

DENTON POLICE DEPARTMENT



Lee Howell, Chief of Police



Distribution: All Personnel Master File

Special Order 14.3

Subject: Bias Policing and Racial Profiling Policy

This Order Incorporates and Eliminates General
Order 02-3

Effective Date: January 24, 2013

Last Revision Date:

14.3 PURPOSE

The purpose of this Order is to clearly state that racial profiling and bias policing is completely intolerable and contrary to the governing values of the Denton Police Department, to provide guidelines for officers to prevent such occurrences, to establish procedures to educate citizens how to report incidents of perceived racial profiling, and to protect police officers of the department when they act within the dictates of the law and policy from groundless accusations.

14.3.1 POLICY

It is the policy of the Department to patrol in a proactive manner, to assertively investigate suspicious persons and circumstances, and to actively enforce motor vehicle and penal laws. The Department is committed to a respect for constitutional rights in the performance of duties. We live and work in communities very diverse in population: respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions, particularly stops of individuals, for traffic and other purposes, investigative detentions, arrests, searches and seizures of persons or property, shall be based on the standards of reasonable suspicion or probable cause as required by the United States Constitution and statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions which support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Nothing in this Order limits non-enforcement contacts between officers and the public.

14.3.2 DEFINITIONS

Most of the following terms appear in this Order. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other Orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

Bias – Prejudice or partiality which may be based on preconceived ideas, a person’s upbringing, culture, experience, or education.

Biased Policing – A law enforcement-initiated action based on an individual’s race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group rather than on the individual’s behavior or on information identifying the individual as having engaged in criminal activity.

Community Care-Taking Function – Allows detentions of persons and vehicles without suspected criminal activity. Officers who observe persons in need of help may initiate contact without reasonable suspicion or probable cause. The reasonableness of the stop must be based on:

- The nature and level of the distress exhibited by the person who is being helped;
- The person’s location;
- Whether the person was alone or had access to other means of assistance; and
- The extent to which the person is a danger to himself or others.

Consensual Encounter – A consensual encounter is a contact between a citizen and an officer that is voluntary and in which the citizen is free to leave. Officers can approach, contact, and question citizens in public places without any suspicion of criminal conduct. Under these circumstances, citizens are free to engage the officers questions or not and are free to leave at any time. Officers or citizens can initiate consensual encounters. As long as the officer’s speech and conduct do not clearly imply that the citizen is required to answer questions or requests, the encounter remains consensual.

Ethnicity – A cluster of characteristics which may include race but also cultural characteristics or traits which are shared by a group with a common experience or history.

Probable Cause – Facts or apparent facts and circumstances within an officer’s knowledge and of which the officer has reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed and that the suspect has committed it.

Race – A category of people of a particular decent, including Caucasian, African, Hispanic, Asian, Native American descent, or Middle Eastern descent. As distinct from ethnicity, race only refers to physical characteristics sufficiently distinctive to group people under a classification.

Racial Profiling – A law enforcement-initiated action based on an individual’s race, ethnicity, or national origin rather than on the individual’s behavior or on information identifying the individual as having engaged in criminal activity.

Reasonable Suspicion – Articulate, objective facts which lead an experienced officer to suspect that a person has committed, is committing, or may be about to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a person. Courts require that stops based on reasonable suspicion be “objectively reasonable.”

Sex – A biological classification, male or female, based on physical and genetic characteristics.

Stop – The detention of a subject for a brief period of time, based on reasonable suspicion. A stop is an investigative detention.

14.3.3 PROHIBITION

Officers are prohibited from engaging in bias policing, racial profiling, or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person’s race, color, ethnicity, ethnic background, national origin, citizenship, cultural group, religion, age, creed, sex, sexual orientation, disability, economic status or other identifiable group. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes.

14.3.4 PROCEDURES

Reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Individuals shall only be subjected to stops, seizures, or detention upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.

Employees shall observe and respect the constitutional rights of all persons and shall not engage in discrimination, oppression, or favoritism.

- Because traffic stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent. How the officer disengages from a traffic stop may be crucial to a person’s perception of fairness or discrimination.
- Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.

All personnel shall treat everyone with the same courtesy and respect that they would want others to treat Department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.

Personnel should facilitate an individual's access to other governmental services whenever possible, and shall actively provide referrals to other appropriate agencies.

All personnel shall courteously accept, document, and forward to the Chief of Police any complaints made by an individual against the Department or its officers or employees, per General Order 10.2.

When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety.

All personnel are accountable for their actions. Personnel shall justify their actions when required.

14.3.5 SUPERVISORY RESPONSIBILITIES

Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify and correct instances of bias in the work of their subordinates.

Supervisors shall use the disciplinary mechanisms of the Department to ensure compliance with this Order and the constitutional requirements of law enforcement.

Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are key to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.

Supervisors are reminded that biased enforcement of the laws engenders not only mistrust of law enforcement, but increases safety risks to personnel. Lack of control over bias also exposes the Department to liability.

Supervisors shall ensure that all enforcement actions are duly documented per Departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.

Supervisors shall facilitate the filing of any complaints regarding law enforcement service per General Order 10.2.

14.3.6 DISCIPLINARY CONSEQUENCES

Actions prohibited by this Order shall be cause for disciplinary action, up to and including indefinite suspension.

14.3.7 TRAINING

Officers shall complete the comprehensive education and training program on racial/bias based profiling established by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE), including legal aspects, not later than the second anniversary of

the date the officer was licensed, the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. A person who on September 1, 2001, held a TCLEOSE intermediate proficiency certificate, or who had held a peace officer license issued by TCLEOSE for at least two years, shall complete a TCLEOSE training and education program on racial/bias based profiling not later than September 1, 2003.

The Chief of Police shall, in completing the training required by Section 96.641, Texas Education Code, complete the program on racial/bias based profiling established by the Bill Blackwood Law Enforcement Management Institute of Texas.

14.3.8 COMPLAINTS

Any person who believes that a Denton police officer has engaged in bias policing or racial profiling with respect to that person may file a complaint with the Department. No person shall be discouraged, intimidated, or coerced from filing such a complaint. No person shall be discriminated against because they have filed such a complaint.

The Department shall accept and investigate citizen complaints alleging incidents of bias policing and racial profiling. Such complaints shall be investigated according to General Order 10.2.

Complainants and officers will be notified of the result(s) of the investigation when such investigation is completed.

14.3.9 RECORD KEEPING

Appropriate documentation of each law enforcement action should always be completed, generally in the form of a warning, citation, arrest or other document. Any deliberate recording of any misleading information related to the actual or perceived race, ethnicity or gender of the person stopped for investigative or enforcement purposes is prohibited and a cause for disciplinary action, up to and including indefinite suspension.

Officers who initiate a traffic, pedestrian, or other stop shall document the stop by commonly accepted means (MDC or by radio), ensuring that the correct disposition codes have been entered per General Order 17.7 Call Disposition Codes. Unless computer use is unavailable, officers will normally clear themselves from the stop or detention by using their MDC to input the required disposition codes.

Officers are expected to “check out” with Dispatch each time he/she makes a traffic, pedestrian, or other stop, and upon clearing the stop, ensure that the necessary data is collected using the above listed methods. The only exception to this is when there are multiple officers working together as a group (i.e., concentrated enforcement packs, STEP enforcement initiatives involving several officers, etc.). In these types of instances, the supervisor or officer in charge is responsible for collecting all of the citations, warnings, and/or stop data issued for each individual and is entered the same day into the CAD system in accordance with this policy, preferably by using the MDC to input the data.

Consensual encounters and stops based on the community care-taking function do not require reasonable suspicion or probable cause. They are not of the same category as detentions or arrests. Therefore, documentation is not required for these instances. In addition, a “frisk” for weapons of a person’s outer clothing is not a search and should not be documented as such for purposes of this policy.

The information collected shall be compiled in an annual report covering the period of January 1 through December 31 of each year and shall be submitted to the City Council no later than March 1 of the following year. The annual report shall neither include identifying information about any individual stopped or arrested nor shall it include identifying information about any peace officer involved in a stop or arrest.

The information will be reported to TCLEOSE in the required format.