
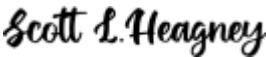


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|  | City of Rusk Police Department Policies and Procedures | | |
| Chapter 2.3 | Subject: Racial Profiling | | |
| References: Texas Best Practices Program: 2.01. | | Issued: January 1, 2024 Effective: February 13, 2024 | New: <input type="checkbox"/> Amends: <input checked="" type="checkbox"/> Rescinds: <input checked="" type="checkbox"/> |
| Issuing Authority:  <hr/> Scott L. Heagney Chief of Police | | Distribution: All Members of the Rusk Police Department | |

This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

I. PURPOSE

- 1.1. The purpose of the Rusk Police Department's Racial Profiling policy is to reaffirm the department's commitment to unbiased policing in all its encounters between officers and any person.
- 1.2. To reinforce procedures that serve to ensure public confidence and mutual trust through the provisions of services in a fair and equitable fashion.
- 1.3. To protect Rusk Police Officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.
- 1.4. To ensure employees and the department fulfills our obligations under Texas Code of Criminal Procedure (CCP) section 2.131 and 2.132.
 - 1.4.1. CCP, section 2.131, which prohibits Texas peace officers from engaging in racial profiling.
 - 1.4.2. CCP, section 2.132, which requires law enforcement agencies to have:
 - 1.4.2.1. Policies that prohibit racial profiling.
 - 1.4.2.2. Record and report information on traffic and pedestrian stops.
 - 1.4.2.3. A complaint investigation procedure for allegations of racial profiling.

II. POLICY (TBP 2.01)

- 2.1. It is the policy of the Rusk Police Department to:
 - 2.1.1. Patrol in a proactive manner.
 - 2.1.2. Aggressively investigate suspicious persons and circumstances.

2.1.3. Actively enforce all criminal laws, motor vehicle laws, and city ordinances to prevent crime and aid in the detection of crime once it has occurred.

2.1.3.1. Rusk Police Officers are expected to be relentless in their problem solving and following up on calls for service, reported crimes, and pursuit of criminals.

2.1.4. Only stop or detain citizens when there exists reasonable suspicion to believe they have committed, are committing, or are about to commit an infraction of the law.

2.1.5. Rusk Police Officer's will not engage in any type of racial profiling or biased based profiling under any circumstances.¹ (TBP 2.01)

2.2. The Rusk Police Department has **ZERO** tolerance for any type of racial or biased based profiling.

III. DEFINITIONS

3.1. **Racial Profiling:** Racial profiling is defined as any law enforcement-initiated action based on an individuals, race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

3.1.1. Racial profiling pertains to persons who are viewed as suspects of criminal behavior.

3.1.2. Racial profiling is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.

3.1.3. A law-enforcement initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

3.1.3.1. In its broadest sense, racial profiling is the practice by law enforcement officers to stop, search and investigate minorities, in a street stop (pedestrians) or traveling in a vehicle, based solely on stereotypes, their racial or ethnic background, rather than on actions and behaviors that give rise to reasonable suspicion or probable cause.

3.1.3.2.1. This has the end result of treating minorities significantly different than non-minority citizens.

3.1.3.2.2. This is a volatile issue which can polarize the police department from the community we serve.

3.1.4. Texas Code of Criminal Procedure (CCP), Section 3.05, defines racial profiling as a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than

¹ Texas Code of Criminal Procedure, Art. 2.131, Racial Profiling Prohibited.

on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

- 3.1.5. Texas Police Chiefs Best Practices Program (TPCBP) defines biased based profiling as any profiling based on ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.
- 3.1.6. The United States Department of Justice (DOJ) defines racial profiling as The invidious use of race or ethnicity as a criterion in conducting stops, searches, inspections, and other law enforcement activities based on the erroneous assumption that a person of one race or ethnicity is more likely to commit a crime than a person of another race or ethnicity.
- 3.1.7. The American Civil Liberties Union (ACLU) defines racial profiling as the discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin.

3.2. **Race or Ethnicity:** Race or ethnicity is defined as a person's decent, including Caucasian (White), African (Black), Hispanic, Asian, or Native American (American Indian), Middle Eastern, Other (undetermined).

3.3. **Acts Constituting Racial Profiling:** Acts constituting racial profiling are acts initiating law enforcement action, such as a traffic stop, detention search, issuance of a citation, or arrest, which is based solely upon an individual's race, ethnicity, or national origin or on the basis of racial or ethnic stereotypes, rather than upon the individuals behavior, information identifying the individual as having possibly engaged in a criminal activity, or other lawful reasons for the law enforcement action.

3.3.1. **Examples of Racial Profiling:**

- 3.3.1.1. Citing a driver who is speeding in a stream of traffic where most other drivers are speeding because of the driver's race, ethnicity, or national origin.
- 3.3.1.2. Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity, or national origin is unlikely to own or possess that specific make and model of a vehicle.
- 3.3.1.3. Detaining an individual based on the determination that a person of that race, ethnicity, or national origin does not belong in a specific area of the city or a specific place.

3.4. **Pedestrian Stop:** A pedestrian stop is defined as an interaction between a peace officer and an individual on foot, who is being detained for the purposes of a criminal investigation in which the individual is not under arrest².

3.5. **Traffic Stop:** A traffic stop is the stopping of a motor vehicle by a peace officer for a violation of law

²Terry v. Ohio, 392 U.S. 1, 88 S. CT 1868 (1968)

or an ordinance regulating traffic^{3 4}.

- 3.6. **Complaint:** A complaint shall be defined by the following guidelines under Texas Government Code (TGC) 614.022.

3.6.1. A complaint against a law enforcement officer in order to be considered by the head of a local law enforcement agency, must be:

3.6.1.1. In writing.

3.6.1.2. Signed by the person making the complaint.

IV. PROCEDURES

4.1. **Racial Profiling Prohibited** (TBP 2.01)

4.1.1. In compliance with the requirements of Articles 2.131-2.136 of the Texas Code of Criminal Procedure, the Rusk Police Department strictly prohibits officers from engaging in any type of racial profiling.

4.2. Officers must conduct themselves in a dignified, unbiased, and respectful manner at all times when dealing with each member of the public.

4.3. Two of the fundamental rights guaranteed by both the United States and Texas constitutions are equal protection under the law and freedom from unreasonable searches and seizures by government agents.

4.3.1. The right of all persons to be treated equally and to be free from unreasonable searches and seizures must be respected.

4.4. Racial profiling is an unacceptable patrol tactic and will not be tolerated.

4.5. **Permitted Conduct**

4.5.1. The prohibition against racial profiling does not preclude the use of race, ethnicity, or national origin as factors in a detention decision by a peace officer.

4.5.1.1. Race, ethnicity, or national origin may be legitimate factors in a detention decision when used as a part of an actual description of a specific suspect for whom a peace officer is searching for.

4.5.2. Racial profiling pertains to persons who are viewed as suspects of criminal behavior.

³ Whren v. United States, 517 U.S. 806, 116 S. CT 1769 (1996)

⁴ Carroll v. United States, 267 U.S. 132, 153 (1925)

- 4.5.2.1. The term is not relevant as it pertains to witnesses, complaints, or other citizen contacts.
- 4.5.3. This policy does not prohibit officers from stopping someone based upon observed actions and behaviors, or information received about the person.

5.1. **Complaint Process**

- 5.1.1 The Rusk Police Department accepts complaints from any person who believes they have been stopped or searched based on racial, ethnic, or national origin profiling.
- 5.1.2. Any person who believes they have been the subject of racial profiling by a Rusk Police Officer may file a complaint with the department.
- 5.1.3. Under no circumstances will a person be discouraged, intimidated, or coerced from filing any complaint.
 - 5.1.3.1. No person shall be discriminated against for filing a complaint.
- 5.1.4. Any employee receiving notice of any type, from an individual indicating that they wish to file a complaint, will immediately refer the person making the complaint to the on-duty supervisor.
 - 5.1.4.1. The supervisor will receive and document the complaint.
- 5.1.5. All complaints must be in writing.
 - 5.1.5.1. If the complainant is unable to personally write the complaint, the supervisor receiving the complaint will reduce the content of the complainant in writing for the complainant.
 - 5.1.5.2. The written complaint will include the time, date, location, and details of the alleged incident of the racial profiling.
 - 5.1.5.3. The complaint must also identify or describe the officer(s) involved, describe the manner in which the officer(s) contacted the complainant, and state the address and phone number of the complainant for follow-up investigation and return notification.
 - 5.1.5.4. Personnel receiving the complaint must follow procedure for Formal Complaints as defined in this policy and procedure manual.
 - 5.1.5.5. Once the initial complaint has been taken, it will be forwarded to the Chief of Police for investigation.
 - 5.1.5.6. Investigations of complaints must be conducted in a thorough and timely manner.

- 5.1.5.7. All complaints received will be acknowledge in writing to the complaint by the Chief of Police.
- 5.1.5.8. The Chief of Police will inform the complainant in writing of the outcome and disposition of the investigation.
- 5.1.5.9. The Rusk Police Department will take appropriate corrective action against an officer who, after an investigation, is shown to have engaged in racial profiling in violation of this policy.
 - 5.1.5.9.1. Any corrective action taken can range from training up to and including dismissal from the department depending on the totality of the circumstances.

6.1. Public Education Related to the Complaint Process

- 6.1.1. The department will provide the public with information and assistance regarding the complaint process for allegations of racial profiling.
 - 6.1.1.1. The information and assistance that may be provided by the department is not limited to:
 - 6.1.1.1.1. Assistance in filing the complaint at any hour of the day.
 - 6.1.1.1.2. Brochures outlining the procedures for filing a complaint.
 - 6.1.1.1.2.1. Brochures and complaint forms will be displayed in a conspicuous place in the lobby of the police station.
 - 6.1.1.1.3. Information will be posted to the department's web page on how to file a racial profiling complaint.

7.1. Required Reporting

- 7.1.1 Officers shall collect the following information for all traffic and pedestrian stops they make.⁵ (TBP 2.01)
 - 7.1.1.1 This includes traffic stops regardless if an officer issues a verbal warning, written warning, citation, or makes an arrest.
 - 7.1.1.1.1. A physical description of each person detained as a result of the stop, including the person's gender and race or ethnicity, as stated by the person or as determined by the officer to the best of their ability.

⁵ Texas Code of Criminal Procedure, Art. 2.136, Liability, A Peace Officer Not Liable for Collection of Racial Profiling Data.

- 7.1.1.1.2. Whether the officer knew the race or ethnicity of the individual detained before detaining that individual.
 - 7.1.1.1.3. The street address or approximate location of the stop.
 - 7.1.1.1.4. Location type where the stop occurred (city street, highway, county road, or private property).
 - 7.1.1.1.5. The suspected offense, traffic law, or ordinance to have been violated.
 - 7.1.1.1.6. Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search.
 - 7.1.1.1.7. Whether probable cause to search existed and, if so, the facts supporting the existence of the probable cause.
 - 7.1.1.1.8. Whether any contraband was discovered in the course of the search and, if so, the type of contraband discovered.
 - 7.1.1.1.9. Whether the officer made an arrest as a result of the stop and/or search and, if so, a statement of the offense charged.
 - 7.1.1.1.10. Whether the officer issued a verbal warning, written warning or a citation as a result of the stop and, if so, a statement of the offense charged.
 - 7.1.1.1.10.1. For traffic stops, this information can be directly entered into Mobile Cite.
 - 7.1.1.1.10.2. For field stops, this information can be entered in Badge.
- 7.1.2. Supervisors will ensure that the proper data has been collected and entered into mobile cite or Badge.
- 7.1.2. Annually, the Chief of Police will compile and analyze the data.⁶
- 7.1.2.1. Based upon the analysis of the data, the Chief of Police will prepare a report to be sent to the City Manager, City Council, and the Texas Commission on Law Enforcement before the deadline set by statute for the submission of said report.^{7 8}

⁶ Texas Code of Criminal Procedure, Art. 2.134, Compilation and Analysis of Information Collected.

⁷ Texas Occupations Code 170.164, Collection of Certain Incident Based Data Submitted by Law Enforcement Agencies.

⁸ Texas Code of Criminal Procedure, Art. 2.1385, Civil Penalty, Intentionally Failing to Submit Report.



- 7.1.2.1.1. The Report will include:⁹
- 7.1.2.1.1.1. A breakdown of citations, written warning, and verbal warnings by race or ethnicity.
 - 7.1.2.1.1.2. The total number of verbal warnings, written warnings, and citations where a search was conducted.
 - 7.1.2.1.1.3. The total number of searches which were consensual.
 - 7.1.2.1.1.4. Whether probable cause to search existed.
 - 7.1.2.1.1.5. Whether any contraband was discovered in the course of the search and, if so, the type of contraband discovered.
 - 7.1.2.1.1.6. The total number of citations and written warnings that resulted in a custodial arrest for the cited violation or any other violation.
 - 7.1.2.1.1.7. Whether the officer issued a verbal warning, written warning, or citation as a result of the stop.
 - 7.1.2.1.1.8. A breakdown of whether the peace officer knew the race or ethnicity of the individual prior to the detention.
 - 7.1.2.1.1.9. The total number of written warnings, and citations in which an officer used force that resulted in bodily injury, as that term is defined by section 1.07 of the Texas Penal Code, during the stop.
 - 7.1.2.1.1.10. The number of stops by location type where the stop occurred (city, highway, county road, or private property).
- 7.1.2.1.2. The data collected as a result of the reporting requirements of this policy do not constitute prima facie evidence of racial profiling.
- 7.1.2.1.3. The report may not include any identifying information about the officers making the stops or about the individuals who are stopped or arrested.

⁹ Texas Code of Criminal Procedure, Art. 2.133, Reports Required for Law Enforcement Stops.

- 7.1.3.1.4. The analysis required by CCP section 3.134 to supplement the online report must contain:
 - 7.1.3.1.4.1. A comparative analysis of the information compiled under CCP Article 2.133 to:
 - 7.1.3.1.4.1.1. Evaluate and compare the number of motor vehicles stops made by Rusk Police Officers, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities.
 - 7.1.3.4.1.2. Examine the disposition of motor vehicle stops made by Rusk Police Officers, categorized according to the race or ethnicity of the affected persons, including any search resulting from the stop.
 - 7.1.3.4.1.3. Information relating to each complaint filed with the Rusk Police Department that a police officer employed by the department has engaged in racial profiling.

V. USE OF VIDEO AND AUDIO EQUIPMENT

- 5.1. Each motor vehicle regularly used by the Rusk Police Department to make traffic stops and pedestrian stops shall be equipped with an audio/video camera.
- 5.2. Each official citizen contact made by officers working patrol shall be recorded by audio and video if the vehicle being utilized is equipped with such equipment.
- 5.3. All video and audio recordings of traffic and pedestrian stops will be retained for a minimum of ninety (90) days after the date of the stop.
 - 5.3.1. If a complaint is filed with the department that an officer has engaged in racial profiling with respect to a pedestrian or traffic stop, the department will retain the pertinent recording(s) until a final disposition of the complaint is made.
- 5.4. It is the duty of each officer to ensure that the audio/video equipment in the officer's vehicle is fully operational before and during each tour of duty.
 - 5.4.1. If the equipment is found to be in operatable or defective the officer shall:
 - 5.4.1.1. Use an alternative vehicle with an operational camera system.
 - 5.4.1.2. If no other vehicle is available then the officer is to ensure that their body camera captures the contact.

- 5.4.2. Whether or not a vehicle with operational audio/video equipment is being utilized, the reporting requirements are the same.

VI. INFORMING THE PUBLIC ON THE PROCESS TO FILE A RACIAL PROFILING COMPLAINT WITH THE RUSK POLICE DEPARTMENT

- 6.1. The Rusk Police Department will provide information to the public on issues relevant to the racial profiling complaint process by making documents available in the lobby of the police station, city hall lobby, and on the city's web page, concerning the filing of a complaint for racial profiling committed by a Rusk Police Officer.

