



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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Washington, D.C. 20531

February 2, 2015

VIA CERTIFIED UNITED STATES POST

Russell Kerbow  
Chief of Police  
Lewisville Police Department  
1197 West Main Street  
Lewisville, Texas 75067

Re: A.A.<sup>1</sup> v. Lewisville Police Dep't (10-OCR-0704)

Dear Chief Kerbow:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice received the above-referenced Complaint from A.A., whom the Lewisville Police Department (LPD) arrested during a traffic stop in August of 2010. The Complainant alleges that the Respondent discriminated against him based on race, in violation of Title VI of the Civil Rights Act of 1964<sup>2</sup> (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968<sup>3</sup> (Safe Streets Act). The OCR investigated the Complaint and found no merit to its claims.

**I. Jurisdiction and Applicable Law**

The OCR is responsible for ensuring that recipients of financial assistance from the OJP and its components comply with federal laws that prohibit discrimination in the delivery of services or benefits based on race. The City of Lewisville (City), Texas, which includes the LPD, is a recipient of financial assistance from one of OJP's components, the Bureau of Justice Assistance (BJA).<sup>4</sup> In August of 2010, which is the time period of the alleged discrimination, the City was a recipient of financial assistance from the BJA and OJP's Office for Victims of Crime (OVC).<sup>5</sup> Because the Respondent is not only a current recipient of financial assistance subject to these statutes but was also a recipient at the time of the alleged discrimination, the OCR has authority to investigate and administratively resolve this Complaint.<sup>6</sup> The Complaint is also timely, as the

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<sup>1</sup> The OCR will use pseudonyms throughout this letter, which is a public document, to protect the identities of key individuals involved in the instant Complaint.

<sup>2</sup> 42 U.S.C. § 2000d (2012).

<sup>3</sup> 42 U.S.C. § 3789d(c)(1) (2012).

<sup>4</sup> The City participates in BJA's Bulletproof Vest Partnership program. BJA, FY 2014 BVP Awards, *available at* <http://go.usa.gov/Srhjd> (last visited Jan. 25, 2015).

<sup>5</sup> The City participated in BJA's Bulletproof Vest Partnership program (Award Number 2009-BU-BX-08044395) and OVC's Victim Assistance Program (Award Number 2009-VA-GX-0011).

<sup>6</sup> See 28 C.F.R. pt. 42, subpt. D, app. A (2014) (discussing 28 C.F.R. § 42.205(c)(1)).

OCR received the Complaint on September 30, 2010, forty-eight days after the date of the alleged discrimination.<sup>7</sup>

## **II. Complainant's Claims**

The Complainant, an African-American, alleged that on August 13, 2010, LPD police officers stopped his vehicle and, with their service weapons drawn, ordered him to exit the vehicle and to lie on the ground. According to the Complainant, the officers sought to subdue him with an electronic control device, or Taser, a police canine, and a police baton. Once subdued, the officers arrested him.

## **III. LPD's Response**

The Respondent acknowledges much of the substance of A.A.'s allegations, but insists that its officers stopped the Complainant's vehicle because A.A. matched the description of a suspect who had recently used a handgun to rob a convenience store.

On August 13, 2010, at approximately 9:32 p.m., the Respondent's dispatch relayed to LPD Officer Bravo and a second officer that an African-American male of medium build wearing a white t-shirt and black jeans had just committed an aggravated robbery of a convenience store. These officers drove to the scene and briefly interviewed several witnesses, who confirmed the suspect description provided by dispatch and told them that the suspect fled on foot. Based on the directions provided by the witnesses about the suspect's flight path, Officer Bravo drove his squad car in search of the suspect.

Several blocks from the convenience store, and only a few minutes after receiving the initial report of the robbery, Officer Bravo observed a vehicle being driven by an African-American male wearing a white t-shirt. He and LPD Officer Charlie, who was in a second squad car, initiated a "known risk" stop of the Complainant's vehicle.<sup>8</sup> Officer Bravo initiated this stop because the Complainant matched the victim's description of the suspect and the vehicle was near the convenience store that had just been robbed. Because Officer Bravo suspected the Complainant of committing a violent felony, he and Officer Charlie approached the vehicle with their service weapons drawn. At Officer Bravo's command, A.A. exited the vehicle.

At this point, the Complainant stopped cooperating with the officers. Officer Bravo repeatedly ordered A.A. to raise his hands in the air and turn around so that he faced away from the officers, which would allow them to safely handcuff the suspect. In response, A.A. paced next to his vehicle and shouted at the officers, using obscenities. Officer Bravo then repeatedly ordered

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<sup>7</sup> 28 C.F.R. § 42.107(b) (generally, under Title VI, a complainant must file an administrative complaint with the OCR within 180 days of the date of the alleged discrimination); *id.* § 42.205(b) (generally, under the Safe Streets Act, a complainant must file an administrative complaint with the OCR within one year of the date of the alleged discrimination).

<sup>8</sup> *See* LPD, General Order No. 4.46, Stopping Traffic Violators with Known Risks (July 15, 2009).

A.A. to lie flat on the ground, which would allow the officers to safely handcuff and search the suspect. A.A. did not comply with these orders, but instead continued to berate the officers.

As Officer Bravo attempted to secure the Complainant, LPD Officer Delta arrived with a police canine, accompanied by LPD Officer Echo.<sup>9</sup> Several times, Officers Delta and Echo ordered A.A. to lie on the ground and warned the Complainant that they would need to use an electronic control device (i.e., a Taser) or the canine if the Complainant continued to disregard their orders. Still, A.A. did not comply. Instead, the Complainant dropped to his knees and placed his hands on the ground, which suggested to the officers that A.A. could quickly stand up and fight the officers once they approached him.

Given the Complainant's continued failure to accede to the officers' orders, which caused the officers to view him as a threat to their safety, they used a Taser, the police canine, and a baton, in that order, to subdue him. Officer Echo initially attempted to use a Taser, but it was not effective because one of its probes did not make contact with A.A. In response to the officer's failed attempt to use the Taser, the Complainant took his hands off the ground and removed the Taser's probes from his body. Officer Delta then deployed the canine, which sought to bite the Complainant's arm. Before the canine could make contact with A.A., the Complainant stood up and twice hit the canine's snout. When Officer Bravo saw the Complainant's response to the canine, he deployed his expandable baton, which prompted Officer Delta to order the canine to retreat from A.A. Officer Bravo administered a strike of the baton to one of the Complainant's legs, which prompted A.A. to ball his fists, as if he were preparing to fight the officers. At that point, an LPD sergeant arrived at the scene, accompanied by another officer, and successfully used his Taser to incapacitate A.A., causing the Complainant to fall to the ground. The officers handcuffed the Complainant and arrested him for interfering with a police service animal, which is a misdemeanor violation of the Texas Penal Code.

The LPD has a Safety Review Committee that reviews all uses of force by LPD officers. On September 9, 2010, this committee reviewed the incident between the Complainant and the LPD officers and concluded that the officers acted consistent with the LPD's policy on use of force.<sup>10</sup>

The LPD requires police officers to enforce the law in a nondiscriminatory manner,<sup>11</sup> and specifically prohibits officers from targeting persons based on their race.<sup>12</sup> If the Respondent concludes that an officer violated these policies, it disciplines the officer.<sup>13</sup> To ensure that

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<sup>9</sup> Officer Delta had been using his assigned canine to track the suspect on foot, based on the canine's identification of the suspect's scent at the convenience store. Officer Echo accompanied Officer Delta and the canine during their search for the suspect. After following the scent for several blocks, the police canine lost track of it, which suggested to Officer Delta that the suspect might have entered a vehicle.

<sup>10</sup> LPD, General Order No. 4.1, Use of Force (Jan. 14, 2010). Under this policy, LPD officers may use non-deadly force to, among other things, protect themselves from physical harm and subdue a person resisting arrest. *Id.* at 2.

<sup>11</sup> LPD, General Order No. 2.1, Police Ethics 3 (Dec. 1, 2009).

<sup>12</sup> LPD, General Order No. 4.37, Bias Based Profiling Prohibited (Oct. 14, 2009) ("Employees of the [LPD] are strictly prohibited from bias based profiling").

<sup>13</sup> *See* LPD, General Order No. 1.1, Goals and Philosophy 3-4 (Oct. 1, 2005); General Order No. 4.37 at 1.

officers understand and comply with the LPD's policy against race-based profiling, the LPD provides training to officers on this topic.<sup>14</sup>

#### **IV. Discussion**

In evaluating the Complainant's race discrimination claims under Title VI and the Safe Streets Act, the OCR relies on constitutional standards. Both statutes prohibit discriminatory practices that would violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.<sup>15</sup> Here, in challenging the propriety of the Respondent's interactions with him, the Complainant advances a disparate treatment theory of recovery. To establish such an equal protection claim, the OCR must show that the respondent acted with the intent to discriminate against the complainant based on his membership in a protected class and treated him differently than similarly situated persons.<sup>16</sup>

Given the particular facts and circumstances of the LPD's stop and arrest of A.A., the OCR concludes that the Respondent did not intentionally discriminate against the Complainant, in violation of Title VI or the Safe Streets Act. Shortly before A.A.'s arrest, Officer Bravo learned that an African-American male wearing a white t-shirt had just used a firearm to rob a convenience store. Several minutes later, mere blocks away from the site of the robbery, this officer observed A.A., an African-American wearing a white t-shirt, driving his vehicle. Based on this information, Officer Bravo initiated a "known risk" stop of the Complainant, consistent with the LPD's policy for such stops. Neither the LPD's policy nor Officer Bravo's reliance on it to stop A.A. is evidence of race-based discrimination against the Complainant. An officer may initiate a traffic stop of someone when that person matches the description of a suspect, and one of those shared characteristics happens to be race.<sup>17</sup> Taking such action does not violate the

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<sup>14</sup> LPD Response to OCR Data Request No. 25 (Feb. 12, 2011).

<sup>15</sup> *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978). The nondiscrimination provision of the Safe Streets Act provides in pertinent part that:

No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title.

42 U.S.C. § 3789d(c)(1). Title VI's nondiscrimination provision provides in pertinent part that:

No person in the United States shall, on the ground 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. Because Congress modeled the nondiscrimination language of the Safe Streets Act on a similar provision contained in Title VI, we apply the same analytical framework to both statutes.

<sup>16</sup> See *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001); *Priester v. Lowndes Cnty.*, 354 F.3d 414, 424 (5th Cir. 2004).

<sup>17</sup> *United States v. Abbott*, Crim. No. H-05-309, 2005 U.S. Dist. LEXIS 39490, at \*28 (S.D. Tex. Dec. 30, 2005) (concluding that police officers had reasonable suspicion to initiate a traffic stop, in an effort to apprehend three robbers, when the men they stopped had several observable traits in common with the suspects, including their race).

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nondiscrimination provisions of Title VI or the Safe Streets Act.<sup>18</sup> Moreover, the LPD prohibits officers from engaging in race-based policing, provides training to officers on this requirement, and holds officers accountable, through the disciplinary process, for selectively enforcing the law based on a person's race. These measures suggest that the Respondent takes seriously its obligation to ensure that its officers do not engage in race-based discrimination in conducting law enforcement activities.

Based on its careful review of the record in this matter, the OCR finds that the LPD did not violate the nondiscrimination provisions of Title VI or the Safe Streets Act in interacting with the Complainant. Therefore, we are administratively closing this Complaint.

The LPD should be mindful that federal law protects the Complainant from retaliation for having filed this Complaint. The OCR will initiate an investigation if it should receive credible evidence of reprisal.

This Letter of Finding is a public document that the OCR will post on its website.

Sincerely,

/s/ Michael L. Alston

Michael L. Alston  
Director

cc: A.A.

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<sup>18</sup> Daytona, Fla., Police Dep't, No. 13-OCR-87, Office for Civ. Rts. Ltr. of Finding (U.S. Dep't of Justice Apr. 12, 2013), available at <http://ojp.gov/about/ocr/pdfs/FL-13-OCR-87.pdf> (finding that the respondent police department did not engage in discrimination when it stopped the complainant, who shared the same race, among other characteristics, with the suspect of an armed robbery).