



U.S. Department of Justice
Civil Rights Division

JMS:LCC:JG:CS:LM:dh
DJ 207-76-3

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

May 27, 2011

VIA ELECTRONIC AND U.S. MAIL

Ms. Karen Kennard, Esq.
Acting City Attorney
City of Austin Law Department
Norwood Tower
114 West 7th Street
P.O. Box 1088
Austin, TX 78767-8845

Re: 42 U.S.C. § 14141 Investigation of the Austin Police Department

Dear Ms. Kennard:

The Department of Justice ("DOJ") has completed its investigation of use of force by the Austin Police Department ("APD"), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. Because we do not find reasonable cause to believe that APD has engaged in a pattern or practice that violated the Constitution or laws of the United States, we have closed our investigation.

During the course of our investigation, we did identify concerns that could lead to violations of law. On December 23, 2008, we wrote you and recommended revisions to APD's use-of-force policy; changes to the reporting of and responses to uses of force; changes to APD's complaint intake, classification, and investigation procedures; implementation of an early intervention system; increased supervisory oversight; enhanced officer training; and efforts at improved community relations. APD has implemented nearly all of our technical assistance recommendations. We thank APD for its continued cooperation in our investigation and its voluntary steps toward implementation of our technical assistance.

However, gaps in use-of-force reports and supervisory investigations, though not necessarily rising to the level of constitutional violations, should be reformed. To that end, we make the following recommendations:

(1) We recommend that APD bring to fruition its planned, though not fully implemented, early intervention system that identifies officers who demonstrate a tendency to violate APD policy, including use of force. APD should assess the efficacy of its early intervention system by identifying personnel through the early intervention system for personnel action, including, but not limited to: training, counseling, internal affairs investigation,

affirmative integrity tests, criminal investigation, and disciplinary action. APD's early intervention system should also be able to assess the effectiveness of the actions taken.

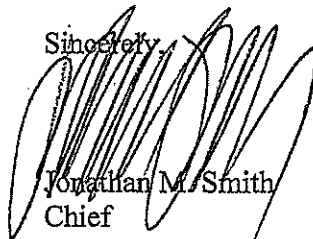
(2) APD's internal affairs division ("IA") should conduct investigations in an objective and probing manner. It is our understanding that APD has undertaken sweeping change of its IA staff following an assessment of a use-of-force incident investigation by an independent consultant. The new composition and training of IA personnel, as well as the investigative process IA employs, should comport with the technical assistance recommendations contained in our December 23, 2008 letter.

(3) APD's force review boards should identify potential tactical or training issues in uses of force that could be corrected to minimize uses of force.

(4) Austin's Office of the Police Monitor ("OPM") should provide objective, public reports on the conduct of APD's internal affairs. In the past, OPM has produced reports on the number of internal affairs complaints filed and the categorical disposition of those complaints. We recommend that APD utilize OPM to produce timely reports not just on the number of internal affairs complaints and their dispositions, but also to provide a qualitative analysis of the internal affairs system. OPM's outside analysis of internal affairs could provide APD an opportunity for improvement of mechanisms to address uses of force.

We thank Austin and APD for the many improvements made during of our investigation. Please contact me at (202) 514-6255, Jonas Geissler at (202) 353-8866, or Corey Sanders at (202) 305-3229, should you have any questions about this correspondence or our technical assistance.

Sincerely,



Jonathan M. Smith

Chief

Special Litigation Section

cc: David Douglas, Assistant City Attorney
John E. Murphy, United States Attorney
(via electronic and U.S. mail)