

INTRADPARTMENTAL CORRESPONDENCE

January 20, 2010
13.5

BPC No. 10-0079

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: BIASED POLICING UPDATE, QUARTERLY REPORT, 4TH QUARTER 2009

RECOMMENDED ACTION

1. That the Board of Police Commissioners REVIEW and APPROVE this report.

DISCUSSION

The attached Biased Policing Quarterly Update, 4th Quarter 2009, is submitted for review and approval.

If you have any questions, please contact Commander Richard A. Webb, Commanding Officer, Internal Affairs Group, at (213) 485-1486.

Respectfully,



CHARLIE BECK
Chief of Police

Attachment

**BIASED POLICING UPDATE
QUARTERLY REPORT
January 15, 2010**

The purpose of this report is to provide the Board of Police Commissioners (BOPC) with a quarterly update on the Department's activities relative to biased policing (BP). On August 19, 2008, the BOPC requested quarterly update reports.

2009 Year End Data

For purposes of clarity, data in this report is for calendar year 2009¹. In summary, statistical trends in biased policing investigations remain relatively unchanged. Biased policing continues to be a male white and Hispanic versus male African American phenomenon. There were 219 **complaints** of biased policing containing 348 **allegations**. Of the 219 complaints, only 3 (1.4%) of them involved an allegation of an ethnic remark. Of the 219 complaints of biased policing, 26 (11.9%) complainants did not provide sufficient information to gather demographic and gender data. Without examining each of these complaints, it is assumed those complainants were not available for interviews. Of the 219 complaints, 52 (23.7%) contained an allegation of discourtesy.

A copy of the year end data is attached as Addenda Nos. 1 & 2.

Since the last report, IAG has made the following progress relative to biased policing.

Enhancement to the Investigative Protocols and Investigations

On March 31, 2009, IAG revised the Biased Policing Investigative Protocols (Protocols) (Addendum No. 3). The Protocols introduced the concept of "Standards of Review," emphasized investigative concentration on Constitutional policing issues and the use of timelines.

In addition, IAG revised the investigative report to ensure relevant topics were addressed in the investigation where as before, investigations were more freeform. The freeform investigative report did not provide for the consistency needed for high quality investigations. The revised format has the following headings:

- Investigative Responsibility
- Statute Issues
- Summary of Investigation
- Allegations
- Facts Not in Dispute

¹ Special Order 15, 2009, dated March 31, 2009, expanded the term from racial profiling to biased policing. Most cases generated for this report were opened prior to March 31, 2009, and closed after that date. However, there are some reports opened since that time that reflects the outdated terminology. IAG has asked the TEAMS II staff to eliminate racial profiling as an available option for personnel complaint allegations. However, due to the presence of biased policing and racial profiling allegations, two reports were generated rather than one. The data for both reports have been combined for purposes of this report.

- Timeline
- Photographs
- Evidence
- Standards of Review
- Canvassing
- Statements

A review of complaints investigated using the Protocols and the revised format reveal investigative quality is significantly enhanced.

Enhancement in the Investigative Process

As of February 1, 2010, Internal Affairs Group will deploy a unit solely dedicated to investigating complaints containing allegations of BP. Initially, a Detective III and two investigators will staff the unit. As cases trickle in, up to eight IAG investigators will be assigned to the unit.

With the deployment of the unit, the following investigative and adjudicative practices will be enacted:

- All statements of complaints containing allegations of biased policing will be transcribed. Paraphrased statements will no longer be used. Because of the logistics of transcription, a full time civilian staff person may be needed to coordinate the nearly 700 anticipated transcriptions per year.
- Adjudications of BP complaints continue to be problematic when completed at the chain of command level.² Therefore, IAG will complete a recommended adjudication for BP cases and forward it to the chain of command for review. Internal Affairs Group management will author the letters of transmittal. Investigators will have no part in the adjudication process to ensure they remain neutral during the investigative process. If the chain of command agrees with the recommended adjudication, then the command will add the information specific to the employee (work history analysis, insight into divisional training needs, etc.) and forward through the chain of command for review.
- If there is disagreement between IAG and any subsequent review, the reviewing entity may militarily endorse the complaint and forward it through the chain of command. Biased Policing complaints that have been militarily endorsed will be presented to the Chief of Police for his final determination.

Mediation of Complaints

Internal Affairs Group continues to pursue the concept of mediating select biased policing complaints. IAG, in conjunction with the Western Justice Center, conducted one community

² 87.1% of all allegations are listed as Unfounded.

meeting to discuss the feasibility of mediating complaints. IAG is developing a strategic plan to implement the mediation model. Once that is completed, the plan will be presented to the BOPC.

Conclusion

The Department's efforts to effectively manage issues of biased policing are progressing well. It is anticipated that a unit dedicated to investigating biased policing, emphasizing Constitutional Policing, will increase the quality of those investigations.

Addenda

1. Racial Profiling-Complaints Closed Between January 1, 2009 and December 31, 2009
2. Biased Policing-Complaints Closed Between January 1, 2009 and December 31, 2009
3. Biased Policing Investigative Protocols, March 31, 2009.

Biased Policing Update
Quarterly Report 4th Quarter 2009

ADDENDA

Nos 1-3

Racial Profiling Complaints Closed Between Jan 1, 2009 and Dec 31, 2009

Accused Age Statistics

<i>Median Age</i>	<i>Mean Age</i>
33	34.23

Accused Ethnicity Counts

<i>Accused Ethnicity</i>	<i>Accused Gender</i>	<i># of CFs</i>	
AMERIND	MALE	1	0%
ASIAN/PAC	FEMALE	2	1%
	MALE	21	10%
BLACK	MALE	26	12%
CAUCASIAN	FEMALE	7	3%
	MALE	74	34%
FILIPINO	MALE	13	6%
HISPANIC	FEMALE	15	7%
	MALE	105	48%
Unknown	Unknown	27	12%

Complainant Ethnicity Counts

<i>CP Ethnicity</i>	<i>CP Gender</i>	<i># of CFs</i>	<i>% of Total</i>
ASIAN/PAC	FEMALE	3	1%
	MALE	1	0%
BLACK	FEMALE	34	16%
	MALE	106	49%
	UNKNOWN	1	0%
CAUCASIAN	FEMALE	7	3%
	MALE	8	4%
FILIPINO	MALE	3	1%
HISPANIC	FEMALE	9	4%
	MALE	25	11%
	UNKNOWN	4	2%
OTHER	FEMALE	4	2%
	MALE	3	1%
	UNKNOWN	1	0%
UNKNOWN	FEMALE	5	2%
	MALE	11	5%
	UNKNOWN	4	2%

Racial Profiling
Complaints Closed Between Jan 1, 2009 and Dec 31, 2009

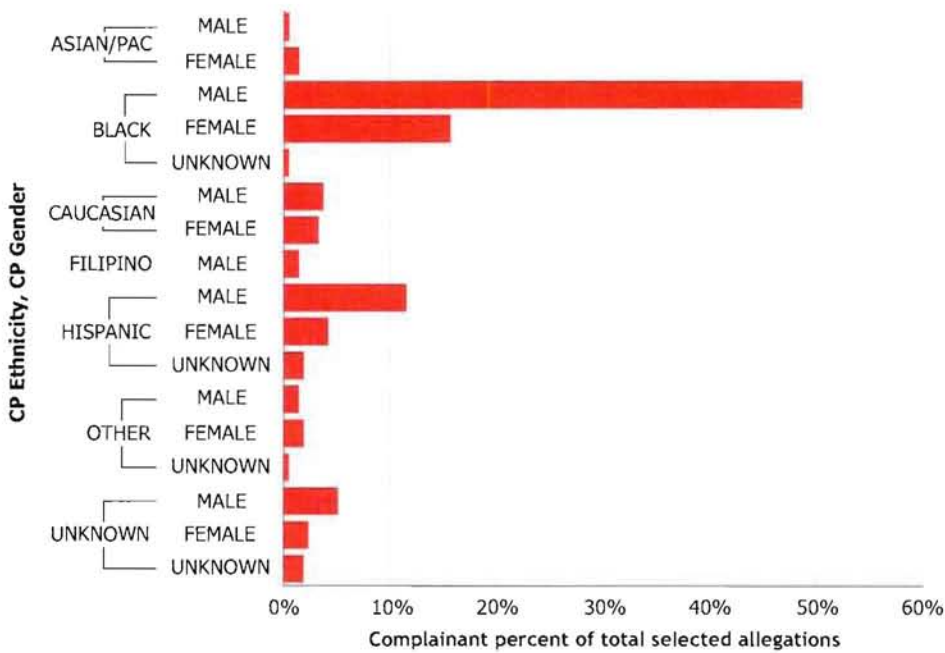
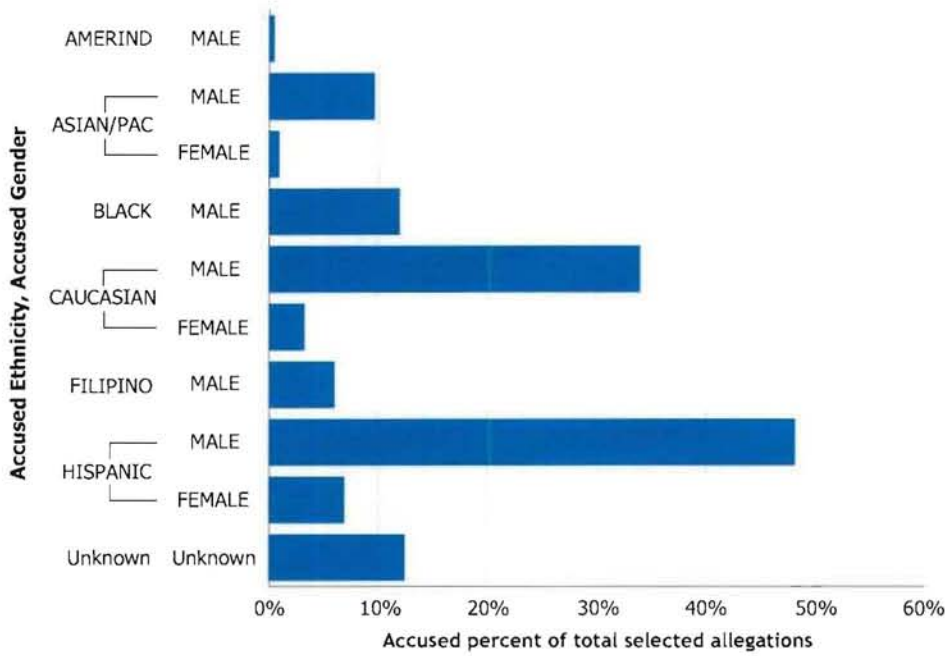
Associated Allegations for Racial Profiling

<i>Allegation</i>	<i># of CFs</i>	<i># of Allegations</i>
Discourtesy	52	67
Ethnic Remark	3	3
Failure to Report Misconduct	1	3
False Imprisonment	38	73
False Statements	17	28
Gender Bias	1	1
Narcotics/Drugs	1	1
Neglect of Duty	25	64
Racial Profiling	218	348
Unauthorized Force	22	44
Unauthorized Tactics	23	34
Unbecoming Conduct	44	76
Unlawful Search	23	36

Dispositions for Allegation: Racial Profiling

<i>Disposition</i>	<i># of CFs</i>	<i>% of Total CFs</i>	<i># of Allegations</i>	<i>% of Total Allegations</i>
Duplicate	8	3.7%	11	3.2%
Insufficient Evidence to Adjudicate	14	6.4%	18	5.2%
No Department Employee	11	5.0%	14	4.0%
No Misconduct	1	0.5%	2	0.6%
Unfounded	185	84.9%	303	87.1%

Racial Profiling Complaints Closed Between Jan 1, 2009 and Dec 31, 2009



Racial Profiling Complaints Closed Between Jan 1, 2009 and Dec 31, 2009

Case Count by Bureau and Area/Division

<i>Accused Bureau</i>	<i>Accused Area</i>	<i># of CFs</i>
CB	CENT	21
	CTD	5
	HOBK	1
	NE	5
	NEWT	9
	RAMP	5
DB	CCD	1
Deactivated Org.	GOSD GSS GANG FIELD UNIT	1
	ND MESB CBSBBUY	5
	ND MESB VBWBBUY	2
	NEWT PAT W3/W5 DENA	1
	NEWT PAT W3/W5 DENC	1
	OSS POL MEM	1
	PER-N	1
	SB VC TASK FORCE	1
	UNASSIGNED TEAM	28
OO ADO	OO ADO SA	9
SB	77TH	8
	HARB	2
	SE	9
	STD	8
	SW	13
SOB	METRO	4
VB	DEV	4
	FTHL	5
	MISN	7
	NHWD	5
	VB MOTEL DETAIL	1
	VB TF SQUAD 1	1
	VB TF SQUAD 2	1
	VB TF SQUAD 5	2
	VB TF SQUAD 6	1
	VNY	6
	VTD	11
WVAL	15	
WB	HWD	10

Racial Profiling
Complaints Closed Between Jan 1, 2009 and Dec 31, 2009

Case Count by Bureau and Area/Division

<i>Accused Bureau</i>	<i>Accused Area</i>	<i># of CFs</i>
WB	OLYM	3
	PAC	7
	WIL	6
	WLA	2
	WTD	7

Racial Profiling
Complaints Closed Between Jan 1, 2009 and Dec 31, 2009
Accused/Complainant Comparison

CF Count	Complainant:	BLACK			Unknown			HISPANIC		CAUCASIAN		FILIPINO	ASIAN/PAC		
		MALE	FEMALE	UNKNOWN	MALE	FEMALE	UNKNOWN	FEMALE	MALE	UNKNOWN	MALE	FEMALE	MALE	MALE	FEMALE
Unk.	Unk.	4	7	0	5	6	4	1	0	0	1	0	0	0	0
BLACK	MALE	13	0	0	4	1	0	2	3	2	3	0	0	0	0
AMERIND	MALE	0	0	0	0	0	0	0	0	0	0	1	0	0	0
FILIPINO	MALE	10	2	0	0	0	0	0	0	1	0	0	0	0	0
HISPANIC	MALE	66	17	1	3	0	0	2	9	3	1	5	2	1	1
	FEMALE	6	4	0	1	0	0	1	1	0	0	2	0	0	0
ASIAN/PAC	MALE	9	2	0	1	2	1	1	3	0	1	1	1	1	0
	FEMALE	2	0	0	0	0	0	0	0	0	0	0	0	0	0
CAUCASIAN	MALE	40	13	0	3	1	0	3	11	1	3	1	1	0	0
	FEMALE	2	2	0	0	0	0	0	0	0	1	0	0	0	2
Total		152	47	1	17	10	5	10	27	7	10	10	4	2	3

**Biased Policing
Complaints Closed Between Jan 1, 2009 and Dec 31, 2009**

Accused Age Statistics

<i>Median Age</i>	<i>Mean Age</i>
24	24.00

Accused Ethnicity Counts

<i>Accused Ethnicity</i>	<i>Accused Gender</i>	<i># of CFs</i>
HISPANIC	MALE	1 100%

Complainant Ethnicity Counts

<i>CP Ethnicity</i>	<i>CP Gender</i>	<i># of CFs</i>	<i>% of Total</i>
OTHER	MALE	1	100%

Biased Policing
Complaints Closed Between Jan 1, 2009 and Dec 31, 2009

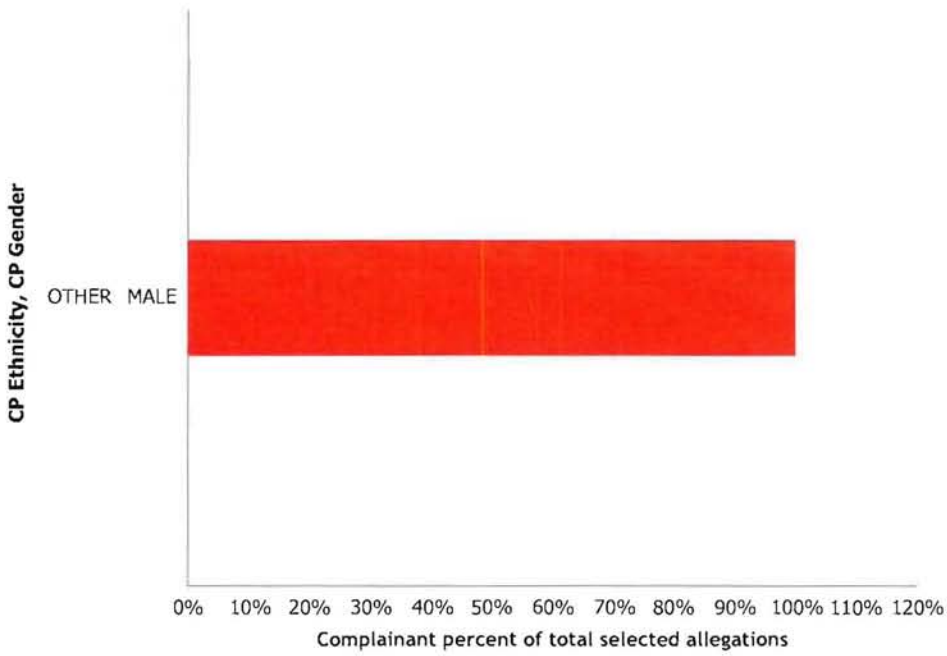
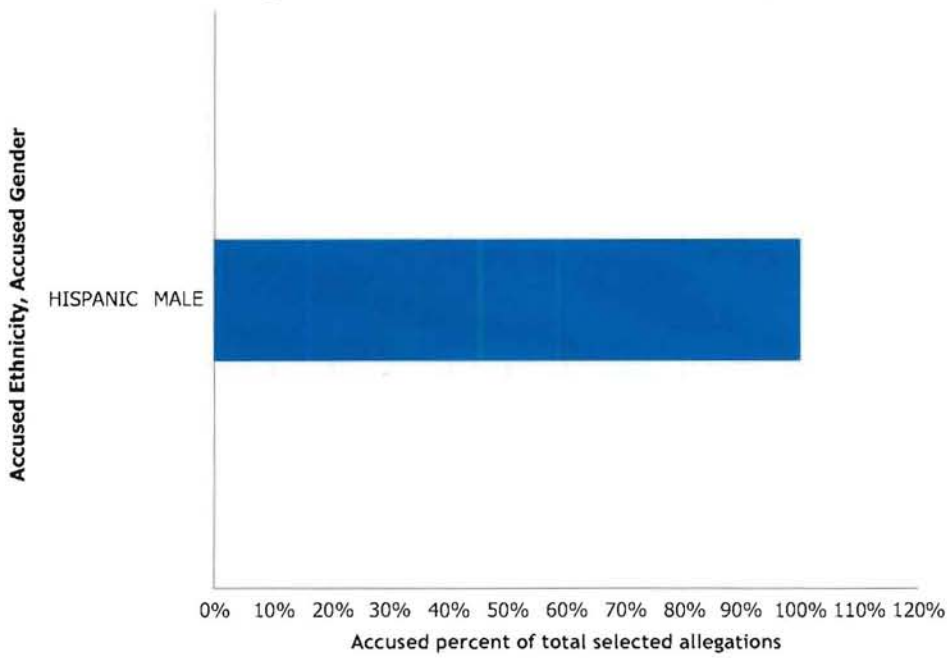
Associated Allegations for Biased Policing

<i>Allegation</i>	<i># of CFs</i>	<i># of Allegations</i>
Biased Policing	1	2
Discourtesy	1	1
Neglect of Duty	1	2

Dispositions for Allegation: Biased Policing

<i>Disposition</i>	<i># of CFs</i>	<i>% of Total CFs</i>	<i># of Allegations</i>	<i>% of Total Allegations</i>
Unfounded	1	100.0%	2	100.0%

Biased Policing Complaints Closed Between Jan 1, 2009 and Dec 31, 2009



Biased Policing
Complaints Closed Between Jan 1, 2009 and Dec 31, 2009

Case Count by Bureau and Area/Division

<i>Accused Bureau</i>	<i>Accused Area</i>	<i># of CFs</i>
VB	FTHL	1

Biased Policing
Complaints Closed Between Jan 1, 2009 and Dec 31, 2009

Accused/Complainant Comparison

CF Count	Complainant:	Unknown
Accused:	MALE	
HISPANIC	MALE	1
Total		1

PROFESSIONAL STANDARDS BUREAU
BIASED POLICING INVESTIGATION PROTOCOL
MARCH 31, 2009

STANDARDS OF REVIEW

Policy & Procedures

Department Manual Section 1/345 – Discriminatory conduct on the basis of race, color, ethnicity, national origin, gender, gender identity, gender expression, sexual orientation, or disability in the conduct of law-enforcement activities is prohibited. Police-initiated stops or detentions, and activities following stops or detentions, shall be unbiased and based on legitimate, articulable facts, consistent with the standards of reasonable suspicion or probable cause as required by federal and state laws.

Department personnel may not use race, color, ethnicity, national origin, gender, gender identity, gender expression, sexual orientation, or disability (to any extent or degree) in conducting stops or detentions, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group.

Department personnel seeking one or more specific persons who have been identified or described in part by their race, color, ethnicity, national origin, gender, gender identity, gender expression, sexual orientation, or disability, may rely in part on race, color, ethnicity, national origin, gender, gender identity, gender expression, sexual orientation, or disability, only in combination with other appropriate identifying factors and may not race, color, ethnicity, national origin, gender, gender identity, gender expression, sexual orientation, or disability, undue weight.

Law

Detentions - police may...

- ***Pennsylvania v. Mims*, 434 U.S. 106 (1977)**
 - Order driver out of vehicle once it's lawfully stopped
- ***Maryland v. Wilson*, 519 U.S. 408 (1997)**
 - Order passenger out of the vehicle once it's lawfully stopped
- ***Terry v. Ohio*, 392 U.S. 1 (1968)**
 - Stop and briefly detain for investigative purposes if the officer has a reasonable suspicion supported by *specific* and *articulable* facts that the individual is involved in criminal activity
 - Conduct pat down search of outer clothing to search for weapons if the officer has reasonable suspicion supported by *specific* and *articulable* facts that the person is armed
- ***Whren v. United States*, 517 U.S. 806 (1996)**
 - Allows for "pretext stops"
 - Officer's stop of a vehicle is reasonable where there is probable cause to believe a traffic violation has occurred
- ***Florida v. Royer*, 460 U.S. 491 (1983)**
 - An individual may not be detained even momentarily without reasonable, objective grounds for doing so; and the refusal to listen to or to answer an officer's questions, without more, does not furnish those grounds
 - An investigatory detention cannot last longer than necessary to effectuate the purpose of the stop
 - Officers must use the least intrusive means reasonably available to verify or dispel suspicion in a short period of time
 - "Where the validity of a search rests on consent, the State has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given, a burden that is not satisfied by showing a mere submission to a claim of authority."
- ***Illinois v. Wardlow*, 528 U.S. 119 (2000)**
 - Mere presence in high crime/narcotics area ≠ reasonable suspicion

- Presence in high crime area *in combination with* one or more other factors (i.e., flight from officers) may justify reasonable suspicion
- **U.S. v. Sokolow, 490 U.S. 1 (1989)**
 - Must consider the totality of the circumstances in determining whether there is reasonable suspicion

Parole/Probation Searches - California:

- (*Unites States v. Knights, 534 U.S. 112 (2001); People v. Sanders, 31 Cal.4th 318 (2003); Samson v. California, 547 U.S. 843 (2006)*)
- Officers must be aware of person's *parole* status **prior to a search of residence** in order to justify the search

INVESTIGATIVE STRATEGIES

Case Preparation:

- Gather and review all documents related to the incident (including but not limited to DFARs, FIs, sergeant's logs, arrest reports, traffic citations, and any audio or video recordings, including in-car camera recordings of the incident.
- If applicable and/or feasible, determine final outcome of any related traffic citation, legal proceeding, which complainant alleges was a result of biased policing.
- If CP alleges officer selectively enforced law, allowing persons of other minority status to avoid similar enforcement, examine enforcement activities for the day around time of incident. Document in Investigator's Note.
- Obtain photographic and visual documentation such as tinting of vehicles, diagrams of locations, etc.
- Canvass location, interview all witnesses.
- Generally, all CPs should be interviewed. However, in some instances, letters or other correspondence may provide specific enough information to not require an interview. Decisions to not interview CPs shall be approved by Section OICs. Consideration should be given to sufficient specificity in correspondence, ability to interview the CP, distance of time from the incident to the date of correspondence, other exiting reviews such as court proceedings, etc. The decision to not interview CP shall be documented in an Investigator's Note.
- Generally, all accused officers shall be interviewed. In some unusual instances, accused officers may not need to be interviewed when there is overwhelming probable cause or video evidence strongly refutes the allegation. The decision to not interview accused officers shall be documented in an Investigator's Note.

Complainant Questions:

- What behaviors on the part of the officer(s) the complainant believed supported biased policing? *Probe for specific articulation.*
- Actions of officer at scene?
- Could the officer have seen the complainant's race or other factor for bias? Direction of approach of officer?
- CP searched? Location searched? Type of search? Scope of search?
- Length of detention?
- Vehicle windows tinted if driving? Window position at time of stop? (Obtain copy of windows.)
- Complainant's definition or understanding of biased policing? *Probe for specific articulation.*
- Other statements made by officer that indicate bias?
- Officer provide explanation for detention or stop?

Officer Questions:

- Reason for the stop, search or detention?
- Obtain details specific to conclusionary statements such as, "officer safety," "uncooperative," "high crime area"; or "consensual encounter." Require articulation.
- Location of officer when first encountered CP?
- Did officer(s) know the race or other factor of bias of subject prior to the stop or detention?
- Was race or bias category (minority status, etc.) a factor in the stop or detention? If the answer is "yes," have the officer(s) explain;
- If there was a search associated with the stop or detention, ask the officer(s) to articulate the reason(s), scope, type and intent of the search.
- Lighting conditions, distance when the officer(s) made the observations?
- Windows tinted? Position of windows at time of initial observation?

Additional Questions for Officer - Other than Self-Initiated Activities:

- Outside information, which lead to detention, such as a radio call, citizen flag down, etc.?
- If outside initiated information caused the detention, determine if the detention was reasonable (i.e., the complainant, in fact matched the description in the radio call). Determine what factors the officer relied upon in concluding that the suspect matched the description of the call.
- Determine if the officer completed any documentation related to the stop, and include this documentation as addenda. If there are no other extenuating circumstances and the reason for the detention, search or other law enforcement activity is reasonable, legal and justified, no further investigation is necessary. (Officer interviews must be conducted.)

CASE REVIEW

All completed personnel complaint investigations containing an allegation of biased policing shall be reviewed by the Section Officer in Charge and the Commanding Officer, Criminal Investigation Division, or the Commanding Officer, Administrative Investigation Division, and finally, the Commanding Officer of Internal Affairs Group, before distribution to the concerned commanding officer for adjudication

Notes: