



DIVISION OF POLICE

DATE: November 2, 2020

TO: Chief of Police Calvin D. Williams

FROM: Inspector General Christopher Paul Viland, Esq., CIG®, #3700

SUBJECT: Recommendations regarding compliance with Presidential Executive Order 13929, Safe Policing for Safe Communities

Sir,

This memorandum has been prepared in accordance with the duties of the Police Inspector General as outlined in the Settlement Agreement with the United States Department of Justiceⁱ, specifically the duty to “review CDP policies and practices to determine compliance with state and federal law...”ⁱⁱ, which is also restated in the Manual of Duties and Authorities of the Office of Inspector General (OIG) of the Cleveland Division of Police (CDP, the Division)ⁱⁱⁱ.

On June 16, 2020, the President of the United States issued Executive Order (EO) 13929, Safe Policing for Safe Communities^{iv}. Significantly, this EO requires the United States Attorney General to identify credentialing bodies to determine law enforcement compliance with specific mandatory safe policing principles. Certification of compliance with adherence to these principles by the credentialing body is a prerequisite for any law enforcement agency to be eligible for discretionary Department of Justice (DOJ) grant funding^v.

Recently, the credentialing bodies in Ohio were identified as the Ohio Office of Criminal Justice Services and the Ohio Peace Officer Training Commission^{vi}. And, pursuant to guidance provided by the DOJ, it is important to note that for law enforcement agencies planning to apply for discretionary 2021 grant funding, they must be credentialed or in the formal process of being credentialed by January 31, 2021^{vii}. It appears that the onus of seeking such certification is on the law enforcement agency to contact the credentialing bodies^{viii}.

While credentialing bodies have discretion in what factors will be considered in the process of certification, the EO identifies two (2) specific safe policing principles that must mandatorily be adhered to:

“(i) the State or local law enforcement agency’s use-of-force policies adhere to all applicable Federal, State and local laws, and (ii) the State or local law enforcement agency’s use-of-force policies prohibit the use of chokeholds – a physical maneuver that restricts an individual’s ability to breathe for the

purposes of incapacitation – except in those situations where the use of deadly force is allowed by law.”^{ix}

As to subsection i above, the OIG is working under the presumption that current CDP Use of Force policies do comply with all applicable legal requirements, as they have been reviewed by the DOJ and the independent monitoring team and filed with the federal court, as well as having been reviewed in a past CDP OIG memorandum regarding compliance with state requirements^x including having recently achieved provisional certification from the Ohio Collaborative Community Police Advisory Board for being in compliance with state standards for use of force policies^{xi}.

And, the OIG similarly posits that the Division is fully compliant with subsection ii above as follows: the Division defines “neck hold” as “a hold around the neck that may restrict the flow of oxygen or blood through the neck”^{xii}. And, the Division specifically prohibits the use of neck holds^{xiii}. The Division’s use of force policies are, in fact, more restrictive on police uses of force than required by the EO in that vascular restraints (those that restrict blood flow) are prohibited along with prohibited airway restraints.

That being said, however, the term “choke hold” does not exist in CDP policy. While the more comprehensive term “neck hold” as used by the Division encompasses this term, and a sophisticated reading of policy illumines this, a cursory review of policy without a familiarity or background in Division operations, especially if that review is based on simple word search may unfortunately lead to the conclusion that the Division’s policy is silent as to “choke holds”.

The communities served by law enforcement have a strong and legitimate concern over police use of force, especially including any restraint to the neck area in light of recent high profile citizen deaths. It is therefore incumbent on the Division to ensure that its policies are as transparent as possible to any and all that wish to review or analyze them and therefore to ensure that colloquial or common language usage and terms are clearly encapsulated in policy.

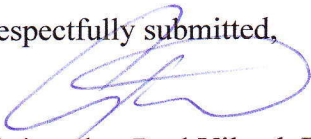
Recommendations:

Based on the above presented information, the OIG makes the following recommendations:

1. The Division should identify the person, office, or unit responsible for ensuring that communications with, application for, and eventual certification is sought from and obtained from the Ohio OCJS and/or OPOTC in a timely manner [Keeping in mind the January 31, 2021 deadline for the 2021 fiscal year].
2. The Division should be continuously aware of any additional certification requirements pursuant to the EO that may be imposed by the Ohio OCJS and/or OPOTC so that they can be complied with as rapidly as possible.

3. The Division should consider amending current use of force policies so as to specifically include the term “choke hold”, even if that term is only subsumed into the current definition of “neck hold” so as to ease any certification review process required by the EO, with the sub benefit of public transparency; minimizing possible assessment, protest or contest issues raised by any interested party looking to hold the Division accountable for use of “choke holds”.
4. The Division should ensure that the Public Safety Grants Coordinator and any personnel within the Division in the grant application process be apprised of this information as it may apply to any new applications for Department of Justice discretionary funding grants and required signatures, attestations and certifications may be changing as a result of the EO.

Respectfully submitted,



Christopher Paul Viland, Esq., CIG®
Inspector General, #3700
Cleveland Division of Police
Work Product Number 20016-M

cc: *via email only:* Deputy Chief J. O’Neill
Hon. Gregory White

ⁱ *United States of America v. City of Cleveland*, United States District Court, Northern District of Ohio, Eastern Division, 1:15 CV 01046, Settlement Agreement, June 12, 2015.

ⁱⁱ *Id.* at ¶253.

ⁱⁱⁱ City of Cleveland, Division of Police, Cleveland Division of Police Office of Inspector General (OIG) Manual of Duties and Authorities, February 2020, at Section I B 1 a.

^{iv} Executive Office of the President, Executive Order (E.O.) 13929 of June 16, 2020, 85 FR 37325 pages 37325-37328.

^v *Id.* at Sec. 2b.

^{vi} <https://cops.usdoj.gov/SafePolicingEO>, as downloaded November 2, 2020.

^{vii} United States Department of Justice, Fact Sheet Safe Policing for Safe Communities, as downloaded November 2, 2020, at https://cops.usdoj.gov/pdf/executive_order/Fact_Sheet.pdf.

^{viii} *Id.*

^{ix} Executive Order 13929, *supra*, note iv at Sec. 2c.

^x Cleveland Division of Police, Officer of Inspector General, Review and Analysis of Current Division Use of Force Policy for Compliance with Standards Set by the Ohio Collaborative Community-Police Advisory Board, Work Product Number 20007-R, April 30, 2020.

^{xi} Ohio Collaborative Community Police Advisory Board, Provisional Certification Use Of Force, Recruitment and Hiring, issued to the Cleveland Police Department September 22, 2020.

^{xii} City of Cleveland, Division of Police, General Police Order 2.01.01 Use of Force – Definitions, issued July 1, 2019.

^{xiii} City of Cleveland, Division of Police, General Police Order 2.01.03 Use of Force – General, at Section VIII A 12, issued April 27, 2020.