

Seattle Police Department Memorandum

TO: Council President Nick Licata
DATE: 11/29/2006

FROM: D/C Clark Kimmerer (SK)
Deputy Chief for Operations

SUBJECT: Bias Crime Recommendations – Council Question #33

Please find attached SPD's response to Mr. Ken Molsberry's request for response to his recommendations on bias crime reporting.

This transmittal is designated as our response to Council Question #33 for 2006. Should you have questions or wish to discuss this matter, please feel welcome to contact Captain Tag Gleason of the Violent Crimes Section at 684-5550. Thank you for your attention to this matter.

Attachment: SPD Response to Council Question #33 (Bias Crime Reporting).

cc: Council Member Jean Godden
Council Member Peter Steinbrueck
Mr. Ken Molsberry, Hate Crime Awareness Project
Peter Harris, Council Central Staff
Greg Doss, Department of Finance
Captain Tag Gleason, Violent Crimes Section
Council Questions File

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SEATTLE CITY ATTORNEY

I rec'd this Dec 21.
(km)

Council Question #33:

What response does SPD have to the recommendations that accompanied Mr. Ken Moiberry's report on "Bias Crimes and Incidents in Seattle, 2000 to 2005: An Analysis by Type of Bias and Neighborhood"?

SPD Response to Council Question #33:

The Police Department appreciates the opportunity to respond to Mr. Moiberry's recommendations and his interest in this topic of importance to our community. He makes nine specific recommendations. This response comments briefly on each of these recommendations.

Recommendation #1 and SPD Response:

"Post signage in the communities condemning bias and hate violence and encouraging reporting of bias attacks. Signage could consist of billboards, notices in public buildings, signs on poles (similar to the way Neighborhood Watch signs are posted), signs for storefronts"

The Police Department has no issue with the substance of this recommendation, provided any signage includes an explanation of what constitutes a bias crime and how to report the crime. We recommend that the author of such signage consult with appropriate City of Seattle and King County prosecutors regarding the language to use in order to ensure the accuracy of the information conveyed. We should also note that SPD does not have funds within its budget to pay for these signs.

Recommendation #2 and SPD Response:

"Provide a formal, centralized means for victims of all types of bias attacks – whether motivated by race, sexual orientation, national origin, religion, etc. – to report attacks outside of SPD. The agency tasked with the responsibility of gathering such reports would report to both the community and SPD and would, when advisable, also encourage the victim to report to SPD and even assist with such reporting when necessary. Because part of the cause of underreporting is fear of government, it could be preferable that such agency not be a government agency – but it would require government funding in order to be able to accomplish its goals."

Screening the reporting of bias crimes through an intermediary organization inserted between the victim and the police would be inadvisable and could unintentionally encourage mistrust of the police. Police are trained and experienced in conducting criminal investigations, are accountable for performing in a competent, unbiased manner, and are the primary actors in the criminal justice system to whom criminal conduct is reported.

The Police Department will continue to work closely with diverse community groups, especially to encourage open communication and better understanding of issues of mutual importance. Rather than acting as a screening entity between the victims of bias crimes and the police, we suggest that a more productive role for such an organization would be to promote more knowledgeable and accurate reporting of bias crimes, better understanding in general of the criminal justice system, and continuing dialog between

the various components of the criminal justice system and the diverse communities that make up our city.

Recommendation #3 and SPD Response:

"Conduct a biennial audit of the investigation and recording of bias attack reports to ensure that a) crimes are being recorded and investigated as crimes rather than as incidents; and b) the proper bias focus (e.g., 'race,' 'sexual orientation,' 'religion') is being recorded whenever possible in the bias crimes/incidents database. Such an audit would need to be conducted by an agency (perhaps OPA?) with substantial citizen oversight/involvement to ensure accuracy and transparency." These recommendations are founded in Mr. Molsberry's observations that the Seattle Office for Civil Rights (SOCR) complaints do not appear in monthly bias crimes reports produced by SPD and that 35% of SPD reported crime case records during a recent time period had either an inaccurately posted bias focus or none at all.

The Malicious Harassment/Bias Crime law is focused on conduct and the motivation for that conduct, and does not criminalize one individual's bias toward or dislike of another person for that other person's perceived protected status, as defined by the law. Consequently, there are incidents in which language or conduct may be emotionally painful to the recipient, but not criminal. The Police Department investigates and evaluates incidents reported involving bias crime to determine whether the language or conduct creates criminal culpability. The universe of incidents that include rude, insulting, disrespectful, offensive, or hurtful language or conduct is much larger than the subset of incidents that constitute a legally defined bias crime. Therefore, it is understandable that the number of "incidents" reported to the Seattle Office for Civil Rights (SOCR) could be greater than what the Police Department reports as crimes. The Police Department continually strives to accurately classify and report bias crime, using original Incident Reports and Investigative Follow-Up Reports upon which to base decisions.

Regarding reported concerns of the SOCR staff about discrepancies between their data and the Police Department's data on the reporting of bias crime, there are several possible reasons: a) the person reporting the incident to the SOCR may not have reported it to the Police Department, b) the person reporting may have reported the facts of the incident differently to the SOCR than to the Police Department, and/or c) the police investigation of the incident may have revealed that what actually occurred was different than what was reported and not a crime.

Recommendation #4 and SPD Response:

"Annually publish a report of bias-related incidents and crimes, and make it readily available to the public. This report would include the number of attacks; the number that qualified as crimes; neighborhood location; bias focus; date; non-identifying information about the race, gender, and age of victims and suspects; and descriptive notes about the attack. (A report containing this level of detail was obtained by a public disclosure request from SPD. Since a private citizen was able to obtain the data for and prepare such a report, it is assumed that SPD could even more easily report on this data.)"

The SPD Bias Crime Coordinator, in compliance with Federal Bureau of Investigation (FBI) standards, annually conveys information gathered from Police Department reports

to the FBI for publication. The full database contains, in addition, much raw information that is unverifiable or determined to be incomplete or inaccurate. Publication of this information could be misleading and would serve no useful purpose.

Recommendation #5 and SPD Response:

"Increase the staff time devoted to bias attacks."

This recommendation implies that the Department's efforts on bias crimes begin and end with a single individual. SPD has a sworn Bias Crime Coordinator whose job is to screen, forward, and track follow-up investigations into bias crimes. It is important to observe that the Bias Crime Coordinator position is what it is titled – a coordinating position. The detective assigned to this position reviews the incoming case reports and, where appropriate, forwards the case to the Police Department unit having primary responsibility for investigating the underlying criminal conduct. For example, an assault or homicide, motivated by malicious bias, would be investigated by the Homicide/Assault Unit; a sex offense, motivated by malicious bias, by the Special Assault Unit; or property destruction, motivated by malicious bias, by a Burglary/Theft Unit. The Bias Crime Coordinator does not investigate every crime motivated by malicious bias. However, the Coordinator does ensure that each incident is handled by the appropriate Police Department unit having the investigative expertise to address the underlying criminal conduct. SPD staff devoted to bias crimes thus includes the efforts of all detectives assigned to follow up on these cases.

Recommendation #6 and SPD Response:

"Provide the public with access to the Bias Crimes Coordinator for questions and discussion about the problem of bias attacks."

The Police Department tries to be responsive to community requests for information and speakers. Competing work schedules and other demands do not always permit an appearance by a particular individual. Nevertheless, the person who is designated by the Department to attend a particular meeting will be competent to address the issues likely to be raised. The Department always strives to provide concerned citizens with an appropriate, timely response.

Recommendation #7 and SPD Response:

"Create a clear, written protocol for officers, investigators, the Bias Crimes Coordinator, and prosecutors to determine whether an attack should be classified, investigated, and prosecuted as a crime. . . . the method for making such important determinations is subjective."

The Seattle Police Department Manual, the Revised Code of Washington, and the Seattle Municipal Code contain clear written protocols. Determining what conduct constitutes a bias crime is not subjective; it is an objective analysis based upon the applicable law – as is true for any crime. It is important to carefully weigh the evidence in these cases as it is for any serious crime. The Police Department works closely with the Prosecutor's Office when investigating and charging Malicious Harassment/Bias Crime. The evaluation of the incident is conducted according to the law in a competent, objective, and thorough manner.

Recommendation #8 and SPD Response:
"Request the Mayor to direct the Seattle Commission for Sexual Minorities, the Human Rights Commission, and the Seattle Office for Civil Rights (SOCR) to educate the general public about bias crimes."

Any educational effort on bias crime must include input from the Police Department. On previous occasions, both representatives from the SOCR and the Police Department have spoken to groups, each covering their area of expertise, with the SOCR speaking on housing or job discrimination and the Police Department speaking on Malicious Harassment. This coordinated presentation of information distinguished between civil and criminal issues and demonstrated the complementary functions of each agency.

Recommendation #9 and SPD Response:
"Request the Mayor to direct other City agencies (such as the Department of Neighborhoods) to seek training for their personnel from SPD, SOCR, etc. in understanding the problem of bias-motivated attacks and how to combat them."

The Police Department has personnel who can instruct on the law of Malicious Harassment and the reporting of these crimes. Given the magnitude of this task, a full program to develop and offer this type of training would need to be reviewed and prioritized through the City's annual budget cycle.