



POLICE ADMINISTRATION

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Date: July 14th, 2021

To: Assistant Chief Derek Kammerzell

From: Chief Rafael Padilla

Re: Internal Affairs No. 20-003
Notice of Discipline

This document shall serve as the Department's notice of discipline regarding Internal Affairs No. 20-003. As you are aware, the Kent Police Department has been conducting an internal affairs investigation into allegations that you violated various City and KPD policies and procedures.

A Pre-Disciplinary/*Loudermill* Notice was delivered to you through the KPOA on May 4, 2021. In that notice, you were advised that I was pursuing the charges relating to Harassment/Discrimination for the posting of a World War II Nazi rank insignia (consisting of two diamonds and an oak leaf) by your name plate, untruthfulness for statements made in your interview, and asking an employee to Photoshop a personal photo. That notice characterized my decision as preliminary and not final, and I notified you that I was reserving final judgment regarding the allegations until after the Pre-Disciplinary/*Loudermill* hearing.

The Pre-Disciplinary/*Loudermill* hearing was held at 12:30 pm on July 12, 2021 in the Chief's Conference Room. In attendance were you, KPOA President Wayne Graff, KPOA member Ken Clay, as well as the KPOA's attorneys, Dave Luxenberg and Joshua Halliday from the law firm of McGavick Graves, PS. For the City, present was Police Chief Rafael Padilla, City Attorney Pat Fitzpatrick, and outside counsel for the City, Mike Bolasina from the law firm Summit Law Group.

Prior to the hearing, the KPOA attorney was provided with a complete copy of the investigation file, along with a copy of your personnel file. At the Pre-Disciplinary/*Loudermill* hearing, your attorney submitted on your behalf a 46-page brief along with a number of exhibits and presented the KPOA's case for approximately one hour.

Procedural Clarifications

At the Pre-Disciplinary/*Loudermill* hearing and in its brief, the KPOA argued a number of matters that warrant a response. First, the KPOA asserted that the investigator utilized an incorrect

standard of proof in making her determinations. It is important to recognize that the Department, and specifically the Chief, did not relinquish decisional authority over this matter to the investigator. KPD Policy provides that under certain circumstances, the Chief may require an investigation be conducted by an outside investigator. Moreover, only the Chief has authority to issue discipline following an investigation. In this matter, due to the fact that you are an Assistant Chief, and due to the nature of the allegations, and in consultation with the Human Resources Department and the City Attorney, I retained an outside investigator. This individual was retained to conduct the fact-finding process. She was not retained to make a decision, but rather to report back what she learned through her investigation and render her preliminary findings as a focusing tool.

Second, a lot has been made of the fact that an interview of you occurred after the investigator prepared an initial report regarding her investigation. The follow up interview was ordered on the advice of the City Attorney in order to develop more background evidence which he felt was missing from the initial interviews. When the follow up interview was ordered, I had yet to formulate an initial decision on this matter, which again, per the above, was my responsibility.

Third, I want to address the KPOA's assertion that the City Council is influencing my determination in this matter. Without waiving the attorney-client privilege, I have repeatedly been advised that in accordance with state law, the matter of employee discipline is an administrative function and not a legislative function within the sphere of the City Council. The City Council is aware of this matter only because it was brought to their attention by members of the community who requested documents regarding the complaint through the Public Records Act. I have received no direction from the City Council about what disciplinary action I should take, and I could not relinquish my authority even if it was given. To the extent I am considering any level of discipline, it is due to your own conduct and not due to outside influences.

Finally, I want to clarify for the record what this investigation is about. The investigation commenced after you taped a Nazi rank insignia above your name on your office door. The issue is whether you knew it was a Nazi rank insignia when you did so. The investigation was never about whether you are a Nazi, whether you are an anti-Semite, or whether you have engaged in biased policing. I have no reason to believe—then or now—that you are. When the investigator asked you questions about World War II, German military history, and the like, she was asking follow-up questions to gauge your credibility after you denied having any knowledge that the insignia was related to a Nazi rank. While Mr. Luxenberg argued that this investigation was an attack on you because of your German ancestry, I assure you that your ancestry is of no concern to me. Your honesty in responding to investigation questions, however, is of paramount concern, and your familiarity with German military history, including the Nazi era, became relevant to that issue due to your answers to the investigator's questions.

Charges and Statement of Evidence¹

The Explanation of Department's Evidence set forth in the Pre-Disciplinary/*Loudermill* Notice dated May 4, 2021, is hereby incorporated by this reference into this Notice of Discipline and is supplemented herein by the following:

- Transcripts of the June 16, 2021, interview of [REDACTED]
- Transcript of the June 16, 2021 interview of Assistant Chief [REDACTED]
- Transcript of the June 22, 2021, interview of Assistant Chief [REDACTED]
- Report of Krista Slosburg dated February 3, 2021, regarding online alias accounts
- Report of Krista Slosburg dated February 3, 2021, regarding Nazi insignia

Determination

After reviewing all of the evidence, including my review of the transcripts of interviews conducted after issuance of the Pre-Disciplinary/*Loudermill* Notice, I have determined that substantial evidence supports the conclusion that you violated City Policy 2.12 prohibiting harassment and discrimination, and that you committed Unbecoming Conduct in violation of Kent PD Policy 13.10 when you posted the insignia attributable to a Nazi military rank on your door. I do not find sufficient evidence to sustain the allegation of untruthfulness.

The record established that in the past, some members of the Department have called you "German General" because of your last name and your ancestry. You embraced your ancestry as an explanation for what some may view as the directness of your communication style, and you described instances of how, in a self-deprecating manner, you had used your ancestry as an explanation for your communication style during Department trainings.

Based on your interviews, you became aware of the rank "obergruppenfuhrer" as a result of the Netflix show, "Man in the High Castle," a show based upon the premise that the Nazis (and imperial Japan) prevailed in WWII and occupy the eastern half of United States. A character in the show is a Nazi official with the rank of "obergruppenfuhrer" which loosely translates to "senior group leader." According to you, as a result of this character in the show, a commander's nickname for you changed from "German General" to "obergruppenfuhrer." The evidence establishes you watched a season of it "maybe two, maybe a year and a half" prior to this incident.²

¹ This notice contains a summary of the facts and documents/information/records that support my determination. All of the evidence gathered during the investigation forms the basis for this summary and my determinations. The City reserves the right to introduce a more detailed and complete statement of the basis for its conclusions as well as additional information and evidence at future hearings or proceedings.

² Mr. Luxenberg stated at the *Loudermill* hearing that the character who played the obergruppenfuhrer, Smith, does not appear as the obergruppenfuhrer until seasons 3 or 4, perhaps after you stopped watching. My research regarding seasons and episodes identifies Smith as the obergruppenfuhrer being a prominent cast

On September 10, 2020, [EI-UnfairPract] inquired of you about the term "obergruppenfuhrer" when she was interested in giving you a Yeti cup for your birthday. She wanted to personalize the cup for you with the above term, but could not remember the term. Ms. [EI-Unf] was not aware of its meaning. She stated that when she asked you, she accompanied you to your office and you performed a Google search of the term and looked at the results for "maybe two minutes."

You stated, ". . . the research that I did was all about 10 seconds or less, and you can confirm that with [EI-Unfair]. And I looked and it just said that what it meant was senior group leader." You also stated:

And the other thing, I scanned down at the bottom and it said NATO equivalent rank and it gave the equivalent I just assumed that was a German military rank that was used all through German time and is currently in use, because it has a NATO equivalent. Germany was not part of NATO until after World War II.

You continued:

I just hit print, and it was printed as she [Ms. [EI-U]] was standing there, and I was cutting, I walked away and I stuck it on my door as another, you know, part of this ongoing joke thing I did not know this thing was associated just with a Nazi thing. I didn't mean to offend anyone or be offensive in any way. This was all geared towards making fun of myself. I wasn't doing it to be offensive to anyone else, and I really apologize for that.

There is no evidence that the symbol was used for military ranks other than Nazi ranks, though there is an assertion that other *similar* symbols have been used by the German military. Also, while there is an assertion that the term "obergruppenfuhrer" is currently in use outside of the Nazi era, finding evidence of this requires significant research, and even then it is difficult. Regardless, there is no assertion that you or anyone on your behalf did such research until just prior to your Loudermill hearing. Based on the research you stated you did do, which was reviewing the Wikipedia page for obergruppenfuhrer, the Nazi association with the rank is glaringly obvious. So glaringly obvious that I would say it is impossible to miss, even based on a cursory review. In contrast, the part of the page that addresses the current NATO equivalent of the rank is quite obscure.

The insignia you posted is for a high ranking official with the SS. To associate oneself with the SS, even negligently, is to associate oneself with the most despicable acts that human beings have perpetrated against each other, perhaps ever.

Based on the above information, I have determined that by placing the insignia on your door, you violated City Policy 2.12 which prohibits harassment and discrimination. That policy defines "harassment" as visual conduct that shows hostility towards an individual because of such

member in Season 1, Episode 2. In later seasons, he was promoted to obergruppenfuhrer and reichsfuhrer, but since you did not post insignias related to those ranks, I consider them irrelevant to the investigation.

individual's protected status with regards to religion, creed or national origin that has the effect of creating an intimidating, hostile, or offensive work environment. It is of no consequence that the symbol was obscure and viewed by few people. It is also of no consequence that you may not have known the full details of the use of the symbol, or that few actually observed the symbol or knew what it meant. The fact is that you, an Assistant Chief, who must lead by example, posted a Nazi insignia on the door of your office.

I have also determined that your action of posting the insignia on your door constituted unbecoming conduct in violation of KPD policy 13.10. Your actions reflected negatively on the Department and brought discredit to the Department. The matter was viewed and recognized by a subordinate officer, and was published outside of the Department via disclosure which was required in accordance with the Public Records Act. This occurred at a time in which police credibility is under attack over allegations of racism and biased policing.

I am, however, not sustaining a violation of the Department's truthfulness policy. Policy 13.10 Truthfulness requires officers to be truthful at all times regarding matters that impact the Department. Based on the evidence presented, I do not believe the investigation produced sufficient evidence that you were untruthful in asserting that you were not aware that the insignia you posted on your door was a Nazi insignia, or put another way, that the insignia was not used by non-Nazi German military forces. The allegation of dishonesty was based on your statements that you learned of the rank through a television show about Nazis, and found the insignia on a webpage where the Nazi connection to both the rank and the insignia are obvious. The investigation revealed no evidence that there were other sources of information available to you on this issue based on your education, experience, or interests. I am crediting your testimony that the decision to place the insignia on the name plate was one made in haste after only a cursory review of the web page, and that you were not intentionally dishonest when you denied knowing its association with the Nazi.

Finally, I find that you violated City Policy 2.09, Use of City Resources, when you asked a subordinate to Photoshop a personal photo on City time. The KPOA has argued that the time involved was short and insignificant and not a violation of policy. The policy does indicate that an employee may make occasional but limited use of City resources if there is no actual cost to the City or if the cost is so small as to be insignificant or negligible and does not interfere with the employee's official duties. However, this is a matter of a superior officer asking a subordinate to use City resources, and therefore, does not neatly fit within the exception to the rule, as a subordinate may not feel that he or she has the ability to decline the request.

Determination of Discipline

In summary, I sustain the allegation that you violated City Policy 2.12 Harassment and Discrimination, and KPD Policy 13.10 prohibiting Unbecoming Conduct. Also, I find that you violated the City Policy 2.09, Use of City Resources when you asked a subordinate employee to edit a personal photo, though this is a minor offense, and alone warrants a verbal warning. This constitutes your verbal warning.

I have determined that a two-week suspension is appropriate discipline for the sustained finding for your violation of City Policy 2.12 Harassment and Discrimination, and KPD Policy 13.10 prohibiting Unbecoming Conduct. Your two-week suspension can be taken either as a hard suspension with unpaid time off, or alternatively, at your discretion, you can use vacation leave to cover the suspension. I am also ordering you to attend cultural sensitivity training. The nature, time and location of that training will be determined by me in my consultation with the City's Equity Manager.

In making this decision, I have taken into consideration the extent of disruption and discredit this matter has caused the Department, and the impact your actions have had with regards to not only your credibility with your subordinates, but also the impact of your actions to public trust. I have also tempered that decision in light of a 27-year career that demonstrates no discipline, uniformly satisfactory and above-satisfactory performance reviews, your past record of leadership with the Department, and the verbal apology you provided during the Pre-Disciplinary/Loudermill hearing.

Please inform me regarding your preferred method of taking the suspension. If you have any questions, please contact your KPOA representative.



Rafael Padilla, Chief
City of Kent Police Department

07-14-71

Date

Redaction Log

Total Number of Redactions in Document: 7

Redaction Reasons by Page

Page	Reason	Description	Occurrences
3	EI-UnfairPract	Employee - Investigation Re: Unfair Practice (Discrimination) – Investigation Closed. RCW 42.56.250(6) provides that records compiled by an employing agency in connection with an investigation of a possible unfair practice under Ch. 49.60 RCW, or of a possible violation of other federal, state, or local laws or an employing agency’s internal policies prohibiting discrimination or harassment in employment are exempt from disclosure, either in part or in total. Once an investigation is closed and the complaining employee has been notified of the outcome, investigative records may be disclosed only if the names of complainants, other accusers, and witnesses are reacted, unless such persons have consented to disclosure. The requested records are part of a closed investigation into allegations of discrimination or harassment in employment, and because consent has not been provided, the names of complainants, other accusers, and witnesses that appear in the requested records have been redacted.	3
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Redaction Reasons by Exemption

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