



INTERNAL AFFAIRS BUREAU GUIDE

Section: Investigative

Procedure No: 620-58

PROCESSING AND INVESTIGATING COMPLAINTS OF PROFILING AND BIAS-BASED POLICING

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PURPOSE

To establish guidelines for the intake, classification, and investigation of complaints related to Racial Profiling and Bias-Based Policing (hereinafter collectively referred to as “Profiling”).

SCOPE

Police-initiated enforcement actions, including but not limited to, Level 1 Requests for Information, Level 2 Common Law Right of Inquiry encounters, Level 3 Terry stops, frisks, searches, summonses, arrests, and motor vehicle stops, must be based on the standards required by the Fourth and Fourteenth Amendments of the U.S. Constitution, Sections 11 and 12 of Article I of the New York State Constitution, Section 14-151 of the New York City Administrative Code, and other applicable laws.

An allegation of Profiling will be included in the Internal Affairs Bureau log whenever a complaint is received that indicates the officer’s decision to initiate enforcement action against, or failure to perform a law enforcement action for, a person is motivated, **even in part**, by a person’s actual or perceived race, color, creed, national origin, religion, age, alienage or citizenship status, gender, sexual orientation, disability, or housing status unless the officer’s decision is based on a specific and reliable suspect description that includes not just race, age, and gender but other identifying characteristics or information. See Patrol Guide 203-25: Department Policy Prohibiting Racial Profiling and Bias-Based Policing.

PROCEDURE

When an allegation of Profiling is made against a member of the service:

COMMAND CENTER INVESTIGATOR

1. Upon receiving a complaint, generate an Internal Affairs Bureau log in the Internal Case Management System (ICMS).
2. Include the allegation of Profiling. Allegations may include more than express statements of Profiling (e.g. “I was profiled based on my race”). You should also categorize as Profiling even those allegations that may less directly or overtly indicate Profiling. For example, an allegation may allege a failure to perform a law enforcement duty by an officer, such as refusal to take a report based upon the complainant’s ethnicity (or other protected class). Similarly, a complaint may allege that officers took certain actions against the complainant but not against other people of different races engaged in similar conduct. Such allegations should be investigated as a Profiling allegation.
3. If you are unsure whether an allegation should be classified as Profiling based on the initial statement you receive from the complainant, you must ask follow-up questions to clarify the complaint.

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NOTE:

Examples of statements that may suggest Profiling and require follow-up include, but are not limited to:

- a. *“The officer did not stop other people doing the same thing”*
- b. *“The officer targeted me”*
- c. *“I didn’t do anything wrong”*
- d. *“The officer stopped me for no reason”*
- e. *“This officer is always stopping me”*
- f. *“The officer stopped me for something minor then started asking about drugs or other unrelated criminality out of the blue”*
- g. *“The officer arrested me because of who I am.”*
- h. *“Everyone in the neighborhood knows that this officer only stops xx type of people.”*

The follow-up questions should seek more information without suggesting that the investigator doubts or does not believe the allegations. Investigators should also keep in mind that people who believe that they have been subjected to discriminatory treatment might find it difficult to articulate why they believe the treatment was discriminatory. Follow-up questions should include but are not limited to questions such as “why specifically do you think the officer stopped you because of your race (nationality, religion, sexual orientation, etc.)?” Just as it is important to avoid “suggesting” that you have reached a conclusion about the complaint, during the investigation, it is also important that you refrain from in-fact actually making a conclusion about the complainant prior to the investigation’s conclusion. You must keep an open mind when evaluating all of the facts and evidence associated with the complaint. Making a premature judgment of the case could impact your ability to objectively view the evidence and impact your ability to adequately investigate the complaint.

**COMMAND CENTER
INVESTIGATOR
(Continued)**

4. Once you have reason to believe the complaint alleges Profiling, the applicable subcategory(s) must be selected:
 - a. Race/Color/Ethnicity/National
 - b. Gender/Gender Identity
 - c. Sexual Orientation
 - d. Age
 - e. Disability
 - f. Housing Status
 - g. Citizenship Status
 - h. Religion
 - i. Other
5. Attach all readily available documents as well as audio/video recordings to the log. Indicate if the subject officer or any officers present were wearing a Department-issued body worn camera.
6. Electronically submit the log to the Command Center Supervisor for review.

**COMMAND CENTER
SUPERVISOR**

7. Review log for accuracy and completeness.

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8. Direct investigator to conduct additional interview of the complainant if further clarification about whether there is an allegation of Profiling is necessary.
9. Classify all logs that contain a Profiling allegation but no additional corruption allegation as a Misconduct Case.

NOTE:

Complaints that include a Profiling allegation along with a corruption allegation will be investigated by the Internal Affairs Bureau as a Corruption Case. All other cases containing a Profiling allegation will be forwarded for investigation to the appropriate Bureau/Borough Investigations Unit.

**CO, IAB
COMMAND CENTER**

10. Review all logs and make determination regarding appropriate allegations, case classification, and assignment to appropriate investigative unit.

NOTE:

Although the majority of cases containing a Profiling allegation will be assigned to an Investigations Unit as delineated below, Internal Affairs Bureau investigators and supervisors will, when appropriate, adhere to the following investigative guidelines related to Profiling allegations.

**CO, INVESTIGATION
UNIT**

11. Review all cases received via the Internal Case Management and Tracking (ICMT) system and assign to the designated unit personnel for investigation within 72 hours/ three (3) days of receiving the case, keeping the schedule of assigned investigator in mind, as to avoid any delay in the initial notification of the complainant.

NOTE:

The Commanding Officer will be responsible for designating investigators specifically for the purpose of investigating Profiling cases.

**CASE OWNER/TEAM
MEMBER**

12. Conduct a thorough review of all documents and audio/video recordings contained in the initial log.
13. Make initial notification (as soon as possible) to the complainant within 24 hours of being assigned to the case to arrange a time and place for the initial complainant interview, if there is accurate contact information available. Complete and finalize the complainant Notification Successful worksheet upon successful notification made to the complainant, or the Complainant Notification Attempt for any unsuccessful attempts made.

NOTE:

If a letter is mailed or an email is sent as one of the attempts to notify a complainant, a copy of the correspondence will be uploaded to the appropriate worksheet. Because some of the complainants file their Profiling/biased policing allegations with the CCRB, a clear explanation of the complaint process can minimize confusion.

14. If the notification was made successfully, create a separate worksheet

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regarding the interview.

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15. Interview the complainant(s), subject officer(s) and witness(es) as soon as possible. Whenever feasible, the complainant(s) and witness(es) should be interviewed in person and in a neutral and comfortable location. Where possible, investigators should seek assistance from complainants to schedule interviews for times and locations convenient for the complainant. Each interview must be recorded independently on an Interview worksheet.
- a. Document each attempt to contact a complainant or witness. When reasonable, a minimum of three (3) attempts should be made to contact each complainant and witness.
 - b. If the complainant or witness is a person with Limited English Proficiency (LEP) or a hearing impairment, the investigator must secure the services listed in PG 212-90_or Department-certified interpreters before proceeding with the interview.

NOTE:

When a complainant is held at a correctional facility located within the five boroughs of New York City, attempt to interview the complainant. If the complainant is represented by counsel who advises not to contact the complainant, do not make further attempts.

Recorded interviews, regardless of whether or not they were conducted under the provisions of PG 206-13, should be uploaded to the appropriate interview worksheet.

CASE OWNER/TEAM MEMBER (Continued)

16. Within 7 days of being assigned to the case, canvass the involved location to identify additional witnesses and to obtain photographic and visual documentation that could confirm or refute the allegation made. Whenever possible, canvassing should occur at the same time of day that the incident in question occurred. Additional canvassing of the involved location should also be conducted as the investigation uncovers potential additional pertinent witnesses, audio and video recordings, and other evidence in the vicinity of the involved location that were not discovered during the initial canvassing.
17. All appropriate investigative steps must be conducted to thoroughly and expeditiously investigate all of the allegations, including: (i) obtaining and review of all corresponding documents and pertinent audio/video recordings (including, but not limited to, body worn camera video recordings made by the subject officer and other MOS on the scene during the incident in question) contained in the initial log and identified thereafter through further investigation and/or interviews of complainant(s), subject officer(s) and witness(es); (ii) interviews of all identified witnesses (or witnesses whose identifies can be learned through any reasonable investigative steps) with pertinent information, including but not limited to all MOS who were

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CASE OWNER/TEAM MEMBER (Continued)

involved in or witnessed any portion of the incident in question; (iii) a review of public social media accounts on the subject officer and the complainant when deemed appropriate on a case by case basis and (iv) the thorough documentation of all material aspects of the interviews, including any additional available evidence or witnesses. All documentary, photographic, audio and video evidence obtained and investigative steps taken during the scope of the investigation must be recorded on individual worksheets. These include attempts to contact witnesses and obtain evidence, whether successful or not, Interviews, Notifications, General Investigation, PD Record Review, and Automated ICAD Requests.

18. In interviews related to allegations of Profiling, it is important to determine each parties' perspective of the incident. Investigators should seek all available evidence, witnesses, and information to corroborate the allegations or any defense.
19. If during the investigation, a subject officer, witness officer, or civilian witness is to be added, updated, or removed, use the appropriate worksheet.
 - a. Utilize Subject Add/Remove/Update worksheet to add, remove or amend a subject officer.
 - b. Utilize Person Add/Remove/Update worksheet to add, remove or amend any non-subject regardless of whether they are a member of the service in any capacity or a civilian non-MOS.
20. While conducting interviews of complainant(s), be careful not to suggest that you have reached a conclusion about whether Profiling occurred, rather include questions to elicit why the complainant felt targeted. Examples of such questions include but are not limited to: "Tell me what the Officer did that you believe was biased?" or "What precisely did the Officer do that appeared to be, or made you feel that the Officers actions were based on bias, or that appeared to be targeting you based on your age (or other protected class)?" Additionally, the complainant should be asked to provide any document(s), audio and video recordings and identities of witnesses with information relevant to the incident that is being investigated. The investigator must document all such evidence and witnesses identified, available and offered by the complainant, as well as all material aspects of the interview, in the complainant interview worksheet and then review all such evidence once it is provided by complainant and make all reasonable efforts in good faith to obtain any such evidence and contact and interview such witnesses. Just as it is important to avoid "suggesting" that you have reached a conclusion about the complaint, during the investigation, it is also important that you refrain from in-fact actually making a conclusion about the complaint prior to the investigation's conclusion. You must keep an open mind when evaluating all of the facts and evidence associated with the complaint. Making a premature judgment of the case could impact your

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ability to objectively view the evidence and impact your ability to adequately investigate the complaint.

21. While conducting interviews of the subject officer related to an allegation of Profiling, the case investigator must pose questions to the officer to obtain the officer's perspective of the encounter. The officer should articulate in their own words, the specific circumstances that provided the basis for their actions or inactions. This should include more than cursory or summary assertions. After receiving the officer's perspective of events, the officer should be asked questions such as "the complainant says you stopped him/her because of their...", "what is your response to that?" If the officer's response to this question conflicts with their initial explanation of events, then clarifying questions are required.
22. Review subject officer's CPI, including prior civilian complaints, whether substantiated or not, disciplinary records, when appropriate, lawsuits filed against the subject officer, and prior performance evaluations with an eye towards identifying patterns of bias/misconduct on the part of the subject officer.

NOTE:

Even if the historical review of the subject officer does not identify a trend or pattern of Profiling or selective enforcement, the investigating officer cannot disregard the specific incident currently in question.

CASE OWNER/TEAM MEMBER (Continued)

23. Reach a finding for each allegation in the case after completing all necessary investigative steps. Create an Allegation Finding worksheet for each subject in the case. Submit completed Allegation Finding worksheets electronically to the Commanding Officer, Investigations Unit

NOTE

The investigator must adhere to Patrol Guide 203-25: Department Policy Prohibiting Racial Profiling and Bias-Based Policing when concluding the investigation and recommending a finding for the Profiling allegation.

A complainant's or witness' guilty status, plea, or conviction does not resolve the issue of whether the subject officer(s) engaged in discriminatory conduct, even if the criminal matter and the complaint of biased policing arise from the same set of underlying facts.

A complainant's previous criminal history and prior arrests should not be dispositive of whether or not an allegation of biased policing is substantiated, However, when the investigator deems it necessary, the complainant's previous criminal history and prior arrests may be taken into account to ensure that the totality of the circumstances are available to the investigator in establishing the appropriate burden of proof. A complainant's criminal history should thus only be considered and included in an investigative file to the extent it reveals charges or convictions that bear on a complainant's credibility, such as perjury. When

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the complainant has previous criminal history or prior arrests which include matters that did not result in a conviction or plea, the investigator must seek appropriate and necessary authorization from the complainant or permission from an appropriate court, before accessing the information. Where the complainant's previous criminal history is a factor in a non-substantiation decision, the investigator shall articulate how the criminal history impacted the decision. The investigator must still complete a full investigation of the allegation.

A subject officer's race, color, creed, national origin, religion, age, alienage or citizenship status, gender, sexual orientation, disability or housing status should not be determinative in deciding whether to substantiate a biased policing allegation, even when the subject officer and complainant identify as members of the same protected group.

The similarities between the race of the Complainant and the racial make-up of the Complainant's neighborhood should not be dispositive of whether or not an allegation is substantiated.

CASE OWNER/TEAM MEMBER (Continued)

24. If requested, perform any additional steps upon the rejection of the Allegation Finding worksheet. Once additional steps are completed and documented, resubmit Allegation Finding worksheet for approval.

25. When the Allegation Finding worksheet is approved, continue with the Complainant and Subject Notification of Findings worksheets. Create a separate worksheet to memorialize each of the final notifications made.

26. Submit a case closing worksheet with a finding for each allegation and a summary of the investigative steps completed to the Investigations Unit Commanding Officer for review.

COMMAND REPRESENTATIVE/ INVESTIGATION UNIT TEAM LEADER

27. Monitor investigative steps taken and provide direction, instructions and oversight through-out the investigation.

28. Approve or reject case worksheets and instruct investigator on additional steps to be taken, if necessary.

29. Review Allegation Finding worksheets and Case Closing worksheet prior to review by the Commanding Officer, Investigations Unit and make appropriate recommendations for additional investigative steps and allegation findings.

CO, INVESTIGATION UNIT

30. Monitor investigative steps taken and provide direction, instructions and oversight through-out investigations being conducted by Unit personnel.

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31. Review the Allegation Finding worksheet and approve or, if you determine that additional steps need to be taken and/or you do not agree with the findings regarding any of the allegations, then reject it.
32. Review the Case Closing worksheet and approve or, if you determine that additional steps need to be taken and/or you do not agree with the findings regarding any of the allegations, then reject it.
33. Submit approved Case Closing worksheets to Bureau/Borough Executive Officer for final determination.
34. Review investigative steps taken in all cases that contain an allegation of Profiling.
35. Review the Allegation Finding worksheet and approve or, if you determine that additional steps need to be taken and/or you do not agree with the findings regarding any of the allegations, then reject it.
36. Review the Case Closing worksheet and approve or, if you determine that additional steps need to be taken and/or you do not agree with the findings regarding any of the allegations, then reject it.
37. Approve case closing worksheet when appropriate.
38. Notify assigned investigator that case closing worksheet has been approved.

**BUREAU/BOROUGH
EXECUTIVE
OFFICER****CO, INVESTIGATION
UNIT****Additional Data**

Allegation Findings: each allegation must have a finding. This means that after a full and complete investigation and after considering all the evidence and information:

Substantiated – *Credible evidence exists that the accused MOS committed the alleged act of misconduct and such credible evidence outweighs the evidence that the accused MOS did not commit the alleged misconduct.*

Unsubstantiated – *There is insufficient credible evidence to prove or disprove the allegation.*

Unfounded – *Credible evidence exists that the alleged act of misconduct did not occur or that the accused MOS did not commit the alleged act of misconduct and such credible evidence outweighs the evidence that the accused MOS did commit the alleged misconduct.*

Exonerated – *Credible evidence exists that the alleged conduct occurred but it was lawful and proper.*

If, after considering all the credible evidence, including that portion of the complainant's account found to be credible and including that portion of the officer's account found to be credible, the investigator finds that the

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credible evidence that the MOS committed an act of misconduct outweighs credible evidence that the MOS did not commit the alleged act of misconduct, the complaint is substantiated. If, after considering all the credible evidence, including that portion of the complainant's account found to be credible and including that portion of the officer's account found to be credible, the investigator finds that the credible evidence that the officer committed an act of misconduct does not outweigh credible evidence that the MOS did not commit the alleged act of misconduct, the complaint is not substantiated and may be found to be unfounded, unsubstantiated or exonerated, as the case may be.

The investigator may make these determinations solely on the basis of the credibility of the complainant's and member's accounts, even if there is no other credible corroborating evidence.

RELATED PROCEDURES

Department Policy Prohibiting Racial Profiling and Bias-Based Policing (PG 203-25)
 Investigative Encounters (PG 212-11)
 Allegations of Corruption and Other Misconduct Against Members of the Service (PG 207-21)
 Investigative Techniques (DG 502-01)
 Guidelines for Interaction with Limited English Proficient (LEP) Persons (PG 212-90)



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October 26, 2020

VIA ECF

Honorable Analisa Torres
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Floyd, et al. v. City of New York*, 08-CV-1034 (AT),
Ligon, et al. v. City of New York, et al., 12-CV-2274 (AT),
Davis, et al. v. City of New York, et al., 10-CV-0699 (AT),
Recommendation Regarding IAB Guide and Training on Profiling Investigations

Dear Judge Torres,

I am pleased to submit my recommendation for revisions to the Internal Affairs Bureau (IAB) Guide 620-58, Processing and Investigating Complaints of Profiling and Bias-Based Policing Patrol. Changes to the earlier Court-approved version of the investigations guidelines have been made to address findings made by the monitor team in its review and assessment of profiling investigations conducted by the NYPD.

The City has informed me that it does not object to the approval of this recommendation; the plaintiffs have informed me that they will be objecting to the recommendation.

Respectfully submitted,

/s/ Peter L. Zimroth _____

Peter L. Zimroth
Monitor

Enclosures