

MEMORANDUM

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SUBJECT: Federal Bureau of Investigation (FBI) Request for Office of Management and Budget (OMB) Clearance for developmental activities including a cognitive testing of a new data collection on law enforcement use of force under the OMB generic clearance agreement (OMB Number 1110-0057).

Recent events involving the use of force by law enforcement have called attention to the need for more reliable information on encounters between the police and the communities they serve. The FBI Uniform Crime Reporting (UCR) Program remains one of the most often cited source for national data on justifiable homicide. As such, the UCR Program has seen a dramatic increase in the requests for information on justifiable homicide involving law enforcement from the Supplementary Homicide Report (SHR) and the National Incident-Based Reporting System (NIBRS) in an effort to understand the dynamics of these events. In addition to the data in the UCR Program, statistics on homicide by legal intervention are collected through the National Vital Statistics System, which is managed by the Centers for Disease Control and Prevention. While these are the only national, annual collections on police use of force, these are not the only data that have been collected in order to explore the dimensions of these encounters between the police and the public.

The *Violent Crime Control and Law Enforcement Act of 1994* established a requirement that, “[t]he Attorney General shall, through appropriate means, acquire data about the use of excessive force by law enforcement officers.”¹ After that time, the DOJ and its constituent parts made a concerted effort to augment existing data collections to include information on the use of force by law enforcement officers. These included the addition of questions on citizen complaints on use of force on the Law Enforcement Management and Administrative Survey and the creation of a supplement on police-public contacts to the National Crime Victimization Survey. Both of these collections are managed by the Bureau of Justice Statistics and are collected every three to four years. In response to subsequent legislation (*Death in Custody Reporting Act of 2000* and *Death in Custody Reporting Act of 2013*), the Bureau of Justice Statistics also created the Arrest-Related Deaths system that provided a mechanism for states to report their deaths in custody. This collection was suspended in March 2014 just prior to the passage of the *Death in Custody Reporting Act of 2013*, which reinstated the mandate for this collection.

An additional effort to create a national database on law enforcement use of force involved the partnership of the Bureau of Justice Statistics and the National Institute of Justice with the International Association of Chiefs of Police. This database was piloted through 2003. However, it was discontinued due to a lack of funding. In general, many of these efforts lost momentum and funding after the events of September 11, 2001 shifted focus towards concerns of homeland security efforts by law enforcement. Given recent events, there is renewed interest in ensuring that the UCR Program is able to provide a more complete picture of police-involved shootings—both those that result in fatalities and those that do not. It is within this context that the UCR Program is seeking to expand the collection of law enforcement use of force information to include all police-involved shootings.

Scope and Quality of Justifiable Homicide Collection in the UCR Program

The UCR Program defines justifiable homicide as, “the killing of a felon by a peace officer in the line of duty or the killing of a felon, during the commission of a felony, by a private citizen.” Justifiable homicides by law enforcement and private citizens are reported to the UCR Program through the SHR, which is an additional component of the UCR Program separate from the monthly reports of offenses and NIBRS. The SHR provides for the collection of additional details on all homicides to include information on the victim, offender, and circumstances related to the homicide. It is within the details of the circumstances that a homicide incident can be identified as a justifiable homicide by law enforcement. As is the case with the UCR Program in general, law enforcement participation in the SHR collection is voluntary.

For the years 2011 to 2013, the number of justifiable homicides by law enforcement reported by UCR contributors was 1,261. However, it is difficult to know what proportion of justifiable homicides are being reported by law enforcement to the UCR Program. The SHR is only reported in the instance of a homicide occurring within an agency’s jurisdiction. While it is possible for there to be an amount of

¹ Violent Crime Control and Law Enforcement Act of 1994, §210402. Data on Use of Excessive Force.

reconciliation between the number of SHR homicide reports submitted by an agency with its own offense counts for murder and nonnegligent manslaughter, justifiable homicide is not a considered a crime by UCR Program policy. There is currently no mechanism for agencies to indicate with certainty² that no justifiable homicides occurred within that jurisdiction.

The current request for approval, under the FBI UCR Generic Clearance (1110-0057) is for activities involved in the development of a new data collection on law enforcement use of force to supplement existing UCR data on justifiable homicide. These activities will require 20 burden hours.

Purpose of the Research

The purpose of the research is to test the language and wording of the questions in the proposed data collection on law enforcement use of force, as well as their associated instructions. The goal is to ensure that participants have a clear understanding of what information is requested even in complex law enforcement situations. This will aid the UCR Program in its efforts to increase the overall validity and reliability of its data collections.

Background Research

The UCR Program submitted a paper during the Spring 2015 Advisory Policy Board (APB) Meetings in order to receive guidance on whether to expand the current collection of justifiable homicide by law enforcement to include nonfatal officer-involved shootings. All five regional Working Groups approved the recommendation to expand the current collection. On April 22, 2015, the UCR Subcommittee concurred with the recommendations of the regional Working Groups and passed the following motion with the modification to include fatal shootings by law enforcement as well:

The Uniform Crime Reporting Program develops a method to collect information on nonfatal/fatal shootings by law enforcement in the line-of-duty.

On June 3, 2015, the APB received the recommendation to approve the data collection and passed the following amended motion:

The UCR Program to develop a method to collect information on nonfatal/fatal shootings by law enforcement in the line-of-duty. The UCR Program will work with local law enforcement agencies and the five major national law enforcement organizations to develop what information to collect and the best method to do so and bring the topic back through the APB Process.

² The current policy on the reporting of justifiable homicides on the Monthly Return of Offense Known to the Police ("Return A") is to indicate the report of a homicide, to "unfound" it in the same instance. However, there are other instances where a homicide might be subject to unounding by law enforcement. Therefore, it is not possible to know with certainty that the homicide being unfounded was a justifiable homicide.

Scope of the Proposed Data Collection on Use of Force based on Meeting of Major Law Enforcement Organizations

Representatives from the major law enforcement organizations including the International Association of Chiefs of Police (IACP), Major City Chiefs Association (MCCA), National Sheriffs' Association (NSA), Major County Sheriffs' Association (MCSA), Association of State Criminal Investigative Agencies (ASCIA), and the Police Executive Research Forum (PERF) met with representatives from the CJIS APB, FBI and the Department of Justice to discuss the next steps regarding the creation of the new data collection on officer-involved shootings. The result of the meeting was a unanimous endorsement of a data collection system to include the following definition and content.

The participants at the meeting on September 18, 2015, proposed the following definition:

Law Enforcement Officer's (as defined by the Law Enforcement Officer Killed and Assaulted (LEOKA) Program) Use of Force (LEOUF) that results in the death or serious physical injury to a person, or when the law enforcement officer discharges a firearm at or in the direction of a person.

The effects of this definition were threefold. First, it expanded the collection to include the use of force that results in serious physical injury, rather than the original focus of officer-involved shootings. A definition for serious physical injury was not decided at the meeting on September 18, 2015. Secondly, the inclusion of the definition of law enforcement as set by the LEOKA Program would allow for some flexibility to expand the scope of the use of force collection in parallel with the LEOKA data collection. Finally, the definition does not require a law enforcement agency determine that the use of force was justified.

In addition to the proposed definition for the types of incidents eligible for reporting in the UCR Use of Force collection, the representatives from the major law enforcement organizations proposed content be collected on every incident that meets the criteria of the definition. The proposed data elements included basic information on any officers involved, the subjects of the use of force, and circumstances related to the use of force and served as the basis for the final recommendation approved by the CJIS APB. This data should be collected by the FBI as a part of the FBI's UCR Program, but collected separately from the rest of the criminal incident and offense information currently maintained by the FBI.

Final Recommendations from CJIS APB, December 2015

On December 3, 2015, the CJIS APB approved the following motions that were signed by FBI Director Comey in February 2016.

APB Recommendation 1

The APB recommends the collection and reporting of use of force by a law enforcement officer (as defined by LEOKA) to the FBI. The collection and reporting would include use of force that results in the death or serious bodily injury of a person, as well as when a law enforcement officer discharges a

firearm at or in the direction of a person. The definition of serious bodily injury will be based, in part, upon 18 USC Section 2246 (4). The term “serious bodily injury” means bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

APB Recommendation 2

The APB recommends collection of data elements included in the Death in Custody Reporting Act and other data elements as determined by a Task Force, to include at a minimum:

- Age, sex, race, ethnicity, height, and weight of the officer(s)
- Age, sex, race, ethnicity, height, and weight of the subject(s)
- Date and time of the incident
- Location of the incident [location codes from the NIBRS]
- Injury/Death of subject(s) [gunshot wound/apparent broken bones/possible internal injury/severe laceration/loss of teeth/other major injury/death]
- Officer(s) injured [yes/no]
- Officer injury type(s) [apparent broken bones/possible internal injury/severe laceration/loss of teeth/other major injury/unconsciousness/death]
- Reason for initial contact between subject and officer [request for response to criminal or suspicious activity/request for medical, mental health, or welfare assistance/routine patrol other than traffic stop/traffic stop/warrant service/other/unknown]
- Subject(s) resisted [yes/no]
- Was the threat of force by the subject(s) directed to the officer or to another party?
- Type of subject resistance/weapon involvement
- Apparent physical impairment of the subject (Yes/No/Unknown)
- Was the subject(s) armed or believed to be armed?
- Type of force used to cause injury or death [firearm/conducted energy device (Taser)/explosive device/pepper or OC spray/baton or blunt instrument/personal weapons/other]

APB Recommendation 3

The APB recommends the creation of a separate collection mechanism under the FBI CJIS for the reporting of use of force data. The new data collection will be maintained separately by the national UCR Program and apart from the criminal incident and offense information. CJIS Systems Officers, in consultation with UCR Program Managers, will determine if agencies within their jurisdiction may submit directly to the FBI. UCR Programs will have timely and on-going access to all data submitted directly to the FBI.

APB Recommendation 4

The LEOKA definition of a law enforcement officer be revised to include military and civilian police and law enforcement officers of the Department of Defense.

The FBI will collaborate with DOD to establish criteria for inclusion of applicable military and civilian police and law enforcement.

Creation of Use of Force Task Force

As specified in the APB Recommendation 2, the FBI moved to establish a Use of Force Task Force to make the decision on the additional content of the new data collection. Central to the discussion on the content of the final data collection is ensuring that law enforcement would not be overly burdened by duplicate reporting that could arise because of requirements in the *Death in Custody Reporting Act of 2013*. The Use of Force Task Force is comprised of representatives from major law enforcement organizations and local, tribal, and federal law enforcement representatives. Specifically, the following organizations are represented on the Use of Force Task Force:

- IACP
- NSA
- MCCA
- MCSA
- PERF
- ASCIA
- National Organization of Black Law Enforcement Executives
- Association of State UCR Programs

In addition to representatives from these major organizations, the Task Force welcomed observers from the Office of the Deputy Attorney General, the Community Oriented Policing Services Offices, and the Bureau of Justice Statistics.

The Task Force has met on three occasions (January 27, 2016; March 17, 2016; and May 4, 2016) and is anticipated to meet one more time before concluding its work with a set of recommendations. On May 4, 2016, the Task Force discussed the scope of the data collection, specific responsibilities related to the reporting and handling of Use of Force data, and a final set of data elements for consideration. This final set of data elements is reflected in the attached questionnaire and builds upon the first set of recommended data elements that was a result of the December 2015 APB Meeting.

Selection of Participants in Cognitive Testing

Each agency that is participating in the cognitive testing is connected to the Use of Force Task Force. These agencies represent local, state, and federal agencies, as well as police departments and sheriffs' offices. Each agency was asked to identify two volunteers that represent someone who would be a typical user of the Use of Force data collection. This may vary by agency depending upon local policy and could include supervisors or records clerks, for example.

Cognitive Testing and Developmental Activity Procedures Language

The cognitive testing will be conducted in English.

Burden Hours for Developmental Activities

The cognitive testing will involve 10 individuals—5 individuals per round of testing for two rounds. We are requesting 20 burden hours for two rounds of cognitive testing of the questions in the data collection. One hour per participant to review the instructions and complete three scenarios, and one hour to participate in a debrief interview over the telephone.

Analysis Plan

The cognitive testing will be conducted through a respondent debriefing process. The participants will be sent a set of scenarios along with the proposed questionnaire and instructions for each of the questions. Each participant will review the materials and complete the questionnaire for each scenario to the best of his or her abilities. For each example, participants will also time themselves to assist the FBI with estimating the burden hours for the new collection. At the convenience of the participant, the FBI will schedule a teleconference with each participant to go through each of the questions on the questionnaire. The participant will be asked prompting questions that will assess any problems with comprehension, judgment, response categories, or confidence judgment. Based upon feedback from the initial round of testing, the FBI will revise either questions or instructions to address any problems. A second round of testing using new participants from each agency will assess whether the changes successfully addressed any problems identified in the first round of testing.

A preliminary report detailing the findings of the first round of testing will be provided to the Use of Force Task Force for review during the August 3, 2016, meeting. At that time, the Task Force will have the opportunity to address any major findings beyond simple changes in language or instructions. After the second and final round of testing, a final report will be provided to both the Task Force and the Office of Management and Budget.

Informed Consent, Data Confidentiality and Data Security

Participation is voluntary for participants in the cognitive testing. The FBI is requesting a waiver from Informed Consent as the debriefing will occur over the telephone. The interviewer will explain the voluntary nature of the activity and describe to the participant any risks involved in cognitive testing and will be witnessed by a note-taker participating in the phone call. The script to be read to each participant is attached. Data files will be housed on internal FBI computer-system and are subject to its data security policies.