



DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE DIVISION

July 30, 2021

Jeffrey A. Howes
First Assistant District Attorney
Multnomah County District Attorney's Office
Multnomah County Central Courthouse
1200 SW First Ave. Suite 5200
Portland, OR 97204

Dear Mr. Howes,

I am writing regarding your request that the Criminal Justice Division review a profiling complaint filed pursuant to Multnomah County District Attorney Office (MCDA) Policy 1.06. Messrs. Schultz and Gibson (complainants) requested that an outside agency review their complaint instead of the MCDA First Assistant as contemplated by the policy. The complainants allege that MCDA has pursued criminal charges against them and has not pursued criminal charges against others who have allegedly engaged in the same or similar conduct. They further allege that the basis for the disparate treatment was due to their "political affiliation, and religion." (See complaint letter, pg. 4).

In considering whether a policy violation occurred, we reviewed the complaint and accompanying materials, Portland Police Bureau police reports, videos of the incident at Cider Riot, relevant pleadings in the underlying criminal matter, emails to and from MCDA employees regarding the criminal matter, and pleadings in the related federal proceeding (*Schultz v. Schmidt*, No. 3:20-cv-01580-IM, 2021 U.S. Dist. LEXIS 36497 (D. Or. Feb. 26, 2021)). Additionally, we conducted legal research, including reviewing the legislative history of HB 2002 (2015), which is relevant to our analysis, because the definition of profiling in MCDA policy 1.06 is taken essentially verbatim from that legislation. We also spoke to members of MCDA.

As relevant to our analysis, MCDA Policy 1.6 prohibits an MCDA employee from targeting an individual for suspicion of violating a provision of law, based solely on the individual's real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness, or disability. The policy shares the same objective as HB 2002, which is to prohibit employees from relying on broad assumptions or stereotypes about an individual's personal attributes as the sole factor in deciding whether to investigate that person for a crime.

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With respect to this complaint, no member of MCDA participated in the decision to investigate complainants regarding their involvement at the incident at Cider Riot. Rather, Deputy District Attorney Brad Kalbaugh's role in this context was to review the investigation completed by the Portland Police Bureau to determine whether sufficient evidence existed to pursue criminal charges. As the United States District Court noted, that determination was based on information derived from police reports, video evidence, and conversations with law enforcement investigators, and was later endorsed by the grand jury that issued indictments against complainants. For those reasons, we find the complaint unfounded.

Thank you for the opportunity to review the complaint. If we may be of further service, please do not hesitate to ask.

Sincerely,



Michael J. Slauson
Chief Counsel
Criminal Justice Division
Oregon Dept. of Justice