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Mayor

CITY AND COUNTY OF DENVER

AGENCY FOR HUMAN RIGHTS AND COMMUNITY RELATIONS

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PUBLIC SAFETY REVIEW COMMISSION

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April 21, 2005

Gerald R. Whitman
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

Commander Fred Oliva
Denver Sheriff's Department
City and County Building
1437 Bannock Street, 5th Floor
Denver, CO 80204

Re: Recommendations involving Electronic Restraint Device (ERD/Tasers)

Dear Chief Whitman and Commander Oliva:

The Public Safety Review Commission ("PSRC") received a request from the American Civil Liberties Union ("ACLU") in February of 2004 asking the PSRC to review the Denver Police Department's ("DPD") use of force policy as it pertains to Tasers. The ACLU also sent a letter dated February 26, 2004 to Chief Whitman outlining the basis for their request. Specifically, the ACLU requested that DPD "forbid officers from using taser[s] in situations that do not present a true threat to human life or a threat of serious bodily injury." The ACLU urged the PSRC to conduct an inquiry to determine "whether the claims made for the Taser's safety are sufficiently trustworthy to justify the [DPD] use-of-force policy, which permits officers to use the weapon on suspects who present no threat to life or limb."

DPD's policy allows a Taser to be deployed

1. [t]o incapacitate a combative or physically resistive person whose conduct rises at least to the level of Active Aggression. . . (Active Aggression – A threat or overt act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.) OR
2. In situations when its use is likely to prevent an officer or a third person from seriously [sic] bodily injury, OR
3. To incapacitate a suicidal person who cannot be safely controlled with other force options.

The Denver Sheriff's Department allows a Taser to be deployed when

[q]uelling a disturbance, preventing escape, protecting the welfare of inmates, staff and the public, and preventing extensive damage to property by inmates. . . can be used when self-defense is justifiable or when an inmate in our custody physically resists a lawful order.

Over the last year there have been many articles questioning the safety of the Taser and some cities have implemented more restrictive policies. In an article titled *Mesa weighs police policy on stun gun use*¹

¹ All the articles referred to in this letter were posted on the NACOLE Update listserv.

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from the Tribune dated March 8, 2005, reporter Ray Stern noted that the Mesa police were considering a more restrictive policy. In Mesa, officers can use Tasers against people who assume a fighting stance or otherwise seem as if they are about to attack or if a crime suspect runs from the police. Mesa Officers recommended moving stun guns up a notch on the department's use of force scale, so that shocking running suspects would be limited and restrict the use to physical actions of aggression. In Mesa a suspected burglar became a quadriplegic after being shocked and falling from a tree. The USA Today reported on March 18, 2005 that the Department of Homeland Security's two largest law enforcement divisions rejected the use of stun guns, largely because of questions about the safety of the devices.

In a March 14, 2005 opinion piece by John W. Whitehead titled *Tasers: Stop the Use of this Dangerous Weapon*, Mr. Whitehead notes that in a recent study compiled by Amnesty International that in instances where Tasers are used, 80 percent of the time they are used on unarmed suspects. In 26 percent of the cases, they are used for verbal non-compliance, but only three percent of the time are they used for cases involving deadly assault. He also notes that since 2001, more than seventy people are reported to have died in the United States and Canada after being struck by a Taser. Further, most of the persons killed were unarmed men and while the men may have been displaying disturbed or combative behavior, they did not present a serious threat to the lives or safety of others. Some of them were subjected to extreme levels of force including repeated Taser discharges even when handcuffed or on the ground.

The International Association of Chiefs of Police ("IACP") released, April 4, 2005, a report titled *Electro-Muscular Disruption Technology: A Nine Step Strategy for Effective Deployment*. Besides the nine steps recommended for deployment the report also advised checking the IACP website for current information on Tasers, sample policies, training protocols, reports and information sources. IACP also issued a concepts and issues paper in January of 2005 on Electronic Control Weapons in conjunction with a policy recommendation on Electronic Control Weapons. The DPD and DSD's review of the IACP report, paper and policy and implementation of their recommendations would go a long way towards addressing the safety concerns raised by the ACLU.

The major concern raised by the ACLU is that Tasers may be used in situations that do not present a true threat to human life or a threat of serious bodily injury. It appears that Tasers are used in situations in Denver to "avoid wrestling, pushing, chasing or negotiating."² According to Denver Post research, two-thirds of those charged after being tased faced only a misdemeanor crime or a citation, officers tased at least 16 people who were already handcuffed, 90 percent did not carry a weapon and in 43 cases police failed to note in court papers that they used a Taser to apprehend the accused and called an ambulance, both of which are required by department policy.

The PSRC's concern is that Tasers appear to have devolved into a weapon used by the DPD and DSD to obtain compliance. In fact, the DPD's definition of "active aggression" would allow an officer to use a Taser after receiving a verbal threat from a citizen and in many instances the Taser is used when a suspect is running away from the officer. Therefore, the PSRC recommends that the DPD and the DSD adopt the recommendations in the February 26, 2004 letter from the ACLU to Chief Whitman. Specifically, the DPD and DSD should prohibit officers from using the Taser in situations that do not present a true threat to human life or a threat of serious bodily injury. Further the DPD and DSD should tighten the reporting requirements in its use-of-force policy to ensure that officers fully report all pertinent details whenever a Taser is deployed, including the information from the computer chip now installed on all Tasers which shows the number of times the weapon has been deployed. The PSRC recently learned that the computer chip in a Taser being checked was malfunctioning, so that there was no record of how many times it had been deployed. It did not appear from the information provided to the PSRC that there is currently any protocol for making sure that the Taser computer chip is in working order or that there is a procedure in

² *Police Tasers set to Stun*, by David Migoya, The Denver Post, May 4, 2004.

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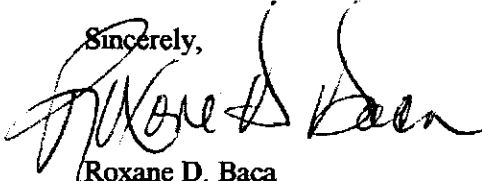
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place to check the computer chip to verify when the Taser was deployed or that a use of force report had been completed. These procedures should also be added to the DPD and DSD protocol for Tasers.

Finally, while officers are required to complete a use-of-force report each time a Taser is deployed, no one outside the DPD reviews how the Taser is deployed, whether the deployment matches the computer chip record in each Taser, or whether the Taser deployment was warranted. As you know, the PSRC sunsets on May 2, 2005. Therefore, the PSRC recommends that the Citizen Oversight Board review these reports for all Tasers on a monthly basis beginning immediately. A copy of our letter will be sent to the Monitor and the Chair of the Citizens Oversight Board for follow-up on our recommendations. If you have any questions, please do not hesitate to contact me directly at (303) 866-5696.

Sincerely,



Roxane D. Baca
PSRC Chair

Cc: Mark Silverstein, Esq. ✓
Mayor John Hickenlooper
Alvin LaCabe, Manager of Safety
Monitor Richard Rosenthal
Joseph Sandoval, Chair of the Citizens Oversight Board