

# TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N. LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

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STEVEN C. McCRAW  
DIRECTOR  
DAVID G. BAKER  
CHERYL MacBRIDE  
DEPUTY DIRECTORS

CRIME LABORATORY SERVICE MSC 0460

P.O. BOX 4143  
AUSTIN, TEXAS 78765-4143  
512/424-2105



January 11, 2012

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Buddy Meyer  
Assistant District Attorney  
Travis County District Attorney's Office  
PO Box 1748  
Austin, TX 78767

Dear Mr. Meyer:

This letter is to complete the report of my investigation into the complaint by Debra Stephens dated December 27, 2011, against the Austin Police Department (PD) Forensic Laboratory. This report supplements my letter to you dated January 6, 2012.

This report will focus on the following issues related to the Austin PD lab practice of issuing "preliminary results" on controlled substance cases. Those issues include:

- 1) Were Austin PD lab policies followed regarding the sufficiency of the testing performed prior to release of the preliminary results?
- 2) Were Austin PD lab policies followed regarding the review of test results prior to release of the preliminary results?
- 3) Were accreditation requirements regarding sufficiency of testing followed prior to the release of preliminary results?
- 4) Were accreditation requirements regarding case review followed prior to releasing preliminary results?

To adequately answer these questions, I contacted and visited the Austin PD laboratory on January 10; meeting with Lab Director Bill Gibbens, Quality Assurance Manager Tony Arnold and others. The visit was to obtain the Austin PD lab policies regarding testing and review requirements they had affecting testing controlled substance evidence and issuing preliminary results to the police investigator. Note that in the Austin PD lab, policies change over time; therefore, each revision of a policy has a version number, which is the date it went into effect. Also during this visit, the complete case records were reviewed on four drug cases.

Question 1: The only written policy the Austin PD lab provided regarding preliminary reports deals with the review required. This policy commenced February 15, 2009. No policy addressed the required level of testing of the drugs prior to issuing preliminary results. Upon interviewing two drug analysts, it appeared that the practice was that a drug exhibit would undergo preliminary tests prior to the issuance of preliminary results. Then, later, usually within ten days, the remaining testing of the evidence would be completed, documented, reviewed and the lab report issued. Without having a written policy, it was not possible to evaluate whether the analysts were meeting the requirements of that policy. We were advised that current practice is to no longer issue preliminary results, but to complete the full analysis of drugs and then follow policy in issuance of the full laboratory report.

On case #L100183, additional records were provided that reflected that some testing was conducted on January 31, 2010; including identification of Codeine in exhibit #11. Documented records of testing of the Cocaine exhibits commence on February 1, 2010. Note that it was reported by the two drug analysts that presumptive chemical tests on drug items on rush cases were not always documented on the day they were performed, but may be entered into the LIMS on a later date. For this case, the weights of the Cocaine exhibits were recorded on February 3, 2010 and spot tests recorded in the LIMS on February 8, 2010. Instrumental tests on the Cocaine exhibits were conducted on February 1 – February 2, 2010.

On Case #L1006319, all documentation of testing was dated on June 9, 2010. The records reflect that the GC/MS testing was conducted on instrument #1. It would normally be possible to go back to the computer on a GC/MS instrument to confirm that a GC/MS was performed on the exhibits on this case on the May 30, 2010 date of the preliminary results notice. However, this GC/MS instrument has been taken out of service since that date. Analysts can only presume that those tests were performed on that date, then re-run on June 9, 2010; overwriting the original test record.

Question 2: The Austin PD lab policy regarding case file review that went into effect February 15, 2009, states "All preliminary reports issued to a detective for filing of charges may be administratively reviewed by the analyst and stated so in the preliminary report". The policy further states that "the supervisor is responsible for ensuring that 75% of cases are technically reviewed". This later policy apparently relates, however, to cases in which a final full lab report is being issued; not a preliminary result.

To answer this question, records on four cases were reviewed: Case #L1001183; #L0807444; #L1006319 and #L1001182. Note that Austin PD lab case files are all stored electronically within their laboratory information management system (LIMS). These case records reflect on the preliminary results document that the report was administratively reviewed by the analyst who conducted the analysis. Therefore, the staff was meeting the lab's policy on three of these cases that were examined during 2010. The policy in effect in 2008, when case #L0807444 was worked, did not require a review; however, the preliminary results document reported that this case was administratively reviewed.

Questions 3 & 4: The Austin PD lab is accredited by ASCLD/LAB under their Legacy program, not their International or ISO 17025 program. The Legacy program prescribes requirements for testing, records, and reviews before issuing a full laboratory report, but does not state requirements for issuing preliminary results. In the International program, it is permissible to issue preliminary results as long as those notices are recorded; which Austin PD lab was doing. This means the Austin PD lab was not meeting all of the Legacy standard 1.4.2.17 for sufficiency of examination documents on the date preliminary results were issued, but that is not required. They did meet this standard by the date the final lab report was issued. It is significant to note that the records show that final reports on all but one of the drug cases in the list of cases provided by Ms. Stephens were issued within ten days of the preliminary result notices.

Finally, I wish to correct the last paragraph in my letter dated January 6, 2012. The Austin PD lab refers to its communication on rush cases as preliminary results. That is appropriate and already differentiates the document from a laboratory report. Also, under the ASCLD/LAB Legacy Accreditation program, under which Austin PD lab is accredited, the examining analyst on a case may still perform the administrative review of their case.

Sincerely,



D. Pat Johnson  
Deputy Assistant Director  
Crime Lab