



MEMORANDUM

Austin Police Department
Office of the Chief

TO: Farah Muscadin, Director - Office of Police Oversight
FROM: Brian Manley, Chief of Police
DATE: August 17, 2020
SUBJECT: Response to the OPO's Analysis of 2018 OIS Incidents

The purpose of this memorandum is to officially acknowledge receipt of the recently conducted analysis of the Austin Police Department's (APD) officer-involved shootings (OIS) from 2018, by the Office of Police Oversight (OPO). The report concluded:

Officers' apparent failure to use de-escalation tactics in many of the incidents, as well as their failure to use "less-lethal" force options in all but one incident, is deeply troubling and requires further explanation by the department. Moreover, the 2018 data clearly reveals a disparate concentration of officer-involved shooting incidents affecting individuals who are ethnic minorities, as well as in areas of Austin that are historically minority-majority. APD must account for these demographic and geographic disparities.

APD's Philosophy - The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may exercise control over another in carrying out their duties. The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force and to protect the public welfare, requires a careful balancing of all human interests. Officers should recognize their conduct prior to the use of force, may be a factor which can influence the level of force necessary in a situation.

De-escalation - Using techniques to stabilize the situation and reduce the immediacy of the threat, so that more options and resources are available to bring about a successful resolution to an encounter with a non-compliant subject. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, thereby eliminating the need to use force in response to resistance.

De-escalation Techniques - Communicative or other actions used by officers, when safe, and without compromising law-enforcement priorities, that are designed to increase the likelihood of gaining voluntary compliance from a non-compliant subject, and reduce the likelihood of using force in response to resistance.

Use of Less Lethal Options

To contextualize the officer-involved shootings in relation to the total number of use of force incidents and total calls for service, traffic stops, and arrests in 2018, there were 12 officer-involved shootings and 4,162 uses of force that resulted from 522,412 calls for service, 122,185 traffic stops, and 26,975 arrests. Therefore, officers used less-lethal force options in more than 4,100 instances to control resistant subjects. De-escalation tactics were also successfully used in many of those incidents. More importantly, the use of force statistics do not capture the countless incidents in which the utilization of de-escalation tactics prevented uses of force from ever occurring.

The OPO's conclusion, "*failure to use 'less-lethal' force options in all but one incident, is deeply troubling and requires further explanation by the department*", assumes less-lethal options are a viable, prudent, and rational choice in every incident, without due regard for the exigencies of a given situation, the limitations of less-lethal devices, and the potential consequences of an ineffective less-lethal deployment. Furthermore, the use of the word "*failure*" implies the opportunity to use less-lethal means reasonably existed and officers overtly eschewed those options in favor of deadly force. The OPO's report does not identify which of the incidents the deployment of less-lethal options would have been appropriate and effective. Consider the following:

1. SWAT officers attempted to capture the Austin bomber, and he detonated an explosive as officers approached his vehicle.
2. Officers attempt to arrest a carjacking suspect who led them on a prolonged chase, barricaded himself in car, and pointed a gun at officers. Less-lethal tactics were not reasonable given the impracticalities of using those options on an armed subject barricaded in a vehicle, and the potential consequences of those implements being ineffective.
3. A stalking suspect shot himself inside an enclosed vehicle at night as officers attempted to detain him. One officer returned fire after forming the belief the suspect was shooting at officers.
4. A family violence suspect opened the front door of his residence and fired upon officers staged outside of the residence attempting to negotiate his surrender.
5. Officers were fired upon by a suspect after being summoned to his residence. Absent from the OPO report is that one officer was actually shot when the suspect fired at them upon their arrival, setting the entire incident in motion.
6. A suspect threatened his mother with a gun and fled the scene. Officers located him and a vehicle pursuit ensued. The officers stopped the vehicle and the suspect immediately exited the vehicle and fired shots at the officers.
7. Officers tracked down a robbery suspect and he immediately pulled out a gun when officers tried to apprehend him.
8. Officers attempted to detain an arsonist and he pointed a gun at officers and bystanders while displaying erratic behavior.

Demographic and Geographic Disparities

It is undeniable that systemic societal inequities lead to disproportionate interactions between police and minorities. However, as noted in the OPO's report, 10 out of the 12 incidents were prompted by emergency calls soliciting a response from the police to a specific location to deal with a specific individual. The other two incidents occurred in Round Rock, TX (Austin Bomber) and on 6th Street (officers heard shots being fired). There is no evidence to support the conclusion that the location of the incident or the ethnic background of the involved individuals had any bearing on the actions of the responding officers. To the contrary, the declination letters issued by the District Attorney's Office concluded the officers' respective actions were dictated and justified by the circumstances they encountered.

OPO's RecommendationsThe OPO's report contained the below recommendations (in bold font). APD's responses follow the respective recommendations.

1. Increase the Office of Police Oversight's access to officer-involved shooting incident data.

The issue appears to be the manner and timeliness of sharing (e.g. "unprompted" and "in writing") rather than a lack of access to the salient information. APD will readily revise our information-sharing protocols to accommodate this request.

2. Publish annual reports related to officer-involved shooting incidents involving the department.

APD will readily accommodate this request, but it may require the infusion of additional research and planning analysts.

3. Any Austin Police Department reporting related to the 2018 incidents, in particular, should include sections acknowledging and analyzing the following issues, as well as the department's specific plans to address them:

- a. the number of fatal officer-involved shooting incidents caused by police;**
- b. the number of officer-involved shooting incidents involving potential mental health components;**
- c. the concentration of officer-involved shooting incidents occurring in southeast Austin;**
- d. the concentration of fatal officer-involved shooting incidents occurring in south, central, and east Austin;**
- e. the fact that only ethnic minorities were the subjects of fatalities caused by police;**
- f. the fact that the majority of OIS incidents involved people from the Latinx community; and**
- g. the fact that "less-lethal" use of force was used prior to deadly force in only one incident.**

Furthermore, the Austin Police Department should regularly communicate with the public, including City of Austin Boards and Commissions and community stakeholders, regarding this data.

APD will readily accommodate this request and work closely with the OPO to provide all relevant information to ensure future reports issued by that office contain all of the context, considerations, and objective data necessary for members of the public to reach independent, informed conclusions about the significance of the information.

4. Increase continuing education for patrol officers.

APD supports this recommendation and urges the City to invest in the necessary resources. However, intractable staffing shortages and additional cutbacks may significantly impair the Department's ability to maximize these opportunities.

5. Ensure mental health response training, policies, and procedures follow best practices and address shortcomings found in the 2018 City Auditor report.

APD supports this recommendation and, as noted in the OPO's report, has already taken steps to improve in these areas. We will continue to enhance those efforts. While APD will always strive to eliminate officer involved shootings, including those with an underlying mental health component, a harsh reality persists—the best training in the world is only effective if there is an opportunity for intervention AND the individual is receptive to the intervention methods.

6. Ensure the Austin Police Department's policies and procedures align with best practices for personnel safety and wellness.

APD supports this recommendation, as evidenced by the creation of a Health and Wellness Division and Peer Support program, the addition of a second staff psychologist, the ongoing refurbishing of departmental gyms, and course offerings at the Training Academy pertaining to managing stress, burnout, and toxic environments. Additionally, APD has a Victim Services counselor available to meet with officers who are in need assistance, and we implemented a program providing Eye Movement Desensitization and Reprocessing (EMDR) services to our officers.

A handwritten signature in black ink, appearing to read "Brian Manley", with a long horizontal flourish extending to the right.

Brian Manley
Chief of Police