

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
vs.)	JUDGE SOLOMON OLIVER, JR.
)	
CITY OF CLEVELAND,)	
)	
Defendant.)	<u>CITY OF CLEVELAND'S</u>
)	<u>SECOND STATUS REPORT</u>

I. Introduction

Section 387 of the Settlement Agreement¹ entered into by the City of Cleveland (“City”) and the Department of Justice (“DOJ”)² states in pertinent part: “Following [its] initial status report, the City will file a status report every six months thereafter while this Agreement is in effect.” The City filed its Initial Status Report on December 9, 2015 and files this second report to update the Court, the Monitor, the Department of Justice, and the residents of Cleveland concerning the status of the broad range of activities that have been undertaken by the CDP and the City over the past six months.

Following the City’s initial status report, the Monitor engaged with the City and the Department of Justice in a collaborative manner to establish an agreed upon plan, or road map, to guide the implementation of reforms during the period February 1, 2016 through January 31, 2017. This guide, the “First-Year Monitoring Plan” (hereafter “Monitoring Plan”), was filed and approved by the Court on February 4, 2016. The

¹ The Consent Decree approved by the Court on June 12, 2015 incorporates the terms of the Settlement Agreement reached between the City and the Department of Justice.

² The City and the DOJ collectively will be referred to as the “Parties.”

Monitoring Plan was designed around work to be accomplished in nine topic areas, and establishes the methodology and calendar for meeting designated deliverable results. The work of the CDP and other City stakeholders in the first half of 2016 has focused on the schedule outlined in the Monitoring Plan.

The City's efforts going forward remain directed at meeting the goals and reform principles identified in the Consent Decree, while continuously seeking to ensure the safety of persons living and working in Cleveland. As might be expected, a large measure of the work being undertaken in the first year of the Consent Decree has involved the development, adoption, and implementation of policies and plans that will guide the CDP going forward. In addition to working with the Monitor and the DOJ, the City and the CDP are working with the new Cleveland Community Police Commission ("CPC") and listening to the many voices of the City's diverse communities as policies and plans are developed.

This report discusses the many areas that have been addressed in the past six months and the City's progress to date. To provide a cross-reference and understanding of activities and progress to this point, the City's report follows the outline contained in Paragraph 387 of the Consent Decree:

This report will delineate the steps taken by CDP [Cleveland Division of Police] during the reporting period to comply with this Agreement; CDP's Assessment of the Status of its progress; plans to correct any problems; and response to concerns raised in the Monitor's previous semi-annual report.

II. Steps Taken by the Cleveland Division of Police and the City of Cleveland During the Reporting Period.

As noted above, the Monitoring Plan covers the period February 1, 2016 through

January 31, 2017 and identifies nine basic topic areas as a framework for establishing the milestones that are anticipated to be met during this twelve month period. The major title headings (A.-I.) following within this section of the report incorporate the nine topic headings as they are identified in the Monitoring Report.

A. Community and Problem-Oriented Policing

1. Mission Statement

The Consent Decree establishes at section 28 that “CDP will ensure that its mission statement reflects its commitment to community oriented policing...” The CDP’s new mission statement has been delivered to the Monitor for recommended approval and filing with the Court. CDP’s development of the new mission statement included receiving and reviewing input from the communities through the work of the CPC along with input from uniformed officers. Developing the mission statement also involved discussions, evaluation, and review by the Parties and the Monitor team.

The Mission Statement proposed for filing with the Court documents CDP’s direct and ongoing commitment to both constitutional and community oriented policing:

The mission of the Cleveland Division of Police is to serve as guardians of the Cleveland community by enforcing the law, maintaining order, and protecting the lives, property, and rights of all people, as guided by the Constitution. We shall carry out our duties with a reverence for human life in partnership with members of the community through professionalism, respect, integrity, dedication and excellence in policing.

2. Community and Problem-Oriented Policing Work Plan

The Monitoring Plan establishes that CDP will propose a Community and

Problem-Oriented Policing Plan in October,³ with a final version of the Community and Problem-Oriented Policing Work Plan being reviewed by the Monitor for filing with the Court by January 30, 2017. Section 17(c) of the Settlement Agreement requires that the CPC assess CDP's community activities and make strategy recommendations for CDP's consideration relating to increased community engagement and confidence.

B. Use of Force - Related Policies

In Section 45 of the Settlement Agreement the Parties agreed that "CDP will revise, develop, and implement force policies, training, supervision, and accountability systems with the goal of ensuring that force is used in accordance with the Constitution and laws of the United States and the requirements of this Agreement and that any use of unreasonable force is promptly identified and responded to appropriately." Review, development, and implementation of new use of force policies is a bedrock of the agreed upon reform efforts and has been a primary area of attention of the CDP during this reporting period.

As was reported in the Monitor's First Semi-Annual Report, "[t]he current goal, codified in the First-Year Monitoring Plan, is for CPD to have a new use of force policy in place, and all officers trained on the policy, by December 31, 2016. This will allow the new policy to become effective and implemented across Cleveland as of January 1, 2017."⁴ The new policies will take effect only when "the parties and the Monitor have certified that training on the polic[ies] and its core concepts have been sufficiently

³ Milestones that are scheduled for completion after June 13, 2016 will be addressed in the City's next status report which should be filed in December.

⁴ First Semi-Annual Report, Dkt # 65, p. 31.

completed.”⁵

The new “Use of Force” policies currently being developed address the guidelines governing use of force by officers, the reporting to be completed following a use of force, the levels of investigation to be completed following a use of force, and requirements for supervisory review following the completion of the required reporting and investigations. An update on the current status of policy development in each of these four uses of force related areas follows.

1. Use of Force – by Officers

Initial steps in CDP’s review and development of revised division policies governing officer use of force involved receiving community input from the Community Relations Board and the CPC, and input from CDP’s patrol and supervisory officers. Taking due consideration of community and officer input, CDP has proposed revised policies governing officer use of force along with guidelines governing the use of intermediate weapons. The policies provide direction and clarity for those instances when an individual’s actions require an appropriate use of force response. The intermediate weapons policy establishes use of force guidelines relative to the deployment of intermediate weapons. Intermediate weapons generally used by officers addressed in the policy include the asp baton, Taser, and Oleoresin Capsicum spray, generally referred to as OC or pepper spray.

CDP has also proposed along with the use of force policy a separate policy addressing the principles of “De-Escalation.” The purpose associated with this new proposed policy is to establish guidelines for officers relative to de-escalating situations

⁵ Monitoring Plan, Dkt # 43-1, p. 7.

in order to gain voluntary compliance and to reduce the need to use force.

The CDP, Parties, and the Monitor continue at the time of this report to be actively engaged in discussions concerning the final language to be contained in each of these proposed policies. The City believes a general consensus between the CDP, the parties, and the DOJ concerning the use of force and de-escalation policy language has been achieved, and it is currently anticipated that final language reflecting the consensus will be proposed to the Monitor by the end of this month. The Monitor's recent First Semi-Annual Report provided that it is "currently contemplate[d] that community engagement on the new force policy will occur beginning in late July or August, with the Monitor recommending that the Court either approve or disapprove of the policy in late August or early September."⁶

2. Use of Force - Reporting

Paragraph 47 of the Consent Decree provides that "[a]s soon as practical following a use of force, CDP will ensure that the incident is accurately and properly reported, documented, and investigated. A fundamental goal of the revised use of force policy will be to account for, review, and investigate every reportable use of force and reduce any improper uses of force."⁷ Within this framework, the parties further agreed that "CDP will develop and implement a single, uniform, reporting system pursuant to a Use of Force Reporting policy."⁸

CDP has been working on the development of the required reporting policy concurrent with the work associated with the aforementioned policies governing officer

⁶ First Semi-Annual Report, Dkt # 65, p. 34

⁷ Dkt # 7-1, p. 14.

use of force and de-escalation. The new reporting policy will establish guidelines for the reporting of all uses of force responses and for documenting the reasonableness, necessity and proportionality associated with an officer's use of force. The proposed use of force reporting policy is being reviewed and discussion remains ongoing between the CDP, the Parties and the Monitor as to the final language to be incorporated. The Monitoring Plan anticipates submission of a final agreed upon draft of CDP's new reporting policy in late June, and, if the Court approves the policy, with the attendant necessary training to be completed by the end of December.

An interim development related to "use of force" reporting that is being currently used a new, interim force reporting form — the "Blue Team Individual Involved Officer Worksheet." Blue Team is a software program that has been adopted by CDP that allows, among other capabilities, for officer "use of force" reporting to be directly and electronically entered into the system. CDP is presently training officers on using the Blue Team system. This program will enable patrol officers to enter their use of force reporting directly into the system allowing them to complete their duties more efficiently. Though the referenced worksheet is a paper form, its design closely aligns with the drop down computer screens used with the Blue Team software system.

3. Use of Force – Investigations

Paragraph 87 of the Consent Decree established that uses of force would be classified within three defined levels, 1, 2, and 3, and further provided:

The three levels for the reporting, investigation, and review of use of force correspond to the amount of force used and/or the outcome of the force. This Agreement's categorization of these types of uses of force is based on

⁸ *Id.* at p. 20.

the following factors: potential of the technique or weapon to cause injury; degree of injury caused; degree of pain experienced; degree of disability experienced by the subject; complaint by the subject; degree of restraint of the subject; impairment of the functioning of any organ; duration of force; and physical vulnerability of the subject. Each level of force will require increasingly rigorous reporting, investigation, and review.

Level 1 is the lowest category and includes “force that is reasonably expected to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, but that is not reasonably expected to cause injury, does not result in actual injury, and does not result in complaint of injury.” Level 2 addresses uses of force that “could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to Level 3 use of force.” Level 3 includes among its definition the use of lethal force, uses of force resulting in death or serious injury, force resulting in hospital admissions, neck holds, force resulting in loss of consciousness, canine bites, and certain levels of electronic control force when used.⁹

The level of scrutiny or investigation to be undertaken following an officer’s use of force increases with the level of the force used. CDP’s proposed policies governing the required investigations for each of the three levels of force are still being discussed and reviewed as of the date of this filing.

a. Levels 1 and 2 Investigation

CDP is presently engaged with the Monitor and the Parties concerning a new proposed policy entitled “Use of Force Supervisory Reviews and Investigations.” The proposed policy addresses the level of scrutiny and use of force investigations that are to

be conducted for Level 1 and Level 2 uses of force. Pursuant to the agreement of the parties and language of the Consent Decree, the proposed policy addresses fair and impartial use of force reviews and investigations that will be conducted by officer chain of command supervisors for Level 1 and Level 2 uses of force. The proposed policy would require that investigations address attempted de-escalation, the reasonableness and necessity of actions taken by an officer, and proportionality of force used in relation to the level of resistance encountered. CDP continues to work with the Parties and the Monitor with the goal of gaining approval and finalizing the policy by late August.

b. Level 3 Investigation

The Consent Decree requires that Level 3 uses of force be investigated by a team of personnel having specialized training and expertise, with the teams being tailored to the circumstances of each investigation. The teams will be identified with the title Force Investigation Team (“FIT”).¹⁰ A FIT will investigate all Level 3 use of force incidents, uses of force involving potential criminal conduct by an officer, all incidents in which an individual has died while in, or as an apparent result of being in, the Division’s custody, and any uses of force assigned for FIT investigation by the Chief.

CDP’s proposed policy governing FIT investigations is currently being reviewed and discussed by the Parties and the Monitor. The proposed FIT policy has been designed to ensure that Level 3 uses of force are investigated fully and fairly by individuals with appropriate expertise, independence, and investigative skills. The policy is intended to

⁹ The complete definition for each of the three Levels can be found at paragraph 87 of the Settlement Agreement, Dkt # 7-1, at subparagraphs a.-c.

¹⁰ Requirements addressing FIT are contained in paragraphs 110-123 in the Settlement Agreement, Dkt # 7-1,.

ensure that any uses of force that are contrary to law or policy are identified; that any training, tactical, and equipment deficiencies related to the use of force are identified; and that investigations when conducted are of sufficient quality. A FIT when deployed is to be granted full investigative authority by the Chief of Police.

The Monitoring Plan establishes that review and further refinement of both the draft supervisory chain of command force investigation policy for Levels 1 and 2 uses of force and the FIT use of force investigation policy for level 3 incidents will be finalized in late August.

4. Use of Force – Review.

The CDP has concurrently developed a policy proposal that relates to the review of uses of force through the creation of a Force Review Board (“FRB”). As established in Section 124 of the Consent Decree the newly created FRB will serve as a quality control mechanism for reviewing use of force investigations and will “appraise use of force incidents from a tactics, training, policy, and agency improvement perspective.” The FRB will review all FIT investigations and all Level 2 investigations where force-related misconduct was found, with the further responsibility to review a sample of other completed Level 2 force investigations. CDP provided its initial proposed FRB policy for review of the Parties and the Monitor on June 10.

C. Officer Training

The third section of the Monitoring Plan is entitled Officer Training. In accord with the Consent Decree, CDP’s training policy is to be reviewed to “ensure that all officers receive adequate training to understand: (a) how to police effectively and safely in accordance with CDP policy; [and] (b) the requirements of the Agreement, Ohio law,

and the Constitution and laws of the United States.”¹¹ To meet the requirements of the Consent Decree the Monitoring Plan establishes certain goals that are to be achieved in 2016. Establishing a training program that meets the requirements of the Consent Decree is a vital undertaking and the following addresses ongoing training related achievements.

1. Training Policy and Committee

CDP’s new Police Officer Training Standards policy was developed and finalized with the agreement of the Parties and Monitor and filed for the Court’s approval on March 30, 2016. The new training policy establishes the use of multiple creative learning techniques and provides for the ongoing and continuing professional training of officers on a variety of subjects—to include constitutional use of force, search and seizure, tactics, crisis intervention, community and problem solving policing, bias free policing, annual equipment training, state required training, supervisory training, and technology training as necessary.

The approved training policy expands CDP’s Training Review Committee by including with CDP’s training section staff members, newly appointed District training coordinators, representatives from the police unions, and members of the Cleveland Police Commission.¹² In recommending approval of the new training policy to the Court on March 30, the Monitor commented that “[a]fter careful review...the proposed policy incorporates the applicable requirements of the Consent Decree while making clear the scope both of training programs that CDP is committing to provide to its officers and of

¹¹ Dkt # 7-1, paragraph 269.

¹² The CPC members that have been appointed to the Training Review Committee include Mario Clopton and Dr. Kathy Clegg.

the Training Review Committee's role in identifying the Division's training priorities."¹³
On April 19 the Court entered an order approving the CDP's new training policy.

The expanded Training Review Committee as envisioned in the Consent Decree¹⁴ will review and update CDP's training plan on a yearly basis and will conduct a needs assessment that considers trends in misconduct complaints, problematic uses of force, officer safety issues, input from officers at all levels, input from the community, court decisions, law enforcement trends, District needs, and changes to laws and policies.

2. District Training Coordinators

Pursuant to the requirements of paragraph 276 of the Consent Decree, CDP has now identified and appointed a single training coordinator for each of its Districts. The coordinators will work with the Commander responsible for training, and as members of the Training Review Committee they will ensure that officers assigned to their respective districts complete required training. The District training coordinators will eventually handle additional responsibilities to include the scheduling of training, presenting roll call training and in-service training, and documenting the completion of training.

3. In-Service Training Plan

As work in the first part of the year has focused on developing revised plans and policies, officer in-service training was separated into two components for 2016. The first component involves training that began in January and that is scheduled to be completed by the end of June 2016. After review and discussion between the Division, Monitor, and DOJ, CDP's in-service training plan for the first six months of the year was approved by

¹³ Dkt # 55, p. 3.

¹⁴ Dkt # 7-1, paragraph 274.

the Monitor. The training undertaken during this period allows the Division to complete existing State-mandated OPOTA training requirements.

CDP's in-service training plan for the second half of 2016 has been submitted to the Parties and the Monitor as required by the Monitoring Plan. The proposed subject matter of the in-service training to be provided to officers in the second six months of 2016 would include training on the new use of force and use of force reporting policies as they are approved, required crisis intervention training, and training in other required areas. As required by the Monitoring Plan CDP has identified and submitted a list of the Division's In Service Training Instructors, along with their area of expertise, to the Monitor and Parties

4. Supervisor Training Plan

Paragraph 323 of the Consent Decree requires that CDP "develop and implement mandatory supervisory training for all new and current supervisors." The Monitoring Plan envisions CDP's developing a Supervisor Training Plan that addresses implementation and adherence to the Consent Decree's supervisor training requirements. Additionally, the Monitoring Plan requires the development of an Initial Supervisor Training Plan for supervisor training that is to be provided in 2016.

Both plans have been prepared and submitted by CDP for review by the Parties and the Monitor in accordance with the Monitoring Plan. Discussions regarding suggested revisions to CDP's proposals remain ongoing and the plans have not yet been finalized and approved.

5. Training Documentation Plan

The Consent Decree requires that CDP develop and implement a system that will

allow CDP “to electronically track, maintain, and produce complete and accurate records of current curricula, lesson plans, training delivered, and other training materials in a centralized electronic file system.” CDP has prepared and submitted to the Parties and the Monitor a proposed Training Documentation Plan (“TDP”) pursuant to the schedule established in the Monitoring Plan. The TDP as proposed by CDP and discussed with the parties and the Monitor would incorporate the adoption of a Learning Management System (“LMS”). LMS involves a software application that provides for the administration, documentation, reporting, tracking, and delivery of electronic educational technology. Review and discussion between the Parties and Monitor regarding feedback and suggested refinements to the proposed TDP remain active and ongoing.

6. Recruitment and Hiring

Paragraphs 300 to 311 of the Consent Decree address CDP recruitment and hiring practices. In achieving the language adopted in the Consent Decree the City and DOJ agreed that “CDP will review and revise as necessary its recruitment and hiring program to ensure that CDP successfully attracts and hires a diverse group of qualified individuals.”¹⁵ The Parties and the Monitor are in agreement that establishing a comprehensive and strong recruiting plan that effectively engages the diverse population of Cleveland and meets the inclusive goals established in the Consent Decree is important. As was commented upon in the Monitor’s First Status Report, the City is proceeding with important work that will significantly impact on future recruiting. The City has developed and submitted proposed and revised recruiting plans within the time frames established in the Monitoring Plan. Aspects of the City’s plan remain subject to

further attention and discussion between the Parties and the Monitor and it was agreed that more time than had been initially contemplated would be taken in developing the final recruiting plan to present to the Court. The City has agreed to continue to work with the Monitor and DOJ in reaching a mutually agreeable and effective recruiting program.

It is understood and contemplated by the City, the Monitor, and the DOJ that the City's next cadet class will come from the City's existing civil service list. The City remains committed to its ongoing establishment of an on-line application process that will make applying to join Cleveland's safety forces an easier process for all involved.

D. Crisis Intervention

In March CDP and the Mental Health Response Advisory Committee submitted a proposed Crisis Intervention Work Plan to address gaps in resources, knowledge and infrastructure regarding crisis intervention and to address the process for complying with crisis intervention deadlines established in the Monitoring Plan. After review and discussion with the Parties and Monitor a revised plan was filed with the Court and was approved in May.¹⁶

The MHRAC is presently working on re-writing CDP's CIT policy and expects to have it completed for review by the Parties and the Monitor in July. Community meetings and focus groups have been held to discuss issues related to CDP and crisis response and to obtain recommendations. The initial eight (8) hour CIT training for CDP officers, which will begin in the Fall, is currently in development. The CIT Coordinator, Captain James Purcell is working on a staffing plan to ensure specialized CIT officers are

¹⁵ Dkt # 7-1, p. 70, at paragraph 300.

¹⁶ Dkt # 64, Order.

available on every shift in each district.

E. Accountability

1. Internal Affairs

Paragraph 178 of the Consent Decree requires that CDP's Internal Affairs ("IA") office "will be headed by a qualified civilian who is not a current or former employee of CDP, and who is not a current or retired law enforcement officer." In this regard the Monitor Plan has established the goal of having a civilian head of IA appointed and commencing work by the end of August.

CDP has established a job description for the position that was approved by the Parties and the Monitor. The position has been posted nationally and CDP has received a number of applications from a diverse pool of applicants. CDP is presently reviewing the application pool for qualified applicants to interview in the near term as the Division works to meet the August deadline for filling the position.

2. Office of Professional Standards

The office of Professional Standards ("OPS") is responsible for receiving and investigating citizen complaints alleging misconduct by officers and employees of the Cleveland Division of Police. After a full and complete investigation, OPS presents the results to the Civilian Police Review Board ("PRB") for disposition. Discussion concerning OPS is contained in Section V of this report: "Response to Concerns Raised in the Monitor's Semi-Annual Report."

3. Police Review Board

The Consent Decree requires the Mayor to work with City Council, in consultation with the CPC, to develop an ordinance to place a Charter Amendment on the

ballot ensuring that members of the Police Review Board (“PRB”) are appointed in a transparent manner, that the PRB membership is representative of the diverse communities within Cleveland, and to allow the chair and vice-chair of the PRB to each serve one year terms, with their selection by a majority vote of PRB’s members. The CPC was consulted and provided recommended PRB Charter amendment language. The Mayor is presently working with City Council to develop an ordinance that would place a Charter Amendment on the November 2016 ballot.

4. Transparency

The City has established a link on both the City’s and CDP website for the purpose of meeting the terms of paragraph 268 of the Consent decree. This paragraph requires that CDP post its “policies and procedures, training plans, community policing initiatives, community meeting schedules, budgets, and internal audit reports on its website.” CDP intends that required information will be consistently posted and updated as matters proceed.

F. Equipment and Resources

1. Equipment and Resources Study

Section 292 of the Consent Decree required that CDP “complete a comprehensive equipment and resource study to assess its current needs and priorities to perform the functions necessary for CDP to fulfill its mission and satisfy the requirements of this Agreement.” CDP completed and submitted the required equipment and resource study in April to the Parties and Monitor.

2. IA Pro

IA Pro is a software program management tool that has been adopted by CDP to

allow the Division to electronically enter, track and maintain all in-house investigations such as injury investigations, use of force investigations, motor vehicle accidents and more. The software program will allow the Division to investigate, follow and close internal cases in a more efficient manner. The program also enables the Division to identify officers for early intervention before discipline is required by tracking indicators such as use of force, motor vehicle accidents, injuries and more. The alert will enable the Division to assist officers with possible issues, such as training, before the officer reaches the need to be disciplined.

CDP identified an IA Pro Implementation and Maintenance Team that has met with representatives of the Parties and the Monitor in accordance with the direction in the Monitoring Plan to discuss the status of implementing the IA Pro system. CDP has also provided the Monitor with a proposed final version of the IA Pro Implementation Work Plan required in the Monitoring Plan. A memorandum filed with the Court on April 11 concerning the IA Pro Implementation Work Plan addresses the status of matters¹⁷:

The Monitor is in receipt of the Division's Final Draft of the IA Pro Implementation Work Plan. That Plan provides a general overview of the intended implementation process, with accompanying deadlines. The Parties and Monitor have agreed that the overview Plan is sufficient for this current juncture — primarily because it closely adheres to the manufacturer of IA Pro's standard and recommended implementation process and establishes an IA Pro Implementation Team to drive implementation of the system across the Division. As the IA Pro implementation process unfolds, updated project plans may be necessary. The Monitor will update the Court as implementation proceeds.

Implementation continues. The IA Pro program will also allow the Office of Professional Standards to enter and track citizen complaints electronically.

¹⁷ Dkt # 56, pp. 1-2.

3. Staffing

Paragraph 319 of the Consent Decree requires that within the first year “CDP will complete a comprehensive staffing study to assess the appropriate number of sworn and civilian personnel to perform the functions necessary for CDP to fulfill its mission, and satisfy the requirements of the Agreement.” Pursuant to the Monitoring Plan CDP conducted a survey of its officers and met with the CPPA and FOP to discuss staffing issues and concerns prior to the completion of its study. The results of the officer survey input have been provided to the Monitor and Parties. CDP is finalizing the staffing study for delivery to the Monitor and the Parties pursuant to the Monitoring Plan.

The Consent Decree further requires at paragraph 319 that following completion of the staffing study that CDP is “to develop an effective, comprehensive Staffing Plan that is consistent with its mission, including community and problem-oriented policing that will allow CDP to meet the requirements of this Agreement.” The Monitoring Plan schedule requires that CDP submit the separate staffing plan to the Parties and the Monitor in August.

4. Body Worn Cameras

During the period of this report the Monitor provided CDP with an assessment of its existing body-worn camera policies and practices. CDP has undertaken to revise its former policies to incorporate feedback received from the Parties and the Monitor. While CDP believes a consensus has been achieved on most body-worn camera policy issues, further review and communication between the parties and DOJ continues in addressing finalization of the policy.

G. Data Collection and Analysis

The Consent Decree requires that CDP designate a Data Collection and Analysis Coordinator to coordinate the creation, collection, and maintenance of multiple data and records required by the Decree. The job position was posted nationally and many applications were received. The Interview process and associated background checks are ongoing.

H. Bias Free Policing

Section of the Consent Decree required that “[w]ithin 18 months of the Effective Date, CDP will develop a bias-free policing policy that incorporates, as appropriate, the recommendations developed by the [CPC] pursuant to paragraph 17 [of the Settlement Agreement] and that provides clear guidance to officers that biased policing, including deciding to retain a motorist or pedestrian based solely on racial stereotypes is prohibited.”

1. Bias Free Policing Policy

On June 3 CDP produced to the Parties and the Monitor a proposed Bias Free Policing Policy. The new draft policy was formulated to provide officers guidance in delivering police services with the goal of ensuring that they are accomplished equitably, respectfully, and free of unlawful bias, and in a manner that promotes broad community engagement and confidence in the Cleveland Division of Police. On March 7, 2016 the CPC completed and provided CDP and others its initial Bias Free Policing Report as contemplated by paragraph 17 of the Settlement Agreement.

In delivering the proposed draft policy the CDP made clear that it is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair and

equitable manner. The policy establishes that CDP officers are to engage in bias-free policing and shall not make enforcement decisions or take actions that are influenced by bias, prejudice, or discriminatory intent.

CDP's proposed bias free policy is the first step in a review process that contemplates finalization and approval of a new Bias-Free policy in the middle of October. As with the development of the use of force policies, the Parties and the Monitor will review and comment on the policy as it proceeds to finalization.

2. Bias Free training

The Plan contemplates that CDP will develop in service training relative to the bias free policing policy after finalization and approval of the policy. Such training would occur during the period of October, 2016 to February, 2017.

I. Compliance and Outcome Assessments and Reporting

1. Biennial Survey

Paragraph 364 of the Consent Decree requires that the CDP and City "agree to cooperate with the design and performance" of the Biennial Survey to be undertaken by the Monitor. Pursuant to the schedule incorporated into the Monitoring Plan, the City and CDP worked to provided relevant comments and considerations to the Monitor concerning preparation of the Biennial Survey. The City understands that much of the survey work has been completed and that the results will be forthcoming in the next reporting period.

2. City Status Report

Pursuant to the terms of the Monitor Plan and the agreement of the Monitor and Parties the City's second status report is being filed with the Court on June 13.

J. Miscellaneous

This section of the report discusses other ongoing efforts during the period of the last six months not addressed in the Monitoring Plan.

1. Consent Decree Implementation Coordinator

In April the City appointed retired Federal Magistrate Judge Gregory A. White as the city's Consent Decree Implementation Coordinator. Judge White reports directly to the Mayor and is responsible for coordinating the City's on-going implementation efforts in meeting requirements of the Consent Decree and the Monitoring Plan. Judge White coordinates directly with CDP's Consent Decree Implementation Unit and regularly interacts with the Monitor.

2. CDP Coordination with CPC

A representative from CDP's Consent Decree Implementation Unit headed by Commander Brian Heffernan regularly attends the scheduled meetings of the CPC, with the Commander providing a point of coordination for commissioners when questions or requests for documents arise that require CDP attention. The Unit has presented information and held question and answer sessions at full and sub-committee meetings in response to topics the Commission was working on, and has further participated with the CPC in break out group meetings with community members on a variety of topics. Additionally the Unit offered and provided formal training to CPC commissioners on topics to include: CDP operations, policies, intermediate weapons and data / statistics matters. The unit is presently arranging and coordinating ride-a-longs with officers during a shift with those commissioners who have expressed interest in participating.

III. Assessment of the Status of Cleveland Division of Police's Progress

CDP has made strong and consistent progress in working to ensure that the reforms and goals agreed to and formalized in the Consent Decree are being met. The Division has been working to meet the terms of the Consent Decree, while at the same time concurrently planning and preparing for the Republican National Convention that is coming to Cleveland during the week of July 18-21. The CDP continues to work with and provide information to the CPC, with Commander Brian Heffernan and other members of its implementation team attending regularly scheduled meetings of the CPC. CDP has also maintained a courteous and professional working relationship with the Monitor, with the intention of ensuring the continuing cooperation that was recognized in the Monitor's first semi-annual report. As addressed in this report much of the work in the past six months has necessarily been focused on policies (e.g. use of force, training, crisis intervention, bias-free policing) that will continue to govern policing in Cleveland beyond the period of the Consent Decree.

IV. Plans to Correct Any Problems

CDP's Law Enforcement Records Management System (LERMS) was originally installed in approximately 1998. An upgrade of the system to a Windows platform was completed on November 15, 2015. After the upgrade, the system had been slow to non-responsive with system errors occurring that resulted in a backlog in the entry of officer incident reports. The City's Information Technology Department ("ITS") worked with the system provider to resolve the identified problem areas related to the LERMS go live date last November. Numerous recommendations and changes/fixes were recommended

and applied. Software fixes applied to the system, in conjunction with the redeployment of new hardware and some network enhancement contributed to the LERMS system being stabilized by mid-May. At the time of this report the LERMS system is completely operational.

Due to the issues described above, a backlog of officer incident reports developed. It is important to note that all reports are added to the LERMS system within 24-72 hour of receipt. The backlog refers to the adding of the report narratives to the initial report record. At this time, a combination of temporary workers and current staff has been employed to address and significantly reduce the number of backlog items, while also managing the current report volume. As was noted in the Monitor's report:

The City has appropriate[ly] put focus on the LERMS issue. Temporary workers have assisted in reducing the backlog of cases not entered into the system to 7,590 as of May 25, 2016. Current city personnel working on ensuring that LERMS is a stable, high-functioning system have gone to extraordinary lengths to address issues far more related to business practice and implementation issues rather than core computer or technology concerns.¹⁸

Further reduction of the number of backlog items has occurred during the period following the Monitor's report and reduction remains an ongoing priority.

V. Response to Concerns Raised in the Monitor's Semi-Annual Report

A significant concern addressed in the Monitor's Semi-Annual Report involved the Office of Professional Standards ("OPS"). The Monitor concluded in the report that "a comprehensive and intensive organizational assessment of OPS must be conducted to determine how OPS is currently functioning, why so few cases are investigated, and what

¹⁸ Dkt # 65, at p. 8.

specific reforms must be instituted to ensure that new complaints are fully and fairly investigated and the enormous backlog of incomplete investigations is addressed.”¹⁹ The City recognizes that the timely, full, and fair investigation of citizen complaints is a critical part of the agreed upon reforms outlined in the Consent Decree. As was noted in the Monitor’s report, the City “has committed to the Monitor and Department of Justice to fixing OPS.”²⁰ The City remains committed to taking those steps that are necessary to ensure that OPS not only meets, but exceeds, the performance measures agreed upon in the Consent Decree. As assessments are completed, the City will further work with the Monitor and DOJ to develop new achievable performance milestones to guide OPS in meeting all agreed upon reforms.

Operations Manual

A near term City goal working with the Monitor and DOJ is the development of a comprehensive and revised agency Operations Manual that sets out the OPS mission statement, ensures public transparency, and provides clear and detailed procedures for investigators in the initiating, handling, and completing of investigations, to include complaint intake, evidence collection, and preparing final reports. The Manual will also document the duties and procedures for the Community Police Review Board (“PRB”) to include the presentation of OPS findings, the standard of review, how reviews are conducted, how disciplinary recommendations are determined, and dissemination of information to the public. The Operations Manual will be made available for public comment before finalization and approval is obtained.

¹⁹ Dkt # 65, at p. 7.

²⁰ *Id.*

Additional Personnel

The City is committed to significantly reducing the number of pending complaints documented in the Monitor's report. The City will provide additional resources to address the situation, while continuing to work with the DOJ and Monitor in assessing the needs of OPS. The hiring process for hiring two additional full-time OPS Investigators is underway. The two positions were posted May 20th and the City has received over 100 applications. The Department of Public Safety is currently reviewing all applications to determine which applicants meet the minimum qualifications. Interviews of prospective investigators will follow shortly after the qualification review is completed.

A new administrator position, General Manager of Administrative Services, has been added to the OPS organizational structure. Over 60 applications were received for the position and a final hiring decision will be made soon. The new management administrator will be responsible for the following duties: monitoring and tracking OPS and PRB budgets, coordinating training, overseeing the performance review processes, and coordinating the annual and quarterly reporting process.

Training

An important consideration in the Consent Decree was agreement to provide OPS investigators with enhanced investigative training. OPS investigators are in the process of receiving enhanced training that addresses the following subjects: Investigative Skills, Gathering & Objectively Analyzing Evidence, Interview and Interrogation Techniques, Data and Case Management, Identifying Conduct Warranting Investigation, Witness Credibility, Preponderance of the Evidence Standard, and CDP Rules and Policy Training. In accordance with the Consent Decree, the CPRB will receive training on the

following subjects: Constitutional Law, Use of Force, Stops, Searches, and Arrests, Police Tactics, Investigations of Police Misconduct, Bias-free Policing, Policing Individuals in Crisis, CDP Policies, Procedures, and Disciplinary Rules

Complaint Investigations

The City will continue to work with the Monitor and DOJ to address and resolve identified problems. The City remains determined to properly and completely investigate all complaints received by OPS. As of June 10, OPS had received approximately 115 complaints in calendar year 2016. In approximately 20 of these complaints, the investigations have been finalized by OPS and reviewed by the PRB. Approximately 200 of the 294 complaints filed with OPS in 2015 remain pending. With regard to 2014, approximately 65 of the 474 complaints filed also remain pending. The City is committed to significantly reducing the number of pending complaints by the end of 2016. In attending to completing its investigations, OPS will place proper emphasis on assessing and prioritizing current complaints to protect the evidence gathering process. To better assist with the task of case management, investigators are currently completing daily activity logs. In addition, OPS will soon begin using the IA Pro electronic case management and performance platform used by CDP. This will allow OPS to accurately track each complaint and resulting investigation.

The City is committed to the reforms contained in the Consent Decree and to ensuring that OPS effectively fosters trust between citizens, the community, and the Cleveland Division of Police by conducting thorough, fair, and timely investigations of complaints.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the City of Cleveland's Second Status Report was filed electronically on June 13, 2016. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. Pursuant to the requirements of the Consent Decree the Monitor Team has been delivered a copy of this filing.

/s/ Gary S. Singletary
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