



DIVISION OF POLICE

DATE: April 30, 2020

TO: Chief of Police Calvin D. Williams

FROM: Inspector General Christopher Paul Viland, Esq., CIG®, #3700

SUBJECT: Review and Analysis of Current Division Bias-Free Policing Policy for Compliance with Standards Set by the Ohio Collaborative Community-Police Advisory Board

Sir,

This memorandum has been prepared to serve informationally as guidance when determining whether current City of Cleveland, Division of Police (the Division) policy regarding bias-free policing meets a standard that has been set and published by the Ohio Collaborative Community-Police Advisory Board (the Collaborative).

In 2017, the Collaborative established a standard regarding bias-free policingⁱ which has been published and is deemed a mandatory consideration for compliance with Collaborative review and assessment, should an Ohio law enforcement agency voluntarily enter into that process. The Division is currently not participating in that process.

In February of 2018, in concert with the United States Department of Justice (the DOJ) as part of a Settlement Agreementⁱⁱ, the Division promulgated an updated policy dedicated specifically to bias-free policing procedures to be used by Division membersⁱⁱⁱ. That policy has been vetted and supported by the DOJ and approved by the Federal court^{iv}.

As a preliminary matter, it must be noted that compliance with Collaborative standards is not mandatory at this time. Additionally, current policy has been developed with stakeholder input and in cooperation with the DOJ as filed with the court, seeming to obviate any need to meet any other or unessential standards. Nonetheless, this review is being presented as part of a series of informational memoranda detailing compliance with various Ohio Collaborative standards.

In the alternative, this information may be utilized as needed by the Division in any instance where an explanation may be necessary in demonstrating where and why the Division's policy is or is not fully compliant with standards outside the scope of the considerations of the Division, its stakeholders, and the DOJ.

To restate, however, this memorandum is a review specifically of how current Division policy complies with standards promulgated by the Collaborative. It is **not** a review of best practices or recommendations for improvements to policy or procedure otherwise.

Ohio Collaborative Standard 3.2017.6, regarding bias-free policing requires that a local law enforcement agency include in policy written statements that support the guiding principles espoused in the standard. Additionally, the standard requires that written policy provide for: training on bias based profiling issues and relevant legal aspects, corrective measures to address violations of the policy to include supervisory review and disciplinary actions, data collection on all self-initiated traffic stops, and an annual administrative review that is made available to the public^v. Compliance determinations broken down by section follow below:

STANDARD 3.2017.6 Guiding Principles

The Collaborative standard's guiding principles statement regarding bias-free policing is re-stated below point by point:

1. Criminal profiling can be a useful tool for law enforcement in carrying out their duties.
2. Officers shall not consider race/ethnicity to establish reasonable suspicion or probable cause, except that officers may take into account the reported race/ethnicity of a potential suspect(s) based on trustworthy, locally relevant information that links a person of a specific race/ethnicity to a particular unlawful incident(s).
3. Law enforcement agencies should prohibit the use of any bias based profiling in its enforcement programs, as it may lead to violations of the constitutional rights of the citizens, undermine legitimate law enforcement efforts and may lead to claims of civil rights violations.
4. Bias based profiling alienates citizens, fosters distrust of law enforcement by the community, and may result in media scrutiny, legislative action, and judicial intervention.
5. Law enforcement personnel should focus on a person's conduct or other specific information.
6. Annually, the agency should include profiling related training that should include field contacts, traffic stops, search issues, asset seizure and forfeiture, interview techniques, cultural diversity, discrimination and community support.^{vi}

While the Division's current bias-free policing policy is comprehensive and encompasses the great majority of Collaborative guiding principles, in some cases more comprehensively, there is no explicit policy statement equivalent to number 1 above that acknowledges that valid criminal profiling can be a useful tool for law enforcement.

Similarly, while this Division policy specifically prohibits bias based policing^{vii} and further defines bias based policing as when "that action or decision is motivated by discrimination on the basis of an individual's demographic category"^{viii}, there is no explicit statement in it equivalent to the portion of number 2 above that recognizes that reported demographic information **may** be considered by officers when valid, relevant race/ethnicity

information is linked to a specific incident (i.e. the physical description of a witnessed or known suspect). That specific guidance and procedure are, however, a part of separate Division policy on investigative stops, also referred to in below sections^{ix}.

It also must be recognized that the Division goes beyond the Collaborative standard when dealing with those who may be directly affected. The standard speaks specifically to race/ethnicity. The Division, however, has been much more all-inclusive by prohibiting bias based on “demographic category” which includes such possible additional factors as: national origin, age, gender expression or identity, sexual orientation, disability, religion or limited English proficiency.^x

As stated above, the Division’s current policy does prohibit bias based profiling in its systems (including: management, policies and procedures, job descriptions, recruitment, training, personnel evaluations, resource deployment, tactics and accountability systems)^{xi}, specifically acknowledging that such actions undermine the Division’s ability to enforce the law^{xii}, although there is no specific explicit mention that bias based policing can lead to violations of constitutional rights or claims of civil rights violations.

Current Division policy absolutely acknowledges that bias based profiling alienates citizens by degrading the public’s confidence in the Division and affects community engagement, trust and confidence as well as specifically fostering distrust in the community^{xiii}. There is, however, no explicit statement that bias based policing may result in media scrutiny, legislative action or judicial intervention.

In accordance with a Collaborative guiding principle, Division policy requires officers to make law enforcement decision “based upon observed behavior”, and relying on information that is “accurate, specific, and free from bias”.^{xiv}

And, finally, Division policy does require annual in-service training for officers that includes, but is not limited to implicit bias, procedural justice, constitutional and legal requirements and cultural competency^{xv}, although there is no specific requirement that the training include the topics of field contacts, traffic stops, search issues, asset seizure and forfeiture, and interview techniques. These topics are recommended by the Collaborative and are not considered strictly mandatory in the standard.

To the extent detailed above, the current Division Bias-Free Policing policy does contain policy statements in support of the Collaborative standard guiding principles and in compliance therewith.

STANDARD 3.2017.6 Requirement Regarding Training

The Collaborative standard requires a written policy statement regarding training on bias based profiling issues and relevant legal aspects.

As stated above, current Division policy requires annual in-service training on bias related issues and relevant legal aspects.^{xvi} Additionally, at a higher standard than presented by

the Collaborative, the current policy requires supplemental training specific to supervisory staff.^{xvii} Division policy is fully compliant with this provision of the Collaborative standard.

STANDARD 3.2017.6 Requirement Regarding Corrective Measures

The Collaborative standard requires a written policy statement mandating corrective measures for violations of the policy which include supervisory review and disciplinary actions.

Current Division policy devotes an entire procedural section to the reporting of bias-based policing incidents.^{xviii} This section details what is expected from any member when a person wants to make a complaint of bias-based policing; it details that in-person supervisory response is required and what is expected of supervisory staff; and it details the expectations and protections for officers and employees who report bias-based policing that they become aware of.

Current policy is explicit that employees who engage in bias-based policing, employees who fail to report bias-based policing, and supervisors who fail to address reports of bias-based policing are all subject to the Division's disciplinary processes^{xix}. Division policy is fully compliant with this provision of the Collaborative standard.

STANDARD 3.2017.6 Requirement Regarding Data Collection

The Collaborative standard maintains that agency written policy requires the collection of data on all self-initiated traffic stops (including driver race and gender).

The Division Office of Inspector General (OIG) can find no current guidance defining the Collaborative term "self-initiated traffic stop". The Division does define and use the term "investigatory stop", including the clarification that vehicle stops for traffic code violations are **not** to be considered investigatory stops^{xx}.

Current Division Bias-Free Policing policy is silent as to data collection. Separate Division policy specific to Investigatory Stops, however, provides specific direction and requirements for the Division's collection of data sets in investigatory stop situations^{xxi}. These data sets go beyond simply race and gender and additionally include, for example: location, passengers, any request that occupants exit the vehicle, basis for the stop, existence of consent, frisks, contraband or evidence seized, and dispositions^{xxii}.

Additionally, the aforementioned Settlement Agreement is very specific as to the situations and types of data that is expected to be collected by the Division^{xxiii}. In fact, the Agreement requires data collection regarding bias not only for investigatory stops but also search incidents^{xxiv}. This data collection goes beyond the Collaborative standard of age and race and includes, at minimum the following additional data sets: date, time, location, duration, age, gender, race, ethnicity, description of legal justification, presence of consent, type of search, description of fruits of a search, and final disposition. The Division is currently in the process of software development and approval, preparing for officer training on this specific data collection operation by the third quarter of 2020.

With the Division current Investigative Stops policy as a supplement to Bias-Free Policing policy, it is clear that the Division's actual operation is set to be more comprehensive in the types of data and the events that trigger data collection than the Collaborative standard, therefore in compliance with same.

Caveat: The assessment of this section is predicated on the assumption that 'self-initiated traffic stops' and 'investigatory stops' as used by the Collaborative and Division are substantially similar enough to be considered equivalent. Should the intent of the Collaborative standard be to include traffic stops for violations of traffic code sections as 'self-initiated traffic stops', then Division policy does not directly address that type of data collection resulting in the Division not being currently compliant.

STANDARD 3.2017.6 Requirement Regarding Annual Review

The Collaborative standard requires written policy that mandates an annual administrative review of agency practices and data; and, providing that review to the public.

Current Division Bias-Free Policing policy is silent as to administrative review and publication. That being said, similar to that discussed above, the Settlement Agreement does specifically require an annual assessment of stop data, including, but not limited to: forms and data collection systems, Fourth Amendment compliance, and trust building practices^{xxv}. This mandatory assessment, like all information collected as part of the Settlement Agreement, must be published to the public^{xxvi}.

While the Division's current policy statement does not comply in verbiage, it is clear that the Division's actual operations, as mandated in the Settlement Agreement, will meet or exceed the review and publication expected in the Collaborative standard.

SUMMARY

The current Cleveland Division of Police General Police Order which provides for principles, policies, and specific procedures regarding bias-free policing is generally compliant with standard 3.2017.6, Bias-Free Policing, as published by the Ohio Collaborative Community-Police Advisory Board. In those areas where the policy is not specifically compliant in writing, the Division is or will be compliant in practice as a result of participation in the Settlement Agreement.

Although it must be noted that this assessment is dependent on the intent of the Collaborative with regard to data collection on 'self-initiated traffic stop', the Office of the Inspector General has no further comment or recommendations regarding this review.

[The Cleveland Police Monitoring Team has provided an independent review of Division bias free policing policy compliance with the Settlement Agreement referenced above by motion in Federal district court.]

Respectfully submitted,



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Inspector General, #3700, Cleveland Division of Police
Work Product Number 20008-R

cc: *via email only:* Deputy Chief J. O'Neill
Hon. Gregory White

ⁱ Ohio Collaborative Community-Police Advisory Board, Standard 3.2017.6 Bias-Free Policing, <https://www.ocjs.ohio.gov/ohiocollaborative/law-enforcement.html>, as downloaded 4-20-20.

ⁱⁱ *United States of America v. City of Cleveland*, United States District Court, Northern District of Ohio, Eastern Division, 1:15 CV 01046, Settlement Agreement, June 12, 2015.

ⁱⁱⁱ City of Cleveland, Division of Police, General Police Order 1.07.08 Bias-Free Policing, February 9, 2018.

^{iv} *See, e.g.*, U.S. v. Cleveland, 1:15 CV 01046, Motion to Approve Cleveland Division of Police Bias-Free Policing Policy, February 2, 2018; *See also*, U.S. v. Cleveland, 1:15 CV 01046, Order, Document 194, Page ID#3711.

^v Ohio Collaborative, *supra*, note i.

^{vi} *Id.*

^{vii} Cleveland Police GPO 1.07.08, *supra* note iii, at pg. 1.

^{viii} *Id.*

^{ix} City of Cleveland, Division of Police, General Police Order 2.02.01 Investigatory Stops, January 1, 2020, at Section II(G).

^x Cleveland Police GPO 1.07.08, *supra* note iii, at pg. 1.

^{xi} *Id.*

^{xii} *Id.*

^{xiii} *Id.*

^{xiv} *Id.* at pg. 2.

^{xv} *Id.* at pg. 4-5, Section IV(A).

^{xvi} *Id.*

^{xvii} *Id.* at pg. 5, Section IV(B).

^{xviii} *Id.* at pg. 3-4, Section II.

^{xix} *Id.* at pg. 4, Section III.

^{xx} Division of Police, GPO 2.02.01, *supra* note ix, at pg. 1 and Section II(D).

^{xxi} *Id.* at Section VII.

^{xxii} *Id.* at Section VII(A)(4).

^{xxiii} *See, e.g.*, U.S. v Cleveland, Settlement Agreement, *supra* note ii, at ¶260.

^{xxiv} *Id.*

^{xxv} *Id.* at ¶¶262 & 264.

^{xxvi} *Id.* at ¶267.