

340.5.7 Conduct [Effective 5-10-17]

(a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy.

You violated these policies because you did not fully report your activities in connection with the Fesser investigation to Portland Police Bureau when you sought assistance from that agency in making the arrest, and you did not fully report your activities with the Fesser investigation when you submitted materials to the Multnomah County DA's office and requested that office to pursue criminal prosecution of Mr. Fesser.

*(k) Discourteous, disrespectful or discriminatory treatment of any member of the public * * *.*

You were disrespectful and discriminatory toward Mr. Fesser during the investigation when you acted with bias in favor of Mr. Benson. Prior to the arrest of Mr. Fesser, you



CITY OF West Linn

knew that Mr. Benson had shown racial animus toward Mr. Fesser, and you discussed with him the benefit of securing an arrest of Mr. Fesser before he could make a formal complaint against Mr. Benson for racial discrimination.

340.3.5 Performance

(b) Careless workmanship resulting in spoilage or waste of materials or work of an unacceptable nature as applicable to the nature of the work assigned.

(c) Refusal, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or instructions of supervisors in a competent manner without a reasonable and bona fide excuse.

*Incompetence may be demonstrated by * * * (3) the failure to conform to work standards * * * .*

The evidence in the CCDA report shows work of an unacceptable nature and the failure to conform to work standards in carrying out your assignment to investigate Mr. Fesser.

d) Concealing or attempting to conceal defective work, removing or destroying it without permission.

You intentionally deleted text messages that were exchanged between you and Mr. Benson during the surveillance of Mr. Fesser and immediately before he was arrested. The text messages were evidence of your own inappropriate comments while on duty and using a work cell phone, and your tolerance of racist comments by Mr. Benson.

(n) Work related dishonesty, including attempted or actual theft of department property, services or the property of others. Criminal, dishonest, infamous or disgraceful conduct whether on or off-duty, that is related to the members position or responsibilities within the Department.

Your on-duty conduct was disgraceful, for the reasons previously stated.

(z) Any other on-duty or off-duty conduct which any employee knows or reasonably should know is unbecoming a member of the Department or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Department or its members.

As an experienced police officer, you knew or should have known that your interactions with Mr. Benson constituted “conduct unbecoming,” and would reflect unfavorably on the Department if it became known.



CITY OF West Linn

(a) Failure to maintain required and current licenses (e.g. driver's license) and certifications (e.g. first aid).

You violated this policy because you failed to maintain your ability to testify in criminal matters, which is an essential function of your position. You were on notice regarding the importance of this issue, because you had previously been the subject of a Brady review by the CCDA.

POLICY 1060 - EMPLOYEE SPEECH, EXPRESSION AND SOCIAL NETWORKING

1060.4 Prohibited Speech, Expression and Conduct

*To meet the department's safety, performance and public trust needs, the following is prohibited * * * :*

(a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the West Linn Police Department or its employees.

(b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the West Linn Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the West Linn Police Department or its employees.

*(c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. * * **

(e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the West Linn Police Department

You violated this policy because the content of the text messages you sent to Mr. Benson on your work phone, during the surveillance of Mr. Fesser, compromised the mission and function of the Department, damaged the reputation of the Department, would reasonably be expected to impact your credibility as a witness, and was contrary to the Law Enforcement Code of Ethics as explained above.

CITY OF WEST LINN PERSONNEL POLICIES

POLICY 12. ELECTRONIC COMMUNICATIONS SYSTEMS

Intended Use



CITY OF West Linn

All communications systems and equipment described above are provided by the City of West Linn for the purpose of supporting and carrying out City business. Such electronic communication systems and equipment are, and at all times remain, the property of the City. This means that all electronic communications and other data that is created, stored, accessed, sent, and/or received on these systems is also the property of the City. Furthermore, because these communications are City property, they may not be deleted without authorization from your supervisor.

Specific Uses Prohibited

Prohibited uses include, but are not limited to:

- *Engaging in unauthorized destruction or deletion of electronic communications or electronically stored materials.*

You violated this policy by deleting the text messages that were exchanged with the alleged victim of a crime during active surveillance of a criminal suspect. These text messages were not only relevant to an ongoing criminal case, but were determined to be impeachment evidence that the prosecution would have been required to provide to Mr. Fesser's attorneys in the criminal case against him.

As stated above, my disciplinary determination is based on the totality of circumstances and evidence outlined in the CCDA report, and the impact on your ability to function as a police officer.

C. Response to Evidence and Arguments Presented at the Pre-Disciplinary Meeting.

1. *The argument that your investigation was adequate, and the evidence supported the arrest of Mr. Fesser.*

The evidence showed that you relied on statements from only four (4) witnesses who had allegedly purchased cars sold by Mr. Fesser at an auction:

- *Mr. Olmos.* Mr. Benson connected you with him as a witness. He was a friend of Mr. Benson's employee, and he claimed that he purchased two vehicles at an auction in November 2016. You did not question how Mr. Olmos discovered that he had paid more than the price Mr. Fesser reported. You interviewed him approximately 2 months after the auction, and he provided no documentation of the price that he paid.



CITY OF West Linn

- *Mr. Omerovic.* Mr. Benson connected you with him as a witness. Mr. Omerovic admitted to you that he had a grudge against Mr. Fesser. According to your report, he claimed that he knew Mr. Fesser had been embezzling at the A&B auctions for several years, but yet he said nothing and kept buying vehicles at the auction, indicating he knowingly paid more for vehicles than what Fesser was reporting. This statement was inherently not credible.
- *Mr. Morrow and Mr. Anderson.* The other two witnesses purchased vehicles at an auction on February 11, 2017. You reviewed a price sheet that was prepared by Brian Dunst, an employee of Mr. Benson, who purportedly listened to the auction and recorded the prices at which the vehicles were sold (referred to in the report as “Brian’s list”). You then compared the prices on that list to the bid sheet that was filled out by Mr. Fesser. You concluded that “24 vehicles sold for more money than Mr. Fesser reported.” However, you only contacted two of the persons from the list of purchasers on that day. One of them claimed to have paid \$25 more for the vehicle than the price recorded by Mr. Fesser, and the other one claimed to have paid \$50 more for the vehicle than the price Mr. Fesser recorded. Neither of these witnesses provided any documentation to support their statements.

Based on this information, other than the two the witnesses who were provided to you by Mr. Benson, the total corroborated amount of “theft” by Mr. Fesser was \$75.00. You wrote in your police report that Mr. Fesser had stolen “at least \$10,830” from Mr. Benson, and that Mr. Fesser “has been running these auctions for 3 years and my investigation shows a small picture of the embezzlement by Fesser.”

You also stated in the pre-disciplinary meeting that you relied on information from Lt. Stradley that Mr. Fesser was “a bad guy.” You claimed that Lt. Stradley told you Mr. Fesser was “a con man” and a “thief.” This is contradicted by the following testimony from your deposition:

- Q: Did Mr. Stradley ever in that January/February 2017 time frame tell you anything that you can recall about Mr. Fesser?
- A: Yes.
- Q: And what did he tell you in that January/February 2017 time frame about Mr. Fesser?
- A: That he knew of Mr. Fesser from when he worked with the Portland gang unit.



CITY OF
West Linn

Q: What else did he say?

A: I don't remember. (Transcript p. 61.)

You also claimed in the pre-disciplinary meeting that members of command staff have expressed support for the quality of your investigation of Mr. Fesser, notwithstanding the written reprimand for the content of your text messages. You were asked in the meeting whether those command staff members were relying solely on the information in your police reports when they made those statements, prior to issuance of the CCDA's report. You stated that you didn't know what they were relying on when they made the statements.

2. The argument that Chief Timeus instructed you to give Mr. Benson the letter you seized from Mr. Fesser's vehicle.

In the pre-disciplinary meeting, you acknowledged that you provided Mr. Benson with the letter that you seized from Mr. Fesser's vehicle, which was addressed to Mr. Benson. You acknowledged that the letter outlined Mr. Fesser's claims against Mr. Benson for racial discrimination in the workplace. You explained to me that you did this because:

- Mr. Benson asked you the day after the arrest what you found in the vehicle;
- You told Mr. Benson about the letter that was addressed to him;
- Mr. Benson asked if you could send him a copy;
- You asked Chief Timeus if you should do that;
- Chief Timeus told you to send a copy of the letter to Mr. Benson; and
- You recalled that you faxed a copy of the letter to Mr. Benson.

None of this information is included in your police report, which states that you returned to Mr. Fesser all of the items you seized from his vehicle. Your statement to me also contradicts your deposition testimony, in which you stated that you did not believe you had given Mr. Benson a copy of the letter. (Transcript pp. 271-272.)

I do not find it credible that you would have had no recollection at the time of your deposition of the conversation with Chief Timeus, or sending the letter to Mr. Benson, but subsequently you developed a clear recollection of the conversation with Chief Timeus and that you faxed the letter to Mr. Benson. Even if this subsequent recall were credible, it is clear from the text messages between Mr. Benson and Chief Timeus that you had told Mr. Benson about the contents of letter within less than an hour after Mr. Fesser's arrest. The arrest occurred at approximately 6:00 p.m. on February 25, 2017, and Mr. Benson wrote to Chief Timeus at 6:25 p.m. that day stating, "Poitras found a letter already about the workplace and discrimination."



CITY OF West Linn

I consider even that initial disclosure to Mr. Benson to be highly unethical and a serious breach of the duty that you owed to Mr. Fesser after seizing property from his vehicle. You provided no credible explanation to me regarding your reason for this conduct.

3. *The argument that you did not know Mr. Benson was making an audio recording of Mr. Fesser's conversation without Mr. Fesser's knowledge.*

In the pre-disciplinary meeting, you expressed that you were not aware that Mr. Benson was unlawfully recording Mr. Fesser's conversation with a co-worker on February 25, 2017, during your surveillance of Mr. Fesser and while you were exchanging text messages with Mr. Benson. You admitted in your deposition that you knew the conversation was being audio recorded, and that you knew it would be unlawful to do so without Mr. Fesser's knowledge. However, in the pre-disciplinary meeting, you stated that you that you assumed Mr. Benson had posted a notice about audio recordings in the workplace, because you had earlier advised him to do so. Assuming this is true, you were in charge of the surveillance operation and it was irresponsible of you to allow the recording to be made without verifying that it was lawful.

4. *The argument that the text messages you deleted should not be considered impeachment evidence under Brady v. Maryland because you did not rely on Mr. Benson to prove Mr. Fesser's criminal activity.*

This argument ignores the overall appearance created by the text messages that you, as the investigating officer, had collaborated with Mr. Benson to gather evidence against Mr. Fesser who was on the verge of filing a discrimination claim against Mr. Benson. The text messages include comments the following comments by you, showing your bias in favor of Mr. Benson and personal interest in proving Mr. Fesser's guilt on the day of his arrest:

- You wrote, "Today his reign of terror ends ."
- Mr. Benson wrote, "OK. We are watching. Wondering if him and scrapper meet later." You replied, "Either way Fesser is fucked."
- Mr. Benson wrote, "Thank god. Brian thinks he is putting cash inside his vest." You replied, "Told you we would be fine."
- You wrote, "It would be so nice if he pockets cash," and later you repeated, "Hope he pockets some cash."
- You wrote, "It's better if we arrest him before he makes the complaint." You were asked in deposition what you meant by that comment. You said:



CITY OF West Linn

“Mr. Benson was questioning whether we should arrest him or not *because of this pending lawsuit that he knew was coming*, and I – I was asserting that if we arrested him before the lawsuit then it’s better than if he makes the complaint and then we arrest him, I guess.” (Transcript pp. 176-177.)

This gave a clear impression that you were aware of Mr. Fesser’s intent to make a racial discrimination complaint against Mr. Benson, and that you were motivated to make an arrest before that occurred.

5. *The argument that you were already investigated by the Department regarding the inappropriate text messages and received a written reprimand.*

It is clear from the investigation report by then acting Lt. Rollins, and the written reprimand, that the scope of that internal investigation was very narrow in scope. It addressed:

- Whether your text messages were racially discriminatory; the investigation concluded that you did not send any text messages that were racially discriminatory in nature.
- Whether your text messages were obscene, indecent, profane, or derogatory while on duty and in uniform; the investigation found that they were.
- Whether you violated property booking and release procedures, and the investigation concluded that you did.

As stated above, there was information disclosed in the CCDA report that was not known by the Department at the time of your IA investigation, including the obvious witness credibility problems in your investigation of Mr. Fesser, and the information that you provided to Mr. Benson about letter that you seized from Mr. Fesser’s vehicle.

Furthermore, my decision is based on more than just the unprofessional and offensive comments that you made in the text messages. It is based on the totality of your conduct that has resulted in the irreparable loss of the public’s trust in your ability to be fair and unbiased, damage to the public’s trust in the Department, and the loss of your credibility as a witness in past, pending and future criminal cases.

6. *The argument that the CCDA’s decision is subject to appeal.*

You stated in the pre-disciplinary proceeding that you disagree with the findings in the CCDA report and intend to seek an appeal regarding the CCDA’s decision barring you



CITY OF West Linn

from testifying. It is my understanding that the CCDA does not intend to reconsider its decision unless you provide new evidence beyond the arguments your legal counsel already presented on your behalf, and which were rejected by the CCDA.

I believe that the findings in the CCDA report are sound and well-reasoned and that it is highly unlikely that an appeal would be successful. But even if the CCDA altered its Brady determination about you, that would not change my determination that you are permanently disqualified from performing the functions of a law enforcement officer in the City of West Linn due to the loss of the public's trust, the City's trust, and the damage to your reputation.

Conclusion

I have given much thought to this decision. Although I listened carefully to the information you provided in the pre-disciplinary meeting, it did not change my ultimate conclusion that termination of your employment is the only appropriate outcome in this matter. Please contact Elissa Preston in Human Resources if you have questions regarding the termination process.