



U.S. Department of Justice

Civil Rights Division

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*Special Litigation Section-PHB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

January 9, 2006

Via Facsimile and U.S. Mail

Daniel A. Spang
Accreditation Manager
City of Easton
One South Third Street
Easton, PA 18042

Re: General Orders: Code of Conduct (1-2); Use of Force
(4-14); and Police Response and Pursuit Procedures
(5-1)

Dear Mr. Spang:

This letter responds to your December 6, 2005 letter submitting revisions to the Easton Police Department's ("EPD") above-referenced General Orders ("GO"). As you know, these GOs were previously submitted in October 2005 to the Department of Justice ("DOJ"). On November 3, 2005 we forwarded our written comments and those of our police practices consultant, Chief Charlie Reynolds.¹

As an initial matter, we are pleased that the City has been receptive to the comments we offered in November and has made many of the recommended changes. However, the City has declined some recommendations and has made new changes, some of which are of concern to us. These items are set forth below.²

¹ In your December 6 letter you also included three additional GOs for our review. We will provide comments on the administrative investigations, mobile/audio recording, and arrest procedures GOs in a separate letter.

² We note that this letter is not to provide a formal approval of the GOs, as we are not in a position to grant official approval of any policies at this stage of our "pattern and practice" investigation of the EPD. Instead, we are providing assistance, at the City's request, to identify any major concerns and to provide limited technical assistance prior to the City implementing the GOs. As our investigation

1. Code of Conduct

We initially recommended only one change to the Code of Conduct GO, which the City has made. We have not identified any additional concerns with this GO.

2. Police Response and Pursuit Procedures

Section 5.1.04.D - Procedures for Emergency Driving

As you know, we suggested the City explicitly limit officers' emergency response driving speeds to 20 MPH over the speed limit in this policy. We appreciate the City's hesitation to impose such a bright-light limit on its officers. Nonetheless, we believe this is a sound recommendation that protects officers, the public, and serves to limit the City's liability by reducing the likelihood of accidents caused by driving at higher rates of speed. In the alternative, perhaps the City could incorporate the 20 MPH as a goal instead of an absolute policy limitation.

Section 5.1.05.A.2 - Pursuits

We recommended that the City limit vehicle pursuits to cases in which the suspect is wanted for a violent felony, felony, or a misdemeanor involving physical violence. The City has chosen to authorize pursuits for misdemeanors of the first degree or higher as established by the Pennsylvania Crimes Code. We believe this may result in potentially high speed vehicle pursuits in situations where the threat may not be serious enough to warrant such risk to officers or the public. For example, under the standard adopted by the City, police officers appear to be authorized to conduct a high-speed pursuit of a forgery suspect. We ask that you reconsider this standard.

continues, we may find it necessary to revisit the content of these GOs to ensure they fully comport with minimal constitutional requirements.

3. Use of Force

4.14.05.B.2 - Level of Force

In our November 3, 2005 letter, we recommended that the City cross-reference this Section with parts of Sections 4.14.05, F and M.2 to ensure consistency and to provide clarity to officers regarding appropriate escalation and de-escalation when utilizing force. As revised, inconsistencies remain at 4.14.05 B.2, F, L, M and Appendix A that could prove confusing to an officer. For example, Section L.9 states that OC spray is a force option which follows verbal compliance tactics on the use of force continuum. However, the progression of force as described at B.2.F and Appendix A have OC spray listed at different places in the use of force continuum. Should an officer follow any of these Sections, s/he arguably could be violating the other Sections of the policy. Also, Section M.3 c(1) states that the Electronic Control Weapon ("ECW") is analogous to OC spray on the use of force continuum. However, the use of force model at Appendix A has the use of the ECW (Taser) before the use of OC spray. We strongly recommend that, prior to approval, the City review all sections of 4.14.05 and Appendix A of the General Order and resolve these potentially confusing inconsistencies.

4.14.05.C - Parameters for Use of Deadly Force

The City has not addressed our previously stated concerns regarding this section of the GO. As we informed the City upon our review of the previous iteration of this policy, this Section suggests that the only type of deadly force involves a firearm. In contrast, the definition of deadly force in Section 4.14.04 is more broad and appropriately classifies deadly force based on circumstances which are capable of causing death or serious bodily injury (such a definition allows for consideration of other types of weapons or uses of force). We ask that the City revisit the comments contained in our expert's report for guidance in addressing this issue. If the City is not inclined to make changes to this Section as recommended, we suggest that the City change the title of this section to Parameters for Use of Firearms or make some similar change to reflect that this section is specifically limited to how officers use firearms and not deadly force in general.

4.14.05.H.1 - Reporting Use of Force

This Section requires that all incidents of firearm discharges be reported immediately to a supervisor and documented, except for the destruction of an injured animal. This section is inconsistent, however, with Section 4.14.05.D.4 which requires that "[a]ll on duty incidents of firearms discharge, including accidental discharges, be reported as soon as practical to a supervisor and documented". We recommend that these Sections be revised to reflect the City's intent that firearm discharges be immediately reported and documented. We also recommend that Section 4.14.05.H.3 be reversed with Section 4.15.05.H.4 so that the responsibilities of the supervisors in reporting the use of force are concluded prior to listing the responsibilities of the commanders.

4.14.05.I.3 - Referral/Transport for Medical Attention

We recommend that this Section be augmented to further require that a subject's, prisoner's or detainee's declination or refusal of medical attention be documented.

4.14.05.L - Guidelines for the use of OC Spray

The City has incorporated our recommendation that the word "restraint" be removed when describing OC spray. We also note that while the City removed the word "restraint" from the title of this Section, the word has not been deleted from the first sentence of this Section. It should be deleted to ensure consistency. Also under this Section at 4.14.05.L.11, we recommend that the policy be reworded to indicate that once a suspect is handcuffed/secured, additional use of OC is unjustified. The unqualified statement that such use is justified appears to have been an unintentional error. If this is not what the City intended, then we must strongly recommend that this provision be deleted as it is inappropriate to make additional use of OC spray absent overtly assaultive behavior that cannot be reasonably dealt with by less intrusive means.

4.14.05.M. Electronic Force-Electronic Control Weapon

As noted by the City, Section 4.14.05.M.3.c indeed mirrors the International Association of Chiefs of Police model policy. Nonetheless, it fails to mention populations susceptible to increased risk of injury or death when an ECW is deployed. We recommend that the City include a discussion or list of susceptible populations to protect those most vulnerable citizens

and provide officers with clear guidance that could prevent needless injuries or deaths.

Our last comment relates to our expert's recommendation, in his report forwarded to you on November 3, that the GO specify the number of rounds the department authorizes its officers to carry, in addition to specifying the authorized ammunition officers may carry. In your December 6 response, the City advised that this recommendation was not adopted because "the department is reluctant to limit the number of rounds an officer may have in a briefcase" No further explanation for this decision was provided. We reiterate this recommendation. As explained in our expert's report, the failure to quantify the number of authorized rounds officers may carry will make it difficult, and in some instances impossible, to determine the number of shots fired and/or account for all rounds fired during a required post-shooting investigation.

We appreciate the opportunity to comment and provide technical assistance to EPD prior to the City approving these GOs for use. Should you have any questions or concerns, please contact Rita Coles at (202) 305-3581 or Ty Clevenger at (202) 305-3351. I may also be reached at (202) 616-2009.

Sincerely,



Tammie M. Gregg
Principal Deputy Chief
Special Litigation Section

cc: Stu Gallaher
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