

**MONITORING CITIZEN COMPLAINTS THAT INVOLVE
POLICE RESPONSE TO REPORTS OF HATE CRIME**



**REPORT AND RECOMMENDATIONS OF THE
POLICE COMPLAINTS BOARD**

TO

**MAYOR ADRIAN M. FENTY,
THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND
CHIEF OF POLICE CATHY L. LANIER**

September 30, 2009

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Table of Contents

I.	Introduction and Overview.....	1
II.	Police Misconduct Complaints that Allege Failure to Provide Adequate Police Service in Response to Reports of Hate Crime.....	2
III.	Addressing Community Concerns and Combating Underreporting of Hate Crimes.....	5
IV.	Recommendations.....	7
V.	Appendix.....	9

I. INTRODUCTION AND OVERVIEW

In 1989, the District of Columbia enacted the Bias-Related Crime Act¹ to address the problem of hate crimes committed in the District. The statute defines a hate or bias-related crime as any criminal act or attempted criminal act that demonstrates prejudice against the victim's actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness, physical disability, matriculation, or political affiliation.² The law provides increased penalties for criminal acts motivated by bias or hate and provides victims a civil cause of action for damages.³ Additionally, to keep District government officials and the public informed of the extent of bias-related crime and to facilitate proactive deterrence of such offenses, the statute: 1) requires the Mayor to collect and compile data on the incidence of bias-related crime; and 2) directs the Mayor to publish annually a summary of the data collected and to transmit the summary and related recommendations to the D.C. Council.⁴

Between January 2008 and October 2008, a series of violent acts committed in the District against members of the lesbian, gay, bisexual, and transgender (LGBT) community that appeared to be motivated by bias against sexual orientation and/or gender identity raised concern about the District's ability to respond effectively to and prevent the occurrence of hate crimes. To address the community's concerns, the D.C. Council's Committee on Public Safety and the Judiciary convened a hearing on December 12, 2008.⁵ Community members, representatives of advocacy groups, and District agency officials testified. Among the views expressed was a belief by some that the District and the federal government have not devoted sufficient resources to identifying, investigating, prosecuting, and preventing hate crimes. Participants also expressed concern that the incidence of hate crime in the District is underreported and not adequately tracked and publicized as required by the Bias-Related Crime Act.⁶

The Office of Police Complaints' (OPC) executive director, Philip K. Eure, testified at the hearing that it may benefit the District's hate crime prevention efforts to begin monitoring the filing and disposition of complaints involving citizen attempts to report hate crimes. OPC annually receives a large number of complaints from members of the public expressing dissatisfaction with the way MPD officers handled reports of crime. OPC refers the vast majority of such complaints to MPD because most do not also allege conduct that is within OPC's statutory jurisdiction to investigate. However, a small number of complaints that have

¹ D.C. Official Code §§ 22-3701- 22-3704 (2009).

² *Id.*

³ *Id.*

⁴ D.C. Official Code §§ 22-3702 (b) and (d).

⁵ *See* Public Hearing, Council of the District of Columbia, Committee on Public Safety and Judiciary, The Honorable Phil Mendelson, Chair (Dec. 12, 2008).

⁶ *See Id.*

alleged both conduct within OPC's jurisdiction and concern about MPD's handling of reported crimes have involved citizen attempts to report possible hate crimes. Based on these data, it appears possible that some of the complaints OPC has referred to MPD may have involved attempts to report hate crimes. OPC is unaware how many of its referrals to MPD have a hate crimes nexus because the agency did not previously track the types of crime underlying "failure to provide police service" complaints, and MPD does not publicly report on the disposition of these complaints.

MPD also likely directly receives complaints expressing dissatisfaction with the level of police service received in response to attempts to report hate crimes, as members of the public have the option to file police misconduct complaints either with OPC or MPD. Regardless of which agency receives such complaints in the first instance, the current handling and disposition of such complaints is not formally monitored by the city. However, because complaints that allege inadequate provision of police service in response to hate crime reports may provide useful information that could help MPD and other District agencies, including OPC, identify and develop better ways to respond to victims and witnesses of hate crime and ultimately help reduce not only the occurrence of hate crimes but also the incidence of police misconduct, the Police Complaints Board (PCB), OPC's governing body, recommends that a collaborative monitoring effort, involving MPD, OPC, and any other District agencies that receive relevant complaints, be formally undertaken.⁷ In the same vein, PCB also urges the District to comply with its legal obligations under the D.C. Bias-Related Crime Act to collect, compile, and publish hate crimes data and use the data to develop or improve initiatives aimed at preventing hate crimes.

At the December 12, 2008, D.C. Council hearing, OPC's executive director also recommended that MPD address community concerns about the adequacy of police response to hate crimes and other issues, such as the possible underreporting of certain hate crimes, through its participation on community advisory boards such as the Fair and Inclusive Policing Task Force (formerly the Biased Policing Task Force), which advises and provides community input to MPD in developing policies and training to address racial profiling and other forms of police bias in Washington. Since that time, PCB has learned of MPD's active involvement in the D.C. Bias Crimes Task Force, a partnership between law enforcement and District-based community groups that engages in significant outreach and education on the issue of hate crime in the District. PCB therefore recommends that MPD use its involvement with the Fair and Inclusive Policing Task Force and the D.C. Bias Crimes Task Force to address citizen concerns about law enforcement's handling of hate crimes and to take action to ensure that District law enforcement responds appropriately to all of the constituencies covered by the D.C. Bias-Related Crime Act, particularly groups for which hate crimes may be underreported.

⁷ PCB is making these recommendations pursuant to D.C. Official Code § 5-1104(d), which authorizes the Board to recommend action to the Mayor, the Council of the District of Columbia, and the MPD and DCHAPD Chiefs of Police if the measures have the potential to reduce the incidence of police misconduct or improve the citizen complaint process. PCB is grateful to the following OPC staff who assisted in researching and drafting this report: Philip K. Eure, Executive Director, who supervised the project; Nicole Porter, special assistant; and attorney Angela Kiper.

II. POLICE MISCONDUCT COMPLAINTS THAT ALLEGE INADEQUATE POLICE SERVICE IN RESPONSE TO REPORTS OF HATE CRIME

OPC, which is independent of MPD, does not investigate complaints from citizens who believe they are victims of hate crimes perpetrated by other citizens. Rather, OPC receives, investigates, and resolves complaints from the public alleging police misconduct by members of MPD and the D.C. Housing Authority Police Department (DCHAPD). To be within OPC's jurisdiction, a complaint must allege that an MPD or DCHAPD police officer abused or misused his or her police powers by engaging in one of six types of conduct: 1) harassment; 2) use of unnecessary or excessive force; 3) use of language that is insulting, demeaning, or humiliating; 4) discriminatory treatment based on any of the grounds in the D.C. Human Rights Act; 5) retaliation against a person for filing a complaint with OPC; and 6) failure to wear or display required identification or to identify oneself by name or badge number when requested to do so by a member of the public.⁸

If an individual believes that he or she has been subjected to discriminatory treatment (including anti-gay bias) by an MPD or DCHAPD officer, OPC has the authority to investigate the complaint, and in fact OPC has investigated and sustained complaints in this area.⁹ However, the anti-gay bias and other discrimination complaints against police officers that OPC has handled have not involved hate crimes. Although to date no citizen has filed a complaint with OPC alleging commission of a hate crime by a police officer, OPC frequently receives citizen complaints alleging that District police officers failed to provide adequate police service in response to citizen efforts to report crimes, including hate crime. An example is a complaint alleging that police refused to take a report of crime or refused to conduct an adequate preliminary investigation before closing a matter. However, unless such a complaint also alleges conduct that constitutes one of the six "offenses" within OPC's jurisdiction, OPC refers such complaints to MPD.

OPC received approximately 200 "failure to provide police service" complaints between fiscal year 2006 and the present. A small number of these complaints also alleged conduct that OPC was authorized to investigate, and of that number a few involved citizen attempts to report possible hate crimes. In one such complaint, which ultimately was dismissed, a citizen alleged that a female D.C. government employee committed a hate crime against him, but when he reported this to an MPD officer, the officer refused to take a report. In a different case, which also was not sustained, a complainant, who identified himself as gay, alleged that he reported to a police officer that he had been beaten by a group of four men and that the group's actions were motivated by sexual orientation bias. The officer ultimately took a report, but the complainant felt that his complaint was not taken seriously based on the officer's suggestion that one of the alleged perpetrators was probably one of the complainant's lovers.

⁸ D.C. Code Official Code § 5-1107(a).

⁹ *See, e.g.*, OPC Case No. 02-0361, 2006 DC POLICE LEXIS 2 (March 2, 2006); OPC Case No. 07-0028, 2007 DC POLICE LEXIS 18 (July 11, 2007); OPC Case No. 06-0052, 2008 DC POLICE LEXIS 3 (March 11, 2008).

OPC is unable to estimate how many of its complaints previously referred to MPD may have involved hate crimes because the agency did not in the past keep statistics on the type of crime underlying a report of inadequate police service. OPC also lacks the ability to gauge how many complaints referred to MPD involved hate crimes because MPD does not publicly report the disposition of such complaints. OPC does not mean to suggest that a large number of the “inadequate police service” complaints referred to MPD likely involved hate crimes. Even so, given that a large volume of complaints have been referred and that a small number of hate crimes-related complaints showed up in those complaints retained by OPC, it appears likely that some of the cases OPC referred to MPD involved hate crimes.

OPC is not the only District agency that receives complaints from the public alleging inadequate provision of police service in response to attempts to report hate crimes. MPD also likely receives such complaints, as members of the public who wish to complain about encounters with MPD officers have the option of filing a complaint with MPD or OPC. It is also possible that such complaints are filed with DCHAPD, the District’s Office of Human Rights (OHR), and with agencies, such as the District’s Office of Gay, Lesbian, and Transgender Affairs, whose official mission does not include receiving and resolving citizen complaints but which serve particular communities covered by the D.C. Bias-Related Crimes Act. However, there are no publicly available reports describing or analyzing the existence or import of such complaints.

One reason for the lack of publicly available information regarding the extent to which members of the public have difficulty reporting hate crimes is that the Mayor’s Office does not appear to have published a summary of hate crimes-related data, as required by the D.C. Bias-Related Crimes Act. MPD, however, consistently compiles such data. Indeed, MPD extensively tracks hate crimes and hate incidents in the District,¹⁰ reviews the information for patterns and trends, submits the information to the Office of the Mayor, and annually furnishes District hate crime statistics to the Federal Bureau of Investigations for its Uniform Crime Reporting (UCR) program.¹¹ Although MPD does not publish most of its detailed internal hate crimes data in its annual report, to its credit, MPD’s Gay and Lesbian Liaison Unit (GLLU) has a crime log on its website that lists all recent criminal incidents occurring in the LGBT community and provides updates on the progress of investigations.

PCB believes that it would be very valuable for the city to also track “inadequate provision of police service” complaints that arise in the context of possible hate crimes, whether such complaints are filed with OPC, MPD, or other District agencies. Collecting and reviewing complaints that express dissatisfaction with police response to citizen reports of hate crimes may contain useful information that prompts specific action, such as revised officer training or modified investigative procedures. To the extent such complaints provide a more complete

¹⁰ A “hate incident” is “a noncriminal act committed against a person or property based on a person’s actual or perceived race, nationality, religion, gender, disability, or sexual orientation.” Metropolitan Police Department Hate Crimes and Hate Incidents for FY 2005, 2006, 2007 and 2008.

¹¹ Telephone Interview by Nicole Porter, OPC Special Assistant, with Lieutenant Brett Parson, Special Liaison Unit, MPD (Aug. 31, 2009).

picture of hate crimes-related concerns, the data perhaps could be included in the summary of bias-related crimes that the District's Mayor is required to publish pursuant to the D.C. Bias-Related Crimes Act.

PCB therefore recommends that MPD and OPC collaborate to establish a system whereby they identify and review relevant complaints filed with both agencies and create a record of complaints reviewed. To the extent other District agencies, such as DCHAPD and OHR, receive relevant complaints, they should be invited to participate in the information-sharing and monitoring process. In the event patterns or trends are identified that suggest the need for corrective action, such information should be noted and brought to the attention of MPD and PCB. Further, to the extent information about these complaints appears appropriate for inclusion in the Mayor's statutorily mandated report of bias-related crime issues, such information should be transmitted to the appropriate officials.

PCB further urges the Mayor's Office to begin complying with its statutory obligation to analyze and publish the hate crimes data which MPD compiles so that District agency officials and members of the public can use the information to develop strategies for reducing the incidence of hate crimes. It appears the report has never been published during the 20 years since the reporting requirement was enacted into law.¹² In light of the recent spate of hate crimes which led to the Council's December 2008 hearing, leadership from the executive branch through compliance with the D.C. Bias-Related Crime Act would communicate to the public that this issue is a priority and that all available methods of addressing it will be pursued.

III. ADDRESSING COMMUNITY CONCERNS ABOUT LAW ENFORCEMENT AND COMBATING UNDERREPORTING OF HATE CRIMES

It was apparent during the December 12, 2008, Council hearing that some members of the public feel MPD and other criminal justice agencies in the District can and should do significantly more to investigate, deter, and punish hate crimes. PCB believes that some of these concerns could be addressed by continuing to engage with community representatives through advisory groups such as the Fair and Inclusive Policing Task Force and the D.C. Bias Crimes Task Force. The Fair and Inclusive Policing Task Force is comprised of MPD officials and representatives of numerous community organizations that have worked together on a number of biased policing issues over the years. Because the issue of police officer responsiveness to victims and witnesses of hate crimes can involve biased attitudes on the part of officers, this task force is well-suited to serve as a forum for interjecting the community's voice into the development of protocols to assist officers respond fairly and professionally when handling hate crimes.

¹² See Lou Chibbaro, *Fenty Vows to Boost Fight Against Hate Crimes*, *washingtonblade.com/news*, Jan. 23, 2009, available at <http://www.washblade.com/2009/1-23/news/localnews/13962.cfm> (indicating that a summary of District hate crime statistics may have been published approximately 10 years ago). The Mayor's Office, however, had no knowledge of the report referenced in the article.

PCB is aware that MPD has engaged in extensive community outreach on the issue of hate crimes both as a separate agency and through the police department's participation as a member of the D.C. Bias Crimes Task Force. The D.C. Bias Crimes Task Force is a partnership between police (MPD and District-based federal law enforcement agencies), prosecutors (the U.S. Attorney's Office for the District of Columbia and the D.C. Office of the Attorney General), and community groups representing African Americans, Latinos, Asian Americans, the LGBT community, the Jewish community and others. Established in 1996 to combat and increase public awareness of bias-motivated crimes in the District, the D.C. Bias Crimes Task Force recently has served as an important forum for community input on ways the District's criminal justice system can better respond to hate crimes incidents perpetrated against members of the LGBT community.

PCB urges MPD to continue utilizing the Bias Crimes Task Force as a means to explain MPD hate crimes-related procedures and initiatives to the public and to obtain community input on ways MPD could be more responsive. PCB particularly encourages MPD to engage its Bias Crimes Task Force partners in developing initiatives to address the possible underreporting of hate crimes with respect to many of the other constituencies covered by the District's hate crimes statute.

Notwithstanding that crime statistics for recent years clearly show that members of the LGBT community are a primary target of hate crimes in the District, the data also indicate the possibility of underreporting of crimes motivated by bias against race or ethnicity. The District's 2007 hate crime statistics indicate that crimes motivated by sexual orientation bias accounted for approximately 70.3% of total hate crimes reported in the city that year, while crimes based on race or ethnicity constituted 13.5 % of the total, and crime based on religious bias accounted for 16.2% of the total.¹³ The District's 2008 hate crimes figures were similar. Crimes based on sexual orientation bias accounted for 81.1% of the total, while crimes based on race/ethnicity constituted 18.9% of the total.¹⁴ There were no reported religious bias crimes in 2008.¹⁵

When the District's hate crimes data are compared to those of similarly sized U.S. cities, the possibility arises that underreporting of hate crimes based on race or ethnicity may be occurring in Washington. This theory is supported by hate crimes data submitted to the FBI in 2007 (the most recent year for which statistics are available) by the District of Columbia, whose population is listed in the FBI's report as 558,292, and eight other cities with populations ranging from 500,000 to 750,000 and that reported having 20 or more total hate crimes. The data show that in the eight comparison cities, crimes motivated by race or ethnicity constituted the largest percentage of total hate crimes reported. The data also show that in these eight cities, hate crimes based on sexual orientation ranked second behind hate crimes based on race/ethnicity and constituted a substantially smaller percentage of total hate crimes than in the District.¹⁶

¹³ MPD 2008 Annual Report at 22.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See* Appendix – Hate Crimes Statistics 2007.

Specifically, the figures show that in the eight cities whose data were reviewed for comparison (Boston; Memphis; Seattle; Milwaukee; Portland, OR; Columbus, OH; San Francisco, and Denver), hate crimes based on race or ethnicity accounted for between 46.1% and 84.6% of total hate crimes reported, compared to 13.5% of total hate crimes in the District.¹⁷ In the same eight cities, hate crimes based on sexual orientation bias ranged from 15.4% to 39.3% of total hate crimes reported, compared to 70.3% of the total in the District.¹⁸ Hate crimes based on religious bias ranged from 0% to 17.5% of total hate crimes reported in the eight comparison cities, a figure comparable to the District's numbers, where religious bias crimes accounted for 16.2% of total hate crimes reported.¹⁹ Recognizing that there are geographic and demographic variances between the District and the cities referenced above, the data may nonetheless provide some valid bases for comparison.

In highlighting the need for the District to engage in hate crimes outreach to groups other than the LGBT community, PCB in no way means to suggest that hate crimes underreporting is not also occurring with respect to crimes based on sexual orientation bias. As several council members and representatives of the public expressed at the December 12, 2008, public hearing on hate crime in the District, there likely continues to be underreporting of sexual orientation hate crime, notwithstanding that MPD's successful outreach to the LGBT community through the GLLU may account for higher levels of sexual orientation hate crimes reporting in the District relative to reporting from members of other groups. PCB commends and encourages the continued success of the GLLU in raising awareness of hate crimes in the LGBT community and believes that GLLU's approach to community outreach could serve as a model for initiatives to reach other groups who, with additional education and outreach, may begin to feel more comfortable reporting hate crimes perpetrated against them.

IV. RECOMMENDATIONS

Based on the foregoing, PCB makes the following recommendations:

- 1.) **MPD and OPC should collaborate to establish a system to monitor complaints filed with both agencies that allege inadequate police response to a report of hate crime.**

Care should be taken to identify relevant complaints even where the complainants may fail to use terms such as "hate crime" or "bias crime." To the extent other District agencies, such as DCHAPD and OHR, receive relevant complaints, they should be invited to participate in the information-sharing and monitoring process. In the event patterns or trends are identified that suggest the need for corrective action, such information should be noted and brought to the attention of MPD and PCB. Further, to the extent information about these complaints appears appropriate for

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

inclusion in the Mayor's statutorily mandated report of bias-related crime issues, such information should be transmitted to the appropriate officials.

- 2.) **The Mayor's Office should comply with the requirement established by the D.C. Bias-Related Crime Act to publish an annual summary of hate crimes data collected by MPD and to transmit the summary and recommendations to the Council.** Fulfilling this obligation will allow other agencies within the District government and the public to see trends more clearly and be able to better tailor initiatives to address the problem of hate crime.
- 3.) **MPD should utilize the existing framework of the Fair and Inclusive Policing Task Force and the D.C. Bias Crimes Task Force to address community concerns about police responsiveness to hate crime and work with its task force partners to ensure that all constituencies covered by the D.C. Bias-Related Crimes Act receive education and outreach, particularly groups for whom hate crimes data suggest underreporting.**

Appendix – Hate Crime Statistics 2007

Hate Crime Statistics 2007 ¹								
U.S. Cities with Population of 500,000 - 750,000 ² and 20 or More Reported Hate Crimes								
City	Population	Total Hate Crimes	Race Crimes	Ethnicity Crimes	Religion Crimes	Sexual Orientation Crimes	Disability	
Washington, DC	588,292	37	3 (8.1%)	2 (5.4%)	6 (16.2%)	26 (70.3%)	0 (0%)	
Boston, MA	591,855	164	73 (44.5%)	20 (12.2%)	22 (13.4%)	49 (29.9%)	0 (0%)	
Memphis, TN	669,264	86	37 (43%)	20 (23.3%)	8 (9.3%)	20 (23.3%)	1 (1.2%)	
Seattle, WA	585,118	28	14 (50%)	3 (10.7%)	0 (0%)	11 (39.3%)	0 (0%)	
Milwaukee, WI	572,938	26	21 (80.8%)	1 (3.8%)	0 (0%)	4 (15.4%)	0 (0%)	
Portland, OR	538,133	63	20 (31.8%)	9 (14.3%)	11 (17.5%)	22 (34.9%)	1 (1.6%)	
Columbus, OH	735,981	94	41 (43.6%)	16 (17%)	11 (11.7%)	22 (23.4%)	4 (4.3%)	
San Francisco, CA	733,799	66	31 (47%)	8 (12.1%)	9 (13.6%)	18 (27.3%)	0 (0%)	
Denver, CO	573,387	24	13 (54.1%)	4 (16.7%)	2 (8.3%)	5 (20.8%)	0 (0%)	

¹ Information in table is from U.S. Department of Justice, Federal Bureau of Investigation, Hate Crime Statistics 2007, available at <http://www.fbi.gov/ucr/hc2007>.

² Population figures are taken directly from FBI Hate Crime Statistics 2007 report and were calculated by FBI through averaging relevant U.S. Census Bureau data. See Methodology: Population figures and area designations available at <http://www.fbi.gov/ucr/hc2007/methodology.htm>.