



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Texans Helping Businesses & Protecting Communities

INTER-OFFICE COMMUNICATION

TO: Darrell Dement, Director, Office of Professional Responsibility

FROM: Peter Heller, Lieutenant, Office of Professional Responsibility

SUBJECT: OPR 2018-075 (Acting Chief of Enforcement Kuykendoll)

DATE: September xx, 2018

On August 9, 2018, The Texas Alcoholic Beverage Commission (TABC) Office of Professional Responsibility (OPR) was informed by Acting Chief of Enforcement (AC) **Victor Kuykendoll** of an allegation of employee misconduct that originated from a verbal comment made to TABC Lieutenant Nicole Langley. According to an email from **AC Kuykendoll** to OPR, [REDACTED] told Lt. Langley that **AC Kuykendoll**, and Sergeant Jeffery Farmer, “slapped him on his ass”, while at a retirement party for former Lt. Sonia Salinas (October 26, 2017).

On August 15, 2018, during a preliminary interview, [REDACTED] stated that **AC Kuykendoll** “grabbed” his buttocks in the parking lot of the La Fiesta Mexican Restaurant and moments later, Sgt. Farmer, “Did the exact same thing”. [REDACTED] stated that he was “embarrassed” and “offended” by the contacts.

Based on the evidence discovered during the “Administrative Inquiry”, that included a verbal statement from [REDACTED], corroborating [REDACTED]’ allegations (See [REDACTED] statement below), OPR found there was a reasonable objective basis for the complaint to move forward as two “Formal Investigations” into employee misconduct.

If the preponderance of the evidence concludes the conduct by **AC Kuykendoll** and/or Sgt. Farmer occurred in the manner alleged by [REDACTED] the employees violated TABC HR Policy 3.02- Work and Professional Conduct: §4.15 - (g) Misconduct - Physical or verbal abuse of other employees or members of the public

The complaint was categorized into two (2) separate investigations as follows:

OPR- 2018-074 Farmer
OPR-2018-075 Kuykendoll

METHODOLGY

OPR identified and reviewed documentary and demonstrative evidence, including witness statements, and Inter-Office Communications (IOC).

The following persons furnished information to OPR during this investigation:

TABC **Acting Chief Victor Kuykendoll**, Enforcement Division, Austin Headquarters
TABC Major Ron Swenson, Special Investigations Unit, Austin Headquarters
TABC Lt. Nicole Langley, Waco Area Enforcement Division
TABC Lt. Joe Garcia, Austin Special Investigations Unit (SPU)
TABC Sergeant Jeffery Farmer, Bryan Area Enforcement Division
TABC Agent Kenneth Sherman, Arlington Special Investigations Unit (SPU)
[REDACTED], Belton Area Enforcement Division
[REDACTED], Belton Area Enforcement Division
[REDACTED], Belton Area Enforcement Division
[REDACTED], Bryan Area Enforcement Division
[REDACTED], Bryan Area Enforcement Division
[REDACTED], Arlington Area Enforcement Division

La Fiesta Mexican Restaurant

[REDACTED] alleged the incident occurred in the parking lot of La Fiesta Mexican Restaurant, 3815 Franklin Avenue, Waco, TX.

Lt. Heller requested [REDACTED] provide locations on a Google Map of where in the parking lot of La Fiesta Restaurant the physical contacts occurred with **AC Kuykendoll** and Sergeant Farmer. [REDACTED] provided a diagram of the contacts. [REDACTED] indicated that **AC Kuykendoll** physically contacted him towards the front of the restaurant to the east. He stated that Sergeant Farmer contacted him in front of the restaurant by the door.

[REDACTED] was asked to provide locations on a Google Map of where he witnessed the physical contacts occur with [REDACTED] and **AC Kuykendoll**, and Sergeant Farmer. [REDACTED] stated, "Directly northeast of that building (restaurant)...on the edge of the parking lot." This location appeared to corroborate [REDACTED] memory of the location. Regarding Sergeant Farmer's contact location and whether he viewed the contact, [REDACTED] stated, "Same exact place. Yes, I did see Farmer do the exact same thing about a minute after Victor did." [REDACTED] recollection of the location of this contact conflicted with [REDACTED]' recollection.

The location of the alleged contact by **AC Kuykendoll** to the front door was approximately 40 feet.

Preliminary Interview with [REDACTED]

On August 9, 2018, Lt. Heller interviewed [REDACTED] as part of the OPR Administrative Inquiry into the allegations made by [REDACTED]

██████████ was asked if he recalled any violations of policy occurring at (former) Lt. Salinas' retirement party. ██████████ stated, "Yes".

When ██████████ was advised that ██████████ alleged he was "slapped on the ass", ██████████ stated that he did not concur with the way it was described. Lt. Heller questioned ██████████ about his disagreement. ██████████ stated that ██████████ was not "slapped" on the buttocks, but rather, **AC Kuykendoll** put his "hand up his butt and lifted him off of the ground". In addition, ██████████ alleged that Sgt. Farmer engaged in the "exact same thing about a minute later".

Based on this verbal statement, ██████████ was advised to write an IOC with the specific details of the incident.

██████████ - *Written Statement*

On August 22, 2018, Lt. Heller received a written statement in a form of an IOC from ██████████ with the following relevant information:

██████████ stated that on October 26, 2017, he arrived at the La Fiesta Mexican Restaurant located at 3815 Franklin Avenue, Waco, Texas, for Lt. Salinas' retirement party. ██████████ car pooled with ██████████ that morning from the TABC Belton office. Upon his arrival he observed multiple agents speaking with one another at the southeast side of the parking lot. ██████████ believed there were approximately ten to fifteen agents waiting in the parking lot.

██████████ stated that he observed **AC Kuykendoll** and (Former TABC Sergeant) Wayne Stovall speaking with one another approximately twenty feet away. He recalled that at one point, he observed both **AC Kuykendoll** and Stovall staring at ██████████ and him and their facial expressions appeared to be very negative ("not smiling and a look of disgust").

██████████ stated this retirement party occurred just weeks after he made a complaint with OPR against **AC Kuykendoll** and Stovall (September 22, 2017).

██████████ stated after several minutes in the parking lot, **AC Kuykendoll** walked over to ██████████ and him. ██████████ stated, "██████████ extended his hand out in an attempt to shake Chief Kuykendoll's hand. Chief Kuykendoll ignored ██████████ hand and without warning, grabbed ██████████' buttocks. This grab was not a slap nor was it a brush of his hand.

The best description I can give is Chief Kuykendoll grabbed ██████████ in the same manner that someone would pick up a bowling ball. After grabbing ██████████, Chief Kuykendoll held onto ██████████ buttocks (left cheek) for several seconds and pushed him in an upward manner. This motion appeared to be a 'lifting motion' where several of Chief Kuykendoll's fingers clearly went inside the pants crack of ██████████".

██████████ described the physical contact with ██████████ as an assault. He stated, "██████████ had a look of shock on his face and immediately jumped upward when Chief Kuykendoll assaulted him".

██████████ stated that minutes later Sgt. Farmer approached ██████████ and “grabbed him in the exact same manner”.

██████████ stated that he was offended by viewing this assault and he believed that ██████████ was “very embarrassed by this incident”.

██████████ was not sure how many agents viewed the contact. He believed ██████████ viewed ██████████ being assaulted by Sgt. Jeff Farmer. ██████████ stated that ██████████ appeared to have an “expression of shock when Sgt. Farmer touched ██████████”.

██████████ stated that ██████████ and he work out of the same office, and ██████████ has spoken to him multiple times about the incident telling him that he was embarrassed and offended by the manner of which he was touched that day. ██████████ stated that ██████████ has also said that he does not have ‘that type of relationship’ with any of his friends or coworkers where contact made in that manner would be acceptable.

██████████ – *Follow-up*

On August 23, 2018, Lt. Heller requested ██████████ provide additional reason(s) why he believed ██████████ witnessed the contact between Sergeant Farmer and ██████████.

██████████ stated, “██████████ was standing at a very close range (within view) of both ██████████ and Sgt. Farmer when this incident occurred. After Sgt. Farmer groped ██████████ I was in shock and disbelief of what I had observed. I remember ██████████ and I made eye contact seconds after this occurred. ██████████ had a smile on his face and I assumed he was smiling because he was also surprised that Sgt. Farmer grabbed ██████████. It is possible that ██████████ was smiling for another reason. I am not positive that he observed the assault...██████████ has never told me that he observed the unwanted contact between Sgt. Farmer and ██████████. I am also not aware if he observed Chief Kuykendoll touching ██████████ either...I do not recall ██████████ and I ever discussing this incident.”

Additionally, Lt. Heller requested ██████████ clarify his reasoning for describing this incident as “Sexual Harassment”. ██████████ stated, “I labeled the written IOC as Sexual Harassment because throughout my career, I have been told that any inappropriate physical contact (including undesired touching or groping), between a supervisor and his subordinate is never acceptable behavior. Chief Kuykendoll was under investigation, from statements written from the Belton office. Chief Kuykendoll purposefully ignored an attempt by ██████████ to shake his hand and walked passed him in order to shake other agents hands. After shaking everyone else’s hands, Chief Kuykendoll then walked over to ██████████ and proceeded to inappropriately grab him (██████████).

One of the questions asked are my thoughts, reasoning or belief as to why this would be sexual in nature. The area of which ██████████ was touched (his buttocks area), by Chief Kuykendoll’s hand is one reason why I think that it is sexual. Whether it be male on male, or male or female...any inappropriate and unwanted touching (of another person’s private areas), should never be tolerated. This is especially true of peace officers that work for a professional law enforcement organization. What makes this situation worse, is it came from the very people that are supervisors and are supposed to protect us from this type of conduct. I also feel that it was

Chief Kuykendoll's and Sgt. Farmer's way of showing [REDACTED] who is boss. In other words, just as in a sexual assault, the contact is not about the sexual act itself, but is about the power behind the unwanted contact...I have watched [REDACTED] be embarrassed and humiliated by this event."

[REDACTED]

On August 10, 2018, Lt. Heller interviewed [REDACTED] as part of the OPR Administrative Inquiry into the allegations made by [REDACTED].

[REDACTED] stated, "Before the luncheon was scheduled to begin I was sitting in my car in the parking lot talking with [REDACTED] from the Arlington Enforcement Office. I noticed that Agents were gathered in a large group in the parking lot greeting each other. If I can recall correctly it was [REDACTED] from the Waco office. There were other Agents from different offices and areas.

At a later time which I cannot recall the specific date [REDACTED] made a comment that Sgt. Farmer and Chief Kuykendoll had "grabbed his butt" at Sonia's retirement party. When he described this to me it was not in a joking manner and I could tell that [REDACTED] felt some sort of discomfort when he mentioned what had happened. I did not witness this incident firsthand but I can attest that there was a large group of officers in the parking lot beforehand."

Lt. Nicole Langley

On August 10, 2018, Lt. Heller interviewed Lt. Langley at the Waco Enforcement Office. Lt. Langley acknowledged that she received an email from Sergeant Farmer on August 8, 2018, regarding the counseling and delivery of a "Letter of Expectation" to [REDACTED]. The email she received stated, "Please find attached IOC of expectation served to [REDACTED] on August 8th 2018. The coaching secession was not very well received. [REDACTED] still appears to be resistant to coaching and supervision. He was argumentative and more concerned that I had been keep notes on his behavior."

Lt. Langley stated that later that day she received a call from [REDACTED] regarding the wording used in the Letter of Expectation and his displeasure with receiving such a letter and counseling. Lt. Langley stated that it was during this discussion that [REDACTED] told her that **AC Kuykendoll** and Sergeant Farmer, "slapped his ass" at (former) Lt. Salinas' retirement party.

While discussing his claim with Lt. Langley, [REDACTED] said the contact was "not sexual" and he did not want his complaint to go any further than her. Lt. Langley stated that she advised [REDACTED] she was bound to report his allegation to the proper authorities.

Lt. Langley stated that [REDACTED] told her the contacts were witnessed by [REDACTED].

Lt. Langley acknowledged that she contacted **AC Kuykendoll** and provided him with [REDACTED] allegations.

On August 15, 2018, Lt. Heller received an email from Lt. Langley about what she remembered transpiring in the parking lot of the La Fiesta Mexican Restaurant.

Lt. Langley stated, *"I tried looking at the employee index to spark my memory of the older white male that I saw in the parking and I believe it was an Austin Agent named Jeff Lashbrook. I parked on the side along one of the back rows in the parking lot. I walked over to the large group of people that were gathered in the parking lot. Sgt. Matthew Kelso and Agent Shanda Rue out of the Arlington office walked up to the group with me. I do not think they could have seen what was going on very well because of the cars in the way but I do not know. Sonia Salinas may have been in the parking lot group with Kuykendoll & Farmer since it was her party. I think I recall there was some reason they were waiting to go in to the location. I am not sure if it was because it was being decorated or because they had not opened yet."*

Preliminary Interview with [REDACTED]

On August 14, 2018, Lt. Heller interviewed [REDACTED] at the San Marcos Police Department due to [REDACTED]'s prior commitment to instruct a TABC training school being held at that location.

Lt. Heller asked [REDACTED] to explain the events that occurred on October 26, 2017. He stated, *"We were at La Fiesta, I think that is the restaurant, it was a Mexican food place. Everybody was kinda standing outside for the room to get kinda cleared and opened up and so we were standing in a circle of people. (Time) Before lunch, just before lunch...we were standing there having a conversation. Different people walked up, different people walked away... the only people I can remember in my head that were there were [REDACTED], and [REDACTED]. And so those are the only two I can concrete in my head remember being there."*

[REDACTED] was asked to explain the relationship of where they were each standing in the parking lot. He stated, *"Near the roadway there is a tree. And, it was warm enough of a day that we were all huddled up under a tree, basically directly in front of my car in a parking lot... Chief started shaking people's hands and by-passed me, or I put my hand out and he started a different direction. Then whenever he came back around, I kind of jokingly turned away and at that point is when he, I guess, felt the need to grab me. It wasn't a slap, it basically kinda of actually lifted me up."*

[REDACTED] was asked whether **AC Kuykendoll** appeared to purposely not shake his hand. He stated, *"I thought so, because of the previous situation, and so I thought he was singling me out of the deal. That was my conclusion. Now again, that is what I felt at the time. Now is that what was going on in his head. I can't imagine one way or another."*

[REDACTED] was asked to explain his initial reaction to this contact. He stated, *"I can't believe this just happened was basically my first thought."*

[REDACTED] stated that **AC Kuykendoll** made no comment other than to talk "normal business".

[REDACTED] was asked if he could surmise a reason for the contact. [REDACTED] stated, *"I can't even give an answer."* [REDACTED] denied any relationship with **AC Kuykendoll**. He explained that he was his Lieutenant when he first started with TABC. [REDACTED] stated that he never saw **AC Kuykendoll** make contact with someone in the same manner.

██████████ stated, *“That is why I thought it was such a weird, but at the time the whole Stovall thing was going on. So I was a little reserved because I know he knows what had happened... (Why) because he was in charge. I mean none of this could go past his plate, and, Tom Noble and Victor Kuykendoll spoke regularly so I would doubt at any point in my mind that he knew what was going on.”*

██████████ was asked to describe the events that followed **AC Kuykendoll’s** contact. He stated, *“I don’t have a real recollection of what occurred immediately after, but basically we broke up and started walking into the restaurant. And, as I started going up to the restaurant Sergeant Farmer, ran, or got up behind me somehow and did the exact same thing. I mean one right after another. I know it sounds absolutely crazy.”*

██████████ was asked to explain his reason(s) for not reporting the contact made by **AC Kuykendoll** in a timely manner. ██████████ stated: *“Embarrassment...already being involved in an OPR investigation. And dealing with a previous supervisor and Agent...Stovall and Noble.”*

██████████ was asked whether **AC Kuykendoll’s** involvement with Noble and Stovall played a role in his failure to report the contact. ██████████ stated, *“Oh yes, I don’t have any question in my mind he knew what was going on (Regarding the **Kuykendoll** (OPR 2018-010); Noble (OPR 2018-011), Stovall (OPR-2018-012) investigations)”*

██████████ was asked whether Sergeant Farmer was present when **AC Kuykendoll** made contact with him. He stated, *“I don’t recall. I really don’t because literally at that point just was in absolute shock of what just happened, twice.”*

██████████ was asked to explain his feelings when Sergeant Farmer made contact. ██████████ stated, *“It is hard for me to log it in because I was like did this just happen twice, and it did. It did just happen twice. And, I’m like I don’t know how to even mentally log that. You know I have never had that happen to me, I felt like a child, and I don’t know if that was the intent.”*

██████████ was asked if there was any past relationship with Sergeant Farmer that would cause him to make contact. ██████████ stated, *“No...he has always been a supervisor...we have no relationship built on manly touch.”*

██████████ denied witnessing any acts to anyone else similar to what he endured.

When asked for any reason(s) that he could recall that would cause the two individuals to act in the manner they did. ██████████ stated, *“I have had a fair amount of time to think this over and to try to put it into perspective and I have yet been able to come up with a time period where anything like that happened prior to because shortly after I got out of FTO training or whatever, I, Victor, Chief Kuykendoll, at the time Lieutenant Kuykendoll, he had basically moved on up to Major in Arlington. So again, my biggest thing for this wasn’t to retaliate against anyone.”*

While discussing the connection between the Letter of Expectation and his complaint, ██████████ acknowledged that because of the letter it did cause him to move forward with the complaint. He stated, *“But it was more to show, why, and provide additional information of, this just didn’t start here...because when somebody does that to you, and that has never happened in my adult life, one would have a little bit of an issue with that individual, and without, because I didn’t know half of the events were being documented the way that they were.”* (██████████)

voiced his concern about Sergeant Farmer keeping notes on his work production, privately, and Sergeant Farmer would not share those notes with him.

██████████ was advised to write a statement of the events and deliver to OPR.

██████████ *Written Statement*

On August 23, 2018, Lt. Heller received an IOC from ██████████ detailing the events from October 26, 217. The following information was additional information to his preliminary interview or restatement of pertinent facts of his complaint:

██████████ stated that he arrived at the restaurant around 11:00AM and parked his unit near Franklin Ave by the trees, east of the restaurant's front doors. ██████████ and he stood to the front of his unit with a small group of agents. He could only remember ██████████ and ██████████ being present at this location

██████████ stated that **AC Kuykendoll** approached the group that was gathered. ██████████ recalled extending his hand to shake **AC Kuykendoll's** hand, but **AC Kuykendoll** did not shake his hand. ██████████ stated that **AC Kuykendoll** made his way back around the circle of agents and appeared to now want to shake his hand. ██████████ stated, "*I then turned my whole body around in an attempt to make light of the awkward situation of Chief Kuykendoll refusing to shake my hand. Once my back was towards Chief Kuykendoll that is when the assault (grabbing) occurred.*"

██████████ stated that **AC Kuykendoll**, "*Grabbed my buttocks, squeezed and lifted me to a point I was no longer flat footed on the ground...I was victimized by Chief Kuykendoll and I feel very embarrassed about the assault.*"

I believe at the time of the assault that Chief Kuykendoll was aware of an ongoing OPR investigation involving two of his friends and co-workers. The OPR investigation, involved Sgt. Wayne Stovall and Agent Thomas Noble...Agent Noble spoke regularly with Chief Kuykendoll and I believe Agent Noble informed Chief Kuykendoll about the OPR investigation. I feel that Chief Kuykendoll used the physical assault to show me that he has power as Major and Acting Chief to show me where I stand.

Shortly after being assaulted by Chief Kuykendoll the group and I started walking to the front doors of the restaurant. While walking up the sidewalk in front of the restaurant Sgt. Jeff Farmer ran up behind me and assaulted me the exact same way Chief Kuykendoll did moments before....After the assaults occurred, I spoke with ██████████ and ██████████ to assist me in coping with the incident.

This was unwanted physical contact by Chief Kuykendoll and Sgt. Farmer. These assaults have haunted me since it occurred and will for a long time. Every time I have to speak about the assaults it causes me to re-live the assaults and all the bad feelings that come along with it."

██████████ - *Follow-up*

On August 24, 2018, Lt. Heller requested clarification by ██████████ on previously stated information. ██████████ responded in an email with the following information:

While discussing if [REDACTED] remembered AC Kuykendoll making any comments upon AC Kuykendoll's arrival, [REDACTED] stated, *"I don't remember saying anything to Chief Kuykendoll outside of a normal greeting. I also don't recall any comments he made to me."*

While recalling the alleged contact, [REDACTED] did not remember uttering comment, words, phrases, exclamations, or expletives at the time, or immediately after, either of the physical contacts. Additionally, he did not remember laughing at the time of either alleged contact.

While discussing [REDACTED] reason for saying the physical contact made him feel like a child, he stated, *"The statement of "like a child" was an attempt to put my feelings into words. This is hard to explain but the only way I can describe it is like an adult showing power over a child."*

While reviewing the elements of "Sexual Harassment", [REDACTED] acknowledged that both physical contacts were pervasive enough to be considered intimidating, hostile, and abusive and their contact has created a hostile work environment.

Regarding [REDACTED]'s remarks about how embarrassed he felt about the contact(s), and the "haunting" memories, [REDACTED] acknowledged having personal obstacles in his lifetime that this contact forced him to recall.

While attempting to confirm the approximate location of the alleged physical contact by Sergeant Farmer, [REDACTED] stated, *"I don't know exactly but approximately 100-120 feet."*

In an attempt to determine [REDACTED]'s reason(s) for not reporting the contacts immediately to OPR, [REDACTED] restated his position that he feared retaliation. He stated, *"I only disclosed the assaults to Lt. Langley, in what I thought was a private conversation, to provide her with the underlying issues between the two assailants and me."*

While discussing his statement to Lt. Langley that the alleged contacts were "Not Sexual", [REDACTED] [REDACTED] acknowledged he did make that comment. He stated, *"I did tell her that in hopes she would not report it to OPR as she stated she had to do. I did not want telling her to cause any form of retaliation on me in the future due to the parties involve being my supervisors. I felt by reporting these assaults this would put a negative light on me and would prevent me from excelling at this agency or one day promoting."*

[REDACTED] stated that he believes the action of AC Kuykendoll ad Sergeant Farmer was "Sexual Harassment", based on, "My understanding and definition of "Sexual Harassment"... any unwanted touching in a person's private area (Buttocks)."

[REDACTED]

On August 15, 2018, Lt. Heller interviewed [REDACTED] regarding the relevant events of October 26, 2017. [REDACTED] acknowledged that he was present at the La Fiesta Mexican Restaurant for Lt. Salinas' retirement party. When asked whether he observed any violations of policy occur, [REDACTED] stated, "No".

██████████ stated that while in the restaurant he was told by ██████████ that Sgt. Farmer and **AC Kuykendoll** “grabbed his ass”. But, he could not recall anything else that was said during the conversation.

When asked to describe ██████████’ demeanor in the restaurant, ██████████ stated he could not recall any specifics, but remembered ██████████ was neither “crying” nor “joking” about what occurred.

While discussing the possibility of any witnesses to the incident or witness to any statements made by ██████████, ██████████ stated that it was possible that ██████████ may have been in the vicinity when ██████████ made the comment in the restaurant.

On August 16, 2018, Lt. Heller contacted ██████████ to readdress the events in the parking lot. Specifically, whether he recalled **AC Kuykendoll** shaking Agent’s hands, including himself, and not shaking the hand of ██████████. ██████████ stated, “No, sir, I can’t say for sure.”

When asked whether he did not “recall” the incident in the parking lot or the incident “did not happen”, ██████████ stated, “Like I said, the only thing I really member from that day, I remember ██████████ saying that they grabbed his ass, like I said, I couldn’t tell you anything other than that, any kind of details, because I really cannot remember.”

██████████

On August 16, 2018, Lt. Heller interviewed ██████████ regarding his recollection of events in the parking lot of La Fiesta Mexican Restaurant on October 26, 2017. ██████████ acknowledged that he was with ██████████, ██████████, **AC Kuykendoll**, ██████████, and Sergeant Farmer prior to entering the restaurant. He stated that it was possible that ██████████ was also present, but was not sure.

While discussing whether **AC Kuykendoll** shook agent’s hands when he was in the “huddle”, ██████████ stated that he would assume he did; however, he did not have a clear remembrance of the event.

██████████ was asked if he was aware of an incident occurring in the parking lot between ██████████ and **AC Kuykendoll**. ██████████ stated that he heard that **AC Kuykendoll** “grabbed his ass”, but he was not sure when he heard that comment. He could not recall if it was that day, or later.

When asked whether he remembered seeing **AC Kuykendoll** make contact with ██████████, ██████████ stated that he did not see any contact. However, he added, that it could have occurred and he just was “not in a position” to see the contact.

██████████

On August 21, 2018, Lt. Heller requested ██████████ provide an email regarding whether he witnessed any contact between **AC Kuykendoll** and Sergeant Farmer in the parking lot of the La Fiesta Restaurant. This request was made due to ██████████ statement that he was in a vehicle with ██████████ before the party and he was not sure if ██████████ witnessed any inappropriate behavior. ██████████ responded to the request and denied knowledge of the

incident. He stated that his only interaction with persons at the party were with [REDACTED] Padgett, and (Former) Lt. Salinas.

Agent Kenneth Sherman

On August 16, 2018, Lt. Heller requested Agent Sherman provide information related to the SIU investigation into Noble, Stovall, and **AC Kuykendoll**. Specifically, if he recalled when he first had interaction/interview/discussion with [REDACTED] about the allegations of misconduct (OPR-2018-010) by **AC Kuykendoll**. Additionally, whether [REDACTED] mentioned if he feared retaliation from **AC Kuykendoll** or any supervisor for providing information to SIU or OPR.

On August 20, 2018, Agent Sherman provided the following information in an email to Lt. Heller regarding the above inquiry:

After reviewing his notes, Agent Sherman stated that his first contact with [REDACTED] was on November 20, 2017. [REDACTED] expressed “fear that his family would be physically harmed because he spoke out.” In addition, [REDACTED] also stated having a fear of retaliation by people who have protected Noble because he spoke out against him. He identified these people as Stovall and **AC Kuykendoll**.

During the criminal investigation, Agent Sherman received information from [REDACTED] stating, “This statement has shown that [REDACTED] and other agents have had to endure over the past years from [TN]. [TN] has already threatened to “beat my ass” and [REDACTED] is very concerned about the safety of my family and retaliation from” [TN] “and people who have protected him over the years. End of Statement.”

Agent Sherman stated that he did not remember [REDACTED] telling him anything about a physical contact (assault) occurring on October 26th.

Acting Chief of Enforcement Victor Kuykendoll

On August 15, 2018, Director Darrell Dement served **AC Kuykendoll** with the “Personnel Complaint” (OPR-1).

On August 21, 2018, **AC Kuykendoll** provided a written “Response” to the complaint, authorized by TABC Policy. The following is information from his response relevant to the alleged contact:

AC Kuykendoll denied that he intentionally or knowingly made contact with [REDACTED] buttocks. He stated, “*If any contact was made it would have been unintentional and inadvertent contact. I would also further argue that [REDACTED] did not find any contact I made of his person offensive which is based upon two factors; his response to my interaction with him that day and the delay in which he decided to file this complaint.*”

Regarding the alleged incident on October 26, 2017, **AC Kuykendoll** stated, “*...I recall the agents were grouped in what I would describe as a backward ‘C’ formation with [REDACTED] and [REDACTED] at the bottom of the ‘C’ and at a distinct separation from the rest of*

the group. I remember thinking this was a little odd to be somewhat secluded from the group. I initially began to shake hands with everyone starting at the top of the 'C' and progressed downward to the bottom where [REDACTED] and [REDACTED] were located...When I approached [REDACTED], I observed that [REDACTED] was standing to the right of [REDACTED] from my perspective ([REDACTED] left). I do not recall anyone else standing nearby as I recall I had to walk a short distance to approach them to exchange greetings and visit.

As I was walking up to [REDACTED], I recall that he was smiling and made a comment, which I cannot recall what was said but my perception is that he was mocking me in a playful manner. I am not certain if I acted as if I was offended and turned away or not but I do recall as I came within reach of [REDACTED], he quickly turned to his left (toward [REDACTED]) in what I would described as a military version of a 'half left face' turn as if he appeared to snub my attempt to shake his hand.

My perception at this time was that he was being a jokester. As he turned, I was already reaching out to shake his hand and remember that my left hand patted him on his right back elbow or waist high but definitely not his lower rear-end or what I believe is commonly referred to as the 'buttocks' area.

As all of this happened quickly and the event was so long ago, I cannot recall if I was trying to capture his right arm by placing my left hand on his right elbow and shake his right hand or I simply patting him on the back to get him to turn back toward me. Regardless, I do recall that [REDACTED] said, 'Hey, hey' or something like that affect and turned back toward me and was laughing. We then shook hands and exchanged pleasantries. He gave me no indication that he was offended or that I had made contact with his 'buttocks' at that time or later on; until just this past week."

In his statement, **AC Kuykendoll** wrote about how he first learned about [REDACTED] allegation from Lt. Langley and how he made notifications to Deputy Executive Direct Robert Saenz and OPR Director Dement upon receipt of the information.

AC Kuykendoll stated, *"I fully expected that the allegation would be rescinded as I believe it to be an exaggeration of the events of the day in response to a negative personnel action which [REDACTED] recently received. However, I have been presented with a formal notice that a complaint was filed against me relating to allegations."*

AC Kuykendoll wrote about his actions in "hindsight". He stated, *"...the reason I recall my interaction with [REDACTED] that day was that I later questioned myself if [REDACTED] was truly just being playful in his behavior by turning his back to me, as if he didn't wish to shake my hand, or if he was being sincere and was disguising his rudeness with humor.*

A couple of months after that day, I learned that both [REDACTED] and [REDACTED] made allegations against me in a separate complaint for a multitude of alleged misconducts. These allegations were made roughly around the same time frame as the day of Lieutenant Salinas' retirement gathering."

Sergeant Jeffery Farmer

On August 15, 2018, Lt. Nicole Langley served Sergeant Farmer with the “Personnel Complaint” (OPR-1).

On August 21, 2018, Sergeant Farmer provided a written “Response” to the complaint, authorized by TABC Policy. The following was Sergeant Farmer’s response relevant to the alleged contact:

“I recall being at the location listed in the complaint...To my knowledge, no contact was ever made by my hand to [REDACTED]’ buttock. It is my belief that this accusation never occurred as outlined in the complaint and that this complaint is made out of malice and spite to defame me.”

TABC-OPR Records Review of OPR2018-010

During the investigation of alleged employee misconduct against **AC Kuykendoll** (OPR 2018-010 (Allegation #8), for allegedly reintroducing an idea of a mutual transfer between Agent Noble and Agent Padgett to prevaricate an ongoing criminal and OPR investigation, the following excerpt was taken from Lt. Garcia’s criminal summation:

“At least one new agent (Agent Padgett) that lived closer to Agent Noble’s service area was hired subsequent to Agent Noble having been entrenched in that area. That agent requested to take over Agent Noble’s service area, which would have resulted in a shorter commute for Agent Noble. Agent Noble refused to transfer. When it became apparent to the persons under investigation that they were being investigated, the talk of transfer began anew. At a recent retirement party [October 26, 2017; Salinas Retirement] [Emphasis Added], Major Kuykendoll informed Agent Padgett that Agent Padgett would be able to transfer to Agent Noble’s service area and made a statement to the effect that Agent Noble would be made an ‘offer’ he ‘could not refuse’One of the first directives given by Major Kuykendoll to Lieutenant Walker was to have her convince Agent Noble to make a voluntary request for a transfer.”

On November 7, 2017, Agent Noble contacted Agent Padgett and advised him he would trade.

On November 8, 2017, **AC Kuykendoll** approved the transfer effective immediately.

Lt. Heller reviewed the transcript of an interview that occurred between **AC Kuykendoll** and Director Darrell Dement and Lt. Heller from December 22, 2017.

During the interview, **AC Kuykendoll** was asked to explain the service area change that occurred in the Waco area. **AC Kuykendoll** stated that there was ongoing “bickering” going on between [REDACTED], and Agent Thomas Noble.

AC Kuykendoll stated, “And it was mainly, the ones I seen doing it were [REDACTED] and [REDACTED] I mean, it was kind of like, you know, they did it in such a way I couldn’t really address it, if that makes sense...I said, ‘This is an easy fix. We’ll just turn around and send a Zip Code change...”

Lt. Joe Garcia

On August 22, 2018, Lt. Heller interviewed Lt. Garcia regarding **AC Kuykendoll's** statement in his "Response" to [REDACTED]' allegation that stated, "A couple of months after that day, I learned that both [REDACTED] and [REDACTED] made allegations against me in a separate complaint for a multitude of alleged misconducts."

Lt. Garcia acknowledged that based on his recollection of facts of the criminal investigation against **AC Kuykendoll**, Stovall, and Noble, the statement was not completely accurate.

According to SIU Investigative Reports, on September 13, 2017, Agent Marvin Padgett "saved screen shots showing friends" on the Facebook Page of **AC Kuykendoll**, and one of his "Facebook Friends", Rami Altrach, was a person on a Terrorist Watch list. Based on this information, SIU opened the investigation into the alleged illegal activity of **AC Kuykendoll**, Noble, and Stovall.

SIU discovered **AC Kuykendoll** began deleting Facebook pictures related to Rami Alatrach on or before October 27th. In stark contrast to "a couple months after" the October 26th party, that **AC Kuykendoll** asserted.

Additionally, between October 13th and 27th, 2017, Deputy Executive Director (DED) Robert Saenz was briefed by Major Swenson about their investigations. DED Saenz contacted **AC Kuykendoll** and made a comment to him, "This shit better not get on you."

On October 26, 2017, at Salinas' retirement party, **AC Kuykendoll** discusses the transfer with Agent Padgett based on the information he received from DED Saenz. Based on his self-admission to the above allegation, **AC Kuykendoll** was "Sustained" on allegation #8 of (OPR 2018-010) for authorizing the transfer of two agents; which, influenced, compromised, and obstructed an OPR and SIU investigation.

Major Ron Swenson

On August 24, 2018, Lt. Heller received the following email from Major Swenson regarding when **AC Kuykendoll** received the information about an ongoing investigation. He stated that on September 23, 2017, DED Saenz advised him that Executive Director Bentley Nettles, 'Brought him up to speed' on 'my' investigation. DED Saenz told Major Swenson, 'I told Victor that this shit had better not get on him'. Major Swenson stated that he was "shocked" about the ongoing investigation being told to **AC Kuykendoll**. Therefore, Major Swenson concurred that **AC Kuykendoll** was aware of the investigation prior to the October 26th retirement party.

EVALUATION/CLASSIFICATION

EVALUATION:

After reviewing the relevant facts and circumstances in this matter, the evidence confirms that on October 26, 2017, **AC Kuykendoll** and Sergeant Farmer attended a retirement party for (Former) Lieutenant Salinas at the La Fiesta Mexican Restaurant. Further, the evidence supports an interaction between **AC Kuykendoll**, Sergeant Farmer and [REDACTED] in the parking lot of the restaurant.

The documentary and testimonial evidence obtained by OPR regarding whether or not AC Kuykendoll and Sergeant Farmer intentionally and/or knowingly caused physical contact with ██████████, while knowing, or should have reasonably believed that ██████████ would regard the contact as offensive or provocative (Assault), does not pass a reasonable test, or at the least, meet the standard requirement to be an assaultive behavior or violation of TABC HR Policy 3.02- Work and Professional Conduct.

In making this determination, OPR reviewed, evaluated, and considered the validity of the investigative materials. Each party was afforded the opportunity to supplement their verbal statements and each availed themselves of such an opportunity by providing written statements and rebuttals to the allegations, and/or provide additional details about the alleged incident for clarification of fact.

The OPR analyzed the following influential factors in this investigation:

I. Fear of Retaliation

██████████ stated, *“I believe at the time of the assault that Chief Kuykendoll was aware of an ongoing OPR investigation involving two of his friends and co-workers.”*

Based on this investigation and previous investigations involving AC Kuykendoll there is validity to ██████████ assertion that AC Kuykendoll would have been aware of ██████████, statement to SIU and OPR implicating him in alleged criminal activity.

Additionally, ██████████ initially reported the information to Lt. Langley hoping it would not go any further than her. He stated, *“I did not want telling her to cause any form of retaliation on me in the future due to the parties involve being my supervisors.”*

As for Sergeant Farmer, there is no reasonable basis for not reporting his assaultive conduct at the time of the assault.

II. Time of Reporting

TABC HR Policy 3.06 – Employee Misconduct Complaints and Investigations, specifically states that *“Any TABC employee who receives any type of complaint or information concerning employee misconduct – whether from another employee or the public – **must** report the allegation either to the Office of Professional Responsibility or the reporting employee’s supervisor as soon as reasonably possible.”*

The OPR received this information from Lt. Langley when she first learned of the allegation. The date from the alleged incident to the date OPR was notified was 287 days. Due to the delay in reporting the incident to OPR valuable evidence was destroyed (i.e. Video surveillance from the restaurant) and testimonial evidence forgotten, to include the recollection of certain facts.

- A. ██████████ recollection of where the alleged contact occurred between Sergeant Farmer and ██████████. Additionally, whether he observed ██████████ witness the contact(s).

- B. [REDACTED] s inability to recall the incident.
- C. [REDACTED] unable to remember when or where he heard [REDACTED] make an outcry.

III.

CLASSIFICATION:

The preponderance of the evidence did not show that AC Kuykendoll or Sergeant Farmer violated TABC HR Policy 3.02- Work and Professional Conduct: §4.15 - (g) Misconduct - Physical or verbal abuse of other employees or members of the public.

NOT SUSTAINED



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Texans Helping Businesses & Protecting Communities

INTER-OFFICE COMMUNICATION

TO: Peter Heller, Lieutenant, OPR, Austin HQ
Darrell Dement, Director, OPR, Austin HQ

FROM: Victor Kuykendoll, Acting Chief of Law Enforcement, Austin HQ

SUBJECT: OPR Complaint #2018-075 Response

DATE: August 21, 2018

This IOC is my response to OPR formal complaint #2018-075. In that complaint, I am alleged to have used my hand to cause physical contact with the "buttocks" of [REDACTED] and he reportedly regarded the contact as offensive. This reportedly occurred on October 26, 2017 in the parking lot of La Fiesta Mexican Restaurant located at 3815 Franklin Avenue, Waco, Texas.

To this allegation, my simple response is that I deny that I intentionally or knowingly made contact with [REDACTED] buttocks. If any contact was made, it would have been unintentional and inadvertent contact. I would also further argue that [REDACTED] did not find any contact I made of his person offensive which is based upon two factors; his response to my interaction with him that day and the delay in which he decided to file this complaint. I will explain the details as I recall them below.

While my recollection of the events of that day are not very clear due to the amount of time that has lapsed, I do recall the following. On October 26, 2017, I attended a retirement gathering for Lieutenant Sonia Salinas (I confirmed the date on my Outlook calendar as I knew it was roughly a year ago). This event was being held at a restaurant known to me as La Fiesta and is located at 3815 Franklin Avenue, Waco, Texas. The event was scheduled to take place at 11 am and I rode to the location with then Sergeant Wayne Stovall of the Waco Area Office (I met up with Sergeant Stovall at the Waco Area Office earlier as I was working on the computer from that office prior to the event).

As my memory serves me, I believe that when we arrived the restaurant was not yet open for business and we found roughly 15 TABC employees, mostly agents, gathered in the parking lot outside the business. I recall that the agents were grouped in what I would describe as a backward "C" formation with [REDACTED] and [REDACTED] at the bottom of the "C" and at a distinct separation from the rest of the group. I remember thinking this was a little odd to be somewhat secluded from the group. I initially began to visit and shake hands with everyone starting at the top of the "C" and progressed downward to the bottom where [REDACTED] and [REDACTED] were located.

I recall that the atmosphere that day was one of lighthearted fellowship as we had all come to celebrate a milestone and the career of a fellow employee. I was there as her immediate supervisor to present her with her plaques and awards.

As I held conversations with the agents, pleasantries were exchanged, some innocent bantering was involved, and everyone seemed to be enjoying each other's company for the most part. When I approached [REDACTED], I observed that [REDACTED] was standing to the right of [REDACTED] from my perspective ([REDACTED] left). I do not recall anyone else standing nearby as I recall I had to walk a short distance to approach them to exchange greetings and visit.

As I was walking up to [REDACTED], I recall that he was smiling and made a comment, which I cannot recall what was said but my perception is that he was mocking me in a playful manner. I am not certain if I acted as if I was offended and turned away or not but I do recall as I came within reach of [REDACTED] he quickly turned to his left (toward [REDACTED]) in what I would describe as a military version of a "half left face" turn as if he appeared to snub my attempt to shake his hand.

My perception of this at the time was that he was being a jokester. As he turned, I was already reaching out to shake his hand and remember that my left hand patted him on his right back about elbow or waist high but definitely not his lower rear-end or what I would believe is commonly referred to as the "buttocks" area.

As all this happened quickly and the event was so long ago, I cannot recall if I was trying to capture his right arm by placing my left hand on his right elbow and shake his right hand or if I was simply patting him on the back to get him to turn back toward me. Regardless, I do recall that [REDACTED] said, "Hey, hey" or something to that affect and turned back toward me and was laughing. We then shook hands and exchanged pleasantries. He gave me no indication that he was offended or that I had made contact with his "buttocks" at that time or later on; until just this past week.

It wasn't until recently when [REDACTED] was issued a written IOC of expectations by Sergeant Jeff Farmer in reference to some behavioral issues both he and Lieutenant Nicole Langley had observed, which based upon their description of some of the events borders on insubordination. As my role as Major for Region 4, Lieutenant Langley kept me informed of these issues and the counselling that they had performed with [REDACTED] following a recent staff meeting.

On the day that Sergeant Farmer provided [REDACTED] with the IOC of expectations, Lieutenant Langley called me to advise that [REDACTED] did not receive the IOC well and was asking to discard the IOC or not forward it to his personnel file. Several hours later, Lieutenant Langley stated that [REDACTED] spoke to her making the same requests but began to suggest he knew of some improprieties against Sergeant Farmer. Langley described this conversation with [REDACTED] as him being "cagey" with these statements and refused to go into specifics. She explained to me that she felt that [REDACTED] was somewhat baiting her with making an outcry of sorts but in a way that encouraged her not to take any action.

Lieutenant Langley reportedly told [REDACTED] if he had information relative to some misconduct, [REDACTED] could contact OPR directly and file a complaint. Eventually, [REDACTED] reportedly came forth with the accusation that Sergeant Farmer had "slapped him on his ass" and then followed that statement with a statement that I "slapped his ass" about five minutes after Farmer.

Lieutenant Langley advised [REDACTED] claimed this all happened almost a year ago at Lieutenant Salinas' retirement gathering and that [REDACTED] reportedly witnessed it. [REDACTED]

██████████ repeatedly advised he did not want to file a complaint but was making her aware. This was reportedly coupled with him requesting multiple times for Lieutenant Langley to keep the IOC of expectations from being placed into his personnel file. Lieutenant Langley expressed to me that she felt that ██████████ was making the claims as leverage to keep the IOC from being part of his personnel file.

Upon receipt of the information, I immediately notified both Deputy Executive Director Robert Saenz and OPR Director Darrell Dement of these allegations. I asked Director Dement to have OPR look into these allegations. The following day after I notified Director Dement, I received a text message from Lieutenant Langley advising me that ██████████ had requested to her that no complaint be filed in reference to his allegations. My response to that was the decision was no longer his to make as the allegations are serious and needs to be investigated whether he desired to proceed or not. I shared this text exchange with both DED Saenz and Director Dement that same day.

I fully expected that the allegation would be rescinded as I believe it to be an exaggeration of the events of the day in response to a negative personnel action which ██████████ recently received. However, I have been presented with a formal notice that a complaint was filed against me relating to allegations.

In hindsight, the reason I recall my interaction with ██████████ that day was that I later questioned myself if ██████████ was truly just being playful in his behavior by turning his back to me, as if he didn't wish to shake my hand, or if he was being sincere and was disguising his rudeness with humor. A couple of months after that day, I learned that both ██████████ and ██████████ made allegations against me in a separate complaint for a multitude of alleged misconducts. These allegations were made roughly around the same time frame as the day of Lieutenant Salinas' retirement gathering. I also have to question, if ██████████ found the contact offensive, why did he not include this information or add it to the information he provided to OPR back then and waited so long to report the incident?

In summation, I emphatically deny that I intentionally or knowingly touched ██████████ "buttocks" and that any contact made would have been purely accidental. There is also no way that any contact would have been to the lower part of his rear-end, commonly associated with what was described as "slapped his ass" as I know the area I patted him on the back was roughly elbow or waist high and was in response to the lighthearted exchange that occurred between ██████████ and myself. I did not threaten him nor physically abuse him during this exchange.

I further attest that in the 27 years of law enforcement or before, I do not have a history of touching people in an offensive manner, committing assaults or threats against others nor interact with others in a derogatory or offensive manner. To have "slapped his ass" would totally be out of my character and anyone who knows me or has interacted with me would know this. There were also a number of other persons in the parking lot that day who have not or are not recipients of any negative personnel actions who should be able to attest to this as well.

I believe that ██████████ allegation is retaliatory as I suspect he blames me for the counseling he received even though I was never present to witness the reported actions that caused his counselling nor was I consulted with prior to being counselled by both Lieutenant Langley and Sergeant Farmer as I was advised he was immediately pulled into an office following the staff meeting that initiated the counselling session.

The only involvement that I had relating to his IOC of expectations was directing that the counseling be followed up with documentation, as I have directed several other supervisors across the state in the field due to previous issues with employees where history of their

Peter Heller
PRINTED NAME OF COMPLAINANT

08/14/2018
DATE


SIGNATURE OF COMPLAINANT

It is the policy of the Texas Alcoholic Beverage Commission to courteously receive and to investigate complaints concerning its employees. Persons complaining verbally or by e-mail will be requested to submit their complaint in writing with their signature affixed. Please provide specific information on this form as to the identity of the Texas Alcoholic Beverage Commission employee (or a description of the employee, if their identity is unknown) and the detailed information as to the nature of the complaint.

TEXAS GOVERNMENT CODE

SEC. 614.022. COMPLAINT TO BE IN WRITING AND SIGNED BY COMPLAINANT. TO BE CONSIDERED BY THE HEAD OF A STATE AGENCY OR BY THE HEAD OF A FIRE DEPARTMENT OR LOCAL LAW ENFORCEMENT AGENCY, THE COMPLAINT MUST BE: (1) IN WRITING; AND (2) SIGNED BY THE PERSON MAKING THE COMPLAINT.

SEC. 614.023. COPY OF COMPLAINT TO BE GIVEN TO OFFICER OR EMPLOYEE. (A) A COPY OF A SIGNED COMPLAINT AGAINST A LAW ENFORCEMENT OFFICER OF THIS STATE OR A FIRE FIGHTER, DETENTION OFFICER, COUNTY JAILER, OR PEACE OFFICER APPOINTED OR EMPLOYED BY A POLITICAL SUBDIVISION OF THIS STATE SHALL BE GIVEN TO THE OFFICER OR EMPLOYEE WITHIN A REASONABLE TIME AFTER THE COMPLAINT IS FILED. (B) DISCIPLINARY ACTION MAY NOT BE TAKEN AGAINST THE OFFICER OR EMPLOYEE UNLESS A COPY OF THE SIGNED COMPLAINT IS GIVEN TO THE OFFICER OR EMPLOYEE. (C) IN ADDITION TO THE REQUIREMENT OF SUBSECTION (B), THE OFFICER OR EMPLOYEE MAY NOT BE INDEFINITELY SUSPENDED OR TERMINATED FROM EMPLOYMENT BASED ON THE SUBJECT MATTER OF THE COMPLAINT UNLESS: (1) THE COMPLAINT IS INVESTIGATED; AND (2) THERE IS EVIDENCE TO PROVE THE ALLEGATION OF MISCONDUCT.