

INTER-OFFICE MEMORANDUM

TO: Tony E. Crapp, Jr.
City Manager

DATE: June 7, 2011

FILE:

SUBJECT: *Response to Mr. Phillip's
Report*

FROM: Miguel A. Exposito
Chief of Police

REFERENCES:

ENCLOSURES:

On January 31, 2011, Paul Phillip, a retired Special Agent in Charge of the F.B.I., was contracted by the City of Miami to conduct an assessment of the operation of the Miami Police Department. As I was informed throughout the process, Mr. Phillip's mission was to gather facts and observations, as well as to obtain information and statements from different sources who had experienced favorable and unfavorable contact with the police department and report back to you with that data, while making recommendations.

On June 3rd, 2011, Mr. Phillip concluded his analysis, and he memorialized his findings in a document labeled, "Final Report." In this report, Mr. Phillip cites his evaluation of shooting incidents involving Miami Police officers during the final year of Chief John F. Timoney's tenure and the shootings that have taken place after I assumed charge of the police department. It was imperative that the study of these police involved shootings be conducted and included in the report, since the shootings were the catalyst for the hiring of Mr. Phillip in the first place. Other areas of the Department that Mr. Phillip explored were the police department's interaction with the community and the media, the assignment and promotion of personnel in the Department, and the current and future management of the police department.

I've had the opportunity to analyze Mr. Phillip's final report and, in addition, have met with him numerous times to discuss issues of concern that have been brought to him by some community residents, elected officials, current and former employees and the press, many of which dealt with perceptions concerning the manner in which the Miami Police Department operates. Mr. Phillip has included the issues of concern in the form of questions, utilizing words such as "may" or "could", and his recommendation is that I explain or demonstrate to your satisfaction that these issues are just perceptions and not actual matters of concern. If my explanations cannot be backed by viable facts to illustrate that those problems are non-existent, then appropriate corrective action must be made and steps should be taken to change these perceptions.

This written communication will serve as our department's response to those issues raised by the aforementioned individuals who were cited in Mr. Phillip's final report, whether the issues of concern are perceptions and speculative in nature or real. I will also focus on the other ancillary points mentioned in Mr. Phillip's report.

As noted by Mr. Phillip, the Miami Police Department is an agency accredited nationally by the Commission on Accreditation for Law Enforcement Agencies (CALEA), a renowned credentialing authority whose primary mission is to accredit law enforcement agencies, training academies, communications centers, and campus public safety agencies. Only those law enforcement agencies that meet the highest standards of professionalism and embrace the concept of best practices are accredited through CALEA. A total of 582 law enforcement agencies are accredited by this organization nationwide, out of over 18,000 existing departments.

Something that is absent from Mr. Phillip's report, but bears mentioning, is the fact that in the past year the Miami Police Department and members of the organization have received much international, national and local acclaim for their outstanding achievements. I have chosen to mention the most notable distinctions. In October 2010, the respected International Association of Chiefs of Police (IACP) presented the Miami Police Department with a special recognition award for its community policing practices. Considering that the MPD was singled out for this prestigious award out of 18,000-plus police departments in the U.S. is noteworthy, particularly in light of the reputation that IACP enjoys. This is the world's oldest and largest organization of police executives, with more than 20,000 members in over 140 countries.

At the 2011 Law Enforcement Officers (LEO) Foundation Awards presentation, the Miami Police Department received the top awards for our efforts in the categories of uniformed patrol and investigations, the two most coveted awards given by that association.

This year, Detective Gary Jackson of the Special Victims Unit was invited to Washington, DC, where he was recognized by U.S. Attorney General Eric Holder for his exceptional investigative work on several child sexual abuse cases.

This past year, Officer Marcos Perez of our Office of Emergency Management and Homeland Security was the recipient of the national award from the Urban Area Security Initiative (UASI) for a program he developed at the Miami Police Department to reduce the incidence of terrorism.

In addition, this past year Coconut Grove was recognized as the safest neighborhood in South Florida and among the top 29 safest communities in the country by Neighborhood Scout, which conducted research of FBI data from 17,000 local police departments to reach this conclusion.

Evaluation of Shooting Incidents and Analysis:

Issue: One of the issues raised by some members of the community, press and elected officials is whether or not there were significant changes in policy which would account for the perceived rise in police-involved shootings after I assumed command of the police department on November 24, 2009.

Response: There has been no change in the shooting policy that was in effect when I assumed command of the Department. What has changed are the hours and days that our tactical officers are deployed. These officers, whose primary focus is proactive crime prevention, are assigned to areas where crime is occurring, during hours that they are taking place. Additionally, these officers are now working 24 hours a day, seven days a week, something they did not do previously.

Issue: Another issue raised by some members of the community, press and elected officials is the perceived rise in police involved shootings after I assumed command of the police department.

Response: As documented in Mr. Phillip's report, during a one-year period of Chief Timoney's last year's tenure (2009), the Miami Police Department was involved in 8 police shootings, where civilians were intentionally fired upon by our officers. During my first year (2010), the Department was also involved in the identical number of intentional police-involved shootings (8); this was in spite of the fact that the MPD confiscated almost 400 more firearms in 2010 than the previous year in typical incidents where there is an increased propensity for armed confrontation.

Issue: The fact that 4 of the last 5 police shooting incidents involved officers from the Tactical Operations Section (TOS) may indicate some general issues of concern.

Response: TOS was created shortly after I was sworn in as Chief of Police, in response to pleas from members of the community that the police department address the issue of violent crimes, particularly in the black neighborhoods of Liberty City, Overtown and Little Haiti. In addition to these supplications, we determined that as a department, we needed to be more proactive in our approach to violent crime. Nothing accentuated this fact more than the two mass shooting incidents that took place months prior to my appointment as Chief, wherein 9 people were wounded or killed in one incident in Liberty City and 12 people were wounded or killed in another in Overtown. We also noted that the tactical units in existence were understaffed, ill-trained and were not being assigned to work in areas where violent crimes were taking place or during the hours when the crimes were occurring. In addition, there was no uniformity in the manner that the units were being deployed or the focus of the task at hand. To correct these inefficiencies, the new administration made a decision to centralize command of these tactical units under one element of the Department by creating the Tactical Operations Section. We doubled the number of officers assigned to this Section and their primary mission was to

proactively address violent crime. Additionally, we created the Tactical Robbery Unit. By implementing the Tactical Operations Section, the Department could ensure that there were no officers working independently, which had been a concern in the past. We could also schedule regular and specialized training for these units and program them to work 24 hours a day, 7 days a week, not merely Monday through Friday, from 10:00 a.m. to 8:00 p.m., as had practically been the norm in the past. Scheduling these officers during all hours was particularly important if the Department was to effectively address street-level drug sales that are prevalent during the evening hours and on the weekends. I must point out that this strategy proved to be successful as evidenced by the 2% reduction in violent crimes this past year, and as categories such as Robbery and Sexual Assaults dropped to levels not seen in over 40 years.

To understand clearly why officers in tactical units are more prone to be involved in armed confrontations, we must understand their duties and responsibilities. Unlike uniformed patrol officers who respond to calls for service from the public, where much of their time is taken up by writing reports, making traffic stops and being highly visible, the tactical units have one primary function. That function is to address violent and serious crimes, particularly by focusing on areas where statistically, crimes are occurring and during the times that they are taking place. The tactical units, among their responsibilities, must deal with violent gang members, they purchase weapons and drugs, they arrest violent or dangerous fugitives and they work closely with our SWAT Teams serving warrants.

Issue: The fact that 4 of the last 5 police shootings involved officers from TOS may indicate issues in our selection process. During interviews with past or current members of the MPD, it became clear that some perceived that officers currently assigned were not experienced enough for such a sensitive task. It is also a widely held belief that many senior police officers will not volunteer for these assignments due to artificial barriers such as additional physical requirements or tests.

Response: Firstly, assignment to TOS is strictly voluntary on the part of the applicant. The selection process for TOS is no different than the one used by all other specialized units, which includes an interview component formulated by the City of Miami Department of Employee Relations. In addition to the aforementioned, there is a requirement to successfully complete a physical agility test, as well as to be willing to work a flexible schedule. This test is necessary both for officer safety and operational effectiveness. Many specialized units such as SWAT, Marine Patrol and K-9 ask for some type of additional requirement above and beyond the skills necessary to function in uniformed patrol, which are commensurate with the job task at hand. Some senior officers are not attracted to this position as they may not be willing to undergo the agility test or work flexible hours. Currently, the average law enforcement experience of officers assigned to TOS is 10.2 years, which is considered that of a seasoned officer. In addition, almost 30% of the officers assigned to TOS have over 15 years experience.

Issue: The fact that 4 of the 5 police shooting incidents involved officers from TOS may indicate issues regarding training. Additionally, what efforts has the Department made to ensure that all officers have received the necessary firearms training to include "shoot-don't shoot" training?

Response: Upon my appointment as Chief of Police, I brought Major Ian Moffett to the police department to oversee our training program. Major Moffett is a nationally recognized instructor in the area of public safety training and is currently the Chairman of the Florida Criminal Justice Training Directors Association. He was selected for this position by the other 41 directors of training centers in Florida and provides our agency with direct contact with the Florida Department of Law Enforcement (FDLE) regarding training issues. His appointment further impacts the training of law enforcement throughout the state, and emphasizes our department's pivotal position as a leader in law enforcement training in the state.

Although the training curriculum under the previous administration met all the state mandates and requirements, with the assistance of Major Moffett, my administration has initiated a program to set benchmarks that well exceed the state requirements set forth by FDLE. Survival training is mandated by the state (which includes "shoot-don't shoot" training) for all officers in the Department once every four years. Currently, we are presenting this training program to our officers every two years. In addition to the specialized training that the tactical officers in TOS receive, they participate in "shoot-don't shoot" scenarios on a quarterly basis. This quarterly training has included and will continue to include participation from the federal agencies that the tactical units partner with. In the case of firearms training, officers are required by FDLE to undergo this training every other year; however, MPD adheres to more stringent standards as set forth by the Commission on Accreditation for Law Enforcement Agencies (CALEA), which requires that the MPD qualify its officers once a year.

Issue: The fact that 4 of the last 5 police shooting incidents involved officers from TOS may indicate issues regarding supervision. Past and current members of MPD opined that the supervisory management personnel in charge of these units may lack the experience and good judgment needed to successfully manage such high risk operations.

Response: The average law enforcement experience of first-line supervisors (sergeants) assigned to TOS is 14.2 years. These sergeants are considered experienced supervisors. Additionally, the commander and the lieutenants of the section boast an average of over 30 years experience. While "good judgment" is a subjective term, there has not been any indication of poor judgment by any supervisors assigned to TOS.

Issue: Several former police executives expressed concern that one officer was involved in a shooting on 8/11/2010 and another on 8/20/2010. Some questioned his quick return to duty after the first shooting.

Response: The current policy that has been in existence for many years requires officers involved in police shootings to "be assigned to administrative duties for a minimum of three days, during which period the officer will be required to attend Post Traumatic Counseling." (the Department depends on a mental health professional who has the training and experience to judge the mental state of the officer.) The only addendum we made to this policy is that we now require the officer to qualify with his replacement weapon, something that was not mandated in the past. Based upon the results of the Post Traumatic Counseling, combined with the facts available to the Department about the shooting incident, the Department will determine if the officer is ready to return to full duty. In the case of this officer, after reviewing physical evidence, witness testimony, the results of the Post Traumatic Counseling by the mental health professional and the successful qualification with the replacement weapon, the Department was confident that there were no issues relating to the initial shooting that precluded the officer from returning to full duty.

Issue: Some former police executives expressed concerns about the officer involved in the two shootings and the fact that he was later arrested on an unrelated federal theft charge. This may call into question the adequacy of pre-employment screening and his selection assignment.

Response: Candidates for employment as police officers undergo testing and a rigorous screening process. Police departments generally look at the past performance and history of the candidate to predict future conduct. They also depend on psychological testing to weed out individuals who may have a propensity for bad behavior such as corruption and abusive treatment of citizens. As we have observed in police departments across this country, these processes are not 100% foolproof. In the case of the officer involved in the multiple shootings, nothing in his background or past behavior was indicative that he would become involved in acts of corruption involving thefts. This behavior was also totally unrelated to the shootings that he participated in or the outcome of those shootings.

The investigation that led to the arrest of this officer was initiated by our Internal Affairs Section, which worked this case jointly with the FBI. At one point, a sting operation was initiated, eventually leading to the arrest of the officer for dealing in stolen bluetooths.

Issue: The Department is required to have a vigorous early warning system. Did the names of any officers involved in any of the shooting incidents appear on the watch list?

Response: The early warning system which Mr. Phillip mentions is actually the Incident Tracking System. One of the categories of the Incident Tracking System is ITS IV. This category identifies officers with two or more discharges of a firearm within 24 months. None of the officers involved in the shootings met the criteria to be placed in this category. However, it was not until after the second shooting (August 20, 2010) that the officer involved in the two shootings met the criteria for inclusion in this category.

Issue: Several shooting incidents have involved federal agencies working with Miami Police Department officers. What has the Department done to insure that the officers and federal agents are working as they have been trained?

Response: Under my administration, the MPD initiated quarterly training sessions that include and will continue to include participation from the federal agencies that our department partners with.

At the conclusion of every operation or incident involving federal agencies, MPD management conducts an assessment of all the participants and their roles to ensure that their actions adhered to the policies, procedures and practices stipulated in our training criteria. If any issues of concern are identified, they are addressed accordingly.

Interaction with the Community/Media

Issue: During meetings of the City and County Community Relations Boards (CRB), several civilian participants opined that they and their community were viewed in an unfavorable light and therefore received much harsher and more disrespectful treatment from the police than other communities. While the incidents mentioned were largely anecdotal, the concerns raised should be addressed and not dismissed.

Response: In 2010, there was a 22.4% decrease in overall citizen complaints against MPD officers, as compared to 2009. The most significant decrease in citizen complaints occurred in the black neighborhoods of Liberty City, Overtown and Little Haiti with a decrease of 46%, 39%, and 33%, respectively. This would coincide with Mr. Phillip's assessment that this was largely "anecdotal" and not factual.

On the subject of complaints against our officers, not only was there the 22.4% decrease in overall citizen complaints, but also a 21% decrease in discourtesy complaints. Additionally, it should be noted that all firearm discharges decreased by 33.3% from the previous year and Response to Resistance reports by 22.4%.

Issue: Several family members of individuals shot or killed by police were offended that the police department did not make timely notifications to families surrounding the injury or death of their family member. What efforts has the Department taken to address lack of notification of next of kin?

Response: Although every effort is made to notify next of kin of a person killed or wounded as a result of police action in a timely manner, the police department has the obligation and responsibility to ensure the exact identity of that person prior to notifying next of kin. This will prevent instances where inaccurate information is provided and can create unnecessary anxiety. In some of our recent shootings, neighbors and

acquaintances of those shot by officers, contacted relatives prior to police making a positive identification.

Issue: There was concern expressed by various stakeholder groups regarding the reluctance of the police department to release many details on shooting incidents until investigations were concluded. While this policy may be legally defensible, it often leads to the dissemination of erroneous information and additional mistrust of the police by some stakeholder groups.

Response: The MPD recognizes and respects the public's right to know the activity of its police department; however, there are times when it must balance the public's right to be informed and its responsibility to avoid compromising an investigation, particularly when it involves possible wrongdoing on the part of its employees. Additionally, there are state statutes that govern and limit the dissemination of certain facts related to internal police investigations.

As it pertains to the police-involved shootings that have taken place during my administration, the Department has disseminated only those facts that we believe will inform the public, yet do not compromise our investigations. I'd rather be accused of not being publicly forthcoming with information related to these shootings, than to act in a selfish and irresponsible manner, wherein I release information to the media and the public that ultimately allows a police officer, who may be guilty of a crime, to walk free.

Shortly after the DeCarlos Moore shooting, which was the first that took place after I became police chief, I explained in a public forum the manner in which investigations of police shootings are conducted and provided a step-by-step description of the process. At one point, I realized that not all family members of those who had been shot had been privy to the information I provided in the public forum. For clarification purposes, and to quell the anxiety that existed, I decided I would invite the family members to meet with me in private. I made it clear that the purpose of the meetings would be to update family members as to the progress of the investigations, but that I would not discuss the particulars of the cases. The action that I took rarely occurs, if ever, due the fears of police chiefs that the information relayed could be used against them in any future litigation. I felt strongly about these meetings and some family members accepted my invitation.

In keeping with my philosophy of transparency, one of the priorities I clearly stated as a component of my mission upon being sworn in, I invited the U.S. Department of Justice through the FBI, to sit in on the post-shooting meetings for every case. These cases were discussed in their entirety at the meetings. I invited the FBI, not because I was required to do so, but because of my strong conviction that it was the appropriate thing to do.

Issue: What measures has the Department taken to ensure that press inquiries are handled in an expeditious fashion?

Response: We have a fully staffed and operational Public Information Office (PIO) that is available to the media throughout the day. During the overnight hours, an on-call representative of PIO is available to respond to major scenes and follow up with responses to media inquiries, as stipulated in our Standard Operating Procedures. We have not been made aware of any concerns as to the lack of expeditious handling of media inquiries.

Issue: What measures has the Chief of Police taken to prevent instances of ill-advised participation in reality television shows and social network sites such as YouTube, Facebook and other blogs and social media?

Response: MPD has had a professional and successful relationship with the production company of the First 48 television series for numerous years. The Department will continue to work with only these types of reputable companies in order to highlight the positive aspects of law enforcement and maintain the professional integrity which we are noted for.

In terms of social networks, MPD recently crafted a policy which outlines restrictions for employees engaging in the use of social networks.

Issue: Morale in the Police Department

Response: One issue that was not cited in Mr. Phillip's report is the issue of morale in the police department. I will address it; however, since the issue of low morale has been mentioned by one of our elected officials on a radio talk show as an area of concern.

In 2007, the Fraternal Order of Police Lodge 20, the police department's bargaining union for sworn officers, expressed their displeasure by a vote of "no confidence" for Chief John F. Timoney. The results of this vote showed an 80% level of dissatisfaction.

As we all know, morale is something that can change at any given time. There are indicators that are barometers for measuring morale. The three most significant in law enforcement are the increase of citizen complaints against officers, the use of sick time and the willingness to work closely and share resources between elements of an organization. This being the case, it bears repeating that overall, citizen complaints against our officers declined by 22.4% in 2010, when compared to the previous year. The use of sick time also declined by 10% this year, in comparison to the previous year. In the last year, a renewed relationship has developed between the Field Operations Division and the Criminal Investigations Division. For example, information sharing and enhanced communication between members of the two divisions has allowed the MPD to work more efficiently in solving crimes and identifying culprits, ultimately leading to their arrest and subsequent conviction as patrol officers and detectives are working in close partnership to reach that common goal. These three factors are indicative that morale at

MPD has increased during my tenure, in spite of the fact that significant pay cuts and reduction in benefits were imposed by the City on sworn officers in October, 2010. Although this created dissatisfaction on the part of the rank and file, morale was not affected.

Recommendations Concerning Promotions/Assignments within MPD:

Issue: During interviews of current members of the police department, it was evident that under this administration and previous chiefs, there was a lack of confidence in the manner in which persons were promoted to senior staff positions. Specific complaints were made regarding large numbers of high ranking officers who were promoted without attaining a civil service rank above sergeant.

Response: Dating back to the 70s, appointments to staff positions have come from all civil service ranks, including the rank of police officer. Individuals occupying these positions serve at the will of the Chief of Police and they are the Chief's immediate staff. There is no written policy and none could be found from prior administrations that dictate that appointments must come from persons holding a civil service rank above sergeant. From a personal perspective, as Chief of Police, I always look to appoint the person that I believe best suits the staff position that is vacant. I must add that some of our successes as an organization have been under the leadership of persons who did not necessarily hold a civil service rank above sergeant.

Issue: During interviews of current members of the police department it was evident that under this Chief and previous chiefs, there was a lack of confidence in the testing process for promotion to the ranks of sergeant and lieutenant.

Response: No promotional examinations have been given since my appointment as Chief of Police. The promotions that I have made to the rank of sergeant were made from existing promotional registers, abiding by procedures and policies that were set in place when that promotional register was established. The police department is currently working closely with the Department of Employee Relations, which is the City department responsible for promotional testing, as well as the U.S. Department of Justice to continue to ensure that any future promotional examinations are conducted fairly and equitably for all applicants.

Recommendations Concerning Management of the Police Department:

Issue: Mr. Phillip stated that according to the Employee Relations Department, I must retire by 01/12/2012 since I am in the Deferred Retirement Option Plan (DROP). He therefore recommended that the City Manager consider advertising for a new chief, that the recruitment period should last no more than 45 days, that a thorough vetting process should take place, and that if I do not have a performance plan in my personnel file, the Employee Relations Department should address this issue with the next chief.

Response: At the present time, I have not made any arrangements to retire. I will address this matter on January 12, 2012.

I trust that my response to Mr. Phillip's report satisfactorily addresses all issues of concern and clarifies the steps our department has taken to enhance our level of service and efficiency. Further, I am confident that this information brings clarity to the issues raised by some community members, elected officials, employees and the press through Mr. Phillip's report.