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Civil Rights Division

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*Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530*

January 21, 2010

Via U.S. Mail

Mayor Salvatore J. Panto, Jr.
Office of the Mayor
City of Easton
One South Third Street
Easton, Pennsylvania 18042

Re: Investigation of the Easton Police Department

Dear Mayor Panto:

As you know, the Civil Rights Division of the Department of Justice ("DOJ") has been conducting an investigation of the Easton Police Department ("EPD"), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. Once again, we would like to express our appreciation for the continued cooperation from the City of Easton ("City") and the EPD. In our last letter, dated November 26, 2007, we conveyed technical assistance recommendations regarding EPD's practices and policies. In this letter, we write to recommend further technical assistance. We will be in touch with counsel shortly regarding next steps toward resolving our investigation.

At the beginning of our investigation, we committed to provide the City (when appropriate) with technical assistance, to ensure compliance with minimal constitutional standards and to enhance EPD's practices and procedures. At the City's request, we previously reviewed a series of policies and procedures and provided our comments in writing. As noted below, we appreciate the revisions EPD has made to many of its policies and procedures, in response to our technical assistance.

Since our November 26, 2007, Technical Assistance letter, we have reviewed various EPD documents, including taser reports, canine reports, use of force

reports, and administrative investigations.¹ We have further reviewed updated policies that the EPD sent to us in November 2008. Based on this additional review, we now recommend further technical assistance for the EPD's policies and practices. These recommendations were developed in close consultation with our police practices consultants. We view the technical assistance provided below as recommendations and not mandates. We strongly urge EPD to closely review and consider these technical assistance recommendations in revising its policies and practices. We hope this letter will assist in our mutual goal of ensuring that the EPD provides the best possible law enforcement services to the people of Easton.

The technical assistance we provide below centers on Use of Force reports, use of force, investigation and resolution of complaints, application of use of force statistics, and training. In summary, we found that Use of Force reports needed more detail, better consistency among officers' reports, and better supervisory review. Regarding use of force, we found that officers' drawing of firearms was statistically high and that the policy needed clarification on "low-ready" drawings, that officers needed to attempt to verbally de-escalate situations before employing force, that taser warnings were ineffective, and that officers needed to articulate better why they deemed vehicle stops "high-risk." Regarding investigation and resolution of complaints, we found investigations untimely, disorganized, and lacking in basic protocols. Regarding training, we found that EPD officers are not consistently following policies and recommend that training be provided to reinforce certain policies and practices. Regarding use of force statistics, we found that the EPD's average number of uses of force incident to arrest possibly dependant on inaccurate data. We note, however, that overall we saw substantial improvement by the EPD during the course of our investigation.

I. EPD POLICIES AND PROCEDURES GENERALLY

In our November 2007 Technical Assistance letter, we noted that EPD had been updating and developing a policy and procedures manual ("Manual") from an outdated hodgepodge of policies and procedures. The EPD has periodically updated these policies, including the submission of several policies to us in November 2008. While we suggest changes below, we commend the EPD for its continued effort and

¹ As you know, during the first phase of our investigation we previously reviewed relevant EPD policies and procedures, conducted interviews with City officials and a cross-section of EPD supervisors and patrol officers, and participated in ride-alongs. We also met with representatives of the Fraternal Order of Police Lodge 19, community leaders, and other Easton citizens.

progress toward developing a current and comprehensive policies and procedures manual.

II. USE OF FORCE REPORTS

In May 2006, EPD began using a Use of Force form to document incidents of force. Prior to that, EPD relied on force-specific forms, such as Taser Use Reports and Canine Reports. Our review of the EPD's Use of Force reports for the years 2006 and 2007² found inadequate use of force reporting and inadequate supervisory review. We found that Use of Force reports needed more detail, consistency in quality among officers' reports, and better supervisory review.

A. Inadequate Use of Force Reporting

The current Use of Force form, while an improvement, could benefit from more detail. The current form captures basic information, such as the officers involved, type of force used, and where the officer(s) applied force to a suspect. The form, however, fails to require officers to explain sufficiently in narrative fashion why they decided to use force. This information is essential to determining if officers used appropriate force and applied force in accordance with policy and procedure. The officers' general summaries of the overall incident are appended to the Use of Force form. These officers' general summaries are not sufficient. The Use of Force form itself should include its section for officers to provide a narrative regarding what action by subject prompted their use of force and what force they applied (in response to the subject's action).

Beyond the form itself, we found that EPD officers could benefit from further training on how to record use of force information. Our review uncovered inconsistent descriptions from officers at (or involved in) the same incident, incomplete information, vague terminology, and unsigned reports. When multiple officers are involved in or witness a use of force, the primary officer fills out the Use of Force report, but the other officers attach individual incident descriptions. We found that officers' descriptions of events were so varied in the use of terminology and level of detail, that it was difficult to determine exactly what occurred during an incident. This lack of consistency found across the Use of Force forms and attached incident descriptions counsels that EPD officers could benefit from additional training on how to fill out Use of Force report forms completely and

² While we reviewed both the 2006 and 2007 Use of Force reports, we gave greater weight to the 2007 reports because they best represented an evolution of EPD's current practices for documentation of use of force post DOJ technical assistance. See also footnote 4, below.

accurately, regardless of the type of form ultimately used by the EPD. We therefore recommend additional training to improve consistency and accuracy. Left unaddressed, these deficiencies impact a supervisor's ability to assess the reasonableness of a particular use of force incident and, ultimately, to ensure officer accountability.

B. Inadequate Supervisory Review

EPD policy requires that a supervisor report to the scene whenever EPD officers use greater levels of force, such as chemical weapons, electronic force, impact weapons, and firearms. EPD's Use of Force policy, General Order ("G.O.") 4.14.05 H, requires the supervising officer to conduct a preliminary investigation (which includes, e.g., documenting "the officer's and suspect's statements") and "complete necessary written reports." We found several significant problems with the EPD's application of this policy. Foremost, supervisors frequently were not called to report to the scene of the incident, as the policy requires. Moreover, when a supervisor did report to the scene, in almost all the incidents we reviewed, the Use of Force reports failed to contain the supervisor's preliminary investigation documentation. Without the supervisor's documentation for these incidents, EPD's documentation gives the appearance that supervisors are not conducting the preliminary investigation the policy dictates.

Also, EPD's Use of Force policy does not clearly state what should occur when a supervising officer is involved in a use of force that requires a preliminary investigation and supervisor's report. We could not determine whether EPD's policy allows the supervisor involved in using force to also conduct the preliminary investigation or whether another uninvolved supervisor should conduct the investigation. Pursuant to generally accepted police practices, we recommend that the policy require that another uninvolved supervisor conduct the preliminary investigation to help preserve the integrity of information gathered and used to review applications of force.

Further, the policy dictates that an EPD Commander should review all uses of force to determine whether the force the officer(s) used was justified.³ The Chief of Police periodically reviews the Commander's determination. The EPD does not have a written policy or procedure that prescribes what the Commanders or Chief should review in making their determination regarding the appropriateness of the

³ Commanders are synonymous with Captain in EPD's organizational hierarchy. We understand that the EPD currently has two Commanders, the Administrative Services Commander and the Field Operations Commander. Either Commander can review uses of force.

force. Moreover, as alluded to above, because the on-scene supervisors often failed to write their preliminary investigation reports, the Commander and Chief did not have a supervisor's report from which to glean necessary facts. Accordingly, we strongly recommend that supervisors complete their written report according to policy and that EPD develop clear guidelines for the Commanders and Chief to follow when they determine whether an officer's use of force was justified.

III. USE OF FORCE

We found that officers drew their firearms at an abnormally high rate, that the firearms policy needed clarification on "low-ready" drawings, that officers needed to attempt, or at least consider, verbally de-escalating situations before employing force, that taser warnings were ineffective, and that officers needed to better articulate why they deemed vehicle stops "high-risk."

A. Firearms

The EPD's drawing of firearms: (1) were numerically disproportionate to the number of incidents reported in 2006 and 2007; (2) possibly failed to comport with EPD policy; and (3) demonstrated EPD officers' failure to appropriately de-escalate a situation.

Overall, we found EPD's uses of force generally constitutional. We were concerned, however, that roughly two-thirds of the 2007 Use of Force reports we reviewed involved the display of a service weapon. We found it difficult to discern whether officers' display of the service weapons complied with the Use of Force policy. First, the narratives in the Use of Force reports failed to fully articulate the harm or apparent danger present that required the drawing of the service weapon. As indicated above, we recommend additional training to ensure detailed consistent reports. Second, the Use of Force policy needs to clarify when an officer may draw a service weapon and hold it at "low ready." The policy currently forbids an officer to draw or display his/her firearm, unless circumstances create reasonable cause to believe that it may be necessary to use the weapon in conformance with this policy." G.O. 4.14.05 D.1.d(1). This policy does not clearly state whether this criteria covers "low-ready" display. Additionally, the policy does not clearly articulate whether an officer's "low-ready" firearm display mandates him/her to complete a Use of Force report and contact a supervisor because the policy mandates this process only when the "weapon is displayed and pointed towards another individual." G.O. 4.14.05 D.3.

According to generally accepted police practices, officers should not point their weapon at a suspect unless they reasonably perceive an actual threat to their (or another person's) safety. EPD's policy adheres to this standard for pointing a

weapon at a suspect. Additionally, generally accepted police practices allow officers to hold their firearms at "low-ready" when they reasonably perceive a possible elevated threat to their safety. EPD's policy does not articulate this standard. Moreover, while not considered a use of force, the EPD should record "low-ready" displays to track possible unnecessary use of the firearm display. Please note, however, that we do not intend for our suggestion to track these displays to have a chilling effect on officers' display of firearms.

Accordingly, we suggest that the EPD clarify the circumstances that allow an officer to hold his/her service weapon at "low-ready." To allow tracking, we recommend inclusion of a separate check box on the Use of Force report for "low-ready" displays. Again, this recommendation is for ease of reporting such displays and is not intended to cause a chilling effect on officers' ability to draw weapons in furtherance of safety. The EPD should stress that officers should not be discouraged from displaying their firearms when appropriate.

B. Failure to De-escalate

Generally accepted police practices require officers to make reasonable efforts to use verbal tactics and police presence to de-escalate a situation, prior to using force on subjects exhibiting minimal resistance. EPD's Use of Force policy does not affirmatively require this de-escalation. Moreover, incident reports reflect that EPD officers routinely fail to make reasonable attempts to de-escalate a situation. In many instances, we found that EPD officers escalated routine matters that could have been resolved by officer presence coupled with appropriate suspect or witness communication and interaction. For example, we found several instances where officers approached intoxicated or sleeping persons by pushing, tapping, or yelling at these individuals in a manner likely to agitate the person and lead to negative behavior that warranted an arrest or the drawing of firearms.

The EPD should ensure that its officers do not contribute to the need to use escalated force with a suspect. Thus, we recommend that the EPD affirmatively state in policy that officers should attempt de-escalation before using force on subjects exhibiting minimal resistance. Further, we recommend that the EPD institute additional training on de-escalation techniques and proper police interaction with suspects or citizens. This training should include training on how to interact with special segments of the population, such as intoxicated persons or people with mental illness, to avoid unnecessary escalation of events.

C. Taser Deployment

EPD's Use of Force policy provides that prior to taser use, officers, when practical, should issue a verbal warning and provide a reasonable opportunity for

the suspect to comply with the warning. G.O. 4.14.05 L.d. Incident reports, however, showed that in most instances EPD officers provided no verbal warning or a verbal warning that was insufficient to actually give the suspect a reasonable opportunity to comply.

EPD officers routinely yell "taser" just prior to deploying the weapon. Simply yelling "taser" does not comport with generally accepted police practice or the EPD policy. Yelling "taser" is likely to alert a nearby officer of the impending use of a taser rather than warn the suspect. Thus, EPD's actual practice does not serve as a possible deterrent for the suspect, which is the underlying purpose of the warning policy. Accordingly, we recommend giving EPD officers additional training to ensure that an officer gives an adequate verbal warning whenever possible before he/she deploys a taser.

D. High-Risk Vehicle Stops

We have similar use of force reporting and force escalation concerns regarding EPD's "High-Risk Vehicle Stops." See G.O. 5.4.09. Regarding use of force reporting, the policy requires that "high-risk vehicle stop procedures should be used," "when an officer is able to articulate a high potential for a dangerous confrontation." G.O. 5.4.09. Similar to the discussion above for Use of Force reports generally, the Use of Force reports associated with high-risk vehicle stops failed to articulate the dangers that signaled a high potential for a dangerous confrontation. An officer's failure to clearly articulate why a stop was deemed high-risk or what tactics officers used on the scene in his individual report makes it difficult for a supervisor to determine whether the force used by the officer during the stop is proportional to the threat posed to that officer.

Moreover, the EPD's guidance on the approved tactics for conducting a high-risk vehicle stop is unclear. We were unable to find the "high-risk vehicle stop procedures [that] should be used," "when an officer is able to articulate a high potential for a dangerous confrontation." G.O. 5.4.09. These procedures should include protocols for calling in the high-risk stop, the position of police vehicles, how officers approach the suspect(s), and when firearms should be drawn.

Accordingly, we recommend that the EPD provide officers additional training on articulating in incident and Use of Force reports the reasons they deemed a stop "high-risk," and clarify the high-risk vehicle stop procedures. Ensuring proper training on how to conduct and report a high-risk stop is critical for EPD to accurately examine the circumstances surrounding a high-risk stop, to identify potential problems, and to take appropriate corrective actions with necessary training.

IV. INVESTIGATION AND RESOLUTION OF COMPLAINTS

We reviewed the EPD's management of citizen complaints and police misconduct investigations and found the investigations untimely and inadequate. The investigation reports were also disorganized and inconsistent. These types of deficiencies make it difficult to determine why supervisors and command staff reached their conclusion as to the validity of a citizen complaint or administrative investigation.

A. Untimely

EPD Administrative Investigations Policy, G.O. 2.5.09 B.6, requires that the EPD complete reports on all investigations and citizen complaints in 30 days unless the Chief of Police grants an extension in writing. We found that the EPD took more than 30 days to complete every investigation and citizen complaint, even though the Chief never approved any extension. Furthermore, the EPD's investigations were too lengthy, with large lapses of time without any activity or explanation as to why the investigation sat idle. These large time lapses increase the chances that witnesses become unavailable or forget valuable information. We recommend that the EPD enforce the policy's timeliness requirements.

B. Disorganized

Generally accepted police practices prescribe basic elements for conducting an administrative investigation and for recording or preserving the related facts and evidence. The EPD's methods fail to meet these minimally accepted practices. For example, reports should have indices, which are standard and necessary to help officers working or reviewing an investigation to find information or assess whether information was ever requested. Also, questions for interviewees should be written and part of the investigation record. If the EPD has developed written questions for interviews, it fails to include the questions in the official investigation report. Additionally problematic is that EPD administrative investigation files are disorderly and extremely difficult to review. The files often contained loose documents and followed no logical sequence.

The EPD should develop basic protocols for investigations, which should include what information should be collected, evidence and fact gathering techniques, interviews, and file maintenance. At the conclusion of each use of force investigation, the investigator should prepare a report on the investigation, which should be made a part of the investigation file. The report should include a description of the use of force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting

the findings. The proposed findings should include a determination of whether the use of force is consistent with EPD policy and training; a determination of whether proper use of force tactics were employed; and a determination whether lesser force alternatives were reasonably available. With appropriate guidance, the EPD could easily improve the quality of its investigations.

V. USE OF FORCE STATISTICS

While we found the EPD's uses of force generally appropriate, we note that inaccurate data is possibly skewing the EPD's average number of uses of force incident to arrest.

The EPD may be calculating its arrest and uses of force contrary to general professional practices. For instance, based on the information the EPD provided for 2007, the EPD had 361 uses of force for 1661 arrests, giving a use of force to arrest ratio of 21.7%.⁴ What the EPD chooses to deem a use of force or arrest can significantly affect this average. We could not determine what data the EPD considers when totaling its uses of force and whether the EPD counts non-custodial arrests⁵ or ticket citations. By counting non-custodial arrests, the EPD would be under-reporting its use of force average. The EPD should not include these non-custodial citations as arrests, as it would be effectively under-reporting use of force. Nor could we determine whether the EPD counted "low-ready" firearms displays as uses of force. As discussed above, see supra Part III.A, while the EPD should track "low-ready" displays to monitor possible overuse, the EPD should not count these "low-ready" displays as uses of force. By counting "low-ready" displays, the EPD effectively would be over-reporting its use of force average.

We recommend that the EPD develop clear policy guidance, in accordance with these generally accepted professional standards, on what uses of force and arrests statistics supervisors and command staff should consider when calculating the EPD's and individual officer's use of force incident to arrest ratios.

⁴ We note that our review of objective data is one factor, not the sole or determining factor in assessing whether EPD's use of force is constitutional. Indeed, we recognize that it is not the quantity but the individual legal assessment of the reasonableness of each use of force that is determinative.

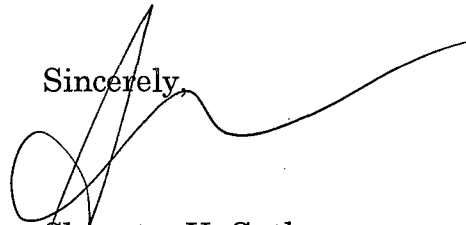
⁵ For the purpose of this letter, non-custodial arrests are arrests where the EPD places an unresisting suspect under arrest (including handcuffing) but then releases the suspect at the scene of the incident, (i.e., the EPD does not transport the suspect to jail).

VI. CONCLUSION

We commend the EPD for the many positive organizational and policy changes it has made since we opened our investigation. These positive changes are no doubt due to the thoughtful leadership and dedication of EPD's command and line officers, as well as the focused efforts of the City's leadership and staff. This letter has detailed our remaining concerns about the EPD's use of force and how it reports and reviews that force, and our recommendations for additional measures that would address those concerns.

We hope that this analysis will be useful to you in your continuing efforts to revise and improve the policies of the EPD. As previously noted, we view the technical assistance provided above as recommendations and not mandates. Nonetheless, the existing deficiencies we note throughout this letter give rise to a concern that, if not sufficiently addressed, unconstitutional conduct may result. Therefore, we strongly urge the EPD to closely review and consider the technical assistance recommendations contained in this letter. We hope that these recommendations will be received in the spirit of assisting in our mutual goal of ensuring that the EPD provide the best possible law enforcement services to the people who reside in and travel through Easton. We look forward to continued cooperation toward this goal. We will contact you shortly to discuss the next steps of our investigation.

Sincerely,



Shanetta Y. Cutlar
Chief
Special Litigation Section

cc: William K. Murphy, City Solicitor
David J. MacMain, Esq.
Chief Larry Palmer