



City of Phoenix
EQUAL OPPORTUNITY DEPARTMENT

To: Ed Zuercher
Assistant City Manager

Date: January 10, 2013

From: Lionel D. Lyons
Director

Subject: **SECONDARY MEMO / JACOBS, ET AL. V. POLICE (EOD # 13-14N)**

In October 2012, five White officers alleged that they were unfairly excluded from participation in a team of employees working as part of the upcoming Presidential inauguration in Washington, D.C. The Complainants alleged that the department management used race, sex, and national origin as criteria for selection to a detail traveling to the inauguration. EOD investigated the allegations and found that race and sex were used in the decision making process, a violation of A.R. 2.35. A cause finding has been issued by EOD.

Since the closure of the investigation, EOD has received additional information from Assistant Chief Tracy Montgomery, Commander Geary Brase, and Officer Joe Clure, PLEA President. Assistant Chief Montgomery and Commander Brase requested that the EOD's final investigative report be amended to reflect the additional information. EOD has added that information to its investigative file.

Assistant Chief Montgomery, Commander Brase, and Officer Clure contend that Chief Daniel V. Garcia should have been included in the investigation as a respondent, rather than a witness. Chief Garcia was not identified by the complainants as a respondent. The complainants allege Assistant Chief Montgomery made the decision to consider race and sex.

Chief Garcia stated that he expressed a desire for the inauguration detail to represent the diversity of the department. The directive was issued after Assistant Chief Montgomery expressed that there were concerns of a lack of diversity related to the 2009 inauguration selection process. The City of Phoenix has expressed diversity as a core value. Therefore, EOD does not view Chief Garcia's directive for diversity as discriminatory. EOD's final investigative report outlines Chief Garcia's role with the selection process. There was no direction given regarding the use of statistical representation as a basis for selecting participants. That decision was made by Commander Brase. There is no corroboration that Chief Garcia was briefed on the

decision to use workforce demographics. Therefore, EOD maintains that Chief Garcia is not a respondent.

Assistant Chief Montgomery and Commander Brase could have used an alternate non-discriminatory selection process to accomplish the directive of diversity by Chief Garcia or could have sought advice from the Human Resources Department to determine how to best accomplish the goal of diversity.

During the course of the investigation, and as part of the grievance process, the issue brought forward by the complainants was resolved. The selection list was reordered using a non-discriminatory business reason. Additionally, Assistant Chief Montgomery and Commander Brase are no longer part of the team going to the inauguration.

The complainants' harm was eliminated through the grievance process. The department did not act on the original list, which used race and sex as part of the decision making process. The selection list was reordered based upon non-discriminatory criteria. Four out of the five complainants were either selected to participate or were named as alternates. The fifth complainant (Officer Jeffrey Tobey) did not qualify for participation based on the non-discriminatory criteria used for the final reorder list.

In closing, EOD affirms its original cause finding that the action violated A.R 2.35. The fact that the department was able to mitigate the damages caused by the discriminatory selection process does not eliminate the responsibility of the Assistant Chief Montgomery and Commander Brase. The direction of Chief Garcia could have been accomplished in using legitimate non-discriminatory methods. EOD reiterates that Chief Garcia is not a respondent and thus EOD will not amend its final investigative report to include him. EOD has added to its file the information obtained from Assistant Chief Montgomery, Commander Brase, and Officer Clure. The department reordered the selection list as part of the grievance settlement, which resolves any potential harm toward the complainants.