

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

ADDITIONAL DATA ELEMENTS SUBCOMMITTEE
MEETING MINUTES

Friday, October 14, 2016

Teleconference Locations: California Department of Justice Offices

Los Angeles

300 S. Spring Street
5th Floor Conference Room
Los Angeles, CA 90013

Oakland

1515 Clay Street
20th Floor, Suite 2000
Oakland, CA 94612

San Diego

600 West Broadway St.
Suite 1800
San Diego, CA 92101

Sacramento

1300 "I" Street
Conference Rm. 1540
Sacramento, CA 95814

Other Teleconference Locations:

Kings County Sheriff's Office
1444 W. Lacey Blvd., Administration Building
Hanford, CA 93230

Stanford University
Jordan Hall, Room 106
450 Serra Mall
Stanford, CA 94305

Subcommittee Members Present: Chair Edward Medrano, Jennifer Eberhardt, Andrea Guerrero, David Robinson, Tim Silard

Subcommittee Members Absent: Mike Durant, Honorable Alice Lytle

California Department of Justice Staff Present: Nancy A. Beninati, Shannon Hovis, Rebekah Fretz, John Applebaum, Kathy Radez, Glenn Coffman, Jerry Szymanski, Jenny Reich

1. Call to Order and Introductions

The meeting was called to order at 11:10 a.m. by Chair Medrano. RIPA Board members and DOJ staff members were introduced.

2. Approval of Minutes

Motion: Member Guerrero moved to approve the minutes from the prior subcommittee meeting. The motion was seconded by Member Robinson.

Votes: The motion passed with Chair Medrano and Members Eberhardt, Guerrero, and Robinson voting “yes”; no “no” votes; no abstentions (Member Silard was not present at this time).

3. Continued Discussion of Additional Data Elements and Values

a. Officer identification number

Chair Medrano opened the discussion by referring Board members and the public to the document provided by DOJ staff listing the data elements collected by various law enforcement agencies in California, Connecticut, New York, and Texas, as well as the recent data collection recommendation issued from the U.S. Department of Justice to the San Francisco Police Department.

Member Robinson commented that RIPA is clear that the Department of Justice cannot provide information showing the unique identifying information of the officer, and suggested that the agency generate a unique identifier for each officer that is not disclosed so that the agency can deal with issues as to specific officers within the confines of the Public Safety Officers Procedural Bill of Rights Act (POBAR).

Chair Medrano agreed with these concerns, but commented that agencies will not be able to correct problems if they cannot identify individual officers. He suggested that each officer be provided with a unique identifier that will not change by the agency and that the agency retain the cipher.

Member Guerrero relayed a discussion at the Technology Subcommittee meeting with CJIS staff that officer anonymity is technically possible, and suggested this Subcommittee focus on the type of information that would be required by the officer.

Member Eberhardt explained that officer-level data is necessary not just to identify particular officers who might be engaged in problem behavior but also to understand the nature of the data and what may be producing racial disparities, if any. For example, the Oakland Police Department analysis did not single out particular officers, but revealed that only 20 percent of the department was making the majority of stops and searches, and that more senior officers and women were making relatively fewer stops.

Motion: Later in the meeting, Chair Medrano moved that agencies assign each officer a permanent unique identifier to be used in reporting data to the DOJ and in any RIPA data report, with the cipher to be retained by the agency. Seconded by Member Guerrero.

Votes: The motion passed with Chair Medrano and Members Eberhardt, Guerrero, Robinson, and Silard voting “yes”; no “no” votes; no abstentions.

b. Officer demographic information

Member Robinson commented that officer demographic information (gender, race, years of service, etc.) should not be included because it will necessarily be amenable to re-

identification for smaller agencies. If the information is collected, it should stay within the department and not be relayed to the public.

Ms. Hovis commented that the DOJ deals with the risk of re-identification whenever it releases data, particularly in the context of OpenJustice, and represented that the DOJ errs on the side of caution: if there is a possibility of re-identification, the practice is either to redact or report that data in a summary fashion only. Nancy Beninati further commented that while the DOJ redact the information or object to disclosure in response to a PRA request, release could still be ordered pursuant to litigation on a case-by-case basis. Neither the DOJ staff nor members of the Board were aware of examples in which an agency decision to redact such information had been challenged in litigation or overturned by a court.

Member Eberhardt explained that a lot of agencies collect officer demographics and assignment information in order to determine if disparities can be traced to particular assignments or other factors. She cautioned that if the data is too limited to examine such causes, the public will assume that disparities result from officer bias. She noted that both LAPD and OPD collect this information and have never had a problem with redacting it. She later explained that demographic information could be used to determine whether gender or length of service matters based on aggregate analysis that would not identify any particular officer.

Member Robinson responded that the agencies already have that information in officer's personnel files, and reiterated it should not be reported to the DOJ—particularly if it cannot be included anyway in the public data.

Turning to the type of information that might be collected, Member Guerrero identified two categories of data in the sample document: service characteristics (special assignment, beat, length of service, and rank) and demographic characteristics (age, race, and gender).

(Member Silard arrived at this point.)

Nancy Beninati explained that if this information were reported to the DOJ but redacted from public release to avoid officer re-identification, the RIPA Board might still be able to make use of it in preparation of its annual report if it could be reviewed during a closed session or protected in some other manner, but Ms. Beninati was not aware whether that was possible. Ms. Beninati stated that DOJ staff will need to conduct additional research to determine whether and how officer-level data could be shared with the RIPA Board without resulting in public disclosure of officer identity, but that was not an issue that had been resolved as of the meeting.

Member Silard suggested a distinction might be made based on agency size, and that perhaps these concerns don't exist for agencies with greater than 334 officers (the first three tiers of RIPA reporting). Chief Medrano agreed with this idea, noting that the issue is of particular concerns for smaller agencies where only a small number of officer might fit a particular demographic profile. Member Eberhardt cautioned that the re-identification problem might still exist at larger agencies, but suggested this type of tiered system could present an initial safeguard if coupled with review by the DOJ. Member Guerrero raised a concern that limiting data collection to larger agencies might be inconsistent with the intent of RIPA.

Public comment: Michelle Wittig/Coalition for Police Reform, Santa Monica, commented that the purpose of RIPA is to address racial profiling of members of the public, and that it's not important to know the race/ethnicity of the police officer, but rather whether there are individual officers regardless of any demographic characteristic that are bad apples. She emphasized the need for consistent data over time, and noted that, in Santa Monica, the officer's identifying number changes with every shift. Chair Medrano clarified that the officer's unique identifier will not change over time.

Peter Bibring/ACLU commented that the charge of this project is to identify patterns, and therefore it is crucial that the Board has access to officer demographic data even if the data is not available to the public. For example, we want to know whether greater experience reduces disparities, or whether African American officers show the same association of particular subject characteristics with criminality as do white officers. The text of the legislation, particularly Gov. Code, § 12525.5(d) supports this by suggesting that other unique identifying information would be collected but not made public where race or other demographic information within smaller agencies might permit re-identification.

Professor Jack Glaser/U.C. Berkeley commented that there are multiple opportunities to ensure officer identities are not made public and a lot of ways to do this. First, agencies might have an opportunity to redact demographic information susceptible to re-identification when they merge that information from officer files according to the agency-assigned unique identifier. Second, the DOJ would have an opportunity to review both public data and data analysis to prevent the release of information susceptible to re-identification. Professor Glaser also noted that officer demographics are critical as the purpose of RIPA is not to weed out bad apples but to identify trends as to the nature of the problem, which is often a systemic rather than individual problem.

Gena Rinaldi/Disability Rights California agreed; officer identities should be protected, but demographic information will help patterns to emerge at the department level, which is important. Omitting demographics will limit what we can do afterwards in terms of analysis.

Cory Salzillo/State Sheriff's Association commented that the DOJ will not always know when or what to redact because it will vary by agency and, in any event, the information may be discoverable in litigation. He questioned why the race, age, or duty of the officer matters, arguing that, if there is a trend showing that a particular officer is stopping an inordinate number of Hispanics, etc., the officer's demographic profile is not relevant. In response to a question by Member Eberhardt, Cory noted that being unable to provide any examples of disclosure suggests we are moving "into uncharted territory."

Member Guerrero commented that she appreciates all of these concerns, but noted that individual agencies are always susceptible to PRA requests that would expose the identity of an officer, and that the Subcommittee's proposals today would not necessarily increase that liability. She further commented that the purpose of RIPA is to respond to an ongoing national and statewide debate because there is an epidemic of violence and abuse and we do not understand why. The purpose of RIPA is not limited to how individual departments should respond to bad apples—that's already the agency's job—but to enable state level analysis.

Chair Medrano asked DOJ staff whether there is a standard used by DOJ to determine when redaction is necessary to prevent reidentification. Ms. Hovis reported that CJIS is working on a standard and that redactions are currently handled on a case-by-case basis.

Chief Medrano suggested that it would be possible for agencies to merge unique identifiers with personnel files in order to report officer demographic information to DOJ, and allowing the data to pre-load so the officer does not have to fill it in during each stop. As a technical point, Chair Medrano later suggested that the system should record the officer's birth year rather than prompt for age, which will change over time.

Motion: Chair Medrano moved that, in addition to the officer's unique identifier, agencies should be required to collect and report the reporting officer's age, gender, length of service, and race, provided that the regulations should specifically address redaction of any information that could be used to re-identify the officer. The regulations should not require data element for rank because it is subject to change over time. Seconded by Member Guerrero.

Votes: The motion passed with Chair Medrano and Members Eberhardt, Guerrero, and Silard voting "yes"; Member Robinson voting "no"; no abstentions.

Motion: Chair Medrano moved that, in addition to the above data elements, agencies should be required to collect and report the reporting officer's assigned, using pre-filed options (patrol, special task force, traffic, etc.) to be determined by CJIS.

Member Silard commented that this data element will help clarify whether seemingly-skewed data is a result of officer assignment (for example, an officer assigned to a Latino gang task force) versus bias. Chair Medrano agreed, noting that this request has come up before and will help to address that concern, along with the data element for self-initiated versus required action.

Votes: The motion passed with Chair Medrano and Members Eberhardt, Guerrero, and Silard voting "yes"; Member Robinson voting "no"; no abstentions.

c. Other actions taken by officer

Chair Medrano referred the subcommittee members to item 21 on the sample template, explaining these options were provided by the Definitions Subcommittee for this Subcommittee's review. He also noted that the FBI has started an initiative to collect officer use-of-force data nationwide and suggested that, to the extent possible, these data collection efforts should be considered together to avoid multiple reports or inconsistencies. He asked DOJ staff whether CJIS could address how to make the choices for actions taken by officer consistent with the proposed FBI requirements, as well as A.B. 71. Jenny Reich explained that CJIS is looking now at the various requirements and exploring technology options for standard collection and transmission.

Public Comment: Professor Glaser asked whether "other use of force" could be broken down further to distinguish actions along the continuum of physical force (i.e., guiding a subject into a vehicle versus a blow to the body).

A member of the public in San Diego commented that he attended the Definitions Subcommittee meeting and that the discussion there did not consider “guiding” without injury to be reportable. Chair Medrano explained that agencies define use of force differently, and that it might be difficult for the data form to get more detailed.

Member Eberhardt commented that there was some discussion about including a data value for pointing a firearm as a mid-point between unholstering and discharge, explaining that the community sees a big difference between a “low ready” position versus a pointed firearm, and that such concerns resulted in a change of policy at OPD. Ms. Hovis confirmed that the Definitions Subcommittee minutes do not reflect any decision on whether to add “pointing a firearm.” Member Silard suggested added a category for pointing a weapon; specifically, a firearm (versus Taser, etc.)

Motion: Member Silard moved to add an option between unholstered weapon and discharged weapon to reflect that the officer pointed his or her firearm at the subject. Seconded by Member Eberhardt.

Votes: The motion passed with Chair Medrano and Members Eberhardt, Guerrero, Robinson, and Silard voting “yes”; no “no” votes; no abstentions.

d. Other characteristics of the person stopped, including perceived disability status

Member Silard asked DOJ staff to direct the subcommittee to the letter received by advocacy groups. Ms. Hovis referred the subcommittee to two letters:

- A June 14, 2016 letter from ACLU of California, Disability Rights of California, NAMI California, The Arc California, National Black Disability Coalition, Independent Living Resource Center San Francisco, and a community advocate recommended that officers be required to respond yes or no to a number of disability data options, including Welfare and Institutions Code § 5150 or § 5585.20; other signs, symptoms, or evidence of mental illness, mental health disability, or emotional crisis; signs or evidence of intellectual/developmental disability; signs or evidence of autism spectrum disorder; signs or evidence of deaf or hard of hearing; and other disability.
- A September 15, 2016 letter from ACLU of California, Asian Americans Advancing Justice, Youth Justice Coalition, Alliance for Boys and Men of Color, and PolicyLink recommended a data element for signs of perceived disability and set forth the following corresponding data values with check boxes for either “yes” or “no”: signs of deaf/hard of hearing; signs of other physical disability; signs of mental health/psychiatric condition or episode; and signs of developmental/intellectual disability.

Chair Medrano suggested this data element should utilize check boxes rather than yes/no responses to streamline reporting. Member Robinson agreed, and recommended that that data

element specifically include “perceived” so that officer do not feel they need to ask the subject about specific disabilities.

Public Comment: Disability rights advocates in Oakland represented that these letters reflect their position.

Motion: Member Medrano moved to recommend the more expansive of the two lists (the June 14, 2016 letter). Seconded by Member Robinson.

Votes: The motion passed with Chair Medrano and Members Eberhardt, Guerrero, Robinson, and Silard voting “yes”; no “no” votes; no abstentions.

e. Reasonable suspicion

Chair Medrano directed Subcommittee members to the minutes from the last meeting and list of data elements collected by other jurisdictions provided by DOJ staff.

Member Silard commented that there was agreement at the last meeting that a checkbox for “reasonable suspicion” doesn’t provide sufficient information about the underlying facts that lead the officer to that legal conclusion. He further commented that his recollection of police reports is that there tend to be a discrete number of recurring bases for reasonable suspicion.

Chair Medrano referenced a discussion at the last meeting to include a narrative box limited to 140 characters or less, or other options to minimize the reporting time. Member Eberhardt would prefer an open box.

Member Silard referred Subcommittee members to page 9 of the data elements document, providing the various options used by the NYPD in its data collection, and suggested the DOJ should use the lists on pages 9 and 17 of that document as a starting point to provide as broad a range as possible, with a required text box if the officer selects “other.”

Member Eberhardt commented that NYPD is removing “furtive movements” as an option because it is too subjective; as a result, it is a field where you are likely to see racial disparities. Member Silard suggested the option should be retained if that is the reason the officer made a stop, and that including this as a data option is not a commentary on whether it is a sufficient basis for a stop. Member Eberhardt explained that providing the data value might offer officers a justification for a stop that is not truly justifiable. Chair Medrano referenced page 17 (U.S. DOJ recommendations to SFPD), where the U.S. DOJ recommended that the option for furtive movements be retained but coupled with a required brief explanation.

Public comment: Professor Glaser noted that the NYPD form is only for pedestrian stop and frisk, which is why it omits any traffic stop options. He further explained that NYPD was removing furtive movements because it is subjective, accounted for half of all stops in New York, and resulted in a particularly low yield rate for contraband and weapons. He suggested the list include “other” and should require additional details regardless of the officer’s selection because a yes/no response does not provide a lot of information. He commented that NYPD

found most stops were attributed to a small number of stop basis, and that fruitful stops were attributed to an even small number.

Peter Bibring/ACLU agreed with the proposal to incorporate the U.S. DOJ recommendations, plus a Penal Code drop box. He suggested the text box should be an option for all reports and not limited to “other,” and suggested the DOJ incorporate the language used by OPD prompting the officer to provide “additional information” where necessary.

Michelle Wittig/Coalition for Police Reform, Santa Monica suggested that, if furtive movements is included as an option, DOJ should follow the example on 17 to require further explanation.

A representative from the Los Angeles County Sheriff’s Department asked whether the “reasonable suspicion” category would provide drop down options or simply a field to describe. Chair Medrano clarified that the current proposal was that the officer would be prompted to select a basis for the stop from a pre-set selection or to select “other” and enter a brief description.

Chair Medrano concluded that none of this discussion was contrary to the decisions made at the prior meeting, and that the committee did not have any further specific recommendations to make on the data values for “reasonable suspicion.”

4. Adjourn

Chair Medrano adjourned the meeting at 1:00 p.m.