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MEMORANDUM

To: D. M. Moschos, Counsel, Town of Ashland
From: Jody L. Newman
Date: June 22, 2012
Re: Report of Investigation For the Town of Ashland

I. Introduction

This is a report and summary of the preliminary independent investigation I conducted on behalf of the Town of Ashland involving allegations of harassment of a [REDACTED] police officer within the Ashland Police Department (the "Department" or "APD") to determine whether there was probable cause to initiate a formal investigation. I was appointed as an Investigating Officer on March 22, 2012 by Town Manager John Petrin and asked to determine whether there was probable cause to initiate a formal investigation with appropriate notices to the subject(s) of the investigation.

The allegations of harassment were not brought forward by the alleged victim, [REDACTED], but, rather, by [REDACTED] Officer in Charge ("OIC") Sgt. Edward Pomponio ("Sgt. Pomponio") based on recent and past statements that [REDACTED] had made to him.

For the reasons described in this report, as well as facts and impressions gleaned from the entire scope of my investigation, including the position taken by the alleged victim, [REDACTED] I conclude that there is not probable cause to initiate a formal investigation and that this matter should be closed.

II. Scope

Based upon the nature of the conduct alleged, I have treated the allegations of "harassment" as sexual harassment or gender-based harassment, although neither [REDACTED] nor Sgt. Pomponio used the term "sexual harassment." I interviewed the key witnesses, Sgt. Pomponio and [REDACTED] and others who may have knowledge about the allegations, including members of the Command Staff, Chief Scott Rohmer ("Chief Rohmer" or "the Chief"), Lt. David Beaudoin ("Lt. Beaudoin"), Lt. Richard Briggs ("Lt. Briggs"), Sgt. Robert MacQuarrie ("Sgt. MacQuarrie"), Sgt. Greg Wildman ("Sgt. Wildman"), and the female civilian staff, Maureen Carmichael, Jaime Patriarca and Janice Neitz.

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In addition, I reviewed the following documents:

(1) Sgt. Pomponio's [REDACTED] Charge dated February 14, 2012; (2) [REDACTED] personnel file; (3) Town of Ashland's Sexual Harassment Policy; (4) Chief Rohmer's notes of his conversations with [REDACTED] on 12/23/11, 01/05/12, and 01/09/12; (5) Chief Rohmer's letter to [REDACTED] dated 01/20/12 requesting [REDACTED] cooperation in an investigation of statements [REDACTED] made about "being bullied, blackmailed and harassed"; (6) a "whistleblower" petition dated 01/23/11 signed by [REDACTED] and other officers alleging "major acts of misconduct" against Chief Rohmer, Lt. Beaudoin, and Sgt. Pomponio; (7) a letter from [REDACTED] dated 02/01/12 responding to and repudiating statements attributed to her in the Chief's 02/01/12 letter; (8) Lt. Brigg's report dated 12/21/12 concerning [REDACTED] and (9) an undelivered letter from [REDACTED] to Chief Rohmer dated 01/18/12 stating that [REDACTED] did not want to file a complaint against any member of the APD.

I informed each individual witness that I was acting as a neutral, independent investigator and that they had an obligation to the Town to tell the truth. I explained that while this matter was confidential and they should not discuss their interviews with anyone else, I would be reporting my findings to Ashland's outside counsel. Certain members of the patrol officer's union requested that they not be directly questioned about matters which could result in their discipline without union representation present and Lt. Briggs' made the same request with respect to his legal counsel. I agreed.

Key Witnesses Summaries

Sgt. Ed Pomponio

I met with Sgt. Pomponio for approximately two hours on March 22, 2012, in a conference room at Town Hall. He gave me a copy of his February 14, 2012, [REDACTED] charge (the "Pomponio Charge") naming [REDACTED]. The quotations in this section come from the Pomponio Charge.

Sgt. Pomponio joined the APD as a patrol officer in 2008. He was promoted to Provisional Sergeant on October 19, 2011 and became [REDACTED] OIC on the day shift. Sgt. Pomponio has known [REDACTED] his whole life as both grew up in Milford and considers [REDACTED] a friend. Sgt. Pomponio disclosed that he left his prior position as a sergeant in the Milford police department due to his affair with a female officer and has since strived to rehabilitate himself professionally and personally. When Sgt. Pomponio arrived in Ashland, [REDACTED] held the post of [REDACTED] and, in connection with his own community outreach role, Sgt. Pomponio worked with [REDACTED] at the [REDACTED] and mentored [REDACTED]. He observed that [REDACTED]

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██████████ was not treated well by some of the officers and that ██████████ had to have a "thick skin."

According to Sgt. Pomponio, he brought forward concerns about ██████████ because of an encounter he had with ██████████ in late December of 2011. He saw ██████████ in the dayroom, crying, shaking and apparently sick, holding ██████████ head and stomach. He asked if ██████████ was alright. ██████████ said that ██████████ was "upset about how ██████████ was treated and wanted to tell on people, but that (sic) could not say anything because in the past Officer Dionne had said to ██████████ you may have a file on us this big (gesturing small) but we have one on you that big (gesturing large)". ██████████ also said that Officer Dionne told ██████████ that if "you say anything, you could ruin five officers and their families." Officer Dionne is by all accounts closely aligned with Sgt. Greg Fawkes (Sgt. Fawkes) and has assumed the leadership role in the union.

The source of ██████████ distress that day was an investigation that Lt. Briggs had done accusing ██████████ of multiple misconducts based on ██████████ having briefly left town with a cruiser. His report was dated December 21, 2012 and ██████████ asked for and obtained a copy from the Chief's office. Sgt. Pomponio described the situation as a simple miscommunication which was unfairly escalated. According to Sgt. Pomponio, ██████████ on ██████████ duty at the time due to a ██████████ had told Sgt. Pomponio in the beginning of ██████████ shift that ██████████ needed to pick up a ██████████. He approved ██████████ request, assuming that ██████████ was going to the ██████████ in Ashland but instead ██████████ went to the ██████████ in Milford. When Lt. Briggs ordered Sgt. Pomponio to write a statement about the incident, he offered to provide verbal counsel to ██████████ but Lt. Briggs insisted on handling the matter.

During the December 2011 encounter in the dayroom, Sgt. Pomponio told ██████████ that ██████████ needed to report the problem ██████████ was having which was making ██████████ so upset. ██████████ "appeared to be frightened and didn't want to talk about it anymore." Sgt. Pomponio told ██████████ "I can't just let this go." Shortly after this exchange, ██████████ came back to speak with Sgt. Pomponio in the sergeant's office. He again encouraged ██████████ to take action. ██████████ was adamant about not wanting to take action and left the office appearing "extremely upset."

Following these two conversations with ██████████ Sgt. Pomponio, "[a]cting in what [he] believed to be in ██████████ best interest and knowing that ██████████ might be upset with [him]" for doing so, reported ██████████ statements about Officer Dionne's comments and ██████████ distress to Lt. Beaudoin, then to the Chief. At that time, Sgt. Pomponio also reported past statements made by ██████████ to him in 2009 or 2010 when he was a fellow patrol officer. These past statements described incidents of a sexual nature involving ██████████. Sgt. Pomponio "felt responsible" to forward ██████████ past disclosures because "it now related to

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this new possible issue mentioned by [REDACTED], and, as he stated to me, he was now a member of the Command staff and had a duty to report potential misconduct.

The most serious of [REDACTED] past statements was that [REDACTED] took [REDACTED] hand and placed it on his penis. [REDACTED] also made that same disclosure to two female APD civilian employees). With respect to [REDACTED], [REDACTED] had told Sgt. Pomponio that he hit [REDACTED] on the face with a hot dog at a police event barbeque causing [REDACTED] to cry and he was highly agitated afterwards. [REDACTED] also said that when he was a patrol officer, [REDACTED] had showed [REDACTED] two sexually explicit photographs. According to Sgt. Pomponio, he was "completely taken back" by these disclosures and had urged [REDACTED] to report the conduct at the time. [REDACTED] said [REDACTED] would not because "they know things about me" and [REDACTED] didn't want them "to ruin my life." [REDACTED] also declined then Officer Pomponio's offer to help [REDACTED] or speak with the Chief about it. [REDACTED] reiterated not wanting to pursue the issue but that "they better not try to hurt [REDACTED] career with all of the information [REDACTED] has on them."

At a January 12, 2012 Command Staff meeting, Chief Rohmer disclosed the issue involving [REDACTED] and a possible investigation. He issued orders to enforce a professional environment in the Department and convey zero tolerance for violations of the Town's Sexual Harassment policy. There were questions at this meeting by Sgt. Fawkes and Sgt. MacQuarrie whether [REDACTED] had actually reported sexual harassment to [REDACTED] OIC (Sgt. Pomponio). He denied that [REDACTED] had done so because the past incidents were disclosed when he was not [REDACTED] OIC and [REDACTED] had not used the term "sexual harassment" in describing the conduct. Sgt. Pomponio subsequently made his "Conduct Unbecoming" report describing all of [REDACTED] statements about [REDACTED] and [REDACTED].

I met with [REDACTED] on April 11, 2012 at the offices of Mirick O'Connell. [REDACTED] was represented by Tim King, Esq., of the Massachusetts Coalition of Police AFL-CIO, Council 351 ("MassCop"). The interview lasted about 2 ½ hours. On May 30, 2011, I conducted a follow-up interview with [REDACTED] at the office of Attorney Jon Ceraulo, who had been hired by MassCop to serve as independent counsel for [REDACTED].

[REDACTED] joined the APD in 2004. Between 1999 and 2004, [REDACTED] worked in the Milford Police Department as a dispatcher, then auxiliary officer, then full patrol officer. [REDACTED] graduated from the police academy in 2003. [REDACTED] resigned from the Milford Police department to care for [REDACTED] a family member in 2004. [REDACTED] returned to work for the RMV in Framingham and, later that year, Chief Melnick recruited [REDACTED] to join the APD.

[REDACTED] was hired as Ashland's [REDACTED] replacing two officers who held the post. [REDACTED] reported that [REDACTED] loved the job, and that it was [REDACTED] "dream job" because [REDACTED] was drawn

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to helping troubled youth (█████ had worked at █████ for a period) and it was a Monday-Friday day shift. █████ held the job for 8 years, and had received special training to team the program. █████ was removed from the special post late last year.

Asked about Lt. Briggs' investigation of █████ his past December, █████ became upset and said that he had brought "serious charges" against █████ which were "bullshit", stating that other officers leave town for a cup of coffee without reprimand and █████ heeded █████ and █████ arm brace and had permission to get both. █████ added that █████ has been assured that Lt. Briggs was no longer pursuing the matter, but █████ was obviously still quite bothered by it.

█████ agreed with Sgt. Pomponio's account in two respects. First, █████ agrees █████ was in a distressed state over Lt. Briggs' investigation when █████ talked with Sgt. Pomponio in the day room in December of 2011. The reason █████ was upset was because "my peers were ganging up on me". █████ said, "Kavanaugh (who initially reported █████ leaving town with the cruiser) and his little group wanted to reprimand me." █████ identified the "group" as Officers Muri, Dionne, Alberini and Sgts. Fawkes and Wildman. Asked why they would want to get █████ in trouble, █████ said █████ didn't know. Second, █████ agreed that █████ told Sgt. Pomponio about Officer Dionne's comment about having a bigger file on █████ than █████ had on them, but said that █████ had misunderstand the comment and that Officer Dionne had recently assured █████ that it was a joke and there was no file on █████ denied telling Sgt. Pomponio that Officer Dionne had also said that █████ could ruin five officers and their families. █████ said █████ had used those words but Officer Dionne had not. █████ said that Sgt. Pomponio agreed that the Briggs' report was "bullshit." He told █████ that these guys were trying to hurt both of them and he said "let's get these guys".

After speaking with Sgt. Pomponio, █████ went to talk to the Chief about Lt. Briggs' investigation of █████ At this meeting which, according to Chief Rohmer's notes, occurred on December 23, 2012, █████ learned that Sgt. Pomponio had told the Chief about their recent conversation in the dayroom and had also told him of █████ past disclosures. According to █████ the Chief said that he had heard that that █████ was being harassed and subjected to inappropriate behavior. The Chief said it was "classic sexual harassment" and encouraged █████ to come forward. █████ indicated █████ immediately blamed Sgt. Pomponio and was upset that he had talked to the Chief. In █████ letter of January 20, 2012, █████ denied that █████ complained directly to the Chief █████ about █████ treatment but, in █████ first interview with me, █████ did not disagree with Chief Rohmer notes reflecting that █████ told him █████ was "being bullied, being blackmailed [and] that there was inappropriate behavior going on around here."

Throughout both interviews, █████ repeatedly lashed out at Sgt. Pomponio complaining that he had "betrayed █████ confidence," and that he was "using █████ as a vehicle to get rid of the men who were trying to get him fired" (a reference to what █████ believed to be

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a serious charge pending against Sgt. Pomponio). [REDACTED] claimed to be afraid of Sgt. Pomponio, but I did not find that claim to be credible.

[REDACTED] emphasized that the incidents [REDACTED] had told Sgt. Pomponio about were in the past and were "stupidity," "jokes" and [REDACTED] hadn't been offended. Asked about the specific past incidents [REDACTED] allegedly disclosed to Sgt. Pomponio which were described in the Pomponio Charge, [REDACTED] did not deny the incidents completely but described them more benignly. [REDACTED] said that [REDACTED] was "fooling around" with hot dogs at the Cape Cod police event and hit male officers on the face, including Chief Melnick and Officer Minehan, before he started on [REDACTED]. When asked further questions, however, [REDACTED] conceded [REDACTED] was humiliated, felt disrespected as a [REDACTED] and began crying. [REDACTED] described [REDACTED] post-incident conversation with [REDACTED] as him apologizing profusely and saying he was wrong to disrespect [REDACTED] as a [REDACTED]. [REDACTED] denied that [REDACTED] showed her a photograph of his penis and said that a random penis picture was floating around the station at some point. [REDACTED] said that he had shown [REDACTED] a photograph of a "dominatrix" and laughed it off as a joke.

[REDACTED] denied that [REDACTED] made [REDACTED] touch his penis, scoffing about the allegation indicating that [REDACTED] would never let that happen. [REDACTED] said a group of officers had been sitting around at lunch in the roll call room discussing whether Italian or Irish had bigger penises. [REDACTED] said, [REDACTED] who is Irish, reached over to take [REDACTED] hand and [REDACTED] yanked it back.

According to [REDACTED] in early January, Chief Rohmer pressured [REDACTED] file a sexual harassment complaint and ultimately ordered [REDACTED] to do so. At that time, [REDACTED] left the department "hysterically crying," totaled [REDACTED] and [REDACTED].

[REDACTED] gave me a letter [REDACTED] wrote to Chief Rohmer dated January 18, 2012. The letter referenced their conversation the prior week about [REDACTED] "private talk with Ed Pomponio" and stated that [REDACTED] did not want to file a complaint against anyone in the APD. [REDACTED] gave it to Officer Dionne and he apparently did not deliver it because it wasn't detailed enough.

[REDACTED] wrote a second letter to the Town Manager dated February 1, 2012 responding to the Chief's letter of January 20, 2012 asking for [REDACTED] cooperation in a investigation of [REDACTED] statements about being "bullied, blackmailed, harassed," on which letter the Town Manager was copied. [REDACTED] stated:

I would like to be clear regarding this on going situation in response to Chief Scott Rohmer's letter of request.

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I understand that the Chief has heard some information from Sergeant Edward Pomponio that he interpreted as harassment and bullying.

I did share some old information with Sgt. Pomponio from the department in confidence, over a year ago. I never intended for those stories to be brought to the Chief's attention as official allegations nor complaints. Sgt. Pomponio stated to me *"He would never repeat any information I shared with him **without my permission.**"*

Although we have a joking locker room atmosphere within the Police Department, there was never anything that I felt I couldn't take care of on my own. The information that the Chief referred to, were things that happened more than 2-3 years ago. I did not report any incidents because in my opinion there were no incidents that rose to the level of seriousness or concern. If I felt at all that I was being harassed and or bullied at that time, I would have come forward with any sort of information immediately.

In my opinion, I feel Sgt. Pomponio clearly had his own agenda in this situation because they were investigating him for a different complaint that had nothing to do with me. Sgt. Pomponio stated to me *"These guys are out to get my stripes and you (meaning me), think about coming forward, I will help you and the chief will help you as well". "We need to get rid of these guys".* However, these are the same colleagues that he felt were some of the problems.

Since [REDACTED] has signed a January 23, 2012 whistleblower petition to the Town Manager against Chief Rohmer, Lt. Beaudoin and Sgt. Pomponio which Sgt. Fawkes and Sgt. MacQuarrie brought to [REDACTED] Officer Dionne asked [REDACTED] to go to the union meeting for a "no-confidence" vote against the Chief and [REDACTED] declined because [REDACTED] was "too stressed out."

Chief Rohmer

I met with Chief Rohmer on Friday, April 13, 2012 at the Ashland Library and reviewed his contemporaneous notes of three conversations he had with [REDACTED] on December 23, 2011, January 5, 2012 and January 9, 2012. According to the Chief, [REDACTED] made similar statements to him in response to the Briggs investigation which he described as [REDACTED] being bullied, being blackmailed [and] that there was inappropriate behavior going on around here." It is also clear from his accounts of his

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conversations with [REDACTED] during this period that [REDACTED] was distraught, crying, feeling high stress and being pulled in different directions. [REDACTED] expressed both resentment towards Officer Dionne suddenly being solicitous of [REDACTED] distrust of the union and not wanting to get people in trouble. [REDACTED] also expressed anger to the Chief that Sgt. Pomponio had betrayed [REDACTED] confidence and was adamant then that [REDACTED] did not want to pursue a complaint.

Conclusions and Findings

1. It is undisputed that in late December 2011, [REDACTED] was highly distraught that Lt. Briggs had written [REDACTED] up. [REDACTED] believes that he had grossly exaggerated a minor infraction routinely overlooked with others into serious charges intending serious discipline.
2. I find that in [REDACTED] distraught state about the Briggs report, [REDACTED] made vague statements to Sgt. Pomponio suggesting that [REDACTED] wanted to reveal misconduct by Lt. Briggs's allies but had been warned by Officer Dionne to keep quiet because they knew negative information about [REDACTED]. I find that [REDACTED] made a similar statement about not wanting to complain for that reason when [REDACTED] previously told Sgt. Pomponio of the past incidents of a sexual nature and he had urged [REDACTED] to report them.
3. I find that Sgt. Pomponio reasonably believed that [REDACTED]'s references to Briggs's allies was a reference to the inappropriate conduct of a sexual nature that [REDACTED] had previously complained to Sgt. Pomponio about.
4. I find that that Sgt. Pomponio reported [REDACTED] recent and past statements because, as [REDACTED] friend, he genuinely wanted to help [REDACTED] and, as [REDACTED] OIC, he believed he had a duty to report what appeared to be harassment and retaliation. However, it is also clear that the fact that [REDACTED] alleged harassers were the same officers opposing Chief Rohmer and Sgt. Pomponio in an underlying power struggle occurring simultaneously. This created the opportunity for Sgt. Pomponio's detractors to cast him as opportunistically using the complaints to further his own agenda. This is the motive that [REDACTED] ascribes to Sgt. Pomponio.
5. I find also that in late December 2011, [REDACTED] made statements to Chief Rohmer similar to those [REDACTED] made to Sgt. Pomponio, specifically that [REDACTED] had wanted to report inappropriate conduct in response to the Briggs investigation but that [REDACTED] feared retribution. However, after [REDACTED] learned that Sgt. Pomponio had reported [REDACTED] past statements to the Chief, and after the Chief urged her to file sexual harassment charges, [REDACTED] became extremely agitated and felt undue pressure to act against [REDACTED] will. I find that [REDACTED] then aligned [REDACTED] with the officers named in the Pomponio Charge and blamed Sgt. Pomponio for creating this ordeal for [REDACTED].

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6. There is insufficient evidence to conclude that [REDACTED] has been subjected to sexual harassment in violation of Ashland's Sexual Harassment policy or the law. The policy describes sexual harassment as "behavior which is not welcomed by the employee, which is personally offensive to him or her, and which undermines morale and /or interferes with the ability of the employee to work effectively." Under the legal standard, hostile environment sexual harassment is

"sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when . . . such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment".

See MCAD Guidelines for Sexual Harassment.

[REDACTED] repeatedly and forcefully maintains that [REDACTED] ever wanted to report the incidents. [REDACTED] privately told Sgt. Pomponio about [REDACTED] downplays the past incidents as joking around which did not offend [REDACTED] denies that any actual touching with [REDACTED] occurred and describes the incidents with [REDACTED] as isolated and benign. In this context, the incidents would not rise to the level of a violation or policy or law as they were not unwelcome and/or not severe or pervasive.

7. Nor is there sufficient evidence that Officer Dionne engaged in unlawful retaliation by his past statement to [REDACTED] suggesting the release of damaging information about [REDACTED] if [REDACTED] reported inappropriate behavior by his friends. [REDACTED] says that [REDACTED] misunderstood and that Officer Dionne's comment was merely a joke. [REDACTED] says [REDACTED] was the one to voice a concern about hurting other officers and their families over trivial past behavior. It may well be that [REDACTED] decision to not complain was a decision to pick [REDACTED] battles and, without [REDACTED] corroboration of a specific threat or warning, there cannot be a finding of retaliation.

Conclusion

Sexual harassment laws are not intended to purify the workplace of any sexual references or even conduct of a sexual nature; they are intended to eliminate the gender bias which occurs when sexual references or conduct of a sexual nature is severe or frequent enough to deny women equal opportunity in the workplace. It appears that [REDACTED] made disclosures to [REDACTED] friends about incidents of a sexual nature not because [REDACTED] believed that the incidents were hurting [REDACTED] career, but because [REDACTED] believed that those acts would be embarrassing to the actors and [REDACTED] potential disclosure of them would deter them from causing [REDACTED] problems in the workplace in the

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future. [REDACTED] clearly and reasonably perceived the Briggs report as an effort to harm [REDACTED] career. I make no findings in this report as to his motive for doing so.

Accordingly, I find no probable cause to initiate a formal investigation because there is insufficient evidence to establish a violation of the Town's Sexual Harassment Policy or the law.

/s/ Jody L. Newman
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