

Officer Jenison's Resignation and Severance Agreement Frequently Asked Questions

This list compiles those questions asked most frequently regarding the Resignation and Severance Agreement with former Officer Clayton Jenison.

Do you have any comment on Judge Mason's March 2021 ruling that Officer Jenison's Resignation and Severance Agreement is an open record?

The City considered Officer Clayton Jenison's Resignation and Severance Agreement to be a personnel record under Kansas law, and historically has not released its employee's personnel records unless required by law. Judge Mason, after acknowledging that no court had determined whether such an agreement must be disclosed to the public, concluded the agreement must be disclosed.

The City respects the Court's decision and in accordance with its ruling the City has released the Resignation and Severance Agreement between Clayton Jenison and the City of Overland Park with the Court-approved redactions.

Why did Officer Jenison receive severance as part of his resignation agreement?

The City did not have a legal basis to fire Officer Clayton Jenison, yet the City Manager, Police Chief and Officer Jenison felt it was in the best interest of the community for him to voluntarily resign from the Overland Park Police Department. The incident was understandably high-profile and Officer Jenison would not have been able to continue serving the community effectively.

If a City fires an employee without due legal cause, the City could be subject to a lawsuit that results in the employee being retained. The Resignation and Severance Agreement allowed the City to end the relationship quickly and decisively without a lawsuit, which could have resulted in Officer Jenison remaining an employee of the City and additional costs of litigation.

Why didn't the City release Officer Jenison's resignation agreement?

The City considered Officer Jenison's resignation agreement to be a personnel record, which under state law is exempt from disclosure under the Kansas' Open Records Act. The City does not release any current or former employee's personnel records. State law allows the City to

keep these records confidential for the purpose of protecting employee's privacy interests, save personal reputations, and encourage qualified people to remain in and seek government employment. Judge Mason for the first time in Kansas ruled that the resignation agreement was a type of employee agreement that must be disclosed.

The City Council was notified of the Resignation and Severance Agreement in two separate Council meetings: April 2018 and June 2020. Additionally, the existence of the resignation agreement was acknowledged in the response to various records requests starting in 2018 and, in fact, the document was the subject of litigation and news coverage in 2019.

In line with past practice, the City did not send out a news release about the Resignation and Severance Agreement. The City did not directly talk with the Albers family about the Resignation and Severance Agreement because it was a personnel matter and the City had received notice of a potential lawsuit by the Albers against the City.

After a March 2021 court ruling that the agreement must be disclosed to the public, the City has released the agreement.

Who cleared Officer Jenison of criminal and policy wrongdoing?

In cases like this, the District Attorney's office convenes its Officer Involved Shooting Investigation Team (OISIT), a group of outside law enforcement investigators commissioned by the DA to investigate officer-involved shootings. No Overland Park Police Officers participated in this OISIT Team investigation. OISIT's investigation report was referred to the DA's office and the DA determined there would be no criminal charges.

Based on an Internal Affairs' review, Police Chief Frank Donchez found no violation of the law or policy. The use-of-force policy in effect at that time stated that "Officers will not discharge a firearm at or from a moving vehicle except in self-defense or defense of another and when the suspect is using deadly force."

In addition, the Kansas Commission on Peace Officers' Standards and Training (CPOST) undertook an independent investigation. CPOST presented its investigation to the Commission Investigative Committee who closed the matter with no action or recommendation.

To summarize, there have been three separate determinations about Jenison's use of force: the District Attorney's conclusion that there was no probable cause that Clayton Jenison used

excessive force in violation of state law; Chief Donchez's conclusion that Clayton Jenison did not violate a City policy, and CPOST's subsequent decision to take no action.

Why didn't the City reach out more to the Albers family after the incident?

The Police Department did speak to the family the night of the incident. However, the City was sent a notice two days after the incident indicating the possibility of a lawsuit by the family, which significantly limited our ability to speak with the family about the incident. That is standard with pending litigation. In addition, this was a personnel matter, which is not discussed publicly.

What has the city done, if anything, in response to the incident?

- Creation of Mental Health Task Force
- Expansion of Crisis Intervention Team training for all OPPD officers
- More Crisis Intervention Team positions funded
- Response to Resistance policy changes bans officers from shooting at a moving vehicle; updated twice since John's death.
- Addition of a JoCo Mental Health Co-responder in 2021 budget bringing the total number to three.

Who all knew about the agreement and any non-disclosure?

In April of 2018, the City Manager discussed the Agreement during his review so the City Council was aware at that time. In addition, the Police Chief, Human Resources, the Deputy City Manager and the City's legal staff were aware early on.

Mark Schmid, who later claimed to be a family friend of the Albers, submitted a KORA request in July of 2018 and the City responded acknowledging possession of the Agreement. Thus, the City assumes Schmid and the Albers family were aware of the Agreement at the time. (The City was in litigation with the Albers family at this time. The City received notice of a potential lawsuit by the Albers on January 22, 2018, the Albers filed a lawsuit against the City on April 17, 2018, and that litigation lasted until January 2019. In addition to not discussing employment matters, during litigation the City typically doesn't discuss the subject matter of a lawsuit with the parties suing the City or the public.)

Again - there was no non-disclosure agreement limiting what Jenison could say or documents he could release. In the Agreement, the City agreed to follow its standard practice of not disclosing Jenison's personnel records that were not required to be disclosed by law. At the time the City considered the Agreement to be such a record.

When did the police Chief know about the resignation agreement?

The Police Chief was aware of the City Manager's analysis of the situation early on but was not intimately involved in the discussions. The Police Chief did not communicate with Officer Jenison about the agreement or encourage him to enter into it.

Did Officer Jenison approach the city or did the city initiate the deal with Officer Jenison?

The City felt it was in the best interest of the community that Jenison no longer be an officer in our community. With no just cause to terminate Officer Jenison, the City approached Jenison through his attorney to initiate a discussion. Ultimately, the terms were mutually negotiated.

Why didn't the City just terminate Officer Jenison instead of entering the agreement?

The only way to guarantee that Officer Jenison did not remain an Overland Park police officer was for him to resign. There was no legal basis to terminate Officer Jenison's employment. If the City would've attempted to fire Jenison, he could have appealed that decision to the independent Civil Service Commission, which had the authority to rule that there was no cause to terminate and reinstate him.

At the time the City entered the agreement with Jenison, Chief Donchez had reviewed the Internal Affairs summary and review of the incident and concluded Jenison didn't violate the existing response to resistance policy, and the District Attorney had informed the City he had concluded his investigation. The City believed based on relevant information, to include the fact that no warrant had been issued for Jenison's arrest, that the DA would not bring criminal charges against Jenison. Therefore, the City had no legal grounds for terminating Jenison, and any attempted termination would present a strong case for the Civil Service Commission to reverse that decision. The other risk was that Jenison could sue the City requiring an inordinate amount of City staff time and taxpayer dollars to defend. Therefore, his resignation was the most viable option for all parties. The only way to guarantee that Officer Jenison did not remain an Overland Park police officer was for him to resign.

Was Officer Jenison allowed to keep his license as a police officer? If so, why?

CPOST, not the City, controls licensing of police officers in Kansas. When an officer separates from employment with a Police Department, [CPOST Form CR304](#) provides Police Departments with four options for reporting the circumstances of the separation:

- 1) voluntary resignation where officer resigns for personal or professional reasons and not to avoid potential disciplinary or adverse employment action,
- 2) voluntary resignation where officer resigns while being investigated or investigative, disciplinary, or legal action was being contemplated,
- 3) involuntary resignation where officer is offered the opportunity to resign to avoid potential disciplinary or adverse employment or legal action, or
- 4) involuntary termination.

Officer Jenison was not terminated but instead voluntarily resigned; he was not being investigated when he entered the resignation agreement on February 15, 2018 (*on February 2, 2018, Internal Affairs provided a summary of events and review of the incident to Chief Donchez, who concluded there was no violation of the law or policy; on February 13, 2018, the District Attorney informed Command Staff of the Police Department that his office had concluded its criminal investigation into the shooting*); the City was not contemplating potential disciplinary or adverse employment action because it had no basis for such action; and the City was not contemplating and had no knowledge that any other agency was contemplating any investigative, disciplinary, or legal actions against Officer Jenison when he resigned.

On December 4, 2019, Chief Donchez received a letter from CPOST regarding an investigation into Officer Jenison's resignation. On March 4, 2020, the Disposition Report was presented to the CPOST Investigative Committee and they closed the matter with no further action.

Please complete the following termination report as adopted by the KS-CPOST Executive Director on March 1, 2012 in accordance with K.S.A 74-5611a(d).

Note: K.S.A. 74-5611a(d) mandates that "the agency head shall include a report explaining the circumstances under which the officer resigned or was terminated."

K.S.A. 74-5611a(e)(1) further states that the agency, agency head and any officer or employee of the agency shall be absolutely immune from civil liability for the report made in accordance with K.S.A. 74-5611a(d).

Effective Date of Termination or Separation from Employment: _____ MM-DD-YYYY

Reason (Please Check Only One):

- Voluntary Resignation (Under Ordinary Circumstances) (C):** Officer resigned for personal or professional reasons and not to avoid potential disciplinary or adverse employment action.
- Voluntary Resignation (Under Questionable Circumstances) (I):** Officer resigned while being investigated or investigative, disciplinary, or legal action was being contemplated.
- Involuntary Negotiated Resignation (I):** Officer was offered the opportunity to resign to avoid potential disciplinary or adverse employment or legal action.
- Termination (I) :** Officer's employment was terminated involuntarily.

Complete the following for all above "I" code termination or separation reasons. (Check all that apply)

- Performance Issue(s)
- Possible Training Act Violation(s) (K.S.A. 74-5605 and 74-5616)
- Internal Investigation
- Other

Please give a brief description (attach a letter if more room is needed): _____

Please provide the officer's last known address and phone number: _____

Other: Please specify by selecting one of the choices below

- | | |
|---|--|
| <input type="checkbox"/> Medical Leave (O) | <input type="checkbox"/> Retired (E) |
| <input type="checkbox"/> Military Leave (S) | <input type="checkbox"/> Killed in the Line of Duty (M) |
| <input type="checkbox"/> Other Leave (S) Please Specify:
_____ | <input type="checkbox"/> Died Other Than in the Line of Duty (Q) |
| | <input type="checkbox"/> Medical Resignation (K) |

Note: Information requested in Box 4 must be disclosed pursuant to KSA 74-5611a(d), effective July 1, 2004.

Name Change**Box 5**

Please change the Law Enforcement Officer's name to:

Last_____
First_____
MI

(Note: Please provide official documentation reflecting the name change, i.e. Driver's License, Social Security Card, Marriage Certificate, Court Order, etc.)

Rank or Title Change**Box 6**

Please Change the Law Enforcement Officer's Rank or Title to:

Effective Date of Change: _____

MM-DD-YYYY

Agency Head/Appointing Authority Signature**Box 7**

Name of Agency Head/Appointing Authority: _____

Title of Agency Head/Appointing Authority: _____

By signing my name below, I certify under penalty of perjury that there are no willful misrepresentations, omissions, or falsifications in the information provided on this form.

Signature of Agency Head/Appointing Authority_____
Date

Mail Completed Form To:

Central Registry Manager
KSCPOST
1999 N Amidon Ste 350
Wichita, KS 67203

**"Defenders of
Integrity and Truth"**

Or fax:

(316) 832-9679