



UNION COUNTY PROSECUTOR'S OFFICE
ANDREW K. RUOTOLO JR. JUSTICE CENTER

32 RAHWAY AVENUE
ELIZABETH, NEW JERSEY 07202-2155
(908) 527-4500 FAX: (908) 289-1267
UCPO@ucnj.org

LYNDSAY V. RUOTOLO*
Acting Prosecutor of Union County

* Certified Criminal Attorney

DOREEN A. YANIK
First Assistant Prosecutor

DEREK T. NECECKAS
Deputy First Assistant Prosecutor

November 6, 2019

Chief John Brennan, Jr.
Elizabeth Police Department
1 Police Plaza
Elizabeth, NJ 07201

Director Earl Graves
Elizabeth Police Department
1 Police Plaza
Elizabeth, NJ 07201

Re: Elizabeth Police Department Internal Affairs Unit Oversight and Related Issues

Dear Chief Brennan and Director Graves:

On April 23, 2019, the Union County Prosecutor's Office (UCPO) assumed oversight of the Elizabeth Police Department's Internal Affairs Unit. The oversight continued through the service of First Assistant Attorney General Jennifer Davenport as Acting Union County Prosecutor, from April 26, 2019 to July 18, 2019, and into the term of Lyndsay V. Ruotolo, who was sworn in as Acting Prosecutor on July 18, 2019. The oversight included review of all 2019 internal affairs complaints, regular consultation with the detectives conducting internal affairs investigations, legal advice and guidance to ensure thorough, fair and impartial investigations, and the approval of case dispositions. The UCPO oversight also involved the inspection of facilities, equipment, policies and training, with the goal of implementing best practices for the internal affairs function of the Elizabeth Police Department (EPD).

The UCPO's direct oversight of cases filed with the EPD's Internal Affairs Unit is now complete. Of course, pursuant to *N.J.S.A. 2A:158-5* and *N.J.S.A. 52:17B-112(b)*, the County Prosecutor, as the Chief Law Enforcement Officer of Union County, maintains general oversight of all law enforcement functions within the County. In addition, the staff of the UCPO remains available to consult and provide guidance at any time to the detectives and command staff assigned to EPD's Internal Affairs Unit. Consultation with the UCPO is particularly important during the investigation of matters involving allegations of excessive force and differential treatment.

Counsel to the Acting Prosecutor Joseph Walsh and recently retired Assistant Prosecutor John Esmerado reviewed all internal affairs complaints against the EPD from January 1, 2019 until October 1, 2019. A total of 75 complaints were reviewed. All pertinent statements, investigative reports, internal affairs reports, CAD entries, external video, medical records and over 181 hours of body camera footage were independently reviewed. In approximately 10 cases, supplemental information/investigation was requested. By the end of the review period, the UCPO agreed with the initial findings made by the EPD Internal Affairs Unit in 74 of the 75 cases. Final determinations were approved in all cases.

The UCPO finds the Internal Affairs function at the EPD to be healthy and professional. Repeated efforts were made in all cases to find corroborating information from body camera footage, medical records, eyewitness statements and surveillance video. By utilizing the Attorney General's *Internal Affairs Policy and Procedures, (November 2017)* as a performance metric, the UCPO found compliance from the Elizabeth Police Internal Affairs Unit with the eleven basic requirements of the Internal Affairs Policy. Based on the police performance we observed in the 181 hours of body camera footage, Elizabeth Police generally treat members of the community with respect and patience. Reviewers were particularly impressed with the repeated use of verbal de-escalation skills by members of the EPD.

Based upon the UCPO's oversight of EPD's Internal Affairs Unit over the past six months, a number of recommendations are necessary and appropriate to further advance the strength of the Internal Affairs Unit. Rather than wait until completion of the oversight period, UCPO staff has been involved in ongoing dialogue for the past six months with EPD commanders and leaders of the City of Elizabeth, all of whom have been professional, open-minded and cooperative. As a result, a number of UCPO's recommendations have already been introduced or are in the process of implementation.

INTERNAL AFFAIRS RECOMMENDATIONS

Facilities / Equipment / Software / Body Worn Camera

- Create an appropriate interview room within the Internal Affairs Bureau that will promote confidentiality for complainants, witnesses and police officers. EPD promptly constructed the interview room and by early June of 2019, the interview room was fully functional, providing privacy and confidentiality during interviews and statements.
- Acquire and install a modern digital audio/video recording system to document the statements of complainants, witnesses and officers. EPD has purchased, installed and is using the system to record all interviews since June 2019. Of particular importance is the current ability to take a recorded statement and then review pertinent body camera footage with the officer or witnesses in the interview room.

- Fully utilize the IA Pro software package already acquired by EPD to track all internal affairs cases. Collaborate with New Jersey State Police Office of Professional Standards (OPS) for best practices on utilization of the IA Pro system. EPD detectives have visited State Police OPS to initiate this process.
- Utilize the Blue Team software package, a component of IA Pro which has already been purchased by the City of Elizabeth, to track all uses of force by EPD officers.
- Continue to expand the EPD's use of Body Worn Cameras (also known as Body Worn Recorders) to record the activities of EPD's officers, thereby promoting police accountability and transparency. Expand the BWC/BWR program to include all officers who are working details at private businesses, malls and road construction assignments. Of particular note is the need to have body-worn cameras in place when officers provide security at bars and nightclubs, where patrons can become unruly and intoxicated. The UCPO notes that the review of BWC/BWR recordings provides the best evidence of exactly what took place in each police-citizen encounter. It allows internal affairs detectives to conduct objective investigations, and provides a mechanism for police command staff to efficiently review operations and ensure compliance with departmental policy. As an additional feature, Body Worn Cameras are helpful as training tools for officers at all stages of their careers.
- Consistent with *Attorney General Directive 2015-1, Law Enforcement Directive Regarding Police Body Worn Cameras, Section 10.1(f) at page 20*, the EPD should consider adopting a policy allowing internal affairs detectives to show BWC/BWR footage "...to a civilian who intends to file a complaint against an officer to demonstrate what actually occurred during the encounter so the person can make an informed decision whether to file the complaint." Some agencies report a reduction in the filing of frivolous internal affairs complaints when such a policy is in place.

Training of Internal Affairs Detectives

- Internal affairs detectives must receive sufficient training to prepare them for their challenging assignment. The UCPO recommends that all personnel assigned to the EPD internal affairs unit complete the one-week Internal Affairs School offered by the New Jersey State Police Office of Professional Standards. Four slots have been secured for EPD IA officers in the next session of this class, scheduled for December of 2019 in Middlesex County. Going forward, officers should attend the State Police training or equivalent training approved by the UCPO within 120 days of assignment to the IA unit. Ongoing professional development training is also recommended.

Investigations & Interviews

- Internal affairs detectives must conduct thorough and complete investigations, which shall include seeking all corroborative evidence, including the medical records of complainants. The *Attorney General's Internal Affairs Policy and Procedures (November 2017)* shall provide guidance to detectives. On excessive force complaints, medical records may be obtained via a prosecutor approved grand jury subpoena when there exists sufficient evidence to support the investigation of potential criminal activity. In other cases, it may be necessary to seek signed waivers from complainants or witnesses to obtain medical records.
- When conducting interviews, internal affairs detectives shall refrain from engaging in the pre-interviewing of witnesses or target officers. The prohibition on pre-interviews applies to all investigations including those investigations that start out as *de minimis* or allegations of minor rules violations.
- Internal affairs cases must be properly identified in accordance with the categories listed in Appendix S of the *Attorney General's Internal Affairs Policy and Procedures (November 2017)*. The categories are Excessive Force, Improper Arrest, Improper Entry, Improper Search, Other Criminal Violation, Differential Treatment, Demeanor, Domestic Violence and Other Rule Violation. Only allegations of differential treatment based on race, ethnicity, gender, religion, sexual orientation, gender identity, or other protected classes, should be listed in the Differential Treatment category. Several cases originally listed as differential treatment did not meet the definition of differential treatment and did not involve a claim of biased treatment.
- Allegations of criminal behavior by an officer, whether an indictable or disorderly persons offense, may not be assigned to that officer's commanding officer for investigation. Allegations of criminal behavior must be investigated by the internal affairs unit, in consultation with the UCPO. Only minor rules violations may be referred to a supervisor, who must be at least one step removed from the officer's immediate supervisor, for investigation.

Impartiality of Hearing Officers

- The City of Elizabeth should continue the practice of using outside counsel to serve as hearing officers to oversee hearings and make decisions on charges filed against police officers for violations of the department's rules and regulations. Outside counsel serving in the role of hearing officer, in contrast to the Police Director serving in that role, promotes confidence in the integrity of the process for complainants, officers, and the public. UCPO sees the independent hearing officer as an important component to ensure the impartiality of disciplinary hearings and recommendations.

RESPONSES TO ATTORNEY GENERAL'S DIRECTION

In addition to oversight of the EPD's internal affairs function, in a statement issued on April 26, 2019, the Attorney General directed the Union County Prosecutor's Office to take a number of steps designed to ensure that the EPD was engaged with the community, was properly exercising its authority in hiring and promotional practices, and had received sufficient training on matters of implicit bias and sexual harassment. In response to the Attorney General's direction, the UCPO made the following observations and took the described actions.

Hiring Practices

- The UCPO reviewed employment records provided by the EPD and noted that as of May 1, 2019, the EPD had three hundred and thirty-six (336) sworn officers. The officers identified as follows:
 - White (174 officers or 51.8%);
 - Black (32 officers or 9.5%);
 - Hispanic (124 officers or 36.9%); and,
 - Other (6 officers or 0.6%).

- As of July 1, 2018, the United States Census Bureau estimated the population of the City of Elizabeth to be 128,885 people. The population is broken down as follows:
 - White (46.6%)
 - Black (19.2%)
 - Hispanic (64.1%)
 - Other (5.8%)

Note that under the methodology utilized by the U.S. Census Bureau, "Hispanics may be of any race, so also are included in applicable race categories," accounting for a total percentage greater than 100%. See information posted at: <https://www.census.gov/quickfacts/elizabethcitynewjersey>

- As is the case with most large law enforcement agencies in New Jersey, the EPD is governed by New Jersey's Civil Service statutes, *see N.J.S.A. 11A:1-1 et seq.*, and regulations, *see N.J.A.C. 4A: 1-1.1 et seq.* This system requires the agency to hire police officer candidates from certified lists supplied by the New Jersey Civil Service Commission following a state-administered law enforcement admissions testing process. This testing process is known as the Law Enforcement Examination (LEE) and is administered approximately every 2-3 years by the Civil Service Commission. The hiring agency has no discretion to deviate from the list of qualified candidates provided by the Civil Service Commission, as only candidates who fail background checks, medical/psychological exams, or residency requirements, may be deleted from the lists. Note that Elizabeth residents' names appear on hiring lists before other Union County or statewide residents.

- The City of Elizabeth has taken numerous steps over the past several months to raise awareness throughout the City about the police officer testing and hiring process. The steps have included creating and posting in the community hundreds of flyers explaining that EPD will be hiring officers and the process for candidates to register for the LEE; advertising on numerous social media outlets; appearing at job fairs, recruitment drives, community events, National Night Out, and various other events. The Mayor devoted a segment of his weekly cable television program, "Our Town," to an interview with an EPD Deputy Chief explaining the entire police hiring process: <https://www.youtube.com/watch?v=f5IfW9PBy5s> and emphasizing the importance of candidates meeting application filing deadlines. Many of these efforts have focused on minority communities and included racially and culturally diverse groups of police officers. The Elizabeth Police Benevolent Association, Local 4 (PBA), has been an active participant in this recruitment process.
- In an effort to broaden the pool of qualified candidates, respond to long-standing community complaints about the lack of diversity in the ranks, and increase participation by people of all races and ethnic groups within the City of Elizabeth, the City has instituted several civil service test preparation programs. The test preparation programs are available free of charge to all residents of the City of Elizabeth and designed to better prepare candidates for the fall 2019 Civil Service Law Enforcement Examination (LEE). One program is being presented by the National Organization of Black Law Enforcement Executives, Northern NJ Chapter (NOBLE). It is fully funded by the City and open to all Elizabeth residents. The course includes preparation for the written, oral and psychological exams, as well as the physical fitness assessment. A second test preparation program, produced with financial support from the City of Elizabeth, was offered by the Hispanic Law Enforcement Association of Union County (HLEAUC) in partnership with the PACO Agency of Hudson County. This program was offered free of charge to all Union County residents, again with the goal of preparing candidates to succeed on the upcoming fall 2019 Civil Service LEE. The HLEAUC-PACO course offered instruction on test-taking strategies and subject matter, interview skills, and physical training preparation. Both of the test preparation courses provide Elizabeth residents with no-cost opportunities to prepare for the upcoming testing process, as well as exposure to successful law enforcement professionals representing racial and ethnic minority groups, who may serve as positive role models.
- The NOBLE course registered 150 candidates. The candidates were divided into two groups of 75 people, and each group received four weeks of test preparation instruction.
- The HLEAUC-PACO course reports that 386 candidates registered, with a nightly average attendance of 260 students over the three sessions of the course. Over 50% were residents of the City of Elizabeth. Makeup sessions are planned for those who missed a session of the course.

- The New Jersey Civil Service Commission anticipates administering the LEE during November and December of 2019:

<https://www.state.nj.us/csc/about/news/safety/2019%20October%20--%20Law%20Enforcement%20Status%20Report%20-%20Combined.pdf>

Promotional Practices

- The EPD promotes personnel from the rank of police officer to the superior officer ranks of Sergeant, Lieutenant, Captain, Deputy Chief, and Chief based upon certified lists or rosters provided to the City of Elizabeth by the New Jersey Civil Service Commission, pursuant to state statutes and regulations, *see N.J.S.A. 11A:1-1 et seq.*, and *N.J.A.C. 4A: 1-1.1 et seq.* The lists are promulgated by the Civil Service Commission following state-administered law enforcement promotional examinations. In general, Police Officers test for Sergeant, Sergeants test for Lieutenant, Lieutenants test for Captain, etc. Ranking on the lists or rosters is determined by the test scores and seniority. Within the EPD, the promotional examination testing process is quite competitive. Many officers devote significant time to studying and attending privately run test preparation courses.
- The employing agency, in this case the EPD, is required by law to follow the Civil Service Commission's "rule-of-three," *see N.J.S.A. 11A:4-8*, by selecting the successful candidate for promotion from the top three candidates on the certified list supplied by the Civil Service Commission. The City of Elizabeth does not have discretion to deviate from the certified lists or the Civil Service Commission's "rule-of-three."
- A review of the EPD's records (Civil Service Commission promotional rosters and actual officer promotions) over the last two testing and promotional cycles for each of the superior officer ranks reveals no evidence of discrimination in the City of Elizabeth's police department promotional practices. Each cycle covers approximately three years. No evidence of minority candidates being "passed over" in favor of non-minority candidates was discovered. No specific complaints or anecdotal evidence of racial discrimination in the promotional process was discovered.
- In an effort to assist all of its officers preparing for promotional examinations, with the goal of broadening the pool of officers scoring well on the exams and becoming eligible for promotion, the City of Elizabeth retained, at its own expense, a private test-preparation company to provide professional development courses. The company, which runs test-preparation programs for police officers throughout New Jersey, is providing instruction to EPD officers during their off-duty hours at Elizabeth Police Headquarters. The program not only assists officers to score well and succeed on the Civil Service tests, but provides in-service training to officers in a cost-effective manner.

Training

- In response to the Attorney General's April 26, 2019 direction, the UCPO organized a mandatory training program for all EPD officers. The program included blocks of instruction on *Sexual Harassment in the Workplace*, taught by an instructor from the New Jersey Division on Civil Rights; *Police Officer Resiliency*, taught by instructors from Penn Medicine's Princeton House Behavioral Health First Responder Treatment Services Program; and *Implicit Bias Booster Training*, a program created by the nationally recognized Fair and Impartial Policing (FIP) Program. The FIP program is an implicit-bias awareness training program for law enforcement personnel designed to raise awareness about implicit bias and recognize and mitigate its effect in police work. The FIP Program has been adopted in major cities throughout the country, as well as by the New Jersey State Police. The EPD, along with all Union County law enforcement agencies, received the basic FIP training course in 2017 and 2018, via a program coordinated and funded by the UCPO. The EPD's 2019 training included a booster or update to the basic FIP course.
- EPD officers, in compliance with *Attorney General Law Enforcement Directive 2016-5* creating the CLEAR (Community-Law Enforcement Affirmative Relations) Institute, have taken courses in De-escalation Techniques: Police Response to Individuals with Special Needs/Mental Health Issues and Sexual Assault Investigations. Additional training, designed to address police-community relations, is planned each calendar year in accordance with the program established by Directive 2016-5.
- EPD officers complete an annual training program on Workplace Harassment Prevention, which includes Sexual Harassment. The training is conducted via the department's computer based Power DMS system. A representative from the New Jersey Division on Civil Rights was consulted on this training block. Officers are required to pass a short examination upon completion of the annual course, which includes a review of the EPD General Order Prohibiting Workplace Harassment, applicable laws, reporting options, supervisor responsibilities, investigation procedures, and anti-retaliation provisions.
- Between June and September of 2019, EPD officers attended the "When Words Fail" training program. The training provides law enforcement officers with communication skills designed to enable them to de-escalate combative subjects without compromising officer safety. The officers are taught to utilize their Body Worn Cameras as an evidence-gathering tool during combative situations. Finally, officers learn physical control techniques designed to enable them to control a combative subject without using punches, kicks, strikes, or choke holds. The course was presented to EPD officers in cooperation with the Union County Sheriff's Office.

- In addition to the above described training courses, which address the Attorney General's concerns expressed in his April 26, 2019 statement, EPD officers participate in regularly scheduled training on a variety of topics including firearms, use of force, and domestic violence.

Community Engagement

- The EPD has a Community Services Division headed by a Police Lieutenant that is tasked with ensuring that the department is engaged with the community. In addition to other duties, officers assigned to this division attend regular community block watch meetings. The meetings are held in each of the City's six wards and hosted by members of the Elizabeth City Council. Annually, EPD officers and command staff attend an average of eight meetings in each of the City's six wards. At these meetings the Lieutenant and EPD officers address community concerns about criminal activity, response time to calls for service, and any issues raised by those in attendance. Officers also use these meetings as opportunities to meet and engage with community leaders, and to recruit new EPD candidates by distributing information about the police hiring process. The Community Services Division is also involved in targeted enforcement actions designed to address many of the issues raised by citizens. The EPD should consider creating a dedicated Community Policing Unit that focuses solely on community engagement issues.
- EPD officers have appeared and participated at many community events over the past six months, including an Iftar Dinner at the Muslim Community Center of Union County, Special Olympics Torch Run fundraiser, Pizza with a Cop, Fishing Derby at Warnaco Park, Ice Cream with a Cop, Battle of the Badges fundraiser basketball games to support St. Mary's School and the Valerie Fund, National Night Out, Elmora Youth Little League events, Coffee with a Cop, and the UCPO's Summer Slam Youth Basketball Tournament.
- EPD officers teach the L.E.A.D. (Law Enforcement Against Drugs) program in the Elizabeth Public Schools, providing an excellent opportunity to engage in a positive manner with grade school students. The program addresses drug abuse, bullying, and violence. The EPD is considering the addition of anti-smoking and anti-vaping components to the existing curriculum.
- The EPD engages Elizabeth residents on social media platforms, maintaining Facebook, Instagram, and Twitter accounts. The Police Benevolent Association (PBA) maintains an Instagram account. In addition, the City of Elizabeth often provides information about the EPD and public safety issues via its social media presence on Twitter, Instagram, and Facebook.
- The EPD conducted a recent survey and determined that 175 of its current officers are bilingual. This represents over 50% of the sworn members of the department. Spanish and

Portuguese are the most common second languages spoken; however, Greek, Arabic, Creole, Italian, German, Tagalog, Chinese, Ukrainian, Croatian, and French, are also represented. The significant number of bilingual officers assists the EPD in providing service to the City's immigrant communities and certainly promotes community engagement.

GENERAL RECOMMENDATIONS

- The UCPO recommends that the EPD complete the process of seeking agency accreditation, either through the New Jersey Association of Chiefs of Police (NJSACOP) or the Commission on Accreditation of Law Enforcement Agencies (CALEA). Accreditation signifies a law enforcement agency's commitment to the implementation of policies and procedures that are conceptually sound and operationally effective, in order to reflect the best professional practices. The EPD began the accreditation process several years ago, but has not completed the requirements or the necessary review by NJSACOP or CALEA.
- The *Attorney General's Internal Affairs Policy and Procedures (November 2017)*, at page 9, states that, "Proper supervision is critical to the discipline and management of a law enforcement agency. To maximize their effectiveness, agency supervisors should receive appropriate supervisory training as close as possible to the time of their promotion. Emphasis should be placed on anticipating problems among officers before they result in improper performance or conduct." The UCPO recommends that all newly appointed EPD supervisors receive formal training to prepare them for their new roles as leaders within the department.
- The UCPO recommends that the City of Elizabeth and the EPD adopt a policy on Supervisor-Subordinate Consensual Personal Relationships in the Workplace. Relationships between supervisors and subordinates implicate the employer's obligation to provide a workplace free of discrimination, harassment, or an otherwise hostile environment. Such relationships may erode organizational morale and productivity, as well as create potential liability for the employer. Many agencies, including the N.J. Department of Law and Public Safety, have policies in place that address this issue and may serve as templates for the City of Elizabeth and the EPD.
- Both the City of Elizabeth and the EPD have policies in place prohibiting discrimination and harassment in the workplace. The EPD's General Order addressing this issue, issued on June 16, 2015, includes a strong anti-retaliation provision protecting employees who file complaints alleging discrimination or harassment in the workplace. The UCPO recommends that the City's policy be updated to include a similar anti-retaliation provision to protect all City employees and to be consistent with the EPD General Order.
- The EPD has recently implemented a pilot program requiring regular supervisory review of a random sampling of every officer's BWC/BWR files. Sergeants and Lieutenants will review

the BWC/BWR footage to ensure officer compliance with departmental policy and to identify training needs. The UCPO recommends that the EPD continue to develop and expand the pilot program department-wide. The program will allow EPD supervisors and commanders to identify problematic behavior at its early stages, thereby promoting early intervention. The early intervention may include policy changes, counseling, training, and discipline.

- The Code of the City of Elizabeth, at Title 2, Chapter 2, Section 2.56.010, establishes the civilian Police Director as the head of the police department. This contradicts *N.J.S.A.* 40A:14-118, which states that "...the chief of police, if such position is established, shall be the head of the police force and be directly responsible to the appropriate authority for the efficiency and routine day to day operations thereof, and that he shall, pursuant to policies established by the appropriate authority: ...[List of Police Chief Duties]." The City of Elizabeth Code, at Title 2, Chapter 2, Section 2.56.020, lawfully designates the director of the police department as the appropriate authority to make, administer, enforce, adopt and promulgate rules and regulations for the EPD. However, the Chief of Police, when the position exists, must be the "head of the police department," as required by *N.J.S.A.* 40A:14-118. The City of Elizabeth should amend the City Code to comply with the requirements of *N.J.S.A.* 40A:14-118.

In conclusion, after a full systematic review of internal affairs complaints, hiring and promotional practices, officer demographics, and training, the UCPO did not find evidence of institutional or *de facto* racism within the Elizabeth Police Department. To be sure, not all members of the department or the community feel that the EPD's ranks are fully representative of the population of Elizabeth, a concern that exists in many communities. Through recruitment and test preparation efforts, both the City and the EPD are taking reasonable steps to address that concern. It should be noted that City of Elizabeth leaders, EPD command staff, rank-and-file officers, and the Police Benevolent Association, all conducted themselves with a spirit of cooperation and professionalism throughout this process. Most expressed a genuine sense of pride in their association with the EPD. The Union County Prosecutor's Office looks forward to continuing its collaborative relationship with the EPD, working together to make the City of Elizabeth safer for all of its residents.

Very truly yours,

LYNDSAY V. RUOTOLO
Acting Prosecutor of Union County



By: JOSEPH F. WALSH
Deputy Attorney General/
Counsel to the Acting Prosecutor

Chief Brennan & Director Graves

Page 12

November 6, 2019

c: Attorney General Gurbir Grewal

First Assistant Attorney General Jennifer Davenport

Mayor J. Christian Bollwage, City of Elizabeth

William Holzappel, Esq., City Attorney of the City of Elizabeth