



# West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-515-5500 | westfargopolice.com

**Denis E. Otterness**  
Chief of Police

## Memorandum

Date: October 4, 2021

To: Internal Affairs File 2021-001

From: Denis Otterness, Chief of Police

A handwritten signature in blue ink, appearing to be "DO", is written over the name "Denis Otterness".

Subject: Closing of Internal Investigation 2021-001

Effective October 4, 2021 this investigation is being closed. Prior to finalizing this investigation in accordance with West Fargo Police Department Standard Operating Procedure #9, Assistant Chief (A/C) Boyer tendered a letter of resignation effective October 1, 2021 at 5:00 pm. A/C Boyer's resignation letter is dated September 22, 2021. I received A/C Boyer's resignation letter electronically on September 27, 2021. A Copy of A/C Boyer's resignation letter was added to this investigative file.

Assistant Chief Jerry Boyer  
800 4<sup>th</sup> Ave E. #2  
West Fargo, ND 58078

September 22, 2021

Chief Denis Otterness  
800 4<sup>th</sup> Ave E. #2  
West Fargo, ND 58078

*Re: Resignation*

Chief Otterness:

I am resigning from the West Fargo Police Department effective October 1, 2021, at 5:00 PM. I will look back at my time and service with the City of West Fargo with pride and happiness. The sworn and non-sworn staff within the police department are a truly dedicated group of professionals that care deeply about providing excellent service. The citizens of West Fargo are lucky to have them as members of such a great organization.

Cordially,

  
\_\_\_\_\_  
Gerald Boyer (Sep 23, 2021 13:04 CDT)

Assistant Chief Jerry Boyer





## EMPLOYMENT AGREEMENT

**EMPLOYEE NAME:** Gerald Boyer (hereinafter, "you," "your")  
**DEPARTMENT:** Police  
**DATE:** September 3, 2021  
**SUPERVISOR:** Denis Otterness

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The Chief of Police and City Administrator have reviewed your request for resignation, effective October 1, 2021. As of August 19, 2021, you were placed on paid administrative leave. This paid administrative leave will continue until your requested resignation date.

During this period of time, you are still considered a Police Department employee and must comply with the City Employee Handbook, Police Department Policies, and the following terms and conditions of your administrative leave. Violations of any City of West Fargo or Police Department policy or the following terms and conditions will result in immediate termination of employment.

**Separation of Employment.** Your employment relationship with the City of West Fargo (hereinafter, the "City") will end October 1, 2021 (the "Separation Date"). Except as otherwise provided in this Employment Agreement (the "Agreement"), all benefits and privileges of employment will end as of the close of business on that date. In the unlikely event that you were to die prior to the Separation Date, your employment relationship with the City will end as of the date of death with all usual and customary benefits that inure to the benefit of a deceased employee inuring to the benefit of you, your beneficiaries, heirs, and estate. You will receive separate information regarding your right to participate in the City's group dental and vision plans at your cost following termination of your employment, as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

1. **Administrative Leave.** Commencing August 19, 2021, through the Separation Date, you will continue to be a full-time employee of the City, but will be on paid administrative leave, with said period to be referred to as the "Administrative Leave Period." During the Administrative Leave Period, you will be paid by regular payroll check with applicable payroll deductions, and the City will contribute the employer's and your share in the same manner as the City has done prior to the effective date hereof.

2. **Employee Benefits.** Your rights to City employee benefits, including but not limited to vacation leave and sick leave, under City employee policy or other City employee benefit plans will be governed by such policy or the terms of applicable plans up to and including the Separation Date. In addition, you will be entitled to 100 percent of your sick leave balance, provided on your final paycheck.
3. **Other Employment.** Your employment with the City during the Administrative Leave Period will continue up to the Separation Date. If you obtain employment elsewhere either with a contractor or company that has a current contract with the City or with a company or employer that would constitute a conflict of interest with the City, you and the Chief of Police agree to meet and confer with each other to resolve any conflicting aspect of such employment.
4. **No Further Claim to Compensation.** This Notice and Agreement fully and completely satisfies any and all obligations between you and the City that arise out of or relate to your employment and separation from employment. You have no claim to any compensation from the City, in any form, beyond the compensation that is specifically described in this Agreement.
5. **Public Comments.** You shall refrain from any negative public comments regarding your tenure with the City and City staff until the Separation Date. If you receive inquiries from the press during the Administrative Leave Period, you shall refer those inquiries to the Chief of Police.
6. **Release of Claims by City.** In consideration of the terms and benefits described in this Agreement, and as an inducement for you to enter into this Agreement, the City hereby fully and completely releases, acquits, and forever discharges you and your attorneys, agents, representatives, insurers, heirs, executors, assigns, and other affiliates from any and all liability for any and all damages, actions, or claims, regardless of whether they are known or unknown, direct or indirect, asserted or unasserted, that arise out of or relate to any action, decision, event, fact or circumstance occurring before the City signs this Agreement. The City understands and agrees that by signing this Agreement it is waiving and releasing any and all claims, complaints, causes of action, and demands of any kind against you that are based on or arise under any federal or state law, including but not limited to the federal constitution, the state constitution, and any federal or state statute, regulation, rule, or common law.
7. **Release of Claims by Employee.** In consideration of the terms and benefits described in this Agreement, and as an inducement for the City to enter into this Agreement, you hereby fully and completely release, acquit, and



forever discharge the City, its current and former Commission members, its current and former officers, its current and former employees, and its current and former agents, representatives, insurers, attorneys, and other affiliates from any and all liability for any and all damages, actions, or claims, regardless of whether they are known or unknown, direct or indirect, asserted or unasserted, that arise out of or relate to any action, decision, event, fact, or circumstance occurring before you signs this Agreement. You understand and agree that by signing this Agreement, you are waiving and releasing any and all claims, complaints, causes of action, and demands of any kind that are based on or arise under any federal or state law, including but not limited to the federal constitution, the state constitution, and any federal or state statute, regulation, rule, or common law, which you may have against the City arising out of employment including, but not limited to claims for: additional severance or back pay; attorney's fees, expenses or costs; breach of contract; breach of personnel policies or regulations; breach of fiduciary duty; fraud or misrepresentation; violation of the Americans with Disabilities Act, the Veterans Preference Act, Title VII of the Civil Rights Act, the Family and Medical Leave Act, the Rehabilitation Act of 1973, the North Dakota Public Employees Relations Act, the North Dakota Occupational Health and Safety Act; denial of due process; defamation; intentional or negligent infliction of emotional distress; breach of the covenant of good faith and fair dealing; promissory estoppel; negligence; wrongful termination of employment; and any other claims for unlawful employment practices.

8. **Claims Not Waived.** By signing this Agreement, neither the City nor you is releasing or waiving any rights or claims that are based solely on events that occur **after** this Agreement is signed, or any right to institute legal action for the purpose of enforcing this Agreement. Additionally, you do not waive the following: (a) any right to apply for unemployment compensation benefits; (b) any claims arising under the Workers' Compensation Act; or (c) any right to file a charge with a governmental agency, including the Equal Employment Opportunity Commission, although you agree that you will not be able to recover any award of compensation, damages, or any other monies if you file a charge or complaint or have a charge or complaint filed on your behalf with any federal, state, or local government agency.
9. **Acceptance Period.** You have the right to review and consider this Agreement for a period of twenty-one (21) calendar days after receiving it. You acknowledge that you were provided a copy of this Agreement on September 3, 2021. If you sign this Agreement before twenty-one (21) calendar days have elapsed from the date on which you first received a

copy of the Agreement to review, you will be voluntarily waiving your right to the twenty-one (21) day review period.

10. **Revocation under ADEA.** You recognize that by signing this Agreement you are waiving and releasing any employment discrimination, retaliation, or other claims that you might have under the Age Discrimination in Employment Act ("ADEA"). After you sign this Agreement, you will have seven (7) calendar days to revoke your waiver and release of any claims arising under the ADEA. This right of revocation applies only to claims arising under the ADEA. For a revocation of claims under the ADEA to be effective, it must be delivered to City Attorney John T. Shockley of Ohnstad Twichell, P.C., either personally or by United States mail within the seven (7) day period. If delivered by mail, the revocation must be postmarked within the seven (7) day period, properly addressed to John T. Shockley at Ohnstad Twichell, P.C., P.O. Box 458, West Fargo, ND 58078-0458, and sent by certified mail, return receipt requested.
11. **Rescission under North Dakota Century Code Chapter 14-02.4.** You recognize that by signing this Agreement, you are waiving and releasing any employment discrimination and retaliation and waiver of claims that you might have under N.D.C.C. Chapter 14-02.4. For a rescission of claims arising under the North Dakota Human Rights Act to be effective, it must be delivered to City Attorney John T. Shockley of Ohnstad Twichell, P.C., either personally or by United States mail within the fifteen (15) day period. If delivered by mail, the rescission must be postmarked within the fifteen (15) day period, properly addressed to John T. Shockley at Ohnstad Twichell, P.C., P.O. Box 458, West Fargo, ND 58078-0458 and sent by certified mail, return receipt requested.
12. **Effect of Rescission of Release of Claims.** If you revoke or rescind any part of the Release of All Claims in this Agreement, paragraphs 2, 3, 4, and 5 of this Agreement will automatically be rescinded without further action by either party.
13. **Return of Property.** Upon separation from employment, you agree to immediately return any City property that is in your possession. The City will notify you when your personal items from your office are ready to be picked up at the West Fargo Police Department.
14. **No Admission of Wrongdoing.** Nothing in this Agreement may be construed to be an admission of liability or wrongdoing by, against, or on behalf of the City or you. Any form of wrongdoing or liability is expressly denied by the City and its representatives and by you and your representatives.



15. **Choice of Law, Forum and Severability.** This Agreement is governed by the laws of the State of North Dakota regardless of your domicile or status as a resident of North Dakota or any other state. The parties agree that the North Dakota state and federal courts will have exclusive jurisdiction over any dispute arising out of this Agreement. If a court determines that any part of this Agreement is unlawful or unenforceable, the remaining portions of the Agreement will remain in full force and effect.
16. **Remedies for Breach.** If you breach this Agreement, you agree the appropriate remedy for breach is immediate termination of your employment or, if breach occurs subsequent to the Administrative Leave Period, you agree to repay any and all payments made and benefits received from the date of this Agreement. If the City breaches this Agreement, you may bring an action for payment of salary and employee benefits due under this Agreement.
17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to your employment and separation from employment with the City. No party has relied upon any statements, promises, or representations that are not stated in this document. No changes to this Agreement are valid unless they are in writing and signed by all parties. A copy of this Agreement will have the same legal effect as the original.
18. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

I acknowledge and agree to the information provided in this notice.

EMPLOYEE SIGNATURE: *Gerald Boyer* DATE: Sep 14, 2021  
Gerald Boyer (Sep 14, 2021 15:11 CDT)

SUPERVISOR SIGNATURE: *[Signature]* DATE: 9-15-21

HUMAN RESOURCES: *[Signature]* DATE: 9/15/21



## Receipt of Internal Investigation Materials Acknowledgement and Notice of Paid Administrative Leave

EMPLOYEE NAME: Gerald Boyer  
DEPARTMENT: Police  
DATE: August 19, 2021  
SUPERVISOR: Denis Otterness

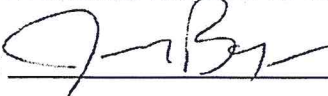
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Enclosed, please find all documents related to the internal investigation conducted May 2021 through August 2021. These documents are still part of an active investigation, and as a result are confidential and not public documents. These documents are not to be shared with anyone other than your representative, until after the internal investigation is complete. Based on the information provided during the investigation, the recommended disciplinary action is **termination of employment**.

Per West Fargo Police Department Standard Operating Procedure #9, Section XVII, Pre-Discipline Employee Response, these documents are being provided to you in order for you to provide any additional written information you may have in your possession relevant or responsive to the internal investigation. You are not obligated to provide any additional information, if you so choose. You have **ten (10) business days** to provide a written response to these documents. If you choose to respond, the response must be received by **5:00 pm CT on September 2, 2021**. Your written responses should be delivered to Denis Otterness, Chief of Police. If written responses are received, the City of West Fargo will evaluate/ investigate those responses and then contact you regarding the timeline for finalizing the internal investigation.

Effective immediately, you will be placed on **paid administrative leave** until the finalization of this internal investigation. The decision to place you on paid administrative leave has been made due to the seriousness of the allegations and the impact of the allegations on your ability to complete the essential management functions required of the Assistant Chief of Police position. You are not to have contact with any potential witnesses regarding this investigation until you are notified the investigation is complete. Further, you are not to retaliate against any employee who provided information/testimony relating to this internal investigation.

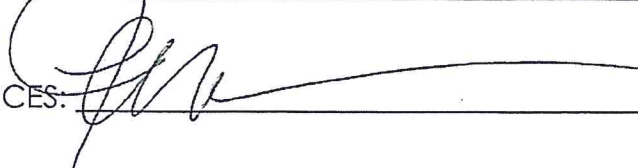
I acknowledge the contents within this form were discussed and on August 19, 2021, I was provided a copy of all materials related to the above-described internal investigation

EMPLOYEE SIGNATURE: 

DATE: 8/19/21

SUPERVISOR SIGNATURE: 

DATE: 8/19/21

HUMAN RESOURCES: 

DATE: 8/19/21





# West Fargo Police Department

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Denis E. Otterness  
Chief of Police

## Memorandum

Date: June 30, 2021

To: David Zibolski, Chief of Police, Fargo Police Department

From: Denis Otterness, Chief of Police

Subject: Internal Affairs Complaint 2021-001

In accordance with West Fargo Police Department (Department) Standard Operating Procedure (S.O.P.) 9 – Personnel Complaints (Exhibit 1), this memorandum is provided alleging that Assistant Chief (A/C) Gerald Boyer may have violated policies, procedures and/or requirements contained within Department General Order 36 – General Rules of Conduct (Exhibit 2) and the City of West Fargo's Employee Handbook (Exhibit 3).

This memo is intended to provide a factual basis for these alleged Department and City policy violations. In the interest of providing for an objective and impartial investigation, you have been requested to provide investigative assistance. This request was also made based on the fact that I am the complainant and a witness to the alleged misconduct.

On April 23<sup>rd</sup>, at 1:23 pm, A/C Boyer sent an email to all members of the Department titled, "Why Keep Coming"? (Exhibit 4) Based on the content of the email I met with A/C Boyer on April 29<sup>th</sup> to discuss several concerns I had in relation to the email that included insubordination, leadership principles, Department culture within our Command Staff, establishing and maintaining trust, and finally my expectations regarding A/C Boyer's communications moving forward. On May 3<sup>rd</sup> I memorialized my



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April 29<sup>th</sup> discussion with A/C Boyer, in an email, detailing again my concerns and reinforcing expectations moving forward (Exhibit 5).

During the afternoon of May 10<sup>th</sup> I was engaged in an unrelated conversation with Lt. Jason Dura. During this conversation I was advised that A/C Boyer had been complaining to other member(s) of the Department Command Staff about me and criticizing my recent concerns surrounding the previously mentioned Department email he had sent. More specifically, Lt. Dura advised me that he had been provided this information by Lt. Adam Gustafson.

Based on the above information I requested that I.T. allow me access to A/C Boyer's email account. During a review of A/C Boyer's email activity, I located an email dated April 23<sup>rd</sup> at 11:27 am. The email was addressed to A/C Boyer's wife Sara Cruze, at the Fargo Police Department, asking her to "proof" the previously mentioned email (Exhibit 6). A/C Boyer sent this email just prior to accompanying me to purchase lunch for our Administrative Staff for Administrative Professional Day and never mentioned the email, the rationale behind it, or his intention to send it out. Exhibit 4, previously mentioned above, contains an email string where I communicated some of my concerns to A/C Boyer immediately after he had sent the email. Ultimately, he admitted he should have talked to me about it beforehand.

A/C Boyer's insubordination and gossiping, coupled with his decision to criticize me to Department member(s) below his rank, significantly undermines my ability to lead this Department and is a grave concern. It is especially troubling given the fact I had just counseled A/C Boyer about my concerns on April 29<sup>th</sup> and May 3<sup>rd</sup> and set forth clear expectations from that point forward.

In addition, I am concerned that A/C Boyer chose to have his wife review this email rather than another member of our Command Staff, or me as the Police Chief. The judgement used to make this decision, especially considering the content of the message, is not consistent with the expected performance standards of someone tasked with the significant responsibilities of Assistant Chief of Police for this Department.





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It is more specifically alleged that A/C Boyer's conduct is a violation of:

## City of West Fargo Employee Handbook - Standards of Behavior

- **Section 3.03 (1)** *Unsatisfactory performance of job functions, attendance issues, or other behaviors that prevent an employee from accomplishing his or her work; and*
- **Section 3.03 (3)** *Unprofessional behavior such as raising voice, ridiculing, belittling, blaming, gossiping, making assumptions, or embarrassing employee; using inappropriate or profane language; engaging in hostile or intimidating interactions; and*
- **Section 3.03 (4)** *Insubordination, including refusal or failure to perform assigned work; and*

## General Order 36 – General Rules of Conduct

- **Law Enforcement Code of Ethics;** and
- **Section H(3)9b)** - *Insubordination, discourteous treatment of the public or a fellow employee, or any act of omission or commission of a similar nature which discredits or injures the public; and*
- **Section I - General Conduct (1)** - *Employees will display respect for their supervisors, subordinates, and associates; and*
- **Section O - Public Appearance and Exercise of Freedom of Speech (3)** - *Employees will not unjustly criticize, ridicule, express hatred or contempt toward, or otherwise defame the Department, its policies, or other employees when to do so might disrupt operations or adversely affect morale or create disharmony in the workplace.*
  - a. *The measure of disharmony is the inability of supervisors to maintain discipline.*

Please be advised Department S.O.P 9, Section VIII (J) Administrative Investigation Procedures, states, ***all employees shall provide complete and truthful responses to***



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Denis E. Otterness  
Chief of Police

***questions posed during interviews.*** A violation of this policy may result in an additional complaint which, if sustained, may result in disciplinary action up to and including termination of employment.

In addition, all parties involved in this investigation are to be cautioned not to discuss this investigation, and any matters relevant to this investigation, with anyone directly or indirectly connected to this investigation. This does not preclude them from discussing this matter with an attorney. This order remains in place until the completion of this investigation or until such time as it is rescinded by the Chief of Police.

Failure to comply with this directive will result in an additional and separate charge of insubordination and disciplinary action up to and including termination from the West Fargo Police Department.



<b>WEST FARGO POLICE DEPARTMENT</b>		
<b>Section: Standard Operating Procedure (SOP)</b>		<b>9</b>
<b>Title: Personnel Complaints</b>		
	<b>Approved:</b>	December 5 2018
	<b>Effective Date:</b>	<b>December 5, 2018</b>
	<b>Supersedes:</b>	July 2018
	<b>Review:</b>	December 2018

## I. **PURPOSE AND SCOPE**

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the West Fargo Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

## II. **POLICY**

The West Fargo Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and employment agreements. It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

## III. **PERSONNEL COMPLAINTS**

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

## IV. **COMPLAINT CLASSIFICATIONS**

Personnel complaints shall be classified in one of the following categories:

- A. Informal** - A matter in which the Shift Supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.
- B. Formal** - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Internal Affairs Unit, depending on the seriousness and complexity of the investigation.
- C. Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Internal Affairs Unit, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

The following applies to the source of complaints:

1. Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
2. Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
3. Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
4. Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
5. The Department may be the recipient of tort claims and lawsuits.

**V. DOCUMENTATION**

Supervisors shall ensure that all formal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All formal complaints should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police or the authorized designee.

**VI. ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows.

**VII. SUPERVISOR RESPONSIBILITIES**

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the



alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

The responsibilities of supervisors include, but are not limited to:

1. Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
  - a. The original complaint form will be directed to the Shift Supervisor of the accused member and take appropriate action and/or determine who will have responsibility for the investigation.
  - b. Resolving those personnel complaints that can be resolved immediately.
2. Follow-up contact with the complainant should be made as soon as possible.
  - a. Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Division Supervisor, Assistant Chief and Chief of Police shall be notified.
  - b. Promptly contacting the Department of Human Resources and the Division Supervisor for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
  - c. Forwarding unresolved personnel complaints to the Division Supervisor, who will determine whether to contact the complainant or assign the complaint for investigation.
  - d. Ensuring that the procedural rights of the accused member are followed.

#### **VIII. ADMINISTRATIVE INVESTIGATION PROCEDURES**

Whether conducted by a supervisor or a member of the Internal Affairs Unit, the following applies to employees:

- a. Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- b. Unless waived by the employee, interviews of an accused employee shall be at the West Fargo Police Department or other reasonable and appropriate place.
- c. No more than two interviewers should ask questions of an accused employee.
- d. Prior to any interview, an employee should be informed of the nature of the investigation.
- e. All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- f. No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.

- g. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Garrity* advisement and after the investigator has consulted with the prosecuting agency.
- h. The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview should be provided to the employee prior to any subsequent interview.
- i. All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- j. All employees shall provide complete and truthful responses to questions posed during interviews.
- k. No employee may be compelled to submit to a deception detection device examination, nor shall any refusal to submit to such examination be mentioned in any investigation.

**IX. ADMINISTRATIVE INVESTIGATION FORMAT**

Investigations of personnel complaints shall be detailed, complete and essentially follow this format:

- A. **Introduction** - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.
- B. **Synopsis** - Provide a brief summary of the facts giving rise to the investigation.
- C. **Summary** - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.
- D. **Evidence** - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.
- E. **Conclusion** - A recommendation regarding further action or disposition should be provided.
- F. **Exhibits** - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

**X. DISPOSITIONS**

Each personnel complaint shall be classified with one of the following dispositions:

- A. **Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.
- B. **Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.



- C. Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.
- D. Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

#### **XI. ADMINISTRATIVE SEARCHES**

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

#### **XII. ADMINISTRATIVE LEAVE**

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

1. May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
2. Shall be required to continue to comply with all policies and lawful orders of a supervisor.
3. May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

#### **XIII. CRIMINAL INVESTIGATION**

If there is a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation.

Any separate administrative investigation may parallel a criminal investigation. The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

The West Fargo Police Department may release information concerning the arrest or detention of any member, including an officer that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

**XIV. POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review and include their comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

**XV. DIVISION SUPERVISOR RESPONSIBILITIES**

Upon receipt of any completed personnel investigation, the Division Supervisor of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Division Supervisor may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Division Supervisor may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Division Supervisor shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

**XVI. CHIEF OF POLICE RESPONSIBILITIES**

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Section Supervisor for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice and the following:



1. Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
2. An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
  - a. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
  - b. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

#### **XVII. PRE-DISCIPLINE EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee

1. The response is not intended to be an adversarial or formal hearing.
2. Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
3. The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
4. In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
5. The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

#### **XVIII. POST-DISCIPLINE APPEAL RIGHTS**

Employees have the right to appeal a suspension without pay, punitive transfer, and demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any employment agreement and/or personnel rules.

**XIX. RETENTION OF PERSONNEL INVESTIGATION FILES**

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Files Policy.

**XX. TERMINATION REPORTING**

When an officer is terminated, notice of the nature and cause of the termination, the effective date of the termination, and a statement indicating whether or not the Department recommends denial, suspension or revocation of the officer's peace officer license, shall be forwarded to the North Dakota Peace Officer Standards and Training Board within 30 days of the termination (N.D.A.C. § 109-02-02-18).



**ADMINISTRATIVE PROCEEDINGS RIGHTS  
NOTIFICATION OF ALLEGATIONS**

NAME: \_\_\_\_\_ (name and rank)  
DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

If an investigation by the Department focuses on matters which could lead to disciplinary action taken against an employee, the following conditions shall be complied with:

1. Any questioning of the employee shall take place at a reasonable time and place as designated by the investigating officer, preferably when the employee under investigation is on duty and at the Police Department of the employee being investigated, unless circumstances dictate otherwise.
2. Before questioning, the employee shall be informed of:
  - a. The name and rank of the investigating officer and of any individual to be present during the questioning and;
  - b. The nature of the investigation.

Department policy provides that:

1. You are entitled to read the complaint lodged by the complainant.
2. Refusal to answer all questions pertaining to the allegations made by the complainant, either orally or in writing, shall be grounds for disciplinary action.
3. The answers given during the investigation of an administrative matter will not be used against you in any criminal proceedings.
4. The answers given do not constitute a waiver of your privilege against self-incrimination as related to criminal matters.
5. During an administrative investigation, no attorney will be permitted to be present.

Accordingly, you are hereby advised that the following allegations have been made:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMPLAINANT(S): 1. \_\_\_\_\_ 2. \_\_\_\_\_

The undersigned hereby acknowledges receipt of the written charges or allegations made against them and of their rights in any administrative proceeding.

\_\_\_\_\_  
Signature Date

WITNESSES:



# West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-433-5500 | westfargopolice.com

Heith R. Janke  
Chief of Police

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## West Fargo Police Department

### Garrity Notice

On behalf of the West Fargo Police Department I am advising you that you are being questioned as part of an official administrative investigation.

You are required to answer my questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/ or termination.

During the course of questioning, any statement, answer or information that you disclose which indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions.

My signature acknowledges my awareness and understanding of the aforementioned

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time

\_\_\_\_\_  
Witness/ Interviewer's Signature





# West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-515-5500 | westfargopolice.com

Denis E. Otterness  
Chief of Police

## Memorandum

Date: July 23<sup>rd</sup>, 2021

To: Gerald Boyer, Assistant Chief of Police

From: Denis Otterness, Chief of Police

Subject: Internal Affairs Complaint 2021-001

In accordance with West Fargo Police Department (Department) Standard Operating Procedure (S.O.P.) 9 – Personnel Complaints, this memorandum is provided alleging that you may have violated policies, procedures and/or requirements contained within Department General Order 36 – General Rules of Conduct and the City of West Fargo's Employee Handbook.

This complaint is based, in-part, on the April 23<sup>rd</sup>, 2021 email sent to all members of the Department titled, "Why Keep Coming" and the follow-up communications that we had on both April 29<sup>th</sup> and May 3<sup>rd</sup>.

It is more specifically alleged that your conduct is a violation of:

### **City of West Fargo Employee Handbook - Standards of Behavior**

- **Section 3.03 (3)** *Unprofessional behavior such as raising voice, ridiculing, belittling, blaming, gossiping, making assumptions, or embarrassing employee; using inappropriate or profane language; engaging in hostile or intimidating interactions; and*
- **Section 3.03 (4)** *Insubordination, including refusal or failure to perform assigned work; and*
- **General Order 36 – General Rules of Conduct**





# West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-515-5500 | westfargopolice.com

Denis E. Otterness  
Chief of Police

- **Law Enforcement Code of Ethics;** and
- **Section H(3)(b) - Insubordination, discourteous treatment of the public or a fellow employee, or any act of omission or commission of a similar nature which discredits or injures the public;** and
- **Section I - General Conduct (1) - Employees will display respect for their supervisors, subordinates, and associates;** and
- **Section O - Public Appearance and Exercise of Freedom of Speech (3) - Employees will not unjustly criticize, ridicule, express hatred or contempt toward, or otherwise defame the Department, its policies, or other employees when to do so might disrupt operations or adversely affect morale or create disharmony in the workplace.**

*a. The measure of disharmony is the inability of supervisors to maintain discipline.*

You are to report to Fargo City Hall on Thursday, July 29<sup>th</sup>, 2021, at 10:30 am, in the Meadowlark Room, for a formal interview related to this complaint.

Please be advised Department S.O.P 9, Section VIII (J) Administrative Investigation Procedures, states, ***all employees shall provide complete and truthful responses to questions posed during interviews.*** A violation of this policy may result in an additional complaint which, if sustained, may result in disciplinary action up to and including termination of employment.

In addition, you are not to discuss this investigation, or any matters relevant to this investigation, with anyone directly or indirectly connected to this investigation. This does not preclude you from discussing this matter with an attorney. This order remains in place until the completion of this investigation or until such time as it is rescinded by the Chief of Police. Failure to comply with this directive will result in an additional and separate charge of insubordination and disciplinary action up to and including termination from the West Fargo Police Department.

On Apr 23, 2021, at 1:53 PM, Gerald K. Boyer <[Gerald.Boyer@westfargond.gov](mailto:Gerald.Boyer@westfargond.gov)> wrote:

Good Afternoon

Since we have not been able to have a real department meeting in over a year, I am forced to send this out in an email, this is not my preferred way of communicating this message.

I know that many of you are struggling with many things that are happening in the world right now. I'd be lying if I said that I wasn't also bothered, quite frankly it pisses me off. I know that each and every one of you is a good person, and came into this profession for the right reasons. Seeing officers second guessed over and over by "experts", and wondering where your next attack is coming from, the media, politicians, or the streets it is an unfair burden on you and your families. You are all policing in new territory and hard times, our profession has been through this before, it will get better. Many of you have probably asked yourself why should I keep trying? Again with everything that has happened in the past year, I think those are valid questions to ask yourself. I have also asked myself that on several occasions.

I think that the answer will be a little different for each of us, but that underlying cause that is what brought us all here together remains the same. We do what we do, because we are called to be a part of something that is bigger than ourselves. For the all the sworn staff, you most likely joined to help people, to help that victim of a crime, to make that child safer, to make a difference in this part of the world we call home. For our support staff here, they keep the wheels moving forward, completing the needed tasks to keep us all paid, paperwork corrected, and support the community that call or come in here for services. For those of us in supervisory roles our job is to support you, and provide you with all the tools we can to go home safe to your families, and to be here to listen to your concerns.

We are lucky here at our department, we have a community that overwhelming supports us, the City Administrator supports us, the Commission supports us, and your admin staff supports you. Most places have one or two of those things, some none at all. Please remind yourself that the things you see on the news or social media are not about you personally, or even close to the majority of the people out there. Every single shift you make a difference to many people, you are valued as people and the work that you do. I appreciate you more than you will ever know, and that is why I keep coming back. My door is open to anyone that wants to talk, or call or text me anytime. I don't have all the answers, but I will listen, and I understand.

Jerry

Assistant Chief Jerry Boyer  
West Fargo Police Department  
800 4th Ave E



Exhibit 2

**Denis E. Otterness**

---

**From:** Denis E. Otterness  
**Sent:** Monday, May 3, 2021 9:00 PM  
**To:** Gerald K. Boyer  
**Subject:** Follow-Up to Last Thursday's Conversation

A/C,

I'm providing a quick follow-up email in reference to our conversation last Thursday (29<sup>th</sup>). As you will recall this is in regards to the Department-wide email you sent on April 23<sup>rd</sup> at 2:09 p.m. titled "Why Keep Coming?". I am appreciative that you were willing to discuss this matter last week and consider my concerns. As I stated during our meeting I had several thoughts about your email to the Department beginning with a reference to our lack of having a "real department meeting in over a year". I am troubled that this may have suggested to the entire Department that the three Department meetings I held on December 22<sup>nd</sup>, where I laid out several of my Department visions, Department goals and 2021 Department projects, were somehow insignificant. This type of email, taken out of context, can significantly undermine my ability to lead this Department moving forward and could be construed as insubordinate.

In addition, your statement about being "bothered, quite frankly it pisses me off" in regards to your struggles surrounding current world events, could seriously impact your ability to lead this Department. As we discussed, it is imperative that as a senior leader on this Department that you remain professional and positive and be revered as a role model that others can look to as an example. If our civilian staff and those within our sworn ranks ever believe that we as Department leaders are in despair, or have somehow lost hope, it can have a detrimental impact on morale within the Department.

While there are a number of good points you brought up in regards to the overwhelming amount of support we all enjoy while working for the City of West Fargo, your email seems to suggest that you are the only one on the Command Staff team that can be approached if staff find themselves in need of someone to talk to. As I stated during our meeting, I'm not sure of your motivation behind this portion of your email, but this is not the unified Command Staff team approach or message I am trying to cultivate in terms of the culture of our organization. You have effectively suggested to the entire Department that none of the rest of the Command Staff are capable of hearing from our staff that may be having similar concerns about current world events. It is important to me as the Chief of Police that all of our Command Staff are seen as a trusted resource and an option for all members of the Department to air concerns.

In the future, I would like you to be more cognizant of the impacts Department communications such as these can have on our organization. It is a leadership quality that I expect for the second in command of this Department. As always I am open to providing feedback prior to any messages going out in the future. Trust at our level, for the entire Command Staff, is imperative for the overall health and efficient operation of our organization.

In closing, again, I appreciate your willingness to discuss this matter with me last week. If you would like to discuss this issue, or any other concerns you may have questions about, my door is always open. I look forward to continuing to partner with you and the entire Command Staff team to positively impact our entire organization, along with the citizens of West Fargo.

Denis

Denis Otterness  
Chief of Police  
West Fargo Police Department  
800 4<sup>th</sup> Avenue East  
West Fargo, N.D. 58078

Exhibit 3

**Denis E. Otterness**

---

**From:** James D. Anderson  
**Sent:** Tuesday, June 15, 2021 11:04 AM  
**To:** Denis E. Otterness  
**Subject:** RE: Information Request

Hi Denis,

I will take a copy of the data from a backup from tonight and hand over the information tomorrow morning if that works for you? That way I can get access to today information.

Thanks,

**James Anderson**

Information Technology Director, City of West Fargo  
(701) 515-5900  
Visit our website at:  
[westfargond.gov](http://westfargond.gov)

---

**From:** Denis E. Otterness  
**Sent:** Tuesday, June 15, 2021 11:01 AM  
**To:** James D. Anderson <James.Anderson@westfargond.gov>  
**Subject:** Information Request

Good morning James,

Based on an active internal investigation I am requesting access to Assistant Chief Jerry Boyer's emails from April 29<sup>th</sup> through today's date. I am specifically looking for sent and received emails. Please let me know if you have any questions. Thanks!

Denis



**Denis Otterness**

Chief, West Fargo Police Department

800 Fourth Ave. E., Suite #2  
West Fargo, ND 58078  
(701) 515-5500  
Visit our website at:  
[westfargopolice.com](http://westfargopolice.com)



### **III. Employee Development, Performance, and Discipline**

#### **3.01 Job Performance**

Communication between employees and supervisors is very important. Discussions regarding job performance must be frequent and ongoing. These discussions can be informal. Employees should initiate conversations with their supervisors if they feel additional ongoing feedback is needed.

#### **3.02 Attendance/Punctuality**

All employees are expected to arrive on time and ready to work, every day they are scheduled to work.

If an employee is unable to arrive at work on time, or if an employee will be absent, the employee must contact the supervisor as soon as possible. Excessive absenteeism or tardiness may result in disciplinary action, up to and including termination of employment. Failure to show up or call in for a scheduled shift without prior approval may result in disciplinary action, up to and including termination. If an employee fails to report to work or call in to inform the supervisor of the absence for three or more consecutive days, the employee will be considered to have voluntarily resigned employment.

#### **3.03 Standards of Behavior**

The City of West Fargo is committed to creating a respectful and ethical workplace for all of its employees. A respectful and ethical workplace is viewed as one that promotes honesty and a healthy and positive work environment in which employees treat one another with professionalism and respect.

Behaviors and actions that do not foster a respectful and ethical workplace and may lead to disciplinary action or termination of employment include but are not limited to:

1. Unsatisfactory performance of job functions, attendance issues, or other behaviors that prevent an employee from accomplishing his or her work.
2. Disorderly conduct including fighting, attempting bodily injury, or using abusive or threatening language toward another employee or in a work-related setting.
3. Unprofessional behavior such as
  - Raising voice
  - Ridiculing, belittling, blaming, gossiping, making assumptions, or embarrassing employees
  - Using inappropriate or profane language
  - Engaging in hostile or intimidating interactions
4. Insubordination, including refusal or failure to perform assigned work.
5. Any violation of the Drug Free Workplace Policy.
6. Possession of any firearm or dangerous weapon, as defined in NDCC 62.1-01-01, in any City offices and/or buildings, unless required for employment. For the purpose of this policy, dangerous weapon does not include pepper spray or other irritating agent intended for personal defense. Employees who legally possess a firearm may have said firearm in their possession, provided it is locked inside or locked to a private motor vehicle in the parking lot and the employee is lawfully in the area.
7. Dishonesty, including the falsification of records or reports and other fraudulent activities.
8. Employees arrested or found guilty for a criminal violation.
9. Negligent or intentional damage to City property or unauthorized removal or use of property belonging to City or another employee.

10. Breach of confidentiality or release of confidential information in violation of the Confidentiality policy or other policies or contracts.
11. Improper influence or attempt to influence other officials to act on the employee's benefit.
12. Accept with the perception of favor or influence, gifts of any value, excluding food or beverages that may be immediately consumed, from a person, business, or other entity. The employee must immediately decline the offer. An employee who receives or is gifted anything valued in excess of \$50.00, that would not be perceived as favor or influence, shall immediately notify his/her department head. The future use of the gift will be determined by the department head in conjunction with the City Administrator. Any items won by a game of chance do not need to be forfeited, regardless of the dollar amount. If there is any doubt in the appropriateness of a particular item or offer, the employee should consult his/her department head and/or the City Administrator.
13. Any unethical or improper act or behavior that has an adverse impact on the City or its employees.
14. Failure to make good faith reports of illegal activities or violations of City policies.

Open communication of issues and concerns, without fear of retaliation, is vital to a healthy work environment. People who report concerns of wrongdoing will be protected from retaliation for making a good faith report. Those people will not be disciplined for making a report in good faith or asking a question.

Disciplinary action for any of the above listed behaviors will follow the Disciplinary Policy.

### **3.04 Confidentiality**

The protection of confidential information is vital to the interests and success of the City of West Fargo. Confidential information is any and all information disclosed to or known by an employee because of employment with the City of West Fargo that is not generally known to others.

An employee who improperly uses or discloses confidential information will be subject to disciplinary action, up to and including termination of employment and legal action, even if the employee does not actually benefit from the disclosed information.

All requests for public information must be referred to the department head or Human Resources departments. All requests for public information from a representative of the media must be referred to the Communications Director.

This provision is not intended to, and should not be interpreted to, prohibit employees from discussing wages and other terms and conditions of employment if they so choose.

### **3.05 Harassment and Offensive Behavior**

Sexual and other unlawful harassment is a violation of the Title VII of the Civil Rights Act of 1964 (Title VII), as amended, as well as many state laws. Harassment based on a characteristic protected by law, such as race, color, ancestry, national origin, gender, sexual orientation, marital status, religion, age, disability, gender identity, results of genetic testing, service in the military, or other characteristic protected by state or federal law, is prohibited.



It is the City of West Fargo's policy to provide a work environment free of sexual and other harassment. Harassment of City of West Fargo employees by leadership, supervisors, co-workers, or nonemployees who are in the workplace is absolutely prohibited. Further, any retaliation against an individual who has complained about sexual or other harassment or retaliation against individuals for cooperating with an investigation of a harassment complaint is similarly unlawful and will not be tolerated. The City of West Fargo will take all steps necessary to prevent and eliminate unlawful harassment.

**Definition of Unlawful Harassment:** "Unlawful harassment" is conduct that has the purpose or effect of creating an intimidating, hostile or offensive work environment; has the purpose or effect of substantially and unreasonably interfering with an individual's work performance, or otherwise adversely affects an individual's employment opportunities because of the individual's membership in a protected class.

Unlawful harassment includes, but is not limited to epithets, slurs, jokes, pranks, innuendo, comments, written or graphic material, stereotyping or other threatening, hostile, or intimidating acts based on race, color, ancestry, national origin, gender, sex, sexual orientation, marital status, religion, age, disability, veteran status, or other characteristic protected by state or federal law.

**Definition of Sexual Harassment:** While all forms of harassment are prohibited, special attention should be paid to sexual harassment. "Sexual harassment" is generally defined under both state and federal law as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where:

- Submission or rejection of such conduct is made either explicitly or implicitly a term or condition of any individual's employment or a basis for employment decision; *or*
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Other sexually orientated conduct, whether intended or not, that is unwelcome and has the effect of creating a work environment that is hostile, offensive, intimidating, or humiliating to workers may also constitute sexual harassment.

While it is not possible to list all circumstances that may constitute sexual harassment, the following are some examples of conduct. If unwelcome, these circumstances may constitute sexual harassment depending on the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwanted sexual advances, whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life, comments about an individual's body, comments about an individual's sexual activity, deficiencies or prowess;
- Displaying sexually suggestive objects, pictures or cartoons;
- Unwelcome leering, whistling, brushing up against the body, sexual gestures, or suggestive or insulting comments;
- Inquiries into one's sexual experiences; *and*
- Discussion of one's sexual activities.

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment and retaliation against individuals for cooperating with an investigation of sexual harassment complaint is unlawful and will not be tolerated at the City of West Fargo.

**Complaint Procedure:** Any employee who believes he or she has been subject to or witnessed illegal discrimination, including sexual or other forms of unlawful harassment, is requested and encouraged to make a complaint. Employees may complain directly to their immediate supervisor or department head, the Human Resources Director, or any other member of leadership with whom that employee feels comfortable bringing such a complaint. Similarly, if employees observe acts of discrimination toward or harassment of another employee, they are requested and encouraged to report this to one of the individuals listed above.

No reprisal, retaliation, or other adverse action will be taken against an employee for making a complaint or report of discrimination or harassment or for assisting in the investigation of any such complaint or report. Any suspected retaliation or intimidation should be reported immediately to one of the persons identified above.

All complaints will be investigated promptly and, to the extent possible, with regard for confidentiality.

If the investigation confirms conduct contrary to this policy has occurred, the City of West Fargo will take immediate, appropriate, corrective action, including discipline, up to and including termination of employment.

### **3.06 Discipline**

Disciplinary action may be taken by leadership in cases of violations of the policies set forth in this Employee Handbook, or for any instance of conduct deemed inappropriate by the City.

The City of West Fargo reserves the right to determine, in its sole discretion, whether and to what extent disciplinary action will be imposed. Determination as to specific disciplinary action will be made on a case-by-case basis depending on the circumstances of a particular situation.

Disciplinary action may take any or all of the following forms, even on a first infraction:

- Counseling/Coaching
- Verbal Warning
- Written Warning
- Final Warning
- Suspension with or without pay
- Demotion
- Termination of employment

Any listed method of discipline, except for counseling/coaching, shall be recorded in writing and kept in the employee's personnel file. The employee shall receive a copy of such disciplinary notices.



Elected and appointed board officials are not subject to disciplinary action except through election and/or appointment processes.

### **3.07 Privacy**

The City of West Fargo reserves the right to conduct searches when there is suspicion or belief that work related wrongdoing has occurred. Search may include all areas of West Fargo City property reasonably suspected to be related to or involved in the wrongdoing. If a supervisor, foreman or department head suspects that an employee's personal phone or laptop is being used to further the wrongdoing, he/she will consult with the City Attorney.

WEST FARGO POLICE DEPARTMENT		
Section: General Order (GO)		36
Title: General Rules of Conduct		
	Approved:	January, 2020
	Effective Date:	January, 2020
	Supersedes:	September 2018
	Review:	January, 2020

## I. POLICY

The West Fargo Police Department has the responsibility to protect life and safeguard property. The Department expects all personnel to maintain high standards of appearance and conduct. Law enforcement officers wield considerable power over citizens; power that has been established and is carefully controlled by State and Federal law, the Constitution, and the Bill of Rights. Our powers to arrest, seize property, and interfere at times with the lives of citizens constitute a public trust. We can help ensure this trust through exemplary performance tied to the Department's commitment to the community oriented policing values reflected in our mission.

## II. PURPOSE

To define departmental expectations for on and off-duty personal behavior.

## III. DEFINITIONS

- A. **Moral Turpitude** - An intentional act or behavior displayed in words or actions which violates public morals or the common sense of the community. These acts or behaviors may involve but not be limited to intent to defraud, intentional dishonesty for personal gain, lying, perjury, cheating, bribery, unlawful possession of controlled substances, sexual harassment, unlawful sexual conduct, or excessive use of force.
- B. **Good Moral Character** - The attributes of an employee that enhance their value to the Department and to public service which include honesty, integrity, truthfulness, obedience to the oath of office and the code of ethics, respect for authority, and respect for the rights of others.

## IV. CODE OF ETHICS

- A. All officers will display the integrity required by the Law Enforcement Code of Ethics:



AS A LAW ENFORCEMENT OFFICER, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my Department. I will 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 in deeds in both my personal and official life. I will be exemplary in obeying the law and the regulations of my Department. Whatever I see or hear of a confidential nature or 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, political beliefs, aspirations, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice, or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office 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 police service. I will never engage in acts of corruption or bribery, nor will I condone such acts conducted by other law enforcement officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession - law enforcement.

## **V. GENERAL DUTIES**

- A. All officers will, within jurisdictional limits, prevent crime, preserve the peace, protect life and property, detect and arrest violators of the law, and enforce the laws of the United States, the State of North Dakota, and the City of West Fargo. Officers must know when they act under color of law; they are enforcing the law according to statutes, written administrative guidance from within the Department, ordinance, common usage, and custom. Further, officers will exhibit good moral character in the administration of their duties according to departmental orders.
  - 1. The West Fargo Police Department maintains the right to establish oral and written orders to govern and control efficiency, effectiveness, and provide safe law enforcement operations.

2. Management reserves the prerogative to discipline personnel for violations of rules and policy.
3. The decision to discipline and the measures of discipline employed depends on, but is not limited to, the consequences of the employee's actions, the employee's current and past performance, and the employee's length of service.
4. All written or oral orders given by the Department are performance measures which address an employee's performance, that is, conduct, behavior, and work proficiency.

**B. ADMINISTRATIVE**

Officers are expected to:

1. Be on time and ready for duty.
2. Have the necessary paperwork needed before beginning patrol shift.
3. Make careful inspection of your squad before and after your shift. Report all damages new and old to the Administrative Lieutenant immediately.
4. Turn in **all paperwork** before going off duty. Shift supervisor may approve a report to be turned in the next day.
5. Make sure Overtime and Comp. time earned are entered daily when possible on the schedule program.

**C. INSPECTION**

The Sergeant, will be responsible for inspection of the Patrol Officers.

**The Sergeant may** conduct daily inspections for the following:

1. Grooming Standards
2. Serviceable Uniform Pants and Shirt and shined boots
3. Proper placement of insignias and pins
4. Clean Weapon
5. proper Equipment

Any other standards deemed necessary by the Sergeant. If infractions are found, they will be enforced according to the Matrix.

As your immediate supervisor you can expect:



1. Sound professional leadership/mentorship.
2. The latest methods in policing.
3. A listening ear to all grievances. (A written response if necessary)
4. That your concerns be delivered to the proper personnel.
5. Constant challenge to your work performance.
6. That all effort will be giving to ensure that additional training be afforded to personnel. ( i.e., basic investigation, FTO School etc.)
7. Consistent praise and written communication for good performance.
8. Counseling for minor violations and human errors.
9. Swift punishment for major violations.
10. **Seniority** will be the determining factor on shift assignments each year.

#### D. QUALITY OF SERVICE

Thorough Preliminary Investigation includes:

1. Proceeding to the scene swiftly when you receive the dispatched call.
2. Clear, concise, legible reports. Make sure to check for typos, proper codes, and completed.
3. Reports should contain, at the very minimum, the elements of the crime.
4. Thorough interviews with victims and suspects.
5. Giving a clear picture of events in chronological order.
6. Being cognizant of your crime scene, which includes securing the scene When necessary and notifying your supervisor or investigations.
7. A working knowledge of all appropriate laws and policy and procedures.

#### E. PATROL FUNCTION

Criminal Apprehension, Field Interviews and Traffic Enforcement are a vital portion of our assignment. Each officer, as a part of your performance, is expected to tally, obtainable figures monthly in:

1. Traffic Summons.
2. Field Interviews and/or Investigations.
3. Criminal Arrest.

Each officer should take as a personal challenge, the prevention of burglaries in their beat. However, should a burglary happen, our goal is to not only find the burglary, but catch the burglar.

Each officer is expected to operate their police vehicle with due regard for safety.

Each officer should know their beat including streets, trouble spots etc.

## **F. RADIO PROCEDURES**

Officers are expected to:

1. Give immediate response when called by the dispatcher.
2. Make radio transmission short and to the point.
3. Be professional on all police channels, use standard radio protocol.
4. Refrain from switching to another channel, unless it is an emergency.
5. Avoid responding to the scene when told that no additional units are necessary.
6. Speak loud and clearly during radio transmissions.
7. Back other units within your beat if you are in the clear.
8. Refrain from any arguments with the dispatcher. All discrepancies should be brought to the Sergeant or in his absence the Senior Officer.
9. Do not make any inappropriate or unnecessary comments over the radio.

## **G. COURTROOM TESTIMONY**

1. When you testify in court, remember you are representing the West Fargo Police Department. Officers should remember to:
  - a. Maintain a professional attitude always.
  - b. Be prepared with the necessary files and paperwork.
  - c. Be prepared and familiar with your case.
  - d. Look professional when appearing and testifying in court.
2. Obedience to laws and orders
  - a. Authority
    - 1) Employees will obey all Federal and State laws, and ordinances of the City of West Fargo or other municipality in which the employee may be present.
    - 2) Employees will obey all lawful orders, written or oral, issued to them by competent authority.
  - b. The term "employees" includes both sworn and non-sworn civilian personnel.
3. Violation of law
  - a. Supervisors will not knowingly or willfully issue any order in violation of any law or ordinance or order of the West Fargo Police Department.
4. Conflict of orders



- a. If an employee receives two apparently lawful but different orders that may conflict, the last order given will be followed unless the order is retracted or modified.
- b. If an employee receives conflicting orders, the employee will inform the person giving the last order of the conflict.
- c. The person giving the conflicting order will then resolve the conflict by retracting, modifying, or requesting the employee to comply with the latest order.
- d. If the conflicting order is not altered or retracted, the employee may be held responsible for disobedience of the order or directive previously issued.

5. Obedience to orders

- a. Employees will promptly obey any lawful order of a supervisor, including any order relayed on behalf of a supervisor by an employee of the same or lesser rank.
- b. Employees are NOT required to obey any order which is contrary to the laws of the United States, State of North Dakota, or ordinances of the City of West Fargo.
- c. The employee may be required to explain and justify the reason why they choose to refuse a particular order.

6. Civil Rights

- a. All members will observe and respect the civil rights of citizens as the term "civil right" is commonly understood.
- b. Respect for constitutionally protected rights is paramount.

7. False statements

- a. On any official matter whatsoever, members will not knowingly lie, give misleading information, or falsify oral or written communications in any official report or in their actions when it is reasonable to expect the information may be relied upon because of the employee's affiliation with the Department.

8. Enforcement actions while off duty

- a. If an officer, while off duty, witnesses a violation of the law committed in their presence which, in the officer's professional judgment, demands immediate attention, the officer may make an arrest.
- b. The officer should only make the arrest when it can be done without jeopardizing their own safety, the safety of the violator, or the safety of the public.
- c. The officer will display their police identification to the violator and

- announce their purpose.
- d. The officer may not use their personal vehicle to chase or pursue the violator.

#### H. DISCIPLINARY/PERSONNEL ACTIONS

1. Disciplinary actions may include a warning; counseling and coaching; an oral or written reprimand; suspension with or without pay; reduction in pay; demotion; or termination.
2. Personnel actions may include probation, counseling, training, close supervision, performance evaluation, and termination.
3. As appropriate, disciplinary action may be taken for any of the following reasons:
  - a. Incompetent or inefficient performance or dereliction of duty;
  - b. Insubordination, discourteous treatment of the public or a fellow employee, or any act of omission or commission of a similar nature which discredits or injures the public. (Insubordination consists of direct, tacit, or constructive refusal to do assigned work.)
  - c. Mental or physical unfitness for the position which the employee holds.
  - d. Conviction of a felony or misdemeanor involving conduct amounting to moral turpitude or which shocks the conscience of a reasonable person, or a pattern of misconduct as displayed by a series of misdemeanor convictions.
  - e. Failure to report to an appropriate superior authority incompetence, misconduct, inefficiency, neglect of duty, moral turpitude, or any other form of misconduct or negligence of which the employee has knowledge.
  - f. Failure of a supervisory employee to take corrective action regarding employees under their supervision who may be guilty of any form of neglect of duty or misconduct when the supervisor knows or should have known of the dereliction.
4. Examples of behavior specifically prohibited include:
  - a. Use of alcoholic beverages on duty, or drunkenness on duty.
  - b. Use of illegal drugs or narcotics.
  - c. Buying alcoholic beverages while on-duty.
  - d. Failure to follow a direct order-insubordination.
  - e. Releasing any information to a suspect or convicted person that would enable an escape from custody or hamper an investigation.
  - f. Being a member of any group that threatens to overthrow the government
  - g. Recommending legal counsel or bondsmen to any person.
  - h. Publicly criticizing supervisors, the Mayor, or any other city official.
  - i. Directing harsh, profane, or obscene language toward any member of the Department or to the public.
  - j. Sleeping on duty.
  - k. Sexual conduct on duty.



5. Nothing in these rules and regulations limits the charges against employees because the alleged act or omission does not specifically appear in this manual, the orders of the Department, or in the laws or ordinances of which the Department is responsible for enforcing.
6. See Standard Operating Procedures 9 and 9A for procedures relating to employee discipline.

X

## **I. GENERAL CONDUCT**

1. Employees will display respect for their supervisors, subordinates, and associates.
2. The Department expects all employees to display good moral character while on or off-duty and to apply their judgment accordingly.
3. When on-duty and in the presence of the public, supervisors will be addressed or referred to by rank.
4. Employees will address their subordinates, associates, supervisors, or members of the general public courteously and will not use abusive, violent, insulting, or provoking language.
5. Employees will at all times be civil and courteous. They will maintain an even disposition and remain calm, regardless of provocation, in executing their duties.
6. Employees will not slander or speak detrimentally about the Department or another employee.
7. Employees will always display honesty.
8. Employees will cooperate and coordinate their efforts with other employees and law enforcement agencies to ensure maximum effectiveness.
9. Employees will restrict personal conversation or association to the appropriate minimal level while on duty.
10. An officer will not display cowardice in the line of duty or in any situation where the public or another officer might be subjected to physical danger.
11. Unless actually incapacitated themselves, officers will aid, assist, and protect fellow officers in time of danger or under conditions where danger might be impending.
12. Employees will not at any time use or attempt to use their official position, badge, or credentials for personal or financial gain or advantage.
13. Employees will adhere to Department and City policies.

**J. GIFTS, BRIBES, GRATUITIES, REWARDS**

1. Employees will not accept any gift, gratuity, or other thing of value, the acceptance of which might directly or indirectly influence any manner of official business, or which might adversely reflect on the Department or any employee.
2. Employees may not accept any gifts of any value, excluding food or beverages that may be immediately consumed, from a person, business, or other entity. The employee must immediately decline the offer. An employee who receives or is gifted anything valued in excess of \$50.00, that would not be perceived as favor or influence, shall immediately notify his/her department head. The future use of the gift will be determined by the department head in conjunction with the City Administrator. Any items won by a game of chance do not need to be forfeited, regardless of the dollar amount. If there is any doubt in the appropriateness of a particular item or offer, the employee should consult his/her department head and/or the City Administrator.
3. Persons wishing to direct a gift, gratuity, reward, or thing of value to the Department will be instructed to contact the Chief of Police.
4. Employees found to have accepted bribes will be dismissed with prejudice.

**K. SUGGESTIONS OR GRIEVANCES**

1. Employees wishing to make suggestions for the improvement of the Department; or who feel injured or offended by the treatment, orders, or neglect of duty of a supervisor may communicate the suggestion either orally or in writing through the chain of command to the Chief of Police or Assistant Chief.
2. Certain matters such as those of a personal or confidential nature may be brought directly to the Chief of Police or the Assistant Chief.

**L. DUTY**

1. Employees will report for duty at the time and place specified by their assignment or orders and complete the number of hours on duty required by their assignment.
2. While on duty, employees will remain alert and awake, unencumbered by alcoholic beverages, over the counter and prescription drugs, illegal narcotics, or conflicts arising from off-duty employment.
3. While on duty, employees will not engage in any activity or personal business which would cause them to neglect their duty.
4. Employees serve in order to protect lives, preserve the peace, enforce the laws of the City and State, and assist the public in any reasonable request.
5. Officers will identify themselves to any person requesting an officer's name, rank,



and badge number.

6. All employees will maintain a telephone.
  - a. Employees will notify the Business Manager and HR of their telephone number, address, and any change thereto.
7. All employees will, in a timely fashion, complete and submit all forms and reports required by the Department.
8. Employees will not provide information from computer-based programs or files to citizens without the proper authority.
9. While on duty, if an employee becomes ill or is injured, the employee will promptly notify their supervisor of the illness or injury and its circumstance.
  - a. In all cases of work related injury, an Incident Report will be completed.
  - b. A Workforce Safety and Insurance First Report of Injury form will be completed when treatment is sought.
10. Employees will maintain a professional attitude and manner when communicating by radio.
  - a. Employees will communicate in plain language, abiding by FCC requirements and requirements of the Department.
11. Employees will not loiter at the Department, but will use the office for professional purposes only.
12. Employees will not use Department vehicles for personal business or transportation of unauthorized persons, except in emergencies.
  - a. Authorized persons include arrestees, detained juveniles, victims, witnesses, and citizen ride-a-longs.
13. Employees are not authorized transportation in Department vehicles to or from work, except in emergencies or those employees authorized a take home vehicle by City Policy.
14. Requests to use police vehicles for personal business will be made to the Chief of Police or the Assistant Chief.
15. Officers will clean the interiors of their police vehicles daily.
16. Employees will keep their financial affairs in good order and under control.  
Failure to pay debts in a timely manner may be a cause for disciplinary action.
17. No employee will use their position with the Department for personal or monetary gain.
18. Employees are permitted to make long distance telephone calls when necessary

for official purposes.

19. Officers must carry police identification with them while on-duty unless working undercover.

a. In addition, while on duty, officers will carry a valid driver's license.

**M. LEAVE**

1. Employees will not be absent from duty without first obtaining permission from their supervisor.
2. Employees will, in situations requiring emergency leave or sick leave, notify their supervisor of the circumstances as soon as possible.

**N. INFORMATION**

1. Employees will not communicate to any person who is not an employee of this department any information concerning operations, activities, or matters of law-enforcement business, the release of which is prohibited by law or which may have an adverse impact on the Department's image, operations, or administration.
2. Employees will communicate promptly to a supervisor information regarding tips on crimes or criminal activity or other relevant law enforcement information which may come into their possession.

**O. PUBLIC APPEARANCES & EXERCISE OF FREEDOM OF SPEECH**

1. If an employee receives a request to make a public presentation or appearance on the Department's behalf or publish an article concerning their duties, the employee will receive permission from the Chief of Police or the Assistant Chief.
2. The Department does not wish to interfere with the First Amendment of its employees. However, the Department reserves the right to authorize appearances or writings that represent the Department and may therefore restrict activities only where the employee may appear to represent a Department view.
3. Employees will not unjustly criticize, ridicule, express hatred or contempt toward or otherwise defame the Department, its policies, or other employees when to do so might disrupt operations or adversely affect morale or create disharmony in the workplace.
  - a. The measure of disharmony is the inability of supervisors to maintain discipline.

**P. USE OF ALCOHOL**

1. Employees will not drink any alcoholic beverage while on duty unless authorized



to do so.

2. Officers in plainclothes, with the consent of their supervisor, may drink limited quantities while on duty when necessary to accomplish the law enforcement mission.
3. Employees will not appear for regular duty, or be on regular duty, while under the influence of intoxicants to any degree whatsoever or with an odor of intoxicants on their person.
4. In the event of an emergency recall, each employee must determine their own fitness for duty if they have consumed alcohol.
5. A supervisor will be consulted and asked to confirm or overrule the employee's judgment as to whether the employee is fit for duty.
6. No adverse actions will be taken if, in an emergency recall, the employee indicates they are unfit for duty or is told they are unfit by a supervisor before the employee actually goes on duty.

**Q. USE OF DRUGS**

1. Employees will not use any controlled substance or prescription drug while on or off-duty unless prescribed by a physician.
2. Employees using any prescribed drug, narcotic medicine, or over the counter medications that could possibly induce impairment of their performance will notify their supervisor.
  - a. The information will be recorded in the employee's personnel file and will be removed when the employee is no longer taking the medication.
  - b. The information will be protected with the same care as other medical information.

**R. USE OF TOBACCO**

1. Smoking is prohibited in all offices, except in designated smoking areas.
2. Smoking is prohibited in all Department vehicles.
3. Employees will not smoke or otherwise use tobacco products while engaged in traffic control, on an investigation, or when in view of the public.

**S. PROPERTY & EQUIPMENT**

1. Employees will be responsible for the proper care and use of Department property and equipment assigned to or used by them and will promptly report to their supervisors any loss, damage, destruction, or defect therein.

2. Employees will operate Department vehicles and other equipment in such a manner as to avoid injury to persons or damage to property.
3. Whenever a Department vehicle is involved in an accident, the operator will notify a supervisor and the Administrative Lieutenant.
4. Under no circumstances will an employee investigate their own accident.
5. Accidents occurring within Fargo may be investigated by the Fargo Police Department.
6. All other accidents will be investigated by the Sheriff's Office.
7. At the beginning of a tour of duty, employees will examine any equipment assigned to them and report any operational deficiencies, damage, or defects to their supervisors and fill out a Repair Request.
8. Repair Requests will be forwarded to the Administrative Lieutenant.
9. Failure to report damage or defect creates the presumption the employee inspected the equipment and found no damage or defects.
10. The employee may be held responsible for the cost of repair or replacement of damaged or lost equipment.
11. When an employee terminates employment, all issued equipment will be returned on or prior to the day the termination is effective.
12. Failure to return all items will result in the City taking legal action.
13. Employees will not temporarily or permanently convert Department property for their own personal use or use by any other person.

**T. PART-TIME OR OFF-DUTY EMPLOYMENT**  
**(See Standard Operating Procedures 20)**

**U. REPORTING MOTOR VEHICLE CRASHES, ARRESTS, COURT ACTION, CIVIL CASES**

1. Employees will immediately notify their supervisor if they are arrested, subpoenaed to court, or have otherwise been involved in any legal proceedings except divorce.
2. Any employee of the Department who becomes involved in any accident, incident, or altercation, or any problem which may come to the public attention, will give oral notification as soon as possible, and within 24 hours to the Chief of Police.
  - a. Officers of the West Fargo Police Department are prohibited from investigating motor vehicle crashes involving employees of the



West Fargo Police Department, or City of West Fargo vehicles driven by a city employee while working.

3. Employees will avoid involvement in any civil disputes involving neighbors or acquaintances.

**V. MEMBERSHIPS**

No member of the Department will be a member of any organization which advocates the violent overthrow of the government of the United States, the State of North Dakota, or any local government, or participate in any organization which has a purpose, aim, objective, or any practices which are contrary to the obligations of a law enforcement officer under these rules and regulations.

**W. MONEY EXPENDITURES**

No employee will assume any financial obligation on behalf of the Department without first obtaining the permission of the Chief of Police.

**X. RESIGNATIONS**

An employee in good standing will provide at least two weeks written notice of his or her intent to resign. The resignation should be directed to the Chief of Police.

**Y. CLOTHING & GROOMING (M – men, W – women)**

**1. Beards (M)**

- a. A groomed and neatly trimmed mustache, goatee or beard is authorized. Beards or goatees must be worn with a mustache. Facial hair must not be longer than 1/4 of an inch. No portion of the beard may be exceptionally longer than the rest, must be trimmed to the contour of the face, and must never look unprofessional. Patchy, spotty, clumps of facial hair are not considered beards, and as such are not permitted. The neck area must remain clean shaven at all times, the beard should follow the contour of the lower jaw. The cheek area must also be trimmed maintain a clean look. The Beards may be grown only on days off consisting of being absent from work for at least 7 consecutive calendar days. Officers that arrive for work unshaven will be sent home on their own time to remedy unprofessional beards, or facial hair. The Chief of Police or his designee shall be the final authority in determining if the facial hair looks unprofessional and must be removed.
- b. Those officers that work undercover may deviate from subsection (a) limitations.

**2. Cosmetics (W)**

- a. Will be conservative and in good taste.
- b. Not worn by men.

### **3. Hair, Overall Standard (M & W)**

- a. Will be clean, well-groomed and neat.
- b. If dyed, will look natural.
- c. Will not contain excessive amount of grooming aids, touch eyebrows when groomed or protrude below the front band of properly worn headgear.

### **4. Hair Style (M)**

Will be of natural color and have a tapered appearance on both the sides And back, both with and without headgear.

- i. A tapered appearance is one that when viewed from any angle outlines the individual's hair so that it conforms to the shape of the head, curving inward to the natural termination point. Block cut permitted with tapered appearance.
- ii. Will not contain or have any visible foreign items attached to it.

### **5. Hair Style (W)**

Will be of natural color and styled to present a professional appearance.

- a. A plain and conservative pin, combs, headbands, elastic bands, and barrettes similar to the individual's hair color are permitted to keep hair in place.
- b. Will not include hair ornaments such as ribbons or jeweled pins.

### **6. Mustache (M)**

Will not extend downward beyond the lip line of the upper lip more than  $\frac{3}{4}$  inch or extend sideways beyond a vertical line drawn upward from the corner of the mouth more than  $\frac{3}{4}$  inch.

- a. Does not apply to individuals with a shaving waiver.

### **7. Sideburns (M)**

- 1. Will be neatly trimmed and tapered in the same manner as the haircut.
- 2. Will be straight and of even width (not flared) and end in a clean-shaven horizontal line.



3. Will not extend below the lowest part of the exterior ear opening.
  - a. Does not apply to individuals with a shaving waver.

#### **8. Wigs and Hairpieces (M & W)**

1. Will be in conformance with the same standards required for natural hair, be of good quality, and fit properly.
2. Will not exceed the standards stated for natural hair.

#### **9. Nail Polish (W)**

1. Will be conservative and in good taste.
2. Will not contain ornamentation.
3. Will not be worn by men.

#### **10. Body Alteration or Modifications**

1. Will be prohibited, if it is intentional and results in a visible, physical effect that detracts from a professional image.
1. Employees who intentionally alter or modify any part of their bodies in order to achieve a visible, physical effect that disfigures, deforms or otherwise detracts from a professional image may be subject to disciplinary action or involuntary separation, as determined appropriate by the Chief of Police.
  - a. Examples of prohibited conduct include (but not limited to) tongue splitting or forking, tooth filing and acquiring visible, disfiguring skin implants.

#### **11. Tattoos/ Brands**

1. Tattoos/ brands visible anywhere on the body that are obscene, advocate sexual, racial, ethnic, or religious discrimination are prohibited on duty or otherwise performing any work-related activity.
2. Tattoos/ brands that are not offensive in nature may be exposed while performing official duties for the West Fargo Police Department. Tattoos/brands are not permitted on the face, neck, or the hands (ring tattoos are permitted in lieu of a wedding ring).
3. Any employee obtaining unauthorized tattoos will be required to remove them at his/her own expense.
  - a. Disguising, masking or otherwise concealing a tattoo or body marking by way of a bandage, make-up, or any other means (excluding regular clothing attire such as a long-sleeve shirt, pants, skirt, socks, etc.) is not an acceptable method of complying with this appearance standard

and shall not be permitted.

b. Employees failing to cover unauthorized tattoos in a timely manner may be subject to disciplinary action, up to and including termination of employment.

4. The Chief of Police will have final approval of displaying of questionable tattoos.

## **12. Body Piercing / Implanting**

Employees are prohibited from implanting, attaching, affixing or displaying objects, articles, jewelry or ornamentation to or through the ear, nose, tongue or any exposed body part (includes visible through the uniform).

a. An exception to the above rule is made for allowance of female employees to wear conservative earrings which should be small stud earrings, flat as possible and without hoops. The number shall be limited to two earrings in each ear.

Non-sworn women employees are authorized to wear spherical, conservative, diamond, gold, white pearl, or silver pierced or clip earrings affixed to the earlobe.

## **13. Uniform Accessory**

1. Uniform or clothing permitted for the position of the officers assignment

2. Footwear

a. Uniform officers will wear black shoes or boots; shined and in good repair.

b. Civilian style footwear will be consistent with the type of clothing worn.

3. Watch – one Conservative

4. Bracelet – one

1. Conservative, no wider than one inch, and not present safety hazard.

5. Rings

1. Maximum of three at any one time

6. Eyeglasses and sunglasses



1. Conservative, clear, slightly tinted or photosensitive lenses indoors.
2. Conservative lenses and frames outdoors.

7. Necklaces

1. Concealed under collar or undershirt.

8. Headphones and earphones

1. Prohibited unless required to perform duties.

9. Religious head covering

1. The Chief of Police will approve religious headgear based on consultation with expert of religious custom.

**Z. MEDICAL ASSISTANCE**

Employees will render, or cause to be rendered, medical assistance to any ill or injured person.

**AA. ARRESTS OF LAW-ENFORCEMENT OFFICERS**

The arresting officer will immediately notify a supervisor after arresting an employee of another law enforcement agency.

1. The arresting officer will contact a supervisor to review and confirm probable cause exists before arresting an employee of this department.
2. Officers will take whatever action is appropriate to the circumstances including issuance of summonses or making a physical arrest.
3. It makes no difference the person cited or arrested is a law-enforcement officer.

Exhibit 6

### Chris Davidson Interview Summary – July 2, 2021

On Friday, July 2, 2021, from 11:02am to 11:18am, I conducted an interview with Administrative Assistant, Christine Davidson, with the West Fargo Police Department relative to this investigation. The interview took place in the City of Fargo's City Hall Meadowlark Room and was audio recorded. Prior to interviewing Ms. Davidson, she was informed that she was not the target of the investigation, however, per department policy she was still required to provide truthful answers. Ms. Davidson affirmed that information without issue. The following is the investigative synopsis of the interview.

Ms. Davidson confirmed that she received an email on April 23, 2021 that originated from Assistant Chief Gerald Boyer, titled Why Keep Coming? Ms. Davidson said that upon reading the email she was immediately shocked and wondered why a message like that would not have come from the Chief. She commented that she felt the issuance of that email was undermining Chief Otterness's authority and ability to manage the department. After reading the email, she approached Lieutenant Jason Anderson and Lieutenant Adam Gustafson asking them why the Assistant Chief would have sent out an email like that and inquiring as to whether or not the Assistant Chief was "ok." The lieutenants responded that they had no idea why Assistant Chief Boyer sent out that email.

During the course of the interview, Ms. Davidson indicated that shortly before the email came out, she noticed there had been officers in Assistant Chief Boyer's office. She could recall officer Mike Pietron was definitely in Assistant Chief Boyer's office sometime between 10:30am and 11am. She felt this was very unusual. It would not be normal for Officer Pietron to be in Assistant Chief Boyer's office. She was not certain as to the identity of the second officer but she believes it was Travis Evink. Ms. Davidson did not hear any of the conversations while Officer Pietron was in Assistant Chief Boyer's office. However, she later heard from others in the department that Officer Pietron's wife was concerned about him coming to work during a time in which protests were occurring. It should be noted that email was pushed out on April 23, 2021, which was three days after the jury verdict in the Derek Chauvin murder trial had found him guilty. Derek Chauvin was a Minneapolis police officer who was convicted of the murder of George Floyd, in May of 2020, leading to civil unrest in many areas of the country.

It should be noted that the information regarding the officers who were in Assistant Chief Boyer's office does not contain any interview audio. Upon reviewing the recording, I realized that I had not asked that question. However, I made phone contact with Ms. Davidson at approximately 2:15pm on July 2<sup>nd</sup> and obtained that information from her.

Ms. Davidson had no other information relative to any other acts of insubordination or discussions regarding the April 23<sup>rd</sup> email. The interview was concluded at 11:18am.

RECEIVED FARGO POLICE DEPARTMENT
JUL 27 2021
DAVID B ZIBOLSKI CHIEF OF POLICE
REF: <u>CHIEF OTTERNESS</u>



## Chris Davidson Interview – July 2, 2021

Chief Zibolski (Z)  
Chris Davidson (C)

Z: Ok this is ah Chief David Zibolski. It is Friday, July 2<sup>nd</sup> at 11:02am. Uh I am in the uh Meadowlark Room of Fargo's City Hall 225 4<sup>th</sup> Street North, conducting an interview of Christine Davis

C: son

Z: Davison

C: Davidson

Z: Davidson. Um (cough) relative to internal investigation ah filed by Chief Otterness regarding potential insubordination by Assistant Chief Gerald Boyer. Um, Christine can you just ah, can provide your name and how long you've been with the department.

C: Yes. My name is Chris Davidson. I've been with the department for 26 years. I did five years as a dispatcher and the rest has been in the civilian.

Z: Excellent. And so how long have you worked with um Assistant Chief Boyer?

C: As Assistant Chief is when he began I believe in 2016? And I've known him prior to that when he was a patrol officer and a sergeant.

Z: Excellent. Um I just want to reiterate ah before we continue that ah Christine is not the target of this investigation and she understands that she must provide truthful statements to the questions ah relative to the investigation. Um (clears throat) so you've worked with Assistant Chief Boyer since when did you say?

C: Um as Assistant Chief I believe it was 2016.

Z: Ok. What about before that? Was he working there before that?

C: Yes. He was working there before that as a sergeant and a patrol officer.

Z: Ok. So you've got how many years would you say working with him in his different ranks?

C: Um, I'm trying to think how many years he's been there. Um cause I know as a patrol officer so

Z: His whole career

C: His whole career he's been at the police department

Z: Alright. Um have you specifically ever had any conflicts with ah Assistant Chief Boyer in any of those have there been any other instances when you've had a conflict with him personally or professionally?

C: Yes.

Z: Ok. Um during his tenure as assistant chief or previously?

C: During Assistant Chief in 2018.

Z: Ok. So just to give a so before we get into specific questions, I'd like to get the background on what that prior conflict was if you could kind of relay with that.

C: Ok. We were going through the department was going through the whole situation of ah Chief Mike Reitan. Um a lot of allegations and there's quite a history of that. Um Duane Sall, Jerry and I were the three that um started the process of those allegations on Mike. So we were basically somewhat of a team and we stuck together back in those days in 2018 during that investigation. Um, once Michael Reitan had left, um, asked not to come back, um, things started to change with Jerry. Um, do you want me to keep going on?

Z: Yea. What I'm interested in Chris is prior conflicts interest in terms of um previous conflicts you might have had with him and then tying into your observations and questions that I'm going to have about this case I think it's just good to know for the record. Was there some existing conflict between you two and then just ascertaining

C: ok

Z: There's no bias in the in the questions the answer that you provide relative to the investigation.

C: So when he began to be the chief while we were waiting for a new chief to come, um, a lot of situations happened with him. Um he I felt that he abused his authority. Um meaning in many ways that I dealt with him is money um he was quick to assign money. He was quick to assign different policies or make quick changes a lot of times without upper management not knowing. Um. I had a issue with that. Um and it was probably the simple things as well Fargo PD at that point in time they were giving away a lot of promotional products like water bottles. And I told him that we that's too much money. We don't have that in the budget. So what he did is he tried to sneak through and make that purchase. But I found out about it. I stopped it by going to our Assistant or our actual um Tina Fisk who's our administrator. Um I told her that there's a little purchases like that happening and promises to others and I said we can't have that. So anytime he did something like that I always had to go talk to Tina so she can stop that process and tell him that he cannot purchase things without approval.

Z: Ok. Did that did you ah in during that time did you confront him with this at all or did what did he come back and confront you regarding your stopping of the payment or?



C: He didn't like it but I told him that I had to go to Tina because I felt this purchase was not correct. If it's not right.

Z: That was within your city policy or?

C: It was in I'm I'm part of I do all the budget. I know what we can purchase and what we cannot purchase and I also knew what the City Administrator allowed us to purchase for PR items and it was not a water bottle that was 10 bucks to give away. It was simple like that but it was little things like that all the time that would come up you know. So um he got used to the idea and finally kind of faded off of that so.

Z: So was there any investigation or anything that resulted as a result of those purchases or was it just handled internally?

C: Handled with Tina.

Z: Ok.

C: So it eventually stopped.

Z: Ok. Gotcha. And just to be clear these are these are purchasing policy issues that you identified nothing ah of an illegal nature or anything like that.

C: Not illegal. We just knew that we were not to purchase that within our budget.

Z: Ok. Alright. Got it. Um is there anything as a result of these these prior situations that ah put you in a position where you can't provide ah unbiased and objective answers to this investigation relative to Assistant Chief Boyer?

C: No.

Z: Ok. Ah and there's never been any kind of intimidation or threats against you from him as a result of any of that?

C: He's never done that.

Z: Ok. Alright. Great. Ok. So um what I kind of want to start with is ah April 23<sup>rd</sup> of 2021 there was an email that Assistant Chief Boyer sent out I believe to all staff.

C: Ok?

Z: Did you receive that email?

C: Which one was it? Um

Z: It's one that's titled Why Keep Coming.

C: Oh. Ah. That started with Jerry.

Z: Yes

C: Yes. Yes.

Z: He sent it.

C: I remember reading that.

Z: Ok.

C: Yes.

Z: So you received that email?

C: We all received that email.

Z: Ok so I'm gonna just kind of show you that email again. Here's a copy of it.

C: Ok

Z: Um

(Pause)

Z: And that email was sent out on April 23<sup>rd</sup> at 2:14pm. (corrected to 1:23pm as referenced in Exhibit 4 of this investigation)

(Pause)

C: Yea. I I do remember this. Did you want me to read it again or just

Z: No I I just as long as you remember

C: I I

Z: I wanted to ask what's your response was your response to the email

C: My response to when this went out is oh my God what's going on now. I wasn't real sure what his thought process was. I do remember a couple of officers in his office that day. I don't know what triggered this. And that was my first thing this is odd and why is it this not coming from the Chief.

Z: Right.

C: That's that was my thought process on this day is like cause I remember talking to Jason Anderson I said what is going on is he ok?



Z: Mm hmm. Yea. Right. Ok. So yea you your thoughts why isn't this coming from the Chief. Did you um mention this to anyone or did ask that question of anyone else or?

C: Only Jason.

Z: Ok.

C: Only Jason. But it I

Z: Is Jason Dura?

C: He's upper management

Z: Yea

C: So I don't make comments to anybody that is under upper management so.

Z: Sure. So that's Jason Dura, correct?

C: Jason Jason Anderson

Z: Anderson. Ok so that's.

C: Jason Anderson.

Z: Ok so you asked him if Jerry was ok and why why he sent that out?

C: And I also asked Adam the same thing

Z: Adam Gustafson

C: Cause they both were standing right there so.

Z: Did they respond to that question?

C: They're like I have no idea what's going on.

Z: Ok.

C: And that was the end of the conversation if I remember right.

Z: Ok. And that would have been shortly after the email was sent out?

C: Um actually I think it was that day.

Z: Ok.

C: Because we all like wow.

Z: Ok. Um so subsequence of that were you aware of any other conversations with Assistant Chief Boyer there involving the Chief or any ah other persons regarding that email?

C: That email?

Z: Yea

C: No.

Z: Ok.

C: It was a very hush and quiet type thing.

Z: Ok

C: If I remember right. There wasn't a whole lot of talk you know how things get going?

Z: Mm hmm.

C: There wasn't a whole lot of talk on that.

Z: Ok. Um since that email came out, have you ah witnessed or had any conversations ah with anyone in the department ah from Assistant Chief Boyer discussing the email or commenting on the email or the Chief in terms of the follow up on the email?

C: No.

Z: Ok.

C: No.

Z: And have you witnessed any um what you would perceive to be insubordination on the part of Assistant Chief Boyer?

C: In a way I did, because like I said this this is something that should come out by a chief not at Assistant Chief level.

Z: Ok so ah just by virtue of the email you felt that was insubordinate?

C: Um well it to me it's a little undermining. Um there's kind of that little level there that just kind of went below maybe a little bit, hovered over the.

Z: Ah did you have any specific conversations with Assistant Chief Boyer about the email or the chief?



C: Not that email. The Chief um the only comment that was made. I think it was like a week or two later, or maybe a week, somewhere around then the Chief says to me, he says, can you believe that email he put out? I'm like, wow. And it was a short conversation. Um just back and forth one word type things like wow what's going on type thing and that's really about it and then we left it as that you know.

Z: Ok so you didn't talk to Assistant Chief about it? He didn't mention anything to you about it? Did you hear him making any comments to anyone else about it?

C: No.

Z: Ok.

C: No.

Z: Ah did you hear him make comments to anyone else relative to the Chief addressing his sending of the email?

C: Not me. And I couldn't see him telling me that stuff.

Z: Ok. Did you hear other people talking about it?

C: No. No. A lot of time's I'm the last one to know.

Z: Gotcha.

C: Cause everybody knows my connection to the Chief. (Laugh)

Z: Gotcha. Um were there any other lieutenants or other folks that you heard discussing the email in terms of um the chief addressing that with with the Assistant Chief?

C: No.

Z: No?

C: No. And nothing from the lieutenants. The lieutenants usually would tell me um if something's like that, but like I said, this was ah it was just nothing after that so.

(Pause)

Z: Um ok. And were you ever involved in either a conversation or did you hear a conversation ah with any other supervisors or personnel in the department discussing this email ah the chief's reaction to it or any action that he took with Assistant Chief Boyer?

C: I didn't even know.

Z: Ok.

C: Any of this.

Z: Gotcha.

C: Until the Chief actually sat down and kind of told me a little bit the other day to get me prepared for this so.

Z: Ok.

(Pause)

Z: Ok. So then really your only knowledge about this whole incident is that you saw the email, felt it should have come from the Chief, which seems a little undermining of the Chief's authority?

C: Yes. Absolutely.

Z: Ok. No other um witnessed or overheard comments or other emails or anything like that on um on the Assistant Chief's part?

C: No.

Z: Ok.

C: Jerry never said anything to me. Um I actually I thought that email was ah a dead situation actually.

Z: Mm hmm.

C: So.

Z: Gotcha. Ok. Ah are you aware of any other actions ah on part of the Assistant Chief that appear to be ah undermining or insubordinate to the Chief's ability to run the department?

C: He only from what the Chief has told me. I I'm kind of out of that group. Which I'm glad.

Z: Sure.

C: But however knowing Jerry and this might not be fair, this doesn't surprise me.

Z: Ok. Alright. Um. Let's see. Anything is there something I didn't ask you that you think is important to the investigation?

C: No. I think you asked me about everything.

Z: Let's see. Um. Alright. I think we're we are done. I appreciate you coming in.



C: Great.

Z: Ah end the interview at 11:18am.

Exhibit 7



# West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-433-5500 | westfargopolice.com

Denis E. Otterness  
Chief of Police

## West Fargo Police Department

### Garrity Notice

On behalf of the West Fargo Police Department I am advising you that you are being questioned as part of an official administrative investigation. You have been identified as a witness to alleged misconduct allegations.

You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/ or termination.

During the course of questioning, any statement, answer or information that you disclose which indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions.

My signature acknowledges my awareness and understanding of the aforementioned.

<u>Jason Dura</u>	<u>7-9-21</u>	<u>0917</u>
Employee Signature	Date	Time

Ronald B. [Signature]  
Witness/ Interviewer's Signature



## **Jason Dura Interview Summary – July 9, 2021**

On Friday, July 9<sup>th</sup>, 2021, at 9:16am, I conducted an interview with West Fargo Police Lieutenant Jason Dura relative to this investigation. The interview took place in the City of Fargo City Hall second floor Meadowlark Room and was audio recorded. Prior to interviewing Lieutenant Dura, I read him the West Fargo Police Department Garrity Notice, which he stated he fully understood and signed the notice confirming that he would provide truthful and complete answers, understanding that none of the information provided could be used against him in any criminal proceeding. The following is the investigative synopsis of the interview.

I reviewed with Lieutenant Dura West Fargo Police Department General Order 36, section H subsection 3 (b) which prohibits insubordination. I asked Lieutenant Dura if he felt it would be insubordinate if one of his sergeants, after receiving a directive from him, addressed officers in a roll call briefing and said something either completely different or criticized a decision that he made to the rest of the officers. Jason stated that he would consider that insubordinate. When questioned regarding a similar scenario involving the Assistant Chief and the Chief, Jason also identified that as insubordinate and in that scenario it would undermine the whole department and department policy.

When questioned regarding the April 23<sup>rd</sup>, 2021 email, Lieutenant Dura stated that he did recall reading the email from home as he was off on Friday, April 23<sup>rd</sup>. When asked what his reaction was to the email, Lieutenant Dura stated that he was surprised that Assistant Chief Boyer put the email out because to him after reading it, it seemed like it would be something the Chief would put out. He stated that struck him as off right away. In reviewing various paragraphs of the email, Jason identified areas in which he felt statements were insubordinate to the Chief and demotivating in general. When questioned about the last paragraph, specifically the last couple of sentences, Lieutenant Dura stated that he got the point that Assistant Chief Boyer was excluding the Chief and any thoughts of the Chief, based on the manner in which it was written. He further went on to state that that was insubordinate as well.

Lieutenant Dura stated that the only other person he discussed the email with was deceased Lieutenant Adam Gustafson. That discussion again centered around the belief of both of them that the email should have come from the Chief and not the Assistant Chief. He believes that conversation occurred on or about Monday, April 26<sup>th</sup>. Lieutenant Dura stated the discussion with Lieutenant Gustafson happened shortly after the Chief had spoken to Jerry about the email. At some point after that, Jerry had a conversation with Lieutenant Gustafson. Lieutenant Dura was not sure if that occurred in Assistant Chief Boyer or Lieutenant Gustafson's office, but at some point, Lieutenant Gustafson came into Lieutenant Dura's office and informed him that Assistant Chief Boyer had talked to him (Adam) about getting his ass chewed by Chief Otterness over the email. Lieutenant Dura stated he had no other discussions about the email with any other members of the department, except when he was notified by the Chief of this internal investigation. Lieutenant Dura had no prior knowledge of the email, did not participate in any reviewing or providing language for the email or proofread it in any



way. Lieutenant Dura did state that he heard a rumor that Assistant Chief Boyer's wife had proofread the email prior to it being sent out.

Lieutenant Dura was able to confirm that he was working on May 10<sup>th</sup>, but did not recall any specific discussions with any other department members on that date. Lieutenant Dura stated he later found out from the Chief that the Assistant Chief did not have his blessing or permission to send out the email.

When questioned regarding whether there was any other information or questions that weren't asked that Lieutenant Dura felt would be important to the investigation, specifically related to Assistant Chief Boyer's actions, statements, comments about the Chief, that seem undermining or insubordinate, Lieutenant Dura relayed the following. He stated that approximately a week earlier on a Wednesday or a Thursday, June 30<sup>th</sup> or July 1<sup>st</sup>, he was speaking with Sergeant Pete Nielsen. Sergeant Nielsen relayed a recent incident in which Assistant Chief Boyer entered Sergeant Nielsen's office and began to speak to him about the Chief. Assistant Chief Boyer made some type of reference to Sergeant Nielsen that it's like the old Reitan days, referencing prior Chief Reitan. Lieutenant Dura recalled Sergeant Nielsen stating to him that the Assistant Chief also stated that Chief Otterness holds things back from him and doesn't always tell him everything. Lieutenant Dura was very surprised that the Assistant Chief would approach a Sergeant and make these statements and believed that was something that Chief Otterness needed to know. He directed Sergeant Nielsen to see the Chief and report that information. He believes that he informed the Chief about this incident upon return from his off days on July 7<sup>th</sup>.

When asked if there was anything else that I did not specifically ask him that he felt may be important to the investigation or important for me to know, Lieutenant Dura relayed that there was an issue that occurred during the COVID timeframe. He states that during the months of February, March and April of 2020, approximately, most of the staff were working from home, including Assistant Chief Boyer but as a result of an emergency declaration, exempt employees such as he and the Assistant Chief could get overtime. Lieutenant Dura states that Assistant Chief Boyer pretty much worked from home the entire time and maybe stopped into the PD every now and then but he noticed that the Assistant Chief seemed to be getting a lot of overtime for COVID-related functions. He knew this from looking at the overtime sheets that he and the other Lieutenants had to fill out. Lieutenant Dura said that he himself may have put in a couple of hours the entire time of overtime and that Lieutenant Gustafson may have had five hours of overtime but Assistant Chief Boyer had quite a bit of hours above everybody else. Lieutenant Dura stated that HR Director Jenna Wilm would have records of this overtime activity.

The interview was concluded at 10:08am.

RECEIVED FARGO POLICE DEPARTMENT
AUG 04 2021
DAVID B ZIBOLSKI CHIEF OF POLICE
REF: <i>Chief Otterness</i>



## **Jason Dura Interview – July 9, 2021**

Chief Zibolski (Z)

Jason Dura (D)

Z: Ok today is Friday, July 9<sup>th</sup>, 9:16am. This is Chief David Zibolski conducting an internal investigation on ah on behalf of Chief Otterness of the West Fargo Police Department. Ah I am here with Lieutenant Jason Dura of the West Fargo Police Department. We are in the Meadowlark Room, second floor of City Hall. Jason, can you just acknowledge attendance here?

D: Yes. I am here.

Z: Ok. Alright. So before I begin the in investigation and questions, is it ok if I call you Jason?

D: Call me Jason.

Z: Ok. I'm just going to read you the West Fargo Police Department Garrity notice. On behalf of the West Fargo Police Department, I am advising you that you are being questioned as part of an official administrative investigation. You have been identified as a witness to alleged misconduct allegations. You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/or termination. During the course of questioning, any answer, statement, or information you disclose which indicates your involvement in any criminal conduct may not be used against in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions. Any questions about that Jason?

D: No questions.

Z: Ok. In a nutshell, just to be clear, um because you are compelled to answer questions and you ah are required to answer truthfully, any responses that are untrue with only will result in internal investigative ah potential violations ah but no criminal charges. Ok?

D: Yes I understand.

Z: Alright. So I'm just going to ask you to sign, acknowledging the form that we just went over.

D: Ok.

Z: Perfect. And that will become part of the record.

(Pause)

Z: Thank you sir. As we go, ah I may take a couple of notes here just that there might be a question I want to come back to

D: Sure.

Z: And I will attach my questions and notes that will be with the original complaint at the end of the investigation.

D: Ok. You got to sign this too.

(Pause)

Z: And I also want to clarify that based on the notice (cough) you aren't the target of this investigation, you are a witness so.

D: Yes.

Z: Um. Ok. Ok so I'm going to ask you a series of questions that ah relate to ah Assistant Chief Jerry Boyer ok and so the crux of the investigation has to do with potential ah allegations of wrongdoing on his part.

D: Ok.

Z: Ok? So (cough) again as we go through this, um, if you need time to think, that's great, take time to think. Um respond the best of your ability. Ok?

D: Ok.

Z: Alright um. First I kind of just want to go over you know your role as a and really department policy perspective. Um specifically (pause) general order 36 section H which talks about disciplinary and personnel actions ah specifically section 3 B like in boy which talks about insubordination, discourteous treatment of the public or a fellow employee (cough) and other other facets not related to to the question I'm about to ask you but in terms of your role as a lieutenant, if one of your sergeants after receiving a directive to you went out to role call and said something either completely different or criticized the decision that you made to the rest of the officers, would you consider that to be insubordinate to your ability to command?

D: Yes. Exactly.

Z: Ok.

D: Exactly.

Z: If something like that happened, as a lieutenant, how would you handle that with the sergeant?



D: Um, I guess I would have to um if I wasn't present during the time that he was briefing or whatever he was telling ah his subordinates, I guess I at first would ask him directly if he did or didn't do that. Ah if he did I may also do an investigation myself to see ah what other ah people heard or what was said and go from there and see if I need to do a disciplinary action with him.

Z: Ok. So if just kind of following through on the example, so he sends a provides a wrong message or criticizes you as the leader, how does that adversely affect your ability to lead that shift?

D: Well ah quite a bit actually ah it undermines what I my authority ah whenever I put out a directive that someone doesn't like, they'll either run to the sergeant or somebody else and and go around me if they don't you know so it's a big impact on the department and you cannot have it.

Z: Sure. Ok. And so would you agree that ah I guess would you agree that that issue um is present within every different rank structure as we go further up the chain? Ah I apologize there.

D: No. Go ahead.

Z: Um you know if you go out to your troops and criticize or ridicule what directive the Chief has given you or ah to this particular investigation if the Assistant Chief were to go and do that relative to the chief's directive um would you apply the same level of insubordination as that do you agree that's the same concern?

D: Yes. I do. You know it at any level it cannot happen. And ah yea it just like I said undermines the whole department and and our policies.

Z: Alright. So I'm going to take you back in time a little bit Jason to April 23<sup>rd</sup>.

D: Yep.

Z: Ok? April 23<sup>rd</sup> of 2021, there was an email that was sent out looks like to all all staff of the West Fargo Police department.

D: Yes.

Z: Ah by Assistant Chief Boyer and I'm gonna show you that email and I'm gonna ask you if you recall receiving it and reading it.

D: I do recall receiving it and reading it on April 23<sup>rd</sup>.

Z: Ok. So do you have any idea when you actually read it?

D: I probably didn't read it until the next day cause I think he put this out and I can't recall which day April 23<sup>rd</sup> is if it's ah

Z: Oh I can get you a calendar.

D: Yea

Z: Go ahead and put your calendar because I'm not certain either.

D: Um. It

Z: It was sent out at 1:23pm.

D: Cause.

(Pause)

D: I'm trying to find my calendar on my phone (laugh)

Z: So Jason's just looking up his calendar to confirm dates. There will be a momentary pause here.

D: Ok

Z: Pause in conversation.

D: So April 23<sup>rd</sup> it was a Friday. Um I have Fridays off so I may have read it at home rather than at work.

Z: Ok. Gotcha.

D: So. And I think yea. I did read that one at home.

Z: Ok. Do you um what was your reaction when you read it?

D: Um my reaction was I was surprised that he put this out ah because to me after reading it, it it seemed like it'd be something that ah the chief would put out. Ok? Um and I wasn't sure if maybe ah Jerry had ran this through our chief or not, but I thought hmm. Normally this this is something the chief would put out an I I that struck me off right away.

Z: Ok

D: And that's why um and ah that's all I can say about that I mean it struck me odd that that he would put it out rather than the chief or or you know.

Z: Yea. So how I mean when you read this specifically I guess let's go

D: Sure.

Z: Read this last paragraph to you. Um while I think the the first paragraph even second paragraph I mean how what's that message to you? Is that positive or a negative message?

D: Why we are here?

Z: Mm hmm. Why should or why what's it titled?

D: I think it's yea.

Z: Why keep coming?

D: Yea. Why keep coming.

Z: Why keep coming.

D: Yea

Z: Question mark right

D: Yea. Um yea I just wasn't sure why that was a message he was putting out at that time um and I it just struck me odd that um you know I wasn't sure if he was what he was going through at that time or what he was thinking. You know and I just I didn't know if he was having some personal issues or what and why he um decided to put that out now or at that time.

Z: Mm hmm. Is this a message you know the opening paragraph where he ah talks about I'd be lying if I said that I wasn't also bothered now that I guess just to put this in context, April 23<sup>rd</sup> is significant in time to what event?

D: Ah the I would say the George Floyd event.

Z: Yea. Ok so on the 20<sup>th</sup>, ah the jury determination came out and found Derek Chauvin guilty right?

D: Yes.

Z: And so in that timeframe this is what's going on and reading the the second paragraph, ah well actually let's read the first paragraph so since we have not been able to have a real department meeting in over a year, I am forced to send this out in an email. This is not my preferred way of communicating this message. What's your reaction to that?

D: Well what he's saying there is the chief hasn't come up with hasn't done a department meeting yet.

Z: Ok.



D: Or recently. And so right there that's undermining the chief saying you know well we haven't had a meeting and that's you know that's a bad message right there you know.

Z: Right. So you your interpretation is that ah just by him sending this out it's an act of insubordination. He's inferring that the chief for whatever reason has decided well first of all we haven't had a real department meeting and he somehow is forced to send this message out to the troops.

D: Exactly yes.

Z: Ok. Um and he kind of goes on to talk about I know many of you are struggling with many things that are happening in the world right now and I'd be lying if I said that I wasn't also bothered. Quite frankly it pisses me off. I know that each and every one of you is a good person and came into this profession for the right reasons. Seeing officers second guessed over and over by "experts" and wondering where your next attack is coming from. The media, politicians, or the streets is an unfair burden on you and your families. You are all policing in new territory and hard times. Our profession has been through this before. It will get better. Many of you have probably asked yourself why should I keep trying? Again with everything that has happened in the past year, I think those are valid questions to ask yourself. I have also asked myself that on several occasions. Do you feel that this is a positive, motivating message? Or what ah that paragraph. How does that what's your reaction to that?

D: No. I don't think it's motivating anybody. It's like it's questioning why you're even in the profession and ah you know if he's struggling with it that's you know that's something he has to work out himself but he shouldn't be projecting it on the entire staff.

Z: Sure.

D: And ah so I reading that and listening to it this is actually having somebody read it to me

Z: Mm hmm

D: It's it's saying he's struggling with what's going on at the time and apparently he's not dealing with it very well. And I don't understand why he's he's projecting it out on the whole department.

Z: Sure. And do you feel that this kind of a message going out to the department especially with without the chief's at least the chief not being involved would serve to further undermine operations of the department I mean just from the perspective of the reader. Let's say I'm a cop coming to work and my second in command this is the message I'm getting. Do you feel that has ah an undermining effect on department operations?

D: Yea. It's like you know so he's he's asking why even come into work you know so we're having people come in and being unmotivated right from the beginning after reading that.

Z: Yea.

(Pause)

Z: I'm gonna go down to the last paragraph and ask for your reaction to this sentence. (cough) We are lucky here at our department. We have a community that overwhelmingly supports us. The City Administrator supports us. The commission supports us and your admin staff supports you.

D: Well I don't know if he's specifically trying to exclude the chief. I know the chief's part of the administration and maybe that's what he's saying we're all the chief and and the command staff but you know he doesn't he he purposely excluding you know this is what me and the chief feel or anything like that so ah again I got the point that he was excluding the chief and any thoughts from the chief.

Z: And if that's what he did, would you consider that to be insubordinate as well?

D: I would yes.

(pause)

Z: Alright. Um again I think he kind of closes out with your you know I appreciate you more than you will ever know and that is why I keep coming back. My door is open to anyone that wants to talk or call or text me anytime. I don't have all the answers but I will listen and I understand.

D: Again, you know he he's actually bypassing all the the things we have in the department to help people. Our PAC team, you know our crisis team, and if they have an issue then he's also excluded the program the city has. You know the EAP program so all of the sudden he's like the overall umbrella that to ah fix everybody's problems and that's not how actually operate in our department.

Z: Sure. And when he he's very specific in this last sentence about I I will do this. I will keep coming. I will listen I will understand (cough) does it feel like anyone's excluded there?

D: (laugh) Pretty much everybody's excluded and it's just it's all him. He's he's running it. He's doing it so yea. Excludes everybody.

Z: Alright. Ok. So you think you probably read this at home on

D: I I I know I did because ah I like I said I'm off on Fridays. At that time I was off on Fridays and ah I had a that weekend we had a promotion going on at Dave's Tire to ah mark catalytic converters and I ended up seeing the chief on that Sunday.



Z: Ok. Did you um discuss the email with him on Sunday when you saw him?

D: Um (cough) Chief came up to me. We were just standing there and he goes hey what'd you think of um Jerry's email that he put out? And ah you know there were several people around so we didn't get into a big discussion but I said you know I told him I thought it was kind of odd I said it that looks like something you should have be that would be something that you would put out not the assistant chief and that's basically our conversation then and there.

Z: Ok. Um did you discuss this email with anyone else after it came out?

D: Um

Z: Department members, colleagues.

D: The only other person I discussed it with was my ah partner patrol lieutenant Adam Gustafson.

Z: Ok. Unfortunately he passed away right? 5/18/21

D: Yes.

Z: Do you remember roughly when you had that conversation with ah him?

D: Um. It was probably the following week. Sometime. Ah we usually after we have our command staff meeting on Mondays I either go into his office or he'll come into mine and we'll discuss the meeting and things we need to go forward with. I think he came into my office that Monday and I think we talked I asked him if if he ah

Z: I'm looking at a calendar. Go ahead sir.

D: I asked him what he thought of the email and he just at that time he just said ah I don't know. You know he didn't really give me a one way or the other at the time. You know. And I just I think I said that Adam if I recall I said don't you think that's something that should have been sent by the chief and not the assistant chief and I think he agreed to me and that's basically what I remember with that conversation.

Z: So you think that would have been probably Monday April 26<sup>th</sup>?

D: I think so.

Z: Ok. Was there anyone else in the room or involved in that conversation?

D: No.

Z: Ok. And so you haven't talked to anyone else in the department about that email ah since it came out other than Adam Lieutenant Gustafson.



D: No I only spoke with Adam.

Z: Alright. Ok. And Adam didn't relay any other concerns other than he agreed with the fact it should have come from the chief?

D: Yes.

Z: Ok. Were there any subordinates any of your sergeants or um officers civilian staff that approached you at any time and asked you about the email?

D: Ah. Not that I can remember I don't. No.

Z: Ok.

(Pause)

Z: Alright. Do you recall ah ever talking to the Admin Assistant Chris Davidson about the did she come up and ask about the email?

(Pause)

D: I usually don't discuss things like that with Chris.

Z: Ok.

D: So I don't remember her bringing the email up.

Z: Gotcha. Ok. And you didn't have to did you ah take any I guess measures to address it with your troops? Ah as kind of the shift commander?

D: I I did not.

Z: Ok.

D: No.

Z: Did anybody else that you're aware of? Ah any other lieutenant address the troops or have any conversations about this?

D: Um. Not that I'm aware of. Um Jerry's you know when he was interim chief he would put out emails some are to something like that every now and then.

Z: Ok.

D: So it wasn't anything like I guess out of maybe out of the ordinary for Jerry to do every now and then.

Z: Ok. Um alright. Have you ah discussed this email with Assistant Chief Boyer at any point?

D: No.

Z: Ok. Did you talk to him at all or even have a discussion with him about the topic prior to the email going out?

D: I did not. No.

Z: Ok. That I think it's understandable you know that it's a very tense week in law enforcement and with the verdict it was there were some um just a tense environment across the board um (cough) were did any officers approach you and say hey we're having a tough time with this particular situation or we have some additional fears and we think something should be said or done about it from the department perspective?

D: No and ah I'm I'm the head of our PAC team at the police department so I've always put out the word ah to our staff and to our PAC team members that if they are struggling with anything you know to come to one of us so and I haven't been told of anything of that sort.

Z: Alright. Ok. Good so as head of the PAC team you're pretty much at the pulse of that then?

D: Yes.

Z: Ok. So if there was an officer that was struggling or their family was struggling, they would most likely come to you to get that kind of support right?

D: Normally yes. Yes.

Z: Ok. Not that they have to

D: Yep.

Z: But it would be there.

D: Yep.

Z: That's available to them. Alright. Before the email went out, I know you were off on Friday did you have any idea or any knowledge that Assistant Chief Boyer intended on sending out an email relative to this topic or the trial or anything to do with that?

D: No. I had no idea. And like I said when I you know I'll on Fridays even when I'm not working I'll I check my email and I saw it and like I said I was kind of surprised by it.

Z: Ok. Um did you partake in any way in putting together the language of the email?

D: No.

Z: Ok. Did you proofread the email before it went out?

D: I did not.

Z: Ok. Do you know of anyone who did participate in the language of the email other than Assistant Chief Boyer?

D: Ah. I only have a rumor. And that was ah I was told that his wife had he had sent it to his wife to proofread.

Z: Ok. Do you know who mentioned that to you or?

D: Um. It was Chief Otterness.

Z: Oh ok. Gotcha. And his wife ah Detective Sara Cruz works for the Fargo PD right?

D: Yes.

Z: Ok gotcha. Ok. But you're not aware of any other department members that were participated in the language or the idea to place push this email out?

D: No.

Z: Ok. Um and I think you answered this but have you discussed this email with Assistant Chief Boyer at all since either before it went out or after it went out? You haven't had any discussions.

D: I have not. No.

Z: Has he approached you or are you aware that he has approached any of your colleagues to try and explain the purpose of the email?

D: Not at all. I'm not aware of it and I don't know if he he did or not.

Z: Ok yea. So he's never come up to and said hey you know Lieutenant Dura here was the idea behind this email blah blah blah nothing like that?

D: Nothing like that.

(Pause)

Z: And then your only discussion was with Lieutenant Gustafson on that 26<sup>th</sup> and you did you talk to him at any other time about this email prior to his passing or have any other discussions about it?



D: Ah. Not pertaining to the email ah no. Ah it's the only time we talked about it. Ah it was after the email is when um me and Lieutenant Gustafson talked about something that had happened to Jerry when he had gotten spoke to by Chief Otterness.

Z: Ok and is this in reference to Chief Otterness speaking to him about the email?

D: Correct.

Z: Ok so tell me about that. When did that conversation happen?

D: So again ah ah I I don't have any specific dates

Z: Ok.

D: Um it was either um it was shortly after the Chief had spoken to ah Jerry about the email and and then at some point after that, Jerry had a conversation with Adam I don't know where if it was either Jerry's office or Adam's office but at some point um Adam came to my office and spoke to me and informed me that Jerry had talked to him about getting his ass chewed by ah Chief Otterness over I think over the email or or over at least part partly being the email. Ah and I was I was surprised that ah Adam had that information and knew that um Jerry seemed a little more comfortable talking to Adam I think. Adam and Lieutenant Anderson during the day cause they were there during the day and I usually didn't come in until 2 so I didn't get half the information from ah Assistant Chief Boyer most of the time so.

Z: Ok. Alright so Adam is relaying to you Jerry's comments about getting his ass chewed as a result of the email he sent out.

D: Yea.

Z: Um did Adam provide you any additional details as to what that entailed or what the direction was or?

D: Ah I'm trying to rack my brain on that conversation cause I know it's a big part of what's going on and and quite frankly all I really remember is ah that when Jerry just told Adam that he basically got his ass handed to him or ass chewed by the chief and that's I don't remember really much more after that.

Z: Ok. Ok. And do you and so um just kind of just leaning on a time frame here I know we talked about you talked to Adam on the 26<sup>th</sup> just in general about the email.

D: Yep.

Z: How long after that do you think it was that this conversation where Adam relayed this information about the

D: It was I would say it was at least about two weeks after the email.

Z: Ok. I think Adam passed away shortly after that right?

D: Yea it would be pretty close to that.

Z: Ok. Alright so prior to Adam telling you that, did you have any knowledge that the chief even addressed the email with Assistant Chief Boyer?

D: No I didn't.

Z: Ok. Did Lieutenant Gustafson ever relay to any other information related to questionable comments or insubordination related to Assistant Chief Boyer ah comments or actions regarding the chief?

(Pause)

D: It's tough because Adam and I pretty much talked every day and he would usually relay stuff that he and Jerry had talked about previously during the day so I don't remember specifics um of anything may have been insubordination at the time. Ah this one just totally sticks out in my mind. That's why um I can remember that one.

Z: Ok. Um can you are you able to tell me if you were working on May 10<sup>th</sup>? Which would have been about two weeks ah from?

(Pause)

D: Ah it would have been a Monday most likely I would have worked.

Z: Ok yea. Was it it was a Monday.

D: So

Z: And you come in at 2pm?

D: I come in at 2.

Z: So like a 2 to 10?

D: 2 to midnight.

Z: 2 to midnight. Oh you do 10 hours. Ok. Gotcha. Ok. Alright. Um ok. Did you have any discussion with Lieutenant Jason Dura about comments made by Assistant Chief Boyer relative to the email or any comments regarding the Chief um.

D: Ah um I'm Jason Dura.

Z: Oh I'm sorry. You you are Jason Dura.

(Laugh)

Z: I'm sorry. Jason Anderson.

D: Ok.

Z: I got the wrong Jason.

D: Yep.

Z: Thank you.

D: Couple of them.

Z: Yes.

D: Can you repeat the question?

Z: No problem sir. Did you have any discussion with Lieutenant Jason Anderson about comments any comments made by Assistant Chief Boyer regarding the chief on or after um May 10<sup>th</sup>? Just I know time wise this was a couple months ago.

D: Yea.

Z: Trying to put this in perspective for how this played out.

D: Are you saying specifically regarding the email or just anything ah

Z: Regarding the email or anything that you feel would be of an insubordinate nature or diminishing the chief or undermining the chief or undermining department operations through the comments that were made um from his position to others.

(Pause)

D: Again we have so many conversations and there's times where things may have come up but you know unless I wrote it down or specific thing that I can remember um we we have these kinds of conversations all the time. Any time that something Jerry does surprises us um

Z: What specifically is anything like that occurred relative to the operations of the department the undermining or insubordination of the chief?

D: Um

Z: Questioning of the decisions or the actions, things of that nature.

(Pause)

D: Um. I'm drawing a blank right now. I'm sorry.



Z: That's fine. If nothing comes to mind that's fine.

D: Yea.

Z: Um and just want to go back so on May 10<sup>th</sup> are you able to say right if you were working for sure or aren't you sure? It would have been normal work day but I guess I'm wondering were you actually working?

D: Well I I I'd have to check a schedule my schedule but I can try to pull it up and

Z: Yea. If you want to go ahead yea take a couple seconds and let's

D: And see if was on that day.

Z: Get that part down.

(Pause)

D: Yes I was working that day.

Z: Ok. So you would have been in at 2pm right?

D: Correct.

Z: Ok. Very good. Ok. Um

(Pause)

Z: Alright so I just want to go this is um I'm going back to general order 36 again. Section I where it says general conduct. Um part 1 says employees will display respect for their supervisor, subordinates and associates. Part 6 says employees will not slander or speak detrimentally about the department or another employee. Um and I just you're interpretation from the email and the way it was sent out ah I know you answered previously aware that the chief wasn't aware that he sent it out ah would you consider that to be violations of those general or one or both of those general conduct ah rules. Talking about 1 and 6 specifically. Just curious what your thoughts are there.

D: Well I would hope since that the when he put out that email that he would have got the blessing of the chief before he put it out and that was not known at the time that's so I think yea that's ah not notifying him of that that he was going to put that out is definitely violating that.

Z: And you've not got any explanation either from your position as a ah you know shift level leader in the department as to what this is all about other than what you've discussed today and told me about.

D: No I had no idea it was coming out and um quite frankly ah ah I was surprised that it's it's not motivating our people at all. Um and there's other avenues if people are struggling. Ah to go through rather than what he suggested in the email.

Z: And ah is Assistant Chief Boyer is he a member of the PAC team or is he someone that does that type of counseling?

D: He is not.

Z: Ok. Alright. Um (cough) were you aware Jason of any department members who, as part of the stress level environment had may have been threatening to leave the department or there might have been some type of situation that would have propelled them if if one of your personnel had an issue they would likely come to you first I would assume, right?

D: Yes.

Z: Ok. Alright. Are you aware of any situations in which an officer in that situation would have gone to see the Assistant Chief about it about the issue?

D: No I don't think so. Um like I said that's not a normal operation to do. Um normally if they have we we you know we pretty much have the environment that you talk to your supervisor first if you're you know if you have some issues and and they'll either help you ah give you an avenue to go to or they know hopefully that they know that the PAC team's available and there's you know we got all levels of people on the PAC ah PAC team from sergeants to officers to you know to lieutenant

Z: Mm hmm.

D: So they have a lot of avenues to go get help if they need it.

Z: Ok. Um

(Pause)

Z: And as you said earlier since you found out the assistant chief did not have the chief's blessing or permission to send the email out?

D: Yes I found that out from the chief.

Z: Gotcha. Are you um aware of a I guess it's a I don't know if it's a West Fargo PD wife Facebook page?

D: Um I know there is one.

Z: Ok.

D: Ah ah my wife isn't a part of it. She doesn't have Facebook so.

Z: Gotcha

D: I've only heard of it. I haven't seen it though.

Z: Ok. Um are you aware of any has anyone mentioned this to you or have you heard from anyone that may or may not have been postings on that particular page about either this email or this particular situation?

D: I was not aware of it. No.

Z: Ok. Alright. Let's see here. And do you have any ah existing personal relationship with Assistant Chief Boyer other than at work?

D: No. I do not.

Z: And I imagine if how long have you worked with him ah in your capacity?

D: Um well ever since he started at the PD I was his sergeant at one time.

Z: Gotcha. Ok. Ok. Um. I think that's all the questions I have at this juncture Jason. Ah I'll just throw this out there. Is there anything in your mind ah that maybe I didn't specifically ask you but that you would feel would be important to this investigation specifically related to Assistant Chief Boyer's actions, statements, comments, about the Chief that seem either undermining or insubordinate?

D: Yes actually I do. Um just last week I don't know if it was Wednesday or Thursday um I was speaking to ah Sergeant Pete Nielsen ah we were talking and he all of a sudden told me that um last week the officers were kind of quiet last week through the holiday so there wasn't too much command staff around. I was gone ah Chief was gone ah most, like I said the only person I think was around was Jerry and I think this was last Thursday.

Z: Ok so we're talking

D: It would be like I think it's the first?

Z: Yea. Thursday was the first.

D: The first. And I think he came into the. Assistant Chief Boyer came into Pete's office

Z: Ok.

D: And just apparently started talking to ah Pete about ah the Chief about ah how the Chief's never around ah and that it it he made a reference that's he goes it's like the old Reitan days meaning that um Chief Reitan never um apparently held some things back from ah Assistant Chief Boyer and didn't always tell him everything and so ah he was referencing I think that's what he meant when he said it's like the old Reitan days



when ah Mike Reitan was our Chief. So I know Pete has a lot more information on that conversation. Those are the couple things that struck me um and I couldn't believe that ah Jerry was going to Pete and saying these things to a sergeant ah I mean to anybody but down to a sergeant level and um at that point I I decided that is something that Chief Otterness needed to know that Jerry was um confiding in one of our sergeants about ah the Chief's conduct.

Z: So did you report that to the chief?

D: I did report that to the chief.

Z: Ok. So just kind of when do you know when sergeant Nielsen told you about this? I know you said it happened on July 1<sup>st</sup> but when did he relay it to you?

D: Um

Z: Cause you said you were off on the first right?

D: Yea.

Z: The 2<sup>nd</sup> was Friday.

D: Yea I I've been off until I'm trying to think when when Pete told me that but.

Z: When did you report it to the Chief? Do you know when?

D: Um I'm gonna look at a calendar cause I

Z: Absolutely.

D: My days are so messed up with being on vacation.

Z: Yep. Just take a peek and see if you can figure that out. If not

D: I know that it happened last week and that's why

Z: Ok.

(Pause)

D: I know I would have told the Chief when I first came back which was probably the 7<sup>th</sup>.

Z: Gotcha. And when did you start vacation?

D: I started on the on the 1<sup>st</sup> but I was gone on the 30<sup>th</sup> for honor guard training. Um so I was in the office but I so I know that ah Jerry either talked to Pete on the 30<sup>th</sup> or the 1<sup>st</sup>. It was one of those two days. I'm sorry that I'm not specific.

Z: No that's.

D: I I think that Sergeant Nielsen would have the

Z: Gotcha.

D: The the specific day. But I informed the chief on the 7<sup>th</sup> when I came back

Z: Ok.

D: Um.

Z: Does Sergeant Nielsen report to you or is he ah what shift does he work?

D: He all the patrol sergeants right now are reporting to me since I'm the only patrol lieutenant so right. So yea he's reporting to me right now.

Z: And and what shift does he work?

D: He works the day shift. He's ah day shift sergeant with a canine.

Z: And so those hours would be.

D: 7 to 7.

Z: 7am to 7pm ok. Sure.

D: Correction 7 to 5. I don't know why I said 7 to 7.

Z: I said 7 to 7.

D: 1700 is.

Z: Yea. Ok. Alright. Good um any other was there any follow up with you and Sergeant Nielsen about that other than you reporting it to the Chief?

D: Well, Sergeant Nielsen to me was concerned that ah um you know. He knew that the Chief didn't know about this and ah but he he's we're in the middle of a promotion process and he's up for you know he wants to be promoted as well.

Z: Ok.

D: So he thought it might be adverse if he brought this up um taken that ok if Jerry found out that he said something that it could affect possibly being promoted.

Z: Oh. Does Chief Boyer have a um is part of that selection piece or just?

D: Well um normally he would be yes. You know. He would consult with the Chief. The Chief has the final decision but I think he would ah he would probably be on the board the interview board possibly you know.

Z: Gotcha. Alright and so what did you tell Sergeant Nielsen after he said that.

D: Um I told him you know you know not to worry ah I would talk to the Chief and let him know what's going on and so that would not affect anything that he is trying to ah do as far as getting promoted.

Z: Ok.

D: So. And and the Chief actually asked me to make sure that he's reassured of that as well.

Z: So you touched base with Sergeant Nielsen and let him know that you talked to the chief?

D: Yes.

Z: Ok. Alright. Um any other conversations or other situations like this that you're aware of?

D: No. Those are the only two that really just are really stand out in my mind that ah above and beyond so. The email and and the conversation that Jerry had with Sergeant Nielsen.

Z: Ok and obviously I'll you know be speaking with him so um as part of any internal investigation you understand advisement not to speak talk to anyone about the internal investigation or about any of the questions that were asked.

D: Yes.

Z: Until it's complete. Ok.

D: Yes.

Z: Um are you aware from talking to Sergeant Nielsen who else may have been in the room when he was talking to Assistant Chief Boyer on that day?

D: Well there was Sergeant Danielson and Sergeant Orn were in the room prior. Or earlier. But so all four of them were in the room at one point um and then I think Sergeant Danielson and Orn left and that's when ah Assistant Chief Boyer and and Pete continued talking. I think that's when that conversation about the Chief occurred.

Z: So.

D: So I don't think Danielson or Orn were aware of anything.



Z: Nielsen will be able to clear that up.

D: Yes.

Z: Ok. Alright very good. Ah hmm. Anything else that maybe I didn't specifically ask you Jason anything that's important to the investigation or important for me to know so I can obtain all the information?

D: Well the only other person and I don't know if this is on your list is is you know um Business Manager Chris Davidson. She works a lot with you know side by side with Jerry and she may have some information that I'm not aware of.

Z: Ok. But and you have her and you have talked or discussed about any such issues or anything like that. You're just saying she might know something.

D: Well the only issue I asked her um is during COVID um most the command staff was working from home. I myself was a night ah the night lieutenant at the time so I was still coming to the police department so Jerry pretty much worked from home the entire time ah maybe stopped came into the PD every now and then but um I noticed cause we get the overtime sheets that he'd accumulated quite a bit of overtime during COVID

Z: Assistant Chief did?

D: The Assistant Chief did.

Z: He gets overtime?

D: Well, it was you know considered a disaster. The governor made a

Z: Oh.

D: An emergency declaration so um.

Z: Exempt people could

D: Exempt people could get overtime.

Z: Hmm.

D: Um so.

Z: So you noticed that? Ok go ahead.

D: Yea I just I noticed and actually ah Lieutenant Gustafson both myself discussed it about how he seemed to be getting quite a bit of overtime during ah during COVID um I do know that you know at that time Chief Heith Janke was in the process of um going

back to the FBI and so he pretty much kinda left Jerry in charge of COVID operations but you know ah I myself maybe put in a couple hours the entire time of overtime and I don't know if Adam even had more than five hours but Jerry had quite a bit of hours above everybody else. And that's why I just discussed with Chris if she noticed that and she did she said she did but she didn't she never said never said anything.

Z: Ok. Any idea how many hours he accrued?

D: I was trying to look it up. Um before we had this conversation and I I was unable to find it at the time cause it's it went back so far that I couldn't I couldn't locate the overtime sheets at the time but.

Z: So what timeframe are you I know it's during COVID but kind of what time

D: I would say you know the February March April timeframe of 2020.

Z: Gotcha. And so you had Chief Janke who was kind of in process of leaving prior to Chief Otterness coming in.

D: Yes.

Z: And he came in when, September?

D: Yes. Yes.

Z: Ok. Alright so there would be a record somewhere.

D: There would be a record. Yes.

Z: Ok. Gotcha. So when you do, when you were doing overtime under that emergency order as an exempt employee, did you have to fill anything out? Were there any forms you filled out indicating what you

D: Yes.

Z: were doing?

D: HR actually made us fill out a sheet every week and turn into her.

Z: Ok.

D: Anything that was COVID-related. So Jenna Wilm would have the all the COVID overtime sheets.

Z: Got it. Jenna.

D: W-I-L-M

Z: Ok. Alright yea because the feds are reimbursing that right?

D: Yes.

Z: Hmm. Ok. Alright. Um anything else related to kind of the behavior, insubordinate acts that I didn't specifically ask you about?

D: No. Those are the only instances I can think of.

Z: Ok.

D: At this time.

Z: Alright ah well let's see. I don't have any additional questions for you ah Jason so we're going to end the interview ah 10:08am again just a reminder again not to discuss this investigation with anyone until it's completion. I'm sure the chief will let you know when the investigation is complete. I appreciate your ah your ah participation and candor. Ok? Any other questions for me?

D: No.

Z: Ok. Perfect. We're going to end the recording.



**David Zibolski**

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**From:** David Zibolski  
**Sent:** Friday, July 9, 2021 2:39 PM  
**To:** David Zibolski  
**Subject:** WFPD —Lt. Jason Durra—7-9-21 9-am-10:08am

**WFPD**

**—Lt. Jason Durra—7-9-21 9-am-10:08am**

-job 17

Intro and reading of allegations

Not a target

Garrity notice

Review of Insubordination policy

How does that look from a Lt./Sgt position

How does it look from a Chief perspective?

Email on 4/23

-read it probably at home—off on Fridays

What was your reaction to this?

-surprised —seemed like it should come from Chief

Did you discuss the email with anyone else?

-saw chief off duty on Sunday and thought it was odd

Who/when?

-Lt. Adam Gustafson the following week—probably Monday, April 26th

-agreed

Did any subordinate ask you about the email at that time?

-not that I can remember

-did not address with troops

-doesn't think anyone else did either

who/what was said

Did you discuss the email w/AC Boyer prior to it going out?

-no

Did you have any knowledge of his intent to send it?

-no

Did you partake in putting together the language of the email

-no

-told his wife had proof read it.

Did you proof read the email prior to it being sent

-no

Have you discussed the email with AC Boyer since it was sent out on 4/23?

-

Have you discussed the email with anyone else in the department since 4/23?

Did you have a discussion with Lt. Adam Gustafson about the email?

-

Did Lt. Gustafson relay any information to you related to AC Boyer's comments about the Chief and any action taken regarding the email?

-shortly after Chief spoke to Jerry about the email and Jerry spoke to Adam about this. Adam relayed to him that Jerry got his ass chewed over the email. About 2 weeks.

Did Lt. Gustafson relay any information to you related to any questionable comments made to him by AC Boyer regarding the Chief?

-not that he can recall

Where you working on May 10, 2021?

-2p-12am—yes

Did you have any discussion with Lt. Jason Anderson about comments made by AC Boyer regarding the Chief on or after that day?

When/where/who was there

Where any conversations in a place that could be overheard by others?

(Ref: GO 36, H.4.h., I.1. & 6.)

Are you aware that email is an open and public record?

-do you know if AC Boyer had the Chief's permission to publish the email?

(O.1. & 3).

-

Not aware of FB

No personal relationship

AC Boyer—any other situations re: insubordination/undermining of the chief?

-

Last week Wednesday, June 30 or Thursday, July 1st into Pete's office

-Nielsen told him about this on...

-Chief's never around referenced he's like Ryden days—old chief

-He reported to Chief first back from vacation on 7/7/21

-Sgt. Nielsen reports to him and works day shift (7a-5p)

-Sgt. Danielson and Orn were in the room at one point—after they left

Chris Davidson may have info\*\*

-during COVID, AC working from home mostly, acquired a lot of OT, as did Lt. Gustafson

-Chief Jahner was in process of leaving, so not watching so much

-most only had 5 hours

-Feb, March, April, OT

-HR made them fill out sheets COVID related OT—Jenna Wilm\*\*

Sent from my iPad



Exhibit 8



# West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-433-5500 | westfargopolice.com

Denis E. Otterness  
Chief of Police

## West Fargo Police Department

### Garrity Notice

On behalf of the West Fargo Police Department I am advising you that you are being questioned as part of an official administrative investigation. You have been identified as a witness to alleged misconduct allegations.

You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/ or termination.

During the course of questioning, any statement, answer or information that you disclose which indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions.

My signature acknowledges my awareness and understanding of the aforementioned.

[Signature] 7/13/21 1428  
Employee Signature Date Time

[Signature]  
Witness/ Interviewer's Signature

## David Zibolski

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**From:** Denis E. Otterness <Denis.Otterness@westfargond.gov>  
**Sent:** Thursday, July 8, 2021 9:41 AM  
**To:** Jason Anderson  
**Cc:** David Zibolski  
**Subject:** Internal Investigation

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good morning,

In reference to our discussion you are scheduled to meet with Chief David Zibolski on Tuesday, July 13<sup>th</sup> at 2:30 pm regarding an on-going internal investigation. This meeting will take place at Fargo City Hall (not the Police Department) in the Meadowlark Room (2<sup>nd</sup> Floor). Just a reminder that you are not to discuss this matter with anyone other than an authorized representative, which you are entitled to have with you. As discussed you are not the subject of this investigation but have been identified as a potential witness to misconduct allegations. Thanks and please let me know if you have any questions.

Denis



**Denis Otterness**

Chief, West Fargo Police Department

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Visit our website at:  
[westfargopolice.com](http://westfargopolice.com)



## **Jason Anderson Interview Summary – July 13, 2021**

July 13, 2021 from 2:25pm to 3:33pm, I interviewed Lieutenant Jason Anderson of the West Fargo Police Department relative to his knowledge of this investigation and allegations contained within. The interview was conducted at Fargo City Hall, second floor Meadowlark Room and was audio recorded.

Lieutenant Anderson indicates he been with the West Fargo Police Department for over 20 years and that he has known Assistant Chief Boyer his entire career. While they don't participate in off-duty activities. He does consider Assistant Chief Boyer a friend.

When questioned regarding the April 23<sup>rd</sup>, 2021 email sent out by Assistant Chief Boyer, Lieutenant Anderson immediately replied he didn't know anything about it and didn't read it. He went on to state that he doesn't read emails like this because he has seen Jerry send these types of emails out before. He knew right from looking at the title of it that it was some type of department pick-me-up email and immediately deleted it as he felt it was not important. Lieutenant Anderson states that he was working on April 23<sup>rd</sup>, but completes his tour of duty shortly before 2pm which was close in time to the email being published. He went to the gym to work out and believes that while there, he had some discussion regarding the email with Sergeant Craig Danielson and Sergeant Shane Orn while they were at the gym. He can't recall the specifics of that conversation but didn't assume that the message was anything other than what he thought when he deleted it, that being some type of department pick-me-up email. He states that Sergeant Danielson may have better memory of the conversation.

Lieutenant Anderson said that he hasn't seen or talked to anyone about the email since it was published except for last week when Chief Otterness read him the first line and served him a notice to appear for the interview. Lieutenant Anderson states that he doesn't recall talking to any other lieutenants, subordinate staff, or civilian staff regarding the email. Specifically, he states he does not recall Administrative Assistant Chris Davidson asking him about the email. Lieutenant Anderson stated several times that because he felt he knew the content of the email and understood Jerry from a personal perspective that the contents of the email did not directly affect him or what he does on a daily basis so he did not pay it any further attention. He states if anyone asked him about it he would not have paid much attention to that and is unable to recall any specific conversations about the email.

Lieutenant Anderson did state that prior to the passing of Lieutenant Gustafson on May 18, 2021, he does recall talking to Lieutenant Gustafson in Assistant Chief Boyer's office prior to May 18<sup>th</sup> over a particular issue in which Lieutenant Anderson pushed out an AA type memo that didn't follow the process put in place by Chief Otterness and may have upset him. Assistant Chief Boyer told them that he, too, may have upset the Chief but didn't provide any specifics. Lieutenant Anderson states that he didn't follow up on that statement by Assistant Chief Boyer but realizes that maybe he was referring to this particular email incident when he made that statement.

Lieutenant Anderson stated that he had no knowledge that Assistant Chief Boyer was going to send the email out, he did not partake in putting together the language of the email, nor did he proofread the email prior to its publication. He also states that he did



not discuss the email with Assistant Chief Boyer at all. He is unable to remember discussing the email with anyone else. However, again states he may not have been paying attention and if it doesn't concern him, he generally ignores it. Lieutenant Anderson was unaware of any action the Chief took to address the email with Assistant Chief Boyer.

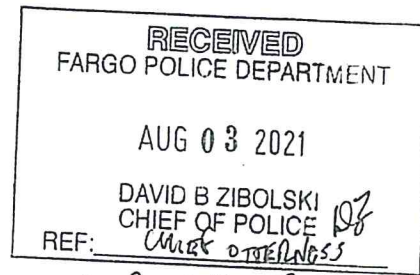
Upon checking his work calendar, he did acknowledge he was working on May 10<sup>th</sup>, 2021 and that actually may have been the day he was in Assistant Chief Boyer's office with Lieutenant Gustafson in which Assistant Chief Boyer mentioned that he may have upset the Chief.

When going over the email with Lieutenant Anderson since he had not read it before, he stated that because he knows Jerry, he doesn't take the email as insubordinate or undermining, however he agrees that other personnel in the department and/or certainly the public could interpret it that way, which would be contrary to department policy, and could have a detrimental effect on the Chief's ability to run the department.

I questioned Lieutenant as to his experience working under Chief Reitan. Lieutenant Anderson stated it was "like a dictatorship" and that it was his way or no way type of deal. He went on to say it was horrible and you didn't know what was about to happen. Lieutenant Anderson stated that Chief Reitan would express to all of them at department meetings that they all could "get fired" and they were all replaceable. He felt Chief Reitan never really showed any leadership. I asked Lieutenant Anderson if Assistant Chief Boyer compared Chief Otterness to Chief Reitan, would that be a positive message. Lieutenant Anderson stated that it would not. I asked Lieutenant Anderson if Assistant Chief Boyer made statements like that to people within the department, would he agree that was an act of insubordination. Lieutenant Anderson stated, yes considering the policy, that would fall underneath it. When asked if he ever heard Assistant Chief Boyer make these comparisons, Lieutenant Anderson stated no.

When questioned as to Lieutenant Anderson's knowledge regarding any other situations regarding insubordination or undermining of Chief Otterness by Assistant Chief Boyer, he stated that Assistant Chief Boyer has complained on many occasions that communications between he and the Chief are not good. Lieutenant Anderson states that he did not ask for or observe any specifics, and has heard Assistant Chief Boyer say this on many occasions. Lieutenant Anderson feels that Assistant Chief Boyer is still upset that he did not get selected for the Chief's position. Lieutenant Anderson agreed that it was pretty detrimental to Chief Otterness's ability to succeed if Assistant Chief Boyer was unable to reconcile the fact that he was not selected as Chief. Although Lieutenant Anderson has had conversations with Assistant Chief Boyer in which the Assistant Chief has expressed his displeasure in not being selected, he doesn't feel that Assistant Chief Boyer would attempt to undermine Chief Otterness. Lieutenant Anderson stated that he has had conversations with Assistant Chief Boyer in which he has expressed complaints about the Chief not being around. Lieutenant Anderson stated he did not take that in a bad way, as he thinks that is a good thing.

Lieutenant Anderson had nothing further to add relative to this investigation and the interview was completed at 3:33pm.



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## Jason Anderson Interview – July 13, 2021

Chief Zibolski (Z)  
Jason Anderson (A)

Z: This is Chief David Zibolski um it is Tuesday, July 13, 2021 at 2:25pm, conducting an internal investigation on behalf of Chief Denis Otterness of the West Fargo Police Department. We are currently in the Fargo City Hall second floor Meadowlark Room and present for the interview is Lieutenant Jason Anderson of the West Fargo Police Department. Um, is it ok if I call you Jason?

A: That's fine.

Z: Ok Jason. Can you just acknowledge presence for the for the audio piece please the video or the audio?

A: Just want my name? Jason Anderson Lieutenant West Fargo Police Department.

Z: Ok thank you. And so before we begin Jason, I'm going to read you um the West Fargo Police Department Garrity Notice. On behalf of the West Fargo Police Department, I am advising you that you are being questioned as part of an official administrative investigation. You have been identified as a witness to alleged misconduct allegations. You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/or termination. During the course of the questioning, any statement, answer, or information that you disclose which indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However these statements may be used against you in subsequent administrative actions. Do you understand that?

A: I do.

Z: Ok so have you ever been involved in an internal investigation before sir?

A: I do the IAs at our department.

Z: Ok. But you haven't been questioned but you do the IAs so you know the purpose of a Garrity.

A: Yep.

Z: Ok.

A: Yep.

Z: Good. So, um again I want to clarify that you are not a target of the investigation. You've been identified as a potential witness to alleged misconduct. Um.



A: Understand.

Z: Ok good. I'm going to ask you to sign this acknowledging that. Need a pen?

A: Yea.

(Pause)

A: Here you go.

Z: Thank you. I'll sign that.

(Pause)

Z: Ok um just in terms of a little background Jason, how long have you been with the West Fargo Police Department?

A: April 20<sup>th</sup> of 1998. A little over 23 years.

Z: Gotcha. How long have you been a Lieutenant?

A: October 26<sup>th</sup> of 2017.

Z: Ok. So the investigation that I'm conducting relates to alleged insubordinate acts on part of your Assistant Chief, Gerald Boyer. Ok, so (cough) understanding that this is a difficult position for you to be in as someone who is subordinate to that individual, um I just want to remind you that it's important that you just answer truthfully and as completely as you can. Ok? Um and at the end of the this investigation will be reviewed by Chief Otterness and he'll make a determination as to whether or not there is any violation or things of that nature ok but I will be asking you as we go through here um for your input on a on a couple of these questions ok?

A: Sure

Z: Um and so I guess how long have you worked with Assistant Chief Boyer at West Fargo PD?

A: Oh I'd say since he's been hired on. I guess I'm not sure about the years probably

Z: So as long as you've been working there

A: Yes

Z: He's been working there.

A: Well I started before him so it's probably in that 15 years I suppose, somewhere in there.

Z: Ok. Do you have any kind of personal relationship with Assistant Chief Boyer that's outside of work?

A: Ah not really, no. We don't hang out or do anything. I mean, if there's a function

Z: Sure.

A: PD function or something and we're there at the same time, we talk. We're I would consider him a friend but we don't ah you know I don't hang out with him. We don't go to the gym together, things like that so.

Z: Mostly professional relationship?

A: Yea for the most part. But still I would I mean I'd still consider him a friend I guess.

Z: Ok. Well you do consider him a friend?

A: Yea.

Z: Ok.

A: Oh yea. Yea.

Z: Um ok. So I guess making this more difficult.

A: Understand.

Z: Just keeping it in mind. So, first I want to go over a couple of your policies to share with you ah I'm sure you're familiar with department policy, but I just want to talk about a couple things. This is general order 36 and section H talks about disciplinary and personnel actions ah specifically ah subsection 3 b like in boy mentions insubordination. And it also mentions insubordination consists of direct tactic or constructive refusal to do assigned work also includes discourteous treatment of the public or a fellow employee or any act of omission or commission of a similar nature which discredits or injures the public. (cough) And in section I the general conduct, there's a couple things here I just want to review. One is ah, I one which says employees will display respect for their supervisors, subordinates and associates. Number six employees will not slander or speak detrimentally about the department or another employee. Are you familiar with those ah policy pieces there?

A: Yea.

Z: Familiar?

A: General rules of conduct actually.

Z: Yep. You got it. Ok. (cough) There's also a city policy here as well, um employee development, performance and discipline, 3.03 standards of behavior for the city um,

specifically talks about behaviors and actions that do not foster a respectful and ethical workplace and may lead to disciplinary action or termination of employment include but are not limited to number 3 talks about unprofessional behavior, such as ridiculing, belittling, blaming, gossiping, making assumptions or embarrassing employees. And number 4 is insubordination including refusal or failure to perform assigned work. Um, I don't I don't know if you recall the city handbook. Is that something you

A: Yea I don't I mean I they give us. We have access to it I suppose I don't recall that I've ever looked at it but it kind of mirrors what we have in our own policies so.

Z: Yep. And as a Lieutenant/City employee you recognize the city and department policies apply.

A: Yep. Yep. Correct.

Z: Ok. Alright. Ok so um (cough) I want to take you back inside some of this is a bit in time so if you want to reference a work calendar or whatever, that's perfectly fine. We can arrange for that. Um (cough) were you there was an email sent out by Assistant Chief Boyer on April 23<sup>rd</sup>. It was entitled oh Why Keep Coming? Ok that was sent to all staff. I'm showing you a copy of it. Do you recall getting that email?

A: Um, I recall getting it.

Z: Ok.

A: I can tell you right now, I didn't read it.

Z: You never read it?

A: No.

Z: Ok. Alright.

A: I don't normally and probably bad on me but I don't normally read these types of emails that come out.

Z: Ok well what do you mean by that?

A: I just don't read them. I know what they say. I have an idea of what they're going to say. It's kind of a pick me up to want to come make sure that it it seems like in the past because we've had these come out before um like ah Jerry's been interim a couple times and some of the times we've had hard moments during those times with our department because first time leadership was really kind of, it was poor. So we had a bad moment in our department um it wasn't fun to go to work type of thing so Jerry would send out a lot of emails to try to pick people up um you know, let them know we're all together, we're here, we're family.



Z: Mm hmm.

A: Things like that. Um so after awhile of having seen those types of emails, I just (laugh) stopped reading them.

Z: So um as a lieutenant I guess, this is an email from the Assistant Chief so

A: I know.

Z: Can you elaborate on what kind of message you think was going to be in there?

A: That we are all together, let's show up for work, let's come to work, let's be happy, keep a good attitude type of thing.

Z: So it's why keep coming.

A: So to me that the fact that if I even looked at this for probably half a second would probably be stretching the time and that was just popping up on my thing so what this says in here

Z: Yea

A: I can't tell you.

Z: OK.

A: I've never seen it.

Z: Alright. Um so were you were you working on April 23<sup>rd</sup>?

A: Probably.

Z: I mean can you check your schedule confirming you were working?

A: Yea. Ah what day was it?

Z: Um, well April 23<sup>rd</sup>.

A: Is it ah is it ah do you know if it's a Monday Tuesday?

Z: Give me a second here. It is a ah Friday.

A: I'll check because I don't know I necessarily was working. Um. Odds are I probably was but.

Z: Well, take the time, check your schedule. That's fine.

A: Ah let's see the April I know it sounds odd but

Z: Hey there's a lot of weird things that happen and ah it's a dynamic environment right?

A: I I guess I you know coming from past emails and stuff like that I just thought it was other kinda like hey let's stick together.

Z: You thought it was going to be a positive message huh.

A: Kind of yea. Or or one that would like say hey we're we're all in this together.

Z: Sure

A: We're all here. We're family that type of thing and I don't personally need that. I love coming to work. I love my job. I don't need the pick me up and I don't I guess I don't need the pep talk I guess that's how I look at it.

Z: Self-motivated guy.

A: If I get in trouble for not reading it I guess I get in trouble (laugh)

Z: I don't think that yea I don't think that's the focus but ah

A: Ah yep. I was ah I was actually working that day. I recall but you know some of the guys that brought up that the email came about so it's not that I haven't heard about it. I just haven't read it.

Z: Ok so.

A: I guess if that's the best way to

Z: Who else brought it to your attention there? Who else did you talk to about the email?

A: Ahhhh oh I would have to imagine it would have probably been Craig or Shane would have been the two guys that if I guess I would have talked to it would have been at the gym.

Z: Ok so who's Craig?

A: Sergeant Danielson and Sergeant Orn would have been the only two guys that I would have talked about and I'm trying to think I cause if we even if we were to say anything if they were to tell me about it because I remember seeing the email come out and I just hit delete. I

Z: So you just deleted it right away?

A: Yea. I didn't even open it.

Z: (cough) Ok so you deleted it as soon as you got it

A: Mm hmm.

Z: You assumed it was going to be a pick me up.

A: Mm hmm.

Z: So when you think you discussed it with Sergeant Danielson and Sergeant Orn or?

A: I thought some I thought one of the guys had mentioned something at the gym.

Z: Ok. What gym do you go to?

A: Ah family wellness.

Z: Ok. On ah 52<sup>nd</sup> Avenue?

A: No ah that's BLVD and Cedar Park Cedar Drive

Z: Oh gotcha. Ok.

A: Something like that.

Z: Ok

A: And ah I can't quote I can't quote but something to the affect and I don't remember if it was Craig or if it was Shane. It could have been both at that time depending on I don't know if Shane was going to metroflex or not but about hey did you see that email from Jerry? And I said no I didn't open it and I kind of a scoffing moment as far as another one of those types of emails last time you know it's the last thing we said about it. So therefore I almost confirmed to me that it was one of those.

Z: Mm hmm.

A: A we're in this together type email. So we didn't really talk much more because I'm at the gym.

Z: Ok. So as far as you know it was another positive pick-me-up email.

A: That's what I thought it was.

Z: Ok. Did you find anything out differently since Since you deleted it?

A: Ah next next time I talked about it at all was with ah Chief Otterness last Thursday when he brought this up to me.



Z: Ok

A: So I haven't seen it, talked about it, or done anything about it until it would have been Thursday when he notified me that I was coming here. And then he had um he read the first line I think it was

Z: Mm hmm.

A: Which is the first I've actually had any substance from this particular email.

Z: So he read the first paragraph to you?

A: Ah I think it was the first sentence was it the first sentence? Ah whatever he read was I think he said was the very first thing boom off the bat so.

Z: Gotcha.

A: That would have been the actual first time I heard any substance of this email.

Z: Ok um (cough) so you are you day shift lieutenant?

A: Yea

Z: Ok um

A: Well I do I'm the administrative lieutenant yea, But I'm on, I work during the day yea.

Z: Gotcha. Ok and so did you have any kind of any conversation about the email or its contents with any of your lieutenant peers?

A: None.

Z: Adam Gustafson not ah Jason Dura

A: Nope.

Z: Ok.

A: Not that I remember. I normally if I'm gonna if it would have been anybody it would have probably been Adam I guess if there is anybody that I would have talked to about it. But it's it was a Friday, odds are I probably left a little bit early. Adam usually stuck around a little bit later in the day time.

Z: Mm hmm.

A: So what time was that? What time did it come out?

Z: Ah it came out at 1:53pm.

A: So there's really good odds that as I'm leaving, that comes out.

Z: Cause you're done at 2 right?

A: Well, well I would usually leave around 2 2:30

Z: Gotcha.

A: So what I like to do before I leave is go through and hammer out any delete delete delete anything that's not

Z: Yea cause it's the end of the week.

A: Right. So I and then as the weekend goes, I check my email so that I don't come back to a bunch so as I'm leaving on that Friday, I probably saw that the title or whatever and just deleted and just kept on deleting down.

Z: Ok.

A: Cause I actually have it in my email where it's like the emails on the column email you know

Z: Ok

A: And then on the right side of that the email will actually show, like words or whatever will actually show but so much so that I didn't even look over there to read any of it. I just delete delete delete delete as I know which ones you know I don't need this I don't need this I don't need that type of deal. So being it almost two o'clock, I'm probably busting out of the building about that time so not paying a whole lot of attention to anything.

Z: Ok. Um did any of your subordinates ask you about the email? I mean it went to the whole department. I'm just curious did anyone come to you and say hey Lieutenant Anderson um I got a question about this email.

A: No.

Z: Ok.

A: Other than if other than ah like I said I don't know who, but I know it came up ah when we were at the gym probably this day.

Z: Oh so you went to the gym after work.

A: Yea.

Z: That's when you were discussing things with lieutenant Danielson or

A: I don't if if Craig Danielson if it would have been Craig I would have waited until 4:30 about if I went with Craig. I'm assuming it probably was Craig because I think Shane goes to Metro most of the time during the week, but he could have had a day where where he decided to run over to wellness there but

Z: Mm hmm.

A: So Craig and I I'm pretty sure that Craig and I had a very very short brief hey did you see that email that came out type of deal where it was like, yea I said no I would have told him I didn't look at it and just deleted it and then he would have said ah more than likely like hey it's it's ridiculous or something like that but we never got into any substance of it.

Z: Ok.

A: Which is why again I'm like ok. Another.

Z: So as far as you know in that conversation with Craig, this was still some kind of a pick me up email.

A: Yea. That's

Z: Ok.

A: Cause we didn't get into the

Z: Craig didn't raise any other concerns or questions?

A: No. Nothing nope.

Z: Ok um.

A: Not that I can recall. Um, if he did ah I don't recall but I recall it was a very very short brief conversation.

Z: Hmm.

A: And I'm pretty sure we were by the cement machines.

Z: Ok. And ah none of your none of your subordinates asked you about it ah what about any other civilian staff? Any civilian staff talk about being ask you about this email?

A: Nope. And um, I have ah I'm my division is all the civilian staff so I have none of them approach me about it at all either.



Z: Ok. Um what about the Administrative Assistant Chris Davidson? You have any contact with her?

A: Well daily I do yea but about this email?

Z: Yea

A: Not that I can recall.

(Pause)

A: Again a Friday, hell I probably would have forgot about it by Monday.

Z: At any time, not just on Friday.

A: Well as far as for this email goes? Yea no.

Z: So since the email went out, no subordinate has come up and asked you about it.

A: None.

Z: You haven't discussed it with any other of your peers?

A: Nope.

Z: You may have had a brief discussion with

A: Craig

Z: Craig ah Danielson at the gym?

A: Yea right.

Z: And no civilian staff including Chris came up and asked you about it that you can remember?

A: Nope.

Z: Ok. Alright. Um.

A: But like I said, I can tell you up until Thursday when the Chief read that first line right there um and I think he said something about since we haven't had a real department or something

Z: Yea

A: I can't I don't know the exact words

Z: Sure

A: But something to that effect. That's literally the first time any substance of this email has been in my head or in my ears or in my eyes.

Z: Alright well actually then this um is somewhat interesting ah so I'm going to go over parts of this email and ask you your reaction to it ok? Um so again this was sent out on April 23<sup>rd</sup> at 1:53pm. Ah by Assistant Chief Boyer and it starts out good afternoon (cough) since we have not been able to have a real department meeting in over a year, I am forced to send this out in an email. This is not my preferred way of communicating this message. So as a lieutenant in the department, what does that first paragraph mean to you?

A: That we haven't had a department meeting for a while.

Z: A real department meeting what is any is that

A: Like

Z: Relay any message to you?

A: Like where we all get together

Z: Ok

A: Cause like normally what we do is on the first usually like a first I think it was God I don't remember it's been so long. Like the first Tuesday of every month we used to always have a monthly meeting where it wasn't mandatory but people we'd everybody who wanted to come to hear what was going on or whatever

Z: All ranks kind of thing?

A: Patrol, civilian, the whatever whoever in the department wanted to come, we would share information so to me that was that would be we haven't had any a meeting so he's about to say something.

Z: Say something. Ok. And so just to put this in context Jason, April 23<sup>rd</sup> was a Friday. There was a significant event that happened that week um that caused some additional stress to law enforcement. Do you remember what that was?

A: Help me out.

Z: Ok. On April 20<sup>th</sup>.

A: Is that was that the riots?

Z: Yea well there was riots right. The jury decision in the Derek Chauvin case came out on April 20<sup>th</sup>.

A: Ok.

Z: Where they found him guilty of George Floyd's murder.

A: Yea I don't I didn't watch a bit of that.

Z: Ok so you you weren't aware that the jury found him guilty?

A: I was aware of that.

Z: Oh

A: But I don't watch the news. I don't.

Z: Gotcha.

A: I don't read the paper. I don't do social media at all. What I did get from the Chauvin trial was whatever Adam was complaining about what was going on with the trial. That was it.

Z: Ok.

A: So yea no.

Z: We would you would acknowledge that was a stressful time for law enforcement?

A: Oh sure yea yea yea yea.

Z: With the decision coming out?

A: Yea I mean I the dates I know that came out date wise.

Z: So following that decision, a few days later this email comes out.

A: Ok.

Z: So just setting context to especially since you didn't actually, you haven't read this yet.

A: Right.

Z: So I just want to provide some context for you as we walk through this ok?

A: Well and is that why it came out? Because I don't know. I mean I wouldn't have put that together.



Z: Right, well, I guess that's that's the question that remains to be answered but I think ah as we go through it, you might connect those dots perhaps.

A: Ok. Ok.

Z: So the next paragraph says I know that many of you are struggling with many things that are happening in the world right now. I'd be lying if I said that I wasn't also bothered, quite frankly it pisses me off. I know that each and every one of you is a good person and came into this profession for the right reasons. Seeing officers second guessed over and over by quote experts and wondering where your next attack is coming from. The media, politicians, or the streets is an unfair burden on you and your families. You are all policing in new territory and hard times. Our profession has been through this before. It will get better. Many of you have probably asked yourself, why should I keep trying? Again with everything that has happened in the past year, I think those are valid questions to ask. I have also asked myself that on several occasions. What's your what's your reaction to that paragraph as a lieutenant in the West Fargo Police Department? The message from your Assistant Chief?

A: Can I read it so I don't have to listen?

Z: Well I'm going to read the rest of it so seeing as how you haven't read it.

A: Can I cover it and read that paragraph?

Z: Sure yea.

A: So I don't see the rest of it, I just I'm going to try to process why

Z: I'm with you. Read that paragraph and tell me what you think.

(Pause)

A: See and this, this type of statement that you know this very first statement to me is where I'm looking I would be thinking like oh he's trying to help trying to get everybody to believe that they're here for the right reason. That we're doing the right things and to keep believing that we're here.

Z: Ok. So you see that as a positive message.

A: It's a good thing that we come to work regardless and we try to help people regardless of what's going on around the world and in the United States and wherever that we're all still coming to work and we're doing it for a good reason.

Z: Ok.

A: You know we're all good people. And then like the second being second guessed and all this other stuff to me it's like, I guess I would look at it like he's trying to keep people knowing hey we're doing the right thing.

Z: Mm hmm.

A: Don't let someone when they second guess you or they're going to Monday quarterback you know that you're doing the right thing.

Z: Ok

A: Type of thing I guess is that's how I look at that.

Z: Alright.

A: And I guess you know this last part

Z: Ok.

A: Is just him reaffirming that he wants everybody to believe that we're doing the that everybody that we hire that we have working for us is doing the right thing and we should still be proud of proud of what we're doing.

Z: Ok. Alright. Um Let me go down to the last paragraph here. So this one starts out we are lucky here at our department. We have a community that overwhelmingly supports us. The City Administrator supports us. The commission supports us and your admin staff supports you. Do you feel that anything's missing in that message?

A: Are you referring to ah the chief supports you?

Z: Well I mean do you feel that's missing in that message?

A: I me, personally, the admin staff. I guess that would include the chief.

Z: So you don't think it's unusual that while he goes to great lengths to talk about the city administrator and the commission he doesn't specifically mention the chief?

A: I I probably would look at it differently.

Z: Ok. Alright um how about towards the end here and I'll let you read the whole thing if you want but I just want to ask you about this ending sentence. Um every single shift you make a difference to many people. You are valued as people and the work that you do. I appreciate you more than you ever know. And that is why I keep coming back. My door is open to anyone that wants to call or text me anytime. I don't have all the answers, but I will listen and I understand. Anything missing from that piece?

A: Considering he's writing the email?

Z: Mm hmm.

A: No.

Z: Ok. So you don't think that this is a message that should involve the chief of police?

A: I didn't say that.

Z: Ok well that's my question.

A: I think it's an email that probably should have got sent by the chief

Z: Ok.

A: But being that Jerry sent it, how he sent it I can I see where he's I guess to me it looks to me cause

Z: Mm hmm.

A: This isn't the first type of email seen and as you read this and as I start hearing the words, it is another hey we can do this.

Z: Yea.

A: Well let's go back to your original analysis ok so when you said your admin staff supports you, in your perception you think that includes the chief and so let's look at it from that perspective. Let's say he was including the chief.

A: Yea.

Z: If he was including the chief, would his last sentence have all I's in it or would it be we?

A: Well see what he and how I look at it is when he adds all these things the city the admin all these people and then he he's ending up his last paragraph

Z: Sure

A: To everybody from him

Z: Ok

A: I guess so.

Z: Well, but he's talking to everyone.

A: Right.

Z: Up here, he's saying your perception is that he's including the chief and admin staff supports you. So why would he go from that to now it's just me? Now it's just I that



appreciate you. I'm here for you. I will listen and I understand. Um would you agree that if he was representing the chief he would have said we?

A: I don't know that he's representing the chief.

Z: Ok.

A: So I guess that's a question that I can't answer that.

Z: Ok you think this is a message that should have come from the chief?

A: Yea. I can say that.

Z: Alright. And do you think that before message would have been sent out by an assistant chief that the chief would have been consulted and involved?

A: Never being an assistant chief or a chief I guess maybe? Probably?

Z: Well let's ask this question, um

A: I guess if I was going to send out

Z: Ok.

A: An email like that, which I I know I've done

Z: Mm hmm.

A: Before.

Z: Sure.

A: Um, I don't know to this extent where I've never really sent out everything to the department but I've sent out to like particular guys hey great job whatever you're doing those types of things with like FTO stuff cuz I'm the leader of our FTO stuff.

Z: Mm hmm.

A: I've done that or like directly spoke to somebody about that but yea you probably want to you probably want to run it by to go hey I'm going to do this, is there a problem with that? Um.

Z: Yep yea ok. So

A: So I I I look at the email probably different than than most cause I guess I've known Jerry for a while and I I know or I think I know where he's coming from.

Z: Ok.

A: So to me I guess it's it's you'll probably get a different opinion on it.

Z: Ok.

A: Now that I now that I'm hearing it, I can still tell you I still see it as a hey guys we got this.

Z: So your, your reaction having heard this for the first time is that this is a positive message?

A: Still a little bit to try to pick everybody up with all the hard times that we've had, yea.

Z: Ok. Alright. And so let me just kind of ask you some generic questions. Um, so as a lieutenant you oversee some sergeants and some cops, right?

A: No.

Z: No? Who do you oversee?

A: One one sergeant.

Z: One sergeant ok.

A: And he is a cop. Right?

Z: Ok and how many officers?

A: None.

Z: Oh none. One sergeant?

A: I'm ah I do all civilian. So my sergeant it a training officer. Now I also I do oversee like my FTOs you know the FTO sergeant who's in charge of the FTO program and all the FTOs so I do I guess.

Z: Sure.

A: Technically sure I guess I do oversee that and my use of force team and all that stuff so. Directly just one sergeant but through um through different avenues of what I'm involved in the police department

Z: Sure

A: Sure. Multiple guys.

Z: Ok. So if your sergeant went out after you gave a directive to your team or had gave a directive to him to give to your team and went out to the group of civilians or your

training officers and goes you know (cough) lieutenant said this but here's the real message or here's what I think we should do um would you consider that to be undermining or insubordinate of your command?

A: If he if he changed what I if he's changing what I had pushed to him?

Z: Yes.

A: And he changed that?

Z: Mm hmm.

A: Well yea then he would be.

Z: Ok. What if he went um to your group and provided a message for your command similar to this that you weren't consulted on?

A: I guess I'd have to talk to him and ask him what his you know what the basis behind it all was. I I'd want to get more information as to what this is referring to.

Z: Sure.

A: Cause his point of view might might be something

Z: Right.

A: I might be reading it and seeing something that he didn't see when he was writing it cause he was in a different like he's he's writing this and thinking ok this is going to help this might help some people. I might read it and go what the heck what the f word so I guess I would like to probably pull him aside and go hey you sent this out and when I read it it to me it sounds like this.

Z: Mm hmm.

A: You might want to explain some things to me here so.

Z: So a situation like that (cough) and the wrong message is going out or it represents your division or are you in a division or what's your break down there? You in charge of a unit, division, whatever?

A: Well if I'm reading it and I'm getting the wrong impression on it, obviously others might be as well so I mean

Z: And does that affect your ability to command that unit?

A: I mean yea it could. It's possible depending on how well I'm running my unit. Um but sure I mean there's obviously a crack in the wall here if if that's getting sent out to our people who are looking at it differently than what this guy might have tried to send it



out and how I'm reading it and how somebody else is reading it so I'm going to yea there's certainly a possibility that there's there could be an issue with how I'm progressing with the development of my division so.

Z: Sure and you would agree that that may undermine your ability to command?

A: It does yea it could yea.

Z: So at a higher level, do you see the same relationship with the chief and assistant chief in terms of a message like this going out to the whole department, presenting a message um and potentially that message undermining the chief's ability to run the department?

A: Yes. For me, no cuz it I want it and read it to as I read it right here, this wouldn't affect me.

Z: It wouldn't affect you.

A: It's me personally obviously I'm one person out of 75 so.

Z: Ok.

A: Um and obviously I can only speak on my behalf but this wouldn't take this wouldn't take anything from me on how Denis wants to lead.

Z: What about the rest of your employees? What about the rest of your troops? Would it affect?

A: I don't know. I don't know that cause I haven't asked. (laugh) I haven't had a conversation with any of them about it so I just

Z: Well I understand but same example we just talked about how it undermines you as a commander depending on how people interpret it

A: Right.

Z: Wouldn't that have the same effect in terms of the chief's ability to run the department if the message from the assistant chief is causing different interpretations or different messages about the level of commanding control of the department.

A: Yes. I mean that's very true if I knew you know if I knew that other people read it in the same manner yea sure. That's and there's obviously a possibility that that's the case so yes.

Z: And and so after all of this, no one has come to you and said hey lieutenant I got a problem with this or what's going on

A: No.

Z: Or that kind of stuff

A: No. Not one time no.

Z: Ok. Alright.

A: And to be honest, I don't know that anyone would.

Z: Ok.

A: So

Z: For what reason do you think they wouldn't come to you if they had a concern?

A: I don't maybe they didn't read it or they just read it and thought the same thing I'm thinking um

Z: Ok. Um

A: It's pretty it's I I don't know I think a lot of the people in our department I don't know that you would have probably got anybody that came to somebody about about that particular email I'm not sure that you asked any of the supervisors if anybody came to them about that you probably wouldn't find many that probably wouldn't and I can be completely wrong in how I'm looking at it but I think a lot of our people just kind of move along with the with the motions so.

Z: So ah if (cough) another member of the department went and said hey I actually asked lieutenant Anderson about this email, um are they mistaken or they just don't remember that or?

A: Nobody's asked me about this email.

Z: Nobody's ask you about that email? Ok.

A: I'm going to tell you that right now and if they did, either I'm sleeping or wasn't paying but I'm telling you right now, no one's asked me about that and the only conversation I've had about that would have been a very short, brief at the gym I think with Craig.

Z: Ok. And were you aware at all um of any um having not read it I guess, did anyone bring to your attention was there any action taken by the chief or conversations between the chief and the assistant chief relative to the email? Any conversations that you had with anyone about that?

A: You'll have to rephrase that cause

Z: Well let's start with this. Have you discussed this email with Assistant Chief Boyer at all?

A: No.

Z: Ok. And has he come and explained anything to you about the email?

A: No.

Z: So you got no conversations about that?

A: No.

Z: Ok. Go ahead.

A: Mmm. Well, I think Jerry had mentioned to me he may he may have upset the chief about something. It could have been this. I don't get into that. It's not my business type ah so I think Adam and I were I wish I could tell you the approximate even time. I don't even remember when it was. But it was a little while ago that Jerry had said something about that he had made the chief upset about something. But didn't didn't go into why.

Z: And that was something that he told you and Adam?

A: Yea. Adam and I both were in his office I think so.

Z: Ok so this would have been prior to May 18<sup>th</sup>, right?

A: Yep. Obviously yea.

Z: Yea I don't want to not to be a con there but yea just trying to put dates in place there.

A: And I guess I would I guess if I was going to assume now we know why.

Z: Ok so when Jerry said he may have upset the chief, he didn't provide any specifics there wasn't?

A: No and we didn't ask. Neither one of us even asked.

Z: Ok. Did he make did he say anything else about why he upset him or what

A: I can't.

Z: Any action that was taken against him as a result of that or.

A: I can't remember why it even came up I I'm trying to think if I sent something out about like we do AAs, which is an announcement about something that's going on through the department.



Z: Like a memorandum

A: Yep.

Z: Ok I got you.

A: And I don't know if I sent something out or Adam or one of us sent something out and we didn't go through an AA shit I don't remember to be honest with you. But something to that effect came out and I think it upset the chief that we didn't go about the AA or so we were told anyway that went about it and Jerry's like don't worry about it I got in trouble or I upset the chief ah too or whatever something to that effect. So that was kind of no in depth conversation.

Z: So you were talking about something that you and Adam had sent out to the troops that didn't follow the proper process or something?

A: Yea. I think it was something to do with an AA that had gotten sent out and I think the chief might have been upset about it cause we didn't follow an AA or something and I I'm trying to think that's it's something along the lines of that

Z: Ok.

A: Where I I stepped on your tail here and then I think it was more like Jerry just said something to the affect that hey don't worry I I upset him about something too and but we didn't go into any details as far as as far as that goes.

Z: So this wasn't a conversation where Jerry said hey I upset the chief. This was a conversation that you and Adam were talking about

A: We were all in Jerry's office.

Z: Yea. All in Jerry's office

A: Yea.

Z: And then he added that ok.

A: Right.

Z: Ok.

A: But about what, I couldn't tell you. But now I can probably taken an educated guess.

Z: Might be that.

A: It might be that.

Z: Ok. Um

(Pause)

Z: So obviously having never read it, you did you partake in any discussions with Assistant Chief Boyer about the language in the email or any proofreading or anything of that nature?

A: Never seen it.

Z: Ok. Any prior to it being sent.

A: Never knew about it.

Z: Didn't have any knowledge of his intent to send it?

A: Nothing.

Z: Gotcha.

A: Sometimes it obviously benefits not reading emails I guess (laugh).

Z: Ignorance is bliss huh.

A: I guess I got a lot of that.

Z: Alright let's see here. And ah Adam, Lieutenant Adam Gustafson did he at any point relay to you ah anything regarding the chief and how he addressed this email and how he addressed this email with Assistant Chief Boyer?

A: No cause I don't I literally have I literally have no idea what this email said up until right now.

Z: Ok.

A: Today.

Z: Alright. And can you, you may need to check your schedule again. Can you look and see if you were working on May 10<sup>th</sup> of this year?

A: More than likely. I'm not gone very often.

Z: Worker huh? No vacation time ever?

A: I have 329 hours.

Z: Wow.

A: I have plenty vacation, I just don't

Z: Just don't use it.

A: May 10<sup>th</sup>?

Z: Yes sir.

A: Monday, May 10<sup>th</sup> yep. I was working.

Z: Ok. And again I know some time is the last year. Um do you recall any conversation on that particular day with ah either Adam or any other department personnel regarding the email and the fact that the Chief had addressed the email with Assistant Chief Boyer?

A: On May 10<sup>th</sup>?

Z: Yep.

A: I don't remember anything anybody addressing anything with any emails unless that maybe that's the day he said that maybe he was in trouble maybe for that.

Z: Oh ok. So it may have been on that day?

A: Cause it wasn't long after that where Adam had passed away.

Z: It was a week later, right?

A: Right.

(Pause)

A: And I I'm sorry but I just can't put a date to it and I'm just trying to remember if there was any conversations at all about about that and I just don't recall having a conversation about an email that I didn't know any substance on.

Z: Gotcha. Ok so um I'm sure you're aware your experience here that emails are open records. Right?

A: Correct.

Z: So any member of the public could request an email like this. Ah so I don't know if you want to read through that one more time or that's fine too but if that email were to be publicly disclosed, do you think that would have an adverse effect on the chief's ability to run the department or cause some problems from that perspective?

A: To somebody who probably doesn't know Jerry, ah I'd probably have to agree with you. Which would be a large part of the community.



Z: Right.

A: Um so in speaking in those terms, yea. I can I can I can see it I guess I can really see it towards the end where I mean I get it he has a lot of I and what not in the last paragraph but you know like I said to me it's he's sending it so he's to me he's saying hey I'm sending this email out so I I'm here for you blah blah blah. I'm not saying it's right I'm just saying I can understand how (cough) he's sending it.

Z: Sure.

A: And that's because I've known him for a long time so I guess I can I'm looking at it different than someone who probably doesn't know him.

Z: Ok.

A: But this is this is similar you know to I mean I guess if you were to go back and look at some of the other emails that had got sent out um when Mike had left and then when Heith had left you would probably find some similarities with with that. Now there was no chief

Z: Right.

A: Don't get me wrong, so substance and and and the meaning behind it might be different because at the time he was acting chief so I guess.

Z: In that position, he's he's

A: Right.

Z: In charge of the department so

A: Right.

Z: That's different. Different platform.

A: Right.

Z: Um would you agree a message like this, especially in the context of the Derek Chauvin conviction and all things that were happening is a message you would expect to see from the chief versus the assistant chief?

A: Yea.

Z: And that if the chief weren't involved in this message that that could be somewhat insubordinate in terms of undermining the chief's messaging?

A: Yea I mean there's there's some definitely some good possibility on that I guess if it was read differently than I guess how I look at it because I know Jerry for however long.

Z: You've got that personal insight into his psyche that many others may not.

A: Right.

Z: So the other members of the department certainly the public would interpret this vastly different.

A: Yea I would I would be willing to bet that's the case.

Z: Ok. And so we kind of agree that would have a pretty detrimental effect on the chief's ability to run the department from from that perspective.

A: From a department perspective? Yea that's there's a good possibility but.

Z: Alright.

A: And not to defend anybody but I mean I think a lot of people after having seen so many of these that have come out, they might.

Z: Might be numb to it maybe?

A: Yea, you might think it's the same. Cause that to be honest that's the conversation that Craig and I would have had literally ended because you just like seen it before it's no point in talking about it.

Z: So um tell me a little bit about Chief Reitan.

A: Reitan?

Z: Reitan? Yea. What kind of environment was there when Chief Reitan was there?

A: Um well it was a lot like a dictatorship where you know it was his way or no way type of deal. Um I guess I got along fine with him. He didn't I don't know he didn't single me out for anything I guess but I guess I stood up to him a couple times in my in my career and I don't know if he just maybe respected that but he didn't like pick on me where I felt like he would pick on certain people and ah it jut wasn't a good place to be at. You know I was an SRO for 4 ½ years and it was nice to be out of the building

Z: Mm hmm.

A: Type. I loved my job then cause I wasn't there.

Z: Yea.

A: Um and then when he took over you know it was pretty pretty rough going as far as he just didn't listen to you. He didn't care what you said. Um.

Z: Were you a lieutenant during that time?

A: No. I was a sergeant at that time so. He was just miserable to be around I guess

Z: So um

A: You never you never knew what tomorrow would bring and that's

Z: Which is not a good environment.

A: It was horrible right, you didn't know what was about to happen. Um these department meetings that we had I mean he'd let us all know how we could all just get fired I mean that's or that we were all replaceable um just stuff like that that would never really show any leadership that we appreciate the people that are here and what everybody's doing so there's a lot of us who put in way more time than we are ever getting compensated for. We are just doing it because we love what we're doing or we try to do more more more to help our department out and there was never any hey good job. So more like you can get fired for this.

Z: So (cough) if the assistant chief compared Chief Otterness to Chief Reitan that's not a positive message. Do you agree with that?

A: (laugh) That would not no.

Z: So if he made statements like that to other people in the department, would agree that's an act of insubordination?

A: I would yea considering the policy that would be I suppose that would certainly fall underneath it.

Z: Have you ever heard assistant chief Boyer make those comparisons?

A: To Reitan?

Z: Yea.

A: No.

Z: Um have you ever heard him disparage Chief Otterness in any fashion?

A: Ah I think there's times where Jerry is frustrated because the communication he said you know that Denis doesn't communicate well with him, which I guess that could be depending on how you look at it. Um I guess that's probably one of the main things that I've ever heard Jerry say as far as his ability to or his lack of communication with with



Chief that's the hardest part I would say between between the two but as far as saying stuff like that, I have not heard that.

Z: Do you know um what the source of the communication breakdown is?

A: Well if you want my personally opinion, it's because Jerry's not the Chief. I think I think he took it pretty hard that he didn't that he didn't get the Chief spot.

Z: Ok.

A: Um and I guess rightfully so. You can't be happy that you lose a spot, especially after a second time.

Z: Right. It's hard.

A: But there's probably some circumstances that were behind the doors or whatever that took place so I don't know.

Z: And I think that's understandable. I mean it's probably, I don't know about you but I've been in positions where I've not gotten selected for promotion but I think from ah I would assume that you would agree that from a perspective of the well-being of the department even if I don't get picked I have to be a participating positive member of that team, right?

A: Correct.

Z: And if I'm if I can't get passed that, that's pretty detrimental to the Chief's ability to succeed as well, right?

A: If you use that um if you use that negative energy then yea it is. I I guess if you use that negative energy toward somebody who absorbs that.

Z: Right.

A: Like when I when and Jerry has said it a couple times where they don't communicate well. And to me I just it doesn't affect me. It doesn't affect what I do.

Z: Mm hmm.

A: I think nothing of it to be honest with you. I think zero. It it doesn't define what I'm going to do on a daily basis. So it doesn't affect how my job goes, it doesn't affect how my day goes, it doesn't affect what I'm going to do next.

Z: Mm hmm.

A: So to me it it doesn't undermine me for what I'm going to do for my department for my division for the guys for Denis for Jerry. For Dura, nobody. So I don't let any of that crap get to me. Again, that's me.

Z: Right sure.

A: I'm only speaking up for me.

Z: Yep. So let's let's put it in perspective of your leadership role as a lieutenant. So, um, for you, you have the resiliency to not let it affect you. But a message like this going out to the whole department without the Chief's blessing, how does that adversely affect morale or motivation of all the employees? Some of them work for you and that may you know what's going on? How does that affect cohesiveness of the department?

A: It's probably not very well. The the togetherness doesn't seem like it's there in that email. The you know the bond that's supposed to be between those two I guess.

Z: Sure and while he may be expressing his personal perspective as the assistant chief, if his perspective is different than the chief's should he be messaging that out to the department?

A: Well, not if we're all together as a group. That's not the message that we should be sending.

Z: Would you agree that's kind of insubordinate to do that?

A: According to the policy, yea.

Z: Ok. Um, cough, let's see here Jason.

(Pause)

(Cough)

Z: Um (cough) Jason is there anything else that I didn't ask you that you think is important to the investigation? Or any other well I'll start there anything else I didn't ask you think is important to the investigation?

A: No I guess I mean I guess I'm just trying to thing if there's there's times where Jerry could have said something that I'm like I said I'm whatever and I don't pay attention to it or it doesn't process through my head and I'm just trying I ain't going to get my ass in a can because I didn't say something that happened and I just yea I might have been there but I don't remember having any so I'm literally going through my head right now going I I wouldn't be in the room with Adam and Jerry a lot when we would talk about um Chief. We would be in there talking about golf or lunch or whatever or hey let me know when you guys are leaving cause sometimes we would just bolt out of the door just kind of more or less kind of conversations not so much work related. You know? A lot of it's just not work related when we're sitting in the office and just chatting just to break the day up. And I'm Adam was in there a lot more than I was.



Z: Ok. So coming from your perspective I guess well you see Jerry's messaging in a different fashion but.

A: I do. But I'm one person and I'm one person that's worked a long time with somebody that you know I guess knows I don't have to read that cause I feel like I know what it's going to say.

Z: I guess go back to your other your other point has Assistant Chief Boyer ever expressed any frustration to you about not being picked as the chief or?

A: Oh yea. Yea. Yea he's he's expressed that. He's said it sucks you know and um that he's had a hard time trying to get into it but we've also had conversations you know when ah when Denis first got hired that's like ok. We have somebody now. They're here. It's not about us as a command staff. It's about all the people that work here and we need to let's shift it into gear and let's get moving for our for our department I mean so we've had some great conversations about here we go. Let's start spinning the wheels and get out of here. Get out of the rut you know sitting without without a leader or a the head leader um but you know we've had conversations where he was not real happy that he didn't get picked. But nothing to the point where it's like, you know, screw that guy type of deal where he's looking at you know I don't know trying to deface him or whatnot so I mean not that I took it that way I guess so.

Z: Ok so but you see how others might.

A: I I can. Yea I mean obviously I I'm if you put two and two together there's some of that.

Z: Certainly to be published in an email or something of that nature.

A: Yea yea. I could somebody who doesn't know doesn't know him I mean I ca certain see that it's going, it could cause some riff or some serious confusion as to what's going on.

Z: Mm hmm. Ok um alright and no other statements made by Assistant Chief Boyer to you relative that could be interpreted as insubordinate to the chief that you can recall? Since this April 23<sup>rd</sup> date? I mean that's a long time. I'll give you that much. So I'm just asking if anything comes to mind.

A: Um no like I said the only thing that's ever really come up is the fact that you know the communication between the two is is poor. Ah that there's not and I guess that would be that would be one because I guess if you look at it I guess I I'm not necessarily the guy that you go to I guess you would have to go to the chief about as to why but I don't know if because I'm because we still have some kind of a friendship there's a friendship there

Z: Sure.



A: That he might you know lean or bend towards me. I mean I can't answer that either obviously but that would be the only thing that he's ever said to me that I can you know spit out here that I guess since I'm on some short notice or whatever. That I guess you could consider you know what we're talking about so. Never heard him say anything comparing him and Reitan together.

Z: Did you ever hear him complain about the chief not being around?

A: I have not but then again we've had a conversation where I'm like I love that he's not around sometimes cause to me it's the chief should be gone a little more and the assistant chief should be around a little more and the lieutenants should be around more and this guy should go out and hug babies and get me all the money I want (laugh) do you know what I mean?

Z: Sure.

A: So not in a bad conversation that he's not around. It's like the boss is gone.

Z: For you it's not bad. For he said something that he expressed in a frustrating or a negative way?

A: I didn't take it as a negative way because I'm the one who brought it up.

Z: Ok.

A: I'm like god I never see the chief. Cause I'm like the old chief was here oh my god get. Get out of here. Stop being here so much. Put a bed in here for you and then this one is you know almost different in the fact that he's gone just he's gone more and I'm like wow. This is great. And I'm like Jerry you can be around a little bit more now and then the rest of us four are here more cause now we're running the department and this guy can go get me all the money that I that I need type of deal you know so hug babies, get the community to love you, um commission to love you so I didn't take it as a negative way, but yea we talked about that but again to me it wasn't negative there was no negative connotations to that it was this is how, this is how it should be. Like the chief shouldn't be around all that much. He should be around, and when he is to make the decisions, he's there. So.

Z: Ok

A: You might get a, you might get a different answer from someone else who's like god he's never around, but for me, I like I said, I don't take it like that so.

Z: Do you think Jerry said that to someone else other than yourself they might take that as a negative comment?

A: Mmm maybe. But when we were having the conversation and I like said I brought up the conversation. I think I was looking for him one day and was like jeez the chief's never here and you know Jerry's going it's just basically Jerry likes to sit there and listen

to people talk so I just kept on going like he could be gone more here. Heith was always over here and you could be here and the rest of us should be here as far as timewise goes so. I can't say that I took it I can't say that I took it negatively. It was a conversation that I brought up and that I liked it so it wasn't a negative thing.

Z: Um one other area I just want to ask you about Jason. Um, last last year during COVID months like February, March, Aprilish,

A: Ok

Z: When there was a lot of people working remotely at your department and folks like yourselves could get overtime even though you were otherwise exempt employees

A: Mm hmm.

Z: Um who did anyone oversee that overtime expenditure? Was there a reporting mechanism in place for people that were exempt that were claiming overtime?

A: Yep. We had um so the Jenna sent out a like a sheet that you would fill out weekly about you know whatever the COVID-related things or how many hours so like for me, I was in every morning. I had this electric spray gun and I went through our whole building on a daily basis and went through all kinds of cleaner stuff where I was spraying everybody's desk, cars, making sure all of our stock and everything was in. Um things like that so you track that in this I can't remember what this form was called.

Z: But you put in there what you were working on for overtime?

A: Yea and well it was, it's confusing at first you know because like you work this many hours on COVID but you still had to do this many hours working non COVID things but it was only the COVID things that could be the overtime pay as long as you got over 40 and that was in addition to the COVID and the working normal hours. So you had normal hours worked and then COVID hours worked.

Z: Ok. And Jenna has that.

A: Yea. Jenna would have, well, we turn them in on a weekly basis so.

Z: Gotcha. Did anyone have to approve those? Was there an approval process or did they just go to Jenna?

A: I suppose Jenna would have been the

Z: She's the approver?

A: the approval process. So.

Z: Ok. Alright. Jason, anything else ah, you want ot add or think it's important to the investigation?

A: Ahh I I can't think of anything that.

Z: Alright. Then we will end the interview at 3:33pm.



**David Zibolski**

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**From:** David Zibolski  
**Sent:** Tuesday, July 13, 2021 3:43 PM  
**To:** David Zibolski  
**Subject:** WFPD —Lt. Jason Anderson—7-13-21—am-2:25pm—3:33pm

WFPD —

Lt. Jason Anderson

—7-

13

-21—am-

2:25p

m

—3:33pm

JOB 18 test, 19 interview

Intro and reading of allegations

Not a target

Garrity notice

Review of Insubordination policy

4yrs as a Sgt.

Worked w/AC Boyer since hiring—he was AC FTO

How does that look from a Lt./Sgt position

How does it look from a Chief perspective?

Email on 4/23

- got it didn't read it—doesn't read emails like this—thinks they are pick me ups
- Jerry has sent these before
- working
- deleted it immediately\*\*\*F/U IT

What was your reaction to this?

Did you discuss the email with anyone else?

- SGt. Craig Danielson & Sgt. Orn probably at the gym Family Wellness on 4/23
- not certain probably Craig\*\*
- Hasn't seen or talked to anyone about the email since Chief Otterness read the first line to him last week when served notice to interview.
- Didn't talk to other Lt's that he can remember.

Who/when?

Did any subordinate ask you about the email at that time?

- no
- no civilian staff
- can't recall talking to Chris

who/what was said

Did you discuss the email w/AC Boyer prior to it going out?

- no
- Jerry may have said something to he and Adam that he(Jerry) may have upset the Chief but not specifics—prior to May 18th
- he or Adam may have sent something out about the process re: an AA, chief may have been upset in Jerry's office

Did you have any knowledge of his intent to send it?

- no

Did you partake in putting together the language of the email

- no

Did you proof read the email prior to it being sent

- no

Have you discussed the email with AC Boyer since it was sent out on 4/23?

- no

Have you discussed the email with anyone else in the department since 4/23?

- not that he can remember—could have not been paying attention

-if it doesn't concern him, he ignores it

Did you have a discussion with Lt. Adam Gustafson about the email?

-don't believe so

Did any Lt. Or department member relay any information to you related to AC Boyer's comments about the Chief and any action taken regarding the email?

-no

Did Lt. Gustafson relay any information to you related to any questionable comments made to him by AC Boyer regarding the Chief?

-no

Where you working on May 10, 2021?

-was working, may have been the day AC mentioned upsetting the chief\*

Are you aware that email is an open and public record?

-do you know if AC Boyer had the Chief's permission to publish the email?

(O.1. & 3).

-yes, could be viewed by others as insubordinate, but because he "knows" Jerry didn't take it that way, but members of the public or dept. could.

No personal relationship, but considers him a friend

AC Boyer—any other situations re: insubordination/undermining of the chief?

-he has complained about communication between them

-Lt Anderson feels AC is upset and hasn't gotten over not getting the Chief's position



Exhibit 9



# West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-433-5500 | westfargopolice.com

Denis E. Otterness  
Chief of Police

## West Fargo Police Department

### Garrity Notice

On behalf of the West Fargo Police Department I am advising you that you are being questioned as part of an official administrative investigation. You have been identified as a witness to alleged misconduct allegations.

You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/ or termination.

During the course of questioning, any statement, answer or information that you disclose which indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions.

My signature acknowledges my awareness and understanding of the aforementioned.

A handwritten signature in black ink, appearing to be "R. A. H.".

Employee Signature

7-13-21

Date

1315

Time

A handwritten signature in black ink, appearing to be "Daniel B. J.".

Witness/ Interviewer's Signature

## David Zibolski

---

**From:** Denis E. Otterness <Denis.Otterness@westfargond.gov>  
**Sent:** Thursday, July 8, 2021 8:41 AM  
**To:** Peter D. Nielsen  
**Cc:** David Zibolski  
**Subject:** Internal Affairs Interview

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good morning,

In reference to our discussion yesterday you are scheduled to meet with Chief David Zibolski on Tuesday, July 13<sup>th</sup> at 1:00 pm regarding an on-going internal investigation. This meeting will take place at Fargo City Hall (not the Police Department) in the Meadowlark Room (2<sup>nd</sup> Floor). Just a reminder that you are not to discuss this matter with anyone other than an authorized representative, which you are entitled to have with you. As a reminder you are not the subject of this investigation but have been identified as a potential witness to misconduct allegations. Thanks and please let me know if you have any questions.

Denis



**Denis Otterness**

Chief, West Fargo Police Department

800 Fourth Ave. E., Suite #2  
West Fargo, ND 58078  
(701) 515-5500  
Visit our website at:  
[westfargopolice.com](http://westfargopolice.com)



## **Pete Nielsen Interview Summary – July 13, 2021**

On 7/13/21 from 1:12pm to 2:15pm I interviewed Sergeant Pete Nielsen regarding his knowledge of this investigation. Also with Sergeant Nielsen was his representative, Attorney Mark Fries. The interview was conducted at the Fargo City Hall second floor Meadowlark Room. Sergeant Nielsen was read the City of West Fargo Garrity Notice and was advised he was not the target of the investigation.

Sergeant Nielsen indicated that he has been a Sergeant with the West Fargo Police Department for the last four years and has worked over 20 years in total on the department. He stated that he was actually the field training officer for Assistant Chief Boyer.

Relative to the investigation, Sergeant Nielsen recalled receiving the April 23<sup>rd</sup>, 2021 email entitled Why Keep Coming? He states that he didn't read it on April 23<sup>rd</sup> and likely read it upon his return to work on April 26<sup>th</sup>. Sergeant Nielsen states that he found the email to be bizarre and shocking and confusing because he did not know what Assistant Chief Boyer was trying to do by sending out that email. He states he does not believe he discussed it with anyone else, and no subordinate asked him about the email. Upon reviewing the email with Sergeant Nielsen, he stated that the content of the email could be insubordinate or undermining to the Chief's ability to run the department. Further, if revealed in an open record request would also be considered insubordinate and undermining to the Chief's ability to maintain morale and operations of the department.

Sergeant Nielsen relayed that during the week of June 21<sup>st</sup> or early the week of June 28<sup>th</sup>, he did have a conversation with Assistant Chief Boyer in which he felt his statements were insubordinate or undermining of the Chief. Sergeant Nielsen described the incident as follows. He was in his office in the police department discussing pay grade status with Sergeant Orn and Sergeant Danielson. Assistant Chief Boyer entered the office at which time Sergeant Orn and Danielson exited and he observed them leaving the area so they were not within hearing distance. At that time, Assistant Chief Boyer began to make a series of statements to Sergeant Nielsen stating similar to the effect that Chief Otterness is just like Chief Reitan, meaning like a dictator and that Chief Otterness takes coffee breaks with phantom friends and that he's never around. Assistant Chief Boyer stated that he's sick of dealing with that type of pattern of behavior. Sergeant Nielsen described Assistant Chief Boyer's demeanor as seeming depressed and stating these things in a normal conversational tone. Sergeant Nielsen stated that he was extremely uncomfortable with the statements as he believed them to be insubordinate and undermining of the Chief and tried to deflect them with various response such as it may not be that bad and things of that nature. Sergeant Nielsen does not believe anyone else was in the area that may have overheard the conversation. He does not recall if his door was open or shut at the time of the conversation.

After processing the remarks, Sergeant Nielsen decided that he should report this to Lieutenant Dura because of the insubordinate nature of the comments. After checking his department off-day calendar, Sergeant Nielsen determined that he likely talked to



Assistant Chief Boyer and had this conversation on June 25<sup>th</sup>, after which his first day back to work would have been June 30<sup>th</sup>, which is the day he believed he went to Lieutenant Dura's office to relay the insubordinate statements to him. Lieutenant Dura then informed him that he should speak with the Chief directly. He subsequently spoke with the Chief and was later notified that he would be required to provide information during an internal investigation.

Sergeant Nielsen stated that there had been times previously where Lieutenant Adam Gustafson would let him know that the Assistant Chief was unhappy with the Chief, but was not sure of the particulars.

Please reference the transcribed audio for the full content of the conversation.

<p>RECEIVED</p> <p>FARGO POLICE DEPARTMENT</p> <p>JUL 28 2021</p> <p>DAVID B ZIBOLSKI <i>DB</i></p> <p>CHIEF OF POLICE</p> <p>REF: <u><i>Chief's Office</i></u></p>
---

## **Pete Nielsen Interview – July 13, 2021**

Chief Zibolski (Z)

Pete Nielsen (N)

Mark Frieze (F)

Z: Ah today is Tuesday, July 13, 1:13pm. Here in ah Fargo City Hall second floor Meadowlark Room. This is Chief David Zibolski. I'm conducting an internal investigation on behalf of Chief Denis Otterness of the West Fargo Police Department. Ah present with me for this interview is Sergeant Pete Nielsen of the West Fargo Police Department and Sergeant Nielsen can you just state acknowledge verbally for the recording your presence.

N: Yes sir.

Z: Thank you and also with Sergeant Nielsen is attorney Mark Frieze serving as his representative. Mr. Frieze can you just acknowledge your presence?

F: I'm here. Good afternoon.

Z: Ok. Thank you sir. Um (cough) before we begin, sir is it ok if I call you Pete or?

N: Yes sir.

Z: Ok um I'm going to read you the West Fargo Police Department Garrity notice. It's a formality for any such investigation. On behalf of the West Fargo Police Department I'm advising you that you are being questioned as part of an official administrative investigation. You have been identified as a witness to alleged misconduct allegations. You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent, or provide false or misleading information may result in disciplinary action and/or termination. During the course of the questioning, any statement, answer, or information that you disclose that indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions. Again, in a nutshell Pete, is that you're required to answer all questions truthfully and as completely as possible. Nothing can be used against you in a criminal proceeding but any ah untruthful statements or things of that nature may be pursued internally. Ok? Now I'm going to ask you to sign this ah just acknowledging that you were given notice and I would also clarify that you are not the target of this investigation. You've been identified as a witness, a person who may have information to further the investigation. Um (cough) the internal investigation that that's being conducted ah relates to alleged insubordinate acts on part of your Assistant Chief Gerald Boyer. Ok? So I ah understand that that is a very sensitive relationship and it's difficult for someone who's a subordinate to have to answer questions about someone who is their superior ah so I'll from that perspective I would just advise you to give the answers as completely as fully as you can. This information will only be relayed to Chief Otterness who will use it in a potential disciplinary decision. OK? So um. From

there of course, whatever that decision is, it's handled by the Chief. Ok? So there is no um I don't want you to be concerned about any adverse actions against yourself for providing this information. You're required to do so and if something like that were to happen, I would advise you to let Chief Otterness know immediately. Ah but as this juncture, as an internal, no one else should know who's being interviewed and what's being said, other than the two of us.

N: Yes sir.

Z: Ok? (cough) Ah first thing I want to just kind of go over with is ah department policy 36 section H which has to do with disciplinary and personnel actions sub 3 which talks about as appropriate disciplinary action may be taken for any of the following reasons. Ah sub 3 b talks about insubordination and several other things ah in your policies that I'm sure you're aware of that policy, right?

N: Yes sir.

Z: Ok. And sub section I ah there's several things under general conduct. Number one being employees will display respect for their supervisor, subordinates and associates. Number four employees will address their subordinates, associates, supervisors and members of the general public courteously and will not use abusive, violent, insulting or provoking language. Number six employees will not slander or speak detrimentally about the department or another employee. I've got these here for reference ah just I'm just verifying that you're aware of those potential policies, right?

N: Yes sir.

Z: And that those are enforced? Ok. Thank you. Ah so, Pete how long have you been with the West Fargo Police Department?

N: I started in December of 1999.

Z: Ok. And how long have you been a sergeant?

N: Um almost four years.

Z: Ok. And how long have you worked with Assistant Chief Boyer?

N: Ah since he was hired on at the police department. I actually ah I was one of his field training officers.

Z: Ok. Do you have any kind of personal relationship with him other than professionally at work?

N: Um I went to the police academy with him. I um personally, um I don't I don't know if there's a lot of personal connection. We, we talk like other people do. Um I don't think we have picnics and barbecues together but I yea I've known him for a long long time.



Z: Sure. Ah mostly a professional relationship then? Would you consider him a close friend?

N: I would say more professional.

Z: Um so I want to go back to ah an email that was sent out to department staff on April 23<sup>rd</sup> of 2021 from Assistant Chief Boyer that was titled Why Keep Coming? Ah do you recall receiving that email? I'll push you a copy there.

(Pause)

N: Yes I do.

Z: Ok.

N: Do you want me to read it to verify I remember?

Z: No you don't need to. As long as you, I guess at this juncture, you recall receiving an email. It was sent out to all staff?

N: Yes. I believe so.

Z: Alright. And let me go back to one kind of informative question here. As a sergeant of four years, if um you provided a message to your shift, right, your direct reports and shortly after that occurred, one of the officers went to another group of officers and said you know? Um I don't think sergeant Nielsen should have told us to do that or that's the wrong message. Here's what we are going to do. Or something contrary to the direction that you had just given your direct reports. Um, would you consider that to be insubordinate?

N: Yes.

Z: Ok and how would that affect your ability to supervise?

N: Well, if these are my subordinates, they would report directly to me every day and there's a working relationship of me and my subordinates. Um who in turn take direction from me and I think it would affect that type of ah working relationship.

Z: You think it would undermine your ability to properly supervise the shift?

N: It would be very detrimental to you know the working relationship between me and the subordinate.

Z: Sure. Ok and so in a similar vain if you were to um have a meeting with your lieutenant or get direction from your lieutenant and go out and tell your shift something completely different or in a sense negate the lieutenant's message, would you consider that to be insubordinate?

N: Yes.

Z: And how would that affect the lieutenant's ability to run the shift do you think?

N: I think it would pretty much the same as how I answered before. It would be difficult for there to be a working relationship between the lieutenant and myself.

Z: Ok. Which, could that affect the whole department even from the shift level?

N: Sure I guess.

Z: Ok. So from looking up higher up from a position you're in right now, but from the chief's position, if an assistant chief did similar type of conduct, what do you think the affect is on the chief's ability to run the department if the assistant chief is doing that type of activity?

N: Well, I think I can't necessarily speak for what the chief would do. I'm not chief as you are or Chief Otterness is, but as you asked in the first question, I think it would be if a subordinate of mine did undermine me, I think it would be difficult to work day to day with them.

Z: Ok. And so let's go let's go back to this email of April 23<sup>rd</sup>. Were you do you know when you received this were you working on this day or I know that's some time ago so may be difficult to remember.

N: I don't remember if I was actually working that day or or not. I mean I can surely look that up if if you want me to look that up.

Z: Um yea I mean if you can check your calendar and at least tell me if you were working on the 23<sup>rd</sup> or that's that's fine if you don't know right now we can come back to that later. Not a big deal. Ah but you remember reading this?

N: I do.

Z: Ok and so what was your reaction when you read this email?

N: Um could I just

Z: Yea absolutely.

N: Peek at it real quick while I'm sitting here.

(Pause)

N: I thought the email was kind of I think it was kind of bizarre the whole email in general. Um I don't know if it was a rant or what it was. It was it was it kind of it was shocking when I read it.



Z: Can you um elaborate a little bit on why you thought it was bizarre or shocking?

N: I think the first sentence when it says since we have not been able to have a real department meeting in over a year I'm forced to send this out in an email. It kind of set the tone of when I read it personally I looked at it and I said uh oh what's coming happening. I think that that intro to the the email was very it kind of seemed bizarre to me. It did.

Z: Do you think that's a an appropriate message from the Assistant Chief or was it I mean what struck you as as bizarre in nature?

N: Well the first where it says real department meeting it just I kind of when I read that I I didn't know you know what he was relaying on that and how that message was trying to go out to the rest of the the troops the rest of the guys. Um and then it goes on to say I'm forced to send this out in an email which kind of drew you back into like what's going to explode or what's going to happen or you know it's it wasn't the it wasn't very professional at the beginning. You know it kind just almost like a like you're trying to me when I read it it almost like you're trying to start a story.

Z: Ok. Um and just going back to the other do you think that was an appropriate message for your assistant chief to send out to all staff?

N: I guess I don't know what you know he can and can't provide messages for the department.

Z: Ok. But you're clear it was kind of representing the department in the way he sent it out is that was that your impression of it?

N: Yes.

Z: I just want to go through a couple of other parts here and ask you for your reaction. Um so paragraph two talks about I know that many of you are struggling with many things that are happening in the world right now. I'd be lying if I said that I wasn't also bothered. Quite frankly it pisses me off. I know that each and every one of you is a good person and came into this profession for the right reasons. Seeing officers second guessed over and over by quote experts and wondering where your next attack is coming from, the media, politicians, or the streets is an unfair burden on you and your families. You're all policing in new territory and hard times and our profession has been here before it will get better. Many of you have probably asked yourself why should I keep trying? Again with everything that has happened in the past year, I think those are valid questions to ask yourself. I have also asked myself that on several occasions. Do you find that paragraph to be professional or motivating to the department?

N: I it was more confusing.

Z: What do you think he was trying to express in that message?



N: I didn't I didn't to tell you the truth I didn't know what he was trying to. There's many avenues to go down with that actual paragraph.

Z: So for context, this email came out on April 23<sup>rd</sup> right so there was an important event that happened that week.

N: Ah was it the verdict of

Z: Right. The verdict of Derek Chauvin right. That came out on April 20<sup>th</sup>, a few days before this email. Ok and so again going back in time I know it's been some time since that particular event occurred, but I think a lot of law enforcement agencies were on edge in their communities and so forth because of all the civil disruption that occurred so. A couple days after the verdict, this email was sent out by Assistant Chief Boyer so just context wise. Um, (cough) let me know I kind of down to this last paragraph here. Ah where assistant chief Boyer this email last paragraph we are lucky here at our department. We have a community that overwhelmingly supports us. The city administrator supports us. The commission supports us and your admin staff supports you. Is do you feel that there's anything missing in that message?

N: I guess looking at it, maybe leaving the chief out?

Z: Ok. Let's go down a little further here. Um, to the last sentence quote I appreciate you more than you'll ever know and that is why I keep coming back. My door is open to anyone that wants to talk or call and text me anytime. I don't have all the answers but I will listen and I understand. Any reaction to that?

N: I think he's maybe trying to be personal with himself or with the department maybe? I I don't know what his mindset was when he's writing that.

Z: Ok. Do you think he was including the chief in that message or?

N: After reading it, I don't I don't see that in there.

Z: You think that that's unusual that the chief would not be included in a message like that to the whole department?

N: Yea I guess I don't I don't know if they spoke and then he sent it out. You know and I don't know what his authority is to address the department.

Z: Sure

N: Versus the chief.

Z: Fair enough. Do you think that if he discussed it with the chief that he would use I's in language that he's using and the way that he's relaying the message?

N: Probably not.

Z: Ok. Um did you discuss this email with anyone else after it came out?

N: I don't think I did. I think I read it so I was just kind of like any other emails you get. You get so many and ah it didn't necessarily pertain to my work ability so I just.

Z: Sure. So what impression as a sergeant I mean you read this and what impression did it leave with you or what did you take away from it in terms of your supervision responsibilities at the police department?

N: I didn't take anything away from it.

Z: Ok. Any of your subordinates ask you about the email in terms of explanation or why it was sent out or anything like that?

N: Not that I can remember.

Z: Ah did you ever discuss the email with Assistant Chief Boyer?

N: No.

Z: What about any of your lieutenants? Um, which lieutenant do you report to?

N: I currently I report to lieutenant Dura.

Z: Ok. Did you discuss this with him in terms of what it meant or why it was sent out or anything like that?

N: I don't I don't remember. I don't think it I even I didn't even really remember until you brought it up today.

Z: So you for you it was pretty much a read and forget kind of situation huh?

N: Well

Z: I mean in terms of it's meaning to you.

N: Yea.

Z: Not that you were being

N: Yea it's it just was kind of it was bizarre and I just kind of looked at it as shrugged my shoulders and didn't necessarily affect me.

Z: Ok. And then you haven't talked to anyone else in the department about the email since it came out?

N: No.

Z: Ok. What about lieutenant Adam Gustafson who ah obviously has passed away. Did you have any conversations with him about the email?

N: I don't believe so. No.

(Pause)

Z: Ok. (cough) Ah were you well let me ask you this I guess. Were there kind of going over the insubordination rules and so forth are you aware of any or have you had any interactions with assistant chief Boyer that you um believe may be insubordinate or in violation of that particular policy?

N: Yes.

Z: Ok. Do you remember when that occurred?

N: It would have been oh week and a half ago I suppose.

Z: Do you have a calendar with you?

N: I do not. I left all my phones in the car.

Z: Let me give you my calendar. Today's the 13<sup>th</sup>. I'm just trying to nail down a day here.

N: It would have probably been the week of like the 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup> or maybe the Monday or Tuesday right after.

Z: June?

N: Ah yes June.

Z: Ok.

F: Chief can I put it in context we visited about timing this and he was doing the best reconstructing he could with his calendar in the office so that was his best estimate.

Z: So yea ok we I can maybe help clarify that but you think maybe the week of you think the week of June 21<sup>st</sup>, right?

N: I believe so.

F: Late that week or next week.

Z: Ok.

(Pause)

Z: Alright. Um and what was that what was that conversation or contact?



N: He

Z: You talking about Assistant Chief Boyer?

N: Yes sir.

Z: Ok.

N: He stopped in my office and we just began to speak ah kind of personal level of day to day operations of the police department.

Z: Ok.

N: And he explained some insight on Chief Otterness and at that point the conversation wasn't didn't take very long. It was probably a few minutes maybe 10 minutes at the most and then he went his way and I kind of continued doing what I was doing.

Z: Ok. So specifically what kind of insight was he talking about? What did he say?

N: He said that he believed that um working for um Chief Otterness is similar to working for a previous chief that we had at the police department. Um he feels that he micromanages the command staff, mainly him. Um he doesn't take any direction from the command staff. He makes his own decisions um said that he he seems to be gone all the time, never at the PD. He he goes on this coffee breaks with I don't remember the exact words but it was like phantom friends or made up friends or something like that and is gone and he just said he is you know sick of dealing with that type of pattern or whatever the word was.

Z: He say anything else?

N: I think that was pretty much it.

Z: Ok. How would you describe his demeanor when he was making these statements?

N: He seemed down um like he was depressed.

Z: Ok. How was his voice? Was it loud? Was he talking quietly?

N: It was a normal tone kind of like you and I are having like a conversation.

Z: Ok.

N: I don't I didn't see a lot of emotion.

Z: Any idea why he would decide to I mean have you had a conversation with him like this previously?

N: No. Ah he he never really said anything to me before um that I can recall that would be you know negative towards the chief.

Z: Ok.

N: Um

Z: Any idea why he would have decided on this day just to pop in your office and make these statements?

N: It's not uncommon for not only him but other even command staff level individuals come in to my office and talk to me um sometimes asking opinions on things um, guidance sometimes. Not that I'm you know the tree of all knowledge but I think they see that I've been here for a long time so they maybe run a scenario past me and I'll give them my thought on whatever that would be and so for him to do it wasn't ah out of the ordinary to just say something but not directed like towards the chief.

Z: Right. Do you consider his statements to be insubordinate of the chief?

N: I guess is you know I can't speak for what he was trying to relay to me but you know as well as I know he's underneath the chief and anything you say is under the chief.

Z: Sure I mean well even if we go back to the initial conversation right? How is this any different than your cop leaving roll call and speaking poorly about you or undermining your direction?

N: It would affect the working condition of the individuals involved.

Z: Sure. And at the assistant chief level, that scope's pretty big. Do you agree?

N: I agree with that.

Z: And so when he references or makes a comparison ah Chief Otterness to Chief Retlin was it?

N: Reitan.

Z: Reitan. Ok. So what was Chief Reitan's reputation? What's his reputation? What does that mean to you when he said he was like Chief Reitan?

N: Chief Reitan was more of a dictator type of a leadership. He made all the decisions didn't allow his command staff to make any of the decisions. Was not respected.

Z: Ok. So he's comparing Chief Otterness to someone who is like a dictator and not respected by the department?

N: Correct.

Z: Alright. Do you think that's insubordinate?

N: Yea.

Z: How does that affect you as a supervisor and your ability to work under Chief Otterness when the Assistant Chief comes in and makes those statements?

N: Well as you said, that's a big scope underneath the assistant chief and that scope trickles down and as it trickles down, I supervise at the patrol level and I try to maintain myself and my lane of where I should be. And for something to trickle down would make me have to try to fix the guys underneath me.

Z: Ok. How do you think that affects morale?

N: If that was out,

Z: Sure.

N: It would divide.

Z: Ok. Do you think that was an appropriate set of statements for an assistant chief to come in and relay to a sergeant?

N: Probably not.

Z: Has he ever come into your office and talked about the chief previously?

N: Yea, but it was he had a very good relationship with the past chief so everything was positive. Chief Janke.

Z: Oh Janke. Ok Got you. I mean specifically Chief Otterness. Has he come into your office and talked about Chief Otterness at any other time prior to this conversation?

N: Nothing that I can remember that would be detrimental.

Z: Ok. So this is the first time when he really came into your office and said some things that you agree are insubordinate and undermining of Chief Otterness?

N: Yea.

Z: So what was your reaction to that? I mean what did you have a response after he said that or what happened?

N: There's always in the work place chatter. And that's never going to change no matter where you're at or what job you're doing. And I kind of thought of it as that at the beginning that you know maybe he's down on his luck or whatever and he was just kind of venting so I took the information in and then you know at that point I started to process it.



Z: Ok. After you processed it, what did you conclude?

N: That I needed to speak to my supervisor.

Z: And who is that?

N: Lieutenant Dura.

Z: Alright. Did you do that?

N: I did.

Z: Ok. So just to back up, so you didn't respond to the statements that Assistant Chief Boyer made? You just listened?

N: Yea. I may have said that's unfortunate. It was very vague. Um or maybe when he said it's like working for Reitan, I would have said you know are you serious or just kind of it can't be that bad or whatever the comments were they were just comments that were you know kind of almost change the subject, deflect it. Allow the venting to finish.

Z: So and were you doing that because you were uncomfortable with the conversation?

N: I mean I guess I'm not totally uncomfortable with I don't know what to even say.

Z: Well you're in a difficult position because of the rank variance so I get that part. So it's not like you're on a one-on-one relationship and you're able to maybe give your opinion in that case but that's really what I'm trying to ask you is what did you say versus what you were thinking in terms of whether or not this was appropriate, insubordinate, or otherwise not a good idea.

N: Probably wasn't a good idea.

Z: Ok. Because of the effects in terms of the

N: If somebody if people would have heard it maybe would have changed the dynamic or that's why I'm here.

Z: Mm hmm. Was there anyone else that would have been in earshot of this conversation?

N: I don't think so. But my office is kind of weird. I shouldn't say weird. It's there's an area out of the office that he can't see. But I wouldn't think that anybody heard no.

Z: Did anyone come up to and mention the conversation after it happened that maybe would have heard it?

N: No sir.

Z: Ok. Who was the person sitting closest to your office that may have overheard it? Is there assigned desks or could it maybe have been anyone passing by?

N: I am fairly certain no one could have heard him.

Z: Is this a is this a regular office like with walls and a ceiling and a door? Or is it a cubicle?

N: No it's walls and a ceiling and a door.

Z: Ok. And the door was closed or open when you had the conversation?

N: I can't remember. I would assume it's open. It's mostly open.

Z: Ok so after this happened or what so you process this and you decide you should report this to Lieutenant Dura because why?

N: I felt that the comments that were being made should be brought to the attention of the chief.

Z: Ok and why?

N: Due to the um due to the insubordination feeling that was being portrayed.

Z: Ok so that was a concern for you

N: Yea.

Z: Even though you you're below in rank.

N: Yes sir.

Z: Ok so difficult thing to do from a sergeant perspective and everyone recognizes that so. Um so that's understandable. Ok so when did you so when did you report this to lieutenant Dura from the time the conversation happened, when do you think that was?

N: I want to say it was like on a Monday or a Tuesday right after that. It was a few days. I was off.

Z: So can we if we could maybe just look at the calendar. Can you kind of look at where you think this was and just generally figure out where this may have fit in? You know there's the 4<sup>th</sup> of July in there and all that flip back I guess. So there's June. Maybe if you just flip it up let's try and piece this together a little bit if possible.

(Pause)

N: I think what did I say July June 21<sup>st</sup>?

F: Yea you said you thought that the comments were the end of the week of June 21<sup>st</sup> through the following week early and you thought you visited with Lieutenant Dura two or three days after that.

N: If I it would have been probably that week of the 21<sup>st</sup> so towards the end of that week.

Z: Ok.

N: And then I would have talked to him to lieutenant Dura the beginning of the following week, which would have been the start of the 28<sup>th</sup>.

Z: Ok. And what are your work days Pete? Is it the same or are you Monday through Friday? What's your shift and day?

N: It rotates.

Z: Ok so on that particular week of the 28<sup>th</sup> do you know what your schedule would have been? What days you would have been working or not? Can you look at that again?

N: I'd I'd have to login to my to the schedule if you want

Z: Can you log in on there?

N: Yea I just have to go to the internet.

Z: Yea just push the bottom button there. You should be able to get to the internet.

(Pause)

F: While you're doing that Pete, can you check and see if you were working on the 23<sup>rd</sup> the day that the email that was one thing that you left open with the chief. The 23<sup>rd</sup> of April.

N: Yep. It's loading so it's going to take a second to log into.

Z: Brief pause in audio while Pete checks the calendar no problem.

(Pause)

N: So I was working was the question of what are my working? I worked Monday through Thursday the 21<sup>st</sup> through the 24<sup>th</sup>.

Z: Ok I will just jot this down here. Monday to Thursday 6/21-6/24 ok.



N: Take that back I'm looking at something else. Scratch that.

Z: Ok.

N: I worked the 25<sup>th</sup>, 26<sup>th</sup>, and 27<sup>th</sup>

Z: Which is a weekend right?

N: Yes sir. And then I was off and then my first day back was Wednesday the 30<sup>th</sup>. So I would say probably now looking back, I probably heard it or talked to Assistant Chief Boyer on the 25<sup>th</sup> and my first day back would have been the 30<sup>th</sup> and that's when I would have told Lieutenant Dura. That's the best of my

Z: Gotcha

N: For what I can remember.

Z: Ok.

N: And then I could be I don't think I'm, well yea.

F: And then April 23<sup>rd</sup>. And then can you tell the Chief whether you get if you access your work emails from home as well.

N: April 23<sup>rd</sup> was a Friday. I was not working that day.

Z: OK.

N: And then I came back on Monday the 26<sup>th</sup> so I would have read my email probably Monday the 26<sup>th</sup>

Z: OK so the April 23<sup>rd</sup> email you wouldn't have read it from home necessarily. You probably didn't read it until you came back to work?

N: Yea. Sometimes I do read them but it just depends on what's going on but probably over a weekend like that I it was I was off Friday, Saturday, Sunday, I probably didn't read the.

Z: Did you log out of there?

N: Oh you can.

Z: I don't want to be in your schedule. Ok alright so we are likely to June 30<sup>th</sup> when you reported this to Lieutenant Dura right? OK. So did that happen in his office or where did that take place that conversation?

N: Yes sir. It was in his office.

Z: Ok. Anyone else present?

N: No.

Z: It was in Dura's office ok. And can you just kind of relay to me what the conversation was. How did you bring this up to Lieutenant Dura?

N: I went in. We were having a general conversation ah about patrol stuff I believe it was and I brought up the conversation that Assistant Chief Boyer and I had and at that point he heard what he had said and told me that I need to talk to um Chief Otterness.

Z: Ok. Do you remember specifically what you relayed to Lieutenant Dura about the Assistant Chief's comments?

N: I told him kind of the generalized of what he was telling me about working underneath Chief Reitan and he directed me to the Chief and I said ok. And I talked to the Chief.

Z: Do you know when you talked to the Chief then? When that occurred?

N: Um probably last week?

Z: Do you need the calendar again?

N: I'm starting to question my days now.

Z: It's ok. Here.

N: I'm wondering if it wasn't another week later.

Z: Alright. Here we go. That's July. We are at June 30<sup>th</sup> with Lieutenant Dura's discussion and then you would have went and talked to the chief sometime after that.

N: So I would have talked to the Chief last week.

Z: Ok.

N: I believe I'm wondering if I'm off a week.

Z: And if you're not certain, I'm sure the chief knows when you came in and talked with him right?

N: Yes.

Z: That's ok.

N: But I I'm just wondering if I'm off a week. If I'm off a week. I think

Z: Alright so. You relayed to the Chief these statements. Do you remember what you told him when you talked to him?

N: I would have told him what I told you. How he came to me and told me those statements about him.

Z: Ok can we just can you relay that one more time about what those statements were?

N: He said it was like working underneath Chief Reitan that he felt like he was working for him and he was a dictator. It was a dictatorship. He didn't make any decisions that the individuals on the command staff had no say that he makes the decisions and it's difficult to work underneath him. He said that he's never at the PD. He says he's always on coffee breaks or phantom coffee or fake friends I don't know what his comment was with his friends versus meeting with others. And I spoke to the chief on that and told him what had happened.

Z: Ok. Did you relay any concerns to the chief other than that?

N: Um I don't remember exactly what I said to the chief you know in regards to what had happened with him but I told him what Jerry or Assistant Chief Boyer had said to me.

Z: Was anyone else present when you met with the chief?

N: No.

Z: Um (cough) ok. And then the chief obviously told you what after you relayed that information?

N: He just said that he's very professional. He thanked me for coming to him and um advised me that there is an internal investigation and that I would be hearing from you and at that point, I really didn't know what was happening or taking place and he had sent the email the same one that you were copied that I was to talk to you and at that point I called Mr. Friese and I didn't know what was going what was happening.

Z: Sure. Ok. Um let's go back to these statements by Assistant Chief Boyer again. So I know the reference to Chief Reitan is obviously a negative connotation along with some of the other things he said. But let's just say for example that even the comments that Assistant Chief Boyer were true. Is that an appropriate way for an assistant chief to address that situation going to a sergeant and expressing those insubordinate statements?

N: Probably not.

Z: Do you think that would be a violation of department policy?



N: I would think so.

Z: Ok. Has any of this ah well let's go back one to one piece. The conversation in your office that you had with Assistant Chief Boyer. Was Sergeant Orn or Sergeant Danielson anywhere in the vicinity?

N: No.

Z: Had they been in your office prior to Assistant Chief Boyer coming in?

N: Yes sir.

Z: Do you recall what type of conversation the three of you were having?

N: They were complaining about um what their level is on the what their pay level step was and I had pulled the pay level information from the city website and was explaining to them how once you're promoted it goes from one level times a percentage and where you drop in and I was trying to explain that to them and after talking to them for awhile this um was when Assistant Chief Boyer would have came in.

Z: Ok so were they in there when he walked in?

N: Yes sir.

Z: Ok. So when he walked in and they were sitting there, what was just what did Assistant Chief Boyer say at the initial juncture? When did Orn and Danielson walk out relative to the insubordinate comments?

N: Ah they spoke to Assistant Chief Boyer. They were they talked to. He asked them how they were doing. What was going on or how's things going, stuff like that. And then at that point, they kind of started to ask about pay. He said that he would look into it and I think that appeased their mind here for the assistant chief saying he'll look into where they fall into the sergeant pay scale.

Z: Ok.

N: That's what I was trying to say.

Z: Ok.

N: And then they left.

Z: Ok so they weren't there at all when Assistant Chief Boyer started making the insubordinate statements?

N: No.

Z: Ok. How much time lapsed do you think I mean could they have been around a corner and overheard anything? Do you have any I mean is there any way for you to tell if they were in close proximity or not?

N: I can see farther out and I saw them walking to the other side of the building kind of angling away and we had talked for a few moments prior to those statements.

Z: Ok. Is any just go back to the answer is there any reason you can think of that I guess Assistant Chief Boyer could have said this to all three of you I guess but why did he let those two leave and tell you? Any idea why he chose to do that?

N: No.

Z: Ok. And there's no clerical staff nearby or anything of that nature?

N: No sir.

Z: Is there any video in that area of the department?

N: No sir.

Z: (Cough) Alright. Um. So Pete is there any other contacts or conversations that you've had with Assistant Chief Boyer, relative to the Chief that are similar in nature that are insubordinate or undermining of the chief's authority or ability to run the department?

(Pause)

Z: So no no conversations since this one with the Assistant Chief

N: No. No sir.

Z: Anything previously that you can recall that's of a similar nature?

N: With him directly I don't believe so no.

Z: What about with anyone else in the department?

F: We're just reading the notes when we had met earlier to discuss it.

N: So Assistant Chief Boyer would go to the other lieutenants with some with information and he would speak to the other lieutenants

Z: Ok.

N: And talk to them regarding how the police department is the day to day operation would go. And sometimes the lieutenants would tell me the information.

Z: Ok.

N: Of what was you know he was unhappy and

Z: That Assistant Chief Boyer was unhappy?

N: Yes.

Z: Ok. And so is this is there any specific conversation or is this something that happened routinely or how how often did that kind of activity take place?

N: I wouldn't say routinely but it's it just chatter of individuals that you know in a workplace environment however in policing there's a rank structure and same with the military and that's important to adhere to that and sometimes Lieutenant Gustafson would tell me would come and talk to me about stuff the information that um that Assistant Chief Boyer was unhappy with the Chief.

Z: Just kind of in those general terms?

N: Unhappy with him. Um doesn't doesn't ah take any of his advice. Almost almost the same stuff the information that Assistant Chief Boyer was saying to me. Um feels like he's never there. That's his main thing says he's never there. He'd tell Lieutenant Gustafson and then he'd come and tell me.

Z: Ok. Did um what about Lieutenant Dura um did he ever relay similar information to you from the Assistant Chief?

N: No. I don't I don't know how much those two talk.

Z: What about Lieutenant Anderson? Jason Anderson?

N: He would once in awhile say not as much as Lieutenant Gustafson but Lieutenant Anderson would say some of the similar things that he believes that that Assistant Chief Boyer was unhappy with Chief Otterness.

Z: So I mean what's your reaction to that? So you got lieutenants coming to you and saying here's what the assistant chief's telling us I mean how does that affect your morale motivation is that appropriate you think or what are your thoughts on that?

N: Me personally I you know when you're in the business long enough, you've seen a lot of stuff and if I've always been taught that if you just keep your eyes and ears open more than your mouth open, you tend to do a better job at things and I feel like when they say stuff like that I kind of just talk to them and brush it off and I never would repeat it down because if I repeated it to the other sergeants or any patrolmen, that's when I believe we would have an uprising with some people so it's kind of if it did filter to the end of me, it would stop there. I wouldn't.



Z: So it really only got to the point where Assistant Chief came to you personally and made these insubordinate statements that you recognized you needed to go to the chief?

N: Yes.

Z: Alright.

F: You went to your lieutenant not the chief.

Z: I'm sorry yes. You notified your lieutenant and then were directed to the chief so.

N: Yes sir.

Z: Following proper chain of command obviously. Ok. Um are you aware of this ah there's a wife's facebook page at the department?

N: No idea. I don't have facebook so.

Z: Ok. No contact, nothing with that, ok. Um. Alright. Were there any officers that you're aware of again in context this was a pretty intense situation for law enforcement that were concerned about coming to work or that were um either their wife said they were concerned about working them coming to work or being safe in the field. Any any did you hear any concerns like that?

N: No sir.

Z: Ok. If you did hear some of those concerns, where would you direct those officer?

N: I would probably take their their information to the lieutenant.

Z: Ok. You guys have a peer support team also right?

N: Correct.

Z: Alright.

N: There's also you know the counseling sessions EAP that they could be privilege to. HR um it would depend on what the actual comment was.

Z: Ok. And just as you did following chain of command, are there any officers that you're aware of that um have a direct ability to go into the assistant chief's office and relay concerns outside of chain of command?

N: Ah he's Assistant Chief Boyer is best friends with one of the patrol officers.

Z: Ok. Who's that?

N: Ah Matt Oldham.

Z: Ah Matt how do you spell the last name?

N: O-L-D-H-A-M

Z: Ok he's ah patrol officer?

N: Patrol officer. Yes sir.

Z: Ok so does he have direct access to the AC? I don't want to have you seen that?

N: I mean they've been friends very good friends for a long time.

Z: Ok. Have you um observed or heard officer Oldham passing along or making similar statements insubordinate or otherwise undermining the Chief?

N: No sir.

Z: Ok. Is he one of the guys that you supervise?

N: He's a patrol officer. He works the night shift but

Z: Ok. Gotcha. Alright. Um (cough) over last year's COVID situation where a lot of people were working remotely and ah in some instances exempt employees could get overtime, things of that nature, did you did you have any involvement in how overtime during COVID was assigned or allotted or anything like that?

N: Do I have any? No sir.

Z: Did you have any involvement in it last year or

N: No sir.

Z: Ok. Ok. Um and I'm sure are you aware that emails are actually a public record?

N: Yes sir.

Z: Ok so then I guess from the larger perspective of we already discussed the insubordinate tone in the email. Were that email to be requested and go out publicly, what do you think the effect of that would be on the chief's ability ah to run the department?

N: I think it would depend on the individual who is reading it and interpreting the context of the email.

Z: Ok. How did you interpret the context of the email?

N: I thought it was like I said bizarre and maybe reading it more how you placed it out was was um you know insubordinate because of the stuff he left out from the chief.

Z: Ok from a public perspective. Would you agree that that could be very damaging to the chief's ability to run the department?

N: Yes sir.

Z: Ok. Alright um Pete are there any is there anything else that you're aware of or questions that I didn't ask you relative to actions or conduct of Assistant Chief Boyer that you would interpret to be insubordinate or undermining to the Chief?

N: Not that I can think of sir.

Z: Ok. Um then I believe I have exhausted all questions. Ah I appreciate your cooperation. And again I just want to you know for the record if this is a confidential investigation so you shouldn't be discussing it with anyone else other than your representative. And if at any time you feel there is any adverse action taken against you as a result or what have you, please bring that to the attention of ah of your commander. Ok?

N: Yes sir.

Z: Alright so we're going to end.

F: Do we have everything then? Follow up, the only follow up note I had was 23<sup>rd</sup> I think that's been confirmed. Is there anything else we need to provide to you?

Z: Yea I think we provided the. Oh were you were you also working on July 1<sup>st</sup>? You know when you said you were working the 30<sup>th</sup> that's the day you thought you talked to Lieutenant Dura.

N: Is July 1<sup>st</sup> the

Z: It was a Thursday right after that. The 30<sup>th</sup> was a Wednesday.

F: The 30<sup>th</sup> was your first day back. You had worked that weekend.

N: So then I did work the 1<sup>st</sup>.

Z: You did? Um I don't think I have any other follow ups well I should say one thing can you check your schedule and see if you were working on May 10<sup>th</sup>? I'm sorry I should see if you're still logged in. Let's follow up on that date real quick.

(Pause)

N: May 10<sup>th</sup>. I was not working that day.



## David Zibolski

---

**From:** David Zibolski  
**Sent:** Tuesday, July 13, 2021 2:19 PM  
**To:** David Zibolski  
**Subject:** WFPD —Sgt. Pete Nielsen—7-13-21-am-1:12pm—2:15pm

WFPD —

Sgt. Pete Nielsen

—7-

13

-21-am-

1:12p

m

—2:15pm

Intro and reading of allegations

Not a target

Garrity notice

Review of Insubordination policy

4yrs as a Sgt.

Worked w/AC Boyer since hiring—he was AC FTO

How does that look from a Lt./Sgt position

How does it look from a Chief perspective?

Email on 4/23

-yes,

-not working, back on 4/26 and would have read email

What was your reaction to this?

-Bizarre/rant/shocking

-confusing—didn't know what he was trying to do

Did you discuss the email with anyone else?

Don't think so

Who/when?

Did any subordinate ask you about the email at that time?

-NO

who/what was said

Did you discuss the email w/AC Boyer prior to it going out?

-no

Did you have any knowledge of his intent to send it?

Did you partake in putting together the language of the email

Did you proof read the email prior to it being sent

Have you discussed the email with AC Boyer since it was sent out on 4/23?

Have you discussed the email with anyone else in the department since 4/23?

-

Did you have a discussion with Lt. Adam Gustafson about the email?

-don't believe so

Did any Lt. Or department member relay any information to you related to AC Boyer's comments about the Chief and any action taken regarding the email?

Did Lt. Gustafson relay any information to you related to any questionable comments made to him by AC Boyer regarding the Chief?

Where you working on May 10, 2021?

-

Did you have any discussion with Lt. Jason Anderson about comments made by AC Boyer regarding the Chief on or after that day?

When/where/who was there

Where any conversations in a place that could be overheard by others?  
(Ref: GO 36, H.4.h., I.1. & 6.)

Are you aware that email is an open and public record?

-do you know if AC Boyer had the Chief's permission to publish the email?  
(O.1. & 3).

-yes, insubordinate,

Not aware of FB

No personal relationship

AC Boyer—any other situations re: insubordination/undermining of the chief?  
-yes, week of June 21st or early week of June 28

Where you working on July 1st 2021?  
-yes

Did AC Boyer have any conversations with you regarding the email or the Chief?

-stopped in his office, explained some insight on Chief Otterness after 10 minutes left-

-AC believed is similar to Chief Reitin (dictator) and does coffee breaks with phantom friends—sick of dealing with that type pattern. Seemed depressed. Normal conversation.

His response was can't be that bad or trying to deflect the conversation. If people would have heard it bad. Not sure if anyone else would have heard this conversation. Doesn't think so.

Office w/walls/door/ceiling

Decided to report to his Lt Durra due to insubordinate statements

-Monday or Tuesday after the conversation week of 6/28/21

-Works

-M-th 6/25, 6/26, 6/27 first day back 6/30

-Talked to AC on 6/25 and reported Lt. Durra 6/30/21

-in Durra's office who directed him to talk to the Chief

-he spoke with the Chief last week roughly

Who else was present? No

Was Sgt. Orn or Danielson present?

-previously in his office before AC came in

-complaining about their pay level step and they were looking at city website pay data

-they angled away out of hearing distance

Could the conversation be heard by others?

-Doesn't think so



“ Lt Gustafson would let him know that AC was unhappy with the Chief, doesn’t take his advice.

Lt. Jason would sometimes say similar concerns that AC was relaying

What was your reaction to that?

Do you have any knowledge of how OT was divided out during COVID?

-no involvement

AC

Matt Oldham—patrol officer best friends w/AC

Exhibit 10



# West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-433-5500 | westfargopolice.com

Denis E. Otterness  
Chief of Police

## West Fargo Police Department

### Garrity Notice

On behalf of the West Fargo Police Department I am advising you that you are being questioned as part of an official administrative investigation. You have been identified as a witness to alleged misconduct allegations.

You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/ or termination.

During the course of questioning, any statement, answer or information that you disclose which indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions.

My signature acknowledges my awareness and understanding of the aforementioned.

A handwritten signature in black ink, appearing to be "C. D. R.", written over a horizontal line.

Employee Signature

7/29/21

Date

1304

Time

A handwritten signature in black ink, appearing to be "Daniel B. J.", written over a horizontal line.

Witness/ Interviewer's Signature

## David Zibolski

---

**From:** Denis E. Otterness <Denis.Otterness@westfargond.gov>  
**Sent:** Monday, July 26, 2021 9:30 PM  
**To:** Craig Danielson  
**Cc:** David Zibolski  
**Subject:** Internal Investigation

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Sgt. Danielson,

In reference to our discussion today you are scheduled to meet with Fargo Chief David Zibolski on Thursday, July 29<sup>th</sup> at 1:15 pm regarding an on-going internal investigation. Unfortunately, because of other schedules and the timeline, I am unable to avoid pulling you out of training for a brief period on Thursday. Your interview will take place at Fargo City Hall (not the Police Department) in the Meadowlark Room (2<sup>nd</sup> Floor). Just a reminder that you are not to discuss this matter with anyone other than an authorized representative, which you are entitled to have with you. As I explained, you are not the subject of this investigation but have been identified as a potential witness to misconduct allegations. Thanks and please let me know if you have any questions.

Denis



**Denis Otterness**

Chief, West Fargo Police Department

800 Fourth Ave. E., Suite #2  
West Fargo, ND 58078  
(701) 515-5500  
Visit our website at:  
[westfargopolice.com](http://westfargopolice.com)



## **Craig Danielson Interview Summary – July 29, 2021**

On Thursday, July 29, 2021, at 1:15pm, I conducted an interview with West Fargo Police Sergeant Craig Danielson relative to this investigation. The interview took place in the City of Fargo City Hall second floor Meadowlark Room and was audio recorded. Prior to interviewing Sergeant Danielson, I read him the West Fargo Police Department Garrity notice, which he stated he fully understood and signed the notice confirming he would provide truthful and complete answers, understanding that none of the information provided could be used against him in any criminal proceeding. The following is the investigative synopsis of the interview.

I informed Sergeant Danielson that the investigation concerned allegations against Assistant Chief Gerald Boyer. I reviewed with Sergeant Danielson, West Fargo Police Department Policy 36 (General Rules of Conduct), specifically sections H (3)b; section I (1); section O (3), as well as the West Fargo employee handbook standards of behavior, sections 3.03 (1), (3), (4). Sergeant Danielson confirmed that he is familiar with these policies and rules. Sergeant Danielson states that he has been with the West Fargo Police Department for nine years and has been a sergeant for approximately seven months. He has worked with Assistant Chief Boyer and known him for approximately 10-12 years. He describes his relationship as mostly professional but on occasion he has attended off-duty events that may have been related to department operations.

Sergeant Danielson confirms that he was working on April 23<sup>rd</sup>, 2021, but that he was performing a special duty, that being SWAT selection, which took until about noon on that date. When questioned as to whether he recalled receiving the April 23<sup>rd</sup> email from Assistant Chief Boyer, titled Why Keep Coming? he stated that he does recall receiving it and thinks that he looked at it that day. Sergeant Danielson states that he had a brief discussion with Lieutenant Jason Anderson at the gym on April 23<sup>rd</sup> at approximately 4pm regarding the email, but does not recall any specifics. When asked for his reaction to the email, Sergeant Danielson said that it seemed a little odd but thought it was coming from a good place.

Sergeant Danielson states that he cannot recall any subordinate asking him about the email. He states that he did not discuss the email with Assistant Chief Boyer prior to it going out, did not have knowledge of his intent to send it, did not partake in putting together the language of the email, and did not proofread the email prior to it being sent. He also states that he has not discussed the email with Assistant Chief Boyer since it was sent out on April 23<sup>rd</sup>. He states that he believes he may have discussed the email with Sergeant Shane Orn and that he may have been at the gym with he and Lieutenant Anderson on April 23<sup>rd</sup>. However, he states he's not sure because Sergeant Orn was changing gyms around that time.

Sergeant Danielson states he did not have a discussion with Lieutenant Gustafson or any other Lieutenant or department member related to the email or any action that the chief may have taken against the Assistant Chief relative to the sending of the email.

Sergeant Danielson stated that he was not working on May 10<sup>th</sup>, 2021 and did not have any discussions regarding the email with any lieutenants on or about that time. He states that he is aware that email is subject to open records and that if that email were to have been released to the public, the interpretation of it could have an adverse effect on Chief Otterness's ability to oversee the department and/or department morale. Sergeant Danielson states that he can't remember any other situation or contact that he has had with Assistant Chief Boyer in which the Assistant Chief has made any insubordinate, undermining, or unprofessional comments about the Chief.

I asked Sergeant Danielson if was working on Friday, June 25<sup>th</sup>, 2021. Again, he checked his work calendar via cell phone and stated that he was on vacation from June 21<sup>st</sup> with his first day back to work on June 30<sup>th</sup>, 2021, which was special duty having to do with the honor guard. He states that his normal shift hours are 4pm to 2am. I asked Sergeant Danielson if he recalled being in Sergeant Nielsen's office on or about that time discussing pay grades and/or pay levels for a sergeant. Sergeant Danielson said he doesn't remember having that conversation. I asked him if he recalls a conversation involving Sergeant Nielsen and Sergeant Orn in Sergeant Nielsen's office, relative to pay status or pay grades. Again, he stated that he could not remember having that type of a meeting with those individuals. Sergeant Danielson did state that he has asked questions about pay but can't recall that specific meeting.

Sergeant Danielson had nothing additional to offer relative to this investigation. The interview was concluded at 1:27pm.

RECEIVED
FARGO POLICE DEPARTMENT
AUG 03 2021
DAVID B ZIBOLSKI
CHIEF OF POLICE
REF: <u>CHIEF OTTERNESS</u>

+ FOR INVESTIGATIVE FILE



## **Craig Danielson Interview – July 29, 2021**

Chief Zibolski (Z)  
Craig Danielson (D)

Z: Good afternoon. This is ah Chief David Zibolski conducting an internal investigation on behalf of Chief Denis Otterness of the West Fargo Police Department. Today is Thursday, July 29, 2021 at 1:03pm. Ah present with me is Sergeant Craig Danielson. Can you just acknowledge your?

D: I am here. Yes. Sergeant Craig Danielson.

Z: Thank you sir. Um Sergeant Danielson received a notice to appear for the investigation um he's also been informed that he's not the target in the investigation although I will read the Garrity Notice to him just to remind him that he's required to respond truthfully and completely to all questions. Um and is it ok if I call you Craig or?

D: Certainly can.

Z: Ok so Craig this is right from your department policy. On behalf of the West Fargo Police Department, I am advising you that you are being questioned as part of an official administrative investigation. You have been identified as a witness to alleged misconduct allegations. You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/or termination. During the course of the questioning, any statement, answer or information that you disclose which indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions. Do you understand all of that?

D: I understand.

Z: Have you ever been a subject or interviewed in an internal investigation before?

D: Yea. Yep.

Z: Ok. Ah I'm just going to ask you to sign that.

D: Certainly.

Z: And get your signature that you acknowledge. Do you need a pen?

D: If I could borrow one for a second.

Z: There you go. Ok.

(Pause)



Z: Ok Craig. Ah the nature of this investigation has to do with allegation against your Assistant Chief Gerald Boyer, which understandably puts you in a very difficult position ah so I just want to caution you at the beginning I'll probably do the same at the end that you're not the target of this investigation ah but you're also subject to the department policy in terms of not discussing this internal investigation with any other department member or anyone else until such time as the investigation has been completed or the Chief advises you that it's over.

D: Ok.

Z: Um (cough) how many years have you worked for West Fargo PD?

D: Since December of 2012 so just about 9. 9 this fall.

Z: 9 years. Ok. And how many years have you been a sergeant?

D: Since January of 21. So seven months. Pretty new to the sergeant gig.

Z: Ok. Very good. Um how long have you worked with ah Assistant Chief Boyer?

D: Um well obviously since I was hired and I ah knew Assistant Chief Boyer since before my time with the West Fargo. I worked about 9 years with Cass County Sheriff's office so when I was with the Sheriff's office, he was at NDSU so I knew him a little bit then and then I think he went to West Fargo and in my time at the county so I would say between 10-12 years total time.

Z: Ok. Ah do you have any kind of personal relationship with Assistant Chief Boyer?

D: Um nothing like super close. We've hung out on several occasions but it's been mostly something to do with the department activity. Nothing I mean he's invited me to his lake place. It's real close to where we have a lake place but I've never been there. Um, so no. Not a lot.

Z: Ok. Mostly professional relationship.

D: Mostly professional relationship. Yep.

Z: Gotcha. Um I just want to go over with you some of your department policies that we'll be talking about here. I'm sure you're familiar with um I'll show you a copy of these.

D: Sure.

Z: Um General Order 36 under H 3a that talks about insubordination. And then if you want to flip it over, um just the highlighted part is all.

D: Just that B there.

Z: Yea. Just focusing on the insubordination and if you flip that thing over to section I,

D: Ok yep.

Z: There's some highlighted pieces there.

D: (mumbling reading)

Z: So specifically, I 1 employees will display respect for their supervisors, subordinates and associates. Section 6 ah employees will not slander or speak detrimentally about the department or another employee.

D: Ok.

Z: So those are familiar to you, right?

D: Yep.

Z: OK and also along with that I'm sure you're aware there's also city policy regarding standards of behavior um section 3.03 and specifically um parts 1, 3, and 4 that deal with behaviors that prevent an employee from accomplishing his/her work, unprofessional behavior which consists of ridiculing, belittling, blaming, gossiping, making assumptions, or embarrassing employees, and four which is insubordination.

D: Yep. I know city policy a little less than the PD, but it's pretty much the same stuff.

Z: Right. Yea. Same scope. Ok excellent. Ah so what I want to start with is ah I guess I'll ask you to look at your work calendar.

D: Ok.

Z: Were you working on April 23<sup>rd</sup>, 2021? And I understand that some of this is dated in time so certainly want to allow you a sufficient time to look and think about um the dates I may ask you about.

D: Ok. I'll pull up April here.

(Pause)

D: April 23<sup>rd</sup>, looks like a Friday, and was it my weekend I can see right off the bat that it was not, but I have some overtime here so I worked ah yep so you're familiar with this day probably because of some SWAT selections that we did a second round of.

Z: Oh ok.

D: And ah did a second round of SWAT selections it looks like I was working until 1:00 the night before and then 7:30 to about noon that Friday on those SWAT selections. I'm one

of our team leaders on Red River Valley SWAT so I was there for SWAT selections. I left at noon. I wasn't at the PD but I would have been at the SWAT building, the public safety building there for those SWAT selections.

Z: Perfect.

D: That's what that looks like.

Z: Ok so ah on April 23<sup>rd</sup> at about 1:53pm, an email was sent out to all staff by the Assistant Chief titled Why Keep Coming? Are you familiar with that email?

D: I remember that email.

Z: Ok. Well, here's kind of a copy of it.

D: Ok.

Z: And so do you remember receiving that email? Or do you remember when you read it?

D: Yea. Yea I do remember receiving this email. I don't remember exactly when I looked at it. I think it was that day um but I do remember looking at it. Yep.

Z: Ok. Um what was your ah reaction to that email?

D: Um my first reaction to that email was that it was a little bit odd um I understood where the place that it was probably coming from but um but somewhat odd I thought. Is it ill timed is it from a from a good place? I didn't really know the intentions to it so um odd was was my odd would be the word I would describe it.

Z: Ok. Can you why do you think it was odd? I mean what do you think was odd about it?

D: Knowing Jerry as long as I have, um, I know that there's a lot of times that he's tried to give a pep talk or tried to pat you on the back or lift you up to a place and it doesn't come across. It's amazing going through Dale Carnegie today, listening to some of this, it didn't come across genuine. So this when this email came out and this is previous stuff that

Z: Sure.

D: There's times before where I'm like ah that doesn't seem, is it disingenuous, maybe that's a strong word so this email kind of lined up with that so I kind of put it in that category that doesn't seem real genuine. I think I know what he's trying to do with this email and it kind of seems like he was targeting maybe some of our younger officers that have ah just been with the department for a short amount of time and are more subject to this public ridicule and stuff. I've been a cop for 17 years almost so for me it didn't really hit me like it may some but. Do you need that back or?



Z: I guess you can hang onto it.

D: But that's where that kind of comes from. It's like ah.

Z: So I mean it's fair enough I think different people would interpret it differently. So I just want to kind of go through a couple of parts here and ask you specifically for your reaction or thoughts.

D: Sure.

Z: Um so this is the Assistant Chief sending this out to the whole department right so in the second, well the first paragraph starts out since we have not been able to have a real department meeting in over a year, I'm forced to send this email out. Not my preferred way of communicating um any idea what he means by that or?

D: We usually had regular monthly department meetings, I know COVID was a factor in not having a real department meeting.

Z: Ok.

D: Um so I would say that it's COVID was probably where we can't get that many people in a meeting room so we weren't meeting because of COVID. I'm forced to send this out in an email ah means this I basically want to get this information out but I don't have any other way of doing it in person is kind of how I interpret that.

Z: And when he sends this email out, from your sergeant perspective, who is the email representing or what's the message representing? Where is the message coming from?

D: Well I can only assume, like you said, ah I interpret it that it's coming from command staff, upper administration, ah him as an Assistant Chief ah collectively um the administration but he words everything I noticed it several times that it's coming from him directly so you know I don't want to read between the lines but I will assume it's coming from him as the Assistant Chief.

Z: Sure and ah so let's go down to that last paragraph since you kind of noticed that as well. So it starts out the last paragraph we are lucky here at our department. We have a community that overwhelmingly supports us, the City Administrator supports us, the commission supports us and your admin staff supports you. Is there anyone missing from that message do you think?

D: Ah admin staff supports you seems to be vague from that. Um, the Chief ah I guess the City Administrator, the Commission, it should be you know chief and I and your direct supervisors which would be the admin staff.

Z: Sure.

D: Um yea nothing really nothing other than that.

Z: OK and so are you assuming the chief is included in the admin staff supports you?

D: I would assume that that yes that that is what that means.

Z: And do you think he's representing the chief by sending this out?

D: When I read that your admin staff, I would include that as everybody that's above me up to an including the chief, yes.

Z: Ok. Alright so, um looking at the last two sentences here where he kind of closes out I appreciate you more than any of you will ever know and that is why I keep coming back. My door is open to anyone that wants to talk or call or text me anytime. I don't have all the answers but I will listen and I understand. Is that the same perspective?

D: No. Totally different perspective there coming from a first-person perspective. He's representing himself in that statement.

Z: Right and who's not included in that message?

D: Definitely the Chief.

Z: Alright. Ok. Do you find that is that your reaction to that is

D: Yea I guess looking back in retrospect it's it's ah how can I say this? If I were the chief, I may feel like that that's bothersome but I can't speak on on the chief's opinion but um yea that I mean it's

Z: It's a message that's going out like you said all these other members of the department

D: Right.

Z: Is that a motivating email? Or?

D: I mean like I said, I wasn't a fan of this email in its entirety. Motivating? No. I don't think it is motivating I think it maybe came from a good place but but it came across wrong. That's why the combination of those two thoughts makes it conflicting to me.

Z: Um and you're aware that email is subject to open records, right?

D: Yea. Absolutely.

Z: So how do you think if this went out as an open records request, it would be interpreted by members of the public in terms of the message? I mean there's a piece in there where he said this pisses him off too and some other comments in there.

D: Yea. There's definitely some things in here as far as the open records request portion of this email that are concerning to me. There's things in here that I wouldn't have put out in an email to the department. Not only because of the open records part of it but because of the message that it sends. Yea. Like you said. The language and you just said it where it quite frankly pisses me off I would never use that line in an email to the department at all.

Z: Sure. Do you think that's professional?

D: No.

Z: Do you think that this message could have an adverse effect on the chief's ability in terms of overseeing the department?

D: Yea possibly.

Z: Discipline. Morale.

D: Possibly. Yep.

Z: Alright um so you might have looked at this maybe that day um have did you discuss do you recall any discussions immediately after with anyone else regarding it?

D: Yep. I recall having a discussion. I don't really recall much about that discussion but I recall having a discussion with Jason Anderson, a lieutenant for the department. Jason and I go to the gym together a lot. We that's just been something we've done a lot. We're personal friends. Um, lift together, so we were at the gym and I believe I brought it up. I brought this email up. I believe that I read this email on my work phone sometime between those selections and going to the gym. I think we went to the gym around 4:00, 4:30, somewhere mid-afternoon there so I to the best of my recollection I read that somewhere in between. And that's when I got that that's really an odd email so that's when I mentioned to him I said hey did you see the email from Assistant Chief Boyer? Um and I don't really remember that conversation. It was pretty short. I remember him saying something like yea, I think I deleted it or something. He disregarded it, which doesn't surprise me from Jason. That's that's his personality that sometimes he'll delete things that probably shouldn't be deleted. But that's neither here nor there.

Z: Ok.

D: But I remember that that conversation was short and sweet and both of us kind of eh it was odd.

Z: Alright. Um did any of your subordinates come up and ask you about the email after it was sent out?

D: No. Not that I recall.



Z: Did you discuss the email with Assistant Chief Boyer before it was sent out?

D: Did I? Nope.

Z: Ah did you have any knowledge of his intent to send it out?

D: None.

Z: Ok. Did you partake in putting together any of the language in the email?

D: None.

Z: Did you proofread the email prior to it being sent out?

D: Nope.

Z: Have you discussed the email with Assistant Chief Boyer since it was sent out on April 23<sup>rd</sup>?

D: Nope.

Z: Um have you discussed the email with anyone else in the department since April 23<sup>rd</sup>?

D: I don't think so. I think just Lieutenant Anderson and I'm maybe to maybe to Shane Orn, another sergeant but that's that's all I can remember. I didn't really pay a lot of attention to it.

Z: Ok. And was Sergeant Orn with you at the gym when you talked to Lieutenant Anderson?

D: I don't recall. He may have been there. Then Shane changed gyms and there's been some times that the three of us have gone to the gym together um but I I don't remember if he was there or not. Because he's there maybe one out of five times that we go.

Z: Ok and prior to his passing, did you have any discussion with Lieutenant Gustafson about the email?

D: No.

Z: Um did any lieutenant or any department member relay any information to you regarding any comments the Assistant Chief made related to the Chief's follow up from this email? Which is a long question.

D: Yea it is and I think I understand it. Ah the only ones that I would have talked to would have been Jason I don't I one hundred percent know that Lieutenant Gustafson

didn't tell me anything. Nor lieutenant Warren and if Jason would have, I would have remembered that so no I don't believe there was.

Z: Ok. Um ok so calendar question again, were you working on May 10, 2021?

D: Give me a moment. It's a good scheduling program but it's not fast.

Z: Well none of them are.

D: None of them are right. So May. Let me switch months.

(Pause)

D: Monday, May 10<sup>th</sup>.

Z: Yes.

D: I worked the weekend previous to that. I worked ah that Friday, Saturday, Sunday ah so I would have been off Monday Tuesday so I did not work that day.

Z: Gotcha. Ok. Um were you working on June 25<sup>th</sup>, 2021?

D: I took a pretty good vacation for a family reunion right around then so initial thoughts are no, but ah I'll double check. We had about 30 from my mom's side out at our lake place so I was out there

Z: Oh yea.

D: For a lot of that cooking and

Z: Good place to be this summer.

D: Yea it was a wonderful weekend. Friday, June 25<sup>th</sup>

(Pause)

D: No I had previously worked ah a little later than normal for one of the night shift sergeants. He paid me back by it looks like coming in early that night ah and took a little bit of my evening shift.

Z: When does your shift end?

D: My shift it 1600 to 0200. So um but no I let me go back here. I don't see that I was on then. My vacation started about the 20 ah the 21<sup>st</sup> I worked 8 to 4 and I believe that was new hire selections. 22<sup>nd</sup> through about the 30<sup>th</sup> I was off. So no. That was. I used vacation on that 25<sup>th</sup>.

Z: Do you recall on or about June 25<sup>th</sup> being um in Sergeant Nielsen's office discussing pay levels?

D: Boy no I don't. Discussing pay levels.

Z: Yea pay levels and I think pay grades and there was questions on that Sergeant Orn may have been there. Ah Sergeant Nielsen was explaining about the pay scales and levels and when people get promoted and what your pay rates are that kind of stuff.

D: I don't remember that. If it was on or about June 25<sup>th</sup>, I would have been not even in the office so.

Z: Well if may not be

D: Couple days around there.

Z: Couple days either way or a conversation like that at all around that timeframe.

D: I've talked to Pete about pay grades before but it's mostly been you know where am I at where is he at and ah I don't remember.

Z: You don't remember you and Sergeant Orn sitting down with him and he was explaining to you ah promotional pay grades and how you where you bump and how your pay is determined?

D: I honestly don't remember that.

Z: Ok.

D: Not saying that it didn't happen I just don't recall.

Z: Gotcha. Ok. Um I guess at any time or have you since this email came out, um observed any situations in which Assistant Chief Boyer made statements or other comments regarding the chief that could be interpreted as insubordinate or unprofessional or undermining?

D: I I can't think of any time that I've flagged a statement in my mind about something that seems to be that way.

Z: Ok.

D: Um there was a few times around Adam's funeral that I was kind of setting up the funeral so I went to my lieutenant and forwarded onto Assistant Chief Boyer about a few decisions for the funeral and Jerry just made those decisions which I assume he had the leniency and the ability to do that.

Z: Sure. I mean he didn't hadn't made any statements that you would be considered insubordinate or undermining related to the chief?



D: No. I can't think of any.

Z: Ok.

D: I haven't had since my vacation haven't had a lot of contact with Jerry. I know he went on a fairly long vacation that kind of offset mine so there's a pretty good length of time there where we didn't have contact. And then working evenings maybe catch him for a few hours at the end of the day.

Z: And you said your vacation was June 21<sup>st</sup> to I'm sorry when? June 30<sup>th</sup>?

D: June 30<sup>th</sup> I came back for honor guard camp and then I had some days off around the 4<sup>th</sup> too. So I was off I had a pretty good chunk off right there.

Z: Gotcha.

D: Back the 30<sup>th</sup> but I wasn't even in the office that day. The 30<sup>th</sup> I was doing honor guard stuff.

Z: OK. Alright. Um is there anything that I haven't asked you that you think may be important or relevant to this particular investigation?

D: Nothing comes to the top of my mind.

Z: Ok. Have you talked to Assistant Chief Boyer at all regarding his relationship with the chief or the working environment or anything like that?

D: Nope.

Z: Ok.

D: The last conversation I had with Assistant Chief Boyer was about some SWAT stuff. He sits on the SWAT board. Um as a team leader I kind of go directly to him with some some SWAT-related questions or issues. We had a conversation a couple days ago in my office about some SWAT decisions that affected the department. Ah nothing major. It was a good conversation but yea there was nothing other than that.

Z: Alright well I don't think I have any other questions for you then sir.

D: Ok.

Z: Unless you think there's something else that would be of interest or

D: Nope not not that I can think of that would be beneficial of that comes freely to the top of my mind.

Z: Ok. Very good then we are going to end the interview at 1:27pm.

**David Zibolski**

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**From:** David Zibolski  
**Sent:** Thursday, July 29, 2021 1:44 PM  
**To:** David Zibolski  
**Subject:** WFPD —Sgt. Danielson—7/29/21; 1:15pm-1:27pm

## WFPD —Sgt. Danielson—7/29/21; 1:15pm-1:27pm

Job #48 interview  
Job #49 summary

Intro and reading of allegations

Not a target

Garrity notice

Inform of nature of investigation: A/C

yrs as a Sgt.? 9 years, 7 mos

Worked w/AC Boyer since? Whole career, knew him previously when he was with Cass Co, 10-12 years

Personnel or professional relationship w/ A/C?  
-mostly professional, hung out sometimes

Review of insubordination policy (dept & city) from summary memo\*\*

How does that look from a Lt./Sgt position  
-

How does it look from a Chief perspective?

Working on 4/23?  
-SWAT selection until noon  
-received and thinks he looked at it that day

Email on 4/23—Why Keep Coming?

What was your reaction to this?  
-little odd, from a good place

Did you discuss the email with anyone else?  
-Yes Jason Anderson at gym and he brought it up  
-read it on his phone and then 4pm at gym

Who/when?

Did any subordinate ask you about the email at that time?

who/what was said

Did you discuss the email w/AC Boyer prior to it going out?

Did you have any knowledge of his intent to send it?

Did you partake in putting together the language of the email

Did you proof read the email prior to it being sent

Have you discussed the email with AC Boyer since it was sent out on 4/23?

Have you discussed the email with anyone else in the department since 4/23?  
-don't think so, maybe Shane Orn—may have been at gym

Did you have a discussion with Lt. Adam Gustafson about the email? No

Did any Lt. Or department member relay any information to you related to AC Boyer's comments about the Chief and any action taken regarding the email?  
-don't think so

Did Lt. Gustafson relay any information to you related to any questionable comments made to him by AC Boyer regarding the Chief?

Where you working on May 10, 2021? No

Where you involved in any discussions regarding the email with any Lt.'s on that day—including Gustafson?

Are you aware that email is an open and public record? Yes, and adverse to Chief's ability to oversee department and morale  
-do you know if AC Boyer had the Chief's permission to publish the email?  
(O.1. & 3).

AC Boyer—any other situations re: insubordination/undermining of the chief?  
—no—can't remember

Where you working on Friday, June 25, 2021? No  
—1600-0200am is shift  
-vacation started on 6/21/21-6/30/21

Do you recall being in Sgt. Neilson's office discussing pay levels?  
-No—doesn't remember



About what time do you think that was?

Who else was there?

Was there a time when A/C walked into the office?

What did A/C say?

How long did you stay in the office?

Did you here A/C make any comments about Chief O?

-

Sent from my iPad

Exhibit 11



# West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-433-5500 | westfargopolice.com

Denis E. Otterness  
Chief of Police

## West Fargo Police Department

### Garrity Notice

On behalf of the West Fargo Police Department I am advising you that you are being questioned as part of an official administrative investigation. You have been identified as a witness to alleged misconduct allegations.

You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/ or termination.

During the course of questioning, any statement, answer or information that you disclose which indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions.

My signature acknowledges my awareness and understanding of the aforementioned.

<u>Shane J. Alm</u>	<u>07/27/2021</u>	<u>2:04 PM</u>
Employee Signature	Date	Time

<u>David B. J.</u>
Witness/ Interviewer's Signature

## David Zibolski

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**From:** Denis E. Otterness <Denis.Otterness@westfargond.gov>  
**Sent:** Monday, July 26, 2021 4:01 PM  
**To:** Shane Orn  
**Cc:** David Zibolski  
**Subject:** Internal Investigation

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Sgt. Orn,

In reference to our discussion you are scheduled to meet with Fargo Chief David Zibolski on Thursday, July 29<sup>th</sup> at 2:00 pm regarding an on-going internal investigation. This meeting will take place at Fargo City Hall (not the Police Department) in the Meadowlark Room (2<sup>nd</sup> Floor). Just a reminder that you are not to discuss this matter with anyone other than an authorized representative, which you are entitled to have with you. As discussed, you are not the subject of this investigation but have been identified as a potential witness to misconduct allegations. Thanks and please let me know if you have any questions.

Denis



**Denis Otterness**  
Chief, West Fargo Police Department

800 Fourth Ave. E., Suite #2  
West Fargo, ND 58078  
(701) 515-5500  
Visit our website at:  
[westfargopolice.com](http://westfargopolice.com)



## **Shane Orn Interview Summary – July 29, 2021**

On Thursday, July 29, 2021 at 2:02pm I conducted an interview with West Fargo Police Sergeant Shane Orn relative to this investigation. The interview took place in the City of Fargo City Hall, third floor Valley Room and was audio recorded. Prior to interviewing Sergeant Orn, I read him the West Fargo Police Department Garrity notice, which he stated he fully understood and signed the notice confirming that he would provide truthful and complete answers, understanding that none of the information provided could be used against him in any criminal proceeding. The following is the investigative synopsis of the interview.

I informed Sergeant Orn that the nature of the investigation concerned allegations against Assistant Chief Gerald Boyer. Sergeant Orn states that he has been with the West Fargo Police department for 12 years and has been a Sergeant since 2018. He's worked with Assistant Chief Boyer his whole career but describes his relationship as only professional. I reviewed with Sergeant Orn West Fargo Police Department General Order 36 section H (Disciplinary/Personnel Actions), section 3.b. regarding insubordination; section I (General Conduct), section 1 and 6, as well as West Fargo personnel policy 3.03 (Standards of Behavior) sections 1, 3, and 4. Sergeant Orn confirmed his knowledge of those policies and understanding of them.

Sergeant Orn was able to access his online schedule system from his phone and confirm that he was working on April 23<sup>rd</sup>, 2021 from 8am to 4pm. He was shown exhibit 7, the email sent by Assistant Chief Boyer titled Why Keep Coming? and recalls receiving it. He states he was not sure when he read it but then later stated he believes it was that day. When asked for his reaction to the email, Sergeant Orn stated that there was "lots going on" and that he didn't think it was a bad email and that some people needed to hear it. I went through various sections of the email with Sergeant Orn so that he may elaborate a little more on what parts he felt people needed to hear and his reaction to the specific message itself. I also reminded Sergeant Orn that this email was sent out three days after the jury verdict in the George Floyd murder case. While overall Sergeant Orn didn't think it was a bad email, he did agree that this type of a message without the Chief's input or oversight could be undermining and affect his ability to oversee the department and/or affect morale. Sergeant Orn acknowledged that emails are subject to open records and that if this email were to be released to the public, it could be negatively viewed in terms of the Chief and his ability to oversee the department. Sergeant Orn also stated that some of the statements by the Assistant Chief were not professional, including the section where the email states "quite frankly it pisses me off."

When asked whether he discussed the email with anyone else, Sergeant Orn stated that he normally talked to Lieutenant Adam Gustafson on a daily basis and he also talks regularly with Lieutenant Jason Anderson. He states that he does recall having some conversations with Lieutenant Gustafson and Anderson in which he expressed to Lieutenant Gustafson some of the good points he saw in the email. He doesn't recall any other specifics relative to conversations with either lieutenant regarding the email. He states that none of his subordinates asked him about the email and that he didn't address the email with any of his subordinates as far as he can remember.

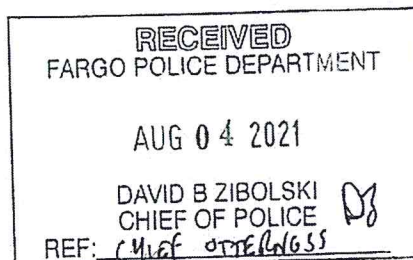
Sergeant Orn states that he did not discuss the email with Assistant Chief Boyer prior to it going out, he did not have knowledge of his intent to send it, he did not partake in putting together the language of the email, and he did not proofread the email prior to it being sent out. He also states that he has not discussed the email with Assistant Chief Boyer since it was sent out on April 23<sup>rd</sup>, nor has he discussed it with anyone else in the department except Lieutenant Gustafson and Anderson.

Sergeant Orn confirms that he was working on May 10<sup>th</sup>, 2021 from 8am to 4pm but when questioned again states he was not involved in any discussions with any of the department lieutenants regarding any action the chief may or may not have taken against Assistant Chief Boyer regarding the email. Sergeant Orn states that he has not observed Assistant Chief Boyer make any insubordinate or undermining statements about the Chief directly to him or in front of others.

Sergeant Orn confirmed he was working on Friday, June 25, 2021 from 8am to 1:15pm. When questioned, he states he does recall being in Sergeant Nielsen's office discussing pay grades and pay comparisons and that also present with him was Sergeant Cody Beilke. He states that Sergeant Craig Danielson was not present for this conversation. He states that Sergeant Nielsen was explaining to them the various pay policies that the City has and at some point, Assistant Chief Boyer walked into the office. Assistant Chief Boyer asked them what they were talking about and they explained to him it had something to do with the pay and Assistant Chief Boyer said he would look into it. At some point, he and others left the office but he did not recall who left the office first and whether or not Assistant Chief Boyer remained in the office after he left. Sergeant Orn states that at no time during this conversation did he hear Assistant Chief Boyer make any insubordinate or adverse comments about Chief Otterness.

Sergeant Orn made a reference to Chief Reitan and when questioned regarding the working relationship when he was working for Chief Reitan, he stated that he got along with him but he knew that some in the department had a tough time working for Chief Reitan.

Sergeant Orn had nothing further to add to the investigation and the interview was concluded at 2:31pm.





## Shane Orn Interview – July 29, 2021

Chief Zibolski (Z)

Shane Orn (O)

Z: Ok good afternoon. This is Chief David Zibolski. I'm conducting an internal investigation on behalf of Chief Denis Otterness of the West Fargo Police Department. Ah today is Thursday, July 29, 2021. It's 2:02pm. Present with me for the interview is Sergeant Shane Orn of the West Fargo Police Department. Ah Sergeant Orn would you just verbally acknowledge presence?

O: I am here.

Z: Ok. And is it ok if I call you Shane or?

O: That's fine.

Z: Ok. Perfect. Alright. Um, before we begin, ah I just want to advise you that the allegations that I'm asking you about today have to do with your Assistant Chief, Gerald Boyer, um and as any internal investigation and pursuant to your department policy, I would caution you not to discuss the ah questions or answers or any investigative information with any other department member until such time as the case has concluded and the Chief advises that the investigation is closed. Ok?

O: Kay.

Z: Um I'm also going to read you a Garrity notice as part of your police department policy and again you are not the target of this investigation. Ok so on behalf of the West Fargo Police Department, I'm advising you that you are being questioned as part of an official, administrative investigation. You have been identified as a witness to alleged misconduct allegations. You are required to answer all questions truthfully, completely, and impartially, and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent, or provide false or misleading information may result in disciplinary action and/or termination. During the course of the questioning, any statement, answer or information that you disclose which indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions. So in a nutshell, truthful answers, complete answers to the best of your ability. Nothing can be used in any type of criminal investigation. Ah do you understand all those?

O: Yes.

Z: Ok. So I'm just going to ask you to sign at the bottom, acknowledging your awareness of the of those provisions.

(Pause)



Z: Great. I'll sign the bottom of that. Ok. Um so a little bit of background there Shane. How long have you been with the West Fargo PD?

O: Since 2008.

Z: So 12 years with them. And how long have you been a Sergeant?

O: Since 2018. Beginning of 18. January of 18.

Z: Alright so you've work with Assistant Chief Boyer your whole career there at West Fargo?

O: Yep.

Z: Did you know him prior to the PD?

O: No.

Z: Do you have any type of personal relationship with Assistant Chief Boyer?

O: I guess we don't you know hang out on the weekends but if I was to ah see him in public obviously I would go say hi to him.

Z: Sure.

O: Other than

Z: Not a close friend or anything.

O: No.

Z: Like that just mostly professional, department related?

O: Yea. We've texted back and forth about old cars, stuff like that, but nothing, like I said nothing ah not hanging out on the weekends or anything.

Z: Gotcha. Alright and ah I just want to, I'm sure you are aware of these, I just want to walk through a couple of the department policies. Um I'm sure you're familiar with General Order 36, Section H 3B which talks about insubordination. And section I General Conduct ah the highlighted portions 1 and 3. 1 ah states that employees will display respect for their supervisor, subordinates and associates and part 6 says employees will not slander or speak detrimentally about the department or another employee. I'll give you those for your quick refresher and review.

(Pause)

Z: Flip the if you flip the page there sir the other part's on the other page.

O: Oh.

Z: Ok. Yea.

(Pause)

O: Ok.

Z: Ok. Now this isn't shocking or anything. Now along with that, I'm sure you're aware that the City has policies also in their employee handbook. 3-03 Standards of Behavior ah section 1, 3, and 4. Ah one talks about unsatisfactory performance of job functions or other behaviors that prevent an employee from accomplishing his or her work. Part three talks about unprofessional behavior such as ridiculing, belittling, blaming, gossiping, making assumptions or embarrassing employees, and four refers to insubordination.

(Pause)

Z: Ok. Um I'm going to ask you to check your work calendar now and um if you're able to tell me if you were working on April 23<sup>rd</sup>, 2021.

(Pause)

O: Yes.

Z: Ok. And do you know what hours you were working that day?

O: Typically it's 8 to 4.

Z: 8am to 4pm.

O: Yep.

Z: Ok. Gotcha. Um (cough) do you recall on April 23<sup>rd</sup> an email that was sent out to all staff by Assistant Chief Boyer that was titled Why Keep Coming? I've got a copy of the email to look at. It was sent out about 1:53pm.

O: I remember it yea. Do you want me to read read the whole thing?

Z: No. I don't think you need to. We'll touch on a few areas but you remember um you remember receiving it. Do you know when you may have read it?

O: That I'm not sure. I believe I read it that day though but I just don't remember what time.

Z: Ok. Um so what I guess what was your reaction to that email?

O: Um from my my initial reaction I said it wasn't um it like wasn't a bad email. I actually thought because it was I know there was a lot of stuff going on and personally I read it and I didn't think it was a bad thing. I actually thought it was something some people needed to hear. Personally I it was I thought it was a good email and some people at work needed to hear it just because of everything that was going on. So but other than that I I guess I wouldn't ah. I thought it was an alright email I guess.

Z: Ok so ah what parts of it do you think people at work needed to hear and what sentence are you referring to?

O: Well what was all going on back at that time? I know there was a lot of

Z: Well contextually we know that this was three days after the George Floyd verdict right?

O: Ok. Yep.

Z: So that was on April 20<sup>th</sup> to kind of put it into a timeline. So this was a few days after that right? So and let's just kind of walk through this.

O: Sure.

Z: And maybe you can um leave in the parts that you were mentioning that you thought were good so. The first paragraph says since we have not been able to have a real department meeting in over a year, I'm being I am forced to send this out in an email, not my preferred way of communicating. Um what is any idea what he's referring to there about not having a real department meeting in over a year and being forced to send it out in an email?

O: I imagine because of COVID. Because we used to get together once a month.

Z: Sure ok. Have you had any department meetings?

O: Not for quite awhile again.

Z: Ok. Alright so then the next paragraph says that I know that many of you are struggling with many things that are happening in the world right now. I'd be lying if I said I wasn't also bothered. Quite frankly it pisses me off. I know that each and every one of you is a good person and came into this profession for the right reasons. Seeing officers second-guessed over and over by "experts" and wondering where your next attack is coming from, the media, politicians, or the streets is an unfair burden on you and your families. You are all policing in new territory and hard times. Our profession has been through this before and it will get better. Many of you have probably asked yourself why should I keep trying? Again, with everything that has happened in the past year, I think that they are valid questions to ask yourself. I have also asked myself that on several occasions. Any specific reaction to that paragraph?



O: No I think it was like I said some people needed to hear it because just at the time between like it says in there the media and were getting second guessed and pretty much blasted with everything we do, um, people leaving the profession and I I like I said I've that's where I could see he's probably coming from. Just because no one really likes getting blasted day after day after day after day.

Z: Mm hmm. From a global perspective

O: Yea. And I could how some people could be thinking that.

Z: Ok. (Cough). Um let's go down to the last ah paragraph then ok.

O: Ok.

Z: Ok so it says we are lucky here in our department. We have a community that overwhelmingly supports us, the City Administrator supports us, the Commission supports us, and your admin staff supports you. Is there anyone missing from that particular sentence?

O: I guess I'm not

Z: In your opinion

O: If there's anyone missing? Nothing like jumps out at me now.

Z: Ok. Um who do you think Assistant Chief Boyer is representing when he sends this email out to everyone in the department?

O: Well there's a lot of his personal opinions in here so I think it kind of comes from him and how he's feeling about things.

Z: Ok and would you I guess, especially in a supervisory role, um so are expect that somehow the chief would be involved in a message like this?

O: I can I could see it. Um I guess it would depend on the relationship that they have together and if one would trust somebody else if they you know if somebody was gone and you trusted your number two person to handle things or say things I think ultimately it kind of reflects back on you know the Chief and how if the feelings are similar but if this was coming straight from Jerry, not the chief. I mean if you're going to send something else out for somebody else, you probably would hope they feel the same way type of a thing so that's why I kind of look and see that it would be coming from him.

Z: Right. I guess if one of your narcotics detectives put out a message to the rest of the team about something related to your mission in which you hadn't been consulted on and sent that forward um would you feel that was a little bit undermining?

O: Could be. Depending on what like I said depending on what the message would be. If we're not on the same page on something then sure.

Z: Could that affect your ability to supervise the unit?

O: Yea.

Z: Alright. So and when you read this and I'm asking your opinion so in that sentence that we talked about where admin staff supports you, do you believe that that includes the chief when he's talking about that? Or can't you tell.

O: I mean when I read it and it says admin staff, I would assume that would collectively involve all admin staff.

Z: Mm hmm. And so um along those same lines then Shane, just looking at the last two sentences, it says I appreciate you more than you will ever know and that is why I keep coming back. My door is open to anyone that wants to talk or call or text me anytime. I don't have all the answers but I will listen and I understand. Does it feel like he's representing the chief in those last two sentences?

O: Well there he's basically talking about him. So he's basically it's a lot of I's and a lot of everything else in there so um I took it as he's the one that's available in that regard.

Z: Do you think that excluding the chief from that is a little bit short sided or undermining? I mean how do you, at the top we're talking about admin staff supports you so generically all right so let's say the chief is involved in the end if he's saying it's just me, where's the chief in this then?

O: Yea I could see how it could be perceived that way. Personally, I guess I I I didn't. Um.

Z: Sure. Well we got a lot of well, I would imagine you're a pretty young department also right?

O: Yea.

Z: So I mean this is going out to all staff um did any of your subordinates come up and ask you about this email?

O: Not that I can remember.

Z: Ok. Um and did you talk to your staff at all about the email? Any conversations afterwards?

O: To be honest, I don't think I did.

Z: Gotcha. Alright. Um and kind of just going back to the previous couple of questions. You know your email is subject to open records right?



O: Yea.

Z: So let's say that a media outlet requested this email and published it. Um how do you think it would be interpreted in the public viewpoint in terms of its message and whether or not it properly represents the chief or the chief is included in that?

O: Well I guess that's probably going to be his first question. From a media person. What do you have did you have anything to do with this email so I could see how that so I I and to be honest I didn't really read into it until like this question

Z: Sure.

O: Comes about and I think about it so I mean yea. It ultimately always comes back to the chief if something's sent out or something is being done. That's just the way it is. Everything's going to come back to the chief at some point.

Z: Right. So from a public view perspective, you think that some of those statements in there that we discussed could have an adverse effect on the chief's ability to oversee the department or put that in question? Or affect morale or personnel?

O: I mean it could. It all depends on how somebody's going to look at it and interpret those questions.

Z: Fair enough. OK. Um (cough)

(Pause)

Z: Ah did you discuss this email with anyone else um that you recall?

O: Um, yea. I guess I I normally talk to um, now that I'm thinking about it. I usually talked to Adam Gustafson probably almost daily. (sigh) And then I talk to Jason pretty often I can't I know I probably talked to one of them if not both about it. I just I can't recall which one or when or

Z: And Jason

O: Anderson.

Z: Jason Anderson.

O: Yep.

Z: Do you recall any of those conversations?

O: I'm trying to think if I talked to Adam and I called him and I I think I talked to him about it and I actually said it was a he had a lot of good points in there about what was going on and I didn't think it was a horrible email. Um, but that's just how I read into it at



the time. Obviously, there's some underlying things I see that somebody could be bothered by but at the time I didn't see it as that. Um and that's kind of what I said I'm like yea that's actually one of the better things that he's um put out. But. And that was kind of it. I guess we didn't really talk a whole lot about it.

Z: This was just in general conversation with ah with Adam Gustafson and it just came up or

O: Yea

Z: Did you call him specifically to talk about the email?

O: Whether it was specific or not it came up. I don't know exactly if I did just to talk about it. We talked just about all sorts of goings ons and happenings and.

Z: Did Adam relay any other information to you relative to the email or any action the Chief may have taken on the email with the Assistant Chief?

O: Not that I can remember.

Z: Ok. And what about ah Jason Anderson? Do you recall any specific conversations with him about the email or?

O: If if we if we did talk it was probably along the same lines of me saying what I said to Adam.

Z: Did ah Lieutenant Gustafson or Lieutenant Anderson indicate to you that there was a um that the Assistant Chief was not happy with the Chief's operation of the department?

O: Not that they would say to me about it.

Z: Ok. And you said none of your subordinates asked you about it that you can remember?

O: Mm mm. No.

Z: Um did you discuss the email with Assistant Chief Boyer prior to it going out?

O: No.

Z: Did you have any knowledge of his intent to send it out?

O: No.

Z: Did you partake in putting together any of the language of the email?

O: No.

Z: Did you proofread the email before it got sent out?

O: No.

Z: Have you discussed the email with Assistant Chief Boyer since it was sent out?

O: No.

Z: Um have you discussed the email with anyone else in the department since April 23<sup>rd</sup>? Other than you mentioned Lieutenant Anderson and Gustafson.

O: No.

Z: Ok. Ah were you if you could check your calendar. Were you working on May 10<sup>th</sup>?

O: Yes.

Z: Ok and was that ah that would be an 8am to 4 again?

O: Correct.

Z: Do you recall any conversations on or about that date with Lieutenant Gustafson ah specifically regarding the actions ah the chief took or the discussion the chief had with the assistant chief about this email?

O: No. No.

Z: What about Lieutenant Anderson?

O: No. Same. I don't remember anything.

Z: Gotcha. Ah have you ever witnessed Assistant Chief Boyer making any comments or statements that would be insubordinate or undermining towards about Chief Otterness.

O: Nothing. Nothing to me. I've never talked to him about it. No.

Z: Ok. Have has have you seen him speaking to other people about it?

O: No.

Z: Ok and can you see if you were working on June 25<sup>th</sup>? That was a Friday. Friday, June 25<sup>th</sup>.

O: I worked ah 8 and I was done at 1:15.

Z: Ok. Um do you recall on or about that date ah being in ah Sergeant Nielsen's office with Sergeant Danielson um discussing pay grades and pay rates and or some

questions maybe from Sergeant Danielson as a new sergeant about how the city pay scale works?

O: Ah probably wouldn't have been Danielson, it would have been ah Beilke.

Z: Oh. Beilke.

O: Yea.

Z: Is Beilke a sergeant also?

O: Yea. If it's the right day I'm talking about. There's only one day I talked to Pete about it and Cody was in there. Sergeant Beilke.

Z: Cody Beilke.

O: Yea.

Z: Gotcha. Ok do you recall can you recall that conversation? Was it around that June 25<sup>th</sup> time do you think?

O: Yea. I can say I would say yea.

Z: What was the nature of that in a nutshell conversation?

O: Um that basically started when because we've had a couple we had some newly promoted sergeants and the most recent one ah Sergeant Stanton would talk about how his pay raise and how he was very I guess happy with it, excited about it so it got me kind of wondering what he was getting paid. So I ended up contacting ah HR and found out what I was getting paid compared to other supervisors.

Z: Like as a more senior sergeant?

O: Yep so and that's basically what the conversation was with Pete and Cody was how the steps were lining up and my question was I was talking with Pete about it and obviously Cody who got promoted after me as well and just kind of we were basically kind of comparing what our ah and kind of just talking about how somebody would get to these steps these pay scales and that was basically the jist of that conversation.

Z: Was anyone else there other than you, Sergeant Nielsen, and Sergeant Beilke?

O: Assistant Chief Boyer showed up later.

Z: Do you know about what time this conversation happened?

O: I would assume in the morning. If I was at work for.



Z: Gotcha alright and so whereabouts in the conversation did Assistant Chief Boyer did he come into the office?

O: Yea he came in there just to talk or BS I would assume. He sees three sergeants in there he probably wants to come in.

Z: Ok so what was the conversation when he entered the room?

O: The ah we talked probably about various things but then they pay thing came up while he was in there. Other than that, because I think he kind of asked what we were talking about I think Cody said if you asked him if you really wanted to know type of a situation and then ah and then Cody informed him. I called ah Sergeant Beilke. I call him Cody.

Z: Ok. Any other conversation?

O: Well I know that specifically came up. Anything other than that I I would stand out specifically I don't know.

Z: Ok so um did you hear Assistant Chief Boyer make any statements or comments about Chief Otterness?

O: No. Not then.

Z: Um how did the how did the meeting end or when did you leave that meeting?

O: I guess it's kind of one of your random things. He said he was going on vacation but said he would look into it when he got back like what our pays were.

Z: Sure.

O: Um and other than that that's kind of how he had left it.

Z: Ok. Did you leave the office then or?

O: At some point. Probably wouldn't have been too long afterwards. If he would have left maybe Cody and Pete and I hung around and talked a little bit more I'm not I couldn't tell you.

Z: So you're not exactly sure how that ended?

O: No.

Z: Ok. Alright. Cody'd been a sergeant a short time?

O: How long has it been? Two two and a half years maybe? That sounds right.

Z: Ok. Um. Alright Shane. Any other situations I know we're going back in time but even recently um that you can recall where there was any type of insubordinate comments or statements made by the assistant chief regarding the chief?

O: No. I'm not I'm not there. I mean I'm over in Fargo all the time which is kind of nice to be away and not I don't know. For me it's just kind of nice. I don't have to deal with the whatever goes on. Because I was over in I know back story. I was in narcs the first time for five years when Reitan took over and the new building was being made and there was a lot of drama back then so it was very nice to be away from that and then ah then now with new Chiefs coming in and everything else it's just kind of nice being not part of the I don't know the talking and how everybody gets its nice being away from it personally so I'm not there very often.

Z: Gotcha. So you worked for Chief Reitan?

O: Yea ah for the for a short time I was like I said I was over in narcs so I didn't

Z: How was that how was it working for Chief Reitan what kind of environment was that for you?

O: I got along with him but I know a lot of other people didn't so and then when I went over to narcs I heard I never saw him. So I mean it was fine for me but I know a lot of other people had pretty tough time with it.

Z: Ok. Alright um anything else that I didn't ask you Shane that you think might relate to the investigation or help the inquiry a little bit?

O: Nothing that I can think of no.

Z: Alright I'm just going to remind you again just not to discuss this until such time as the chief has concluded the investigation. Ok?

O: Yep.

Z: And we will end the interview at 2:31 pm.

## David Zibolski

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**From:** David Zibolski  
**Sent:** Thursday, July 29, 2021 2:49 PM  
**To:** David Zibolski  
**Subject:** WFPD —Sgt. Orn—7/29/21; 2:02pm-2:31pm

WFPD —Sgt.

Orn

—7/29/21;

2:02pm-2:31pm

Job #50 interview  
Job #51 summary

Intro and reading of allegations

Not a target

Garrity notice

Inform of nature of investigation: A/C

yrs as a Sgt.? 12 years with WFPD, Sgt since 2018

Worked w/AC Boyer since? Whole prior

Personal or professional relationship w/ A/C?  
-professional

Review of insubordination policy (dept & city) from summary memo\*\*  
-reads policies and confirms knowledge

Working on 4/23? Yes, 8a-4pm

Email on 4/23—Why Keep Coming?  
-received it, not sure when he read it—believes that day

What was your reaction to this?



- lots going on, not a bad email, some people needed to hear it
- agrees that message without chief would be undermining and ability to oversee dept./unit
- last two sentences
- public perspective/officer could be negative.

Did you discuss the email with anyone else? Yes, normally talk to Adam Gustafson—talks to him daily and/or Jason Anderson.

- he called Adam and talked about some of the good points
- same thing with Anderson

Who/when?

Did any subordinate ask you about the email at that time? No—not that he can remember

who/what was said

Did you discuss the email w/AC Boyer prior to it going out?

Did you have any knowledge of his intent to send it?

Did you partake in putting together the language of the email

Did you proof read the email prior to it being sent

Have you discussed the email with AC Boyer since it was sent out on 4/23?

Have you discussed the email with anyone else in the department since 4/23?

Did you have a discussion with Lt. Adam Gustafson about the email?

Did any Lt. Or department member relay any information to you related to AC Boyer's comments about the Chief and any action taken regarding the email? No

Did Lt. Gustafson relay any information to you related to any questionable comments made to him by AC Boyer regarding the Chief?

Where you working on May 10, 2021? Yes, 8a-4p

Where you involved in any discussions regarding the email with any Lt.'s on that day—including Gustafson? No

Are you aware that email is an open and public record? Yes, and adverse to Chief's ability to oversee department and morale

- do you know if AC Boyer had the Chief's permission to publish the email? (O.1. & 3).

AC Boyer—any other situations re: insubordination/undermining of the chief?  
-not to him or others

Where you working on Friday, June 25, 2021? Yes 8a-1:15pm

Do you recall being in Sgt. Neilson's office discussing pay levels?

Yes with Sgt Cody Belke not Danielson—

-Sgt. Stanton had new pay raise and he was interested in pay difference

About what time do you think that was? Morning time

Who else was there?

Was there a time when A/C walked into the office?

-talked about the pay thing

-A/C asked what he was talking about and said he would look into it.

What did A/C say?

How long did you stay in the office?

Did you here A/C make any comments about Chief O?

Chief Reitan

-got along with him, but some had a tough time

Sent from my iPad

Exhibit 12



# West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-433-5500 | westfargopolice.com

Denis E. Otterness  
Chief of Police

## West Fargo Police Department

### Garrity Notice

On behalf of the West Fargo Police Department I am advising you that you are being questioned as part of an official administrative investigation.

You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/ or termination.

During the course of questioning, any statement, answer or information that you disclose which indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions.

My signature acknowledges my awareness and understanding of the aforementioned.

A handwritten signature in black ink, appearing to be "J. Brown", written over a horizontal line.

Employee Signature

7/30/21

Date

1415

Time

A handwritten signature in black ink, appearing to be "Daniel S. J.", written over a horizontal line.

Witness/ Interviewer's Signature



## **Jerry Boyer Interview Summary – July 30, 2021**

On Friday, July 30<sup>th</sup>, 2021, at 2:12pm, I interviewed Assistant Chief Gerald Boyer of the West Fargo Police Department relative to this investigation. Also present with Assistant Chief Boyer was his representative, attorney Chris Redmann of Redmann Law, P.C. 107 1<sup>st</sup> Ave NW, Mandan, North Dakota, phone 701-751-7188. The interview was conducted at the City of Fargo City Hall, second floor Meadowlark Room and it was audio recorded. Prior to interviewing Assistant Chief Boyer, I read him the West Fargo Garrity Notice, which he stated he fully understood and signed the notice confirming he would provide truthful and complete answers, understanding that none of the information provided could be used against him in any criminal proceeding. The following is the investigative synopsis of the interview.

Procedurally it was noted that this interview was originally scheduled for Thursday, July 29<sup>th</sup> at 10:30am. However, at the request of Attorney Redmann and in order to accommodate Assistant Chief Boyer, the interview was rescheduled for July 30<sup>th</sup>, 2021. Both Assistant Chief Boyer and Attorney Redmann were advised that at any time during the course of the interview they felt the need for a break, they should merely ask for a break and we would pause the interview to accommodate that discussion. I next provided Assistant Chief Boyer a copy of the West Fargo Police Department General Order 36, specifically directing his attention to the policy violation allegations in section H (Disciplinary/Personnel Actions) subsection 3(b), Insubordination; section I (General Conduct) subsection 1 and 6; section O (Public Appearances and Exercise of Freedom of Speech), subsection 3 which he stated he was familiar with. I next provided Assistant Chief Boyer with a copy of the City of West Fargo Employee Handbook Acknowledgement and Receipt which he signed and received on January 7<sup>th</sup> of 2020. He was also provided with a copy of West Fargo HR Policy 3.03 (Standards of Behavior), specifically highlighting subsections 1, 3, and 4. He stated that he was familiar with these policies. I next provided Assistant Chief Boyer with a copy of his job description in which six specific areas were highlighted. I asked him to read those highlights out loud during the course of the interview, which he did. Those specific highlighted areas include:

- a. "Under limited supervision, the Assistant Chief of Police supports the Chief of Police by providing management, leadership and coordination over activity of the city's police department..."
- b. "Acts as senior advisor to the Chief..."
- c. "...enforces department general orders, directives, rules and regulations."
- d. "...implements modifications to work methods and/or recommend policy or procedural changes."
- e. "Supervises and manages activities and work processes of department employees; administers guidelines and policies to ensure effective and efficient operations..."
- f. "Leads the department management team in creating and maintaining a positive work environment and fostering effective performance of staff."

Assistant Chief Boyer stated that he was also familiar with the job description, although he had not read it in a while.

Assistant Chief Boyer states that he has 16 ½ years with the West Fargo Police Department and has served as the Assistant Chief since November of 2015. He stated that he was promoted to that position by Chief Reitan. When asked to describe Chief Retian's leadership style, Assistant Chief Boyer stated that it was not great. It was like a dictatorship.

I next asked Assistant Chief Boyer if he was working on the following dates and he provided the following responses:

- April 23<sup>rd</sup>, 2021 – Yes
- April 29<sup>th</sup>, 2021 – Appears so, yes

He also states he generally works 8am to 5pm but understandably the schedule varies.

- May 3<sup>rd</sup>, 2021 – No
- May 10<sup>th</sup>, 2021 – Yes, fairly certain he was working that day.
- June 25<sup>th</sup>, 2021 – Yes
- June 30<sup>th</sup>, 2021 – Yes
- July 1<sup>st</sup>, 2021 – No

I provided Assistant Chief Boyer with a copy of an email he sent on April 23<sup>rd</sup>, 2021 at 1:53pm, titled Why Keep Coming?. He stated that he did send the email and does recall the email. He states that he sent it with the intent of being a morale booster due to the number of law enforcement issues that had been occurring during that time and a large amount of frustration that was occurring in the department. He went on to say that he believed by doing this, he was showing some leadership and that he had recently had a conversation with an officer who every department would like to have several of, who met with him to express a desire to leave the department. When questioned as to whether or not he provided this information to the Chief, he stated that he did not but he wished he would have. I asked Assistant Chief Boyer if he sent the email to anyone outside of the department prior to sending it out internally. He stated that yes, he sent it to his wife. When asked why, he stated that she is my sounding board. I next showed him a copy of an email that he sent on April 23<sup>rd</sup>, 2021 at 11:34am to his wife and the response from her to that email.

(Exhibit 6).

I asked Assistant Chief Boyer what he meant when he told his wife "you can post it out right away" after he sends it out. He said that his wife posts things on the West Fargo spouse's Facebook and that she wanted to place that email there. I asked Assistant Chief Boyer if he recalled attending an event and riding in a vehicle with Chief Otterness on April 23<sup>rd</sup>, 2021 at approximately the same time that the email response was received from his wife, further that the event was to pick up food for administrative staff day. He states that he does remember that and acknowledges that he was in a vehicle alone with Chief Otterness at nearly the same time. When asked why he ran the email by his wife but did not have Chief Otterness proofread it or even mention it to him while he was in the car during that same time proximity, he had no explanation.



I asked Assistant Chief Boyer if he discussed the email with any other department members prior to sending it out. He stated that he doesn't recall but, it's possible. When asked who he may have possibly sent this to, he stated he couldn't specifically recall. When asked whether any other department member provided input, proofread, or encouraged him to send out the email, he stated that may be possible, but again could not provide any specifics.

I then provided Assistant Chief Boyer Exhibit 4, which is the email exchange between Chief Otterness and himself, beginning on April 23<sup>rd</sup>, 2021 at 2:09pm and ending on April 23<sup>rd</sup>, 2021 at 2:14pm, in which the Chief expresses his displeasure about the email going out without his knowledge and the explanation from Assistant Chief Boyer regarding that, including a statement that it won't happen again. Assistant Chief Boyer recalls and acknowledges that email exchange. I asked Assistant Chief Boyer if he met with the Chief regarding this particular incident and he stated yes. I asked him if this occurred on April 29, 2021 and also showed him Exhibit 5, which is an email from Chief Otterness, dated May 3<sup>rd</sup>, 2021 at 9pm in which he follows up and references their initial conversation on Thursday, April 29<sup>th</sup>, 2021. After reviewing that, Assistant Chief Boyer acknowledged that the conversation happened on the 29<sup>th</sup>. He stated that he believed the meeting went well and they discussed several issues with the email that were of concern to the Chief. He states that the Chief was notably upset. When asked whether he discussed this April 29<sup>th</sup> meeting with any other department members, he stated that he doesn't know and that possibly he may have. Again, he was unable to recall specifically who that may have been. When asked whether he informed Lieutenant Gustafson that he got his ass chewed by the Chief, Assistant Chief Boyer stated that he possibly did, but doesn't recall when or where that conversation with Lieutenant Gustafson happened, nor what any other part of the conversation contained.

I then showed Assistant Chief Boyer Exhibit 5, which is the Chief's email dated May 3<sup>rd</sup>, 2021 at 9pm in which he again memorializes the April 29<sup>th</sup> meeting. I asked Assistant Chief Boyer whether he considered the issue to be resolved after receiving the May 3<sup>rd</sup> email from the Chief. He stated that while the meeting on April 29<sup>th</sup> was a good conversation, he believed that the email struck a different tone and was not a fair characterization of the conversation they had on April 29<sup>th</sup>. He initially started to type out an email response, but then deleted it. He thought about going and talking to the Chief about it, but he just got too busy and never discussed it with him directly. When asked whether he discussed the April 23<sup>rd</sup> email, the April 29<sup>th</sup> meeting or the May 3<sup>rd</sup> response email with any other department member, Assistant Chief Boyer stated that he may have told someone that the Chief was not happy that he sent the email out. He can't recall specifically who. He states that he believed someone sent him an email and that he responded to them, thanks for their comments. He cannot recall who that person was, but believed it to be a department member.

I then specifically asked Assistant Chief Boyer if after May 3<sup>rd</sup>, 2021, if he discussed the April 23<sup>rd</sup> email or the Chief's response with the following individuals:

- Lieutenant Adam Gustafson – Possibly, but doesn't remember what was said, except he possibly told Lieutenant Gustafson that the Chief chewed his ass.



- Lieutenant Jason Anderson – Possibly.
- Lieutenant Jason Dura – Possible.
- Sergeant Craig Danielson – Maybe.
- Sergeant Shane Orn – Don't know, but possible.
- Officer Matt Oldham – Probably because he's a very close friend. Assistant Chief Boyer assumes that he would have told Officer Oldham that the Chief was pissed and that he was not happy.
- Officer Michael Pietron – Possible, he states that this was the officer looking to leave and did in fact leave for Sarasota, Florida a couple of weeks ago.
- Officer Travis Evink – Don't know but maybe.

In response to all of these individuals that he may have spoken with and in terms of his possibly telling Lieutenant Gustafson that the Chief chewed his ass and telling Officer Oldham that the Chief was pissed and not happy, I asked Assistant Chief Boyer why he made these statements to these individuals. He stated that he was just venting, but understands it was not appropriate.

I asked Assistant Chief Boyer if he had a discussion with Lieutenant Gustafson and Anderson in his office regarding the Chief's response to the April 23<sup>rd</sup> email on or about May 10<sup>th</sup> of 2021. He responded that he can't recall, but he possibly did. He was unable to recall anything more specific. During the course of the conversation, I asked him if he felt that statements about the Chief chewing his ass made to subordinate members could be considered insubordinate and he stated that he had a difficult time making that leap.

I asked Assistant Chief Boyer if he recalled having a conversation with Sergeant Pete Nielsen in his office on or about Friday, June 25<sup>th</sup>, 2021, in which Sergeant Orn and Sergeant Beilke were present, discussing potential pay grades and/or inequities. Assistant Chief Boyer recalled this conversation in great detail and explained a long sequence of events, ending with his statement that he informed the two Sergeants he would take care of it, however, he found out later that HR got to it before he did.

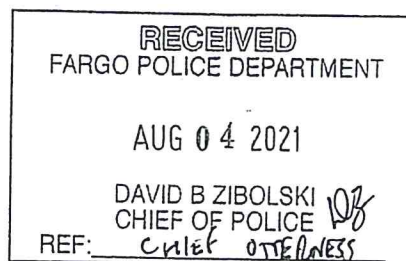
I then asked Assistant Chief Boyer if he made any of the following statements to Sergeant Pete Nielsen on June 25<sup>th</sup>, 2021, after both Sergeants had left Sergeant Nielsen's office:

- Working for Chief Otterness is similar to working for Chief Reitan – Yes, possibly and I can see how it can be taken negatively. Assistant Chief Boyer then asked for an opportunity to explain why he made that statement and explain why he didn't think it was undermining to the Chief.
- Chief Otterness micromanages the command staff and him – doesn't think so.
- Chief Otterness doesn't take any direction from the command staff – doesn't think so, however if Pete says that he said that, he was unsure.
- Chief makes his own decisions – don't know.
- Chief seems to be gone all the time and is never at the PD – may have been made.

- Chief goes on coffee breaks with phantom or made up friends – Assistant Chief Boyer stated that he would never use that terminology but he possibly said that the Chief goes to coffee with friends.
- I am sick of dealing with that type of pattern – doesn't think so.

I asked Assistant Chief Boyer if there was any reason Sergeant Nielsen would make up these statements. He stated that there was no reason why Sergeant Nielsen would make them up and that Sergeant Nielsen is well respected in the department. Understanding that, I asked Assistant Chief Boyer why he decided to make these statements to Sergeant Nielsen. Assistant Chief Boyer stated that he didn't have a good reason. It was unprofessional and it was not appropriate to make those comments. I asked him if he made similar comments to other Sergeants and he stated he doesn't know. I asked Assistant Chief Boyer if making these types of statements from the Assistant Chief to first line supervisors may affect the Chief's ability to effectively run the department. He stated that he can see where that can cause some issues for the Chief. I asked him if he believed those statements were insubordinate and he stated that it would fall into some sort of category along those lines. I asked Assistant Chief Boyer why he made those statements to Sergeant Nielsen and he stated that he just felt he could talk to Sergeant Nielsen. However, when asked whether he consults with Sergeant Nielsen regularly and obtains advice from him, he stated that he does not.

Upon completion of the interview, I again advised Assistant Chief Boyer per West Fargo Department Policy that he is not to discuss this investigation and any matters relevant to it with anyone directly or indirectly other than his attorney, until completion of the investigation by the Chief of Police. The interview concluded at 3:30pm.





## **Gerald Boyer Interview – July 30, 2021**

Chief Zibolski (Z)  
Gerald Boyer (B)  
Chris Redmann (R)

Z: Good afternoon. This is Chief David Zibolski. I'm conducting an internal investigation on behalf of Chief Denis Otterness of the West Fargo Police Department. Today is Friday, July 30, 2021 at 2:12pm. Ah present with me to be interviewed is Assistant Chief Gerald Boyer and his representative Attorney Chris Redmann. Ah if you just want to acknowledge verbally your presence Jerry if you would.

B: Yep. Jerry Boyer.

Z: Are you good with being called Jerry? That's good?

B: That's fine.

Z: And Chris Redmann?

R: Chris Redmann.

Z: Ok. Thank you. Um just for the record um initially when you were served with the allegations sir you were advised to report to Fargo City Hall on July 29<sup>th</sup> at 10:30am and at the request of your attorney um we changed the date to today at 2pm. Um to accommodate your representation. Ok. Um if during the course of the interview you feel that you need to take a break to consult with your representative at any time, you just need to ask for that and then we'll pause the recording and allow that to occur and then when you come back in we can start the recording again. Before we begin I'm going to read you your Garrity Notice. This is from the West Fargo Police Department policy. On behalf of the West Fargo Police Department, I am advising you that you are being questioned as part of an official administrative investigation. You are required to answer all questions truthfully, completely, and impartially and present evidence and information as it relates to this investigation. Your failure to follow this directive or otherwise delay, misrepresent or provide false or misleading information may result in disciplinary action and/or termination. During the course of questioning, any statement, answer, or information you disclose that indicates your involvement in any criminal conduct may not be used against you in any subsequent criminal proceeding. However, these statements may be used against you in subsequent administrative actions. Um do you understand that notice?

B: Yes.

Z: Ok in a nutshell, again nothing can be used against you in any criminal proceeding (cough) but you are required to answer truthfully and completely. Ok? I'm just going to ask you to sign that form there acknowledging that and then I'll sign after.

B: Can I borrow a pen?



Z: Here you go.

B: I shut my watch off so it wouldn't vibrate.

Z: 2:15 is what I'm showing. And is your schedule contained on your department scheduling system? Can you login on your phone and see if you were working on particular days?

B: Yea. I think so. Ah no ah. My work like meetings would be on there but if I took the day off I wouldn't necessarily cancel that meeting so ah

Z: So you might want to leave your phone on cause I'm going to reference some dates with you just to the best of your ability I guess as to whether or not you were working.

B: Um let me see if I can figure out a way to get in there.

Z: Ok.

B: There is a way but I haven't had to use it since the ah laptop.

(Pause)

B: Of course, I'm fat fingering everything too. That doesn't help.

Z: It's ok. Take your time.

B: Let's see

(Pause)

B: I think I'm maybe in.

Z: Ok.

B: Um It's not very easy to read on the small.

Z: Ok. When we get to that I'll give you I'll give you some dates I'll have you work through but at least you'll be ready to roll. Ok. Alright. Before we proceed here I just want to go over the allegations and let you look at a copy of the related policy. Ok so the allegations um are in regards to General Order West Fargo PD General Order 36 General Rules of Conduct and that's H3b. And I 1. And there's section O also. Sub 3. So ah this is just a copy there. I've got a couple of those. I'm sure you're familiar with your policies, correct?

B: Yep

Z: Ok. Ah I think if you look at I, if you flip over to I there's two in there.

B: Yep.

Z: Yea. One talks about displaying respect for supervisors, subordinates and associates and is also sub 6 in there, employees will not slander or speak detrimentally about the department or another employee. So those department policies and also um potential violation of the West Fargo employee handbook standards of behavior. I'm just showing you a copy of your receipt of the city employee handbook in 2018. And the standards of behavior related to these allegations. Ah 3-03.1 unsatisfactory performance of job functions um sub 3 unprofessional behavior including raising voice, ridiculing, belittling, blaming, gossiping, making assumptions or embarrassing employee, and sub 4 insubordination. Ok so those are the allegations and those are related to the questions that I'm going to ask you.

B: Ok.

R: And Dave, just for the record, so the complaint is actually from Denis, correct? He's the complainant.

Z: Yes.

R: Ok.

Z: Yea. The complainant is Chief Otterness and I am merely the ah investigator fact finder if you will so. On completion of this, all the information and everyone that's been interviewed will go to Chief Otterness to make a determination. Ok. Next I just want to go over with you um. You were promoted to Assistant Chief when sir?

B: Ah November of 2015.

Z: And how many years total do you have with the department of West Fargo?

B: Just over 16 and a half with West Fargo.

Z: Ok. And upon promotion, you also got a job description right so I just want to go over that with you just a couple highlighted pieces on there if you would just if you could just kind of go to the first one just read it out loud if you would please.

B: Under limited supervision, the Assistant Chief of Police supports the Chief of Police by providing management, leadership, and coordination over activities of the City's Police Department.

Z: Mm hmm. Next highlighted part.

B: Acts as senior advisor to the Chief of Police on all departmental matters.

Z: Ok. Keep going just the highlights if you would.

B: Just continue on with the highlights?

Z: Sure. Yea.

B: Ah enforces department general orders, directives, rules and regulations and makes modifications to work methods and recommends policy and procedural changes. Supervises and manages activities and work processed of department employees and administers guidelines and policies to ensure effective communication and operations. Ah second page ah leads the department management team in creating and maintaining a positive work environment and fostering high performance of staff.

Z: Ok and you're familiar with your job description correct?

B: It's been a long time since I've read it but yea.

Z: So that's a yes?

B: Yea.

Z: Ok. Um so November 2015, which Chief was that that promoted you sir?

B: Ah Chief Mike Reitan.

Z: Ok ah and what was his how was your relationship with him? How was that working relationship?

B: With Mike?

Z: Mm hmm.

B: Um not great.

Z: How would you describe his leadership style?

B: ah dictatorship.

Z: But he promoted you, right?

B: I was the only applicant so.

Z: Oh. Gotcha. Well, still.

B: Yea.

Z: Alright. So I'm going to ask you about um several dates if you're able to tell me if you were working or not. Ok?

B: Ok.



Z: First one being April 23<sup>rd</sup> of 2021.

B: Yes I know I was working that day and I don't need to look. It is the date of the email.

Z: Alright. Ah April 29<sup>th</sup>, 2021

(Pause)

B: It appears so yes.

Z: You know for sure or you're not certain?

B: Um well yea I mean ah at some point that day I was working because I did not take the day off so.

Z: What are your hours in general. I know they're probably flexed quite a bit but.

B: Yea they move around based on the work load of the week but generally 8 anywhere to 4 or 5. It varies depending upon what's been going on over the weekend or that week.

Z: Sure. Alright. What about May 3<sup>rd</sup>?

B: Um yea I think May 3<sup>rd</sup> I'm fairly certain I would have to look but I will. That's ah Chief Otterness and I had a conversation on May 3<sup>rd</sup> if I'm remembering from the materials that were provided. Nope. May 3<sup>rd</sup> I was off.

Z: Ok. You were off. Gotcha. What about May 10<sup>th</sup>?

B: May 10<sup>th</sup>. Um I was working May 10<sup>th</sup>. Just double check one other thing on May.

(Pause)

B: Yea I'm fairly certain I was working on May 10<sup>th</sup>. Yea.

Z: Yes.

B: The schedule shows that I was there and I wouldn't not put time in if I wasn't there so.

Z: And what about June 25<sup>th</sup>? I've got a couple more dates.

B: Ok. I'll keep this handy then. Was it June 25<sup>th</sup>?

Z: Yes.

B: Sorry. This is very cumbersome to do on a phone. Yes.

Z: Ok. Ah June 30<sup>th</sup>? Two more dates here.

B: June 30<sup>th</sup>. Yes.

Z: And July 1<sup>st</sup>.

B: Sorry I have to switch months here. Nope I was off on July 1<sup>st</sup>.

Z: Ok. Alright. So I'm done with dates just for reference. So going back to April 23<sup>rd</sup>, you mentioned the email. Ah I've got a copy of it here if you want to look that over. Um just confirm that that's the email that you sent out on April 23<sup>rd</sup>.

B: Just looking at the very top portion through

Z: If you want to read the whole thing, go ahead.

B: No I have no reason to believe that's not the email so.

Z: And it went out to all staff, right?

B: Yep.

Z: Um I guess just in general, why did why did you send that out?

B: This email was ah sent out as a um what I believed to be a morale booster for employees of the department. Um given the times that have been going on in law enforcement in the last year plus um you know there was a lot of frustration going on in the department from officers based on um just things going on politically I mean everything is just so divisive and and I heard that there's um one guy was looking to leave and I saw a Facebook post from one of our the kind of officer that every department wants to have 50 of. When that guy says his wife posted that he was thinking of getting out um I just felt like I needed to act. Um because he's a good dude. I mean just unfortunately he left us anyway for another law enforcement agency but um and I talked to him and he said he was good but he had mentioned he'd heard that there were some people intentionally leaving and just based on my own experiences in the last year, I really thought this was an opportunity to show some leadership and send something out to the department to go and to remind them we are lucky we have a great community that supports us overwhelmingly. Cookies and donuts I mean we all need to run just to keep the calories off. Um we have a great commission we have a great city administrator. We have we have the admin staff in place that supports them. I mean that's the whole intention behind this email. It was not I know Chief Otterness took it a different way um because of the department meeting comment that is in there but that's not not what this was about. This was about letting them all know that hey there's you all probably have a different reason for coming to work but this is we're lucky. We are so lucky. We don't have to deal with the stuff that people are dealing with in Seattle and Chicago and no offensive Chief even with your own organization with Fargo. We didn't have a lot of those things going on so be thankful for where you're at. That was the intention of the email. Obviously um what I



had in my head and put it on paper, um according to Chief Otterness anyway it failed miserably to get that point home but that was the intent behind the email. It was not to undermine or say anything negative about anyone or any process or anywhere that we were at as a command staff.

Z: Ok. Um so I guess along those lines then you mention frustration in the department and people looking to leave. Ah did you bring those issues forward to Chief Otterness?

B: No I did not.

Z: Do you think you should have?

B: Well, I guess maybe 20/20 yes.

Z: Do you think he would want to know if there was a building frustration in the department?

B: This wasn't ah we aren't talking about obviously we are small with 60 some officers so if you hear of two or three you know we've had a couple leave and come back um you know that morale issue's always there in a department um. So yea again hindsight maybe 20/20 I wish I would have told him right away and we could have talked about doing something together um. I'll be honest it's hard when you are thrown into the main role and get bumped back and thrown into the main role and get bumped back again. You kind of forget that step that you need to take. You got a boss you know that you need to report to. In the job description, it talks about limited supervision so you know showing leadership to me wasn't something I thought that I needed to clear through my boss. I guess I thought I knew him well enough that he would understand the direction we were going here but obviously I failed in that so.

Z: Well and Chief Otterness at this time had been in place about six seven months maybe?

B: Seven or eight? Yea.

Z: Ok. Um and even comparing your let's take the comparison and you have ah filled in and were in a position for a period of time um I don't know if you had a second in command in that period of time but if during that your second in command, whoever that was, became aware that there was growing frustration in the department and that people wanted to leave, wouldn't you want them to let you know that as the Chief?

B: Yea. Um, you know and we did have when I was interim um I guess my style I guess is a little different if I didn't have a second in command and I wasn't able to move somebody into that role temporarily so I had you know I relied on the four lieutenants that were in place. Um and you know they were allowed to do things and send out an email and if they sent something out um and I'd be like kind of blindsided, I'd be like what's up with that and they would fill me in and we'd talk about it and what are we going to do and yea so I guess it's just a different approach. Um.



Z: Do you feel you were representing the chief when you sent that email out?

B: Um you know Chief Otterness had mentioned that to that I represent him and I understand that to an extent um but I also think that I represent myself. It's my name that's on there. Um it doesn't say Jerry Boyer stating this email in in ah words from Denis Otterness. It you know it came from me.

Z: Sure.

B: So I I kind of see that correlation there but.

Z: Oh ok. I mean I see what you're saying in terms of a personal

B: I'm just going to borrow this one second.

Z: Ah personal opinion but in your role, it is supporting the Chief. In a number of places in here you're supporting the chief, you're acting as a senior advisor, and you should be leading to maintain a positive work environment and fostering effective performance of staff. So as a senior advisor, as someone who should be supporting the chief, is there, do you feel that your role as Assistant Chief there's some separation in that you can push out a message to the whole department representing an opinion that you haven't consulted the chief about. Is that is that what your philosophy is or is that what you're trying to say?

B: No. Um I'm just trying say I thought I was trying to help the department out and the few people having frustrations. There was no ill intent meant by this email.

Z: Ok. Um do you think that other people could have interpreted that differently?

B: I received a lot of positive feedback from people saying thank you. Um the you know, you hear the negative obviously from Chief Otterness was not happy. Um I how somebody else interprets it or you know I can't speak to that I guess. Like I told Chief Otterness in the conversation we had on a later date, I I understand

Z: Ok.

B: Why why he was upset by it but again there was not

Z: Why do you think he was upset by it?

B: For the reasons you just stated. I mean those are almost exactly verbatim the words that he said to me um going back about representing him and the department and and I mean it was. I'm not saying your words were exact but the tone was pretty close from what I can remember.

Z: So um I just want to go over a few parts with you on this just to kind of clarify messaging an intent. Ok? Um first paragraph since we have not been able to have a

real department meeting in over a year, I'm forced to send this email out. What did you mean by that?

B: Well, since we haven't been able to have a department meeting with everybody in one room at one time for over a year because of COVID.

Z: Gotcha.

B: So um the City wouldn't allow us you know to get together based upon recommendations of the CDC for guidelines on the room size and number of people. And so that's all that that meant.

Z: Ok. Um in the second paragraph you talked a little about I know many of you are struggling with many things that are happening in the world right now. I'd be lying if I said that wasn't also bothered. Quite frankly it pisses me off. Is that a motivating message?

B: Again I can't I can't speak to whether it motivates people. The intent there was not. I was frustrated. Everybody wearing a badge and a gun was frustrated at the time with continued vindication of cops and everything they were doing. Simply letting them know it doesn't just frustrate them, it frustrates everybody and I'm frustrated by that as well. There is no that's all that that means. I understand and it's not just me but I understand why some of you are feeling frustrated.

Z: Ok. I think there's that makes sense you empathize and understand the situation but um in your position too I'm sure you realize that emails are subject to open records right?

B: Yep.

Z: So a message like this in the media or going out to the public, how do you think that would be interpreted?

B: Again I can't speak for how other people want to interpret it. I know what my intent was behind this email um and it was not to do any damage to our to the West Fargo Police Department at all or anybody there.

Z: Ok um I'm just going to go to the third paragraph there. We are lucky here at our department. We have a community that overwhelmingly supports us. The City Administrator supports us. The commission supports us and your admin staff supports you. Do you feel that there's anyone missing in that message?

B: Well the Chief is part of the admin staff.

Z: Ok so you include the chief in the admin so you're you are sending a message on behalf of the chief in essence.



B: What I'm saying is that the admin staff supports you. You have the support. You have anybody you can go to on our admin staff. That's simple.

Z: Ok.

B: There's a lot of over reading into this which I can see why somebody would want to over read into it but.

Z: Well I ok I mean maybe it could be considered over reading but you kind of make it a point to specifically talk about the City Administrator and the community and the Commission and then it's just admin staff. Kind of like there isn't anyone after you basically.

B: No.

Z: In the message.

B: The most important one out of the three is always last. Grammar and the last one is admin staff.

Z: Alright. Let's go to the last couple of sentences here where you say I appreciate you more than you will ever know. That's why I keep coming back. My door is always open I'm sorry my door is open to anyone that wants to talk or call or text me anytime. I don't have all the answers but I will listen and I understand. Is there anyone missing from that message?

B: I'm as far as you mean I know Chief Otterness has explained to me that he would have liked to obviously not have the email sent out but you know to have the fact that the command staff is also in there I'm simply just trying to relay to them as a member of the senior leadership group of the department they can go talk to anybody. They know that. They routinely go in and talk to their lieutenants. They know that Chief Otterness has an open-door policy. People are in there all the time talking with him. Just it's nothing meant to be a slight to anybody. It's just letting everybody know it's ok to come in and talk to whoever and I should have worded that better and said you can go talk to anybody you want but.

Z: Well, true I guess but again in going back to your position as the assistant chief, you're representing the chief, the city, right? You're at the top of the ladder. I'm a cop. I'm reading this. Ok. You know and I as you say I guess interpretation can go a couple different ways but um in maybe this could have been done differently I guess if you did this again, would you do this differently or what would you do?

B: Well again in hindsight being 20/20 um if I had to do it again, I wouldn't do it. I would have sat down with the chief and said hey I think you need to send a message out.

Z: Ok.

B: But I don't have the benefit of that at this point.



Z: So the chief didn't have an opportunity to proofread this. He didn't know it was going out. Correct?

B: Correct.

Z: Um did you send this email to anyone else before you sent it out to your department?

B: I believe I sent it to my wife.

Z: Ok um and why did you do that?

B: Well she's my she's one of my sounding boards.

Z: But you're sending a message to your department.

B: Right.

Z: Your wife doesn't work there does she?

B: No.

Z: Ok so you had your wife review it but you didn't have your chief review it.

B: Correct.

Z: Any reason why you wouldn't have thought to have the chief review it? It might have saved you a lot of problem.

B: Well it would have yea. No I I don't.

Z: (cough) So just this um this copy here. This copy an email exchange with your wife where you're asking her to review that right? Oh that's the wrong email isn't it.

B: Yep. That's the one I got from Chief.

Z: Let's see. I'm sorry.

B: Do you want me to give you this one back?

Z: Nope. You can hang onto it for now. This one here. Ok. So this is an email

B: Oh I forgot about that.

Z: Sent out at 11:27 right? On the 23<sup>rd</sup>?

B: Yep. Oh wait.

Z: The email to the department went out at 1:53 right?

B: Oh sorry. I was confused at the top because

Z: Yea it goes from the bottom up. Probably because he printed it off on his computer.

B: Yep.

Z: So at 11:27 you sent it to your wife to review.

B: Yep.

Z: Ok and she asks you can I post this for the wives after a few days? Is that some kind of a Facebook post or what is it?

B: Yea. She um does the wives it's just a group inside the department. It's only for the spouses. She's been doing that for a while. I can't tell you how many years it's been. It's not a lot of activity with them but.

Z: Ok. So and you respond back to her at 11:34am thanks honey I'll let you know when I send this out. You can post it right away if you want after that. So you send it to your wife for review, she's given you a response, and you've also approved her to post it on a Facebook page but you've not talked to the chief at all about it, prior to sending it. Correct?

B: Correct.

Z: Ok. Do you remember on April 23<sup>rd</sup> um probably not too long after this email sent out ah being with Chief Otterness and going to pick up food for admin staff day?

B: Was that that day? Could have been that day.

Z: Ok well let's assume that it was that day. So not too long after this was sent to your wife, you were sitting right next to the chief in the car. It would have been an excellent opportunity to have this discussion before the 1:00 or the 1:53 send out, right? But you didn't do that.

B: No.

Z: Any reason why?

B: Again I didn't think there was anything in here that would offend anybody. Most of all the Chief.

Z: Um did you discuss the email with any other department members prior to sending it out?

B: I don't remember. Possibly? I'm guessed based on your question that I did so I don't know.

Z: Ok so you don't remember discussing it with anyone else before you sent it out.

B: I don't recall but it's possible I guess.

Z: Do you remember if any other department member assisted you with content or did any proofreading of it before you sent it out?

B: I don't know. Maybe. I don't recall.

Z: Do you have any idea who that might have been if that might have happened?

B: I don't. I'm not saying it didn't happen, I'm just saying

Z: You can't specifically recall.

B: I yea I don't know. I mean if you have an email that shows that I did then that would maybe help to refresh my memory a little bit.

Z: Well I'm asking more about conversations that you may have had in your office to discuss the email or content or proofread.

B: I don't know. It's possible, Chief. I I'm not going to say no because I don't want to give anything untruthful throughout this process so.

Z: Sure.

B: Um it is possible.

Z: Understandable. Alright. Um Ok so this goes out let me go to this other one here. And Chief Otterness sends you a response email at 2:09pm on the 23<sup>rd</sup> and that starts at the bottom there. Ok kind of lets you know that he wasn't thrilled about being blindsided and not knowing about it.

B: Yep.

Z: Ok. Um you respond back at 2:11. Understandable. One of our guys wives made a post on Facebook about questioning their reason for being here anymore. I also heard of others looking to leave and didn't want to miss an opportunity. Sorry I should have talked to you about it beforehand. Ah he responds back you know as Chief that's something I need to be aware of and you respond back you're right. I'm sorry. It won't happen again. So there's an email exchange and obviously you didn't you weren't for whatever reason able to have face to face communications after this went out. Um but there was a follow up meeting with Chief Otterness, right?

B: Yes.



Z: On April 29<sup>th</sup>?

B: I don't recall the exact date but sure.

Z: Ok so can you talk about that. What was discussed at that what was the outcome what was discussed and the outcome of that meeting?

B: Um well I

Z: And actually, I guess it was the 29<sup>th</sup> because here's an email referencing that conversation on the 29<sup>th</sup>.

B: Yea I was going to say was it the 29<sup>th</sup> or was it there 2?

Z: Well he's at least referencing it happened on Thursday the 29<sup>th</sup>. He sends this on May 3<sup>rd</sup> but he's referencing that conversation

B: Ok. Ok.

Z: So can you kind of recall in a nutshell what that conversation was about on the 29<sup>th</sup>?

B: Um well, I not trying to show any disrespect but basically a lot of the same themes that you talked about in your questions

Z: Ok.

B: And those are the reasons and his interpretation of things and um. Yea. Um. Yea sorry. That was the conversation. That's what we're talking about right?

Z: Yes.

B: Yea so that was the ah the conversation was long those lines. Again, I I stated pretty much the same thing now as there was no not meant to take a shot at anybody or demean or demoralize or take away from the department meetings that he had. Um in December those were three separate ones. I said we should have department meetings once to see and talk to you and hear from you. Um if we can't do all at one time, um do three separate ones. So ah cause that was one thing we talked about during that meeting that I do remember very specifically now. Um because he was very he was upset. Um that I had taken away from his tone ah from those meetings in December. I think it was December um and by me saying we hadn't had a real one I had to clarify one meeting with everybody in the room as opposed to three separate ones.

Z: Sure.

B: So that was the conversation. Was part of the conversation again along the lines of the same questions that you've asked through this process today.

Z: Ok. So what do you think the outcome of that meeting was when you walked away?

B: I thought that meeting went really really well. I yea. Absolutely thought it was a good good conversation, good talk.

Z: Ok.

B: Yep.

Z: Alright and then he ah well did you discuss that that meeting with any other department members?

B: I don't know. Possibly.

Z: Who might that have been if you did?

B: I don't know.

Z: Ok and so then the Chief followed it up with that email, May 3<sup>rd</sup> referencing the conversation on the 29<sup>th</sup>.

B: Yep.

Z: Kind of went over I think you're right the same content type of things that we're talking about so I think this looks like really just well how did you take this email in terms of where we were with this particular situation?

B: Can you kind of clarify the question because I

Z: Sure.

B: You mean how did I take it as personally or how did I take it as an employee or?

Z: So well professionally so you sent it out, he wasn't happy about it. You guys met on the 29<sup>th</sup>. He sends this email just memorializing that conversation on the 29<sup>th</sup>. So what did you think the status of this, let's call it a conflict, was at that point?

B: Um well

Z: Was it resolved? Or was it ongoing or what was your thought?

B: So my initial thought ah from this email is that I don't feel that this email was a fair characterization of the conversation that he and I had.

Z: Ok.

B: Um I started to type up responses from this email a couple different times and just deleted them um I thought about going in and talking to him about it um I wanted to take some time honestly I was I was not happy with this email um because I just didn't feel it was a fair representation. I thought the conversation we had was phenomenal.

Z: Ok.

B: Um really really really good. Um I didn't think that this email was the same tone as that. Now again after I read through this, I remember thinking for a second to myself ah now that I've sat here and saw this one again, um again emails are open to interpretation and ah by the reader and ah so I understood a little bit more from his point of view um but at the same time I still didn't wasn't thrilled with this either. But again, he's the chief. I mean so.

Z: Was there so you talked about you said you thought about responding to it thought about going to talk to him. Was there any reason you didn't go and have a conversation about it if you felt the email was not representative of the conversation?

B: Well um I was going to wait and try to have a conversation with him and then life just happens. Police department stuff happens. Um then Adam's death and so yea. Just did not ah did not come back around again. Ah yea. To have that conversation. I wish I would have had a conversation with him. I think another conversation probably would have been very helpful but.

Z: Sure. And you well I I guess emails can be interpreted as you said in many different ways. Conversation is often times better. Um you are able to call the Chief on his cell phone, even if you're not face to face right and have a conversation?

B: I am but I didn't feel that again the reason why I didn't send the email is that I didn't feel that this was an email conversation and I also didn't feel this was a phone call conversation.

Z: Right. But you didn't go you didn't attempt to make contact and meet with him to discuss it.

B: Nope I did not right away.

Z: Ok. Did you did you talk to him about it down the road?

B: No. We have not talked about it. At all.

Z: Alright after the that May 3<sup>rd</sup> email, did you discuss this email incident um with be it the email you sent out or the chief's response. Your conversation and his email response on May 3<sup>rd</sup> with any other member of the department?

B: Um I may have told somebody that he was not happy that I sent the email out. Um

Z: Who might that have been?



B: I'm not sure. I remember receiving I received a few responses from the email I had sent out and I responded I think to somebody saying the chief was not happy about it but thank you for your comments.

Z: Someone sent you an email?

B: I think so.

Z: When do you think that was?

B: I don't remember.

Z: That was a department member?

B: Yea.

Z: What about verbally? Did you verbally have any discussions with anyone about this?

B: Possibly. I don't know.

Z: Ok. So I just want to go down go through a list here and I've talked to a number of people ok and leading up to this and so I'm going to be a little more specific in my questions on this ok?

B: Ok.

Z: So after May 3<sup>rd</sup>, did you discuss the email incident, which when I say that I'm referring to the April 23<sup>rd</sup> email, the conversation on the 29<sup>th</sup> and the May 3<sup>rd</sup> email with Lieutenant Adam Gustafson?

B: Possibly. Yea. Um

Z: Do you remember what was said?

B: No I don't.

Z: Did you tell Lieutenant Gustafson that the chief chewed your ass?

B: Possibly. I I don't know.

(Pause)

Z: Do you remember any conversations with Lieutenant Gustafson about this?

B: Ah Lieutenant Gustafson and I obviously talked quite a bit through our day to day work activities. Um plus we were we weren't like friend friends where we hung out at each other's houses or anything like that. Didn't go golfing or anything but um I'm sure I

did have conversations with him. As far as any specifics, I'll just tell you right now Chief, on any specific conversation, whatever name you're going to, I I don't I don't know if I'm going to be able to remember specifically anything but general tone or mentioning of things, yes it's possible if you want to continue sorry.

Z: No I guess it's just a question if you can't completely remember that makes sense. Um so it let's go back to this May 3<sup>rd</sup> thing.

B: Ok.

Z: After this happens, do you believe that this is a done deal and you are moving forward from there?

B: Yea. I believe it's a done deal as far as I know we still need to have a conversation about this part of it um but um yea as far as I was concerned, done deal. I'm not going to send out another something else like that.

Z: Ok. Alright and so well let's go back to alright. Did you same question on this. After May 3<sup>rd</sup> discuss any of these emails or that conversation you had with the chief with Lieutenant Jason Anderson?

B: Possibly.

Z: And again are you able to remember any specifics as to what you may have said?

B: No. Sorry.

Z: Ok. What about same question for Lieutenant Jason Dura?

B: Again it's possible um I don't know. I don't see Jason Dura as much as I saw the other two lieutenants with the shift that he was on but it's possible.

Z: Ok. Um what about Sergeant Craig Danielson?

B: Maybe? I don't know.

Z: Same question in terms of Sergeant Shane Orn.

B: Yea I don't know. Possibly. Sorry Chief. I

Z: Well I understand there's been some time elements to this but some of these things um people recall sometimes you know. Um what about Officer Matt Oldham?

B: Um probably.

Z: Why do you say probably for him?

B: Um Matt Oldham is ah he's a very close friend, has been since before he was in law enforcement and ah so it would be. Yea. I could see most likely me having a conversation with Matt.

Z: Do you remember any specific conversations as to what you discussed with him about this?

B: Um no. Probably. Um I would assume, and again I'm going to assume here that I would have said that the chief was pissed that I sent it out based upon those first emails from him saying that he was not happy that I had sent it out.

Z: Ok. Ah what about Officer Michael Pietron?

B: I don't know. Possibly. He's the officer that I eluded to earlier about the guy who ah you want to have 50 of in every department.

Z: This is the guy that he he's left since then?

B: Yea. He went to ah I believe Sarasota Florida.

Z: When did he leave?

B: A week ago yesterday.

Z: Ok ah

B: Can I take some water?

Z: Ok. What about Officer Travis Evink? Same question. Any conversations with him about the email or the conversation?

B: I don't know. Maybe I guess it's possible again. I don't want to say no.

Z: I understand. I'm just asking if you can specifically remember.

B: No I can't specifically remember.

Z: Ok. Um alright so let's go let's go back to what you've kind of remember. You said you possibly told Lieutenant Gustafson that the Chief chewed your ass right?

B: Possibly.

Z: Ok. Um so if that happened, would you consider that to be insubordinate or undermining to the chief?

B: No.



Z: No? Ok. If you told ah had this discussion with Officer Oldham about this. Understanding he's a close friend but he's also a subordinate member of the department. Would that be undermining of the chief's ability to run the department or affect morale?

B: I don't think so.

Z: No? Why do you think that? You're the assistant chief talking I mean aside from the friendship thing, you are the assistant chief talking to an officer.

B: Right. No I understand that but Matt and I have had plenty of conversations prior to him getting into law enforcement that there's a line. There's a line there. Um and he's one of the the people that I trust talking to but again and this is going to come out I don't know. This is probably not going to come out the way that I want it to come out much obviously like the previous email on April 23<sup>rd</sup> but I've been in the role of interim chief, been assistant chief with this department for coming up on six years and you know I have had to sit down with somebody and tell them to knock it off or don't do this or whatever. Made decisions people haven't agreed with. Um and when that goes through the department and somebody because somebody says that happened, like you said, everything we do is a public record anyway um I guess I don't interpret that as being undermining or affecting the ability to lead um.

Z: Ok. Well let me ask you it this way. This happened. The chief dealt with it with you one on one, right?

B: Yep.

Z: He didn't go out and tell anyone else about that conversation.

B: No.

Z: But you left and you possibly said something to Lieutenant Adam Gustafson and probably said something to Officer Oldham and you don't think that that in any way affects the chief's authority or harmony within the department?

B: I think that's a stretch. I mean I. I think it shows the Chief is obviously the Chief is you know he's got a line and he's willing to hold the assistant chief accountable to what he thinks that line is so I mean I I really am having a hard time making this this leap and I understand that I'm not a chief and not a permanent chief. I get that. But I'm just having a hard time making this leap from these this email to this. Um.

Z: Um well I guess let's maybe look at it this way. Let's look at you as the assistant chief and one of your lieutenants. Let's say this happened. You had this conversation. You addressed it with your lieutenant. From all perspectives at that juncture, it's a done deal. But then the lieutenant goes out and starts to have conversations about that conversation with subordinate members. How does that make you look to them? Like one say you know what Chief Boyer chewed my ass.

B: Well if he had it coming, he had it coming.

Z: So you would be ok with that. If one of your lieutenants did that.

B: It depends.

Z: Alright.

B: I mean if we're talking about an email with no ill intent behind it.

Z: Mm hmm.

B: Yea so to me it depends on the situation.

Z: Ok. Um so when you um possibly talked to Lieutenant Gustafson and probably talked to Matt Oldham, what were your intentions in having those conversations? When did you bring that up?

B: It was just venting.

Z: Ok. Do you think it's appropriate to vent to subordinate members?

B: Um for the most part no. That is not. Um

Z: I guess if you had a concern by if you had a concern what should you have done? How should you have handled this?

B: Well again in hindsight, you know, talking to the chief again about this this email but yea. I don't have the benefit of hindsight at this point. That's why I'm sitting here with you Chief on a Friday afternoon.

Z: Gotcha. Alright. Um I'm going to scoot you up to May 10<sup>th</sup> now. Ok?

B: Ok.

Z: You said you were most likely working on you said yes fairly certain you were working on May 10<sup>th</sup>.

B: Ah I thought May 10<sup>th</sup> I was off.

Z: I'll check myself. I jotted down that you said ah yes, fairly certain. Off on May 3<sup>rd</sup>.

B: Oh was it May 3<sup>rd</sup>? Sorry I didn't figure that it was one day in May.

Z: That's fine. So um where I guess more specifically I guess ok so on May 10<sup>th</sup> so let's just say on or about May 10<sup>th</sup>, did you have a discussion with Lieutenant Gustafson and Lieutenant Anderson in your office regarding the chief's response to your email?

B: Possibly. Yea. It's hard to remember specific dates, times.

Z: Ok. Do you recall what may have been said during this conversation?

B: No.

Z: Alright ah let's go up to June 25<sup>th</sup>. Ok Friday June 25<sup>th</sup> and it's a day that you were working Yes. Ok. So a little more current in time.

B: Ok.

Z: Ah do you recall having a conversation with Sergeant Pete Nielsen in his office?

B: Possibly. Um

Z: Do you recall who else was there?

B: No.

Z: Ok. So let me be I'll try to help you a little bit so you can recall this. Do you recall being in Sergeant Nielsen's office ah walking in and also present was Sergeant Orn and Sergeant Cody is it Benton or Belton?

B: Beilke.

Z: Beilke. Yes. And there was a discussion about pay grades.

B: Yep. Yea. Yep.

Z: Ok what how did that play out?

B: Um Shane was upset about his current pay grade. Um can you hang on just one second let me double check something here um I'm going to try and multitask and I'm going to apologize if I simply stop because I'm

Z: Yep. Take your time.

B: I'm trying to switch from the patrol schedule back to the other one. So Shane was upset about ah a pay grade. It might have been a Friday but it could have been or obviously it was if that was the date you got.

Z: In fact I'll even give you on or about the 25<sup>th</sup> if you remember that.

B: June 25<sup>th</sup>.

Z: Yes. June 25<sup>th</sup>.

B: I just went to May.



Z: Ok.

B: Sorry. Um talking about inequities with pay um regarding um Shane and how long he'd been a sergeant and I believe Cody um um yea and how long he'd been a sergeant and they were talking about their pay stuff and Shane and complaining to Pete apparently for Sergeant Nielsen for been in there for awhile talking about their pay stuff and Pete had told them to go to HR and I walked in there in kind of the middle of the conversation um and I told somebody had brought up well you should I think Jenna HR had said go talk to Jerry about it. Um and so Shane mentioned I think it was Shane mentioned it. I could be wrong. Somebody mentioned to talk to me about it and I said because I was going on vacation the next week and I had something something I was busy with like Monday Tuesday Wednesday and I said as soon as I come back from vacation. Send me the numbers and as soon as I come back, I will talk to HR and talk to the Chief and we'll see if anything can be done but I'm not making any promises because it's budgeted items. We went through all this pay stuff you know just a little while ago I think Adam actually had gone through a bunch of stuff for one of the other sergeants earlier this year when somebody else got promoted. And it's these new promotions that create these little waves in our in our I guess you call it equality system for the sergeants so um. So Shane said yea I'll just shoot you the stuff and deal with it when you get back. Well then I came back from vacation and I found out actually that he'd went to Jenna and then the Chief had approved it so I didn't have time to. Didn't have time to do anything with it. So.

Z: Sure. That's fine. How did that how did that meeting in his office end? What happened after you discussed the pay issue with them?

B: Well it was the only other thing I remember from that conversation was the current Lieutenant opening for Lieutenant Gustafson's ah position just really sitting back and watching the posturing that was going on with with everybody in the room trying to be the next lieutenant and saying they're going to put in for this or that or whatever.

Z: This is with the three sergeants you're talking about?

B: Yea and I was just listening to the to the three of them and mostly Shane and Cody ah I think at that time. I don't remember ah if Chief was still looking at changing the the policy that we had in place um yea I don't remember the exact timing of that but yea.

Z: Ok ah at some point did Sergeant Orn and Beilke leave the office?

B: Yep. I think so.

Z: And then you were just in the office with Sergeant Nielsen?

B: Yep.

Z: OK was there any conversations that you had with him at that point?

B: I believe Sergeant Nielsen talked about people posturing for lieutenant positions and things like that.

Z: Ok.

B: I don't think I said anything but I don't want to.

Z: Ok. So but I be specific as possible here. I'm going to ask you a series of questions. Ok? Ah did you make the following statement to Sergeant Nielsen? Working for or similar to working for Chief Otterness is similar to working for Chief Reitan?

B: Reitan.

Z: Reitan I'm sorry.

B: Yep possibly. Can I expound on why or do you got that coming up?

Z: Sure you can expound on why.

B: Um and I can see how that can be taken obviously very negatively because Chief. I can see how that can be taken negatively. Um the reasons why for me um are the entire time that Heith Janke was the chief, um and then again he was only there for about 2 ½ years.

Z: And this was before Reitan?

B: After Reitan.

Z: Reitan ok.

B: Between Reitan and then between Chief Reitan and then Chief Otterness. Heith Janke was there for

Z: Was he the FBI guy?

B: Yea. The FBI guy. Commonly known as the FBI guy. Um he and I did not agree and we could have conversations all the time. Never ever raised his voice. Never visibly got upset. One time he was upset I believe it was with Lieutenants over when the salary study came out. Chief Otter Chief Reitan was just pissed off all the time. Chief Otterness I can tell he does get upset and obviously sometimes at me um and I'm not saying I don't have it coming. I'm not saying that but I'm saying some of the mannerisms when he gets upset are very similar um some of the other things that Chief Reitan would do when you were having a one on one meeting with him when we were trying to discuss departmental things is he would pick up his phone and start doing things on his phone or answer phone calls or answer texts or whatever. Sometimes Chief Otterness does that to me. I don't know that he does that to other people. Maybe he's more comfortable with me and maybe that's a conversation I should have had with him or should have with him um but that's what I meant by those similarities ah for me um. I've seen him



upset. He appears to me to be upset based upon my 20 some years of law enforcement and reading people. So that's what that comment meant.

Z: Ok so and you know kind of towards the beginning you talked about Chief Reitan and you described him as a dictator and so if you're telling a Sergeant that working for Chief Otterness is like working for Chief Reitan, with no other explanation like you've just done.

B: I do believe I talked about the cell phone thing and that explanation.

Z: But still.

B: Yep.

Z: My question is that undermining the chief's ability ah to run the department?

B: Um I don't know about undermining because again I don't know that he does that with anybody but I would yea that's not.

Z: And your Assistant Chief now talking to a sergeant a line supervisor about the chief.

B: Yea it's not ah yea I'm not happy I did that. I'm not proud of that.

Z: So you see how that could be considered insubordinate?

B: I have a hard time reaching insubordinate on it but I could see it definitely falls under it being unprofessional. Yea.

Z: Alright um did you state to Sergeant Nielsen that Chief Otterness micromanages the command staff and yourself?

B: I don't think so.

Z: Ok. Did you say to Sergeant Nielsen that Chief Otterness doesn't take any direction from the command staff?

B: I don't think words like that no. Chief Otterness has a different style of communication than what the command staff is used to from our last chief. Um he states his opinion and then asks for feedback which can be a little bit intimidating and hard to get used to when you're used to um give me your thought on this. Um so

Z: But you wouldn't have said he doesn't take direction from the command staff?

B: He does. He does take direction.

Z: He does take direction?

B: Yea.



Z: Ok. Ah

B: And and I don't know if Pete says that I said that I don't know. Um I he has a different style of communicating than our last chief we're getting used to so. But

Z: Alright did you tell Sergeant Nielsen that Chief Otterness makes his own decisions?

B: I don't know.

Z: Did you tell Sergeant Nielsen that Chief Otterness seems to be gone all the time and is never at the police department?

B: Um I don't I wouldn't use the word never.

Z: Ok. Did you make a statement similar to that?

B: Ah statement may have been made, I don't know if it was that day um I don't know if it was to Pete but he's his work schedule but people notice that and have mentioned that. That's a long time ago. A long time ago. That was before June 25<sup>th</sup>.

Z: Ok so on June 25<sup>th</sup> you don't recall making that statement to Sergeant Nielsen?

B: It's possible I did but I don't recall specifically no.

Z: Ah did you tell Sergeant Nielsen that Chief Otterness goes on coffee breaks with phantom friends or made up friends?

B: No.

Z: You never said that?

B: Phantom friends? I wouldn't

Z: Phantom or made up friends.

B: I would never use that terminology.

Z: Ok. Did you make

B: He goes to coffee with friends.

Z: Ok. Did you make a statement similar to that?

B: He goes to coffee with friends.

Z: Ok. Did you make a statement similar to that?

B: That he goes to coffee with friends?

Z: Sure.

B: Possibly. Cause he meets with chiefs all the time going to coffee.

Z: Right. Did you tell Sergeant Nielsen that you were sick of dealing with that type of pattern from the chief?

B: I don't think so.

Z: Is there any reason that Sergeant Nielsen would say these things were said if they weren't?

B: I can't think of anything. Pete's a well-respected person. I respect Pete a lot. I've known him for a very long time um what was the last one that you said?

Z: Ah that you made a statement that you were sick of dealing with that type of pattern from Chief Otterness referring to all the things we just covered. Being gone all the time, coffee breaks with friends, ah doesn't take direction from command staff, micromanages command staff, and it's similar to working for Chief Reitan.

B: No I I mean I'm sure I expressed maybe some frustration over answering of the phones and things like that and the similarities with Mike on that stuff but

Z: Alright. Sergeant Nielsen wouldn't make this up or is there some reason he would do that?

B: Unless he misremembers or does yea I don't know.

Z: Ok. Um so let's go to where we said possibly you explained the Chief Reitan thing.

B: Yep.

Z: In your own in your own words. Um micromanaging command staff you weren't sure, taking direction from command staff not sure but if Pete said that you did maybe, um I guess just in general why would you have made any statements like that to Sergeant Nielsen?

B: Yea. I don't have a good reason. I really don't. Again it was unprofessional.

Z: Do you think it's appropriate for someone at the Assistant Chief level to have a conversation or make remarks like that to a line supervisor?

B: Nope.

(Pause)

Z: Have you made comments similar to those to any other sergeants?

B: I don't know.

Z: So you're saying you might have?

B: I don't think so.

Z: Do you believe that making these types of statements may affect the chief's ability to effectively run the department?

B: I could see where that would cause some issue for the chief, yes.

Z: Alright. Do you believe those types of statements are insubordinate?

B: I believe yea I'm sure it would fall into some sort of category along those lines.

Z: So why would you make those kinds of statements Jerry? It's just a question so I mean you might have done this you said you made a few statements I guess I'm just curious overall I mean you kind of explain with the Reitan thing. Why would you as an Assistant Chief make statements like that to line staff to supervisors?

B: Well um Pete and I have a different relationship again. We are a very small department. We went to the academy together. We're you know again we've known each other a long time. He's one of those people that I felt I could talk to a little bit because I can't (sigh) and again this might not come out it's not like you can go home and talk to your wife because sometimes you need somebody to tell you the other side too you know. And I love my wife to death, she's the most important thing in the world to me. I don't always agree with her either um but at the same time I want honest feedback and from Pete I can get that. Like shut up knock it off you're fine. Um

Z: So you consult with Pete regularly for feedback or?

B: No.

Z: No.

B: No. I just have been in a very not great place for a while. Um and I talked to Chief Otterness a little bit about this yesterday. Um and he knows some other things that I really would rather not have part of a public record right now.

Z: That's I'm not asking you that.

B: As far as [REDACTED] and some things that have gone on. So just a whole lot [REDACTED] is happening at one time and just um really was feeling very angry for a lot of different reasons. Um I'm not using this as an excuse because it's not an excuse. I'm better than this and I'm very disappointed in myself. Um also through this process I had heard from one of the city hall employees that Chief Otterness was doing he had mentioned to



them he was doing a code of conduct investigation. I assumed it was me. It was right around that time I believe with Pete so I was really frustrated A that I would find out that way or because I assumed it was me who he would be doing one on because I didn't know about it um so so yea. My frustration level was pretty high and ah

Z: Ok.

B: And ah yea.

Z: Alright um. (cough) Is there anything that I did not ask you Jerry that you think would help inform the investigation or if there's something that I left out?

B: I don't know. I think you know more about it than I do. And I apparently was there so.

Z: I just want to make sure.

B: I I just can't remember. There's just been so much. Yea. I apologize um there's just been so much.

Z: That's fine. Um I don't have any additional questions. I just want to and just per policy caution you that you are directed per your department policy not to discuss this investigation and any matters relevant to this investigation with anyone directly or indirectly connected to the investigation. This does not preclude you from discussing it with your attorney or representative. Ah the order remains in place until completion of this investigation or until such time as it is rescinded by the Chief of Police.

B: Yep.

Z: Ok. Any other questions before we go off record here that you want on record?

R: Dave, the thing that I have is why are you doing the investigation instead of OPS?

Z: Sure. Well, that's an off-record question.

R: No I want it on the record.

Z: Oh you want it on the record? Ok so instead of your OPS?

R: Either Fargo's OPS or West Fargo's OPS?

Z: Oh because you need someone of higher rank in order to do that. So that's a general practice in law enforcement. So like now if you had to investigate a chief, you would probably go out to some outside entity entirely.

R: Sure. Are you friends with Denis?

Z: Well, we're professional yea. So sure.

R: So are you have you been to each other's house?

Z: Sure.

R: Are you communicating regularly?

Z: Yea.

R: Ok as a friend level.

Z: Yea I would say we're friends, yea.

R: Ok.

B: Um can I make a

Z: Sure go ahead.

B: Um again when I talked to Chief Otterness yesterday um I want to make it very clear I'm not um ashamed of um that came out wrong. I'm not saying this because I got caught doing this. I genuinely am ashamed of myself. Everything I've done for 16 ½ years has been for the benefit of the West Fargo Police Department. I sent my son away for four months during the riots and was supposed to pick him up that day and I left and came back. Um everything I've done has been for that department. This all of this is not a true representation of my character, who I am, or what I believe in. And I am sorry for what I did and what I have said. And if I could take it all back I would and it's not about being caught, it's about the damage to the department. I do believe this is recoverable very easily. Um but ah I am I am truly truly sorry and I expressed that to Chief Otterness yesterday. But I wanted that on the record for today.

Z: Ok. No problem. Appreciate that. And again, as I said earlier, I'm just the person doing the investigation.

B: right.

Z: Chief Otterness will decide what to do with this investigation. Um, any other questions before we go off record?

B: No.

Z: Ok.

B: Oh.

Z: Yes.

B: Keep these copies?

Z: Ah yes.

R: if they're part of the investigation, we'll get you a final issue we'll get you a copy of that later.

Z: We'll end the recording at 3:30pm.



**David Zibolski**

---

**From:** David Zibolski  
**Sent:** Friday, July 30, 2021 3:37 PM  
**To:** David Zibolski  
**Subject:** Interview—A/C GB WFPD—7-30-21

## Interview—A/C

G

## B WFPD—7-30-21

2:12pm-3:30pm  
Job #52 interview  
Job #53 summary

Confirmation of change of date/time to accommodate representative

Clarify representative role and if need for break, etc.

Garrity notice

Intro and reading of allegations (Ex. 2)

Review of policies, HR policy, job description (Ex. 1a, 2, 2a, 3)

Have you talked to any other department member since being served with notice of this investigation?

Years with WFPD—16.5 years

How long as A/C?—Nov 2015

What Chief promoted you to A/C

-how was your relationship with Chief Jahnke

-what was his leadership style?

-did you enjoy working for home

-how was your relationship with Chief Retain?

-what was his leadership style?

+not great —dictatorship

-did you enjoy working for him?

Were you working on following dates:

-4/23/21 (email sent)-yes

-4/29/21 (met w/Chief re: email)—yes, generally 8-5p

- 5/3/21 (email f/u sent from Chief)—off
- 5/10/21 (Lt. Office discussion)—yes fairly certain
- 06/25/21 (statements to Sgt. PN)—yes
- 06/30/21 (PN goes to Lt JD)—yes
- 07/01/21 (PN goes to Lt JD)—no

Review 4/23/21 email in sections for response, intent, and meaning (EX 7)

- Did he send it—yes
- why?believed to be a moral booster, due to LE issues, frustration in department and show some leadership, good dude looking to leave—left anyway.
- did you bring it forward to CHief—no
- wish he would have
- 

Did he send the email to anyone outside of the Department prior to sending out internally?

Did he send to his wife/ why/intent?

- she is my sounding board

Review email to wife sent 4/23/21 @ 11:34am (ex 6)

What did he mean telling his wife “you can post it right away” after he sends it out? Post where? Wives of officers

Why and what was the intent in doing so?

Why not run it by the Chief first?

Do you recall attending an event—admin day with the Chief in which you were in the same vehicle to pick up food for admin staff?

What time was that?

So you ran this by your wife, but not your Chief?

Did you discuss this email with any other department members prior to sending it out?

- don't recall—possible
- maybe

Who/when, etc.?

- can't specifically recall

Did any other department member provide input, proofread, or encourage you to send out this email?—possible

Review Chief's email response 4/23/21 @ 2:09pm -2:14pm (Ex. 4)

Did you meet with the Chief regarding this on 4/29/21?

- discussed issues as brought up in internal
- Chief was upset

What was the outcome? Felt it went well

Did you discuss this meeting with any other department members?

-don't know—possibly

-don't know who that could have been

Did you inform Lt. Gustafson that you “got your ass chewed by the Chief?”

-when/where

-who else was present

-what was the conversation

Review Chief's email response 5/3/21 @ 9pm (Ex. 5)

-When did you read this email?

Did you consider this issue to be resolved after receiving the 5/3 email?

-conversation good, but email was a different tone

-not a fair characterization of conversation they had

-thought about going to him and talking about it

-got too busy to discuss with him

-yes, absent discussion

After 5/3/21, did you discuss the email or the Chief's response to you re: the email with any other department member?

-may have told somebody that he was not happy I sent the email out

-someone sent him an email—and he responded thanks for your comments

Who/when/what was said—intentions-why?

Did you, after 5/3/21 discuss the email or the Chief's response with:

Lt. Adam Gustafson

-possibly, don't remember what was said

-possibly told Lt. Gustafson that the Chief chewed your ass

Lt. Jason Anderson

-possibly-

Lt. Jason Durra

-possible

Sgt. Pete Nielsen

Sgt. Craig Danielson

-maybe

Sgt. Shane Orn

-don't know possible

Officer Matt Oldham

-probably, very close friend

-assume would have said the Chief was pissed, saying he was not happy



· Officer Michael Pietron  
-possibly  
-was looking to leave for Sarasota, FL  
-left 2 weeks ago

Officer Travis Evink  
-don't know—maybe

When/what was said/intentions-why?  
-venting  
-not appropriate

Did you have a discussion with Lt. Gustafson and Anderson in your office re: the Chief's response to the email on or about May 10, 2021?  
-possibly  
-can't recall

What was said?

Do you believe these statements violate department policy?

Why/why not?

Do you recall having a conversations with Sgt. Pete Nielsen in his office on or about Friday, June 25, 2021?  
-possibly

Who else was present?  
-Sgt. Orn & Sgt Cody Belke  
-talked about inequities with pay  
-remembers many details about this conversation...\*  
-current Lt. Opening discussion and posturing for position between three sergeants.

Did you make any statement to Sgt PN similar to:

Working for Chief Otterness is similar to working for Chief Reitan?  
-Yes-possibly—can see how it can be taken negatively  
-why: explains why

Chief Otterness micromanaged the command staff and him?  
-don't think so

Chief Otterness doesn't take any direction from the command staff?  
-don't think so  
-if Pete says that I said that—I don't know

Chief makes his own decisions?  
-dont know

Chief seems to be gone all the time and is never at the PD?  
-possible

Chief goes on coffee breaks with phantom friends or made up friends?  
-never would use that terminology  
-goes to coffee with friends—possibly

I am sick of dealing with that type of pattern?  
-don't think so

Sgt. Nielsen is well respected—no reason why he would make this up

Why did you make these statements to Sgt. PN?  
-don't have a good reason—unprofessional  
-not appropriate to make those comments

Have you made them to other Sgt.s?  
-don't know  
-

What was your motivation and intent?

Do you believe making these types of statements may affect the Chief's ability to effectively run the department?  
-can see where that would cause some issues for the chief

Do you believe this would undermine the Chief?

Do you believe your statements were insubordinate?  
-sure it would fall into that category

Why did you make them?  
-felt he could talk to him  
-although doesn't consult with Pete regularly at all

Reminder: not to discuss investigation with any other dept. members other than representative\*\*

Sent from my iPad

**From:** Gerald K. Boyer  
**Sent:** Friday, April 23, 2021 2:14 PM  
**To:** Denis E. Otterness  
**Subject:** RE: Why Keep coming ?

You are right, I'm sorry. Won't happen again

Assistant Chief Jerry Boyer  
West Fargo Police Department  
800 4th Ave E  
West Fargo ND 58078  
701-433-5520

**From:** Denis E. Otterness <Denis.Otterness@westfargond.gov>  
**Sent:** Friday, April 23, 2021 2:13 PM  
**To:** Gerald K. Boyer <Gerald.Boyer@westfargond.gov>  
**Subject:** Re: Why Keep coming ?

As the chief of police that's something I need to be aware of so it'd sure be nice if you'd share that information with me.

Sent from my iPhone

On Apr 23, 2021, at 2:11 PM, Gerald K. Boyer <[Gerald.Boyer@westfargond.gov](mailto:Gerald.Boyer@westfargond.gov)> wrote:

Understandable, one of our guys wives made a post on FB about questioning their reason for being here anymore. I had also heard of others looking to leave, and didn't want to miss an opportunity. I am sorry I should have talked to you about it before hand.

Assistant Chief Jerry Boyer  
West Fargo Police Department  
800 4th Ave E  
West Fargo ND 58078  
701-433-5520

**From:** Denis E. Otterness <[Denis.Otterness@westfargond.gov](mailto:Denis.Otterness@westfargond.gov)>  
**Sent:** Friday, April 23, 2021 2:09 PM  
**To:** Gerald K. Boyer <[Gerald.Boyer@westfargond.gov](mailto:Gerald.Boyer@westfargond.gov)>  
**Subject:** Re: Why Keep coming ?

I am not thrilled about being completely blindsided about a department communication like this. In the future we will have a discussion prior to anything like this going out so that our entire command staff has the opportunity to sign on....not sure your motivations here since I believe we collectively all agree with your thoughts so it would be nice to share those with the rest of our leadership team prior to sending this out. We can talk more on Monday. Have a great weekend. Thanks!



Denis

Sent from my iPhone

On Apr 23, 2021, at 1:53 PM, Gerald K. Boyer <[Gerald.Boyer@westfargond.gov](mailto:Gerald.Boyer@westfargond.gov)> wrote:

Good Afternoon

Since we have not been able to have a real department meeting in over a year, I am forced to send this out in an email, this is not my preferred way of communicating this message.

I know that many of you are struggling with many things that are happening in the world right now. I'd be lying if I said that I wasn't also bothered, quite frankly it pisses me off. I know that each and every one of you is a good person, and came into this profession for the right reasons. Seeing officers second guessed over and over by "experts", and wondering where your next attack is coming from, the media, politicians, or the streets it is an unfair burden on you and your families. You are all policing in new territory and hard times, our profession has been through this before, it will get better. Many of you have probably asked yourself why should I keep trying? Again with everything that has happened in the past year, I think those are valid questions to ask yourself. I have also asked myself that on several occasions.

I think that the answer will be a little different for each of us, but that underlying cause that is what brought us all here together remains the same. We do what we do, because we are called to be a part of something that is bigger than ourselves. For the all the sworn staff, you most likely joined to help people, to help that victim of a crime, to make that child safer, to make a difference in this part of the world we call home. For our support staff here, they keep the wheels moving forward, completing the needed tasks to keep us all paid, paperwork corrected, and support the community that call or come in here for services. For those of us in supervisory roles our job is to support you, and provide you with all the tools we can to go home safe to your families, and to be here to listen to your concerns.

We are lucky here at our department, we have a community that overwhelming supports us, the City Administrator supports us, the Commission supports us, and your admin staff supports you. Most places have one or two of those things, some none at all. Please remind yourself that the things you see on the news or social media are not about you personally, or even close to the majority of the people out there. Every single shift you make a difference to many people, you are valued as people and the work that you do. I appreciate you more than you will ever know, and that is why I keep coming back. My door is open to anyone that wants to talk, or call or text me anytime. I don't have all the answers, but I will listen, and I understand.

Jerry

Assistant Chief Jerry Boyer  
West Fargo Police Department  
800 4th Ave E

**Denis E. Otterness**

---

**From:** Denis E. Otterness  
**Sent:** Sunday, June 27, 2021 1:24 PM  
**To:** Denis E. Otterness  
**Subject:** FW: proof

---

**From:** Gerald K. Boyer  
**Sent:** Friday, April 23, 2021 11:34 AM  
**To:** Sara Cruze <[SCruze@FargoND.gov](mailto:SCruze@FargoND.gov)>  
**Subject:** RE: proof

Thanks honey, I will let you know when I send this out. You can post it right away if you want after that.

Assistant Chief Jerry Boyer  
West Fargo Police Department  
800 4th Ave E  
West Fargo ND 58078  
701-433-5520

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**From:** Sara Cruze <[SCruze@FargoND.gov](mailto:SCruze@FargoND.gov)>  
**Sent:** Friday, April 23, 2021 11:32 AM  
**To:** Gerald K. Boyer <[Gerald.Boyer@westfargond.gov](mailto:Gerald.Boyer@westfargond.gov)>  
**Subject:** RE: proof

Well that made me cry.

Looks perfect.

Can I post this for the wives after a few days?

Detective Sara Cruze  
Fargo Police Department  
105 25th St N  
Fargo, ND 58102  
701-476-4163 (Desk)  
701-446-6235 (Cell)

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**From:** Gerald K. Boyer <[Gerald.Boyer@westfargond.gov](mailto:Gerald.Boyer@westfargond.gov)>  
**Sent:** Friday, April 23, 2021 11:27 AM  
**To:** Sara Cruze <[SCruze@FargoND.gov](mailto:SCruze@FargoND.gov)>  
**Subject:** proof

<p><b>CAUTION:</b> This email originated from an outside source. Do not click links or open attachments unless you know they are safe.</p>
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I think that the answer will be a little different for each of us, but that underlying cause that is what brought us all here together remains the same. We do what we do, because we are called to be a part of something that is bigger than ourselves. For the all the sworn staff, you most likely joined to help people, to help that victim of a crime, to make that child safer, to make a difference in this part of the world we call home. For our support staff here, they keep the wheels moving forward, completing the needed tasks to keep us all paid, paperwork corrected, and support the community that call or come in here for services. For those of us in supervisory roles our job is to support you, and provide you with all the tools we can to go home safe to your families, and to be here to listen to your concerns.

We are lucky here at our department, we have a community that overwhelming supports us, the City Administrator supports us, the Commission supports us, and your admin staff supports you. Most places have one or two of those things, some none at all. Please remind yourself that the things you see on the news or social media are not about you personally, or even close to the majority of the people out there. Every single shift you make a difference to many people, you are valued as people and the work that you do. I appreciate you more than you will ever know, and is why I keep coming back. My door is open to anyone that wants to talk, or call or text me anytime. I don't have all the answers, but I will listen, and I understand.

Jerry

Assistant Chief Jerry Boyer  
West Fargo Police Department  
800 4th Ave E  
West Fargo ND 58078  
701-433-5520

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**Employee Handbook  
Acknowledgement and Receipt**

**Effective November 18, 2019**

I hereby acknowledge receipt of the employee handbook of the City of West Fargo. I understand and agree it is my responsibility to read and comply with the policies in the handbook.

I understand the handbook and all other written and oral materials provided to me are intended for informational purposes only. Neither it, City practices, nor other communications create an employment contract or term. I understand the policies and benefits, both in the handbook and those communicated to me in any fashion, are subject to interpretation, review, removal, and change by leadership at any time without notice.

I further understand I am an at-will employee and neither this document nor any other communication shall bind the City to employ me now or hereafter and that my employment may be terminated by me or the City without reason at any time. I understand that no representative of the City has any authority to enter into any agreement for employment for any specified period of time or to assure any other employment action or to assure any benefits or terms or conditions of employment, or make any agreement.

Employee Name: Jerry Borer

Employee Signature: [Signature]

Date: 11/7/2020



## Assistant Chief of Police Job Description

**Department:** Police  
**Reports To:** Chief of Police  
**Pay Grade:** 19  
**FLSA Classification:** Exempt  
**Approved by:** Human Resources  
**Revision Date:** January 1, 2018

### SUMMARY

Under limited supervision, the Assistant Chief of Police supports the Chief of Police by providing management, leadership and coordination over activities of the City's Police Department. The Assistant Chief of Police is responsible for managing the department and directing police operations/services within the city by establishing goals and objectives within the policy set forth by the Chief of Police and the city commission. The Assistant Chief of Police will provide assistance to supporting subordinate managers in developing and implementing policy and procedures to accomplish departmental goals and objectives.

### ESSENTIAL DUTIES AND RESPONSIBILITIES

- Assumes command of the Department in the absence of the Chief of Police; plans, prioritizes, assigns, supervises and reviews the daily activities of staff; makes decisions and issues orders within scope of authority.
- Acts as a senior advisor to the Chief of Police on all departmental matters, including administrative personnel decisions, resolving personnel complaints, the imposition of discipline, and critical incident management and response.
- Administers grant programs; researches and writes state and federal grant applications; maintains records and requests reimbursement through awarded grants; files appropriate reports.
- Participates in the Department's planning process; develops Department goals and objectives; strategic planning, participates in the budget development and administration process.
- Participates in the development the Department budget; reviews budget requests from staff; evaluates operational needs for training and equipment; recommends and makes equipment purchases; tracks expenditures.
- Participates in the development and implementation of policies, directives and procedures governing the Department; enforces Department general orders, directives, rules and regulations.
- Reviews department performance to assess goal attainment and measures effectiveness of operations, determines and implements modifications to work methods and/or recommend policy or procedural changes
- Supervises and manages activities and work processes of Department employees; administers guidelines and policies to ensure effective and efficient operations; reviews, plans and assigns duties; directs staff work; oversees staff training and development; provides work directives, guidance and development; disciplines employees; addresses complaints; resolves problems; performs the hiring and termination of employees.
- Reviews court decisions and changes in legislation affecting Department operations; makes changes to reflect court or legislative decisions.



- Directs the activities of both sworn and non-sworn personnel within the department, direction includes assignment of projects/programs, review of activities, providing assistance, administering discipline, evaluating performance of the department to ensure its effective operation and quality service to the community.
- Participates in decision on matters of hiring, transfer, suspension, lay off, recall, promotion, discharge, assignment, recognition, adjusting grievances or disciplining employees under the established span of control.
- Leads the department management team in creating and maintaining a positive work environment and fostering effective performance of staff.
- Encourages employees' growth and development by providing and encouraging learning opportunities, to include assignment of training and further education.
- Participates in decisions regarding the content of jobs and the number of staff within the functional area under the established span of control.
- Provides leadership on matters relating to the annual operating and multi-year capital budgets; confers with the Chief of Police on final drafts.
- Represents the police department at civic functions and/or meetings; discusses issues, coordinates efforts and responds to informational inquiries.
- Responds to citizens, news media, etc., concerns and issues and determines appropriate resolutions to maintain positive community relations for the Department and the City.
- Frequently interacts with the public, vendors or across department to exchange detailed and/or technical information.
- Serves as a liaison to county, regional chiefs, TSA, community providers, and other municipal and law enforcement agencies to coordinate activities and to arrange the use of City services and/or resources.
- Participates in various committees and subcommittees as a representative of the West Fargo Police Department.
- Serves as a liaison between city, local and state agencies to perform law enforcement, emergency management and other government functions; develops emergency response plans and guidelines.
- Responds to public information requests; prepares public information regarding Department activities and programs.
- Serves as the Worker's Compensation Safety Coordinator for employees of City Hall and the Department in order to organize, develop and execute safety programs and the injury reporting system within the City.
- Serves as the Department's Public Information Officer.
- Performs research and develops special projects as requested by the Chief of Police.
- Works safely, follows safe work practices, and identifies and reports unsafe work conditions.
- Performs other duties as required or assigned.

*An individual in this position must be able to successfully perform the essential duties and responsibilities listed below. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions of this position.*

#### **MINIMUM QUALIFICATIONS**

- Bachelor's Degree in Criminal Justice or a closely related field.
- Eight years of progressive law enforcement experience.
- Equivalent education and experience is acceptable.



- Three years of supervisory experience.
- Must be a licensed North Dakota Peace Officer.
- Must be able to render credible testimony in a court of law.
- Ability to create and maintain effective working relationships with peers, superiors, other City departments, subordinates, vendors, contractors, external government agencies and organizations.
- Strong communication skills, both orally and in writing.
- Valid driver's license.

#### **PHYSICAL AND MENTAL DEMANDS**

This position requires the incumbent to work in a fast-paced environment, with the ability to meet frequent deadlines. While performing the duties of this job, the incumbent must regularly sit and talk or hear. The incumbent is frequently required to use hands to touch, handle or feel. The incumbent is occasionally required to stand and walk. The incumbent may be required to occasionally perform a full range of motion with lifting and/or carrying items weighing up to 50 pounds. The mental and physical requirements described here are representative of those that must be met by an individual to successfully perform the essential functions of this position.

#### **WORKING ENVIRONMENT**

Work is performed in a standard office environment. The noise level in the work environment is usually moderate. The position may require contact with hostile citizens or public. The work environment characteristics described here are representative of those an individual encounters while performing the essential functions of this position.

I have read and understand the duties, responsibilities, and requirements for this position. \*

\_\_\_\_\_  
Employee's Name (please print)

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\*This document does not create an employment contract, implied or otherwise, other than an "at-will" employment relationship. The City of West Fargo retains the discretion to add duties or change the duties of this position at any time.



REDMANN LAW, P.C.  
THE BOUTIQUE LAW FIRM IN BISMARCK-MANDAN

Exhibit 18

August 2, 2021

David Zibolski, Chief  
Fargo Police Department  
105 25<sup>th</sup> St. N  
Fargo, ND 58102

VIA EMAIL ONLY: [pswift@fargond.gov](mailto:pswift@fargond.gov)

Re: *Supplemental Information Relating to Assistant Chief Jerry Boyer Investigation*

Dave:

Subsequent to our meeting on July 30, 2021, Assistant Chief Boyer wanted to briefly supplement and clarify a couple of comments which have been outlined below. This shall be made part of the official investigative file.

On April 25<sup>th</sup>, 2021, during the catalytic converter spraying event at Dave's Tire, Chief Otterness expressed he was upset with Assistant Chief Boyer to subordinate Lieutenant Jason Dura. The displeasure involved the morale-amplifying email Assistant Chief Boyer had sent to the Department, and he learned of this from Lieutenant Adam Gustafson, who brought the improper comments to his attention. Just as you inquired as to the appropriateness of Assistant Chief Boyer's conversations with "subordinates," Chief Otterness' inappropriate conversations with subordinates has left Assistant Chief Boyer with the distinct feeling of personal animosity and marginalization. This continued behavior has caused Assistant Chief Boyer several months [REDACTED] as he has been cut out of important meetings and information pertaining to the Department. Instead of launching an internal affairs investigation over questionable policy violations, a direct conversation should have occurred by both parties.

Separately, to clarify regarding the Facebook Support Group, the morale-inducing email in question was neither given out to the wives' group nor posted on social media by Assistant Chief Boyer's wife.

Let me know if you have any questions.

Cordially,

Chris Redmann  
Redmann Law, P.C.

CR/amk

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+ for investigative file