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LETTER TO COMMISSION

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: May 13, 2015

SUBJECT: Recent Discipline of Officer Philippe Archer

The purpose of this Letter to Commission is to provide accurate information about the recent suspension without pay of Officer Philippe Archer and a fuller understanding of the factors that led Chief Oates to impose such discipline (as opposed to termination). I asked Chief Oates to prepare a detailed Summary of the Disciplinary Matter, a copy of which is attached hereto. By way of summary, let me set forth the key facts that led me to support Chief Oates in his decision.

First, contrary to media reports, Officer Archer did not attack a woman in public nor a "good Samaritan". The facts, as laid out more fully in the attached memo, are that Officer Archer was on an undercover operation and was asked to respond to a call for service involving a woman who was trespassing and disturbing the peace in a building on West Avenue. Officer Archer, who was not in uniform due to the undercover assignment, responded to the call and encountered the woman just outside the building. When confronted by the officer, she slapped him. She then was violently resisting arrest and showering the officer with racial epithets. The "good Samaritan" who intervened assumed that Officer Archer was attacking the woman. Despite Officer Archer identifying himself as an officer and displaying his police radio, the individual in question threw the radio aside and began to attack Officer Archer. Officer Archer, therefore, was the one actually fending off attacks from two individuals. He ultimately did subdue and arrest both individuals. As Chief Oates notes, both the Department of Justice and the State Attorney's office reviewed this incident and concluded that the use of force was reasonable and that the arrests of the two individuals were lawful. This is important because some of the emails and blog comments have focused on this incident as the reason why Officer Archer should have been fired because of the misinformation regarding what in fact transpired.

The reason why Officer Archer was ultimately disciplined has to do with what transpired back at the police headquarters. The incident was captured by the video camera in the MBPD garage. At that time, it was practice to allow prisoners to be processed and paperwork prepared in the garage near a picnic table.¹ The female prisoner continued to berate Officer Archer with racial epithets and at some point while she walked around the processing area, she kicked Officer Archer.² Unfortunately, in response, Officer Archer immediately struck the female prisoner with his hand and attempted a kick that missed. These were the primary wrongful acts that resulted in the 160 hour suspension without pay.

¹ This practice was discontinued by Chief Oates.

² The Chief's memo points out that the prisoner should never have been permitted to walk around freely by the sergeant in charge of the processing area.

The Chief points to several mitigating factors that led to his decision to suspend (and not terminate) Officer Archer. These include the repeated racial epithets that Officer Archer, an African American officer, was subjected to both out in the field and at the police station by the female prisoner; the lack of support his colleagues provided at both locations, the lack of any prior disciplinary findings of misconduct involving improper use of force, and an otherwise positive record of achievements and performance. While his momentary outburst was completely unprofessional, one could certainly understand his frustration and anger at the blatant racism of the prisoners.

One final point is worth noting: the City has had a poor history in having police terminations upheld during the grievance process under collective bargaining. What has often happened is, unless something is truly egregious, the hearing officers reinstate the officers with back pay and no discipline. As such, in evaluating this particular episode, both the Chief and I thought that, in light of the mitigating factors, this serious discipline short of termination would be more likely to survive the grievance process and thus actual discipline would take place.

If you have any questions, please do not hesitate to contact me or Chief Oates directly.

MIAMIBEACH
POLICE

MEMORANDUM

TO: Jimmy L. Morales
City Manager

FROM: Daniel J. Oates
Chief of Police

DATE: May 12, 2015

SUBJECT: Summary of Discipline Matter Involving Officer Philippe Archer

This memorandum is prepared in response to your request for a summary of my decision making in imposing the 160-hour suspension on Officer Philippe Archer in Internal Affairs Case No.2013-015.

Media coverage of this two-year-old case has been extensive, including at the time this event first occurred, and just recently with the announcement of my disciplinary decision. What has not been made clear in the media coverage is that there actually were two separate events that merited investigation in order to determine whether misconduct occurred and, if so, what discipline would be appropriate.

The first event was the confrontation between Officer Archer and Megan Adamescu and Andrew Mossberg on West Avenue on June 26, 2013, in which a violent confrontation occurred that involved this one officer struggling against two persons who were resisting arrest. The second event involves the treatment of both prisoners later in the police station, in which Officer Archer improperly struck Ms. Adamescu once while in handcuffs after she kicked him, and improperly took a picture with Mr. Mossberg after he had been medically treated.

Event 1: West Avenue

Regarding the confrontation on West Avenue, both the U.S. Department of Justice and the Miami-Dade County State Attorney, after thorough investigations, concluded that no criminal charges would be brought against Officer Archer. Thereafter, MBPD's Internal Affairs Unit did a thorough review of this same event. The results of the Internal Affairs investigation were then reviewed by MBPD's Disciplinary Panel, consisting of Deputy Chief Laretta Hill, Chief of Staff Wendy Rich-Goldschmidt and Major Rick Clements. This panel of senior

executives exists, by Department policy, to review completed Internal Affairs investigations and to make recommendations to the Chief regarding potential discipline. This panel concluded that there was not sufficient evidence to charge Officer Archer for any MBPD policy violations or misconduct for what occurred on West Avenue.

The Internal Affairs investigation determined that Mr. Mossberg's injuries were sustained from his physical confrontation with Officer Archer on West Avenue, which Mr. Mossberg initiated. Officer Archer was attempting to arrest Ms. Adamescu when Mr. Mossberg physically intervened. Officer Archer identified himself as a police officer and even displayed his police radio. Mr. Mossberg actually grabbed Officer Archer's police radio from his hand and tossed it away, this while Archer was simultaneously struggling with Ms. Adamescu. Officer Archer ended up using physical force to arrest both persons, Ms. Adamescu for striking him and Mr. Mossberg for physically interfering in her arrest. The Disciplinary Panel, like the Department of Justice and the State Attorney, could not find misconduct on the part of Archer for doing so.

The Disciplinary Panel concluded that there was no evidence to charge Officer Archer with any violations of MBPD policy. In other words, Officer Archer's use of force was reasonably justified given what he encountered -- two adults simultaneously resisting arrest with violence directed toward him and despite his efforts to identify himself as a police officer.

Implicit in the findings of the Justice Department, the State Attorney and the Disciplinary Panel is that the arrests of Adamescu and Mossberg were lawful. I agree with this assessment. Through an unfortunate series of events -- a perfect storm in which a simultaneous sensitive undercover operation was underway nearby and the police were trying to avoid bringing a marked patrol car onto the block -- Officer Archer was left alone, in plain clothes, to deal with an argumentative, violent intoxicated woman who had slapped him, as well as with another adult male who interceded and claims he did not know Archer was a police officer. When the physical confrontations began, Officer Archer was authorized to use reasonable force to bring these two persons into custody. There was no finding by any authority that reviewed this matter that the force he used on the street was excessive. Such a finding by me as the disciplinarian simply could not be sustained in a subsequent employee arbitration.

Event 2: Police Station

Regarding the second event, the striking of Ms. Adamescu at the police station, both the U.S. Department of Justice and the Miami-Dade County State Attorney, after thorough investigations, concluded that no criminal charges would be brought against Officer Archer.

This second event was captured on the video camera in the MBPD garage. It was MBPD practice at the time to allow prisoners to be processed and paperwork prepared in the garage near a picnic table at the back entrance to the police station. This was an entirely inappropriate prisoner-processing area that did not have sufficient safeguards in place to properly handle prisoners. The practice of using this area was ended by me shortly after my arrival here as the new chief, upon my discovery that prisoner processing was occurring there.

The garage video makes clear that Officer Archer is kicked by Ms. Adamescu and that he responds immediately (and apparently instinctively) with a single strike to her head. He then attempted to kick Ms. Adamescu. A slow motion rendering of that video reveals that the kick apparently did not make contact with Ms. Adamescu, but rather landed on Sergeant Darrell Prieto as Prieto was pulling Ms. Adamescu away. The hand strike and the attempted kick are totally inappropriate uses of force. They constitute the most critical wrongful acts on Officer Archer's part, and these are the primary reasons for which I gave him the 160-hour suspension.

Archer also later took a picture with Mr. Mossberg, after he had been medically treated and had his head wrapped in bandages. There was no appropriate reason for this photograph. I perceive the picture, whatever its claimed intent, to be a humiliation of the prisoner and another act of misconduct on Archer's part. Archer also did not do the appropriate paperwork to document his use of force at the police station, which was another violation.

Other Considerations

In deciding this case, I also considered several mitigating factors involving the event and Officer Archer's past, some of which I have listed here.

Officer Archer, an African American, was subjected to repeated racial epithets on West Avenue during the initial confrontation. Ms. Adamescu repeated these slurs at the station house, again directed at Archer.

Archer's colleagues did not help control Ms. Adamescu at the police station. As discussed above, the prisoner processing area was not appropriate, and the prisoner was permitted to walk around while handcuffed. Ms. Adamescu never should have been permitted to do this or to be in a position to kick Officer Archer. While Officer Archer was also responsible for his prisoner, the sergeant present should have ensured that Ms. Adamescu was completely controlled at all times. The investigation confirmed the sergeant's failure in this regard, and this sergeant would have been disciplined with a significant suspension for this failure had he not retired before discipline was imposed.

Sergeant Prieto also did not instruct Officer Archer to document the use of force in a police report, nor did he prevent the taking of the picture with Mr. Mossberg.

For both of these events, Officer Archer is responsible for his misconduct. Yet again, both of these additional failures on Officer Archer's part would not have occurred had the sergeant exercised proper supervision and leadership.

Officer Archer had received only minor discipline in his 19 years, associated with unrelated violations involving failure to appear at court and the like. He had no prior disciplinary findings of misconduct involving improper use of force. He also had a record of many positive achievements and performance for the Department.

The Internal Affairs investigation could not definitively determine whether Ms. Adamescu's facial bruising was the result of her physical struggle with Archer on West Avenue, which she initiated by slapping Archer, or as a result of the single strike by Archer at the police station. This is because of a failure by another employee in this event, a civilian crime scene technician who failed to properly photograph Ms. Adamescu upon her arrival at the police station to document any possible injuries. This technician will be disciplined separately for his failure in this incident.

Officer Archer waited nine months, suspended with pay and at home, while the FBI and the State Attorney's Office investigated whether to charge him with a crime. During this time, he was the subject of repeated news articles and the public criticism that comes with such disclosures. Despite this, when he returned to duty, Archer performed well in all his assignments, exhibiting a positive attitude and excellent work ethic.

As a final note of mitigation, I find that the Department failed Officer Archer in this entire matter. The first failure was to leave him alone on West Avenue, in plain clothes, to arrest two adults who were violently resisting. An undercover drug operation was underway, and it is understandable that those in charge did not want a patrol car in the area. However, had there been prompt assistance to Archer by other uniformed personnel, the outcome would almost certainly have been different. Second, and as discussed above, the sergeant and the team of officers at the police station did not assist in controlling an angry and intoxicated prisoner who was directing racial slurs and vitriol at Officer Archer. Had the sergeant exercised proper supervision, Officer Archer would have been removed from that setting and away from the prisoner. He would not have been kicked by Ms. Adamescu, and his reactive strike would not have occurred.

Conclusion

In conclusion, I determined that a 160-hour suspension was appropriate in this case. Officer Archer's striking of Ms. Adamescu in the face and his attempted kick at her were clearly wrong and violated Department policy. However, based on the mitigating factors I have cited above, I believe that a 160-hour suspension,

rather than termination, was appropriate. Within the history of the Department, a 160-hour suspension is considered an extremely severe penalty.

In my mind, the penalty in this case is one step below a termination. It is a clear signal to the officer and to the entire organization that no further misconduct of any kind will be tolerated from Officer Archer for the remainder of his career.