

August 6, 2010

AGREEMENT

This Agreement is between Civil Rights Division of the Department of Justice's ("DOJ") and the Easton Pennsylvania Police Department ("EPD"), to help resolve the DOJ's investigation of the EPD, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.

I. SUBSTANTIVE PROVISIONS

1. The EPD will ensure that officers filling out Use of Force Report Forms include fact specific, non-boilerplate, narratives regarding what prompted their use of force and what force they applied.
2. The EPD will give officers additional instruction on how to fill out Use of Force Report Forms completely and accurately.
3. The EPD will adjust its Use of Force Policy to require that only a supervisor without involvement in the use of force incident conduct the use of force preliminary investigation.
4. The EPD will require supervisors to complete their written preliminary investigation report according to policy.
5. The EPD will develop clear guidelines for the Commanders and Chief to follow when they determine whether an officer's use of force was justified. These guidelines will include more guidance than simply reciting the applicable case and statutory law.
6. The EPD will clarify in policy the difference between an officer holding his/her service weapon at "low ready" and other uses of the service weapon that require a Use of Force Report. The EPD will also clarify the circumstances that allow an officer to hold his/her service weapon at "low ready." While the EPD may elect not to consider the drawing and holding of a service weapon firearm at low ready as a use of force, the EPD will require the completion of a Use of Force Report in order to track such events along with all other displays of service weapons as a component of its early warning system.
7. The EPD will affirmatively state in policy that officers should attempt de-escalation before using force on subjects exhibiting minimal resistance. The EPD will give officers additional training on de-escalation techniques and proper police interaction with suspects or citizens.

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8. The EPD will give officers additional training to ensure that an officer gives an adequate verbal warning whenever possible before he/she deploys a taser.
9. The EPD will give officers additional training on articulating in incident and Use of Force reports the reasons they deem a stop "high-risk." The EPD will develop procedures for high-risk vehicle stops.
10. The EPD will enforce its investigation policy's timeliness requirements.
11. The EPD will 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.
12. The EPD will develop clear policy 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.

II. ENFORCEMENT

13. This Agreement shall become effective upon signature by all the signatories below (i.e., Chief, Special Litigation Section, Easton Police Chief, and Easton City Solicitor). The EPD shall implement immediately all provisions of this Agreement which involve the continuation of current EPD policies, procedures, and practices. Within 90 days of the effective date of this Agreement, unless otherwise specified, the EPD shall implement the other outstanding provisions of this Agreement, except the training requirements. The EPD shall implement and conduct all training requirements, unless otherwise specified, within 180 days of the effective date.

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14. This Agreement shall terminate one year from its effective date, if the parties agree in writing that the EPD has substantially complied with each of the provisions of this Agreement. The burden shall be on the EPD to demonstrate that it has substantially complied with each of the provisions of the Agreement and is capable of maintaining substantial compliance. For the purposes of this paragraph; "substantial compliance" means there has been performance of the material terms of this Agreement. Materiality shall be determined by reference to the overall objectives of this Agreement.
15. If any unforeseen circumstance occurs that causes a failure to fulfill timely any requirements of this Agreement, the EPD shall notify the DOJ in writing within 20 calendar days of the time that the EPD becomes aware of the unforeseen circumstance and its impact on the EPD's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The EPD will implement all reasonable measures to avoid or minimize any such failure.
16. In the event the EPD fails to fulfill any obligation under this Agreement, the DOJ must, prior to initialing any court proceedings to remedy such failure to fulfill any obligation under this Agreement, give the EPD, through the City Solicitor, written notice of the failure. The EPD will have 60 days from receipt of such notice to cure the failure. At the end of the 60-day period, in the event the DOJ perceives that the failure has not been cured, the DOJ may, without further notice to the EPD, file a civil action for breach of contract or any other appropriate causes of action and may seek specific performance or any other appropriate form of relief.
17. Paragraph 16 only limits the DOJ's ability to enforce this Agreement. Nothing in this Agreement shall preclude the DOJ from filing an action under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, alleging a pattern or practice of excessive force in addition to or in lieu of the federal court action described in paragraph 16. In the event that the DOJ files any such action, the EPD hereby waives, and agree not to assert, any defense to that action based on statute of limitations, laches, estoppel or any objection relating to the timeliness of the filing of such action. Nothing in this Agreement shall preclude the DOJ from filing an action under any other provision of law.
18. The EPD agrees that it will not retaliate against any person because that

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person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding concerning this Agreement. Nothing in this provision or agreement, however, should be construed as creating any cause of action for any such person other than causes of action that exist under current law.

19. The EPD and DOJ may modify this Agreement only in a jointly signed written document.

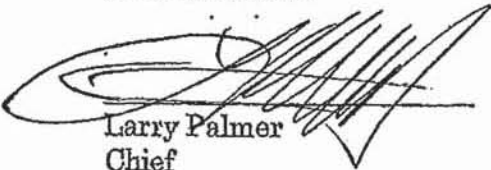
FOR THE UNITED STATES:



Judy C. Preston
Acting Chief
Special Litigation Section

9/30/10
DATE

FOR THE EPD:

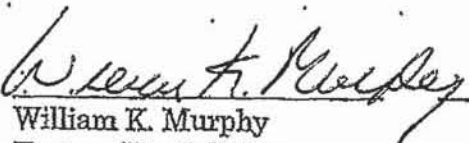


Larry Palmer
Chief
Easton Police Department

9/8/2010
DATE

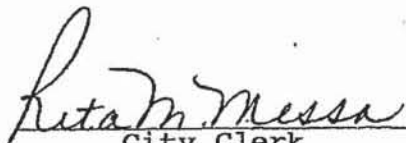


Salvatore J. Pantano Jr.
Mayor



William K. Murphy
Easton City Solicitor

9/8/10
DATE



Rita M. Messa
City Clerk
Assistant