



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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Washington, D.C. 20531

June 28, 2011

Vincent McAlister  
106 West Third Street  
P.O. Box 148  
Tuscumbia, Alabama 35674

Re: Notice of Findings  
v. Sheffield Police Department (09-OCR-0513)

Dear Mr. McAlister:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of your client, the Sheffield Police Department (SPD), in connection with the administrative Complaint that (Complainant) filed against the SPD. In his Complaint, the Complainant alleges that officers with the SPD discriminated against him based on race (African American) and sex (male) in connection with a January 18, 2009, incident.

The OCR has completed our review of the documentation provided by both the SPD and the Complainant and has determined that there is insufficient evidence of a violation of the civil rights laws that we enforce. Our findings are set forth below for your review.

Factual Background

The Complainant alleges that the following occurred on January 18, 2009:

At approximately 8:15 p.m, the Complainant was walking down 16<sup>th</sup> Street in Sheffield, Alabama, when he saw two officers from the Sheffield Police Department (SPD), Officer" "and Officer engaged in a traffic stop.<sup>1</sup> The Complainant stopped to watch the officers, and "Officer noticed the Complainant and said, "Get the hell on down the street." The Complainant replied that he was a grown man and that Officer did not need to disrespect him "like that, and Officer told the

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<sup>1</sup> In his Complaint to the OCR, the Complainant mistakenly identified one of the SPD officers as Captain and did not indicate the identity of the second officer. The information provided by the SPD demonstrates that the officer who the Complainant referred to as Captain is actually Officer and that the second officer is Officer Captain of the SPD was not present during this incident.

Vincent McAlister

June 28, 2011

Page 2

Complainant that he was under arrest. When the Complainant asked Officer why he was under arrest Officer pulled out his Taser, and the Complainant began to run. The Complainant stopped running when he got to an empty lot on 15<sup>th</sup> Street, and Officer came into the lot. The Complainant got down on his knees, and Officer said to the Complainant, "Put your hands on your head nigger!" Officer then came into the lot and said, "Don't you move nigger!" Officer continued to call the Complainant a nigger and pointed a gun in his face. The Complainant stayed on the ground with his hands on his head for several minutes without the officers taking any action. The Complainant's hands began to get heavy and he put his hands down, at which point Officer said, "Put your hands back on your head you damn nigger!" The Complainant heard Officer fire his Taser at the Complainant, but due to the Complainant's heavy coat he did not feel the full effect of the Taser.

Officer and Officer then walked the Complainant down 15<sup>th</sup> Street, where Officer saw a beer bottle on the ground and told the Complainant that the beer bottle was the Complainant's. The Complainant leaned into Officer blew his breath in Officer face, and told Officer that he does not drink. Officer then told Officer that the Complainant tried to head-butt him. The officers arrested the Complainant on charges of resisting arrest, disorderly conduct, and obstructing government operations.

After the officers arrested the Complainant they took him to the SPD headquarters and placed him in a holding cell overnight. During this period of detention the Complainant informed SPD officers that he needed a shot for his diabetes, but the SPD officers told him that he would have to wait until the following day for his medication. On the following morning, January 19, 2009, the Complainant called his sisters from the SPD headquarters to explain what had occurred. While the Complainant was on the telephone, Officer of the SPD, holding a Taser in his hand, told the Complainant, "You're not going to like what's getting ready to happen to you." Officer told the Complainant to hang up the phone and began counting down the seconds while continuing to hold the Taser. One of the Complainant's sisters with whom he was speaking told the OCR that she overheard an officer tell the Complainant that if he did not hang up the phone something bad was going to happen. The Complainant believes that the actions of all of the SPD officers were due to his race and sex.

The Municipal Court of the City of Sheffield found the Complainant not guilty of the charge of disorderly conduct and guilty of the charges of obstructing government operations and resisting arrest. On appeal, the Circuit Court of the City of Sheffield dismissed all charges against the Complainant. On January 22, 2009, the Complainant sent a complaint letter to the SPD Chief of Police, the Major of the City of Sheffield, and a member of the City Council of the City of Sheffield explaining what had occurred, but he has not received a response from any of these individuals.

In the SPD's responses to the OCR's data request and supplemental data request, the SPD stated that while Officer and Officer were engaged in the traffic stop they

observed the Complainant walk up behind them, and that Officer asked the Complainant to leave for officer safety. According to the SPD, the Complainant stated that he did not have to leave and failed to obey Officer repeated commands to leave the area. Officer then told the Complainant that he was under arrest and attempted to place handcuffs on the Complainant, and the Complainant fled on foot. Officer ran after the Complainant and deployed his Taser into the Complainant's back, but it had no effect. The Complainant eventually fell to the ground and the officers placed him under arrest for resisting arrest. The SPD provided the OCR with Officer incident report regarding the Complainant's arrest, which is consistent with the information contained in the SPD's responses to the OCR's data requests. In the SPD's responses to the OCR's data requests, the SPD stated that neither Officer nor Officer called the Complainant a "nigger." The SPD provided the OCR with a written statement from Officer in which Officer asserted that at no point during their interaction with the Complainant did Officer or Officer use this racial slur.<sup>2</sup>

The SPD also provided the OCR with a CD-ROM containing visual footage of the officers' January 18 traffic stop from a camera located on the dashboard of the police car and audio footage from microphones located on the officers. This footage is limited; the Complainant is not visible and it does not appear that the microphones captured all of the words spoken between the Complainant and the officers. However, the OCR can hear the sounds of one or more individuals running and can hear one or more officers repeatedly yelling at the Complainant to put his hands over his head and to get down on the ground, and the Complainant responding that he did not do anything. The OCR did not hear a SPD officer use any racial slur.

As for the Complainant's allegations that he informed SPD officers at the jail that he needed a shot for his diabetes and the officers told him that he would have to wait until the following day, the SPD said in its response to the OCR's supplemental data request that it is not aware of the Complainant requesting a shot.<sup>3</sup> In regard to the Complainant's allegation that Officer threatened him while he was on the telephone with his sisters on January 16, the SPD said that it has no knowledge of whether Officer spoke to the Complainant.<sup>4</sup>

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<sup>2</sup> The SPD noted that the City of Sheffield no longer employs Officer and therefore the SPD is unable to obtain a statement from Officer regarding what occurred on January 18.

<sup>3</sup> During a March 30, 2011, telephone conversation with OCR attorney you said that SPD officers do not recall the Complainant requesting a shot during his confinement. You noted that when an inmate does request medication such as a shot, officers cannot administer the medication without a doctor's authorization, and cannot provide insulin to an individual if the individual is under the influence of alcohol.

<sup>4</sup> During your March 30 telephone conversation with you explained that the SPD no longer employs Officer. However, you indicated that inmates make telephone calls from a public bullpen and that officers typically are not in the bullpen when inmates are making phone calls, especially not with a weapon.

Vincent McAlister

June 28, 2011

Page 4

According to the SPD's response to the OCR's supplemental data request, upon receiving the Complainant's complaint letter, Chief Ray of the SPD reviewed the footage of the incident, interviewed the officers involved in the allegations, and determined that the Complainant's allegations were unfounded.<sup>5</sup>

#### Policies and Procedures Relevant to the Allegations

The SPD provided the OCR with several internal policies and procedures relevant to the Complainant's allegations. The SPD provided the OCR with the SPD General Order No. 90-01A, "Use of Force" (effective June 1, 1988), which states that officers shall not use any form of physical force in making an arrest except in self defense, to overcome physical resistance, or to prevent physical injury to another person. General Order No. 90-01A further states that an officer shall only use the degree of force that is necessary to make an arrest and to bring an individual to the police station for booking. The SPD also provided a SPD Policy Statement on the use of Tasers (effective May 23, 2008), which states that officers may use a Taser in various circumstances, including to subdue individuals who are combative or are resisting arrest, to restrain individuals who are engaging in verbal resistance, and to prevent a suspect from escaping. Additionally, the SPD provided the OCR with Section 1000 regarding the municipal jail from the SPD's written procedures, which indicates that the shift supervisor is responsible for health services to inmates, and that shift supervisors shall evaluate inmates with questionable medical conditions and determine what action to take based on their own judgment.

#### Legal Analysis

Title VI of the Civil Rights Act of 1964 (Title VI) provides that "[n]o person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Additionally, the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), under which the SPD receives DOJ funding, contains a discrimination provision modeled after Title VI that prohibits funding recipients from discriminating on the basis of race, color, national origin, sex, and religion. 42 U.S.C. § 3789d(c)(1). To prove discrimination under these statutory provisions, the evidence must establish an intent to discriminate. Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 265 (1977); Burton v. City of Belle Glade, 178 F.3d 1175, 1202 (11<sup>th</sup> Cir. 1999). Discriminatory intent may be shown by such factors as substantial disparate impact, a history of discriminatory actions, procedural and substantive departures from the norms generally followed by the decisionmaker, and discriminatory statements. Village of Arlington Heights, 429 U.S. at 265, Elston v. Talladega County Board of Education, 997 F.2d 1394, 1406 (11<sup>th</sup> Cir. 1993). The DOJ regulations implementing Title VI and the Safe Streets Act further prohibit funded agencies from

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<sup>5</sup> In your March 30 telephone conversation with \_\_\_\_\_ you stated that you are not aware of any formal SPD complaint procedures governing the investigation of citizen complaints.

Vincent McAlister

June 28, 2011

Page 5

utilizing methods of administration in the delivery of services which have the effect of subjecting individuals to discrimination. 28 C.F.R. §§ 42.104(b)((2), 42.203(e).

Based on the OCR's review of the information that has been submitted by both the Complainant and the SPD, the OCR finds that the evidence is insufficient to demonstrate that SPD officers discriminated against the Complainant based on race or sex. According to the information that is before us, it does not appear that any of the officers' actions were departures from established norms or procedures. As discussed above, SPD General Order 90-01A and the SPD Policy Statement authorize officers to use force, including the deployment of a Taser, when an individual is resisting arrest or is attempting to flee. The SPD's responses to the OCR's data requests and the incident reports for the incident in question indicate that the Complainant fled from Officer [redacted] when Officer [redacted] attempted to arrest and handcuff him, and that Officer [redacted] deployed his Taser into the Complainant's back as the Complainant was fleeing. While the Complainant argues that he did not flee until Officer [redacted] pulled out his Taser, and the evidence is insufficient to demonstrate exactly when the Complainant did flee from Officer [redacted] the evidence clearly shows that the Complainant did flee from Officer [redacted] after he told the Complainant he was under arrest. Additionally, the audio recording of the incident demonstrates that SPD officers had to repeatedly request the Complainant to get down on the ground and put his hands up. As for the Complainant's allegations that Officer [redacted] while holding a Taser, told the Complainant that something bad would happen if the Complainant did not hang up the telephone, the evidence is insufficient to demonstrate exactly what occurred. Even if the Complainant's allegation is correct, the threatened use of a Taser may be in compliance with SPD policies if the Complainant was resisting Officer [redacted] commands.

In regard to whether the SPD officers provided appropriate medical care to the Complainant in accordance with SPD procedures while he was confined at the jail, the evidence before the OCR is insufficient to demonstrate whether the Complainant did request a shot for his diabetes during his confinement, and, if so, why the officers did not provide him with one.

As evidence of discriminatory intent, the Complainant alleges that Officer [redacted] and Officer [redacted] called him a "nigger" on several occasions. However, the OCR did not hear any racial slurs on the audio recording of the January 18 incident, and Officer [redacted] submitted a written statement indicating that neither he nor Officer [redacted] called the Complainant this racial slur. The OCR contacted the individual who was involved in the traffic stop by Officer [redacted] and Officer [redacted] and who was sitting in her vehicle while the Complainant interacted with the officers, but this individual said that she did not hear what was said by the Complainant or the officers. Accordingly, the evidence is insufficient to demonstrate whether Officer [redacted] or Officer [redacted] made discriminatory statements.

According to the SPD's response to the OCR's data request, the SPD does not have a history of race or sex discrimination; the SPD said that since January 1, 2007, there have

Vincent McAlister

June 28, 2011

Page 6

been no other complaints of race or sex discrimination and no lawsuits alleging race or sex discrimination against the SPD or any of the officers involved in the January 18 or 19 incidents. Additionally, the SPD provided documentation regarding the incidents from January 1, 2007 to February 7, 2011, in which SPD officers have deployed a Taser against an individual; of the thirty recorded incidents, eight (26%) involved a black man.

Based on all of the information discussed above, the OCR finds that there is insufficient evidence to demonstrate that SPD officers acted with an intent to discriminate against the Complainant in violation of Title VI and the Safe Streets Act. However, the OCR would like to bring the following issue to your attention. As discussed in the Factual Background section of this Notice, the Complainant filed a complaint with the SPD alleging police misconduct, and never received a response. Additionally, you told the OCR that that you are not aware of any formal SPD complaint procedures governing the investigation of citizen complaints. Please be aware that the SPD's failure to have procedures in place to receive and investigate complaints of discrimination results in the SPD having methods of administration that have the effect of subjecting individuals to discrimination in violation of Title VI and the Safe Streets. In order to ensure compliance with these statutes and the other federal civil rights laws that the OCR enforces, it is imperative that the SPD have procedures in place to thoroughly review all complaints of discrimination brought by members of the public. For your information, I am enclosing a copy of the Model Policy on Investigation of Employee Misconduct and its accompanying Concepts and Issues Paper, published by the International Association of Chiefs of Police (IACP) National Law Enforcement Policy Center (revised October 2001). In these documents, the IACP advises law enforcement agencies that they should have procedures in place to handle complaints of employee misconduct from members of the public, which should include reviewing all citizen allegations of employee misconduct, notifying the complainant of the agency's complaint process, and providing written notification to the complainant explaining the final disposition of the complaint.

The SPD should review the enclosed documents and should promptly develop effective procedures to investigate all complaints of employee misconduct, including discrimination complaints. **Within 60 days of the date of this letter, please provide the OCR with a copy of the written complaint procedures that the SPD develops.** The OCR's administrative review of the SPD will remain open until the SPD develops procedures that provide an effective method of receiving, investigating, and resolving complaints of employee misconduct in accordance with the enclosed documents.

If you have any questions, please contact attorney \_\_\_\_\_ at (202) - \_\_\_\_\_

Sincerely,

/s/

Michael L. Alston

Director

Enclosures