

MAPLEWOOD
POLICE



Maplewood Police Department

Independent Incident Assessment

September 29, 2017

HILLARD  HEINTZE®



September 29, 2017

Mr. Roger J. Desiderio, Esq
Township Attorney, Township of Maplewood
Bendit Weinstock, P.A.
80 Main Street – Suite 260
West Orange, New Jersey 07052

Dear Mr. Desiderio:

Please find attached the final report summarizing the results of the independent assessment you asked us to conduct of the Maplewood Police Department's handling of the incident that occurred after the fireworks event on July 5, 2016.

With an appreciation for the community sensitivities surrounding the incident, our focus was to provide a thorough, fair and objective review of the police operations both during and after that incident as they apply to that specific event.

We place enormous value on the trust that you have extended to us in this manner and look forward to supporting your requirements in the future.

Sincerely,
HILLARD HEINTZE LLC

A handwritten signature in black ink, reading "Arnette Heintze". The signature is written in a cursive, flowing style.

Arnette F. Heintze
Chief Executive Officer



Table of Contents

EXECUTIVE SUMMARY	4
KEY FINDINGS	7
01 RESPONSE TO THE INCIDENT	10
Overview of Events	10
Assessment of the Incident and Response	12
02 POLICE OPERATIONS.....	15
Best Practices for Crowd Control	15
MPD Training and Policy	15
03 INTERNAL INVESTIGATION OF THE INCIDENT	17
Overview of the Internal Investigation.....	17
Assessment of the Internal Investigation.....	17
CONCLUSION AND NEXT STEPS	20
APPENDIX: MAP OF DIRECTED EGRESS ROUTE	22



Executive Summary

Strategic Context: The Drivers of Concern

On July 5, 2016, the Township of Maplewood, New Jersey held its annual Independence Day fireworks celebration. A physical altercation involving a group of young people took place, and Maplewood Police Department (MPD) officers were directed to follow and begin moving the crowd.

The MPD's response to the incident, specifically some of the tactics it used, have generated significant scrutiny both within and outside of the community. This was evidenced by extensive media coverage of the incident and subsequent criminal and administrative investigations. The extent of the community's concerns was particularly evident in the proceedings of the Maplewood Township Committee meeting on August 1, 2017.

Assignment: What You Asked Us to Do

On June 21, 2017, the Township authorized Hillard Heintze to conduct an independent assessment of the incident and recommend strategic and actionable steps the department can take to continue aligning its practices with its mission to serve the people of Maplewood.

Specifically, Hillard Heintze was asked to: review and assess (1) the MPD response to the incident; (2) current training, supervision and oversight of police operations by the Township, with a focus on how these topics affected the way the department handled the July 5 incident; and (3) the MPD's internal investigation of the incident.

Actions Taken: What We Did

In the course of conducting this assessment, the Hillard Heintze team undertook and completed the following tasks:

- 1 Conducted a Project Kick-Off meeting with key Township executive stakeholders and MPD Command to verify goals and objectives of the assessment process.
- 2 Developed an understanding of the department's mission, vision and values as well as its history, organization and cultural environment.
- 3 Assessed the department's level of supervisory and leadership training and how it is measured in application through performance evaluations.
- 4 Requested, received and reviewed documentation relevant to the incident, such as the MPD's policies, procedures and training regarding, but not limited to, police response to civil unrest, criminal incidents and use of force.
- 5 Interviewed responding officers and supervisors on the scene of the incident, focusing on practices and issues that may affect police and youth interaction.
- 6 Assessed supervision, internal affairs procedures and intelligence systems as related to the incident.



- 7 Reviewed current duty manuals, written policies and procedures – including the MPD’s written policy and procedure manuals, as well as written orders and guidelines – to determine whether the officers’ actions complied with training and policy standards for crowd control and arrest situations during the incident.
- 8 Evaluated how the MPD’s crowd control and mass arrest policies compare to best practices recognized by progressive law enforcement agencies.
- 9 Drafted an independent assessment report, including all key findings, recommendations, and proposed strategies and tactics.
- 10 Translated these key findings and recommendations into a clear and actionable roadmap to drive a department-level action plan that is aligned to every unit throughout the MPD.

Methodology: How We Conducted the Assessment

Based upon our experience assessing law enforcement agencies’ operations, including internal affairs investigations, Hillard Heintze undertook a multi-faceted methodology to assess the MPD’s handling of the incident. First, the team reviewed written policies and procedures to develop an understanding of the mission, vision and values of the MPD. These department documents included:

- Annual reports for the past five years
- Rules and regulations
- Standard operating procedures
- Appraisal forms for performance evaluations
- Training records for the past five years
- Special orders related to the Independence Day celebrations in 2016 and 2017

Our assessment team reviewed additional materials specifically related to the incident to gain greater understanding of the context and the MPD’s response to the incident, including:

- MPD incident reports related to the July 5, 2016 incident
- Recordings of radio transmissions and phone calls to MPD dispatch for the night of July 5, 2016
- In-car video camera footage from units involved in the incident on July 5, 2016
- Video from public safety cameras in the areas of Boyden-Elmwood and Valley-Parker



Finally, the team interviewed personnel involved in the incident, as well as government and community stakeholders. The goal of the interviews was to fill in details about the incidents that are not necessarily documented in incident reports and other documents, and to hear different perspectives on what occurred and how it was handled. Although the names of the interviewees remain confidential, interviewees included:

- Members of the Maplewood Township Committee
- Maplewood Township Officials
- Officers, supervisors and command staff of the MPD
- Community members

Scope of Work: Expectations and Limitations

This assessment is limited to the MPD's preparation, response and follow-up to the incident on July 5, 2016 in relation to the Township's annual Independence Day fireworks celebration. This report is not intended to be an assessment of the entire operations of the police department, nor is it an investigation of any particular allegations of misconduct.

Experts: The Hillard Heintze Assessment Team

The research, interviews, and on-site and off-site assessments were conducted by senior members of the Hillard Heintze team, which includes experts across disciplines who have dedicated their entire careers to bringing national and international best practices to the pursuit of excellence in policing and public safety.

- **Engagement Leadership:** Chief Executive Officer Arnette Heintze provided executive oversight for this initiative, including day-to-day counsel and executive guidance in ensuring that the actions and tasks critical to ensuring a highly successful project outcome were carefully planned and followed at every phase of the assessment.
- **Project Management and Execution:** Senior Vice President Rob Davis was responsible for overall project leadership, and Vice President Robert Boehmer was responsible for project management and development of this report.
- **Subject-Matter Expert:** Senior Vice President Davis and Vice President Rick Tanksley conducted the on-site activities and analyses and developed content for the report.



Key Findings

Key Finding #1: The MPD is Broadly Committed to Serving its Community with Integrity

Our assessment team found that MPD members throughout the organization consistently expressed a desire to provide effective professional policing services to the Township of Maplewood. Many voiced heartfelt concern about the way the crowd control situation was handled on the evening of July 5, 2016 and how it has impacted their ability to maintain the trust and confidence of many within Maplewood.

Key Finding #2: There Was an Opportunity to Disperse the Crowd and De-escalate the Situation

MPD members had reasonable cause to respond with concern to a physical altercation between two females in a large crowd at the corner of Valley Avenue and Crowell Place after the fireworks display on the evening of July 5, 2016. For any large gathering, it is essential to address disorderly activity as soon as possible to prevent the disorder from spreading to the rest of the crowd. However, what initially began as an apparent crowd control tactic to disperse young people from the scene of the altercation quickly expanded into a prolonged and counterproductive effort to prevent the youth from dispersing by themselves, forcing them instead on a 1.3-mile walk to the far eastern border of the Township. The desired outcome in situations such as this one would be to disband the crowd as quickly as possible to eliminate the immediate risk of escalation and ensure no ongoing criminal activity, thereby freeing up MPD personnel as soon as possible. However, based on our interviews with MPD members involved in the crowd control effort and additional community stakeholders, our assessment team believes the handling of this incident was not consistent with the MPD's mission "to serve and safeguard all persons with the Township in a fair, safe, professional and considerate manner...."

Key Finding #3: The MPD Chief of Police Took Command of the Incident

Based upon the many interviews our assessment team conducted with MPD members present during the crowd control incident, it was readily apparent that the Chief of Police had taken command upon his arrival and was responsible for the tactics employed during the crowd control operation. Aside from one captain who accompanied the Chief in a vehicle, it does not appear that the Chief sought advice from any of the other command officers or supervisors during the incident.

Key Finding #4: There Was an Opportunity to Intervene after Orders Were Given

Command officers and supervisors, as well as first-line officers, took direction from the Chief of Police without questioning his reasons for implementing the prolonged crowd control operation in which they were engaged, even though several of the interviewees stated they believed the tactic eventually became inappropriate and ineffective. Although it is important to implement an incident command structure to clarify command and control of any incident, command staff and other supervisors still have an obligation to intervene, especially when they observe inappropriate action. This intervention does not necessarily mean disobeying orders and can be as simple as privately communicating concerns to the incident commander. Based on our interviews, there was no evidence of any intervention by an officer or command staff member during the crowd control operation.



Key Finding #5: Implementation of Procedural Justice and De-escalation Concepts is Crucial

There was no evidence that formal and ongoing de-escalation or procedural justice training has been provided to MPD personnel aside from that which they may have received in the Basic Police Academy prior to entering the Field Training Program at the MPD. Implementing procedural justice concepts, especially during crowd control situations, provides people with the knowledge that they are being treated fairly. As crowd members feel like they are being treated fairly, they are more likely to comply with requests by the police to disperse. Additionally, training in de-escalation techniques can provide officers with improved ways of dealing with crowds before any disorderly situations get out of control.

Key Finding #6: Internal Procedural Justice Can Align More Closely with the MPD Mission

There is a reported lack of *internal* procedural justice within the MPD. A theme heard commonly during interviews was that MPD staff do not feel valued as individuals and upper management does not regularly consider their concerns. This is counter to the MPD's stated mission, which, in part, states that it seeks "to provide a supportive and personally enriching workplace for members of the organization."

Key Finding #7: Officers Can Be Trained to Speak Up When Questionable Tactics are Employed

A theme heard commonly by our assessment team was internal distrust and fear of discipline if one were to deviate from expected behavior as determined or preferred by the Chief of Police. MPD members also reportedly do not have routine interactions with the Chief during operations in the field. Therefore, command officers, supervisors and rank-and-file officers were not accustomed to interacting with the Chief in circumstances such as those that occurred on the night of July 5, 2016, and they did not confront the Chief during the crowd control incident to express concern about the tactics being employed. Had officers received training and guidance on how to appropriately deal with situations where they believed a peer or superior officer was acting inappropriately (commonly referred to as peer intervention), the negative outcomes of the operation may well have been avoided or at least mitigated to a great degree.

Key Finding #8: De-escalation and Procedural Justice Can Be Integrated into Performance Expectations

There was no evidence that supervisors have been trained to evaluate the competency of MPD members in de-escalation or procedural justice issues when completing annual performance evaluations of MPD personnel. Our assessment team members also found that annual performance appraisals do not appear to be completed on a routine basis every year.

Key Finding #9: Crowd Control and Incident Management Protocols Can Be Formally Codified

Although the MPD has issued special orders outlining operational plans for Maplewood's Independence Day celebrations, written standard operating procedures to address crowd control and incident management are not in place. It was also unclear whether the MPD had any standard procedures for conducting and evaluating any potential criminal intelligence information that could help it provide for public safety and to assist in crowd control for events such as the annual fireworks celebration.



Key Finding #10: Crowd Control and Incident Management Techniques Can Be Formally Trained

There was no apparent evidence that MPD officers and/or supervisors have been trained in crowd control and management techniques aside from that received during their Basic Police Academy training.

Key Finding #11: Community Engagement Can Be Established as an Organizational Priority

Based on our assessment team's interviews with MPD staff and community members, as well as a review of department training, it does not appear that a robust community-policing program, including a focus on engaging in ongoing, day-to-day interaction with youth, has been an organizational priority for the department. There was no evidence that the MPD has engaged in any formal community policing programs that include written goals and measurable objectives indicating how it is collaborating with schools, social service organizations, faith-based organizations, non-profit organizations or any other government-related organizations to address the root causes of crime or community concerns in Maplewood. Rather, the department appears to be focused on traffic and pedestrian stops. Therefore, officers' opportunities for positive engagement with community members have been limited. This appeared to affect MPD officers' collective ability to engage with the crowd on the night of the incident and limited the department's ability to address community concerns in the aftermath.



01 Response to the Incident

OVERVIEW OF EVENTS

On July 4, 2016, the Township of Maplewood, New Jersey held its annual Independence Day fireworks celebration. The Township has held this popular event over multiple decades, and although purchased tickets are required to enter a park for the best viewing of the fireworks, hundreds of people from areas throughout Maplewood and neighboring jurisdictions flow into the Township to see the festivities. However, on July 4, rain began to fall just before the fireworks ceremony began. Township leaders made the decision to postpone the fireworks event until the following evening, advising attendees that no tickets would be required to attend the festivities at that time.

Maplewood held the fireworks display on July 5, 2016. As was the case the night before, all MPD sworn personnel who were not on vacation were called out to provide security for the event. At around 10:00 p.m., officers near the area of Valley Street and Crowell Place issued a radio broadcast that a physical altercation was taking place at that location. Valley Street had been closed to vehicular traffic to provide for the safety of those attending the fireworks celebration. Officers broke up the fight, with at least one officer using OC spray on some individuals reportedly interfering with the efforts to break up the fight. Once the fight was over, the teenaged females involved in the actual physical altercation left the area and were not arrested.

However, there were still an estimated 65 to 100 youth in the area who had moved near the Shell gasoline station located on the southeast corner of Valley Street and Parker Avenue. MPD leadership decided to implement a crowd control tactic to disperse the teenagers and encourage them to leave the area. One of the reasons provided for wanting the teenagers to leave was past problems with numerous youth collectively storming the business on the corner to steal merchandise.

At that point, upon request of the MPD, the store owner closed the business to prevent anyone from congregating at that location. A primary factor in providing appropriate crowd control is to help prevent potential property damage or other potential crime. The MPD's effort to close the business temporarily was consistent with such an effort. It appears the department was taking steps to protect the location.

Once the crowd left the area, the department quickly allowed the business to reopen, which was also consistent with good crowd control management. The operational tactic to remove the youth consisted mainly of having officers form a line the width of the street and begin to escort the youth through what eventually became the following route (see **Appendix: Map of Directed Egress Route**):

- The crowd control effort essentially began by the Shell gasoline station at the corner of Valley and Parker. MPD leadership provided direction to move the youth eastbound on Parker Avenue.
- Approximately eight blocks later, MPD leadership gave direction to officers to have the youth turn right onto southbound Suffolk Avenue.
- One block later, further direction was given to move the youth eastbound onto Midland Boulevard. Police personnel and vehicles were apparently used to prevent the group from breaking up. Youth were not allowed to break off from the group and go down any of the side streets they were passing along the route.



- Once the group arrived at Boyden Avenue, police personnel again forced the youth group to make a right turn and walk south on Boyden Avenue. Upon arriving at Elmwood Avenue, the youth group was then required to make a left-hand turn onto eastbound Elmwood Avenue. Officers on the ground were directed to follow and escort the group down Elmwood Avenue to the Irvington border and then to stay and “maintain our border.”
- When the group arrived at Orchard Road, a scuffle ensued between some officers and at least two teenage males. One of the youth had allegedly spit at an Irvington police officer who had arrived at the scene to provide mutual aid as requested by the MPD leadership. This was because the group of teenagers was headed toward Irvington Township.
- After taking the youth into custody, the effort to force the remaining youth out of the area essentially ended.
- The distance between the beginning of the crowd control movement at the corner of Valley Avenue and Parker Avenue and the arrests occurring near the corner of Elmwood Avenue and Orchard Road was approximately 1.3 miles.

Because of the all-hands-on-deck approach to the MPD staffing on the night of July 5, nearly every supervisor was working in some capacity to assist in providing for the safety of those attending the fireworks event. Based upon the numerous interviews we conducted, it is apparent that relatively soon after the physical altercation took place at the corner of Valley Avenue and Crowell Street, the Chief of Police, command officers and sergeants arrived at the scene. The Chief took command of the situation, initiating orders for the youth to be moved out of the area of Valley Avenue and Parker Avenue.

As previously noted, MPD officers were directed to follow and begin moving the youth in the area eastbound onto Parker Avenue. All of the supervisors with whom we spoke during our interviews indicated they complied with the Chief’s orders. However, they also indicated that they did not see the need to continue moving the youth once they had left the area of Valley Avenue and Parker Avenue. A number of them indicated they believed it would have been better to allow the youth to walk down the side streets to go home or simply allow them to leave, particularly because there was no property crime occurring as the group moved down the street.

The crowd control tactic was not used to disperse a crowd that was present during the initial fight between two females and encourage them to leave the area so that police could maintain the peace and did not have to continue engaging them. Instead, it became a means of containing and then funneling the youth to what appears to have become a designated termination point on the eastern border of Maplewood approaching Irvington.

Our assessment team asked why none of the supervisors raised these concerns with the Chief of Police on the night of the event to put an end to the forced crowd movement. Interviewees consistently answered that because the Chief was giving the direction, they did not want to countermand his orders, nor did they feel comfortable doing so. They indicated that this was a very unusual circumstance; the Chief of Police very rarely actively participates in patrol or street enforcement operations, so they felt uncomfortable raising issues with him about the operation as it transpired that night.



A number of supervisors also indicated they were hesitant to confront the Chief on the tactic not only because of what they perceived to be his demeanor that night, but also because of the department's perceived culture and the Chief's management style; staff would not openly question his orders. Some MPD interviewees said the Chief was exhibiting behaviors they interpreted as indicating he was not quite sure of what he was doing.

For example, one supervisor, who was in an unmarked police vehicle with subordinate officers, indicated the Chief approached their vehicle and verbally ordered the driver and passenger to step out. They believed the Chief thought they were individuals not associated with the department. When they exited the vehicle to ask the Chief what he needed, one individual stated the Chief appeared to "look through" them and simply walked away without giving them any assignment. Some of the officers we interviewed said they gave the Chief the benefit of the doubt, wondering whether he may have been aware of potential operational details that necessitated moving the youth toward the town of Irvington.

ASSESSMENT OF THE INCIDENT AND RESPONSE

We reviewed videos of the incident from public safety cameras and in-car videos, as well as dispatch records from the night of the incident. It also conducted interviews with various officers, command staff and community members. This collective review culminated in our conclusion that during the series of incidents occurring on that night – from the initial confrontation that resulted in the use of OC spray to the efforts to force the group out of town, which resulted in several confrontations and arrests – the department did not comply with a core element of appropriate crowd control. Specifically, the actions did not encourage avoiding arrest situations and using de-escalation techniques. Some of the agitation and violence of the crowd may have been avoided if the department had standard operating procedures in place rooted in best practices and had provided training on crowd control techniques, procedural justice and de-escalation. In particular, we identified the following concerns with the crowd management on July 5, 2016:

- Rather than designating specific egress routes so the crowd could peacefully disperse as soon as possible, the MPD essentially forced the group to stay together. Even though a few of the youth in the crowd were described as "agitated," a tactic allowing the group of teenagers to disperse on their own would have been more appropriate and helped to de-escalate the situation. The agitators would not have been able to continue agitating a crowd if the crowd was dispersing.
- Likewise, the tactic used did not allow avenues of egress for individuals who did *not* want to be a part of an agitated crowd and further helped increase the potential for the situation to escalate.
- Department members did not appear to reach out to the youth in the crowd in any formal or organized manner in an attempt to de-escalate the situation. There were indications that some officers had positive discussions with some of the youth as they marched along, but there was no coordinated, deliberative effort simply to stop the march and speak with the youth at any point. This may have provided an opportunity to end the march long before it ceased.
- Although some command staff members, supervisors and officers indicated they were concerned about the tactics used during the incident, we saw no evidence that anyone tried to rectify the situation by communicating with the Chief.



None of the numerous MPD employees interviewed was willing to question the Chief's tactics, which was especially concerning to our assessment team. Understandably, in a paramilitary-style organization that follows an incident command structure, it is unusual for a line-level officer to question the commands of the highest-ranking members of the department.

However, assessment team members were somewhat perplexed regarding why sergeants, and especially command-level personnel, were not proactively willing to ask the Chief to step back for a moment during the incident and privately discuss their concerns with him. Doing so would have created some safe space for the Chief to hear their input on the efficacy of the crowd control tactic being implemented. They also could have asked the Chief what the goal of the crowd control tactic was and why they were not focused on allowing the youth to disperse and find their way home. In short, MPD supervisors and command staff members could have intervened during the event and perhaps assisted the Chief in understanding why, relying upon their current street-level policing experience, the tactic they were employing was ineffective or inappropriate.

We considered possible reasons for why the supervisors, and particularly the command officers, did not intervene or interact with the Chief. As previously stated, based upon our numerous interviews, the following were identified as possible reasons for why personal intervention and interaction with the Chief of Police did not occur:

- They were not accustomed to seeing the Chief of Police giving direction during field operations, and they did not have street-level experience of working under the direction of the Chief during real-time operations, causing some hesitation about potentially being seen as countermanding his orders.
- Some members expressed an opinion that the Chief does not always exhibit effective "people skills" when interacting with the rank and file; there are times when they have observed individuals being scolded by the Chief for sharing information or opinions they perceived the Chief did not want to hear.
- Some MPD members thought that being perceived as critical of the Chief, or not agreeing with him publicly, would negatively affect their ability to progress within the department.
- It appears the department does not emphasize the ongoing development of all of its leadership staff or engage in proactive succession planning. This apparent lack of leadership development could have prevented other command staff on the scene from either understanding or feeling competent enough to express their concern about how the incident was being managed.

In fairness to the Chief of Police, all of the possible reasons for why no one apparently was willing to approach him to express concerns with the crowd control tactics on the night of July 5 are based solely on individual opinions. It is also important to reiterate that maintaining command and control is an important element of appropriately handling public safety incidents.

However, the reasons provided were consistent among the interviewed employees, regardless of rank or assignment. In addition, our experience in other cities in which rank-and-file members are hesitant to raise issues of concern to a chief or top command staff officers indicates the sentiments MPD officers expressed are not unusual.



That none of the MPD employees, and particularly supervisors and command officers, were willing to challenge the Chief's tactics on the night of July 5 also raises the issue of the degree to which MPD personnel have been trained in peer intervention. Training can be designed to help officers understand that a critical component of professional policing requires their personal and direct intervention if and when any of them believe they are observing a peer engaging in misconduct or inappropriate policing activities.

Peer intervention is particularly appropriate whenever a police employee observes a colleague becoming angry or losing control of personal emotions when interacting with others, as proactive intervention can help de-escalate a situation and prevent poor performance or misconduct. Unfortunately, it appears that because no peer intervention occurred on the night of July 5, a crowd dispersal tactic was employed ineffectively, which has served to damage the trust and confidence of many community members with the MPD.



02 Police Operations

BEST PRACTICES FOR CROWD CONTROL

Large gatherings occur on a daily basis throughout the country, and most of them are peaceful. From community events such as the Maplewood Independence Day celebration to mass political demonstrations, police departments need to develop procedures and plans that help protect life and property, respect First Amendment rights and respond to civil disorder.

Best practices and model policies have been developed resulting from lessons learned by police departments that have dealt with large gatherings.¹ Crowd violence can escalate if people think the police are treating them unfairly. The following are recommended practices to improve crowd control and increase the likelihood of crowds feeling as if they are being treated fairly by the police:

- Establish policies and procedures for dealing with large events in advance. Ensure that police department members are trained on those policies and procedures.
- Clearly allow officer discretion concerning arrests, but determine ahead of time which behaviors by members of the crowd will or will not be tolerated. Each police officer on the scene should emphasize de-escalating conflict situations when possible, rather than relying on arrests.
- Clearly communicate the ground rules for use of force with officers assigned to the large event.
- Engage the crowd in a friendly, non-confrontational manner.
- Designate clear dispersal routes for the crowd to eliminate the immediate risks of continued escalation and further violence. This includes ensuring that there are appropriate avenues of egress for individuals to separate from the crowd and encouraging the crowd to use those routes.
- If relying on mutual aid to assist with the large event or crowd control, share the policies and operational plans for the event with neighboring jurisdictions.
- Conduct an after-action review of all crowd control incidents to determine lessons learned in preparation for future events.

MPD TRAINING AND POLICY

Our review of the MPD's Standard Operating Procedures (SOP) revealed the department does not have an SOP on crowd control and management. Although the department does not have a standing policy, it issued Special Order #16-06 before the Independence Day celebration. The plan included information

¹ IACP Model Policy on Crowd Management and Control
<http://www.theiacp.org/Portals/0/documents/pdfs/MembersOnly/CrowdsPolicy.pdf>

Managing Major Events; Best Practices from the Field, Police Executive Research Forum (2011)



about notifying surrounding law enforcement agencies to make them aware that there could be a request for mutual aid. We found the special order to be comprehensive, covering most of the logistical details that need to be addressed during any kind of large gathering. Importantly, the order provided guidance on enforcement activities during the upcoming event. The procedure (1) reminded officers to use proper discretion, (2) indicated that summonses or warnings are appropriate for minor infractions, and (3) noted that “when arrests are made, officers must consider the most appropriate tactics for the offense.” Additionally, the order advised officers to “identify potential problems and take preventative measures as soon as possible to prevent escalation.”

To its credit, the MPD issued Special Order #17-05 before the 2017 Independence Day celebration and made it much clearer to officers that except for life safety threats, they should use warnings and de-escalation techniques to address issues. Additionally, the 2017 policy advised, “Whenever reasonable and safe, supervisors shall approve any arrest action and plan for the arrest.”

Aside from the issuance of the special order, we did not see any evidence that the Chief of Police, command staff or any other members of the department were trained on crowd-control techniques or de-escalation.



03 Internal Investigation of the Incident

OVERVIEW OF THE INTERNAL INVESTIGATION

On the day following the incident, July 6, 2016, parents of some of the youth filed formal complaints at the department, alleging racial profiling was involved in the decisions made to handle the incident. Additional allegations were made regarding unnecessary use of force. On July 12, 2016, an internal formal complaint was lodged against the Chief of Police for racial profiling, alleging that racial profiling was responsible for the directions he gave during the crowd-control incident. The complaint against the Chief was referred to the Office of the Essex County Prosecutor. On September 8, 2016, the Office of the Essex County Prosecutor notified the Township Administrator that it had (1) initiated a criminal investigation of Chief Cimino and Captain Cummis, and (2) requested a related administrative investigation cease until the criminal investigation was concluded.

In July 2016, the Captain of Internal Affairs, with assistance from another captain, began reviewing videos and other documentation related to the complaint against the officers involved. As the captains identified potential criminal violations, the case was referred to the Office of the Essex County Prosecutor. The Prosecutor's Office subsequently provided instructions for follow-up activities to the Captain of Internal Affairs and noted that they must not interview any of the officers involved in the investigation. Although much work was done to move forward with the investigation, the Prosecutor's Office informed the Captain of Internal Affairs on October 27, 2016 that she should cease her investigation.

The Prosecutor's Office investigation took some time to complete. On March 30, 2017, the Prosecutor's Office concluded its review of the case and informed the Township, Chief Cimino and Captain Cummis that there was insufficient credible evidence to warrant a criminal prosecution of Chief Cimino and Captain Cummis. Additionally, the Prosecutor's Office noted that it had closed the administrative investigation into Chief Cimino and Captain Cummis as not sustained, clearing the way for the MPD internal affairs investigation to resume inquiry of other members of the force for administrative violations related to the incident.

Following the Prosecutor's Office announcing its decision not to prosecute any MPD personnel for any conduct during the incident, the Captain of Internal Affairs resumed the internal affairs investigation involving the actions of multiple officers during the incident. To date, seven officers have received formal discipline – ranging from written reprimands to suspensions – for a variety of policy violations, including improper use of force. Several other investigations are ongoing.

ASSESSMENT OF THE INTERNAL INVESTIGATION

Our assessment team spoke to department members responsible for and involved in the internal affairs investigations addressing residents' complaints against MPD personnel for their actions during the crowd-control incident on the night of July 5, 2016. We reviewed media coverage of the event and its aftermath. We also listened to community members, who expressed concerns about the time it took to complete the Prosecutor's Office review of potential criminal activity on the part of MPD officers during the incident, as well as the internal affairs investigations.



We discussed at length the internal affairs investigative approach that:

- 1 Was taken immediately after the complaints were filed;
- 2 Was taken within the first couple of weeks of the internal affairs investigations;
- 3 Led to the decision to temporarily halt the ongoing internal affairs investigations while the Prosecutor's Office completed its criminal review of the matter;
- 4 Determined when the internal affairs investigations continued after the Prosecutor's Office declined to file any criminal charges; and
- 5 Guided the process for sustaining the allegations of misconduct, and the thoroughness, fairness and objectivity of any discipline meted out for allegations that have already been adjudicated.

The internal affairs process took a long time, especially given the lengthy amount of time spent during the criminal review process. However, there were no indications that the MPD personnel responsible for conducting the internal affairs investigation were attempting to slow down the process or were not striving to move as quickly as possible. We believe this is the case for the following reasons:

- The internal affairs complaints the department received beginning on July 6, 2016 were promptly processed and assigned to the captain, who would be conducting and overseeing the internal affairs investigation.
- The complaints were filed with the department but reportedly were placed in a sealed envelope, waiting for the return of the Captain of Internal Affairs from vacation. A best practice is ensuring that a backup plan is in place in the event of the Captain of Internal Affairs is unavailable to ensure that complaints are reviewed and acknowledged in a timely manner.
- Once the criminal review began, upon request of the Prosecutor's Office, the Captain of Internal Affairs paused all of the ongoing internal affairs interviews and processes. This is a best practice for a professional law enforcement agency.
- Although often misunderstood, this temporary pause on administrative internal affairs investigations occurs to reduce the risk of having the legal processes that guide an administrative investigation of potential misconduct by a police officer affect the criminal investigation. If the criminal investigation was tainted, it could affect the prosecuting attorney's ability to prosecute a criminal allegation successfully.
- Different protocols, policies and case law guide an administrative internal affairs investigation compared to how a prosecuting attorney conducts fact-finding and gathers evidence for a potential criminal charge. Neither an internal affairs investigator nor a prosecuting attorney wants to jeopardize their ability to conduct a thorough, fair and objective investigation that could possibly sustain a misconduct allegation, successfully prosecute a criminal act, or both.
- For example, an internal affairs investigator could require a department member to provide a statement during an interview, while criminal investigators would be required to provide a potential suspect with Miranda rights waivers and could not compel a statement. If a criminal investigator becomes aware of details from an administrative internal affairs interview, serious damage could be done to a potential criminal case.



- Once the criminal review was complete, the internal affairs process was restarted and was ongoing at the time of we conducted interviews. However, we noted that there was a one-month slowdown after the internal affairs investigation resumed. This was due to an additional administrative project that had been assigned by the Chief of Police to the Captain of Internal Affairs. The additional administrative work had already been completed during our site visit, and the internal affairs case was proceeding forward with due speed.
- We noted that it was appropriate for the Chief of Police to recuse himself from becoming involved in the internal affairs cases because he was named in an internal affairs complaint associated with the crowd control event on the night of July 5, 2016.
- While preserving the confidentiality of the individuals involved in the internal affairs cases, in accordance with proper policies and procedures, it appeared that the investigative process related to the misconduct allegations was thorough, fair and objective. The Captain assigned to the cases provided a detailed, step-by-step explanation of what actions were taken for cases already sustained and adjudicated, as well as for the ongoing cases. We agreed that the Captain was following proper procedures for conducting such cases.



Conclusion and Next Steps

As is the case with many incidents in the news, a police department committed to serving its community was sidetracked by a one-time issue that shed light on potential areas of improvement. Based on our discussions with police officers, supervisors, command staff, township officials and community members, we believe the MPD can overcome these challenges and move forward to improve its relationship with the community.

Although we were reviewing a one-time event, the incident shed some light on the MPD's strained relationships with minority youth. While inappropriate tactics were the focus of our assessment and these can be addressed in part by improving policy and related training, our assessment found issues related to leadership and the lack of robust community involvement.

The initial cause of the escalation of the incident was related to tactics that were not aligned with best practices. Generally, officers we interviewed expressed concern about how the incident was handled and how it impacted the department's relationship with the public. All expressed their desire to continue to ensure the department provides professional service. Also, a number of community members expressed their willingness to work with the MPD to improve the department's community-oriented policing capabilities.

With a proactive approach in mind, Hillard Heintze recommends the MPD consider implementing the following recommendations.

Recommendations

- 1 Adopt a **standard operating procedure on crowd control** based on best practices. It should address, but not be limited to, the following: organizational responsibilities, incident command protocols, use of force, the reporting and investigation of uses of force and mass arrests. A good starting point for the development of the MPD's SOP is the International Association of Chiefs of Police Model Policy on Crowd Management and Control.
- 2 Ensure all officers, especially command staff, are trained in **crowd management and control principles**, as well as on the MPD's related policies.
- 3 Continue to develop **special orders for each special event** identifying incident command protocols, officer assignments and other logistical components related to the event. These special orders should provide specificity on the exact expectations of an officer, sergeant, lieutenant, captain and chief when engaged in crowd control.
- 4 After every special event that involves the management of crowds, conduct an **after-action review** and produce a report identifying what happened, why it happened and how the department can improve its weaknesses and sustain its strengths.



Recommendations

- 5 Consider providing **formal, mandatory training** to all sworn personnel on the topics of **procedural justice and community policing**. This would require training the supervisor responsible for MPD training and/or engaging the services of an experienced training provider. Procedural justice and community policing concepts emphasize engaging and partnering with the community and treating people with respect and fairness. These concepts help to improve the relationship between the community and the police department.
- 6 Make **internal procedural justice** a part of the department's organizational culture. This focus on internal procedural justice should not only improve the relationship among department members, but also carry over to help build positive relationships between the department and the community it serves.
- 7 Consider providing formal, **mandatory de-escalation training** to all sworn personnel. An emphasis on de-escalation may have helped to prevent the July 5, 2016 incident from occurring or at least minimized the problems the MPD encountered.
- 8 Consider providing formal, mandatory training to all sworn personnel for the topic of **peer intervention**. Peer intervention can empower officers and provide them with strategies to use when a colleague may be acting inappropriately, thus helping to prevent problems before they occur.
- 9 Consider providing opportunities for all command-level personnel and supervisors to attend **leadership training** to enhance their abilities. One of the important aspects of a well-performing police department is the development of future leaders.
- 10 Train MPD **supervisors** to assess the ability of all sworn personnel to provide policing services based on the successful implementation of the department's goals, especially the concepts of procedural justice, effective de-escalation techniques and peer intervention. Ensure the supervisors' assessments are documented in annual employee performance appraisals.
- 11 Commit to improving relationships with the **community**, especially youth. MPD command staff should consider reviewing its approach to providing policing services. The approach should be based on the concept of community policing. It should help ensure that the MPD community policing efforts go beyond attending meetings with residents and include engaging in formal, proactive collaboration with external community stakeholders, especially youth.
- 12 Consider having MPD command staff refrain from assigning major administrative tasks to the individual assigned to investigate high-level internal affairs complaints to ensure the administrative portion of such investigations is handled as efficiently as possible.



Appendix: Map of Directed Egress Route

