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January 20, 2010

Interim Chief George Turner  
Atlanta Police Department  
226 Peachtree Street  
Atlanta, Georgia 30303

RE: 09-25 Complaint of James Askew

Dear Chief Turner:

The Atlanta Citizen Review Board ("ACRB") completed its investigation and adjudication of a complaint filed by James Askew. Mr. Askew filed a complaint on July 17, 2009 alleging that on January 22, 2009 at the Chevron service station at 180 Ponce de Leon, he was arrested and subjected to excessive force. He complained that he was stopped at gunpoint and forcibly removed from his car and was thrown face down on the pavement. He was handcuffed behind his back and **Officer Frank Esquilin** pressed his boot on his neck and back. Mr. Askew said that he was stopped without cause and **Officers Esquilin and Tracy Lewis** subjected him to the force described above. He asked them why he was stopped and told to shut up. The officers searched him and his car and he asked to speak to a supervisor. He was then transported to the jail in a prisoner transport wagon and was not secured with a seat belt. This caused him to be thrown around the transport wagon and to strike his head. He was charged with reckless driving, lane direction control signal and disorderly conduct. The traffic and criminal charges were dismissed.

The investigation included a review of the communications tapes as well as interviews with the parties who were present during the stop. The audiotape reflects that Unit 2552 (Officer Lewis) conducted a traffic stop at 180 Ponce de Leon and requested tag information. There was no indication that Mr. Askew was stopped for any other offense other than the traffic offenses that were observed by the officers.

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Mr. Askew refused to sit still and began digging around his car. Officer Esquilin, believing Mr. Askew might have been reaching for a weapon drew his firearm and pointed it at him. The driver's window was still closed and Officer Lewis asked him to roll down his window and step from the car, but Mr. Askew began to open his car door and believing that he might push her away, Officer Lewis held the door open, grabbed Mr. Askew and pulled him out of the car, placed him on the ground and handcuffed him. Sergeant Pulliam said that Officer Esquilin stated that he merely maintained his guard position while Officer Lewis made the arrest. Sergeant Pulliam did not file a use of force report until October 22, 2009 when the ACRB investigator requested the report. He said that he was not required to complete a use of force report for this type of incident and that he only completed it after the ACRB requested it.

**Sergeant David McGinnis** said that he responded to the scene after Officer Lewis and Esquilin called for a supervisor. The officers told him that they had attempted to pull Mr. Askew over several times and that the officers approached the vehicle after the stop and Mr. Askew refused to give them his license. The officer said that Mr. Askew was reaching down into the floor board and that is when Officer Esquilin drew his firearm and Officer Lewis took Mr. Askew out of the vehicle, put him on the ground and handcuffed him.

**Lieutenant Bennie McGee** was interviewed but did not have pertinent information.

**Officer Tracy Lewis** stated that she and Officer Esquilin observed Mr. Askew operating a car on Ponce de Leon Avenue weaving in and out of traffic lanes and cutting off cars. They followed the car and initiated a traffic stop. Mr. Askew pulled away and they initiated another attempt to stop the car. Again, Mr. Askew pulled away. She claims that Officer Esquilin got on the PA system and told Mr. Askew to pull over. Mr. Askew pulled into the Chevron Station and stopped. The officers approached his car; Officer Lewis approached the driver's side and Officer Esquilin approached the front with his weapon drawn and pointed at Mr. Askew. Officer Lewis banged on the window and asked Mr. Askew to open the door. She said that Mr. Askew was on his cellular phone and acting nonchalant. She did not recall how the door got opened, but when it did open, she observed Mr. Askew reaching down as if he was trying to get something from in between the seats. She thought he might be reaching for a weapon and she immediately reached into the vehicle, grabbed him by the arm and pulled him out of the car and placed him face down on the ground. Officer Esquilin came around to assist her and they handcuffed him. Mr. Askew was upset because he did not understand the reason for the stop. Officer Lewis explained to him why he was stopped. Officer Esquilin and Mr. Askew engaged in a verbal altercation and Mr. Askew asked for a supervisor.

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**Officer Frank Esquilin** appeared in the ACRB office and refused to answer questions. He submitted a copy of the police report and said it was an accurate account of the incident. Officer Esquilin's report differed from the statement given by Officer Lewis. According to Officer Lewis, Officer Esquilin's firearm was already drawn as they approached the vehicle; however, the report indicates that Officer Esquilin did not draw his firearm until after Mr. Askew allegedly refused to obey their commands. Officer Lewis' statement is consistent with the complainant's report. The statements provided by Sergeant Pulliam and Sergeant McGinnis also differed. Both of the sergeants reported that the weapon was not drawn until after the contact with Mr. Askew.

The Board considered these statements and discussed the fact that this allegation *turns on* when the firearm was pointed at Mr. Askew. It is undisputed that the firearm was pointed at him. If the weapon was drawn and pointed at Mr. Askew before he was alleged to have disobeyed commands and before he appeared to be reaching for a weapon in the car, then the allegation of excessive force would be sustained. According to the Atlanta Police Department's Standard Operating Procedure (2010.4.6.09), a firearm cannot be pointed at a person for a minor traffic offense. At the time of the stop there was no cause for the display of a deadly weapon.

Mr. Askew's version of the incident is consistent with Officer Lewis and the Board believes that this is the more accurate version. The fact that Officer Esquilin declined to answer questions makes it difficult to assess the credibility of his written report. For that reason, **the allegation of excessive force was sustained against Officer Frank Esquilin. The allegation of excessive force against Officer Lewis was not sustained.** The Board further voted to recommend that the Chief impose a one day suspension on Officer Esquilin. This is consistent with the Department's disciplinary policies.

The Board expressed concerns that there is some confusion as to whether sergeants are required to file Use of Force reports when officers point firearms at a person. The Board has reviewed the Standard Operating Procedure and believes that the current policy requires that they file the report. However, some sergeants appear to be uninformed or unclear about this. It may be helpful to clarify this for the benefit of the supervisors in the police department.

There have been approximately one dozen officers who have appeared in the ACRB office and refused to give a statement. This is not helpful to the Board, to the police chief, nor to the Department. It violates the ordinance which establishes the authority of the Board (See Section 2-2211(H)). The Board is again requesting that you impose the appropriate discipline on Officer Esquilin for refusing to give a statement concerning this matter.

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Please let me know if you have any questions or concerns. The ordinance requires that the Chief respond in writing regarding which recommendations are accepted, rejected, or will be implemented with modifications within thirty (30) days of the submission of a recommendation for action by the Board to the Chief. See Sec. 2-2211(O) of Ordinance 07-0-0141.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Edmond', written in a cursive style.

Roderick E. Edmond, M.D., J.D.  
Chair

cc: Mayor Kasim Reed  
Council President Ceasar Mitchell  
Members of City Council