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VIA EMAIL AND U.S. MAIL

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Dear Mr. Goodrick, Mr. Fisher, and Mr. Barge:

In January 2015 we provided input to Cleveland City Council regarding its bias-free policing emergency ordinance No. 750-15. We are enclosing that letter for your reference. We again write to provide feedback on the topic, this time in response to CDP's August 21, 2017 draft GPO, "Bias-Free Policing."

Cleveland's long history of racial segregation and discrimination makes this policy one of the Division's most crucial to re-building community trust and implementing constitutional policing in our city.

Purpose & Policy

The draft policy states that bias-based policing breeds distrust between officers and those they serve, and inhibits law enforcement's efficacy. But this does not go far enough: bias-based policing is also illegal. It violates the U.S. Constitution's Fourth and Fourteenth Amendment guarantees of due process and equal protection. These fundamental precepts are not mentioned once in the draft policy. The "Purpose" and/or "Policy" sections should include explicit statements that bias-free policing is not only wise and moral, but that it is the right of all residents under our nation's highest law.

Probable cause and reasonable suspicion constitute the cornerstone of all law enforcement action. Reinforcing these standards with law enforcement professionals is necessary to encourage constitutional policing practices. These principles are mentioned only at a late point in the policy. To establish their

importance, they must be stated prominently in the “Purpose” and/or “Policy” sections of this policy.¹

Definitions

“Bias-Based Policing”

This definition, as the backbone of this policy, must be strengthened. We reiterate our January 2015 recommendation that the language forbid police actions that are based “*to any degree*” on an individual’s demographic category. The draft’s current language seems to implicitly suggest this, but we believe it must be explicit. The same insertion is necessary in the “Bias-Free Policing” definition and Section I, parts (A)4, (B)3, and (B)4.

To further strengthen the prohibition on bias-based policing, we recommend adding language that recognizes that bias is based on an officer’s perception of an individual – even if the traits that are perceived are different from the individual’s actual traits. This addition must also be made to the “Bias-Free Policing” definition and Section I, parts (A)4, (B)3, and (B)4.

We urge that this policy expressly cover both sworn and non-sworn CDP members. For example, dispatchers, who are non-sworn members, play a central role in controlling the priority given to each 911 call, the information given to officers before they arrive on scene, and whether an officer will go to the scene at all. There must be no question that dispatchers and other non-sworn members are expected to act without bias.

Incorporating these and other recommendations, the new definition would read:

“Bias-Based Policing: When a *sworn or non-sworn* CDP member takes a *routine or spontaneous* law enforcement action (*e.g., traffic stops, pedestrian stops, other stops or detentions, or decisions to request consent to conduct searches*)² or makes a decision to provide or not provide police services, and that action or decision *or manner in which it is conducted* is motivated *to any degree* by *the officer’s perception of* an individual’s demographic category, *rather than by the specific facts, behavior, or circumstances that link a person to suspected unlawful activity.*^{3”}

¹ See Denver Police Department Operations Manual, policy 118.02, “Biased Policing,” (p. 340); and PERF and COPS’ “Racially Biased Policing: A Principled Response,” p. 52.

² Denver’s policy includes, “Furthermore, officers will not make routine or spontaneous law enforcement decisions (e.g., ordinary traffic stops, pedestrian stops, other stops or detentions, or decisions to request consent to conduct searches) based upon...” Albuquerque’s policy includes, “The interdiction, detention, arrest or other nonconsensual treatment of.” Austin’s policy includes, “includes, but is not limited to, stopping, detaining, frisking, or searching of subjects by police officers.” Burlington, Vermont’s policy includes, “conduct by law enforcement officers.” Honolulu’s policy includes, engaging in traffic contacts, field contacts, asset seizures, and forfeiture efforts or any other type of law enforcement contact with the public.”

³ New York City Administrative Code 14-151 (<http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>) includes: “rather than an individual’s behavior or other information or circumstances that links a person or persons [of a particular race, ethnicity, religion national origin] to suspected unlawful activity.”

“Bias-Free Policing”

We commend the acknowledgment that “bias-free” means free from discriminatory effect, as well as intent. Below we address concerns on how the Division will track whether any such effect exists.

As discussed above, we recommend the following additions to the “Bias-Free Policing” definition: “...based *to any degree on the perception of* the subject’s membership in a demographic category.”

“Demographic Category”

We recommend the following categories be added as protected:

- Economic status⁴
- Mental illness⁵
- To “disability,” add “mental or physical”⁶
- Homelessness or housing status⁷
- Political ideology or affiliation⁸
- Citizenship, immigrant, or refugee status⁹
- Marital or familial status¹⁰
- Color¹¹
- Veteran status¹²
- “or affiliation with any other similar identifiable group rather than on the individual’s behavior or on information identifying the individual as having engaged in criminal activity.”¹³

Section I: Guideless for Bias-Free Policing

Based on our discussion above, we recommend the following additions.

⁴ As in the policies of Albuquerque, Austin, Seattle, Orlando, New Orleans, Newark, and Fort Worth. Burlington, Vermont’s policy includes “socioeconomic level;” Boston’s, “socioeconomic status;” and Washington, D.C.’s, and Honolulu’s “source of income.”

⁵ As in Seattle’s and Burlington, Vermont’s policies and National ACLU’s recommendations (<https://www.aclu.org/other/picking-pieces-recommendations>).

⁶ As in Portland, Oregon’s and Honolulu’s policies, National ACLU’s recommendations, and California bill 953.

⁷ New Orleans’ policy and New York City’s Administrative Code include “housing status.” Seattle’s policy and National ACLU’s recommendations include “homelessness.”

⁸ Seattle’s policy and National ACLU’s recommendations include “political ideology;” Newark’s, “political belief system;” and Washington, D.C.’s, “political affiliation.”

⁹ Albuquerque’s policy and New York City’s Administrative Code include “citizenship status.” Portland, Oregon’s includes “citizenship” and “immigrant or refugee status.”

¹⁰ Seattle’s and Portland, Oregon’s policies include “familial status;” Honolulu’s, “marital status;” Portland, Oregon’s, “marital or familial status;” and Washington, D.C.’s, “familial responsibilities.”

¹¹ As in Seattle’s, Orlando’s, New Orleans’, Fort Worth’s, and Washington, D.C.’s policies.

¹² As in Portland, Oregon’s and Seattle’s policies.

¹³ As in Austin’s policy.

A(4): "...without discrimination based to any degree on an individual's perceived demographic category."

B(3): "Determine reasonable suspicion or probable cause based to any degree upon an individual's perceived demographic category...."

B(4) "Delay or deny police services based to any degree on an individual's perceived demographic category."

Section II: Reporting Bias-Based Policing

Part A requires members to report bias-based policing. To enable tracking of bias-based policing, we recommend that this reporting be memorialized in writing, so it is officially recorded.

Part C: We recommend the addition of language underscoring that officers may not detain an individual solely to wait for a supervisor's arrival.

Part C: To increase the likelihood that an individual who indicates a desire to make a complaint about bias-based policing will be able to do so, we recommend that the officer also be tasked with providing the individual an OPS complaint form, and contact information for the relevant supervisor.

Section III: Discipline

Part C dictates that supervisors who fail to "address" complaints of bias-based policing will be subject to discipline. Given the important role of supervisors in oversight and accountability, we recommend more specificity as to what is expected of them: "Supervisors who fail to follow up on and investigate complaints of bias-based policing as per Division protocol will be subject to discipline."

Similarly, in parts A, B, and C read, we recommend making clear that CDP members will be "subject to discipline as per the CDP Disciplinary Matrix," in order to make clear what the next steps will be.

The Importance of Implementation

The success of this policy, however strong its language, is largely contingent on the way it is implemented and adhered to. The Disciplinary Matrix must, of course, list bias-based policing as an offense – which the March 2017 draft did not. The training for officers on bias-free principles and issues facing various communities must be robust. Internal Affairs must be trusted to conduct investigations of the highest quality, and do so without bias, and civilians must have assurance that their complaints will be investigated and adjudicated thoroughly, within a reasonable amount of time, by OPS and CPRB.

And certainly, data collection is an essential part of assessing whether policing is, in fact, bias-free. We trust that the reason that data collection procedures do not appear in this GPO – as they

do in other cities' bias-free policies – is because they will appear in a forthcoming GPO. If that is not the case, we urge that this policy include provisions mandating the tracking of any discriminatory effect of CDP's policing, and a guarantee that any such findings will trigger revisions to CDP policies and practices.

If you have any questions or would like to discuss further, please don't hesitate to contact us via email or by phone at

Sincerely,



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