



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

June 29, 2011

Donald M. Papy, Chief Deputy City Attorney
Office of the City Attorney
City of Miami Beach
1700 Convention Center Drive, Fourth Floor
Miami Beach, Florida 33139

Re: Notice of Findings
v. Miami Beach Police Department (10-OCR-0647)

Dear Mr. Papy:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of your client, the Miami Beach Police Department (MBPD), in connection with the administrative Complaint that (Complainant) has filed against the MBPD. In her Complaint, the Complainant alleges that officers with the MBPD discriminated against her based on national origin and religion during a January 31, 2010, incident.

The OCR has completed our review of the documentation provided by the Complainant and the MBPD and has determined that there is insufficient evidence of a violation of the civil rights laws that we enforce. Our findings are set forth below for your review.

Factual Background

The Complainant alleges the following:

On January 31, 2010, the Complainant, along with three of her daughters, was attending the trade show at the Miami Beach Convention Center as The Complainant is of Moroccan descent and is Jewish, and was wearing a headscarf for religious reasons. The Complainant was conversing in Arabic and English with one of the vendors and was also conversing with another vendor in a dialect of Sephardic Hebrew, which the Complainant believes sounds like Arabic to most individuals. Approximately twenty minutes after the Complainant's conversations with these vendors, she was approached by Captain and Captain of the

¹ In her Complaint to the OCR, the Complainant lists the rank of both MBPD employees as "Officer" and identifies the second employee as Officer however, based on information submitted by the MBPD, the OCR understands that both of the employees are Captains and that the second employee's correct name is Captain

Miami Beach Police Department (MBPD), along with private security officer who requested that the Complainant and her daughters come with them to a private area behind a curtain. Captain told the Complainant that she was making other patrons uncomfortable. Captain and Mr. accused the Complainant and her daughters of stealing earrings from a vendor's booth, and one of the officers told her that if she does not consent to a search she would be arrested. The officers searched the purses and wallets of the Complainant and her daughters but did not find any earrings. The Complainant offered to have a female officer conduct a pat down search of her and her daughters, but the officers said that was not necessary. Several vendors came forward to vouch for the Complainant's character and to state that she has paid for all of the merchandise in her possession.

After the officers searched the Complainant and her daughters, they conferred privately with Mr. and then told the Complainant that they had to evict her from the trade show because she was making the other patrons uncomfortable. The Complainant asked if it was because she was wearing a headscarf, and Captain replied "[y]es." The Complainant asked if it would be different if she was wearing a wig, and again Captain replied "[y]es." The officers then escorted the Complainant and her daughters out of the building.

The owner of the trade show subsequently contacted the Complainant's husband and said that the Complainant and her family were welcome to attend future trade shows. The Complainant and her daughters did attend the trade show in April 2010, and Captain followed them around the show. The Complainant's daughter heard Captain say to a female MBPD officer "[w]hy are these people back here," and that he did not like them.

The Complainant filed a complaint with the MBPD regarding the conduct of Captain and Captain and the MBPD Internal Affairs Unit (IAU) found the allegation of bias-based profiling to be unfounded and exonerated the officers as to the allegation of abuse of authority. After the Complainant initially notified the MBPD that she wished to file a complaint against Captain and Captain she received a phone call from Captain of the IAU wherein Captain told the Complainant that what she thinks occurred did not occur and that she did not need to file a complaint. The Complainant also received a phone call from Major of the MBPD who told her that there was no means of filing a complaint regarding this type of incident. The Complainant found these phone calls to be harassing and threatening with the intent to discourage her from filing a complaint.

The Complainant believes that the MBPD officers detained her and her daughters, accused them of shoplifting, and evicted them from the trade show because she was wearing a headscarf in accordance with her Jewish religion, and because the officers perceived her to be Arab. The Complainant states that there is a very strong anti-Arab sentiment in the City of Miami Beach and among members of the MBPD.

In the MBPD's response to the OCR's data request, the MBPD denies discriminating against the Complainant based on her national origin or religion, and states that neither Captain [redacted] nor Captain [redacted] had any perception of the Complainant's national origin or religion at the time of the January 31 incident. The MBPD provided the OCR with the IAU's case file of its investigation of the Complainant's complaint, which includes audio recordings of interviews with the Complainant, Captain [redacted] Mr. [redacted] and the Complainant's three daughters. According to these interviews, Mr. [redacted] is [redacted] private security for the [redacted] and has sole authority to remove individuals from the show, and Captain [redacted] and Captain [redacted] were providing assistance to the private security on January 31. Mr. [redacted] told the IAU that a vendor informed members of his private security staff that the Complainant had stolen a pair of earrings from the vendor, and Mr. [redacted] alerted Captain [redacted] and Captain [redacted] Captain [redacted] Captain [redacted] and Mr. [redacted] told the IAU that as soon as they approached the Complainant, the Complainant immediately stated that she gets stopped all of the time for suspected shoplifting. Captain [redacted] Captain [redacted] and Mr. [redacted] also stated that the Complainant and her daughters voluntarily emptied out their purses without being requested to do so, and that neither Captain [redacted] nor Captain [redacted] told the Complainant that she would be arrested if she did not consent to a search. Captain [redacted] stated that he explicitly told the Complainant that she did not need to show him anything, and that he was not going to search her. Captain [redacted] Captain [redacted] and Mr. [redacted] also said that none of them made any comments regarding the Complainant's attire or her wearing a headscarf.

Mr. [redacted] told the IAU that while the MBPD officers were speaking with the Complainant a second vendor approached Mr. [redacted] and said that the Complainant and her daughters may have taken something from his booth, and that Mr. [redacted] decided to remove the Complainant and her daughters from the trade show based on security concerns. According to Mr. [redacted] testimony, he has removed individuals from the trade show on several occasions over the past few years due to allegations of theft.

During the IAU's interviews with the Complainant's daughters, two of the daughters could not recall if either Captain [redacted] or Captain [redacted] requested that the Complainant and her daughters empty their purses, and the third daughter said that they voluntarily opened their purses without the officers requesting them to do so. Two of the daughters said that one or both of the MBPD officers asked the Complainant why she wears a headscarf.

In regard to the Complainant's initial contact with the MBPD regarding filing a complaint, the IAU's case file contains copies of two February 8, 2011, e-mails from Major [redacted] (Captain [redacted] supervisor) to Chief Noriega of the MBPD where Major [redacted] discussed a February 2, 2010, conversation that he had with the Complainant. According to these e-mails, Major [redacted] advised the Complainant that she could contact the IAU to file a Complainant but the Complainant said that she did not wish to do so. In his second e-mail, Major [redacted] said that he responded to the Complainant's inquiries regarding her encounter with Captain [redacted] and Captain [redacted] and that at no time did he harass, intimidate, or threaten her. The IAU's case

file also contains a copy of a February 3, 2011, e-mail from Captain [redacted] to Chief Noriega, where Captain [redacted] said that he spoke with the Complainant earlier that day and that he notified her that the IAU would be initiating an investigation into her complaint.

As for the Complainant's allegations that Captain [redacted] followed her and her daughters around the [redacted] trade show in April 2010, Captain [redacted] told the IAU that he never observed the Complainant at the April 2010 show, and that while he saw one of the daughters he denied following her around the show or asking another officer why the Complainant and her daughters were back at the show.

Policies and Procedures Relevant to the Allegations

The MBPD provided the OCR with several internal policies and procedures relevant to the Complainant's allegations. The MBPD provided the section of the 2011 MBPD Law Enforcement Handbook entitled "Stop and Frisk,"² along with MBPD Standard Operating Procedure (SOP) No. 16, "Search and Seizure" (revised July 15, 2003). These policies state that pursuant to Florida law, whenever an officer encounters a person under circumstances which reasonably indicate that the person has committed, is committing, or is about to commit a violation of the law, the officer may temporarily detain the person for the purpose of ascertaining the person's identity and the circumstances surrounding the person's presence and actions. These policies advise officers that such investigatory detentions must be based on articulable circumstances, which viewed in light of an officer's experience, training, and knowledge, lead the officer to believe that criminal activity has or will be occurring. The SOP No. 16 further states the factors justifying a stop include information from a concerned citizen, and that the detention shall not be longer than the time reasonably necessary to determine identification and to inquire about the circumstances leading to the stop. The MBPD also provided SOP No. 117, "Patrol Functions and Responsibilities" (revised July 15, 2003), which states that officers should conduct a field interview when an individual is engaging in suspicious activity or is a possible suspect in a crime.

In regard to conducting searches of individuals, SOP No. 16 instructs officers to obtain a search warrant prior to searching an area, item or person, except in certain circumstances such as when an individual has voluntarily and freely provided consent to search.

Legal Analysis

Title VI of the Civil Rights Act of 1964 (Title VI) provides that "[n]o person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any

² During a June 24, 2011, telephone conversation with OCR attorney [redacted] you indicated that the section on stop and frisk in the 2011 MBPD Law Enforcement Handbook is identical to the section on stop and frisk contained in the MBPD Law Enforcement Handbook that was in effect at the time of the January 31, 2010, incident at issue.

program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Additionally, the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), under which the MBPD receives DOJ funding, contains a discrimination provision modeled after Title VI that prohibits funding recipients from discriminating on the basis of race, color, national origin, sex, and religion. 42 U.S.C. § 3789d(c)(1). While Federal courts interpreting Title VI and the Safe Streets Act have not yet addressed the issue, courts addressing national origin discrimination under Title VII of the Civil Rights Act of 1964³ have held that national origin discrimination includes discrimination on the basis of an individual's *perceived* national origin or the individual's objective appearance to others. *See, e.g., E.E.O.C. v. WC&M Enterprises, Inc.*, 496 F.3d 393, 401-402 (5th Cir. 2007); *Bennun v. Rutgers State Univ.*, 941 F.2d 154, 173 (3rd Cir. 1991); *Perkins v. Lake County Dep't of Utilities*, 860 F.Supp. 1262, 1278 (N.D. Ohio 1994); *LaRocca v. Precision Motorcars, Inc.*, 45 F.Supp.2d 762, 770 (D. Neb. 1999).

To prove discrimination under these statutory provisions, the evidence must establish an intent to discriminate. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1202 (11th Cir. 1999). Discriminatory intent may be shown by such factors as substantial disparate impact, a history of discriminatory actions, procedural and substantive departures from the norms generally followed by the decisionmaker, and discriminatory statements. *Village of Arlington Heights*, 429 U.S. at 265, *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir. 1993).

The OCR has carefully reviewed the documentation submitted by both the Complainant and the MBPD, and finds that the evidence is insufficient to demonstrate that the MBPD discriminated against the Complainant based on national origin or religion. Based on the information that is before us, it appears that Officer [redacted] and Officer [redacted] actions are consistent with the MBPD's norms or procedures. The evidence demonstrates that Officer [redacted] and Officer [redacted] approached the Complainant and began to question her after Mr. [redacted] alerted them that a vendor had accused the Complainant of shoplifting a pair of earrings. Accordingly, the officers had reasonable justification to temporarily detain the Complainant and her daughters to question them regarding the alleged theft. While the Complainant alleges that one of the officers told the Complainant that she would be arrested if she did not consent to a search, both of the officers denied making this statement and said that the Complainant and her daughters voluntarily emptied out their purses without the officers requesting them to do so. One of the Complainant's daughters agreed with the officers' account that the Complainant and her daughters voluntarily opened their purses without prompting, and the other daughters could not recall if the officers requested consent to search their purses. Therefore, the evidence is insufficient to demonstrate that the Complainant and her daughters did not voluntarily and freely allow the officers to search their purses.

³ Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e – 2000e-17, prohibits discrimination in employment practices.

The evidence is also insufficient to demonstrate that the temporary detention lasted longer than necessary to inquire about the alleged theft. At the conclusion of the temporary detention, Captain [redacted] and Captain [redacted] did not make the decision to remove the Complainant and her daughters from the trade show; rather, Mr. [redacted] made this decision. Based on all of the information in the record, it appears that the conduct of Captain [redacted] and Captain [redacted] complied with relevant MBPD norms and procedures.

In regard to any discriminatory statements, the Complainant alleges that Captain [redacted] affirmed that she was making the other patrons uncomfortable because she was wearing a headscarf, and two of her daughters stated that one or both of the officers asked the Complainant why she wears a headscarf. However, Captain [redacted] and Mr. [redacted] deny that any of them made any statements regarding the Complainant's headscarf. Based on these inconsistent statements and the information in the record, the evidence is insufficient to demonstrate whether Captain [redacted] or Captain [redacted] made any discriminatory statements related to the Complainant's national origin or religion, or whether they had any perception of her national origin or religion.

According to the MBPD's response to the OCR's data request, from January 1, 2009 to the present, the MBPD received one complaint alleging national origin or religious discrimination, where an individual alleged that a MBPD officer made anti-Semitic comments to a member of the public. The MBPD found the allegations to be unsubstantiated. The MBPD said that from January 1, 2009 to the present, it has not had any lawsuits or administrative actions filed against it alleging national origin or religious discrimination. Therefore, it does not appear that the MBPD has a history of discrimination.

Based on all of the information discussed above, the OCR finds that there is insufficient evidence to demonstrate that Captain [redacted] or Captain [redacted] acted with an intent to discriminate against the Complainant based on national origin (actual or perceived) or religion on January 31, 2010. Moreover, the contradictory information submitted by the Complainant and the MBPD is insufficient to demonstrate that any MBPD officers acted in a manner as to discourage the Complainant from filing a complaint with the MBPD, or that Officer [redacted] followed the Complainant and her daughters around the trade show in April 2010. Therefore, we are closing the administrative Complaint filed by the Complainant.

Sincerely,

/s/

Michael L. Alston

Director