



FARMERS BRANCH POLICE DEPARTMENT

2013

RACIAL PROFILING ANALYSIS

PREPARED BY:

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Executive Summary

Article 2.132 (7) of the Texas Code of Criminal Procedure requires the annual reporting to the local governing body of data collected on the race or ethnicity of individuals stopped and issued citations or arrested for traffic violations and whether or not those individuals were searched. Since the law provides no clear instruction to a governing body on how to review such data, the Farmers Branch Police Department requested this analysis and review to assist the City Council in reviewing the data.

The analysis of material and data from the Farmers Branch Police Department revealed the following:

- **A COMPREHENSIVE REVIEW OF THE FARMERS BRANCH POLICE DEPARTMENT REGULATIONS, SPECIFICALLY STANDARD OPERATING PROCEDURE GP-02 AND SECTION 200.08 OUTLINING THE DEPARTMENT'S POLICY CONCERNING RACIAL PROFILING, SHOWS THAT THE FARMERS BRANCH POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH ARTICLE 2.132 OF THE TEXAS CODE OF CRIMINAL PROCEDURE.**
- **A REVIEW OF THE INFORMATION PRESENTED AND SUPPORTING DOCUMENTATION REVEALS THAT THE FARMERS BRANCH POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH TEXAS LAW ON TRAINING AND EDUCATION REGARDING RACIAL PROFILING.**
- **A REVIEW OF THE DOCUMENTATION PRODUCED BY THE DEPARTMENT IN BOTH PRINT AND ELECTRONIC FORM REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE RACIAL PROFILING COMPLAINT PROCESS AND PUBLIC EDUCATION ABOUT THE COMPLAINT PROCESS.**
- **ANALYSIS OF THE DATA REVEALS THAT THE DEPARTMENT IS IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE COLLECTION OF RACIAL PROFILING DATA.**
- **THE ANALYSIS OF STATISTICAL INFORMATION FROM FARMERS BRANCH POLICE DEPARTMENT REVEALS THAT THERE ARE NO METHODOLOGICALLY CONCLUSIVE INDICATIONS OF SYSTEMIC RACIAL PROFILING BY THE DEPARTMENT.**
- **THE FARMERS BRANCH POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW CONCERNING THE PROHIBITION OF RACIAL PROFILING.**
- **THE FARMERS BRANCH POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW CONCERNING THE REPORTING OF INFORMATION TO TCOLE.**

Introduction

This report details an analysis of the Farmers Branch Police Department's policies, training, and statistical information on racial profiling for the year 2013. This report has been prepared to specifically comply with Article 2.132 of the Texas Code of Criminal Procedure (CCP) regarding the compilation and analysis of racial profiling data. Specifically, the analysis will address Articles 2.131 – 2.135 of the CCP and make a determination of the level of compliance with those articles by the Farmers Branch Police Department in 2013. The full copies of the applicable laws and regulations pertaining to this report are contained in Appendix A.

This report is divided into six analytical sections: Farmers Branch Police Department's policy on racial profiling; Farmers Branch Police Department's training and education on racial profiling; Farmers Branch Police Department's complaint process and public education on racial profiling; analysis of statistical data on racial profiling; analysis of Farmers Branch Police Department's compliance with applicable laws on racial profiling; and a final section which includes completed data and information reporting forms required to be sent to TCOLE beginning in 2011.

For the purposes of this report and analysis, the following definition of racial profiling is used: racial profiling means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity (Texas CCP Article 3.05).

Farmers Branch Police Department Policy on Racial Profiling

A review of Farmers Branch Police Department Standard Operating Procedure GP-02 and Section 200.08 revealed that the department has adopted policies to be in compliance with Article 2.132 of the Texas CCP (see Appendix B). There are seven specific requirements mandated by Article 2.132 that a law enforcement agency must address. All seven are clearly covered in Standard Operating Procedure GP-02 and Section 200.08. Farmers Branch Police Department regulations provide clear direction that any form of racial profiling is prohibited and that officers found engaging in inappropriate profiling may be disciplined up to and including termination. The regulations also provide a very clear statement of the agency's philosophy regarding equal treatment of all persons regardless of race or ethnicity. Appendix C lists the applicable statute and corresponding Farmers Branch Police Department regulation.

A COMPREHENSIVE REVIEW OF FARMERS BRANCH POLICE DEPARTMENT STANDARD OPERATING PROCEDURE GP-02 AND SECTION 200.08 SHOWS THAT THE FARMERS BRANCH POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH ARTICLE 2.132 OF THE TEXAS CODE OF CRIMINAL PROCEDURE.

Farmers Branch Police Department Training and Education on Racial Profiling

Texas Occupation Code § 1701.253 and § 1701.402 require that curriculum be established and training certificates issued on racial profiling for all Texas Peace officers. Documentation

provided by Farmers Branch Police Department reveals that racial profiling training and certification did occur in 2013 and was provided to all officers requiring such training.

A REVIEW OF THE INFORMATION PRESENTED AND SUPPORTING DOCUMENTATION REVEALS THAT THE FARMERS BRANCH POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH TEXAS LAW ON TRAINING AND EDUCATION REGARDING RACIAL PROFILING.

Farmers Branch Police Department Complaint Process and Public Education on Racial Profiling

Article 2.132 §(b)3-4 of the Texas Code of Criminal Procedure requires that law enforcement agencies implement a complaint process on racial profiling and that the agency provide public education on the complaint process. Farmers Branch Police Department Standard Operating Procedure GP-02 Complaint Investigation Section and Public Education Section cover this requirement. Specifically, the department has information regarding racial profiling on its website and has prepared a tri-fold pamphlet on the complaint process that is available in the lobby of the police department. The pamphlet is clearly written and provides detailed information on the process and whom to contact to file a complaint.

A REVIEW OF THE DOCUMENTATION PRODUCED BY THE DEPARTMENT IN BOTH PRINT AND ELECTRONIC FORM REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE RACIAL PROFILING COMPLAINT PROCESS AND PUBLIC EDUCATION ABOUT THE COMPLAINT PROCESS.

Farmers Branch Police Department Statistical Data on Racial Profiling

Article 2.132(b) 6 requires that law enforcement agencies collect statistical information on traffic stops in which a citation is issued and arrests with specific information on the race of the person cited. In addition, information concerning searches of persons and whether or not the search was based on consent is also required to be collected. Farmers Branch Police Department submitted statistical information on all citations in 2013 and accompanying information on the race of the person cited. Accompanying this data was the relevant information on searches.

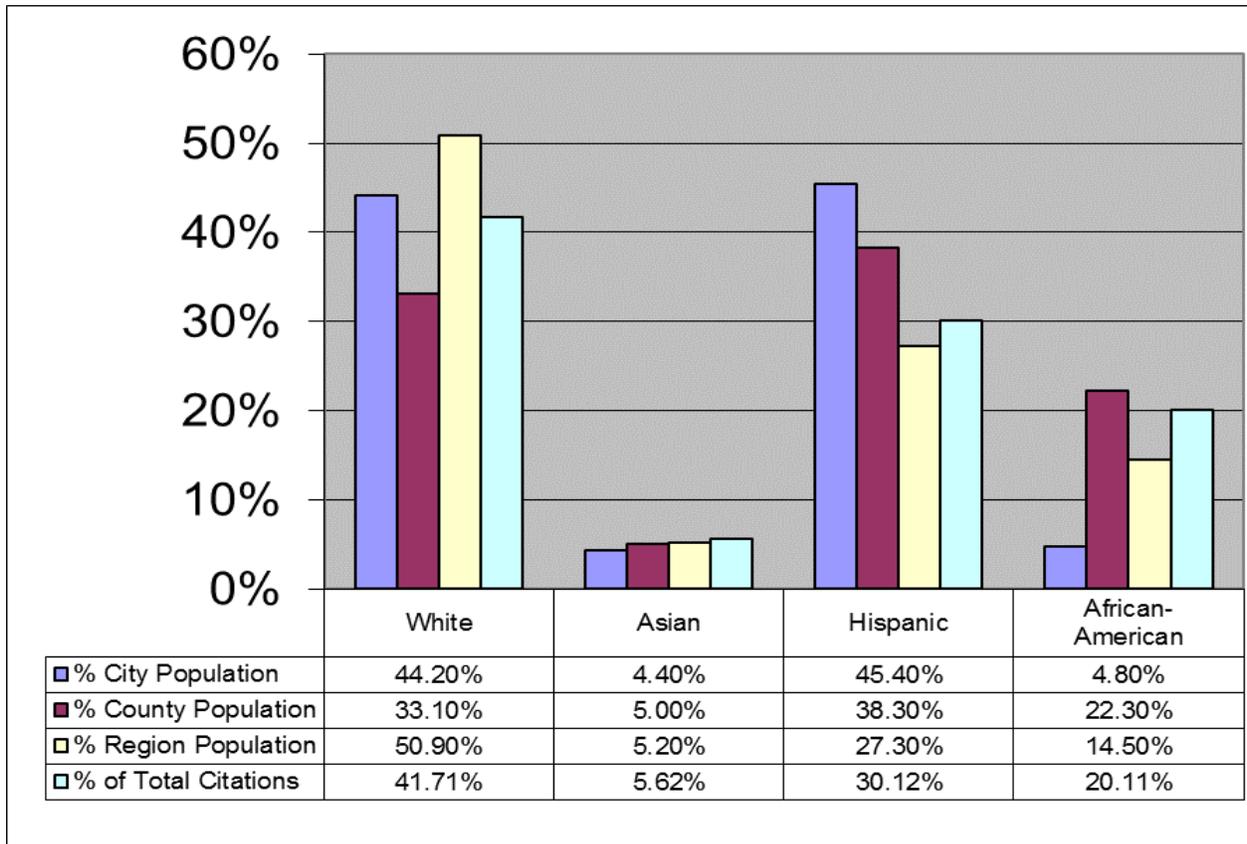
ANALYSIS OF THE DATA REVEALS THAT THE DEPARTMENT IS IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE COLLECTION OF RACIAL PROFILING DATA.

Analysis of the Data

The first chart depicts the percentages of people cited by race among the total 10,310 traffic contacts where a citation was given in 2013.¹ White drivers constituted 41.71 percent of all drivers cited, whereas Whites constitute 44.20 percent of the city population, 33.10 percent of the

¹ There were 253 citations among drivers considered Middle Eastern/American Indian/Native American. These citations were not charted due to the small number of cases relative to the population in Farmers Branch and relative to the total number of citations given among all drivers (10,310).

county population, and 50.90 percent of the region population.² African-American drivers constituted 20.11 percent of all drivers cited, whereas African-Americans constituted 4.80 percent of the city population, 22.30 percent of the county population, and 14.50 percent of the region population. Hispanic drivers constituted 30.12 percent of all drivers cited, whereas Hispanics constituted 45.40 percent of the city population, 38.30 percent of the county population, and 27.30 percent of the region population. Asian drivers constituted 5.62 percent of all drivers cited, whereas Asians constituted 4.40 percent of the city population, 5.00 percent of the county population, and 5.20 percent of the region population.



The chart shows that White drivers are cited at rates lower than the percentage of Whites found in the city and regional populations, but higher than the percentage of Whites in the county population. African-Americans are cited at rates higher than the percentage of African-Americans found in the city population, lower than the percentage of African-Americans found in the county population, and higher than the population of African-Americans in the region population. Hispanics are cited at rates lower than the percentage of Hispanics found in the city and county populations, but slightly higher than the percentage of Hispanics in the region population. Asian drivers are cited at rates slightly higher than the percentage of Asians found in the city, county, and regional populations.

² City and County populations were derived from the 2010 Census of the U.S. Census Bureau. Regional population figures were derived from 2010 Census data compiled and published by the North Central Texas Council of Governments which is defined as the 16 county Dallas-Ft. Worth Area including the following counties: Collin, Dallas, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise.

Easy determinations regarding whether or not Farmers Branch officers have “racially profiled” a given motorist are impossible given the nature of the data that has been collected and presented for this report. The law dictates that police agencies compile aggregate-level data regarding the *rates* at which agencies *collectively* stop motorists in terms of their race/ethnicity. These aggregated data are to be subsequently analyzed in order to determine whether or not *individual* officers are “racially profiling” motorists.

This methodological error, commonly referred to as the “ecological fallacy,” defines the dangers involved in making assertions about individual officer decisions based on the examination of aggregate incident level data. In short, one cannot “prove” that an *individual* officer has “racially profiled” any *individual* motorist based on the rate at which a department stops any given *group* of motorists. This kind of determination necessarily requires an examination of data at the individual officer level for a more detailed analysis of individual officer decision-making. Unfortunately, the law does not currently require the collection of this type of data, resulting in a considerable amount of conjecture as to the substantive meaning of aggregate level disparities.

Additional interpretation problems remain in regards to the specific measurement of racial “profiling” as defined by Texas state code. For example, officers are currently forced to make subjective determinations regarding an individual’s race based on his or her personal observations because the Texas Department of Public Safety does not provide an objectively-based determination of an individual’s race/ethnicity on the Texas driver’s license. The absence of any verifiable race/ethnicity data on the driver’s license is especially troubling given the racial diversity within the North Texas region as a whole, and the large numbers of citizens who are of Hispanic and/or mixed racial descent. The validity of any racial/ethnic disparities discovered in the aggregate level data becomes threatened in direct proportion to the number of subjective “guesses” officers are forced to make when trying to determine an individual’s racial/ethnic background.

In addition, the data collected for the current report does not allow for an analysis that separates (or disaggregates) the discretionary decisions of officers to stop a motorist from those that are largely non-discretionary. For example, non-discretionary stops of motorists based on the discovery of outstanding warrants should not be analyzed in terms of whether or not “profiling” has occurred simply because the officer who has stopped a motorist as a result of the discovery of an outstanding warrant does not *independently* make the decision to stop, but rather, is required to stop that individual regardless of any determination of race. An officer cannot be determined to be “racially profiling” when organizational rules and state codes compel them to stop regardless of an individual’s race/ethnicity. Straightforward aggregate comparisons of stop rates ignore these realities, and fail to distinguish between discretionary and non-discretionary law enforcement actions. In the future, this validity issue could be lessened by the collection of data indicating the initial reason for the traffic stop, whether it be an observed traffic violation, other criminal activity, the existence of an outstanding warrant, or some other reason.

Furthermore, there has been considerable debate as to what the most appropriate population “base-rate” is in determining whether or not racial/ethnic disparities exist. Questions concerning the most appropriate base-rate are most problematic in the case of traffic stops, because there are problems associated with using any number of different population measures to determine whether or not aggregate level racial disparities exist. As the current analysis shows in regards to the use of city, county, and regional base-rates, the outcome of analyses designed to determine

whether or not disparities exist is obviously dependent on which base-rate is used. In addition, changes in the demographic character of North Texas have made the base-rate issue especially problematic because measures derived exclusively from the U.S. Census can become quickly outdated since they are compiled only once per decade. Although the 2010 Census data is useful for this report, it will too become quickly outdated due to the rapid changes still being experienced in the North Texas region. The determination of valid stop base-rates becomes multiplied if analyses fail to distinguish between residents and non-residents who are stopped, because the existence of significant proportions of non-resident stops will lead to invalid conclusions if racial/ethnic comparisons are made exclusively to resident population figures.

Finally, as part of the data collection process required by state law, officers must answer whether they knew the race or ethnicity of the driver prior to the stop (see TCOLE Reporting Forms in the next section of this report). The data demonstrate that officers rarely know the race or ethnicity of the driver prior to the stop. Of the 10,310 stops in 2013, officers knew the race or ethnicity of the driver prior to the stop only 4.4% of the time. If officers do not know the race or ethnicity of the driver prior to the stop, it is impossible to argue that the officer was engaging in racial profiling when he/she stopped the driver. Although the percentage may seem low to some readers, it is consistent with what the authors have seen from other police agencies throughout Texas.

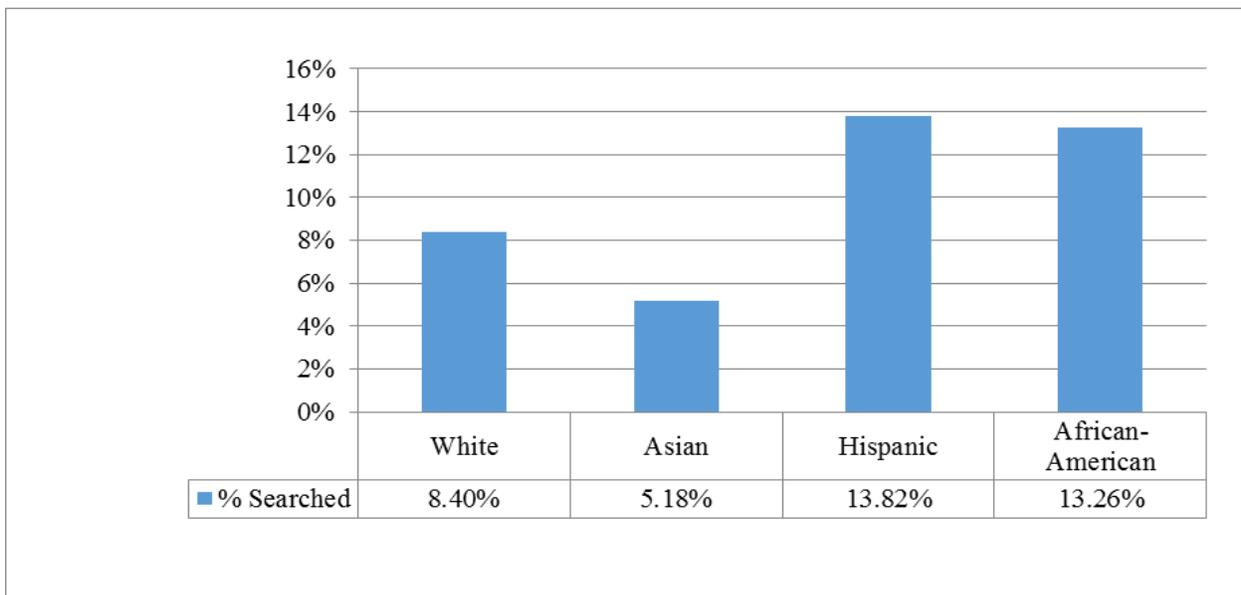
In short, the methodological problems outlined above point to the limited utility of using aggregate level comparisons of the rates at which different racial/ethnic groups are cited in order to determine whether or not racial profiling exists within a given jurisdiction.

The table below reports the summaries for the total number of persons cited by the Farmers Branch Police Department for traffic offenses in 2013. In addition, the table shows the number of cited individuals who granted consent to search and those cited drivers who were arrested pursuant to the stop. The table shows that roughly 42 percent of all persons cited were White drivers (4,300/10,310 total citations), roughly 20 percent (2,073) of all persons cited were African-American drivers, and roughly 30 percent (3,105) of all persons cited were Hispanic drivers. In addition, roughly 33 percent of all drivers searched were White (361/1,103), roughly 39 percent were Hispanic, and 25 percent were African-American. It is clear that the vast majority of the total number of drivers cited (including White, African-American, and Hispanic groups) were not searched (89%), and only 14 percent of all searches were consent searches (156/1,103).

Action	White	African-American	Hispanic	Asian	Other	Total
Stops	4,300	2,073	3,105	579	253	10,310
Searches	361	275	429	30	8	1,103
Consent Searches	64	27	56	7	2	156
Arrests	336	274	403	28	6	1,047

It should be noted that aggregate level comparisons regarding the rates at which drivers are searched by police are subject to some of the same methodological issues as those outlined above regarding analyses of aggregate level stop rates. Of particular concern is the absence of any analyses that separates discretionary searches from non-discretionary searches. For example, searches that are conducted incident to an arrest or as part of a vehicle tow inventory should not be included in analyses designed to examine whether or not racial profiling has occurred because these types of searches are non-discretionary in that the officer is compelled by law or departmental guidelines to conduct the search irrespective of the race of the stopped driver.

The bar chart below presents the percentage of cited drivers who were searched *within* each racial category. The chart indicates that drivers who were cited were rarely searched across the racial categories. For example, only 8.40 percent of all White drivers who were cited were also searched, 5.18 percent of all Asian drivers who were cited were searched, 13.82 percent of all Hispanic drivers who were cited were searched, and 13.26 percent of all African-American drivers who were cited were searched.



Analysis of Racial Profiling Compliance by Farmers Branch Police Department

The foregoing analysis shows that the Farmers Branch Police Department is fully in compliance with all relevant Texas laws concerning racial profiling, including the existence of a formal policy prohibiting racial profiling by its officers, officer training and educational programs, a formalized complaint process, and the collection of data in compliance with the law. Finally, internal records indicate that during 2013 the department received no complaints that could be categorized as involving some type of racial profiling.

In addition to providing summary reports and analysis of the data collected by the Farmers Branch Police Department in 2013, this report also included an extensive presentation of some of the limitations involved in the level of data collection currently required by law and the methodological problems associated with analyzing such data for the Farmers Branch Police

Department as well as police agencies across Texas. The Farmers Branch Police Department should continue its educational and training efforts within the department on racial profiling. Finally, the department should continue to conduct periodic evaluations of individual officers to assess whether or not an officer is engaging in racial profiling. Indeed, the Deputy Chief over the Patrol Division receives a monthly report illustrating each officer's traffic stops. The report is analyzed by the Deputy Chief for any anomalies. It is recommended that this practice continue. The final section of this report includes required TCOLE reporting information by Texas law enforcement organizations.

**Farmers Branch Police Department TCOLE
Reporting Forms**

Appendix A

Racial Profiling Statutes and Laws

Art. 3.05. RACIAL PROFILING.

In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 2, eff. Sept. 1, 2001.

Art. 2.131. RACIAL PROFILING PROHIBITED.

A peace officer may not engage in racial profiling.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING.

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
 - (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
 - (4) provide public education relating to the agency's complaint process;
 - (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
 - (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
 - (A) the race or ethnicity of the individual detained;
 - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and
 - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
 - (7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
 - (A) the Commission on Law Enforcement Officer Standards and Education; and
 - (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.
- (c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.
- (d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. If a law enforcement agency installs video or audio equipment as provided by this

subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 25, eff. September 1, 2009.

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE STOPS.

(a) In this article, "race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

- (3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;
- (4) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;
- (5) the reason for the search, including whether:
 - (A) any contraband or other evidence was in plain view;
 - (B) any probable cause or reasonable suspicion existed to perform the search; or
 - (C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;
- (6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
- (7) the street address or approximate location of the stop; and
- (8) whether the officer issued a written warning or a citation as a result of the stop.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 26, eff. September 1, 2009.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article:

(1) "Motor vehicle stop" has the meaning assigned by Article 2.132(a).

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each law enforcement agency shall submit a report containing the incident-based data compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education

and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency.

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

- (A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; and
- (B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2009, 81st Leg., R.S., Ch. [1172](#), Sec. 27, eff. September 1, 2009.

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT.

(a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 28, eff. September 1, 2009.

Art. 2.136. LIABILITY.

A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.138. RULES.

The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.1385. CIVIL PENALTY.

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 29, eff. September 1, 2009.

Appendix B

FARMERS BRANCH POLICE DEPARTMENT STANDARD OPERATING PROCEDURE

Racial profiling Chapter: General SOP Section: General Procedures Revised 03-31-2011

Number: GP-02 Racial profiling

PREFACE

Two of the fundamental rights guaranteed by both the United States and Texas constitutions are equal protection under the law and freedom from unreasonable searches and seizures by government agents. The right of all persons to be treated equally and to be free from unreasonable searches and seizures must be respected. Racial profiling is an unacceptable patrol tactic and will not be condoned by this agency.

PROHIBITION

Officers of the Farmers Branch Police Department are strictly prohibited from engaging in racial profiling as defined by this S.O.P and Texas State Law.

SCOPE

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

EXCLUSIONS

The prohibition of racial profiling does not preclude the use of race, ethnicity or national origin when used as part of an actual description of a specific suspect for whom an officer is searching.

Nothing in this procedure shall preclude officers from offering assistance to a person who is not the subject of an investigation of suspected criminal activity.

DEFINITIONS

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

Race or Ethnicity: Of a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern descent. **Traffic Stop:** The action of a peace officer who stops a motor vehicle for an alleged violation of a law or ordinance.

PROCEDURES

Specific Acts Constituting Racial Profiling

Examples of racial profiling include, but are not limited to the following:

1. Citing a driver who is speeding in a stream of traffic where most other drivers are speeding because of the cited driver's race, ethnicity or national origin.
2. Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possess that make or model of a vehicle.
3. Detaining an individual based upon the determination that a person of that race, ethnicity or national origin does not belong in a specific part of town or a specific place.

Complaint Investigation

Complaints involving the allegation of racial profiling will be handled in accordance with General Orders Section 100.27.

Sustained complaints involving racial profiling will result in disciplinary action as set forth in General Orders Section 100.29.

Additional requirements set forth in Senate Bill 1074 that are not covered by General Orders Section 100.27 are as follows:

1) On the commencement of an investigation by a law enforcement agency of a complaint alleging racial profiling in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

2) Furthermore, if a complaint is filed with the department alleging racial profiling with respect to a traffic or pedestrian stop, the department shall retain the video/audio tape of the stop until final disposition of the complaint.

Public Education

Information on who to contact regarding complaints on Police Department Employees shall be posted on the City of Farmers Branch Web site. Additionally, brochures on how to make a complaint or give a compliment are available to the public in the police department lobby.

Traffic Stops

All individuals with whom employees of this agency come into contact, regardless of the circumstance by which such contact is initiated, will be treated fairly and with respect regardless of their race/ethnicity.

No officer will initiate a traffic stop based solely on the factor of race and or ethnicity. Such detentions are unlawful and unconstitutional and will not be tolerated by this agency.

Officers will make video and audio recordings of all traffic stops as well as on other occasions as required by S.O.P No. 32:03-95.0.

If an officer is assigned to a vehicle that is equipped with audio/video equipment that is inoperable, the condition will be reported to the shift supervisor immediately.

Data Collection

It is the responsibility of each officer that operates a police vehicle regularly used by this department to make traffic stops and pedestrian stops and is equipped with audio and video equipment to collect and record the following information relating to traffic stops in which a citation is issued and or an arrest is made. The following information shall be recorded using the current mobile computing capabilities. Officers will update their traffic stop field to include at a minimum the below listed information. If an officer is assigned to one of the aforementioned police vehicles that does not have mobile computing capabilities or it's mobile computing equipment is non-functioning, the officer shall provide the below listed information to dispatch so C.A.D. can be updated by a communications specialist.

1) The violator's race and ethnicity. Entries of "Unknown" should be avoided. If an officer meets with resistance from the reporting party regarding their race, ethnicity or national origin, the officer should not become embroiled in an argument, but make an educated guess based upon the observations of the officer.

2) Was a search conducted?

3) Was the search consensual?

4) Was an arrest made?

The requirements for race will be reported using the following:

A= Asian

B= Black

W= White

I= American Indian / Native American

The requirements for ethnicity will be reported using the following:

H= Hispanic

N= Non-Hispanic

The requirements for searches, arrests and citations will be reported using the following clearance codes:

TS2= Traffic stop resulting in a violator contact.

TS3= Traffic stop resulting in a citation; no search performed.

TS4= Traffic stop resulting in a citation; consensual search performed.

TS5= Traffic stop resulting in a citation; non-consensual search performed.

TS6= Traffic stop resulting in an arrest; no search performed.

TS7= Traffic stop resulting in an arrest; consensual search performed.

TS8= Traffic stop resulting in an arrest; inventory search performed.

TS9= Traffic stop resulting in an arrest; non-consensual search performed.

TS10= Traffic stop resulting in a citation and an arrest; no search performed.

TS11= Traffic stop resulting in a citation and an arrest; consensual search performed.

TS12= Traffic stop resulting in a citation and an arrest; non-consensual search performed.

TS13= Traffic stop resulting in a citation and an arrest; inventory search performed.

Pedestrian stops should be cleared according to current patrol guidelines and have no specific reporting requirement other than being audio/video recorded.

Parking Citations shall not fall under the reporting requirements of this section. Parking violations are inherently issued to vehicles and not persons. Therefore the propensity for racial profiling is all but diminished. This does not mean that an officer cannot issue a citation to an individual who claims ownership of a vehicle as the officer is in process of issuing that vehicle a parking related citation.

Supervisory Responsibility

It shall be the responsibility of each supervisor who manages officers who are assigned to police vehicles regularly used to make traffic and pedestrian stops to insure that those officers are adhering to the reporting requirements of this S.O.P. Additionally, supervisors are responsible for the following:

- 1) Officers will be assigned to vehicles with operational video/audio equipment before utilizing vehicles that the equipment has been removed from or has malfunctioned to the point of rendering the equipment inoperable.
- 2) Supervisors will maintain a log of audio/video equipment that is out of service due to maintenance issues, indicating the dates the equipment is not available in the unit it is assigned to.
- 3) Supervisors will view at a minimum one traffic and or pedestrian stop of five different officers per month per patrol shift. A form listing which officer's stops have been viewed will be forwarded to the appropriate person responsible for analysis of racial profiling data. Should concerns emerge from these viewings regarding the possibility of racial profiling, the person in charge of analysis should be notified and additional tapes will be reviewed to determine if a pattern presents itself. If a pattern is established, the Chief of Police will be notified and all appropriate documentation preserved. Any obvious act of racial profiling will be handled by the supervisor who becomes aware of said act by following the guidelines set forth in General Orders section 100.27 and this S.O.P.
- 4) The Farmers Branch Police Department will retain the audio/video tapes of each traffic and pedestrian stop recorded for 90 days after the date of the stop in accordance with S.O.P. # 30:07-01 (4).

Analysis of Data

The person designated by the Chief of Police to analyze data regarding racial profiling will submit monthly reports to the Chief of Police containing the information listed below. Additionally, this person shall view a recording of each officer at least once every 90 days. Documentation of these viewings will be maintained. Any specific concern or pattern regarding racial profiling that emerges from analysis of video/audio recordings or collected data shall be immediately reported to the Chief of Police.

The person designated by the Chief of Police to analyze data concerning racial profiling will no later than February 1st of each year submit a report to the Chief of Police containing the following information. The Chief of police will make a report to the governing board of the City of Farmers Branch no later than March 1st of each year. The data contained in the report will be data collected from the previous year. The initial reporting period will be calendar year 2002.

- 1) A break down of citations by race/ethnicity;
- 2) Number of citations that resulted in a search;
- 3) Number of searches that were consensual;
- 4) Number of citations that resulted in custodial arrest; and
- 5) Any other combination of data deemed necessary by the Chief of Police.

Sid R. Fuller
Chief of Police
SF:kg

Attachment: Audio/Video Viewing Record Racial profiling

SECTION 200.08 RACIAL PROFILING

A. Purpose. The purpose of this policy is to reaffirm the Farmers Branch Police Department's commitment to unbiased policing in all its encounters between officers and any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and protect our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.

B. Agency philosophy. It is the policy of this department to police in a proactive manner, and to aggressively investigate suspected violations of law. Officers shall actively enforce state, federal and municipal laws in a responsible and professional manner, without regard to race, ethnicity or national origin. Officers are strictly prohibited from engaging in racial profiling as defined in this policy.

C. Definitions Racial Profiling – A law enforcement initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity. Race or Ethnicity – Of a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern descent.

D. Conclusion. Farmers Branch Police Officers may not use race or ethnicity as factors in selecting whom to stop and search, while police may use race in conjunction with other known factors of a suspect in making a determination to detain and/or arrest.

E. Implementation Officers of the Farmers Branch Police Department will refer to the current Standard Operating Procedure for specific implementation of this policy.

Appendix C

Racial Profiling Laws and Corresponding Standard Operating Procedures

Texas CCP Article	FARMERS BRANCH POLICE DEPARTMENT Standard Operating Procedure GP-02
2.132(b)1	Definitions Section
2.132(b)2	Prohibition Section
2.132(b)3	Complaint Investigation Section
2.132(b)4	Public Education Section
2.132(b)5	Complaint Investigation Section
2.132(b)6	Data Collection Section
2.132(b)7	Analysis of Data Section