



**U.S. Department of Justice**

**Civil Rights Division**

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

March 2, 2006

**Via Facsimile and U.S. Mail**

Honorable Michael O'Brien, Mayor  
Honorable William Franklin, Director of Service-Safety  
Honorable Gregory V. Hicks, Law Director  
City of Warren, Ohio  
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Warren, OH 44483-4634

John Mandopoulos  
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**Re: Warren Police Department**

Dear Gentlemen:

As you know, in December 2004, the Civil Rights Division initiated an investigation of the City of Warren, Ohio Police Department ("WPD"), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"). We would like to take this opportunity to express our appreciation for the cooperation we have received thus far from the City of Warren and the WPD.

To date we have reviewed relevant WPD policies and procedures, and conducted interviews with City of Warren officials, WPD command staff, a cross-section of WPD line officers and supervisors, representatives of the Ohio Patrolmen's Benevolent Association ("OPBA") and the Fraternal Order of Police/Ohio Labor Council, Inc., community leaders, and other citizens.

At the beginning of our investigation, we committed to providing the WPD with technical assistance to improve WPD practices and procedures and ensure compliance with constitutional rights. During our meetings with you and the WPD

command staff in April and August 2005, we told you that we would provide in writing more specifics about recommendations our police practices experts had made orally. In this letter, we convey our recommendations regarding the WPD's written policies. Important aspects of our fact-gathering process have yet to be completed. Therefore, this letter is not meant to be exhaustive, but rather focuses on significant recommendations we can provide at this preliminary stage of our investigation.

Additionally, we hope this letter will assist in our mutual goal of ensuring that the WPD provides the best possible police service to the people of the City of Warren. We look forward to continued cooperation toward this goal. We would be happy to provide examples of policies used by other police departments that might address some of the issues we raise below.

## **I. WPD POLICIES AND PROCEDURES.**

### **A. The WPD Should Revise and Update Its Policies and Procedures to Be Consistent and Comprehensive.**

Policies and procedures are the primary means by which police departments communicate their standards and expectations to their officers. Accordingly, it is essential that the WPD's policies be comprehensive, comprehensible, up-to-date, and consistent with contemporary police practices.

The WPD adopted its policy and procedure manual in 1979. While the WPD has added some policies over time, the manual has not been comprehensively updated since early 2002. As discussed in further detail below, a number of the WPD's policies and procedures are inconsistent with accepted police practices and insufficiently detailed to provide the appropriate guidance for officer conduct.

In general, we recommend that the WPD review all of its policies and procedures and, where necessary, revise them to reflect current accepted police practices and to provide sufficient detail to appropriately guide officer conduct. Although we do not provide line-by-line edits and recommendations for all of the WPD's policies and procedures, we have endeavored to provide the WPD with general recommendations regarding accepted police practices for significant WPD policies and procedures. Although not exhaustive, the examples and references to WPD policies and procedures illuminate suggested areas for revision.

We also recommend that the WPD distribute updated and complete policies and procedures to all officers and that all officers provide a written acknowledgment of their receipt, review and understanding of the policies and procedures. We suggest that the WPD designate an individual to be responsible

for reviewing the manuals and any revisions or new policies to ensure consistency. This individual would also be responsible for ensuring that all officers receive copies of the manuals and revisions thereto, and for maintaining copies of officers' signed acknowledgments.

**B. The WPD Must Ensure Compliance with Its Policies and Procedures.**

Our investigation has thus far revealed that many officers are not following WPD policies and procedures. The WPD must ensure that officers are complying with all policies and procedures as written.

**II. USE-OF-FORCE POLICIES.**

In the course of their duties, police officers are sometimes required to use deadly and non-deadly force. Because the use of force can place officers, civilians, and subjects at serious risk of harm, it is incumbent upon law enforcement agencies to ensure that officers use force appropriately. Use-of-force policies and procedures must clearly set forth the legal standards for the appropriate use of force. We recommend that the WPD revise its use-of-force policies to provide a comprehensive policy that contains the following elements: appropriate definitions, a use-of-force continuum with intermediate weapons, guidance on the appropriate level of force allowed in specific circumstances, detailed use-of-force reports, and review of deadly force incidents by a Deadly Force Review Board.

**A. Legal Standards Governing the Use of Force.**

Uses of excessive force by police officers are violations of the Fourth Amendment and are analyzed under the Fourth Amendment's objective reasonableness standard. Graham v. Connor, 490 U.S. 386, 394 (1989). The analysis requires a balancing of the quality of intrusion on the individual's Fourth Amendment interests against the governmental interests. Id. at 396. The criteria courts apply to assess an excessive force claim include the severity of the crime at issue, whether the suspect presents an immediate safety threat to the officers or others, and whether the suspect is actively resisting or attempting to evade arrest. Id.; St. John v. Hickey, 411 F.3d 762, 771 (6th Cir. 2005). Lack of specific policy guidance on the appropriate use of force may lead officers to believe that they are justified in using force in situations in which it would be unreasonable or unnecessary. Conversely, overly specific policies may result in officers refraining from using necessary and appropriate force out of an unwarranted fear of using excessive force.

The Supreme Court has determined that deadly force is permissible only when a suspect poses an immediate threat of

serious physical harm to the officer or another person. Tennessee v. Garner, 471 U.S. 1, 11-12 (1985). The only exception to this general rule is the "fleeing felon" rule, which allows police officers to use deadly force to prevent the escape of a suspect in cases where there is probable cause to believe the suspect either poses an immediate threat of serious harm to the officer or another or has committed a crime involving the infliction or threatened infliction of serious physical harm. Id.; Sample v. Bailey, 409 F.3d 689, 696-697 (6th Cir. 2005). Yet even in those circumstances, police are required to provide a warning, if feasible, before using deadly force. Garner, 471 U.S. at 11. Deadly force is permissible only for as long as the threat remains. When the threat is over, the use of deadly force must stop. Based on responses to interviews we conducted, and reviews of policies and incident reports, it appears that the WPD's use-of-force policies and practices do not consistently conform to these legal standards. Accordingly, as discussed in further detail below, we recommend that the WPD's use-of-force policies and practices be revised to incorporate these legal standards.

#### **B. Use-of-Force Definitions.**

While generally good, the WPD's use-of-force policy, Policy 96-007, ("use-of-force policy" or "Policy 96-007") does not define "fleeing felon." The lack of a clear definition of this key term could lead officers to fail to understand properly the bounds and limits of the use of force. Additionally, because officers should be reminded that their use of batons and other intermediate weapons can kill, the WPD should change the term "non-lethal force" to "less-lethal force" when referring to such weapons.

We also recommend that the WPD's use-of-force policy identify any uses of physical force that are specifically prohibited or restricted to limited circumstances. For example, a carotid, or choke hold is typically considered a use of deadly force. Thus, the WPD's use-of-force policy should explain that officers should use the carotid hold only in circumstances in which deadly force would be authorized.

#### **C. Intermediate Weapons.**

A comprehensive use-of-force continuum that includes intermediate weapons is central to effective and efficient policing. The continuum provides a useful tool in training officers to consider lower levels of force when appropriate, which protects the safety of both the officer and the civilian.

The WPD's use-of-force policy sets forth a use-of-force continuum with four progressing levels: verbal force, physical force, intermediate force, and deadly force. The policy defines

intermediate force as the use of non-lethal weapons. Section VI.A. authorizes the use of the straight baton, flashlight, stun-gun, pepper spray, and Taser as intermediate non-lethal weapons. Importantly, while this section simply authorizes their use, it does not mandate that officers carry any non-lethal intermediate weapon. We found no other policy or order mandating intermediate weapons, and several officers confirmed that they were not required to carry these weapons. Thus, pursuant to WPD policy, officers have no intermediate weapon. They have only their handcuffs and their revolver (or service weapon).

Officers without intermediate weapons cannot apply intermediate force. Because officers may unnecessarily resort to their firearms if intermediate force options are not available, we recommend that the WPD require all officers to carry a standard impact weapon (e.g., straight baton) and a chemical agent, and, as detailed in the training section below, the WPD should train all officers on any weapon they carry.

As stated above, Section VI.A. authorizes officers to carry and use a straight baton. This section, however, should define "straight baton," and specifically list and define all other authorized impact weapons. Moreover, this section should also spell out which weapons are prohibited (e.g., weighted gloves).

The WPD does not have a separate policy addressing the use of chemical agents. We recommend that the WPD create a separate policy that gives specific guidance and restrictions on the use of this intermediate weapon, which includes where this particular weapon falls within the use-of-force continuum, limits upon the acceptable use of the weapon, reporting procedures, and decontamination procedures.

#### **D. Specific Uses of Force.**

##### **1. Firearms.**

Unnecessarily or prematurely drawing and displaying a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or unintentional discharge of the firearm. We recommend that the WPD add a section to Policy 96-007 identifying when an officer may display his or her firearm. The use-of-force policy should stress that officers should not draw or display a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm. Reasonable belief should be defined as an objective belief determined by the facts and circumstances reasonably available to the officer at the time and viewed from the perspective of an ordinary reasonable peace officer in the same situation.

## **2. Canines.**

The WPD should discourage the use of canines for crowd control. Currently, Policy 96-004, Section II.B. lists "Assist with crowd control" as a canine duty and Section II.G.1. lists crowd control as reason to call in an off-duty canine team. We recommend that the WPD delete these references, and insert language that the use of canines for crowd control is generally discouraged.

## **3. Arrests.**

Policy 04-001 sets forth the WPD policy for arrests. Section B.3. focuses on handcuffing. It states, "In addition to handcuffs, other restraints may be safely applied to the arrestee who is violent to prevent injury to the officer . . . ." We recommend that this policy specifically identify the "other restraints" that are permissible. Additionally, the policy should detail the dangers of positional asphyxia, and methods and procedures to avoid it. As with all arrest procedures, officers must be trained on any permissible "other restraints."

### **E. Use-of-Force Reporting.**

The WPD's current use-of-force policy mandates that officers complete a use-of-force report form ("Use-of-Force Form") anytime their actions allegedly result in injury or death, anytime they utilize a non-lethal weapon, and anytime they discharge their firearm. Additionally, the policy requires a detailed description of any use of physical force in the arrest report. The WPD should define the elements of the "detailed description" it requires in all arrest reports. We recommend that the WPD require both this detailed description, and a use-of-force report, for all uses of force beyond unresisted handcuffing. In addition, the policy should clarify which individuals are required to complete a detailed description or Use-of-Force Form. Currently the policy only appears to require the officer administering the force to report its use. The WPD should revise its policy to require that the arresting officer and all officers who took part or witnessed the use of force must prepare a Use-of-Force Form detailing the event.

The information regarding each use of force should be tracked in an Early Warning System, as discussed below. The WPD should train all officers in use-of-force reporting and in the Use-of-Force Form.

### **F. Deadly Force Review Board.**

The WPD should consider forming a deadly force review board. This board would not be a board of public inquiry; but rather, the board would report directly to and advise the chief. Its

purpose would be to evaluate whether uses of deadly force were within policy, and prevent future situations calling for deadly force. This review board would not take the place of internal affairs or any criminal investigation, but would proactively identify training needs within the use-of-force policy. We recommend that a captain, an operations lieutenant, the training manager, and two operations sergeants comprise the review board.

### III. BODY-CAVITY SEARCHES AND STRIP SEARCHES.

**The WPD should retrain all its officers on its body-cavity and strip search policy.**

The Fourth Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." U.S. Const. amend. IV. "Its 'central requirement' is one of reasonableness." Illinois v. McArthur, 531 U.S. 326, 330 (2001).

The Fourth Amendment's protection against unreasonable searches and seizures not only prevents searches and seizures that would be unreasonable if conducted at all, but also requires that courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. Masters v. Crouch, 872 F.2d 1248, 1253 (6th Cir. 1989); see also Graham v. Connor, 490 U.S. 386, 395 (1989) (stating "the 'reasonableness' of a particular seizure depends not only on when it is made, but also on how it is carried out").

Strip and body-cavity searches of arrestees by police officers are permitted only in very limited circumstances. The law on strip searches of arrestees for minor, non-violent offenses in the Sixth Circuit is clear:

a strip search of a person arrested for a traffic violation or other minor offense not normally associated with violence and concerning whom there is no individualized reasonable suspicion that the arrestee is carrying or concealing a weapon or other contraband, is unreasonable.

Masters, 872 F.2d at 1255. In Masters, the court distinguished cases upholding strip searches of arrestees for violent crimes, and rejected the county employees' and officials' argument that the strip search policy at issue was designed to prevent arrestees from distributing contraband to other detainees. Id. (citing Dufrin v. Spreen, 712 F.2d 1084 (6th Cir. 1983)).

In 2003, the WPD issued its body-cavity and strip search policy, Policy 03-001. We found the policy to be comprehensive and generally consistent with the above law; however, our

interviews revealed that officers were unclear on the policy's standards and requirements. We recommend the law department re-brief and re-train all officers, including all command officers, on its body-cavity and strip-search policy.

#### **IV. THE TRUMBULL METROPOLITAN HOUSING AUTHORITY.**

##### **The Trumbull Metropolitan Housing Authority Unit needs supervision and structure.**

The WPD has established a unit of WPD officers to patrol housing complexes managed by the Trumbull Metropolitan Housing Authority ("TMHA").<sup>1</sup> The TMHA Unit is comprised of on-duty officers who patrol all housing authority properties for drug and violent crimes.

Our investigation revealed that no clear chain of command exists for this Unit. Presently, the WPD's description of its TMHA Unit lists two patrol officers working flexible hours with only a WPD captain as their supervisor. This description lists no intervening lieutenant or sergeant as a first line supervisor, and TMHA Unit officers we spoke with appeared unclear as to the chain of command. Moreover, some TMHA Unit officers reported that they took direction from a TMHA civilian employee -- e.g., TMHA's director of security -- while working for the WPD in the TMHA Unit. Accordingly, it appeared that sometimes the WPD abrogated supervision of the TMHA Unit officers to the TMHA.

The TMHA Unit needs direct field supervision by the WPD. We recommend that the WPD assign a sergeant as a direct field supervisor responsible for the TMHA Unit. This field sergeant should report directly to the second shift lieutenant, who should manage the TMHA Unit. We note that the shift commander is unavailable to act as the field supervisor because the TMHA officers work flexible hours that stretch over several shifts.

Additionally, the TMHA Unit does not have a clear objective beyond patrolling the housing authority properties and TMHA Unit officers acknowledged that no operations manual existed. We recommend that the WPD write a comprehensive operations manual outlining the duties and procedures of the TMHA Unit, and ensure that TMHA Unit officers are appropriately trained on this manual.

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<sup>1</sup> The TMHA is a political subdivision of the State of Ohio, and is the public housing agency with jurisdiction over all of Trumbull County, Ohio, except the Township of Mesopotamia. See TMHA 2004 Annual Report, p. 8, available at [http://www.trumbulltmha.org/about/tmha\\_ar.pdf](http://www.trumbulltmha.org/about/tmha_ar.pdf) (last viewed February 7, 2006). The City of Warren is located in Trumbull County.



## **V. Complaint Investigations.**

An open, fair, and impartial process for receiving and investigating citizen complaints serves several important purposes. An appropriate citizen complaint procedure ensures officer accountability and supervision, deters misconduct, and helps maintain good community relations, increasing public confidence in, and respect for the WPD. Improving the current procedure for handling citizen complaints would maximize these goals.

The WPD's current policies and procedures regarding citizen complaint process are located in the WPD Manual in Policy 02-006. Based on review and inspection of the WPD Manual provided to us, no separate policy concerning the conduct of internal affairs investigations exists; rather, we understand that the WPD conducts internal affairs investigations under the citizen complaint policy set forth in Policy 02-006, alone. Accordingly, we address herein the citizen complaint process as outlined in the WPD Manual and appendices thereto. We then turn to the conduct of internal affairs investigations, where we draw from the applicable portions of the citizen complaint policy and then add further information for areas of concern for which the WPD does not currently have a policy.

### **A. Complaint Intake and Forms.**

**The WPD should develop and implement a centralized, formal, structured, and consistent system for receiving complaints, without discouraging the filing of complaints.**

Currently, the WPD has both formal and informal processes for investigating and resolving citizen complaints. The WPD utilizes two separate forms for the intake of complaints: (1) the City of Warren Police Department Citizen Complaint Form ("Complaint Form"), which is used both externally and internally for all formal investigations; and (2) the Minor Incident Resolution Form, which is for informal complaints resolved without a full investigation. As discussed below, we recommend that the WPD use only the Complaint Form for all citizen complaints and eliminate its use of the Minor Incident Resolution Form. Moreover, the WPD should improve the Complaint Form and intake process in several ways.

#### **1. Complaint Intake.**

A complaint process should allow unfettered public access to make complaints. WPD policy should require that a Complaint Form be readily accessible and available to any person who wishes to lodge a complaint. Accordingly, we recommend the following changes in policy and practices.

The availability of Complaint Forms and the process for the handling of complaints should be prominently posted at the WPD headquarters and other public facilities. The WPD should provide Complaint Forms in publicly accessible locations that should permit the forms to be obtained without a specific request by a citizen, e.g., blank forms placed in a publicly accessible area for the taking.

The citizen complaint process set forth in Policy 02-006 is inconsistent in many areas with the actual complaint intake practices reported to us by WPD personnel, City personnel, and citizens. Moreover, the WPD Manual does not provide sufficient guidance to WPD officers regarding the complaint intake process. For example, Policy 02-006 provides that the Chief designate "Command Officers" to receive complaints from citizens. Policy 02-006 defines a Command Officer as a "police officer of the rank of Lieutenant or above, or a Sergeant who is acting (being paid) as a Lieutenant." Yet, the WPD informed us that it has placed only a single Lieutenant in command of internal affairs investigations. To be sure, the WPD command staff has informed us that if the appointed Lieutenant is unavailable, complaints can be accepted by a second Lieutenant who formerly headed internal affairs investigations, and the Chief and his secretary may also accept Complaint Forms. Even so, some citizens have informed us that they have not been permitted to submit a Complaint Form to anyone other than the appointed Lieutenant. Additionally, we have been informed that the WPD accepts complaints only during limited working hours. Accordingly, the practice of the WPD has apparently been inconsistent and, at a minimum, in conflict with the WPD's current policy by not allowing the submission of Complaint Forms to any WPD officer meeting the Command Officer definition. Moreover, this practice limits the citizens' access to the citizen complaint system, and is inconsistent with policy, thereby deterring genuine complaints of misconduct and undercutting the legitimacy of the resolution process.

We recommend that the WPD revise its policy to allow any member of the WPD to accept complaints, and to provide that citizens may submit complaints to any WPD officer, designated City offices, or drop boxes located in the police station and other public buildings. We also recommend the WPD change its policy to allow citizens to submit complaints at any time. We recommend revision to the WPD's policy to provide a consistent and comprehensive outline of the procedures that all WPD officers should follow to accept a complaint that, if true, would constitute a violation of the WPD's rules and regulations. This policy should include instructions to any officer that upon accepting a form, he or she should deliver that form to a supervisor promptly, or as soon as one becomes available. We further recommend that the WPD conform its practices with respect

to accepting complaints so that its practices will meet each of these new, suggested policies.

Whoever accepts a Complaint Form should properly identify him/herself on the Complaint Form as its recipient. The Complaint Form currently provides room for the signature of the employee who receives the complainant. As discussed above, the WPD's practice has reportedly been to limit who may actually accept Complaint Forms. In order to assure that the person who collects a Complaint Form can be properly identified, the person receiving the form should identify him/herself by printing his or her name and/or badge number, along with the date and time of receipt, on the form. Accordingly, the WPD should revise the Complaint Form to accommodate such information.

## **2. The WPD Should Not Discourage the Filing of Complaints.**

An open complaint process contemplates that complaints will not be actively discouraged. The WPD Complaint Form currently notifies citizens that they can be subject to civil or criminal action by the WPD and by the employee who is the subject of the complaint pursuant to Ohio Revised Code ("O.R.C.") § 2921.15, for intentionally filing untrue statements. We recommend that the WPD remove this language as it may inappropriately discourage the filing of complaints. We recommend that the WPD should not give any direction -- either as part of the Complaint Form or in separate written material or oral instructions -- to complainants that may discourage potential complainants from filing legitimate complaints.

As a preliminary matter, we note that the WPD has previously agreed to remove the language referencing the Ohio Revised Code from the Complaint Form in 2002. On March 26, 2002, the WPD Chief signed a Letter of Understanding between the City of Warren, the Warren Minority Coalition, and the NAACP.<sup>2</sup> In that document, representatives of the Warren Minority Coalition and the NAACP informed the WPD that they perceive the above-referenced portion of the Complaint Form to be an "intimidation tactic." The WPD agreed to amend the Complaint Form to remove reference to O.R.C. § 2921.15 and provide the information as a separate item. As of the time our review, these changes had not been made.

It is appropriate for a complainant to acknowledge that he or she attests to the facts of a complaint by signing the complaint. However, a prominent threat of reprisal, particularly

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<sup>2</sup> The Department of Justice, Community Relations Service facilitated and witnessed this Letter of Understanding, but is not a party to the document.

by the officer who is the subject of the complaint, deters individuals from filing complaints and undermines the legitimacy of the complaint system. We recommend that the WPD redesign the Complaint Form to contain an attestation that the complaint is made to the best of complainant's knowledge and made in good faith. Such an attestation would convey to the complainant the gravity of filing a complaint.

In addition to removing the language in the current Complaint Form, we recommend that the WPD revise its policy regarding Complaints which may also discourage complainants from filing legitimate complaints. In pertinent part, Policy 02-006 currently provides:

1. Command Officers are to make every reasonable effort to resolve complaints with the concurrence of the citizen, at the lowest possible level without submission of a formal complaint.
2. If a citizen concurs with the Command Officers effort to resolve the matter informally, the Command Officer must submit a Minor Incident Resolution form (Appendix 2) through the Chain of Command to the Office of the Chief of Police describing the complaint and the manner in which it was resolved.
3. If the citizen does not concur with the effort of the Command Officer to resolve the matter informally, or does not concur with the action(s) taken by the Command Officer, a formal Citizen Complaint will be initiated in accordance with this Directive.

The above language permits a Command Officer to attempt to resolve citizen complaints "informally." Though this language appears benign on its face, we understand that WPD officers have discouraged a number of citizens from filing complaints through this informal process.

Similarly, the WPD uses a separate Minor Incident Resolution Form in lieu of the Complaint Form in some instances, such as complaints that are resolved "informally," or complaints of purportedly insignificant policy violations. We recommend that the WPD discontinue the use of this alternative form. According to our consultants, all incidents that warrant the initiation of an investigation should be reported and recorded on the same form and treated uniformly in their intake and tracking. Moreover, the use of this form to informally resolve allegations of officer misconduct allows for the possibility of inappropriate handling and resolution of allegations of constitutional violations. Additionally, this informal mechanism deprives the WPD of useful

and critical information regarding officer conduct, which could potentially expose the WPD to liability. Accordingly, we recommend that the WPD eliminate the Minor Incident Resolution Form and, instead, employ the Complaint Form for the intake of all incidents involving WPD employees.

Our experts also agree that the WPD should accept all complaints of actions that, if true, would constitute a violation of the applicable laws, or WPD's rules and regulations. Once accepted through standardized intake and tracking systems, the Chief of Police may then assign matters of less significant alleged infractions, *e.g.*, discourtesy without further violation, to an informal resolution through shift commanders as discussed later herein. Under no circumstances should a policy of informal complaint resolution be used as a subterfuge to bar citizens from submitting complaints. We recommend that the WPD update its policy to explicitly state that a member of the public has the right to file a complaint, and that no WPD officer should discourage the submission of any complaint.

### **3. Anonymous and Third-Party Complaints.**

The WPD should investigate all complaints, including those received from anonymous sources. The WPD has advised us that, in practice, anonymous complaints are not accepted. We strongly recommend that WPD policy be revised to require the acceptance and investigation of all complaints that allege conduct constituting a violation of policy, including anonymous complaints and those submitted in forms other than the standard Complaint Form -- *e.g.*, by telephone, e-mail, TDD, or other means. Policy 02-006 currently states: "Anonymous or third party complaints or allegations of misconduct will be handled as a Departmental Inquiry." Policy 02-006 defines a Departmental Inquiry as "[a]n investigation initiated by the department into a specific incident or allegation of a rules violation." The policy offers no further explanation of the process for handling anonymous or third-party complaints. The WPD should consider the complainant's failure to execute the form only in weighing that fact among all evidence in the investigation.

The WPD should also accept third-party complaints. The Complaint Form currently requires an attestation that the information the complainant submits is based only on his/her own experiences or observations. Similarly, Policy 02-006 requires that:

Formal Citizen Complaints will only be accepted from parties who have first-hand knowledge. This means that the person was either involved in the incident or was an eyewitness to the incident.

The policy makes no exception for a witness or a representative

of an aggrieved person, e.g., a parent, minister, or attorney, to file a complaint on behalf of another person. The WPD should investigate third-party complaints, but, like anonymous complaints, also be able to consider the complainant's lack of first-hand knowledge in weighing the allegation among all other evidence in the investigation. Accordingly, we also strongly recommend that the WPD modify its policy and practices to accept and investigate third-party complaints.

#### **4. Incomplete Complaint Forms.**

The WPD should investigate complaints that fail to meet all the formalities of its Complaint Form. Policy 02-006 states:

If a complainant is unable to process a formal complaint on a Citizen Complaint Form, the Command Officer will record the information on a Citizen Complaint Form as accurately as possible. The Command Officer will also note the reason(s) why the complainant was unable to complete the form and will then process the complaint in accordance with the procedures established within this Directive.

By the use of "process the complaint," the WPD policy appears to indicate that the WPD will investigate even incomplete Complaint Forms. However, our interviews of WPD personnel and others revealed that the WPD does not investigate unsigned or incomplete complaints. For example, our review revealed a complaint filed in March 2004 by a mother on behalf of her son alleging that the son was assaulted by officers while restrained in handcuffs. The complaint was not "process[ed]." Rather, the WPD's internal affairs officer disregarded the content of the complaint because the form was incomplete and unsigned. Accordingly, we recommend that the WPD change its procedures to require the investigation of complaints to the fullest extent possible and appropriate, even if submitted through incomplete Complaint Forms.

#### **5. Identification of WPD Employees by Complainants.**

A complainant should be encouraged to identify the WPD employee and the complainant's case or ticket number that relate to the incident described in the complaint.

The WPD has advised us that the WPD keeps a "yearbook," i.e., a notebook containing the photos and names of all WPD sworn officers. We understand that the WPD recently updated this yearbook in response to a technical assistance recommendation from our consultants, but the only copy of this yearbook is kept in the Chief's office which may limit its availability to complainants. We recommend that the WPD keep the yearbook up to date and make copies of the yearbook accessible to complainants at all times at the WPD headquarters and during all working hours

at City Hall or other appointed city office where Complaint Forms may be submitted.

We also recommend that the WPD update the Complaint Form to provide a space for a complainant to submit the case number or ticket number of the police action from which the complaint arises. Obtaining this information from complainants should facilitate an accurate and more efficient resolution to complaints.

#### **6. Confidentiality of Complaint Form.**

Most police departments prohibit the unnecessary disclosure of information contained in complaints. The current Complaint Form contains an option for the complainant to request that the information be kept confidential and not released to the public. While possibly reassuring to the complainant, this portion of the Complaint Form may also be misleading. Confidentiality cannot be assured given that the Complaint Form itself may serve as evidence in administrative, civil, or criminal proceedings.

We recommend that the WPD omit from the Complaint Form the sentence regarding confidentiality. Accordingly, we recommend that the WPD revise its Complaint Policy to require that WPD personnel keep confidential the contents of citizen complaints except for such disclosures that are required for the investigation of the complaints, or prosecution or defense of related administrative, civil, or criminal proceeding.

#### **C. Assignment of Citizen Complaints.**

**The WPD should develop objective criteria for the assignment of complaints for the appropriate level of review, including a policy and protocol that requires allegations of potentially criminal conduct be timely and appropriately referred for investigation and appropriate action.**

##### **1. Objective Criteria for Assignment.**

Policy 02-006 states:

The Chief of Police or his designee will determine if a formal Citizen Complaint is to be investigated by the Office of Internal Affairs, Division, or at the Turn Level.

The policy presents no objective criteria for the assignment of citizen complaints to any office other than the WPD Internal Affairs Division. We received reports from WPD staff and officers that the handling of complaints within the WPD is biased by personal relationships between the subject of the complaints and some of the WPD management members. Several of these

individuals allege that favored WPD employees are permitted informal resolution of complaints, while disfavored WPD employees are subject to formal investigations of complaints and greater discipline.

We recommend that, in instances where internal review or complaints reveal misconduct that qualifies as serious under the WPD's policies, the Chief should make the ultimate determination as to whether and how an allegation is referred for investigation within the WPD. The Chief's determination should be memorialized in writing. Further, when an allegation of misconduct qualifies as minor, the Chief may choose to assign both the investigation and disposition of the matter to the shift level commander. In making all such determinations, the Chief should apply consistent and objective criteria. For example, all allegations of discourtesy on the first occasion of such an allegation may qualify as minor. Any allegation of excessive force or other constitutional violation should not be considered minor, and should be subject to full investigation through the internal affairs division. Whichever objective criteria the Chief applies -- e.g., number of incidents involving the same officer, type of incident, repeat complaints from the same complainant about the same officer, allegations of criminal conduct -- should be set out in writing in the WPD Manual. By applying these objective criteria to the assignment of complaints, the WPD should thereby implement a consistency in the assignment for investigation of complaints that will support a greater perception of legitimacy in the complaint process by both WPD personnel and citizens.

## **2. Potentially Criminal Investigations.**

Some allegations of misconduct, including those that are the subject of complaints from a member of the public, may be so serious as to warrant a referral to local or federal prosecutors, or other appropriate entity. The WPD policies and procedures make no reference to this possibility. In revising its policy regarding complaints, the WPD should provide guidance as to which complaints are appropriate for internal review and which complaints should be referred outside the WPD for potential criminal investigation.

The determination of whether the allegations of a complaint would potentially require a criminal investigation also should be made as early as possible. We are aware of an instance in which the City of Warren hired an attorney to be a special prosecutor to investigate specific alleged instances of strip and body-cavity searches by WPD personnel. The attorney's review indicated that the WPD officers had acted in contravention of Ohio law, but he could not pursue criminal prosecution because "2933.32 [regarding the conduct of body-cavity and strip searches] is a misdemeanor and, unfortunately, the applicable



two-year statute of limitations had run **by the time the cases were referred to me.**" (Emphasis added.)

Whether or not a conviction or acquittal would have ultimately resulted in the particular matters, the failure to refer those matters in a timely fashion illustrates the need for a uniform policy on the referral of potentially criminal matters. Accordingly, we recommend that the WPD adopt and adhere to a policy requiring that the Chief, in consultation with the Law Director, timely refer allegations of potentially criminal conduct to appropriate local or federal prosecutors.

The policy and procedure that the WPD implements should also clarify the rights of officers involved. During investigations of potentially criminal misconduct: officers may be read rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), before questioning; may be entitled to have counsel present; and may be required to be polygraphed. Moreover, each WPD officer is entitled to protection pursuant to Garrity v. New Jersey, 385 U.S. 493 (1967), against the use in subsequent criminal proceedings of statements compelled from him or her in administrative proceedings under threat of disciplinary action. This policy should be consistent and coordinated with the policy regarding the investigation and evaluation of complaints. This coordination will prevent a situation in which the investigative protocol used to investigate a complaint turns out to be incompatible with the requirements for the investigation of serious misconduct, thus compromising the integrity of each. For example, if a complaint alleges that serious misconduct might have occurred, WPD policy should require that such a complaint be investigated under the heightened standards, rather than the standards applicable to complaints that do not involve allegations of potentially serious misconduct.

#### **D. Investigations.**

**The WPD should have a consistent policy regarding the appropriate investigation of complaints by trained and objective internal affairs investigators.**

Under the current system of complaint investigation and resolution, if the WPD accepts a Complaint Form, the WPD's internal affairs officer will provide a written notice to some or all of the officers involved that they must submit a written statement regarding the incident. In practice, it appears that in some, but not all, instances the internal affairs officer will also solicit statements from civilian witnesses or written statements from other law enforcement officers or corrections officers -- i.e., involved police officers from neighboring jurisdictions or county jailers. WPD policy does not, however, require that basic investigative techniques, including questioning WPD personnel through personal interviews or

gathering extrinsic evidence -- e.g., third-party witness accounts, or photographs of alleged injuries.

We were also informed that it is the practice of the WPD to focus only on the specific policy violation of the allegations in the complaint that initiated an investigation, even if further policy violations come to light -- or would come to light in the exercise of reasonable due diligence -- in the course of the investigation. We further noted that the WPD officer charged with command of internal affairs is also in command of the WPD's narcotics division; this is of concern because of the potential appearance of conflicts of interest between these two commands. Additionally, we understand that the Chief may or may not become aware of the existence of a complaint, and often there is no written record that the Chief has reviewed the outcome of an investigation or rendered a disposition as to the matter. These policies and practices are inconsistent with the internal affairs investigations of most police departments.

The policy and practice of internal affairs investigations at the WPD, therefore, could be substantially improved by implementing the following recommendations.

#### **1. Consistent, Objective Process.**

We recommend that the WPD adopt a policy concerning the investigation of complaints received from either members of the public or internal complaints. The policy should provide that the Chief be notified of complaints as soon as possible. For complaints alleging the excessive use of force or violation of a person's constitutional rights, the Chief should be notified no less than twenty-four hours after receipt of a complaint.

The policy should delineate and specify responsibility for the citizen complaint investigation process. A designated supervisory officer(s) should be responsible for the investigation and recommended resolution of complaints. We recommend that the WPD appoint a qualified WPD officer whose position does not give rise to a potential appearance of a conflict of interest to command its internal affairs investigations. We further recommend that the WPD invest in outside training programs for this internal affairs commander, who could then, in turn, train all the WPD command officers regarding the proper handling of internal affairs investigations. We recommend that all WPD officers charged with handling complaints, whether conducting intake or investigating complaints, receive specialized training before beginning intake or investigative responsibilities. The training should include investigative and interview techniques for formal complaints, including examining and interrogating witnesses; identifying misconduct, including misconduct that is not specifically named in a complaint; ethics; integrity; professionalism; the factors

to consider when evaluating complainant or witness credibility; and the appropriate burden of proof -- i.e., preponderance of the evidence. The training should also clarify the limited circumstances in which informal complaints are appropriate, objective criteria used to separate formal from informal complaints, and discuss the methods for investigating those complaints.

The WPD policy should clearly define the nature and scope of the complaint investigation. In the course of our investigation, we heard complaints from both citizens and officers that the complaint procedure can be erratic and irregular. The lack of a formal, structured, and consistent policy poses difficulties to the complainant as well as the officer involved in the incident, both of whom are entitled to know in advance what their rights and responsibilities are in the course of the investigation. In defining the scope and nature of the investigation, the WPD policy should provide that any investigation include an interview with the complainant and all witnesses, citizen or police. The policy should require that all forensic or other evidence be obtained and analyzed.

We also recommend that the WPD policy on complaints specify a clear time line under which the complaint will be investigated and adjudicated. We recommend that the policy require that, absent exigent circumstances, any investigation be completed within 45 days, including review of the investigation by the Chief within that time frame. Internal adjudication, if any, of the results of the investigation should be timely completed within deadlines specified under the WPD's labor agreements. Imposition of discipline, if any, should occur within 30 days of the end of the Chief's review or the end of internal adjudication. Extensions beyond these time periods should require the Chief's written approval and be communicated in writing to the complainant.

Finally, WPD policies and procedures do not explicitly state that officers must report violations of law or WPD codes of conduct that would be subject to disciplinary action. We recommend that the WPD revise its policy to require that officers who witness misconduct by other officers report such conduct to the sergeant on duty and, in the event that such misconduct is the subject of a citizen complaint, to any supervisory officer investigating such complaint. We recommend that the failure of an officer to report the misconduct of another officer be subject to a serious level of discipline. Similarly, we recommend that internal affairs investigators be required to report and investigate evidence of violations of law or policy that come to light in the course of internal affairs investigations.

## **2. Internal Affairs Interviews of WPD Personnel.**

The WPD command staff we interviewed indicated that in the course of conducting all internal affairs investigations, written statements from WPD officers and not oral interviews were used because the WPD believed this to be a requirement of the union collective-bargaining contracts. The counsel for the OPBA reviewed that union's contract in the presence of both a Department of Justice team on tour and the WPD's counsel, and he stated that there was no such requirement within the contract. Accordingly, there should be no current contractual reason that the WPD's line officers are only requested to submit written statements for internal affairs investigations.

In the course of our review of incident investigations, it was readily apparent that many officers' written statements were identical or nearly so, leading to the conclusion that officers had the opportunity to confer among themselves to corroborate their written statements before submitting them to the Internal Affairs officer. In fact, a letter from one officer contained in an internal affairs investigation file evidences that the officer requested -- and was apparently granted -- an extension of time to submit his written statement in order that he have the opportunity to first review other officers' statements concerning the same incident. Accordingly, the WPD's use of written statements, alone, for internal affairs investigation may lead to unreliable statements that may affect the perceived legitimacy of the complaint resolution process.

We recommend that the WPD internal affairs conduct personal interviews of all the WPD personnel involved in, or a witness to, alleged incidents that give rise to internal affairs investigations. A subject officer should also be required to produce all statements, reports, and notes completed in his or her course of duties that are related to the allegations. We recommend that the WPD policy require that all interviews be mechanically recorded using an audio or video tape. The WPD should also establish guidelines as to when to compel statements from officers pursuant to Garrity. The WPD should ensure that, to the extent that the complaint implicates possible criminal activity by the officer, officers are adequately informed of their rights against self-incrimination under Miranda. As noted above, the investigative protocol for complaints should require an early assessment of whether serious misconduct may have occurred that may warrant a referral to local or federal prosecutors.

## **3. Thorough Gathering of Evidence.**

The WPD should require the gathering of available, relevant evidence for internal affairs investigations, including witness statements. The WPD should interview all available complainants.

Some citizen complainants have advised us that they have not been contacted by the WPD to investigate their claims. Failing to contact the complainant to investigate his or her complaint does not conform to practice of most police departments. The Complaint Form allows little space for a complainant to list his or her contact information, or the contact information of witnesses. In order to facilitate the WPD's ability to contact the complainants, we recommend that the WPD revise its Complaint Form to allow greater space on which to fill in the address and multiple telephone numbers of the complainant and any witnesses.

While the WPD should retain the use of the current Complaint Summary portion of the Complaint Form, that summary should not take the place of an interview with the complainant. Instructions for the Complaint Summary portion of the Complaint Form direct the complainant to give a detailed account of the alleged action of the employee that gave rise to the complaint. Whether complainants provide only sparse information on the Complaint Form or a thorough description, the WPD should interview them and conduct thorough investigations. We further recommend that, in practice, the WPD make all reasonable efforts to contact complainants -- including on-site visits, telephone conversations, and registered mail -- and interview them rather than rely only upon the statements contained in the Complaint Form.

We further recommend that the WPD policy require that all internal affairs investigators attempt to gather and review extrinsic evidence. This should include video and audio recording of the incidents, where available, medical records of injuries to officers or citizens, arrest reports, etc. The record of this attempt to gather such extrinsic evidence, as well as copies of the evidence gathered should be kept in the investigation file.

#### **4. Adjudication and Resolution of Complaints.**

**The WPD should develop a protocol for the adjudication and resolution of complaints, including the use of a discipline matrix.**

We recommend that the WPD develop a protocol that requires a summary of the investigation and an assessment of the alleged misconduct be presented to the Chief for adjudication and any imposition of discipline. The policy should address the possibility that a complaint may require disciplinary action. The officer conducting the investigation of the complaint should be required to recommend a finding concerning the complaint. The supervisor of the officer concerned should recommend whether any disciplinary measures should be imposed based upon the complaint, provided that supervisor was not also involved in the conduct

that was the subject of the complaint.<sup>3</sup> If the concerned officer's supervisor was also involved in the conduct that was the subject of the complaint, then the next higher level supervisor should recommend whether any disciplinary measures should be imposed based upon the complaint. Recommended disciplinary measures should be based upon an objective discipline matrix, as discussed below. Both the recommended adjudication of the complaint and the recommended discipline of the officer should be provided to the Chief, for his approval, disapproval, or justified modification.

The policy should require a finding as to whether: (1) the police action was in compliance with policy, training, and legal standards; (2) the incident involved additional misconduct; (3) investigation of the incident revealed other incidents of misconduct by the same officer, or instances of misconduct by other officers; (4) the use of different tactics should or could have been employed; (5) the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures; or (6) the incident suggests that WPD should revise its policies, training, tactics, or equipment. The WPD protocol should state that the standard of proof for such administrative investigations is a preponderance of the evidence.

We also recommend that the WPD develop a discipline matrix. Such a matrix should include the levels of discipline available to address violations of policy -- e.g., retraining, verbal counseling, letters of counseling, forfeiture of leave time, suspension, demotion, and termination. The matrix should specify for each type of policy violation and what level of discipline shall be utilized for sustained violations of policy in the first instance, second instance, etc.

We recommend that the WPD policy regarding complaints require a clear resolution of every complaint from a member of a the public, with notice provided to all relevant parties. Policy 02-006 currently states that a complainant will be contacted in writing with respect to the outcome of the complaint. Many citizens we interviewed, however, told us that they have no idea what the outcome of the complaints they have filed is because they do not receive any response to their inquires and the WPD has not affirmatively contacted them to inform them of the status or outcome of their complaints. Indeed, a review of the internal affairs investigation files provided to us by the WPD revealed that only a handful of those files contained a copy of a letter notifying the complainant of the outcome of the investigation.

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<sup>3</sup> In some cases, the officer conducting the investigation could be the subject officer's supervisor, in which case that supervisor would recommend both the disposition of the complaint as well as any disciplinary measures.

Of those letters that did exist, many were not dated, such that the timeliness of notification could not be assessed.

Consistent with Policy 02-006, the WPD should keep complainants apprised of the status of the complaints they have filed. At the conclusion of the investigation, the complainant should receive a letter from the Chief setting forth the key facts of the complaint, including the name of the complainant, the internal control number, the date of the incident, the name(s) of the officer(s) involved, and whether the complaint was withdrawn, exonerated, deemed unfounded, inconclusive,<sup>4</sup> or sustained. If sustained, the letter should indicate whether remedial actions will be taken.<sup>5</sup>

The letter advising the complainant of the resolution of the complaint should be prepared by the supervisor conducting the investigation, and then provided to the Chief at the conclusion of the investigation. If the Chief modifies the supervisor's recommendation, the reason for such modification should be in writing, and kept with the original recommendation in the complaint file. Thus, every complaint should begin with a Complaint Form, and end with a letter, with each document reflecting the same control number for ease of reference and later review, if any.

## **VI. SUPERVISORY OVERSIGHT.**

### **A. Risk Assessment and Management.**

**WPD command staff should examine and review officer conduct on a regular basis as a proactive measure to minimize and detect misconduct, and to identify training and policy issues.**

Our investigation thus far has revealed a lack of structured oversight of WPD officers by command staff. There do not appear

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<sup>4</sup> As part of the recommended change in the internal affairs protocol, we recommend that the WPD adopt the finding of "inconclusive," and discontinue its current use of "not sustained." The current "not sustained" label indicates an exoneration where there is an absence of evidence to support a finding either for or against the alleged violation of policy. If evidence supports exoneration, the "exonerated" finding should be used.

<sup>5</sup> The protocol for internal affairs investigations should also allow for a finding that the subject officer acted in accordance with WPD policy, but that the complaint reveals a failure in the policy, itself.

to be regular review procedures formalized in policy, and review of officer activity appears to be informal and ad hoc. Though the WPD has a high number of command officers for a police department of its size, day-to-day management of certain units also appeared to be lacking. Accordingly, the WPD's supervision and oversight could be improved by implementing the following recommendations.

We recommend that the WPD implement policies and procedures for WPD supervisors to routinely review all aspects of WPD officer conduct, including a review of: (1) all uses of force, as set forth above; (2) probable cause for arrests and the appropriateness of charges filed; and (3) reasonable suspicion for stops and searches that do not result in an arrest.

We recommend that WPD policy require supervisors to review and approve all arrest reports and search-and-seizure reports, and to record their approval on the arrest or incident reports by handwritten or electronic signature. We recommend that the Chief, or his or her designee, meet annually with every WPD officer to discuss positive aspects of his or her police work, his or her complaint history, if any, and to discuss any problems or concerns officers may have concerning the department.

As discussed above, we recommend that the WPD establish a clear line of direct supervision over the TMHA Unit. We recommend that the WPD reassert its authority over officers in the TMHA Unit and not permit those officers to be directed by the TMHA.

#### **B. Early Warning System.**

Although the WPD's use-of-force policy contains an informal process for reviewing all use-of-force reports on an annual basis, this policy does not constitute a comprehensive, systematic risk assessment system or an Early Warning System ("EWS"). The WPD, therefore does not have, but should adopt, an EWS as an integral part of its risk management program. The WPD should develop an EWS that is appropriate and applicable to its needs and size. Whether paper-based or computer-based, even a simple EWS would provide a useful assessment of each officer's conduct as well as the department as a law enforcement agency.

We recommend that the WPD implement policies and procedures to collect data on individual officers for the purpose of maintaining, integrating, and retrieving information necessary for effective supervision and management of WPD personnel. The EWS should contain information on all investigations and complaints, including non-sustained complaints and complaints prior to final disposition, discipline and other corrective actions, uses of force, arrests and charges, searches and seizures, service calls, training, awards and commendations, sick



leave, civil lawsuits, and other items relevant to an officer's conduct. The WPD should then use this data regularly and proactively to: (1) promote best professional police practices; (2) improve accountability and management; (3) manage the risk of police misconduct and potential liability; and (4) evaluate and audit the performance of officers and units on a regular basis. We recommend that the WPD require supervisors, including command staff, to review this data for every officer they supervise on a regular, predetermined basis, such as every quarter.

The policy implementing these recommendations should also establish guidelines regarding specific events that will trigger an additional supervisory review, such as a specific number of uses of force or citizen complaints within a discrete period. Once an officer has been selected for this additional review, a report should be prepared that details all use-of-force reports, formal and informal complaints, calls for service, sick leave, counseling reports, civil lawsuits, and commendations pertaining to the officer within the past five years. The officer's immediate supervisor and command staff should then meet to discuss the report and determine if any corrective action is warranted. The supervisor's and command staff's recommendations should then be forwarded to the Chief for his or her timely review and implementation. The effectiveness of the implemented recommendations should be determined by monitoring the officer and drafting written reports on the officer's conduct on a monthly basis. Both the supervisory recommendations and the written monthly report should be included in the officer's personnel file.

We recommend that the WPD consider utilizing peer reviews of the information contained in the reports by comparing complaints, use-of-force reports, and other pertinent information about a particular officer with similar information from other officers on the same patrol team or shift. In addition, the policy should provide explicit guidance to supervisory officers reviewing reports to ensure that patterns of possible misconduct are identified, analyzed, and addressed properly by command staff. The aim of this process is to give supervisors valuable information that, if received early, could identify potential problem officers before misconduct actually develops.

### **C. The WPD Should Develop an Employee Evaluation System.**

At the start of our first tour, the WPD had no system to periodically evaluate its employees. We understand that, pursuant to the technical assistance recommendations of our consultants, the WPD is currently developing an employee-evaluation system. When implementing this system, we recommend that one person timely train the entire department on the composition and use of the system. This person should train all managers how to evaluate their staff, and inform all line

officers as to how they will be evaluated. This uniform training should eliminate different interpretations of the system, and ensure the integrity of the evaluation information.

Direct supervisors should evaluate their subordinates annually. Prior to the evaluations, supervisors should explain the evaluation process and the expectations to their subordinates. After the direct supervisor completes the evaluation, the entire chain of command should review the evaluation and add comments. The evaluations should be stored in the employee's training or personnel file. The WPD should tie these evaluations into its promotion process, to the extent permitted by law and the WPD's collective bargaining agreements.

## **VII. OFFICER TRAINING**

**The WPD should continue to develop comprehensive training programs for new and experienced WPD officers.**

### **A. Policy Re-Training.**

Much of the technical assistance offered in this letter calls for the creation of new policy or revision of existing policy. We recommend that as the WPD updates or creates each new policy, the WPD re-train all WPD personnel, including command staff, on each new policy and its effects. Such training should be comprehensive to cover all aspects of the change in policy so that WPD personnel are aware of what would no longer be within policy, as well as what new material would then be included in the WPD's revised policies.

Most significantly among the policy topics for which the WPD should stress re-training for all its personnel are:

(1) acceptable and non-acceptable uses of forces; (2) less-lethal uses of force; (3) use-of-force continuum; (4) use-of-force reporting; and (5) citizen complaint process.

Policy re-training should be competency-based. Accordingly, once trained, each WPD member should demonstrate competency of his or her knowledge of the new subject matter through performance or examination. Each member of the WPD, including command staff, should be required to pass competency-based performance or examination for each new policy.

### **B. In-Service Training.**

The WPD has provided us documentation regarding its newly initiated 40-hour block of in-service training. We thank the WPD for providing this information and are encouraged by the WPD's effort to offer training to its line officers and some command staff. It does not appear, based on the schedule provided to us, however, that all command staff, particularly the Chief, are

required to attend all 40 hours of training. As we discussed during our most recent tour of the WPD, it is imperative that the WPD's command staff partake in the WPD's new in-service training. The Chief, in particular, should participate in as much of this training as he is capable of attending. In so doing, the WPD command staff will convey to all WPD personnel the import of the in-service training.

Though a marked improvement from the prior absence of any formalized annual training, the newly initiated 40-hour block of training could be improved in several ways. The training schedule provided to us indicates that all WPD officers in attendance would receive three hours of training concerning use of canines. For non-canine officers, the use of canines may be taught within one hour. The current training should include at least four hours on use of the WPD's approved impact weapon -- e.g., a baton -- and for all officers who use or may use Tasers, four to eight hours on use of Tasers. We also recommend that WPD personnel receive training on each piece of equipment that he or she carries that may have to be used as a weapon -- e.g., a flashlight, or radio. The current training should also include what restraints are considered permissible and what the impact of the use of restraints may have on the restrained individual.

We recommend that all training be conducted by instructors who have been trained and certified to be instructors, and who are competent in the subject matter they are to teach. Accordingly, the WPD should validate the qualification and expertise of its current trainers. The WPD may do so through certification programs outside of the WPD.

We further recommend that the WPD commit to provide all its officers 40 hours of in-service training every year. The WPD should formalize this commitment in its policy. Each year, the training program should be revised with an update to cover new subject areas and revisions in policies, as well as perishable skills that should be re-taught and practiced at regular intervals. According to our consultants, the 40-hour requirement should be in addition to firearms re-qualification. We recommend that officers receive separate firearms training biannually for all service weapons used by WPD officers.

Each year's training curricula should include police topics, such as: use of force, firearms, defensive tactics, policies and procedures, current legal issues or other issues that are essential to police work, searches and seizures, legal developments, and police integrity. The WPD's in-service training should include de-escalation techniques, particularly for interactions with persons with mental illness and those who may be under the influence of drugs or alcohol. This training should also include role-playing and interactive exercises

regarding situational, ethical, and use-of-force scenarios, including de-escalation techniques, cultural diversity, and community policing. Training curricula and lesson plans should incorporate comprehensive and updated police practices and be approved by legal counsel and the Chief.

We note that one potential resource for the WPD in establishing and improving in-service programs may be the longstanding training and grant programs administered by other components of the Department of Justice, such as the Office of Justice Programs. While these programs are completely separate and independent of the Civil Rights Division's investigation, we would be pleased to provide you with contact information for exploring the possibility of such assistance.

#### **VIII. THE WPD SHOULD WORK TO IMPROVE COMMUNITY RELATIONS.**

**Citizen interviews revealed that the WPD must improve its relations with the community. To improve relations, we recommend the WPD: (A) overhaul its citizen surveys; and (B) hold quarterly community outreach meetings.**

##### **A. Citizen Surveys.**

Citizen surveys provide a valuable tool to gauge the community's perception of the WPD's performance. While the WPD already takes citizen surveys, the WPD could improve its surveys with a more frequent and focused approach, and objective methodology. The WPD should abandon the potentially intimidating, and therefore less reliable, practice of taking citizen surveys itself. We recommend that the WPD enlist the help of a local college or university to co-design and administer the survey. These institutions should be familiar the survey process. Having a third party administer the surveys will make them less intimidating, improving frankness and accuracy. We recommend a comprehensive survey at least every two years. Our consultants have offered to provide survey examples upon request.

##### **B. Community Outreach Meetings.**

To improve community relations, the WPD should hold community outreach meetings. The meetings should be an open forum for all citizens to discuss issues with the WPD. These community outreach meetings should occur as needed, but at least quarterly. The shift commanders, who head the Emergency Services Division that interacts with the community most, should attend these community outreach meetings. We recommend that a shift commander chair each of these community outreach meetings.

**IX. CONCLUSION.**

We strongly urge the WPD to adopt these technical assistance recommendations as it revises its policies and procedures. We look forward to working with you and the WPD. If you have any questions, please do not hesitate to contact me at (202) 514-6255, Jonas Geissler at (202) 353-8866, or Cathleen Trainor at (202) 616-9009.

Sincerely,

/s/ Shanetta Y. Cutlar

Shanetta Y. Cutlar  
Chief  
Special Litigation Section

cc: Gregory A. White,  
United States Attorney  
Northern District of Ohio