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May 16, 2011

Chief George Turner
Atlanta Police Department
226 Peachtree Street, S.W.
Atlanta, Georgia 30303

RE: Complaint #10-71, Allan King

Dear Chief Turner:

The Atlanta Citizen Review Board (“ACRB”) completed its investigation and adjudication of the complaint that was filed by Allan Kind alleging false imprisonment by Officers Jonathan Davis, Eric Wheeler, and Ronald Stoddard. The allegations were investigated by Sheena Robertson based on a timely complaint filed by Mr. King.

Mr. King alleges that on December 2, 2010, at about 7:45 p.m., the above named officers stopped and detained him without legal justification as he walked through the parking lot of the Lenox Mall. He explained that he was walking to the Apple Store located in the mall and three police officers in a Quality of Life Van approached him. The officer seated in the front passenger side asked him if he was stealing cars and he replied that he did not know anything about cars being stolen in the lot. He said he told the officers that he had just walked onto the lot from a nearby crosswalk. The three officers got out of the van and approached him. The driver asked him whether he was going to the mall and Mr. King told the officer he was going to the Apple Store. The officer told him that Georgia Law prohibits anyone from walking on a parking lot if the person does not have a car on the lot. The officer seated in the back of the van asked for identification, which he surrendered. They checked his identification and everything came back okay and the officer told him to leave. He claims to have been detained for 10-15 minutes.

The officers were identified by contacting the Zone 2 Commander who explained that the officers in the Quality of Life Van were performing Hot Spot overtime during the holidays. Officers Wheeler, Davis and Stoddard were assigned to the Lenox Mall because of a reportedly large number of pedestrian robberies and car break-ins.

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Officer Jonathan Davis said that on December 2, 2010, he, along with Officers Wheeler and Stoddard were assigned to patrol the parking lot of Lenox Square Mall. At roll call, he was advised by Sergeants Bender and Harty not to allow anyone to walk through the parking lot if the person did not have a vehicle parked therein. Officer Davis observed Allan King walking through the lot, so they stopped him and asked for his name. Mr. King did not respond so they asked him again. Officer Davis said he then exited the van and asked Mr. King how he was doing and at that point, Mr. King put his hands behind his back. Officer Davis thought he may be reaching for something so he issued him a command to show his hands. Officers Wheeler and Stoddard exited the van. Officer Davis then observed two other pedestrians walking in the parking lot, so he went over to deal with them. Officer Wheeler asked Mr. King for his identification, but was unaware whether the identification was checked on ACIC. Officer Davis said they returned Mr. King's identification and explained to him that he could not walk through the parking lot if he did not have a car parked on it. Officer Davis said that Mr. Allan told him that he was on the way to work. Officer Davis said that they did not pull out of service or notify the dispatcher before stopping Mr. King.

Officer Eric Wheeler advised that on December 2, 2010, he, along with Officers Stoddard and Davis were patrolling the Lenox Square Mall Parking Lot and they observed Mr. King. Wheeler was asked why they stopped Mr. King and he began to read his written statement that he had provided to OPS. He explained they saw Mr. King positioned between two cars and it appeared that he was looking into the window of one of the cars. He did not have keys in his possession so he pointed that out to Officer Davis. They drove up to Mr. King and asked him what he was doing, but Mr. King did not respond. He repeated the question, but Mr. King did not respond. Officer Wheeler said Mr. King put his hands behind him and they immediately commanded him to show his hands but he did not comply. Officer Wheeler asked for his identification and checked him through ACIC and it came back okay and they let him go. He said that their supervisor told them to challenge any suspicious persons in the parking lot in Lenox Mall because there had been vehicle break-ins. He said that he did not think that they called out with the pedestrian stop as required by Standard Operating Procedure.

Officer Ronald Stoddard explained that Mr. King was stopped after they observed him walking between cars possibly looking through car windows. He did not have any keys in his hands and it did not appear that he had a car in the lot. He explained that the van drove up to Mr. King and they asked him where he was going. Mr. King stopped but he did not respond; instead, he put both hands behind his back. Officer Stoddard became alarmed so they all quickly exited the vehicle. They commanded Mr. King to show his hands. They asked for identification and said that Officer Wheeler explained that they were stopping him because there had been numerous break-ins. They told him that in the future, he should walk around the parking lots instead of walking through them. They did not frisk or cuff Mr. King, nor did they put their hands on him at any time during the encounter.

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A check of the police radio transmissions and the vehicle's Mobile Data Transmissions was performed and no record was found of an inquiry for Mr. King. The Board noted that the officers did not follow the procedure concerning stops of suspicious persons (S.O.P. 3065, Section 4.1.1).

The Board considered the evidence and voted to **sustain** the allegation of **Unlawful Imprisonment**. The Fourth Amendment allows law enforcement officers to briefly detain individuals for investigatory purposes if the officers reasonably suspect that a person has committed, is committing, or is about to commit a crime. Furthermore, the US Supreme Court has adopted a dual inquiry for evaluating the reasonableness of an investigative stop, to wit, "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." Mr. King was stopped for walking in the Lenox Square Mall parking lot. One of the officers said that Mr. King might have been looking in car windows. He also had no car keys. This is not reasonable suspicion.

The Board discussed some of the factual issues that arose as a result of the investigation. These three officers were all new officers. There was no senior officer assigned to this patrol team. Also, the officers failed to inform the dispatcher about the stop. This is a violation of policy. Also, they were concerned that officers are not properly trained on the requirements of imposed by the Fourth Amendment when conducting stops. The Board was of the opinion that the Department could benefit from more training regarding articulable suspicion, probable cause and when there is insufficient evidence to support a constitutional seizure. For these reasons, the Board voted to recommend that you issue a written reprimand to the three officers and provide Department-wide training to help officers better understand Fourth Amendment law.

Please let me know if you have any questions or concerns or if you would like to have a copy of the full investigation. 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,



Joy Morrissey,
Board Chair

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