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March 17, 2016

Robert Lougy
Acting Attorney General
New Jersey Office of the Attorney General
RJ Hughes Justice Complex
25 Market Street, Box 080
Trenton, NJ 08625-0080

Dear Attorney General Lougy:

On behalf of the American Civil Liberties Union of New Jersey, I write to express our profound concern about an email that appears to reveal a directive from Benjamin C. Fox, Chief of Police in Wyckoff, New Jersey, both authorizing and encouraging racial profiling.

In the email, Chief Fox contends that “[p]rofilng, racial or otherwise, has it’s [sic] place in law enforcement when used correctly and applied fairly.” He continues: “Don’t ask police to ignore what we know.” He purports to “know” that “Black gang members from Teaneck commit burglaries in Wyckoff. That’s why we check out suspicious black people in white neighborhoods.”

We need not belabor the many levels on which such statements are both troubling and illegal. Such an approach to policing violates Attorney General Law Enforcement Directive 2005-1, which prohibits racially-influenced policing. If officers heed the Chief’s bigoted instructions, it could well lead to criminal violations of *N.J.S.A. 2C:30-6* (Official Deprivation of Civil Rights) as well as federal civil rights statutes.

All Law Enforcement Officers in New Jersey, including, presumably, Chief Fox, are told:

The policy in New Jersey prohibiting racially-influenced policing may be simply stated. Except when you are responding to some type of a suspect-specific or investigation-specific B.O.L.O. (“Be On The Lookout”) situation, you are prohibited from considering a person’s race or ethnicity to any degree in drawing inferences that this person may be involved in criminal activity, or in exercising any form of police discretion with respect to how you will deal with that person.¹

¹ Susswein, Ron *Companion Guide, Attorney General Law Enforcement Directive No. 2005-1 Establishing An Official Statewide Policy Defining and Prohibiting the Practice of “Racially-Influenced Policing”*, page 32.

Attorney General Lougy

March 17, 2016

Page 2

The email denigrates that policy and *N.J.S.A. 2C:30-5*, in which the Legislature declared its abhorrence for racial profiling.

We request that you conduct an investigation to determine whether Chief Fox sent the attached email to officers under his command. If you determine that he did, we anticipate that he will be held accountable and that a strong message will be sent, both to the Wyckoff Police Department and the community that it serves, that racial profiling has no place in New Jersey law enforcement. Simply put, if Chief Fox sent the email, he should be fired.

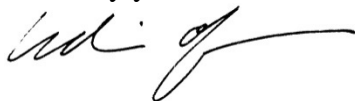
But such a remedy would not be sufficient. If the email was sent from the Chief to the Department, it seems clear that the entire Department will require retraining regarding racially-influenced policing. Such a directive is harmful on its own; but, if officers heeded the Chief's call for racial profiling, there are even more grave concerns. For that reason, if the email is authenticated, we call on your office to conduct an audit of stops, frisks, searches, summonses and arrests occurring in Wyckoff to determine whether racially-influenced policing has occurred.

While not as plainly unlawful as the racial profiling portions of the email, the message also seems to encourage hyper-aggressive police responses to people who resist officers' "authorized demands." The author of the email makes clear that his officers "don't run from fights." Such provocative statements suggest that de-escalation is a frowned-upon technique in Wyckoff. For that reason, your office should also audit use of force incidents in the Department to ensure that force is only used when appropriate and should mandate training in de-escalation techniques.

Finally, to ensure that residents of Wyckoff can have faith that the police force is enforcing the law evenhandedly and without the taint of racial profiling, the public must have access to data regarding stops, frisks, searches, summonses, arrests and use of force incidents. To that end, your office should mandate that the Wyckoff Police Department collect, aggregate and publicly release those data on a regular basis. This is a best practice that should be required in every New Jersey department, but it is particularly needed here.

Please treat this letter as a formal request for an internal affairs investigation. For the purpose of that request, please notify Alexander Shalom (ashalom@aclu-nj.org; 973-854-1714) of the progress of the investigation.

Sincerely yours,



Udi Ofer, Executive Director

c: Elie Honig, Director, Division of Criminal Justice
Paul J. Fishman, United States Attorney
Michael Campion, Assistant United States Attorney

enclosure