



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

May 18, 2015

R. Bruce Warren
Whitehurst, Blackburn & Warren
809 South Broad Street
Thomasville, GA 31792

Re: Notice of Findings
[Redacted] v. Thomas County Sheriff's Office (13-OCR-0460)

Dear Mr. Warren:

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 Thomas County Sheriff's Office (TCSO), in connection with the administrative Complaint that [Redacted] (Complainant) filed against the TCSO. In his Complaint, the Complainant alleges that a deputy with the TCSO discriminated against him based on race (African American) and sex (male).

The OCR has completed our review of the documentation provided by both the TCSO and the Complainant and has determined that there is insufficient evidence that the TCSO has intentionally discriminated against the Complainant in violation of Title VI of the Civil Rights Act of 1964 (Title VI), the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), and their implementing regulations. However, we have concerns that the TCSO is utilizing methods of administration which may have the effect of discriminating against members of the community which it serves. Our findings are set forth below for your review.

Factual Background

The Complainant alleges that the following occurred on June 9, 2013:

At approximately 7:30 a.m., the Complainant was awakened by his fiancé to find a TCSO deputy (Caucasian, Male, hereinafter referred to as "Responding Deputy") standing outside the back door to the Complainant's residence in Thomasville, Georgia. The Responding Deputy was pointing his gun at the Complainant's dog, who had broken the chain used to secure him to the Complainant's property. The Complainant secured his dog in a cage on his front porch, and when he walked back toward the Responding Deputy, the Responding Deputy asked to see the Complainant's identification. The Complainant explained that he currently did not have any identification as his driver's license had been suspended, and the Responding Deputy told him he was going to jail. The Complainant asked what he was going to jail for, and the Responding Deputy stepped close to the Complainant, tried to grab his hands, and falsely accused the Complainant of spitting on him. The Responding Deputy then hit the Complainant in the throat. The Complainant backed away from the Responding Deputy, and the Responding Deputy pulled out his Taser and threatened to

Tased the Complainant if he did not put his hands behind his back. The Complainant put his hands behind his back, and the Responding Deputy handcuffed the Complainant very tightly and started to drag him across his yard towards the Responding Deputy's vehicle. The Complainant's shoe slipped off his foot and he asked the Responding Deputy if he could retrieve his shoe; the Responding Deputy then slammed the Complainant down to the ground on his side and back, got on top of the Complainant and put his knee on the Complainant's head and held him there until another TCSO deputy arrived at the scene. The Responding Deputy arrested the Complainant for obstruction of justice, and the charge was subsequently dismissed in court.

The Complainant sought medical attention immediately following his release from jail on June 9, 2013, for pain and abrasions to his left shoulder, side, and knee. He sought medical attention again on June 12, 2013, for pain to his throat and neck and was diagnosed with a muscle strain on the right side of his neck. The Complainant's medical expenses totaled approximately \$900.00, and to this day, the Complainant still experiences pain in his back and left shoulder and has scarring on his wrists due to the tightness of the handcuffs. The Complainant spoke with a TCSO deputy over the telephone approximately one week after the June 9 incident to complain of the Responding Deputy's behavior, and the deputy told him to get a lawyer to prove his allegations. The Complainant mailed a written complaint to the TCSO on June 17, 2013, but it was returned to him unopened. The Complainant believes that the Responding Deputy arrested him and used excessive force against him based on his race and sex.

The Complainant and the TCSO both provided the OCR with the incident report for the June 9th encounter. According to the incident report, the Responding Deputy initially arrived at the Complainant's residence in response to reports of a dog at large. Once the Complainant secured his dog the Responding Deputy advised the Complainant that he needed his information but the Complainant refused to provide it. The incident report indicates that the Responding Deputy notified the Complainant that he was going to go to jail for obstruction but the Complainant still refused to identify himself and attempted to walk past the Responding Deputy; the report further indicates that the Responding Deputy had to push the Complainant back and advised him that he was under arrest for obstruction of justice in violation of Georgia statute § 16-10-24(a).¹ The incident report also indicates that the Responding Deputy attempted to restrain the Complainant and the Complainant snatched away, and that the Responding Deputy drew his Taser and advised the Complainant to place his hands behind his back or he would be Tased, and the Complainant complied. According to the incident report, about twenty yards from the patrol car the Complainant attempted to walk back towards the house and the Responding Deputy had no choice but to place the Complainant on the ground and restrain him until a second deputy arrived to assist him.

In the TCSO's response to the OCR's Data Request (Data Response), the TCSO also provided the OCR with a written statement from the Responding Deputy (undated) in response to the Complainant's allegations. The Responding Deputy states that he told the Complainant multiple times that he needed his personal information to write a report and that the Complainant refused to provide his information, attempted to walk away from the Responding Deputy, and never explained that his license was suspended. The Responding Deputy states that the Complainant was speaking in such a way that he was spitting, and that it appeared that it was intentional and the Responding Deputy advised him to stop. The Responding Deputy admits that he pushed the

¹ GA CODE ANN § 16-10-24(a) states that a person who knowingly and willfully obstructs or hinders any law enforcement officer in the lawful discharge of his official duties is guilty of a misdemeanor.

Complainant, but says that he pushed the Complainant in the upper chest to get him away from his person only after the Complainant approached the Responding Deputy. According to the Responding Deputy, he advised the Complainant that he was under arrest and attempted to grab hold of the Complainant to take him into custody, and the Complainant physically resisted arrest by snatching away from him; the Responding Deputy says he drew his Taser and the Complainant then placed his arms behind his back to be handcuffed. The Responding Deputy says that about twenty yards from the patrol car the Complainant lost one of his shoes and began to drag the Responding Deputy back toward the shoe, and the Responding Deputy took the Complainant to the ground due to the fact that the Complainant refused to cooperate in any way unless forced. The Responding Deputy asserts that his handling of the situation had nothing to do with the race or sex of the Complainant, but was based on the behavior, attitude, and demeanor of the Complainant.

The TCSO also provided the OCR with the video and audio footage from the in-car camera from the Responding Deputy's patrol vehicle; the camera displays the area directly in front of the patrol vehicle and does not show the interaction between the Responding Deputy and the Complainant, although most of their verbal exchange can be heard and understood. The OCR hears the Responding Deputy repeatedly asking the complainant if he has any identification and stating that he needs the Complainant's information to write the report, and the Complainant stating that he doesn't have any identification; the Responding Deputy asks the Complainant several times to step over to his patrol vehicle so he has something to write on and the Complainant responds that he isn't going anywhere. The Complainant tells the Responding Deputy several times to get out of his face; the Responding Deputy tells the Complainant to calm down, and the Complainant replies that the Responding Deputy should calm down as they are at the Complainant's house. The OCR hears the Complainant telling the Responding Deputy not to touch him, and the Responding Deputy stating "[d]on't spit on me." The OCR also hears the Responding Deputy repeatedly stating that the Complainant is going to jail, the Complainant inquiring for what, and the Responding Deputy stating for obstruction of justice. The Responding Deputy asks the Complainant several times to put his hands behind his back and the Complainant says he is not doing that. The OCR hears the Complainant stating something like, "[d]o not Tase me, I have heart problems;" however, the OCR cannot hear the Responding Deputy state anything about having a Taser or warning the Complainant that he will Tase him. The OCR hears what appears to be handcuffs being applied, and several seconds later hears the Complainant say that he has to get his shoe, followed by the sound of a scuffle.

On the recording, the OCR observes two other deputies arrive separately on the scene, and can hear the Responding Deputy explain off-camera to one or both of the deputies that the Complainant would not cooperate or provide him with any of his information, that the Complainant pulled on him and he had to push the Complainant back, that he pulled out his Taser and the Complainant put his hands behind his back, and that he took the Complainant to the ground after the Complainant turned back toward the house.

In the TCSO's Data Response, the TCSO stated that the Responding Deputy's actions were consistent with TCSO policy. The TCSO also provided the OCR with the medical questionnaire that the TCSO completed when booking the complainant following arrest; according to the questionnaire, there was no pain, bleeding, visible signs of trauma, or other symptoms suggesting emergency care. The TCSO said that the Complainant has not filed any official complaint regarding this incident with the TCSO.

TCSO Policies and Procedures Relevant to the Allegations

In its Data Response, the TCSO provided the OCR with its policy regarding use of force. According to Section 12 of the TCSO's Standard Operating Procedure, Rules and Regulations Manual, entitled "Use of Force" (effective October 2010), the use of reasonable force may be necessary in situations which cannot be otherwise controlled, but all other reasonable alternatives should be exhausted before the application of force. Section 12 states that the application of force necessary to neutralize the event depends on the amount of resistance the officer must overcome to affect the arrest or neutralize the situation. Section 12 discusses several examples of the use of force, including pepper gas, firearms, batons, and Tasers.

The TCSO also provided documentation from a use of force training that it conducted for deputies, including the Responding Deputy, on October 15, 2013. In this training, the TCSO advises deputies that they should only use the reasonable amount of force necessary to make an arrest, and that Tasers should be used when a suspect physically resists or tries to assault an officer.

Subsequent to receiving and reviewing the TCSO's Data Response, the OCR asked you whether the TCSO has any written procedures prohibiting discrimination or harassment by its employees, and setting forth procedures for accepting, processing, and investigating complaints from members of the public alleging officer misconduct. During a May 6, 2015, telephone conversation with OCR attorney Shelley Langguth, you indicated that the TCSO does not have any written procedures in place either prohibiting discrimination or establishing complaint procedures, other than a statement on the Thomas County Board of Commissioner's website at <http://www.thomascountyboc.org/boc.html> (last visited May 11, 2015) indicating that, "[w]e believe all citizens should have equal opportunity and access to county services." The OCR found similar language on the TCSO's website at <http://thomascountysheriff.com> (last visited May 11, 2015) stating that, "[t]he hallmark of our department is fair, impartial and compassionate enforcement of county ordinances and state laws. We provide equal protection for our citizens as well as visitors in our area so that we may earn the trust and confidence of the people we serve."

Legal Analysis

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 Safe Streets Act, under which the TCSO receives DOJ financial assistance, contains a non-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. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). Discriminatory intent may be shown by such factors as procedural and substantive departures from the norms generally followed by the decisionmaker, substantial disparate impact, a history of discriminatory actions, and discriminatory statements. *Id.*

Under federal law, a law enforcement officer's right to make an arrest or investigatory stop necessarily includes the right to use some degree of physical force or threat thereof to effect it. *Graham v. Connor*, 490 U.S. 386, 396 (1989); *Terrell v. Smith*, 668 F.3d 1244, 1251 (11th Cir.

2012). In determining whether the amount of force used is reasonable under the Fourth Amendment to the United States Constitution, courts evaluate the facts and circumstances of the particular case, including whether the suspect poses an immediate threat to the safety of officers or others and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. *Graham*, 490 U.S. at 396. “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Id.*

Based on the OCR’s review of the information that has been submitted by both the Complainant and the TCSO, the OCR finds that the evidence is insufficient to demonstrate that the Responding Deputy’s actions were based on the Complainant’s race or sex and that he intentionally discriminated against the Complainant. The evidence before the OCR, including an audio and partial video recording of the incident, indicates that the Complainant failed to comply with the Responding Deputy’s commands to step over to his patrol vehicle and to provide identifying information, and then failed to comply with the Responding Deputy’s commands to put his hands behind his back. While the Complainant says that he explained to the Responding Deputy that his license was suspended, on the audio recording the OCR only hears the Complainant stating that he does not have any identification and not explaining why, and the Complainant does not attempt to verbally provide the Responding Deputy with his name. The Responding Deputy’s action of pulling out his Taser does not appear to be a departure from the TCSO’s written policy on use of force or from federal law, based on the Complainant’s apparent failure to cooperate and to place his hands behind his back after the Responding Deputy repeatedly requested that he do so. Additionally, the Responding Deputy’s action of putting the Complainant on the ground after he turned back toward the house appears to be consistent with TCSO policy and federal law in light of the Complainant’s overall apparent resistance and failure to cooperate.

In regard to the other relevant factors under the *Village of Arlington Heights* analysis, the evidence before the OCR does not contain any indication that the Responding Deputy made any discriminatory statements about the Complainant’s race or sex. Additionally, it does not appear that the TCSO has a history of discrimination on the basis of race or sex; according to the TCSO’s Data Response, since January 1, 2013, there have not been any lawsuits, local or state administrative actions, or complaints from members of the public alleging race or sex discrimination filed against the TCSO.

Based on all of the information discussed above, the OCR has determined that the evidence is insufficient to demonstrate that the TCSO intentionally discriminated against the Complainant in violation of Title VI and the Safe Streets Act and their implementing regulations.

However, the OCR does have concerns that the TCSO is utilizing methods of administration that have the effect of discriminating against individuals protected by the laws that we enforce. As discussed previously in this Notice of Findings, the Complainant alleges that he mailed a written complaint regarding this incident to the TCSO on June 17, 2013, but that it was returned to him unopened, and the TCSO asserts that it never received a formal complaint from the Complainant. It is unknown to the OCR why the Complainant’s complaint was returned to him unopened and whether it was sent to the correct address. Also as noted previously in this Notice of Findings, you indicated to the OCR that the TCSO does not have any written procedures in place explaining how the TCSO accepts, processes, or investigates complaints of misconduct or discussing prohibited

discrimination. Please be aware that the DOJ's regulations implementing Title VI and the Safe Streets Act prohibit funded agencies from 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). The regulations implementing Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132), Section 504 of the Rehabilitation Act of 1975 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6102), which prohibit discrimination by recipients of federal financial assistance or public entities based on disability and age and which the OCR also enforces, contain a similar prohibition. 28 C.F.R. §§ 35.130(b)(3)(i), 42.503(b)(3), 42.710(a). The TCSO's lack of formal, written procedures explaining how the TCSO accepts and investigates complaints of misconduct and discussing prohibited discrimination and harassment by TCSO employees results in members of the public being unaware of how to file such complaints. Based on the lack of written procedures, TCSO employees may also be unaware of how to accept such complaints or that alleged employee misconduct will be taken seriously and investigated by the TCSO. This promotes a lack of accountability and integrity and prevents the TCSO from detecting, remedying, and taking action to prevent officer misconduct including discrimination.

In order to ensure compliance with Title VI, the Safe Streets Act, and the other federal civil rights laws that the OCR enforces, it is imperative that the TCSO 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 TCSO should review the enclosed documents and should promptly develop effective written procedures to investigate all complaints of employee misconduct, including discrimination complaints. The TCSO should ensure that the written procedures contain a policy statement clearly explaining that TCSO employees are prohibited from discriminating against or harassing members of the public based on race, color, national origin, religion, sex, disability, and age.² The TCSO should also ensure that its written procedures make clear that employees should not engage in any behavior, such as dismissive or threatening verbal statements, to dissuade individuals from filing a complaint. **Within 30 days of the date of this letter, please provide the OCR with a copy of the written complaint procedures that the TCSO develops.** The OCR's administrative review of the TCSO will remain open until the TCSO develops procedures that provide an effective method of receiving, investigating, and resolving complaints of employee misconduct in accordance with the enclosed documents.

² At a minimum, to comply with the federal nondiscrimination statutes that the OCR enforces and which currently are binding on the TCSO, the TCSO is prohibited from discriminating based on race, color, national origin, sex, disability, and age. The TCSO may wish to add other protected classes to its nondiscrimination policy to comply with local, state, or other federal laws that the TCSO is subject to.

R. Bruce Warren
May 18, 2015
Page 7

Thank you for your cooperation in this review. If you have any questions, please contact Ms. Langguth at (202) 305-2353. Ms. Langguth is always available to provide the TCSO with technical assistance in developing effective complaint procedures.

Sincerely,

/s/ Michael L. Alston

Enclosures