



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

CERTIFIED-RETURN RECEIPT REQUESTED

October 15, 2008

Chief Jerry Dyer
Fresno Police Department
2323 Mariposa Mall
Fresno, CA 93721

Re: Compliance Review of the Fresno Police Department (06-OCR-0053)

Dear Chief Dyer:

I am writing to report the findings of the compliance review of language services at the Fresno Police Department (FPD), conducted by the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice. The OCR would like to thank FPD staff, especially Lieutenant Michael Reid and Sergeant Timothy Hahn, for assisting OCR attorney JuanCarlos Hunt during his May 2-4, 2006, onsite visit.

In my letter of January 9, 2006, I wrote to inform you that OCR had selected the FPD for a compliance review under Title VI of the Civil Rights Act of 1964 (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and their implementing regulations. As I noted at that time, OCR limited the scope of the compliance review to the FPD's provision of services to people with limited English proficiency (LEP). A LEP person is an individual whose primary language is not English and who has a limited ability to read, write, speak, or understand English.

In June of 2002, the U.S. Department of Justice published guidance for its financial aid recipients on taking reasonable steps to provide meaningful access to programs and activities for LEP persons in accordance with Title VI and the Safe Streets Act. See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002) [hereinafter DOJ Guidance]. Using the technical assistance standards in the DOJ Guidance, OCR initiated this compliance review to determine the extent to which FPD is providing language services to LEP persons.

After a thorough evaluation of the FPD's services and activities, including the FPD's responses to OCR's data requests and the information OCR gathered during its onsite visit, which included

interviews with department officials, command staff, sworn officers, and representatives from LEP communities, we sent you a draft Compliance Review Report on August 20, 2008, in accordance with 28 C.F.R. §§ 42.107(d)(2) and .206(e). The draft Compliance Review Report took into account the actions that FPD has taken to improve its services to LEP individuals since the time of OCR's onsite visit, including the development of written policies and procedures for LEP persons, Policy 368 and Procedure 368 (effective October 1, 2007). In a letter dated September 19, 2008, the FPD provided some information and clarification on several issues discussed in the draft report. In accordance with this information and clarification, the OCR slightly modified the Compliance Review Report on pages 5, 8, 12, and 17-18.

In regard to the limited scope of our review, we conclude that the FPD is taking steps to provide LEP persons with meaningful access to police services. However, the FPD should build on these steps and take further action to ensure that it is meeting its obligations under Title VI and the Safe Streets Act. The following Compliance Review Report contains recommendations based on the DOJ Guidance that the FPD may find helpful to improve its LEP policy and procedure documents and its overall services to LEP individuals.

Compliance Review Report

This Compliance Review Report closely tracks the DOJ Guidance: first assessing the FPD's obligation to provide LEP services and then reviewing the elements that FPD would include in a more effective plan for offering language assistance to LEP persons.

I. Assessing the Obligation to Provide LEP Services

According to the DOJ Guidance, a recipient's obligation to take reasonable steps to ensure meaningful access to its programs and activities for LEP persons requires an assessment that balances four factors: (1) the number or proportion of LEP persons that are the likely beneficiaries of a recipient's services; (2) the frequency with which LEP persons come into contact with the recipient's programs or activities; (3) the nature and importance of the program, activity, or service provided; and (4) the resources available to the recipient and the related costs. 67 Fed. Reg. 41459-61. In considering the application of these four factors to the FPD, OCR offers the following observations and recommendations.

A. The Number or Proportion of LEP Individuals in the Service Population

In its data response, the FPD provided OCR with a map demonstrating that it divides the City of Fresno into five police districts: Northwest, Northeast, Central, Southwest, and Southeast. Using data from the U.S. Census Bureau, the FPD stated that in 2000, 431,358 individuals age five and older resided in the City of Fresno; of this number, 111,902 (26%) spoke Spanish, 12,354 (3%) spoke other Indo-European languages, 39,202 (9%) spoke Asian and Pacific Island languages, and 2,669 (0.6%) spoke other languages. The FPD noted that the majority of the City's Spanish-

speaking individuals resided in the Southeast District (approximately 36,260) and Central District (approximately 26,100); that most of the City's residents who spoke an Asian or Pacific Island language also resided in the Southeast District (approximately 12,300) and Central District (approximately 8,073); and that the majority of the residents who spoke an Indo-European language lived in the Northwest District (approximately 4,700) and Northeast District (approximately 3,933).

Based on more recent data from the U.S Census Bureau, in 2006, the City of Fresno had an estimated population of 436,146 residents age five and older; of this group, 124,408 (29%) spoke Spanish, and almost half of this number (52,523) spoke English less than "very well," which OCR considers LEP. U.S. Census Bureau, American FactFinder, Fresno city, California at <http://factfinder.census.gov>. This data further indicates that 14,968 residents age five and older spoke other Indo-European languages, with 5,225 speaking English less than "very well;" 40,041 spoke Asian and Pacific Island languages, with 17,042 speaking English less than "very well;" and 3,225 spoke other languages, with 1,165 speaking English less than "very well." *Id.* The 2006 data provides a further breakdown of the specific Indo-European and Asian and Pacific Island languages spoken by residents age five and older; of the residents who spoke other Indo-European languages, 1,257 spoke Slavic languages, 1,249 spoke German or other West Germanic languages, 647 spoke French, and 11,815 spoke other Indo-European languages. *Id.* As for the City's residents who spoke Asian and Pacific Island languages, 3,502 spoke Tagalog, 2,158 spoke Chinese, 1,527 spoke Vietnamese, 879 spoke Korean, and 31,975 spoke other Asian or Pacific Island languages. *Id.*

Recommendation

The FPD should review the latest data from the U.S. Census Bureau to determine more accurately the language assistance needs of its service population. Many police departments have also found helpful the data collected by local school districts on the languages spoken by enrolled students in a given area. This data provides information on the foreign language groups in a particular area and their relative size. The FPD also should track its LEP population to monitor population shifts.

B. Frequency of Contacts with LEP Persons

To respond to non-emergency telephone calls from LEP persons, the FPD utilizes the services of the telephonic interpretation vendor Language Line Services, and officers in the field or civilian employees may also contact Language Line for assistance as well. In its data response, the FPD explained that to estimate the number of LEP individuals that FPD served in 2004, the FPD analyzed reports provided by Language Line and searched its Records Management System (RMS) for information on when an officer noted in a report that the officer requested that an interpreter respond to the scene. This data indicates that the FPD had 15,217 interactions with LEP individuals in 2004; the majority of these interactions involved Spanish-speaking (14,421),

Hmong-speaking (348), Punjabi-speaking (99), Laotian-speaking (92), and Cambodian-speaking (69) individuals. The FPD noted that this data does not include situations where a bilingual officer spoke with a LEP individual without requesting language assistance, where a detective requested language assistance and did not generate a RMS report, and where FPD received an emergency telephone call from a LEP individual. The FPD explained in its data response that it uses the telephonic interpretation vendor Network Omni Services to respond to emergency calls from LEP individuals, and that the State of California covers these costs; at the time of OCR's onsite visit, FPD did not receive service reports from Network Omni.

During the onsite visit, FPD provided OCR with a summary report from Language Line listing the number of calls that FPD made to Language Line during the period of April 21, 2005 to May 2, 2006, along with the languages requested. This information demonstrates that FPD contacted Language Line for assistance 6,329 times during this time period. Of these calls, 5,905 (93%) involved a request for a Spanish interpreter; the other requested languages include Hmong (206 calls), Laotian (53 calls), Punjabi (49 calls), Cambodian (26 calls), and Vietnamese (20 calls).

As noted above, FPD's search of RMS and the reports provided by Language Line do not capture all of the situations where FPD provided assistance to a LEP individual. Subsequent to OCR's onsite visit, FPD developed two new measures to track its encounters with LEP individuals. To track encounters between patrol officers and LEP individuals, the FPD added several fields pertaining to language assistance to the Mobile Display System (MDS) (part of RMS) that tracks all patrol calls; these fields require an officer to state whether the officer provided language assistance during a field encounter, and, if so, what the language was and how the officer provided assistance. To track encounters with LEP individuals at FPD facilities, the FPD created an electronic survey on Limited English Proficiency Services that front counter employees must complete; this survey requires employees to note when interpretation was provided, how and where it was provided, and what language was involved.

Additionally, as discussed on page 2 of this Compliance Review Report, the FPD recently developed written LEP policy and procedure documents, Policy 368 and Procedure 368 (effective October 1, 2007). These documents state that whenever a FPD employee is required to complete a report or other documentation, the employee should note when the employee provided language assistance services to a LEP individual.

Recommendation

The FPD should continue to develop reliable systems for gathering information on its contacts with LEP individuals. The FPD could amend Policy 368 and Procedure 368 to specifically discuss the requirement to track LEP encounters in MDS and in the electronic survey for front counter employees, and should address the need to track such encounters during other situations, such as telephone calls where Language Line or Network Omni was not utilized. The FPD should also obtain periodic reports from Network Omni so that it can track the emergency calls

that it receives from LEP individuals. However the FPD tracks its encounters with LEP persons, it should be sure to include information on the language spoken by the LEP person and the FPD's response to the need for language assistance. The FPD should then tabulate all of the data on an annual basis to determine the language needs of its LEP service population; the FPD may wish to amend Policy 368 to include the compiling of data as one of the responsibilities of the FPD's LEP Program Coordinator, the Commander of the Professional Standards Unit.

C. Important Public Services to LEP Individuals

1. Emergency and Non-Emergency Calls

Based on the FPD's September 19, 2008, response to OCR's draft Compliance Review Report, the OCR understands that dispatchers from the FPD's Communications Center or "Dispatch" receive all incoming emergency calls, and that the Communications Center's computer system automatically routes non-emergency calls to the FPD's Call Diversion Unit. In its data response, the FPD provided OCR with the Communications Center dispatchers' In-Service Training Guide from the Communications Training Manual; this guide states that if an emergency caller cannot speak English, the dispatcher shall press the 9-1-1 transfer button to obtain language assistance from a translator¹. As discussed in Section I.B. of this Compliance Review Report, the FPD uses Network Omni to obtain language assistance for emergency callers, and contacts Language Line for non-emergency calls.

During OCR's onsite visit, command staff and call takers from the Call Diversion Unit told OCR that if a non-emergency caller is LEP, the call taker will either contact Language Line directly for interpretation or may transfer the call to the Communications Center so that the Communications Center may contact Language Line. The Call Diversion Unit call takers also reported obtaining interpretation from family members and friends of non-emergency LEP callers or from bilingual Call Diversion Unit call takers; command staff told OCR that the Call Diversion Unit had approximately four Spanish-speaking, two Cambodian-speaking, and one Hmong-speaking call takers at the time of OCR's onsite visit. Similarly, dispatchers from the Communications Center told OCR that if a caller is LEP the dispatchers rely on Network Omni, Language Line, bilingual dispatchers, or family and friends of the LEP caller to provide language assistance. During OCR's onsite interviews, OCR spoke with a Hmong-speaking Communications Center dispatcher who reported providing language assistance for co-workers. One dispatcher with whom OCR spoke said that dispatchers note in a report if the caller was LEP.

2. Field Encounters and Walk-Ins

At the time of OCR's onsite visit, FPD had a written order in place outlining the procedures for obtaining language assistance, Standing Order No. 3.3.3., Translation Assistance (effective

¹ Please be advised that the DOJ Guidance uses the term "interpreter" to refer to an individual who provides oral language services, and the term "translator" to refer to an individual who provides written language services.

September 13, 2005). This Order states that when FPD employees in the field need language assistance, employees shall first try to obtain language assistance from individuals on the scene, when appropriate. If there is no one available on the scene to provide language assistance, then employees are instructed to contact the Communications Center so that a dispatcher can broadcast a request that an appropriate bilingual employee respond to the scene. According to Standing Order 3.3.3, if language assistance is not available from either of these sources, then an employee shall handle the call "to the best of his/her ability." The Order also contains a paragraph entitled "Use of Language Line;" this paragraph states that Language Line provides 24-hour telephonic interpretation services and lists the phone number and access code for employees to contact Language Line. However, the paragraph also states that Language Line shall not be used to replace the above-referenced means of providing language assistance, but rather should be limited to urgent or emergency situations.

During the onsite visit, FPD also provided OCR with an April 24, 2006, memorandum from the FPD's Professional Standards Unit to all FPD employees; this memorandum reminds employees of and attaches a copy of Standing Order 3.3.3 and instructs employees to use Language Identification Cards or to contact Language Line to identify the language spoken by a LEP individual. Additionally, FPD provided OCR with an April 28, 2006, memorandum from the FPD Records Bureau Manager to all Records Bureau personnel; this memorandum states that when a Records Bureau employee interacts with a non-English-speaking person, the employee shall attempt to use the person's family member to interpret or should locate a nearby bilingual employee, and if no one is available, the employee shall contact Language Line. The memorandum further states that to identify the language being spoken, the Records Bureau employees shall use a Language Identification Card or shall have the LEP person dial 911 so that a 911 operator can have Network Omni identify the language.

The officers and civilian employees with whom OCR spoke told OCR that if they encounter a LEP person in the field or at the station, they contact an appropriate bilingual officer (either directly or through the Communications Center); use a family member or friend of the LEP person, including children, or another third-party at the scene; or contact Language Line. However, several employees told OCR that they would not use a family member, friend or other third-party to interpret if the situation involved domestic violence or a felony or if the third-party was biased. One officer told OCR that the officer tries to use body language to communicate with LEP persons or has LEP individuals speak broken English, and one civilian employee said that the employee has occasionally told LEP callers to call back later.

As discussed previously in this Compliance Review Report, subsequent to OCR's onsite visit, FPD developed new LEP policy and procedure documents, Policy 368 and Procedure 368. These documents state that LEP individuals may elect to accept language assistance services from the FPD, or may choose to provide their own interpreter at their own expense. If the FPD is providing the language assistance, the documents state that employees should first utilize bilingual FPD employees who have been certified by the City of Fresno. If a certified bilingual

employee is not available and if the situation does not involve a criminal investigation, then FPD employees may obtain language assistance from non-certified bilingual employees, Language Line, bilingual community volunteers, and family and friends of the LEP individual. Additionally, the documents note that FPD will use translated forms and audio recordings to communicate with LEP individuals; for example, FPD may provide officers with a broadcast of a canine warning or crowd dispersal order in languages most likely to be encountered. When using non-certified bilingual employees, Policy 368 and Procedure 368 state that employees shall have a "competent understanding" of the language involved, and that when a bilingual FPD employee is not available, depending on the circumstances a FPD supervisor may request a bilingual employee from another local law enforcement agency.

As for family and friends of LEP individuals, Policy 368 and Procedure 368 caution that FPD employees should carefully consider the circumstances before relying on such individuals, including the nature of the situation and the relationship between the LEP individual and the prospective interpreter, and that employees should only use children in emergency or critical situations. Policy 368 and Procedure 368 explain that due to the varying scope and nature of field enforcement activities it is virtually impossible to provide immediate access to complete language assistance services to every officer in the field, and that each officer should assess the particular situation to determine the need for and availability of language assistance services. These documents further note that it is important that an officer be able to effectively communicate the reason for a law enforcement contact, the need for information, and the consequences of any enforcement action.

3. Interviews, Interrogations, and Arrests

At the time of FPD's data response, it stated that when FPD employees conduct interviews, interrogations, or arrests of LEP individuals, they follow the procedures outlined in Standing Order 3.3.3. As discussed above, these procedures involve utilizing bilingual individuals on the scene, when appropriate; contacting the Communications Center to broadcast a request for an appropriate bilingual employee; and using Language Line if the situation is urgent or an emergency. The FPD also said in its data response that FPD detectives work closely with Domestic Violence Advocates, most of whom are fluent in a foreign language, and that these Domestic Violence Advocates serve as another source of language assistance. The FPD further noted that FPD has Miranda Rights Warnings in English and Spanish, and several officers confirmed this to OCR during OCR's onsite interviews.

The new Policy 368 and Procedure 368 have a specific section addressing Custodial Interrogations and Bookings. This section states that to ensure that the rights of LEP individuals are protected during arrest and custodial interrogation, the FPD places a high priority on providing competent interpretation in such instances and that employees shall make every reasonable effort to accurately convey all communication to LEP individuals. This section further states that miscommunication during custodial interrogations may have a substantial

impact on any criminal prosecution. As explained in Section I.C.2 of this Compliance Review Report, Policy 368 and Procedure 368 state that FPD employees should first attempt to use certified bilingual employees to provide interpretation and may use other means of language assistance *if the situation does not involve a criminal investigation*. In the FPD's September 19, 2008, response to OCR's draft Compliance Review Report, the FPD stated that it is currently reviewing Policy 368 and Procedure 368, and that proposed new language states that "[w]hen a criminal investigation involves a felony violation of law, every effort shall be made to utilize a certified interpreter or translator."

4. Booking and Detention

In its data response, the FPD explained that once FPD takes a suspect into custody for a criminal offense, the FPD holds the suspect in FPD's temporary holding facility for up to two hours while the individual is fingerprinted and photographed. As with interviews, interrogations, and arrests of LEP individuals, at the time of FPD's data response, the FPD followed Standing Order 3.3.3. in providing language assistance to LEP individuals during the booking process. Subsequent to OCR's onsite visit, FPD employees began following the procedures outlined in Policy 368 and Procedure 368 when booking LEP individuals, which require employees to first attempt to locate a certified bilingual officer. As explained above, the FPD is currently reviewing Policy 368 and Procedure 368, and proposed new language states that when there is a felony violation of law, the FPD shall make every effort to use a certified interpreter or translator. Policy 368 and Procedure 368 also explicitly recognize the importance of providing effective language assistance services during the booking process, where medical screening questions are used to elicit information on an individual's medical needs, suicidal inclinations, presence of contagious diseases, and the need to segregate the arrestee from the rest of the prisoners.

After the booking process, the FPD either cites and releases the suspect or transfers the suspect to the jail operated by the Fresno County Sheriff's Department; the Fresno County Sheriff's Department provides detention services on behalf of the FPD. The Fresno County Sheriff's Department then assumes physical custody of the suspect, and the FPD provides the Sheriff's Department with all relevant report forms, arrest records, court documents, and information on the suspect's medical conditions. See FPD Standing Order 3.7.4, Prisoner Transportation.

5. Complaints

The FPD provided OCR with its procedures for handling complaints from members of the public; these procedures do not address the receipt of complaints from LEP individuals. See Standing Order 2.4.11, Receipt of Inquiries and Formal Complaints; Internal Affairs Procedures Manual. Briefly, members of the public can complain of alleged police misconduct in person, over the phone, in writing, or on-line. When an individual submits a complaint, a FPD supervisor will meet with the complainant and may attempt to resolve the complaint informally. If the supervisor cannot resolve the complaint informally or if police misconduct is believed to

have occurred, then the supervisor forwards the complaint to the appropriate division commander. The division commander will determine whether to investigate the complaint at the division level or to forward the complaint to the FPD's Internal Affairs Bureau (IA) for investigation; the IA generally investigates complaints alleging major violations, such as discrimination, harassment, or abuse of authority, while a division commander typically investigates complaints involving general violations, such as rudeness or traffic collisions. The FPD has a standard complaint form for complainants to complete, which is accompanied by an advisory form notifying complainants of their right to file a complaint against a police officer. In its data response, the FPD provided OCR with a copy of this complaint form and advisory; the version of the advisory provided by FPD also contains a provision notifying complainants that filing a false complaint against a peace officer is a misdemeanor.^{2,3} The hardcopy complaint form and advisory, along with brochures explaining the complaint process, are available in English, Spanish, Laotian, and Hmong. The FPD said in its data response that the forms are available in all four languages at the FPD district stations and at several recreation facilities within the City of Fresno, and are also posted on the FPD's section of the City of Fresno's website at www.fresno.gov. Additionally, the FPD also posts an on-line version of the complaint form and advisory at www.fresno.gov that the public may submit directly on-line. The City's website has the capability to translate all posted material, including the complaint documents, into the following twelve languages: French, German, Italian, Portuguese, Spanish, Russian, Dutch, Greek, Japanese, Korean, Chinese-Simplified, and Chinese-Traditional.

In FPD's data response, it stated that IA has several employees who are fluent in Spanish and communicate with Spanish-speaking LEP complainants; during OCR's onsite interviews, two Spanish-speaking employees from IA confirmed this. The FPD explained that when encountering LEP complainants who speak other foreign languages, IA has utilized bilingual employees from other FPD units or Language Line to communicate. One IA officer whom OCR interviewed also reported using witnesses on the scene to interpret for LEP complainants. The FPD provided OCR with a copy of the Receipt for Personnel Complaint that FPD sends to

²The provision making it a misdemeanor to knowingly file a false complaint against a peace officer is contained in California Penal Code §148.6. Based on research conducted by OCR, we understand that California Penal Code §148.6 has been declared unconstitutional by a federal district court. See Hamilton v. City of San Bernadino, 325 F.Supp.2d 1087 (C.D. Cal. 2004). Moreover, please note that the IACP National Law Enforcement Policy Center advises law enforcement agencies that it is not a good general practice to inform complainants of the penalties for filing a false complaint, as it creates a chilling effect on the filing of complaints and could be perceived as an attempt to intimidate potential complainants. Additionally, a law enforcement agency's failure to fully document all complaints from the public can create a perception that the agency is covering up some officer misconduct. See the Model Policy on Investigation of Employee Misconduct and its accompanying Concepts and Issues Paper, published by the IACP National Law Enforcement Policy Center (revised October 2001).

³The language notifying complainants that knowingly filing a false complaint against a peace officer is a misdemeanor is not contained in the mail -in version of the complaint form and advisory that FPD posts on -line at www.fresno.gov. It is not clear to OCR whether FPD has removed this language from all of the hardcopy versions of its complaint form and advisory since the time of FPD's data response. However, this warning is still contained in the on-line version of the complaint form and advisory that the public may submit directly on-line at www.fresno.gov.

complainants upon initial receipt of the complaint; this form is available only in English. At the conclusion of a complaint investigation, IA sends the complainant a letter notifying the complainant of the disposition of the complaint; it appears that IA sends this letter only in English.

The FPD reported in its data response that it has not received any complaints alleging ineffective communication with a LEP individual during the period of July 1, 2003 through March 24, 2006. The new Policy 368 and Procedure 368 contain a provision stating that FPD will provide frequently used and critical forms in the languages most frequently encountered, such as making the complaint form readily available to LEP individuals.

6. Community Outreach

The FPD reaches out to LEP populations in a variety of ways. In its data response, the FPD stated that it operates an Hispanic Residents Police Academy and a Southeast Asian Residents Police Academy that are designed to provide Hispanic and Southeast Asian residents with information about the police department and to improve interactions between the FPD and these communities. The OCR understands that the FPD conveys information in these academies in Spanish and Southeast Asian languages, and during OCR's onsite interviews several Spanish-speaking officers reported speaking at the Hispanic Residents Police Academy on DUI checkpoints, the process for filing complaints alleging police misconduct, and when to call 911.⁴ Additionally, in 2002, Chief Dyer established a Citizens Advisory Board comprised of culturally diverse members of the community; this Board meets with the Chief once a month and discusses a variety of issues and concerns including cultural and LEP issues.

The FPD also explained in its data response that it places a community service officer in each police district to work with the community on crime prevention, and that these officers periodically make presentations in Cambodian, Hmong, and Spanish; the FPD said that if it is necessary to communicate in another foreign language, FPD utilizes a certified bilingual FPD officer to assist. The FPD provided a list of organizations that community service officers work with to reach out to LEP populations, including the Fresno Center for New Americans, the Hmong Alliance Church of God, the Mosqueda Community Center, and Pacifica Apartments. The FPD also reaches out to Hispanic and Southeast Asian populations under its Child Safety Seat Campaign, where it uses bilingual community service officers and bilingual officers from other FPD units to participate in safety check stations and to conduct community outreach. The FPD further noted that it participates in a variety of Police Activity League (PAL) programs in the community which target areas of town where a large number of LEP individuals reside, and that FPD has instituted a number of PAL activities in languages other than English. Additionally, the FPD's Vice Unit runs a First Offender Prostitution program to educate first-

⁴ Based on OCR's interviews with FPD command staff, OCR understands that at the time of OCR's onsite visit, the FPD had not held a Southeast Asian Police Academy in several years.

time offenders and prevent recidivism, and has utilized a Spanish-speaking officer to present information.

During OCR's onsite interviews, several bilingual FPD employees reported speaking in Spanish or Hmong with community members and ethnic media on various crime prevention issues. For example, one Spanish-speaking officer said that he appeared on the Spanish-language talk show Arriba el Valle to discuss the process for impounding vehicles, and another Spanish-speaking officer told OCR that he has spoken on the Spanish radio station Channel 21 about DUI checkpoints. Also, an officer told OCR that the FPD has participated in a question and answer session on a Hmong-language television station. Several Spanish-speaking officers reported making presentations in Spanish on gangs and other public safety issues at schools, block parties, the Boys and Girls Club, parent groups, safety fairs, and neighborhood watch meetings. Additionally, one officer told OCR that the FPD recently published a press release advertising an upcoming police academy in the Spanish newspapers Vida en El Valle and El Rique. One Hmong-speaking civilian employee with whom OCR spoke said that the employee has spoken in Hmong about public safety issues at a parenting class and at a school.

The FPD's new Policy 368 and Procedure 368 documents each contain a section specifically pertaining to community outreach, noting that such outreach has become increasingly important to the success of more traditional law enforcement duties. Policy 368 and Procedure 368 state that FPD will continue to work with community groups, local businesses, and neighborhoods to provide equal access to LEP individuals to FPD services and activities.

7. General Language Services

To provide the foregoing public services to its LEP population, the FPD offers both oral and written language assistance.

a. Oral Language Services

Through the FPD's data response and OCR's interview with command staff, officers, and civilian employees, FPD has identified three ways in which the FPD provides oral language assistance to LEP individuals: (1) through Language Line or Network Omni; (2) through friends or family members of LEP individuals or third-party bystanders; and (3) through certified or non-certified bilingual FPD employees.

As previously noted in this Compliance Review Report, the FPD uses the telephonic interpretation provider Network Omni to respond to emergency calls from LEP individuals, and uses Language Line to respond to non-emergency calls from LEP persons. Officers in the field or civilian employees may also utilize Language Line for language assistance, and several officers and civilian employees with whom OCR spoke reported contacting Language Line for interpretation. However, at the time of OCR's onsite visit, FPD's existing LEP policy, Standing

Order No. 3.3.3, instructed employees to only use Language Line in urgent or emergency situations.

According to Standing Order No. 3.3.3, prior to using Language Line, employees should first attempt to utilize individuals on the scene for interpretation, such as family members or friends. To provide some examples of when FPD employees have used family members or friends to interpret, in its data response the FPD included copies of two incident reports involving domestic violence situations where FPD officers relied upon such individuals to communicate with LEP persons. The first report involved the officers using the sister of the woman allegedly being abused to interpret for this woman and using a neighbor to interpret for the alleged abuser, and the second report involved the officers using a friend of the woman allegedly being abused to interpret for both the woman and the alleged abuser. During OCR's onsite interviews, all of the officers and civilians with whom OCR spoke reported using family members, friends or bystanders to interpret for LEP individuals, although several officers said they would not use such an individual if the situation involved a felony, domestic violence, or if there was a conflict of interest. One officer reported using body language or broken English to communicate with a LEP individual if a friend, family member, or other third-party was not available to interpret.

If no one on scene is able to interpret, the employees with whom OCR spoke reported contacting a bilingual FPD employee for assistance, pursuant to Standing Order 3.3.3. These individuals contacted a bilingual employee either directly or through the Communications Center, and the employees with whom OCR spoke did not specify whether they sought out a certified bilingual employee or even realized that some employees were certified. In its data response, the FPD explained that the City of Fresno's Labor Relations Division certifies employees as being competent to interpret through the administration of a language examination; at the time of OCR's onsite visit, certification was available in the languages of Cambodian, Hmong, Laotian, Spanish, and Vietnamese. The Labor Relations Division conducts these examinations twice a year using City employees who have already been certified; in the FPD's September 19, 2008, response to OCR's draft Compliance Review Report, the FPD confirmed that the examination is solely oral and does not contain a written test. The FPD provided OCR with documentation⁵ demonstrating that at the time of FPD's data response, sworn officers who received this certification received a premium pay of an additional \$100.00 dollars a month, while non-sworn certified employees received an additional \$75.00 per month.

In its data response, the FPD attached a list of certified bilingual FPD employees; this list indicates that at the time of FPD's data response, the FPD had 114 certified bilingual employees, out of approximately 1,213 total employees. Of these certified employees, 94 spoke Spanish, 13 spoke Hmong, four spoke Cambodian, and three spoke Laotian. Additionally, during OCR's

⁵ Specifically, the FPD provided OCR with the relevant portions of the Memorandum of Understanding between the City of Fresno and the Fresno Police Officers Association for Fiscal Years 2004-2006, and the Memorandum of Understanding between the City of Fresno and the Fresno City Employees Association, Inc. for Fiscal Years 2006 - 2008.

onsite interviews, OCR spoke to several bilingual officers who had not been certified but reported providing language assistance for FPD. The FPD said that it takes steps to recruit bilingual individuals, such as focusing on hiring under-represented individuals in its cadet program, which is a program that exposes individuals to the FPD and provides them with an opportunity to apply to attend the police academy at FPD's expense. The FPD also noted that as part of its recruitment activities in 2006, it met with an individual from the Mexican Consul and recruited at numerous schools and colleges known for their diversity.

As discussed in Sections I.C.2 - I.C.6 of this Compliance Review Report, since the time of OCR's onsite visit, FPD has developed Policy 368 and Procedure 368 to address how FPD employees should provide oral language services to LEP individuals. This policy instructs FPD employees to first attempt to utilize a certified bilingual employee to provide language assistance, and if a certified employee is not available and the situation does not involve a criminal investigation, to use non-certified bilingual employees, Language Line, community volunteers, and family and friends of LEP individuals. Policy 368 and Procedure 368 advise employees to carefully consider the circumstances before using family and friends to interpret, and that employees should only use children in emergency or critical situations.

As for training FPD employees on how to interact with LEP individuals, the FPD explained in its data response that FPD provides all new employees with a policy manual that contains a copy of every FPD policy, including Standing Order 3.3.3., Translation Assistance. The FPD sends employees any revisions of existing policy, and employees must acknowledge receipt of any policy changes on a log sheet. The FPD further said that during the Patrol Training Officer (PTO) program, which all new officers must complete, the FPD specifically covers Standing Order 3.3.3. During OCR's onsite visits, most of the employees with whom OCR spoke reported receiving some training on Standing Order 3.3.3., and a few employees, including Communications Center employees, recalled receiving training specifically on how to access Language Line. Additionally, two officers told OCR that they received training on how to interact with LEP individuals a few weeks before OCR's onsite visit.

The FPD's recently-enacted Policy 368 specifically addresses how FPD plans to train its employees on providing services to LEP individuals. This document states that FPD will provide periodic training to all employees in public contact positions on LEP policies, procedures, forms, and other available resources, along with how to work effectively with in-person and telephone interpreters. Policy 368 further states that FPD will provide periodic training for FPD management so that they are fully aware of Policy 368 and can reinforce its importance to staff.

b. Written Language Services

In its data response, the FPD said that typically division commanders or bureau managers determine what documents should be translated into languages other than English, and that this determination is based on the needs of the community, the critical nature of the information, and

requests made by the community. In its data response, the FPD provided copies of the following eleven documents translated into one or more foreign languages: the complaint brochure, complaint form and advisory (discussed in Section I.C.5 of this Compliance Review Report) translated into Spanish, Hmong, and Laotian; a form to report a violation of a court order translated into Spanish; an informational sheet for victims of burglary or theft translated into Spanish; a Records Bureau opinion survey translated into Spanish and Hmong; a sexual assault and domestic violence victim information form translated into Spanish; a letter explaining how to apply for a police clearance translated into Spanish; a towed vehicle information sheet translated into Spanish; a DMV DUI form translated into Spanish; and a DMV notice providing information on hearings translated into Spanish, Chinese, Vietnamese, Korean, and Tagalog.

During OCR's onsite visit, the FPD provided OCR with approximately twenty-eight additional flyers or pamphlets that are translated into foreign languages and address public safety issues such as bicycle safety, child abuse, air bag safety, homeland security, crime prevention, vehicle security, latchkey children, and family violence. Of these twenty-eight flyers or pamphlets, nine are in Spanish, three are in Vietnamese, six are in Hmong, six are in Laotian, three are in Cambodian, and one is in Korean. Additionally, the FPD provided OCR with informational sheets and letters to community members translated into Spanish addressing a variety of topics such as domestic violence, how to report a crime, the neighborhood watch program, DUI violations, complaints regarding disturbing parties, the FPD's Problem Oriented Policing Team, and preparing for terrorism. Also, as discussed in Section I.C.5 of this Compliance Review Report, the City's website has the capability to translate all material posted on the website, including information contained on the FPD's section of the website, into the following 12 foreign languages: French, German, Italian, Portuguese, Spanish, Russian, Dutch, Greek, Japanese, Korean, Chinese-Simplified, and Chinese-Traditional.

Based on the information contained in FPD's data response, the OCR understands that FPD uses certified bilingual officers to translate materials into foreign languages, and also uses Language Line to translate documents. The FPD has certified bilingual officers review translated documents to ensure their accuracy, and has also used outside resources to review translated documents such as Language Line, community members, and the Office of the Ombudsman. The FPD said that it distributes the translated materials to the public by posting materials at FPD district stations and at City of Fresno recreation facilities and by having officers distribute the materials in the field. During OCR's onsite interviews with patrol officers, officers reported carrying translated documents in Spanish, Hmong, Cambodian, or Laotian related to issues such as domestic violence, sexual assault, retrieving a towed vehicle, burglary, and making a complaint. Additionally, these officers reported carrying "I speak" language identification cards from Language Line. As discussed above, the City's website may also serve as a vehicle to provide translated material to the public.

In its data response, the FPD provided OCR with a copy of a sign stating in English, Spanish, Hmong, Cambodian, and Laotian that "Translated Services are available. Ask at the counter for

assistance." The FPD provided photographs showing that this sign is posted in several locations at its headquarters building and Northeast, Northwest, and Southwest District stations.⁶

The FPD's written LEP documents, Policy 368 and Procedure 368, state that the FPD will provide frequently used and critical forms and guidelines in the languages most commonly represented within a particular area. The documents note that when appropriate, the translated forms will be conspicuously posted at the front counter and otherwise available upon request.

Recommendations

While the FPD is currently taking steps to provide services to LEP persons, such as testing and certifying bilingual employees as being competent to interpret, conducting community outreach with Hispanic and Southeast Asian populations, and translating some critical or frequently-used materials into one or more foreign languages, the FPD should build on these steps to provide more effective language assistance to LEP individuals. The OCR recognizes and commends FPD for drafting the written LEP protocols Policy 368 and Procedure 368 following OCR's onsite visit. The FPD should carefully review Policy 368 and Procedure 368 and make any necessary changes to ensure that they are consistent with the guidance contained in this Compliance Review Report. For example, the FPD should ensure these documents specifically address how FPD employees will provide services to LEP individuals in all of the contexts discussed in this Compliance Review Report, such as telephone calls, field and walk-in encounters, interrogations, arrests and bookings, complaint processing, and community outreach.

For face-to-face encounters, the LEP protocols should continue to advise employees to first attempt to obtain language assistance services from City-certified bilingual employees, followed by Language Line, non-certified bilingual employees who are qualified to interpret, and community volunteers who are competent to interpret. The LEP documents should state that employees should use family members, friends, or bystanders to interpret only in unforeseen, emergency circumstances while awaiting a qualified interpreter. Section II of this Compliance Review Report contains additional information on what elements should be contained in an effective language assistance plan, along with a link to a sample plan.

Once the FPD has revised and finalized its LEP protocols, it should immediately train all employees on the protocols to ensure that all employees are aware of the proper procedures for providing language assistance services. Following this initial training, the FPD should establish annual training sessions focused specifically on providing language assistance services to LEP individuals. As part of its training program, the FPD may wish to show the enclosed training DVD *Breaking Down the Language Barrier: Translating Limited English Proficiency into Practice*. Other law enforcement agencies have found this DVD particularly helpful in training employees on how to provide services effectively to LEP populations.

⁶ The FPD explained that these four buildings are the only FPD facilities open to the public; the two remaining district stations serve as a dressing station and briefing area for FPD employees.

The FPD is currently taking positive steps to recruit bilingual employees and ensure that its language assistance services are accurate and reliable by offering additional compensation for employees who obtain certification from the City of Fresno in the languages of Cambodian, Hmong, Laotian, Spanish, or Vietnamese. Given the relatively small number and percentage of certified bilingual FPD employees - 114, or 9.4% of FPD's workforce - the FPD should increase its efforts to recruit bilingual officers. In particular, the FPD should attempt to recruit more Spanish-, Vietnamese-, Tagalog-, Chinese-, and Korean-speaking officers, as the latest available data from the U.S. Census Bureau indicates that a large number of City of Fresno residents speak these languages. Also, the FPD may want to work with the City of Fresno to expand the languages that are eligible for certification and additional compensation to include other frequently-encountered languages. The FPD should also ensure that the proficiency tests administered during the City's certification process go beyond testing an employee's skill in communicating in a foreign language and assess the particular skill of interpreting, which requires listening to speech in one language and orally conveying its meaning in another language. The City's proficiency testing should also be expanded to assess an individual's ability to translate written materials, which involves rendering written communication in one language into another language.

The FPD should maintain a roster of all employees who have obtained certification from the City, listing each employee's contact information and whether the employee is certified as being able to interpret and/or translate. The FPD should ensure that this list is constantly updated and distributed to all FPD employees, and that employees are aware that they should first attempt to obtain language assistance services from a certified bilingual employee before using a non-certified bilingual employee.

In regard to written materials, while the FPD has taken steps to make various documents and resources available in Spanish and several Asian languages, it should take additional steps to ensure compliance with Title VI. The Department of Justice encourages recipients to satisfy the "safe harbor" provision in the DOJ Guidance when determining what documents to translate. See DOJ Guidance, 67 Fed. Reg. 41464. This provision states that recipients should translate "vital documents" for LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population. Id. Whether a document is "vital" depends on the "importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner." Id. at 41463. Examples of documents that may be "vital" are consent and complaint forms; intake forms; written notices of rights; denial, loss, or decrease of benefits; notices of disciplinary actions; written tests for a license, skill, or job for which knowing English is not required; applications to participate in a program or activity; and applications to receive a benefit or service. Id.

In accordance with the DOJ Guidance, the FPD should perform an inventory of all of its written materials, identify the documents it considers "vital," and translate these documents into the languages that meet the safe harbor threshold. Based on the 2006 Census data previously cited, it

appears that the Spanish-speaking population of the City of Fresno clearly meets the 1,000 person safe harbor threshold. Although the data is less clear for other language groups, their presence may also meet the safe harbor threshold. The FPD should also continue to ensure the accuracy of translated documents by having the documents reviewed by certified bilingual employees or qualified translators from outside the FPD. The FPD may also wish to use “back translation,” where the primary translator can translate the document, and a second, independent translator could translate it back into English to ensure that the appropriate meaning has been conveyed. Once the FPD translates the “vital documents” and ensures their accuracy, it should expand upon its discussion of written forms and guidelines in Policy 368 to advise officers to carry the translated documents with them in the field and when meeting with LEP communities.

Regarding community outreach, the FPD is already taking steps to build relationships with LEP communities. To ensure that its outreach efforts are effective, the FPD should establish a mechanism for gathering community feedback on its provision of services to LEP individuals. For example, the FPD may want to develop a written survey of community groups serving LEP populations, or to convene a focus group of LEP individuals. The FPD should consider holding separate meetings with each LEP community, perhaps in collaboration with community, business, and religious leaders representing the LEP population, so that the FPD can hear the LEP community’s unique concerns. The FPD should continue to work with ethnic media outlets to publicize these meetings and to inform LEP persons of the availability of free language assistance services and other important resources.

D. Available Resources

The FPD’s fiscal year is from July 1 to June 30. According to the FPD’s data response, it budgeted a total of \$113,268,630.00 for operational expenses in Fiscal Year 2004; of this amount, the FPD spent \$4,071.28 on language assistance services and \$42,001.00 on premium pay for certified bilingual employees. In Fiscal Year 2005, the FPD budgeted \$124,514,212.00 for operational expenses, of which \$9,200.00 was spent on language assistance services and \$73,600.00 was spent on premium pay for certified bilingual employees. In the FPD’s September 19, 2008, response to OCR’s draft Compliance Review Report, the FPD clarified that the listed figures for language assistance services do not include expenditures on Language Line, and that the FPD expended \$80,118.52 on Language Line services in Fiscal Year 2004 and \$34,502.00 on Language Line services in Fiscal Year 2005.⁷ In an October 3, 2008, telephone conversation, FPD Sergeant Brian Rogers told OCR Attorney Advisor Shelley Langguth that he has not been able to determine what the \$4,071.28 and \$9,200.00 figures for language assistance services listed in the FPD’s data response were spent on.

⁷ The FPD explained that expenditures on Language Line services decreased in Fiscal Year 2005 because the FPD initiated an internal audit in Fiscal Year 2005 that discovered that Language Line had been incorrectly billing FPD for calls that had been made by other entities or cities.

In addition to Language Line, which the FPD pays for, and Network Omni, which is subsidized by the State of California, FPD's bilingual employees serve as its primary means of communicating with LEP individuals. As discussed previously in this Compliance Review Report, the FPD provides certified bilingual sworn officers with additional premium pay of \$100.00 a month; certified non-sworn employees receive an additional \$75.00 per month. The FPD takes active steps to recruit bilingual individuals, such as targeting its cadet program toward under-represented individuals and recruiting at schools and colleges known for their diversity. In FPD's Policy 368 and Procedure 368 documents, it also lists bilingual community volunteers from local businesses, churches, neighborhood groups, and schools as a source of language assistance services. However, at the time of OCR's onsite visit, none of the employees with whom OCR spoke mentioned using bilingual community volunteers to interpret. When translating written documents, it appears that FPD relies upon certified bilingual employees, but has also used Language Line, community members and advocates, and the Office of the Ombudsman to translate or to review translated documents.

Recommendation

The FPD should undertake a review of its human and capital resources in assessing how well it is responding to the needs of its LEP populations. One part of this review should include gathering feedback from the local LEP service population on how the FPD can provide more effective language assistance services, as discussed on Page 17 of this Compliance Review Report. The FPD should also work with community groups serving LEP populations to determine what additional steps it can take to attract more bilingual employees capable of interpreting and translating, particularly in Spanish, Vietnamese, Chinese, Tagalog, and Korean. Additionally, the FPD may wish to reimburse employees for taking language classes in frequently-encountered languages. The FPD should utilize the community groups serving LEP populations to identify all of the community resources that are available to provide cost-effective and reliable language assistance services to the City's LEP populations.

II. Developing an Effective Plan on Language Assistance for LEP Persons

According to DOJ Guidance, an effective plan for providing language assistance to LEP persons has five elements: (1) identifying LEP individuals who need language assistance; (2) providing information on effective language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the plan.

Recommendation

The FPD's existing LEP protocols, Policy 368 and Procedure 368, state that the FPD's Commander of the Professional Standards Unit is responsible for coordinating the FPD's LEP program, including conducting audits of the FPD's LEP program and coordinating all translation and interpretation services. The Commander should review Policy 368 and Procedure 368 and

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make any necessary revisions to ensure that they incorporate the five elements referenced above and address the concerns raised in this Compliance Review Report. In doing so, the FPD may wish to consult the DOJ Guidance, along with the following documents: (1) Planning Tool for Creating a Language Assistance Policy and Plan in a Law Enforcement agency; (2) Limited English Proficiency Resource Document: Tips and Tools from the Field; and (3) a sample written language assistance plan. These documents are available online at <http://www.lep.gov>, and should assist the FPD in making any necessary revisions to its existing LEP protocols.

Conclusion

This letter serves as notice that OCR has made a preliminary determination that the FPD appears to be taking steps to provide meaningful access to its programs and activities to LEP persons. However, the FPD should build on these steps to ensure compliance with Title VI. On request, the OCR is available to provide technical assistance to FPD in implementing its recommendations and formulating a written language assistance plan. **Immediately upon receipt of this letter, we ask that a responsible FPD official contact Attorney Advisor Shelley Langguth to develop a timeline and goals for developing a written language assistance plan for your agency.**

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Langguth at (202) 305-2353.

Yours very truly,

/s/

Michael L. Alston
Director

cc: Sergeant Brian Rogers
Fresno Police Department