

Memo

To: Stephen Brugone, Officer

From: Henry A Osterkamp, Chief of Police

CC: Shelly Arzola, Human Resources Director

Date: September 30, 2013

Re: Notice of Final Disciplinary Action Re: IA 13-003 & IA 13-006 – DAVID Misuse

On September 20, 2013 Lieutenant Godfrey completed and submitted Internal Affairs Investigative Report 13-006 pertaining to allegations that you had misused the Florida Driver And Vehicle Information Database (D.A.V.I.D.) system for non business related purposes in order to obtain driver license information and/or records on George Zimmerman, Treyvon Martin, Jennifer Lopez, Lu Gonzalez (an active Daytona Beach police officer you attended the basic law enforcement academy with) and, by your own disclosure, John Travolta.

The investigative findings sustained that you had accessed the D.A.V.I.D. system records for each of the above named individuals for no reason other than personal curiosity while you were off duty. The investigation did not uncover any evidence that would indicate that you had disseminated, shared or used for your own personal gain any of the information that you had obtained on any of these individuals by accessing the D.A.V.I.D. system.

Based on the sustained findings as noted in the investigative report you were provided the opportunity of having a pre-determination conference in order to provide me with any information or evidence for my review and consideration prior to my making a final decision regarding the level of discipline to be taken. You declined this opportunity for a pre-determination conference stating that you had brought forward all information and/or said everything you wanted to say pertaining to your misuse of the D.A.V.I.D. system during your pre-determination conference held pursuant to IA 13-003 and that you had nothing more to add at this time.

Having reviewed the investigative report for IA 13-006 and the evidence that is available to me at this time and taking into consideration the information you provided to me during your pre-determination conference held pursuant to IA-13-003, I find that you knowingly and intentionally violated the conditions for use of the D.A.V.I.D. system by accessing driver license information, photographs, records and/or personal emergency contact information for George Zimmerman, Treyvon Martin, Jennifer Lopez, Lu Gonzalez and John Travolta for other than a legitimate law enforcement/business purpose or authorized use. The available information clearly establishes that you utilized the D.A.V.I.D. system to access the driver license information of these individuals while off duty and that you, by your own admission, did so out of simple "curiosity."

It is further noted that the D.A.V.I.D. system warning message appeared on your Mobile Data Terminal (MDT) screen each individual time you ran the above indicated names and that you knowingly and intentionally bypassed this warning message to access the driver license information on each of the individuals identified. During your sworn investigative interview you acknowledged that you were aware of the D.A.V.I.D. system warning message and that you had read and understood the subject matter of same. As such, you knew, or should have known, that your actions were in direct violation of the information outlined in the warning message and would constitute misuse of the D.A.V.I.D. system.

Based on the information as detailed in Internal Affairs Investigative Report IA13-003, I find that you have violated the following Departmental policies and/or directives:

➤ **C-11-10 General Computer Use**

1. **CITY POLICY ON GENERAL COMPUTER USE:** The Police Department has adopted standards for computer use consistent with the City policy on the same topic. (Administrative Policy #62).
 - A. City furnished in-car computers, mobile data terminals (MDT), and other portable computing devices are governed by the provisions of this policy in the same manner as if they were standard office computers.
2. Mobile users with wireless access to criminal justice related databases (FCIC, NCIC, CJIS), etc. are governed by the same rules that apply to their fixed terminal equivalents.

➤ **C-2-10 Code of Conduct, Section 2.9 - Failure to Follow General Orders, Directives:** Members will adhere to general orders, policies, and directives, and will faithfully execute all duties and responsibilities of their assigned position.

➤ **C-2-10. Code of Conduct, Section 3.60 – Conduct Unbecoming a Member of the Police Department:** Conduct unbecoming a member of the Police Department is defined ***as any conduct or act, which has an adverse impact upon the operation of the Department, and destroys public respect and confidence in the Police Department and its employees. Such conduct may include, but is not limit to,*** participation in any immoral, indecent or disorderly conduct, or ***conduct that causes substantial doubts concerning a person’s honesty, fairness, or respect for the rights of others, or the laws of the state or nation, regardless of whether such act or conduct constitutes a crime.*** Per the labor contract, any charge of “conduct unbecoming an officer” or any other similar shall include specification supporting the charge. To wit: you failed to respect the privacy rights of George Zimmerman, Treyvon Martin, Jennifer Lopez, Lu Gonzales and John Travolta by accessing D.A.V.I.D. system information (driver license information, photograph, history and/or personal emergency contact information) for other than a legitimate law enforcement/business purpose (curiosity).

Your actions of accessing the driver license records of these individuals though the D.A.V.I.D. system may also violate the F.D.L.E. Commission Rule 11B-27.001 governing Moral Character Standards as they pertain to misuse of your official position and clearly run contrary to the professional standards of conduct required of all law enforcement officers employed with this agency. Your misconduct could also subject you to potential civil litigation, fines and/or administrative sanctions resulting from your unauthorized access/misuse of D.A.V.I.D. system information.

1. Based on the totality of the information and evidence made available to me as documented in the investigative report findings of IA 13-003 and IA 13-006, as well as your disciplinary history with the Department to-date, it is my decision to impose adverse disciplinary action for your misconduct as detailed in the above referenced IA reports in the form of a **two (2) day, sixteen (16) hour suspension without pay**.

You will not have the option of taking personal leave in lieu of serving this suspension. The dates your suspension is to be served will be determined by Lieutenant Crimins and your immediate supervisor based on the operational needs of the Department. The sixteen hour/2 day suspension must also be served consecutively within a single week of a two (2) week pay period.

2. You will be required to complete retraining on the use of the D.A.V.I.D. system and the City's/Department's policy on computer use. This retraining will be coordinated by your immediate supervisor and training officer.

It is imperative that you look upon these incidents and the action imposed as a means to improve future performance in this area and to ensure your future with this Department. Any subsequent violations of policy and/or procedure similar in nature to that as noted above, or failure to comply with the disciplinary provisions as outlined above, may result in progressive disciplinary action being taken against you; up to and including termination of your employment.

You have the right to grieve my decision for discipline pursuant to Article 17 of the City of Ormond Beach Police Officers' Bargaining Agreement and/or Section 13.0 of the City of Ormond Beach Human Resources Policy.