

North Charleston
City Hall

IT MATTERS IF YOU'RE BLACK OR WHITE:

Racial Disparities in the Handling
of Complaints against North
Charleston Police Officers

THE
THURGOOD MARSHALL
INSTITUTE

LDF DEFEND
EDUCATE
EMPOWER

July 2017

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LDF's **Thurgood Marshall Institute** is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative.

LDF's work to address unlawful and discriminatory policing practices dates back to its inception, when founder Thurgood Marshall represented Black men who were brutally beaten by police and forced to confess to crimes they did not commit in Groveland, Florida. His daring efforts are captured in the 2013 Pulitzer Prize-winning book, *Devil in the Grove*. Since then, LDF has advocated for unbiased and responsible policing through litigation and policy advocacy.

In 2015, it launched the Policing Reform Campaign after video footage of police shootings of unarmed Black men, women and children dominated national news. The Campaign uses research, public education, policy and legislative advocacy, litigation, community organizing and communications strategies to advance laws, policies and practices that will lead to unbiased and accountable policing at the federal, state and local levels.

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INTRODUCTION

On April 4, 2015, a bystander's video recorded former North Charleston police officer Michael Slager, who is White, fatally shooting 50-year-old Walter Scott, an unarmed Black male, as he ran away during a routine traffic stop. Video of the shooting shocked the public's conscience and gave rise to widespread demands for accountability. State and federal officials responded by bringing charges against Slager. North Charleston officials fired him. The state trial resulted in a hung jury.¹ On May 2, 2017, former officer Slager appeared in a federal court and admitted to willfully using unreasonable deadly force in violation of Scott's civil rights.² His sentencing hearing is pending.

While former officer Slager's guilty plea is a welcome, yet rare occurrence,³ there is evidence that North Charleston's Black community has endured excessive force and racially-biased traffic stops by North Charleston police officers for years with little acknowledgement or accountability. Shortly after Mr. Scott's death, the NAACP Legal Defense and Educational Fund, Inc. (LDF) and more than two dozen North Charleston organizations, lawmakers and residents submitted a letter to then-U.S. Attorney General Loretta Lynch requesting that the U.S. Department of Justice (DOJ) open a civil rights investigation into the North Charleston Police Department (NCPD).⁴

In that letter, we documented a record of alleged misconduct by NCPD officers – including incidents of excessive force, unconstitutional stops, arrests, detentions and racial disparities in policing practices – that suggested a pattern of excessive force and racial discrimination throughout NCPD's law enforcement practices. Investigative reporting has also shown that NCPD officers stop thousands of people, disproportionately Black, often for pretextual reasons;⁵ the same reporting uncovered incidents of officers physically assaulting North Charleston residents.⁶

The shooting death of Walter Scott at the hands of an NCPD officer should not be perceived as an isolated incident, but rather recognized as an outcome of a policing culture that has resulted in decades of police violence and unlawful policing practices committed against North Charleston residents, particularly residents of color. Indeed, in recent months, three North Charleston police officers have been arrested, fired or demoted for assaulting residents or engaging in racially derogatory activities online.⁷

After mounting public pressure by North Charleston residents, in May 2016, the DOJ Office of Community Oriented Policing Services (COPS Office) accepted an invitation from



Town hall meeting in North Charleston, SC. From left to right: Edward Bryant, III, President of the North Charleston Branch of the NAACP; Monique Dixon, LDF Deputy Policy Director and Senior Counsel; and Louis Smith, Executive Director of The Community Resource Center.

Mayor Keith Summey and NCPD Police Chief Eddie Driggers to assess the policies and practices of the police department. The COPS Office assessment is an important first step to changing policing practices in North Charleston, and we have urged the COPS Office to complete and release this critical assessment.

As part of its review, the COPS Office has agreed to evaluate the process by which residents may file complaints against NCPD officers.⁸ As the release of the assessment remains pending, LDF has undertaken a review of NCPD complaint reports that the police department released in response to Freedom of Information Act (FOIA) requests. Our analysis of hundreds of pages of complaint reports filed with the NCPD from 2006 through 2016 revealed, among other things, that Black residents were more likely to file complaints against officers when compared to White residents. Yet, NCPD sustained complaints filed by Black residents only 31 percent of the time compared to sustaining complaints filed by White residents 50 percent of the time. NCPD defines “sustained” as “the allegation is supported by sufficient evidence to justify a reasonable conclusion that the allegation is factual.”⁹ We also conclude that NCPD undertakes inadequate investigations and fact-finding in response to citizen complaints because complaint summaries are often missing information and rarely document the findings or conclusion of the investigation. These and other findings detailed below underscore the need for the COPS Office’s comprehensive assessment of the NCPD complaint investigation practices and its policing practices in general, as well as the need for critical reform to eliminate apparent racial bias in NCPD’s policing practices.

ABOUT THE DATA AND SCOPE OF THE REVIEW

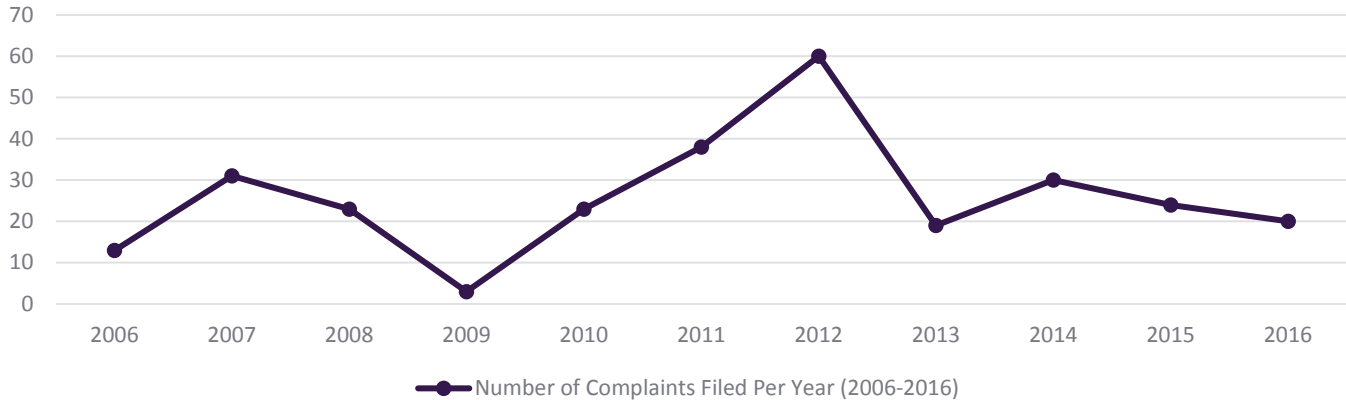
The purpose of this report is to examine the adequacy of the NCPD’s investigation of citizen complaints of police misconduct. We do so by analyzing 10 years of complaint reports and relevant NCPD policies obtained through FOIA requests submitted to the NCPD. In March 2017, the online, nonprofit news organization MuckRock published more than 800 pages of complaint reports received from NCPD for the years 2006 through 2016.¹⁰ The reports obtained by MuckRock are one-page summaries outlining pertinent information presumably assembled by NCPD from each complaint record and do not include the complete records associated with each reported complaint.¹¹

In addition to the MuckRock dataset, more than a year ago, LDF submitted a FOIA request to NCPD requesting records on the number of use-of-force incidents reported by NCPD officers and civilians from January 1, 2012 through December 31, 2015. In response, LDF received 30 one-page complaint summaries like those received by MuckRock. Twelve complaints received by LDF were also included in the MuckRock dataset and 18 were not. It is unclear why the 18 complaints LDF received were not included in the MuckRock dataset; we have included them in our review. We also received NCPD policies governing the investigation procedures for complaints.

FIGURE 1. NUMBER OF CITIZEN COMPLAINT REPORTS FILED PER YEAR
(2006-2016)

N=284

Source: North Charleston Police Department



The LDF/MuckRock dataset includes two categories of complaint reports: those filed by citizens against NCPD officers (citizen complaints), as well as complaints that appear to be filed internally by NCPD or other city personnel against NCPD officers (internal complaints).¹² Although we reviewed both categories of complaints, we analyze each dataset separately and focus our analyses for this report on citizen complaints – 284 complaint reports constituting 343 total complaints – to assess NCPD’s responsiveness to complaints of police misconduct filed by residents. Please note that not all percentages in our analyses add up to 100 percent due to rounding.

We highlight three issues with the dataset provided by NCPD to LDF and MuckRock. First, as noted above, the information contained in the complaint reports we reviewed are one-page summaries of complaints. Second, we presume the complaint reports contained in the datasets were populated by NCPD officers or personnel responsible for investigating the complaints.¹³ Finally, some information is redacted or missing throughout the reports, and in many cases summaries and narratives contained in the reports are either cut off or missing entirely. Because of these issues, it is possible (and likely, in some cases) that the data captured in the reports do not reflect a full, complete or accurate accounting of the facts of certain incidents or submission of factual allegations by residents. Our findings are presented with these caveats.

FINDINGS

Of the 343 citizen complaints reviewed, NCPD personnel divided them into 33 types of complaints. Seventy-three percent of the complaints fell into five categories: code of conduct, conduct unbecoming, use of force, abuse of authority and policy violation.¹⁴ (Figure 1). Of the 343 citizen complaints, NCPD sustained 38 percent. (Figure 2).

FIGURE 2. CITIZEN COMPLAINTS FILED WITH THE NCPD (N=343)
SOURCE: NORTH CHARLESTON POLICE DEPARTMENT

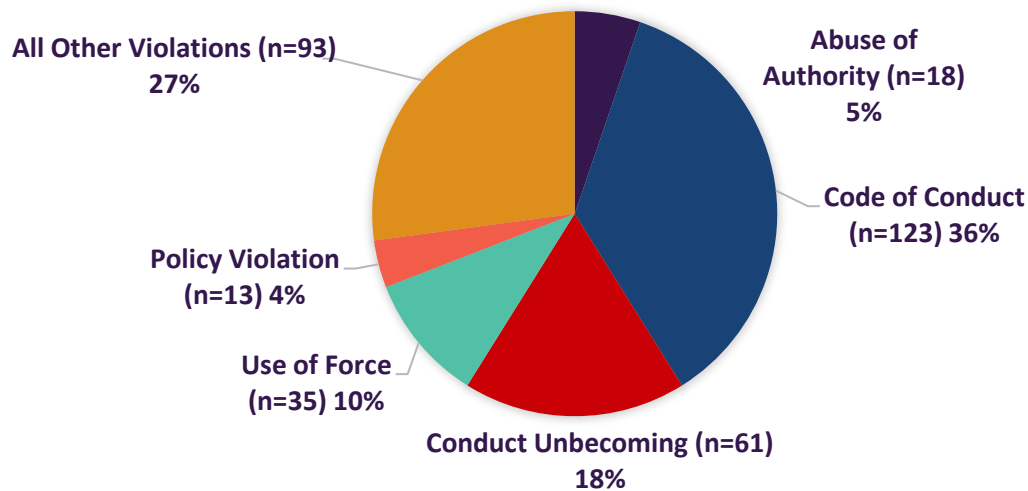
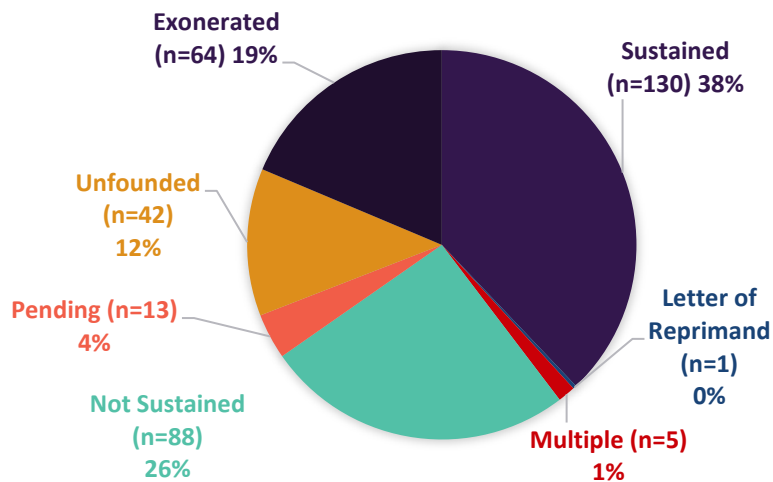


FIGURE 3. DISPOSITION OF CITIZEN COMPLAINTS (N=343)
SOURCE: NORTH CHARLESTON POLICE DEPARTMENT



FINDING I: RACIAL DISPARITIES WERE PERSISTENT AND HIGHLY PRONOUNCED IN THE SHARE, RATE AND OUTCOME OF CITIZEN COMPLAINTS FILED AGAINST NCPD OFFICERS.

Black residents had a disproportionately higher share of citizen complaints against NCPD officers compared to their population, filing 60 percent of complaints even though they comprise only 47.2 percent of the North Charleston population. White residents filed 33 percent of citizen complaints compared to their estimated population of 41.6 percent. In other words, Black residents filed nearly twice as many complaints as White residents, even though their populations differ by only 6 percentage points. (Figure 3)

Although 60 percent of the citizen complaints were filed by Black residents (Figure 4), their complaints were much less likely to be sustained by NCPD than complaints filed by White residents. Overall, NCPD sustained complaints filed by Black individuals 31 percent of the time, but complaints filed by White individuals were sustained 50 percent of the time.

FIGURE 4. RACIAL COMPOSITION OF CITIZEN COMPLAINTS COMPARED TO THE NORTH CHARLESTON POPULATION ESTIMATE
 SOURCES: U.S. CENSUS BUREAU AND NORTH CHARLESTON POLICE DEPARTMENT

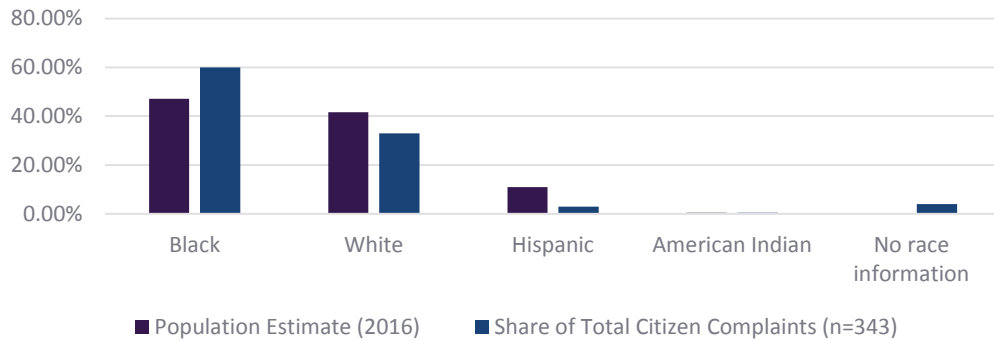
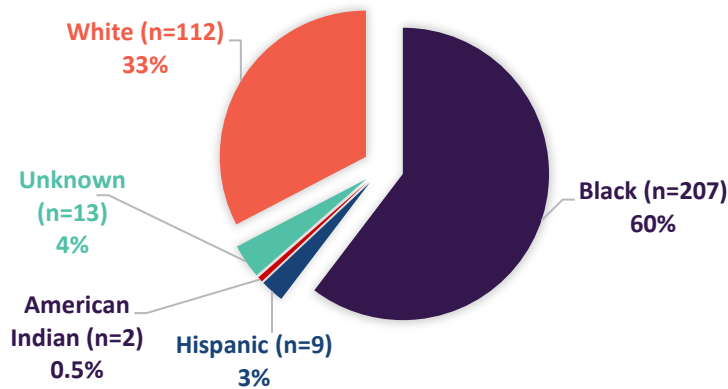


FIGURE 5. CITIZEN COMPLAINTS BY RACE (N=343)
 SOURCE: NORTH CHARLESTON POLICE DEPARTMENT



Racial differences in sustained citizen complaints were even more pronounced for complaints related to allegations of excessive force. Although Black residents submitted twice as many use of force complaints against NCPD officers (23 or 66 percent) than White residents (10 or 29 percent), NCPD sustained complaints filed by Black persons at a rate of 4.3 percent. By contrast, NCPD sustained use-of-force complaints by White residents at a rate of 30 percent – *seven times greater* than their Black counterparts.

The disparate rate of sustained complaints also existed for the two most frequent categories of citizen complaints we reviewed, “conduct unbecoming” and “code of conduct.” Black residents filed approximately the same number of “conduct unbecoming” designated complaints as White residents, 26 percent and 28 percent, respectively. Yet, NCPD sustained complaints by White residents at a rate more than double that of Black residents, 64 percent compared to 31 percent, respectively.

Below is a representative example of a conduct unbecoming and use-of-force complaint filed by a Black resident:

Complainant stated that the officer called him a piece of shit and told him that he should take him out in the country and beat his ass. The complainant stated the officer hit him 3 times in the neck which caused his throat to hurt. Officer received a letter of caution for conduct unbecoming for the statement he made to the complainant. The officer was not sustained on the use of force.¹⁵

Black residents filed almost three times as many “code of conduct” complaints against NCPD as White residents but were only marginally less likely to have their complaints validated (38 percent sustained) compared to their White counterparts (42 percent sustained).

FINDING II: NCPD DOES NOT ACCURATELY CLASSIFY CITIZEN COMPLAINTS.

We identified multiple complaint reports in which NCPD did not accurately classify the type of offense alleged to have been committed by an officer. For example, some complaint summaries or narratives would involve a use-of-force or unlawful search incident, but NCPD designated the complaint as “code of conduct” or “conduct unbecoming.”¹⁶ The following narratives are illustrative:

... the [Black female] complainant came into the office of professional standards and supplied a written statement alleging gross misconduct by ... That on numerous occasions between December 8, 2013 and March 2, 2015, he has come over to her apartment while on duty and has had sexual intercourse with her. The complainant also stated that he has displayed his taser and firearm at her. He has also threatened her with physical harm.¹⁷

Although displaying a taser and firearm and threatening physical harm are clearly allegations of use-of-force, NCPD personnel categorized this complaint as a code of conduct and sustained the allegations. The report does not state what, if any, disciplinary action was imposed on the officer.

According to another report, a Black male complained that on August 31, 2007, NCPD officers

initiated a traffic stop on ... [complainant's] vehicle and approached the vehicle with their guns drawn. The ... complainant and his passenger were pulled out of the vehicle and thrown to their knees and forced to lay on the ground. Complainant stated that ... [the officer] searche[d him].¹⁸

NCPD categorized this complaint as conduct unbecoming and neglect of duty, even though the officer allegedly used force. The investigator sustained the neglect of duty allegation, because the officer “did not issue a warning ticket, which is required by state law.” The investigator did not sustain the conduct unbecoming claim stating that the “use of force was justified.”¹⁹

NCPD identified 35 use-of-force complaints from 2006 to 2016.²⁰ But LDF’s review of complaint reports shows that as many as 54 complaints should have been categorized as use-of-force.²¹ This leads us to conclude that NCPD personnel charged with reviewing complaints are not accurately documenting the nature of citizen complaints and, in many cases, are minimizing the seriousness of the offenses an officer is alleged to have committed.

Similarly, NCPD identified only 12 unlawful search complaints between 2006 and 2016.²² Black residents filed 10 (83 percent) of the complaints, while White residents filed two (17 percent). Only two of these complaints were sustained over a decade, one filed by a Black individual and the other filed by a White individual.

Our review uncovered an additional 22 search complaints made against NCPD officers over this time period, bringing the total to 34, almost three times as many as were identified by NCPD – making unlawful search complaints one of the most frequently reported incidents. Seventy-four percent (25) of search and seizure complaints were filed by Black residents and 24 percent (8) were filed by White residents.

FINDING III: NCPD DOES NOT APPEAR TO ADEQUATELY INVESTIGATE CITIZEN COMPLAINTS FILED BY NORTH CHARLESTON RESIDENTS OR IMPOSE DISCIPLINE WHEN A COMPLAINT AGAINST AN OFFICER IS SUSTAINED.

During our review, we found many complaint reports that did not include basic facts about a complaint and, in many cases, no facts regarding the incident at all beyond the name of the involved officer or officers.²³ For example, one “abuse of authority” complaint we reviewed contains no summary, narrative or witnesses and only lists the officers involved in the incident.²⁴ In another “harassment” complaint, the summary states, “The case was stalled due to continued legal conferences.”²⁵ The complaint report has no other information listed other than the officer involved.

Relatedly, we found that numerous complaint reports lacked any indication that an investigation or fact-finding took place. One complaint documented as a use of force allegation states:

*On 02/06/2016 officers responde dot [sic] the complainant's address in reference to a noise and threats complaint where she was the suspect. The complainant refused to speak with the officers and attempted to walk past them to leave her apartment. Officer ... grabbed her arm, tased her, and arrested her. She feels this was an unnecessary use of force.*²⁶

In this example, the complaint report states the officer was exonerated, which the NCPD defines as “incident occurred, but was lawful and proper.”²⁷ Yet, the investigation and findings that led to that determination are not described.

Additionally, most complaint reports did not list witnesses. Out of 284 citizen complaint reports, only 73 listed witnesses. Of these 73, police officers served as the only witnesses in 44, civilians served as the only witnesses in 16, both officers and civilians were listed as witnesses in nine reports, and no designation was listed for four reports.

The reports also indicate that disciplinary action was rarely taken against officers with complaints sustained against them. Out of the 343 total citizen complaints, 11 sustained complaint reports indicated that some disciplinary action was taken against an officer. The disciplinary actions included: three-month suspension without pay and one-day suspension with pay; letter of caution; loss of 40 hours of leave; suspension; and termination.

CONCLUSION AND RECOMMENDATIONS

Our review of the complaint reports reveals that NCPD does not adequately investigate complaints, document findings or support the final adjudication of complaints. NCPD policy

states that “all investigations ... will be investigated to a factual conclusion ...”²⁸ NCPD should adhere to its own policy and record pertinent details of the investigation that lead to a “factual conclusion.” We offer the following additional recommendations:

1. The COPS Office of the U.S. DOJ should consider the findings in this report and conduct a more expansive investigation of civilian complaints, while it completes the long-awaited assessment of the policies and practices of the NCPD.

2. NCPD leadership should undertake periodic audits of complaint reports to identify officers with multiple complaints, and address racial disparities in complaint filings and outcomes through corrective actions, such as retraining or disciplinary actions, including termination.

3. Make the complaint process more transparent and accessible, and ensure an adequate process for investigating, reviewing and documenting complaints.

- NCPD should improve its online complaint system for residents by including information about how complaints are processed and investigated and posting the NCPD complaint policy on its website.²⁹ Also, NCPD should allow residents to submit written complaints at other locations around the city, such as City Hall.
- A key component of building trust with the community is to “establish a culture of transparency and accountability.”³⁰ According to NCPD’s Policy and Procedure Manual, Policy #A—41, Section 3(11), the Office of Professional Standards conducts an “annual statistical summary of all internal inquiries, which will be available to employees and the community upon request.”³¹ See, Appendix A. The NCPD should post these annual reviews of internal complaints on its website, and make hard copies available at the police department and City Hall.
- NCPD should revise its records retention policy or, at a minimum, adhere to its existing policy so that NCPD and stakeholders have a reliable source of historical information.

According to Policy #A—41, Section 3, F(4), “internal investigation cases files will be retained by the Office of Professional Standards for a period of five years from the final disposition of the investigation and appeal process. At the end of the five-year period, the files will be destroyed.”³² According to a November 2016 email exchange between MuckRock and the NCPD, NCPD only retains complete complaint records for a period of three years.³³ At a minimum, NCPD must adhere to its current policies and conduct annual trainings on records management to ensure all employees understand their obligation to retain paper files. We further recommend that NCPD revise its records retention

policy to retain complete files of complaints against NCPD officers for a minimum of 10 years.

4. NCPD personnel who record, register, control and investigate complaints should undergo anti-bias training.

- Increased awareness of biases is crucial to conducting objective investigations. To mitigate racial bias during the complaint process, from intake to conclusion, NCPD should require all personnel involved in the complaint process to undergo anti-bias training. This training will help personnel have an increased awareness about how subconscious and conscious bias can impact the work of a police officer and community relations.³⁴ Anti-bias training can have a positive effect on how officers interact with the community and help mitigate possible bias in the complaint intake, investigation and adjudication processes.

This report suggests that there are entrenched problems in the NCPD investigation of citizen complaints. These recommendations are just the first steps toward correcting those problems. We invite a more comprehensive and exhaustive review of NCPD, its policies, practices and personnel.

ACKNOWLEDGEMENTS

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ENDNOTES

¹ Rebecca Hersher, *Judge Declares Mistrial in Murder Case Against Former S.C. Police Officer*, National Public Radio (Dec. 5, 2016), <http://www.npr.org/sections/thetwo-way/2016/12/05/504424889/judge-declares-mistrial-in-murder-case-against-former-s-c-police-officer>.

² Alan Blinder, *Ex-Officer Who Shot Walter Scott Pleads Guilty in Charleston*, N.Y. TIMES (May 2, 2017), <https://www.nytimes.com/2017/05/02/us/michael-slager-walter-scott-north-charleston-shooting.html>.

³ German Lopez, *Ex-cop Michael Slager Pleads Guilty to Federal Charge After Killing Unarmed Black Man*, VOX (May 2, 2017), <https://www.vox.com/2015/4/8/8368197/walter-scott-police-shooting>.

⁴ Letter from Sherrilyn A. Ifill et al. to Loretta Lynch, U.S. Att’y Gen., U.S. Dep’t of Justice (July 13, 2015), <http://www.naacpldf.org/document/naacp-ldf-et-al-letter-attorney-general-lynch-re-north-charleston>.

⁵ See, e.g., David Graham, *The Shockingly Familiar Killing of Walter Scott*, THE ATLANTIC (Apr. 8, 2015), <http://www.theatlantic.com/national/archive/2015/04/the-shockingly-familiar-killing-of-walter-scott/390006/>; Glenn Smith & Tony Bartelme, *Pull Over Five Things to Remember When You See the Blue Lights*, POST & COURIER (July 31, 2015), http://www.postandcourier.com/archives/pull-over-five-things-to-remember-when-you-see-the/article_c898fb10-8905-5eba-ba01-7b2d15312fb4.html.

⁶ See, e.g., Jeff Stein, *It Wasn’t Just Walter Scott: The North Charleston Police Department Has a Shocking Record of Abuse Allegations*, SALON (Apr. 8, 2015, 10:15 PM), http://www.salon.com/2015/04/08/it_wasnt_just_walter_scott_the_north_charleston_police_department_has_a_shocking_record_of_abuse_allegations.

⁷ See Andrew Knapp, *Ex-North Charleston Policeman Arrested After Probe into Excessive Force Allegation*, POST AND COURIER (Feb. 8, 2017), http://www.postandcourier.com/news/ex-north-charleston-policeman-arrested-after-probe-into-excessive-force/article_758751ac-ed84-11e6-ba20-57db62ba2d99.html; Glenn Smith, *North Charleston Police Officer Accused of Assaulting Wife in Domestic Incident Captured on Body Camera*, POST & COURIER (Apr. 11, 2017), http://www.postandcourier.com/news/north-charleston-police-officer-accused-of-assaulting-wife-in-domestic/article_7cebef8c-1ebe-11e7-a322-f78c12980b74.html; Glenn Smith & Andrew Knapp, *North Charleston Police Officer Demoted After Sharing Racially-Charged Video with Charleston Thug Life Blog*, POST & COURIER (Mar. 30, 2017), http://www.postandcourier.com/news/north-charleston-police-officer-demoted-after-sharing-racially-charged-video/article_903d99a6-153f-11e7-8186-9328c8bc6b2b.html.

⁸ U.S. DEP’T OF JUSTICE, GOAL AND OBJECTIVES STATEMENT FOR THE COLLABORATIVE REFORM INITIATIVE FOR TECHNICAL ASSISTANCE WITH THE NORTH CHARLESTON POLICE DEPARTMENT, https://cops.usdoj.gov/pdf/crita/CRITA_Goal_and_Objectives_NCPD.pdf.

⁹ NORTH CHARLESTON POLICE DEP’T, NORTH CHARLESTON POLICY AND PROCEDURE MANUAL, POLICY #A-41 (Aug. 1, 2012) (on file with LDF) [hereinafter POLICY #A-41].

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¹⁰ Caitlin Russell, *North Charleston Police Releases Over 800 Pages of Civilian Complaints*, MUCKROCK (Mar. 3, 2017), <https://www.muckrock.com/news/archives/2017/mar/03/north-charleston-police-releases-over-800-pages-ci/>. Though the MuckRock FOIA request was for complaint reports from 2007 to 2016, the records provided to MuckRock also include complaint reports from 2006. See E-mail from Caitlin Russell, MuckRock, to Beth Woodall, Legal Assistant, City of North Charleston (Dec. 2, 2016), <https://www.muckrock.com/foi/north-charleston-2435/north-charleston-police-use-of-force-30168/#comm-343182>. We include the 2006 complaint reports in our review.

¹¹ MuckRock had initially requested “[e]very use of force report made by North Charleston police officers between the years 2010 and 2016” and “[e]very civilian complaint filed against North Charleston police officers between the years 2010 and 2016.” See E-mail from Beth Woodall, Legal Assistant, City of North Charleston to Caitlin Russell, MuckRock (Dec. 2, 2016), <https://www.muckrock.com/foi/north-charleston-2435/north-charleston-police-use-of-force-30168/#comm-343182>. An email exchange published online by MuckRock between MuckRock and the City of North Charleston indicates that, per the NCPD records retention policy, hard copy files containing complete records of complaints against police officers are destroyed after three years, and thereafter NCPD electronically retains a one-page summary sheet of the complaint which contain the pertinent facts of the matter. In response, MuckRock requested the one-page summaries that are the subject of this analysis.

¹² The complaint reports were provided to MuckRock in two zip files, one file labeled “External FOIA” and the other labeled “Internal FOIA.” Some records contained in the “External FOIA” zip file included complaint reports

that were in fact internal complaints and vice versa; we sorted through the complaint reports and grouped together all external complaints and internal complaints for our review.

¹³ See E-mail from Beth Woodall to Caitlin Russell, *supra* note 11; see also POLICY #A-41, *supra* note 9.

¹⁴ Other violations include: accident; arrests, detention, and booking; conduct toward community/co-worker; courtesy; search and seizure; harassment; neglect of duty; biased based policing; driving reckless; equipment violation; evidence procedure violation; failure to attend training; honesty; lost city property/missing property; patrol procedures; prisoner transport; property and evidence; racial profiling; speeding; theft property; traffic collision investigation; traffic enforcement; unauthorized health benefits; unlawful interference; vehicle pursuits and operations; video and audio recording and equipment; violation of city drug policy; and violation of state law.

¹⁵ North Charleston Police Dep't (NCPD), *FULL DETAILS REPORT, COMPLAINTS DETAIL RPT. # A-14, Complaint No. 07-EX019, (Aug. 21, 2007.)* (on file at LDF).

¹⁶ MuckRock writer Caitlin Russell made a similar observation noting that the way a complaint is categorized can be misleading as to the severity of the incident citing as an example: "[A]n officer missing a court date and an incident in which a woman inquired about the arrest of a juvenile suspect only to be arrested for obstruction are both filed under 'conduct unbecoming.'" Russell, *supra* note 10.

¹⁷ NCPD, *supra* note 15, Complaint No. 14-EX002, (Mar. 13, 2014,) (on file at LDF).

¹⁸ NCPD, *supra* note 15, Complaints Detail Rpt. # A-14, Complaint No. 07-EX021, (Sept. 10, 2007,) (on file at LDF).

¹⁹ *Id.*

²⁰ See generally, NCPD, *supra* note 15, Complaints Nos. 13-EX009; 13-EX010; 13-EX011; 13-EX012; 13-EX018; 14-EX025; 15-EX022; 16-EX005; 06-EX009; 07-EX016; 08-EX015; 10-EX006; 10-EX009; 10-EX010; 11-EX010; 11-EX011; 11-EX032; 12-EX021; 12-EX031; 12-EX034; 12-EX035; 12-EX039; 12-EX040; 12-EX054; 12-EX059; 13-EX003; 13-EX005; 13-EX015; 15-EX004; 15-EX005; 15-EX019; 16-EX010; 07-EX019; 08-EX001; 13-EX019, (on file at LDF).

²¹ LDF identified the following additional 19 complaints as use-of-force complaints: NCPD *supra* note 15, Complaint Nos.14-EX006; 14-EX022; 16-EX002; 16-EX003; 07-EX001; 07-EX004; 07-EX017; 07-EX021; 07-EX027; 07-EX028; 08-EX024; 11-EX014; 11-EX021; 12-EX002; 12-EX013; 12-EX038; 12-EX058; 12-EX060; 12-EX004, (on file at LDF).

²² NCPD, *supra* note 15, Complaints Nos. 13-EX 13-EX008; 14-EX007; 14-EX019; 15-EX006; 15-EX008; 15-EX023; 16-EX010; 11-EX020; 12-EX007; 12-EX033; 10-M001, 12-EX023, (on file at LDF).

²³ While we recognize that the complaint reports are intended to be summaries of each complaint record, we presume the information assembled by NCPD in the summaries contain the pertinent facts of the incident that were contained in the full record as indicated by the representative from the City of North Charleston Legal Department. See E-mail from Beth Woodall to Caitlin Russell, *supra* note 11.

²⁴ See, e.g., NCPD *supra* note 15, Complaint No. 06-EX001, (Dec. 5, 2005,) (on file at LDF).

²⁵ NCPD *supra* note 15, Complaint No. 11-EX015, (Mar. 11, 2011,) (on file at LDF).

²⁶ NCPD, *supra* note 15, Complaint No. 16-EX005, (Mar. 2, 2016,) on file at LDF).

²⁷ *Id.*

²⁸ POLICY #A-41, *supra* note 9.

²⁹ The NCPD allows citizens to file a "North Charleston Police Department Compliment – Concerns Form (Informal Complaint)," but does not explain the procedures for filing a complaint, and how it differs from a "Formal Complaint." See North Charleston Police Department Compliment – Concerns Form (Informal Complaint), <http://www.northcharleston.org/Forms/North-Charleston-Police-Department-Compliment-Conc.aspx> (last visited June 16, 2017).

³⁰ U.S. DEP'T OF JUSTICE, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, 85 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf. [hereinafter President's Task Force Report].

³¹ *Id.*

³² *Id.*

³³ See E-mail from Beth Woodall to Caitlin Russell, *supra* note 11.

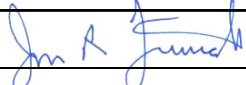
³⁴ PRESIDENT'S TASK FORCE REPORT, *supra* note 30 at 11.

APPENDIX A

North Charleston Police Department Policy and Procedure Manual

POLICY # A – 41



Subject: Professional Standards	Issue/Rev. Date: Aug. 1, 2012
Approved by: 	Effective Date: Aug. 1, 2012
CALEA Reference: 26.1.8, 52.1.1 – 52.2.8, 82.2.2	Page(s): 1 of 5

I. Purpose

To provide members of the department with guidelines by which internal inquiries and investigations are conducted and documented.

II. Policy

It is essential that both the community and the employees of the department possess the confidence that allegations of employee misconduct will be fairly and properly investigated. It is also important that the rights of employees will always be preserved in order to ensure an environment where employees are not unfairly restricted in their efforts to perform their professional responsibilities. The North Charleston Police Department is committed to conducting objective and impartial investigations into all concerns, allegations, and complaints in order to promote community confidence in the department as well as the cumulative mission of law enforcement.

III. Procedure

A. Authority

1. The primary responsibility to conduct administrative internal investigations rests with the Office of Professional Standards.
2. The duty of the Office of Professional Standards is to ensure that the integrity of the North Charleston Police Department is maintained through a system that ensures objectivity, fairness, and justice through impartial investigations and review.
3. The Office of Professional Standards is under the direct authority of the Chief of Police.
4. The Office of Professional Standards is responsible for ensuring that the following activities are accomplished:
 - (a) Recording, registering, and controlling investigations concerning complaints involving employees of the department.
 - (b) Supervising and controlling the investigation of alleged or suspected misconduct within the department.
 - (c) Maintaining the confidentiality of internal investigations and records.
 - (d) Maintaining a comprehensive central complaint file of citizen complaints, whether the investigation was handled by the employee's supervisor or the Office of Professional Standards.
5. The Chief of Police may authorize the Office of Professional Standards to interview any member of the department or review any record or report.
6. The Office of Professional Standards will be responsible for investigations on the following:
 - (a) Discharge of firearms.

- (b) Misconduct which adversely reflects upon the employee and/or department.
 - (c) Complaints of sexual harassment or discrimination.
 - (d) Complaints of internal theft.
 - (e) Review and investigations of use of force complaints.
 - (f) Any other investigation as directed by the Chief of Police.
7. Supervisors with the rank of Lieutenant or greater may be assigned to investigate the following types of complaints:
 - (a) Improper employee demeanor.
 - (b) Violations of department policy and procedure that are non-criminal or would not constitute willful misconduct.
 8. Emergency relief from duty may be imposed by any supervisor at the rank of Lieutenant or above for any of the following types of conduct:
 - (a) Conduct where the employee's continued presence on the job would be offensive to the community or other employees.
 - (b) Conduct that directly affects the operational effectiveness of the department.
 9. Employees who are relieved from duty will be considered on administrative leave without pay, unless otherwise directed by the Chief of Police.
 10. When emergency relief from duty is imposed, the supervisor will immediately notify the Division Commander or the Duty Chief after normal business hours.
 11. Office of Professional Standards will provide the Chief of Police with an annual statistical summary of all internal inquiries, which will be available to employees and the community upon request. This report will be completed no later than January 30th of each year.

B. Receipt of Complaints

1. Procedures for the filing of a complaint will be available to the community via the departmental web site, the departmental Public Information Officer, and posted in the lobby of all police bureaus.
2. All complaints against the department or its employees will be investigated. All employees of the department have the responsibility of courteously and willingly receiving any complaint, including anonymous complaints, that may be lodged against a department member(s), to include any complaints made by telephone, in person, or received through the mail.
3. Complaints received during normal working hours will be received by the Office of Professional Standards. If a member of the office is unavailable, the complainant will be transferred to the appropriate Bureau Commander who will receive the complaint and report it to the Office of Professional Standards as soon as practical.
4. Complaints received after normal working hours will be referred to the ranking shift supervisor, who will document the complaint. The supervisor will complete a North Charleston Police Department Administrative Internal Investigation Field Form and will forward it via their chain of command to the Chief of Police. The North Charleston Police Department Administrative Internal Investigation Field Form is available on the City's Computer Network "I" share drive under Forms (I:\Forms).
5. If a complaint is received after hours and the violation is criminal in nature or one of gross misconduct, the Duty Chief will be notified immediately.

6. The Chief of Police will assign complaints requiring an investigation to the Office of Professional Standards or a supervisor in the employee's chain of command as circumstances dictate.
7. The complaint, whether handled by the Office of Professional Standards or an employee's supervisor, will receive a complaint number generated by the Office of Professional Standards.
8. Complainants will be advised that they will be held responsible for filing false and malicious allegations and that appropriate legal proceedings may be instituted by individual employees for false or malicious allegations.
9. In all cases where complaints are received, an acknowledgment of receipt will be sent to the complainant by the Office of Professional Standards.

C. Investigation Procedures

1. Members of the department who are the subject of a citizen's complaint, or are otherwise involved in the complaint, will not conduct the investigation.
2. Employees of the department will be notified, as soon as practical, if they are the subject of an internal investigation. Employees will also be notified of the allegations against them and their rights and responsibilities relative to the investigation.
3. Upon receipt of a complaint, a member of the Office of Professional Standards will send the complainant a form letter notifying them of the investigative process. If the investigation is not completed within thirty days of initiation, a member of the Office of Professional Standards will notify the complainant of the delay.
4. Generally, all investigations must be completed within thirty days of initiation. If completion of the inquiry is not possible within thirty days, a time extension may be granted by the Chief of Police.
5. Upon completion of an investigation by an employee's supervisor with rank of Lieutenant or above, a report summarizing the investigation must be prepared by that supervisor and forwarded to the Office of Professional Standards for review. This report will be in a format approved by the Office of Professional Standards and attached to the report will be any statements of witnesses, complainants, involved officer(s), and any other pertinent documents.
6. An inquiry conducted by the Office of Professional Standards will be documented and retained in the same manner as an investigation conducted by an employee's supervisor. Completed investigations will be forwarded to the Chief of Police.
7. Final determination and approval of an investigation's status and disposition will be the responsibility of the Chief of Police.
8. Identified complainants will be notified in writing of the investigation disposition by a member of the Office of Professional Standards. Anonymous complaints will be investigated, but due to the nature of the complaint, notification will not be required.

D. Adjudication of Complaints

1. The disposition of all investigations, whether investigated by the Office of Professional Standards or assigned to a supervisor with the rank of Lieutenant or above, will be investigated to a factual conclusion and adjudicated through one of the following findings:
 - (a) Not Involved: Officer was not present at the time the alleged misconduct occurred.
 - (b) Unfounded: Allegation is false or not factual.
 - (c) Not Sustained: Insufficient evidence to either prove or disprove the allegation.
 - (d) Exonerated: Incident occurred, but was lawful and proper.

- (e) Sustained: The allegation is supported by sufficient evidence to justify a reasonable conclusion that the allegation is factual.
- 2. Allegations investigated by the department will be maintained in a secure file within the Office of Professional Standards. Access to these files is limited to the Chief of Police and members of the Office of Professional Standards.
- 3. The Chief of Police will notify the City Attorney of investigations which might result in civil action against the employee or the city.

E. Internal Investigations

- 1. Employees who are questioned in reference to an internal investigation will be advised of their Garrity Warning as per the North Charleston Police Department Administrative Internal Investigation Garrity Warning form.
- 2. Employees are required to truthfully answer questions that are related to his/her duties or employment with the department. Failure to answer such questions or untruthfulness may result in dismissal.
- 3. Answers provided as a result of an internal investigation will not be used against an employee in any criminal proceeding except in cases of perjury or obstruction of justice.
- 4. Answers provided by an employee do not constitute a waiver of the privilege against self-incrimination as it does in criminal matters.
- 5. Attorneys will not be permitted to be present during interviews related to internal investigations.
- 6. If drug or alcohol use is suspected while an employee is on-duty, the employee will be required to submit to an alcohol or drug test. Refusal to submit to an examination will be grounds for dismissal. Examinations for drug or alcohol use will be performed within the guidelines of the City of North Charleston Drug and Alcohol Testing Policy. Copies of the City of North Charleston Drug and Alcohol Testing Policy may be obtained from the City of North Charleston Safety Officer. Procedures for drug and alcohol testing will be as follows:
 - (a) If there is reasonable suspicion to believe that an employee is under the influence of drugs or alcohol, their immediate supervisor will contact the Office of Professional Standards.
 - (b) The Office of Professional Standards will provide the supervisor with guidance on drug and/or alcohol testing in accordance with the City of North Charleston Drug and Alcohol Testing Policy.
 - (c) The supervisor will escort the employee to the forensic certified laboratory designated by the City of North Charleston for blood and/or urine testing. The supervisor will remain with the employee during the testing procedure.
 - (d) If the employee's test indicates a positive reading for alcohol or drugs, the employee will be relieved of duty and will relinquish their badge, credentials, issued weapon, and department vehicle. Upon completion, the escorting supervisor will transport the employee to their residence.
 - (e) The immediate supervisor of the employee who has been relieved of duty will immediately notify their Division Commander or Duty Chief of the test results.
- 7. A photo identification book of department employees may be maintained by the Office of Professional Standards for the purpose of identification by citizens of an employee accused of misconduct.
- 8. Photographs or videotape pictures of employees may be taken for the purpose of internal inquiries when it relates to the employee's job or the employee is suspected of misconduct.

9. An employee may be required to provide financial disclosure statements when it is directly related to allegations of misconduct involving any unlawful financial gain.
10. An employee who is a witness or the subject of an internal investigation may be required to submit to a polygraph examination. The questions asked in such an examination will be narrow and specific in scope, relating only to the investigation.
11. Employees will not be required to participate in physical line-ups for viewing by citizens for the purpose of identifying an employee accused of misconduct.

F. Confidentiality of Inquiries

1. The progress and details of investigations conducted by the Office of Professional Standards are considered confidential information. This confidentiality is required to protect both the accused employee and the complainant.
2. The confidentiality requirement does not preclude the Office of Professional Standards from reporting statistical information on the processing of complaints and inquiries that were received and processed by the department.
3. The Chief of Police has the sole authority and discretion to release information regarding internal investigations to the community.
4. Internal investigation case files will be retained by the Office of Professional Standards for a period of five years from the final disposition of the investigation and appeal process. At the end of the five year period, the files will be destroyed.

APPENDIX B

City of North Charleston Police Department Office of Professional Standards Investigations Yearly Report for 2016

Date of Report: January 30, 2017



External Complaints

There were twenty (20) cases from outside sources during 2016, involving 28 officers. The results of the investigations are as follows:

3 were exonerated

6 were not sustained

10 were sustained - 1 was Terminated, 2 received Written Reprimands, 6 received Letters of Instruction, 1 received Driver Training, and 2 received Chronological Entries.

2 were unfounded

2 are pending

*(Some cases included more than 1 officer)

Internal Complaints

There were fifty-one (51) cases from internal sources during 2016, involving 42 officers. The results of the investigation are as follows:

1 was exonerated

3 were not sustained

1 was unfounded

38 were sustained – 4 were Terminated, 5 received Suspensions, 2 received written reprimands, 24 received Letters of Instruction, and 3 received Chronological Entries.

8 are pending

City of North Charleston Police Department
Office of Professional Standards Investigations
Yearly Report for 2016

Date of Report: January 30, 2017

Bias Based Complaints

There were two (2) Bias-based complaints, involving one (1) Officer and one (1) Duty Officer, investigated by the Office of Professional Standards in 2016. After investigation, both cases were sustained.

Vehicle Collisions

There were seventy-two (72) vehicle collisions that resulted in internal investigations in 2016.

Sixty-two (62) of these investigations officers were sustained on a violation of the Vehicle Pursuits and Operations policy. One (1) received a suspension, ten (10) received Written Reprimands, six (6) received Written Reprimands/Remedial Training (*), forty-three (43) received Letters of Instructions, one (1) received a Letter of Instruction/Remedial Training (*), one loss their take-home vehicle (*), and ten (10) are pending dispositions.

*Discipline was as a result of multiple investigations.

City of North Charleston Police Department
Office of Professional Standards Investigations
Yearly Report for 2015

Date of Report: January 27, 2016



External Complaints

There were twenty-five (25) cases from outside sources during 2015, involving 32 officers. The results of the investigations are as follows:

5 were exonerated

15 were not sustained

8 were sustained - 1 was terminated, 2 received a suspension, 2 received written reprimands and 3 received Letters of Instruction.

3 were unfounded

1 is still pending

Internal Complaints

There ninety-five (95) cases from internal sources during 2015, involving 35 officers. The results of the investigation are as follows:

0 were exonerated

3 were not sustained

0 were unfounded

25 were sustained -2 received suspensions, 6 received written reprimands, 15 received Letters of Instruction and 2 received chronological entries/remedial training.

7 are pending

City of North Charleston Police Department
Office of Professional Standards Investigations
Yearly Report for 2015

Date of Report: January 27, 2016

Bias Based Complaints

There were three (3) Bias Based complaints, involving four (4) officers in 2015. One (1) complaint was unfounded and the other three (3) officers were not sustained on the allegation.

Vehicle Collisions

There were fifty (57) vehicle collisions that resulted in internal investigations in 2015.

Forty-six (49) of these investigations officers were sustained on a violation of the Vehicle Pursuits and Operations policy. One (1) received a suspension, one (1) received a suspension and a Performance Improvement Plan (PIP) (*), eight (8) received written reprimands, one (1) received a written reprimand and remedial training, thirty-six (36) received Letters of Instruction, two (2) received chronological entries, and eight (8) are still pending dispositions.

*Discipline was as a result of multiple investigations.

City of North Charleston Police Department
Office of Professional Standards Investigations
Yearly Report for 2014

Date of Report: January 9, 2015



External Complaints

There were thirty-five (35) officers investigated for complaints in thirty (30) cases from outside sources during this year (January 1, 2014 through December 31, 2014).

10 were exonerated

11 were not sustained

11 were sustained 2 were terminated, 1 received a suspension, 2 received written reprimands, 5 received Letters of Instruction and 1 received a chronological entry.

0 were unfounded

3 are pending

Internal Complaints

There were one hundred twenty-eight (128) officers investigated for complaints in one hundred twenty (120) cases from in-house sources during this year (January 1, 2014 through December 31, 2014).

1 was exonerated

3 were not sustained

0 was unfounded

115 were sustained 4 were terminated, 5 received suspensions, 35 received written reprimands, 64 received Letters of Instruction and 6 received chronological entries/remedial training. ***Two sustained investigations led to the termination of one (1) officer***

8 are pending

City of North Charleston Police Department
Office of Professional Standards Investigations
Yearly Report for 2014

Date of Report: January 9, 2015

Bias Based Complaints

There were two (2) Bias Based complaints on four (4) officers for the year 2014. The officer in one complaint was exonerated and the three (3) officers in the second complaint were not sustained on the complaint.

Vehicle Collisions

There were fifty (50) vehicle collisions that resulted in internal investigations during this year (January 1, 2014 through December 31, 2014). One (1) officer was exonerated, one (1) officer was not sustained and two (2) investigations are still pending a disposition.

In forty-six (46) of these investigations officers were sustained on a violation of the Vehicle Pursuits and Operations policy. 1 was terminated, 1 received a suspension, 13 received written reprimands, 29 received Letters of Instruction, 2 received chronological entries, and 3 are still pending dispositions.

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INSTITUTE

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