



U.S. Department of Justice

Civil Rights Division

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

February 9, 2004

Subodh Chandra, Director
Department of Law
City of Cleveland
City Hall
Cleveland, OH 44113

Re: Agreement to Conclude DOJ's Investigation of the
Cleveland Division of Police's Use of Deadly Force

Dear Director Chandra:

We write in response to Chief Edward Lohn's letter dated December 22, 2003 to propose the following Agreement to conclude the Department of Justice's (DOJ) investigation of the Cleveland Division of Police's (CDP) use of deadly force. As you know, DOJ has provided to the CDP a formal technical assistance letter and informal technical assistance through its police practices consultants. DOJ recommended changes in CDP use of deadly force policies, procedures, and practices. Chief Lohn's letter described the numerous changes that the CDP and the City of Cleveland (City) have implemented to address DOJ's concerns regarding both the use of deadly force by CDP officers and the investigations conducted by the CDP's Use of Deadly Force Investigation Team (UDFIT). The most important of those changes are as follows:

- CDP revised its use of force policy. In particular, the CDP now prohibits CDP officers from intentionally firing at moving vehicles unless there is imminent danger of death or serious injury, other means are not available to avert or eliminate the threat, and, where feasible, some warning has been given;
- CDP expanded in-service officer training to include the use of true-to-life scenarios drawn from CDP experiences, and enhanced officer tactical training in the CDP's practice shooting house;
- CDP created a shooting review team consisting of a cross-section of CDP officers with specialized training. We understand that the team will review uses of deadly force after the conclusion of any criminal or administrative review and makes recommendations regarding tactics, training, and equipment; and

- CDP expanded the investigative responsibilities of the UDFIT to include all officer-involved shootings. We further understand that CDP will develop and implement standard operating procedures for the team setting forth its authority, responsibilities and investigative procedures.

We understand that the CDP intends that these reforms will continue after the conclusion of DOJ's investigation.

We appreciate the City's and CDP's openness and high level of cooperation throughout the investigation and their commitment to improve the CDP's use of deadly force policy and practices. Due to the focused nature of DOJ's concerns regarding CDP officers' use of deadly force, your responsiveness to DOJ's concerns, and the reforms you have implemented, we do not believe litigation is either necessary or appropriate to resolve this matter. We propose the following terms to conclude the use of force component of DOJ's investigation of the CDP:

- (1) Within six months after the effective date of this Agreement, the Department of Justice (DOJ) will attend CDP tactical use-of-force training and will offer oral and, if appropriate, written comments and suggestions. Prior to that visit, the CDP will provide the DOJ with videotape copies of in-service and recruit-training courses, covering one complete recruit class, if any, and one cycle of in-service phase training.
- (2) Within 90 days of the effective date of this Agreement, the CDP shall submit standard operating procedures for the UDFIT for DOJ review and approval. The CDP shall implement the standard operating procedures within 10 days of receiving DOJ approval.
- (3) Sixty days prior to policy promulgation, the CDP will provide to DOJ, for its review and approval, copies of any revised policies regarding officer discipline, use of deadly force, investigation of uses of deadly force, use-of-deadly-force training, and UDFIT's standard-operating procedures.
- (4) For any provision that provides for DOJ "review and approval," DOJ will grant approval in a timely fashion provided that the policy, protocol, plan, revision, or other City or CDP action reasonably satisfies the requirements and standards set forth in the relevant provision(s) of this Agreement.
- (5) Subject to record-retention requirements and procedures imposed by state or local law, the CDP will maintain all records documenting compliance with this Agreement and all documents required by, or developed under, this Agreement. The CDP will maintain all files regarding investigations of police action for at least ten years from date of the incident. The CDP will maintain an officer's training records during the officer's employment with the CDP and for three years thereafter (unless required to be maintained for a longer period of time by applicable law).
- (6) For the duration of this Agreement, the CDP will provide DOJ with full and unrestricted

access to all CDP staff, facilities, and documents (including databases) relevant to evaluating compliance with this Agreement including, but not limited to, use of deadly force investigations, except any documents protected by the attorney-client privilege. DOJ shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a party, absent reasonable written notice to the City and either the City Director of Law's written consent or a court order authorizing disclosure. This Agreement does not authorize, nor shall it be construed to authorize, access to any CDP documents by persons or entities other than DOJ or the City.

- (7) This Agreement shall become effective upon signature by all parties.
- (8) This Agreement shall terminate one year after the effective date of the Agreement, provided that at that time the DOJ has not filed suit to enforce any of the provisions of this Agreement.
- (9) If any unforeseen circumstance occurs that causes a failure to fulfill timely any requirements of this Agreement, the City shall notify DOJ in writing within 20 calendar days of the time that the CDP becomes aware of the unforeseen circumstance and its impact on the CDP'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 CDP will implement all reasonable measures to avoid or minimize any such failure.
- (10) The parties agree to defend the provisions of this Agreement. The parties shall notify each other of any court or administrative challenge to this Agreement.
- (11) In the event the CDP fails to fulfill any obligation under this Agreement, DOJ must, prior to initialing any court proceedings to remedy such failure, give the CDP, through the City Director of Law, written notice of the failure. The CDP will have 60 days from receipt of such notice to cure the failure. At the end of the 60-day period, in the event DOJ perceives that the failure has not been cured, DOJ may, without further notice to the CDP, file an action in the United States District Court for the Northern District of Ohio (the "Federal Court Action") against the City for breach of contract or any other appropriate causes of action and may seek specific performance or any other appropriate form of relief.
- (12) In recognition of the CDP's efforts to address the use of deadly force by CDP officers, DOJ agrees to forego filing of any claim accrued to date under Title 42, United States Code, Section 14141 alleging a pattern or practice of excessive force. Nothing in this Agreement shall preclude DOJ from filing an action under Title 42, United States Code, Section 14141 alleging a pattern or practice of unlawful conduct other than excessive force. Nothing in this Agreement shall preclude the DOJ from filing an action under any other provision of law.

- (13) DOJ will post this Agreement on the website of the Special Litigation Section of the Civil Rights Division.
- (14) The CDP agrees that it will not retaliate against any person because that person had 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, however, should be construed as creating any cause of action for any such person other than causes of action that exist in current law.
- (15) Nothing in this Agreement shall be construed as an admission or evidence of liability under federal, state, or local law.
- (16) The parties may jointly agree, in writing, to modify this Agreement.

Please indicate your acceptance of this Agreement by signing below.

Sincerely,

/s/ Shanetta Y. Cutlar

Shanetta Y. Cutlar
Chief
Special Litigation Section

/s/ Sanford Watson

Sanford Watson
Director of Public Safety
City of Cleveland

/s/ Edward F. Lohn

Edward F. Lohn, Chief
Cleveland Division of Police

I approve the legal form and correctness of this Agreement.

/s/ Subodh Chandra

Subodh Chandra
Director of Law
City of Cleveland