



Police Department

July 14, 2017

To: D. Williams-Ridley, City Manager

From: A. Greenwood, Chief of Police

Re: Release of Draft Interim Report from the Center for Policing Equity

The Draft Interim report from the Center for Policing Equity (CPE) is attached, in accordance with Council's June 27 direction. CPE is an independent, non-profit, grant-funded organization, and we are not paying CPE for this report, which is available to the public here:

www.cityofberkeley.info/CPEDraftInterimReport.aspx

We volunteered to participate in CPE's National Justice Database, not knowing what their analysis and recommendations would be, but confident that the men and women of the Berkeley Police Department carry out their work with honor and dedication, and great respect for the law and for the people whose community we work to keep safe.

Racial Profiling—basing police action solely on a person's appearance, rather than specific information connecting the person to a possible crime—is wrong, and is illegal. We know racial profiling by police has caustic consequences for police-community trust and relationships, as we have all seen across our country. The Berkeley Police Department has not, does not, and will not tolerate racial profiling.

CPE's work in this draft report focuses on a *greater* challenge in this discussion, across the nation, and locally in our work: Understanding and addressing disparate treatment in stops, searches, and uses of force, across differing racial and ethnic groups in our community. How do we best understand disparities in the data? To what can we attribute these disparities, in the absence of explicit racial animus and bias? What are the implications for an agency which always seeks to improve and optimize its performance? How do we compare to other agencies in CPE's work?

By sharing our data, and by receiving their analysis and recommendations, we seek to inform our efforts to provide the highest level of service to our community, and to support CPE's work on the national level, on their National Justice Database, which "collects policing data to measure fairness and improve policing equity, and to make its findings transparent to law enforcement and to communities."

As can be seen, there are numerous instances where CPE's findings reflect well on our officers' work, e.g.:

“Overall, racial disparities in BPD stops and reported use-of-force incidents were low in comparison to many other US Police agencies and much of the observed disparity was attributable to variation in neighborhood crime rates. Moreover, Black-to-White and Hispanic-to-White disparities in vehicle search rates declined by about 40% between 2013 and 2015.” --CPE Draft Interim Report, p. 6.

There are also findings which invite further inquiry and analysis, and recommendations which represent opportunities for improvement and deepening community trust.

Today however, it is important to keep in mind the attached report is a *draft*, provided to BPD in early May. There are numerous issues in the draft which call for additional communication between BPD and CPE to address. Absent these follow-up discussions, it is concerning that some information in the draft report may cause some level of confusion within our community.

Our Department's mission, vision, and values are in accordance with our community's values, and progressive law enforcement practices. We aspire to foster strong relationships with our community, and to inspire trust in our actions. Our core values include treating people with dignity, compassion, empathy, and fairness, while valuing diversity, in our workforce and community.

Our Department has long been committed to policing without racial profiling. In fact, BPD has a long history of proactively working to understand and mitigate implicit bias in our work to safeguard our community, while treating people with dignity and respect.

While there is focus on stops, we are also interested in use of force. In this discussion, context in the data matters: In 2016, our officers handled over 78,000 incidents, conducted over 3,200 arrests, and issued over 5,600 citations... and reported only 32 uses of force (use of a weapon, leaving a visible injury, or where the arrestee complained of pain). These results reveal a culture and practice of treating people with respect, with a minimal reliance on force.

BPD's commitment to policing without racial profiling is evident in our policies, our long history of training intended to mitigate implicit bias, and our department's proven performance. This information is not illuminated in the draft report; out of fairness and to provide some additional context, it's essential to provide more information about BPD policy and training.

Racial Profiling has a specific legal definition in California:

“... the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop, or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description.” - California Penal code 13519.4 (e)

Racial Profiling is prohibited per Penal Code 13519.4 (f), and it is expressly prohibited in our policies, which affirm our commitment to fairness in policing, and also provide a framework for accountability for our staff:

- **General Order B-4, Fair and Impartial Policing,**
 - Reaffirms the commitment of the Berkeley Police Department to fair and impartial policing; to clarify the circumstances in which officers can consider race, ethnicity and other demographics; and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way.
- **Police Regulation 282 Non-discrimination/Equal Employment**
 - Mandates employees to be fair and equitable in all their relations with citizens. Harassment on the basis of race, color, religion, ancestry, national origin, age, sex, et al. shall not be tolerated.
- **Police Regulation 255 Obedience – Laws and Orders**
 - Mandates BPD employees follow all laws of the US, the State of California, Berkeley City Ordinances, and Departmental Orders.
- **Police Regulation 257 Enforcement of Laws – Impartiality**
 - Mandates that employees shall enforce laws in a fair and impartial manner.
- **Police Regulation 200 Misconduct - Duty to Report**
 - Mandates that discrimination-based conduct is a “serious allegation” of misconduct and requires immediate reporting by knowledgeable employees.
- **Police Regulation 201 Misconduct – Supervisory and Command Officer Responsibilities**
 - Mandates that Supervisory or Command officers aware of “serious allegations,” including discrimination-based misconduct, shall take appropriate corrective action and immediately report the alleged misconduct to their chain of command.
- **General Order P-26 Personnel Complaint Procedure**
 - Mandates that bias-based conduct is “discrimination,” and requires prompt investigation.
- **General Order H-4 Hate Crime Policy and Procedure**
 - Defines hate crime and hate incidents and affirms policy that related crimes/conduct shall be “high priority” investigations.

The draft interim report does not review related training, for example:

- **Leveraging Differences for a Competitive Advantage** –This City-wide course was designed to understand a business case for diversity, how perception impacts team effectiveness, how differences in communication styles can impact the workplace, and tools for improving effectiveness. 2017
- **Fair and Impartial Policing** – BPD In-House training, Multiple Workshops spanning 2010-2016
- **Tactical De-escalation** – BPD In-House Training, 2016
- **Crisis Intervention Training** – 37 hour class (over 40% have attended thus far; we send officers whenever a class is offered) 2011-present
- **Crisis Intervention Training** – 8 Hour training 2016
- **POST Biased-based Policing** – 2014

As you know, during our review of this report, we became concerned over questions and issues regarding the analysis of 2015 stop data. I shared many of these concerns with the Police Review Commission via email on May 10, May 18, and in person at the May 24 PRC meeting, and again in my July 6 memorandum to you.

Our major concerns: (1) CPE should specifically consider the “reason for stop” data in their analysis; and (2) is 2015 data missing relevant information that could undermine understanding and analysis?

We have further concerns as well. This is a draft report, and timelines prevented us from discussing our concerns at this draft stage. Out of fairness to CPE, we would expect that many of these concerns would be discussed, clarified, and addressed or considered prior to release of a final report. Note that CPE is ultimately the author of the report, its analyses and recommendation, and that our feedback and input is a part of their process, a process which has not informed the draft.

Out of fairness, since this draft will now be read without the benefit of that process, it is incumbent upon me to point out these examples for the reader.

Examples of concerns include:

- A crime witness or victim’s suspect description is outside of an officer’s control, yet the officer is (rightly) expected to take action, to make an arrest. While making an arrest, the *suspect’s actions*, *the suspect’s resistance to arrest*, plays a significant part in what force an officer is required to use. It’s therefore extremely important to consider how these factors are both outside the officer’s control, and yet they effect when force may be used.

- Discussion of use of force relies on census data, rather than an examination of suspect demographics. Many arrestees are not Berkeley residents. Since force is always related to the actions of an arrestee—who is often not a resident—this deserves attention.
- The Berkeley Police Department’s Use of Force policy is described erroneously at several points in the draft.
- The use of the word “resident” is used even though the data does not contain residency information. Berkeley is an active city, with non-residents—and very often non-resident offenders—coming through town at all times, day or night.
- In several instances, community demographics are relied upon in making predictions... this—like labelling *everyone* BPD contacts, “residents”—can be extremely misleading.
- A description of the December 2014 riots is inaccurate, and would undermine the legitimacy of the report within the Department.
- Given a 40% decline in disparity of vehicle searches for Black and Hispanic drivers occurred over several recent years, the 2016 data analysis is necessary to consider potential actions today.

We look forward to CPE’s full and complete report and presentation. We are confident the completed full report will serve as an opportunity to engage in these important conversations with our community, and will provide the greatest value for our community, in our discussion of issues around fair and impartial policing.