



Sixth Quarterly Report
of the Independent Monitor
for the Oakland Police Department

Robert S. Warshaw
Independent Monitor

Office of the Independent Monitor
Police Performance Solutions, LLC
P.O. Box 396, Dover, NH 03821-0396

August 2, 2011

Table of Contents

Section One

| | |
|--|---|
| <i>Introduction</i> | 2 |
| <i>Compliance Assessment Methodology</i> | 4 |
| <i>Executive Summary</i> | 6 |

Section Two

Compliance Assessments

| | |
|--|----|
| Task 2: Timeliness Standards and Compliance with IAD Investigations | 8 |
| Task 3: IAD Integrity Tests | 10 |
| Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process | 13 |
| Task 5: Complaint Procedures for IAD | 16 |
| Task 6: Refusal to Accept or Refer Citizen Complaints | 25 |
| Task 7: Methods for Receiving Citizen Complaints | 26 |
| Task 16: Supporting IAD Process - Supervisor/Managerial Accountability | 28 |
| Task 18: Approval of Field-Arrest by Supervisor | 30 |
| Task 20: Span of Control for Supervisors | 32 |
| Task 24: Use of Force Reporting Policy | 36 |
| Task 25: Use of Force Investigations and Report Responsibility | 40 |
| Task 26: Use of Force Review Board (UFRB) | 44 |
| Task 30: Firearms Discharge Board of Review | 46 |
| Task 33: Reporting Misconduct | 48 |
| Task 34: Vehicle Stops, Field Investigation, and Detentions | 51 |
| Task 35: Use of Force Reports - Witness Identification | 54 |
| Task 37: Internal Investigations - Retaliation Against Witnesses | 56 |
| Task 40: Personnel Assessment System (PAS) - Purpose | 57 |
| Task 41: Use of Personnel Assessment System (PAS) | 62 |
| Task 42: Field Training Program | 68 |
| Task 43: Academy and In-Service Training | 71 |
| Task 45: Consistency of Discipline Policy | 74 |

| | |
|---|----|
| <i>Supplementary Assessment: Officers Pointing Firearms</i> | 77 |
|---|----|

Section Three

| | |
|------------------------------------|----|
| <i>Conclusion: Critical Issues</i> | 80 |
|------------------------------------|----|

Appendix

| | |
|-----------------|----|
| <i>Acronyms</i> | 82 |
|-----------------|----|

Section One

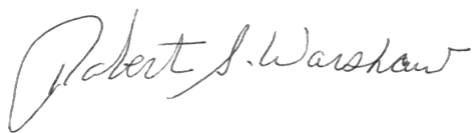
Introduction

This is the sixth quarterly report of the Monitor of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California. In January 2010, under the direction of Judge Thelton E. Henderson, the Parties agreed to my appointment as Monitor of the Oakland Police Department (OPD). In this capacity, I oversee the monitoring process that began in 2003 under the previous monitor, and had produced 14 status reports. The current Monitoring Team conducted our sixth quarterly site visit from May 23, through May 26, 2011, to evaluate the Department's progress with the NSA during the three-month period of January 1, through March 31, 2011.

In the body of this report, we again report the compliance status with the remaining active Tasks of the Agreement. By the end of the seven-year tenure of the previous monitor, the Department was in full compliance with 32 of the 51 required Tasks, and in partial compliance with 16 additional Tasks. As a result, the Parties agreed to reduce the number of Tasks under "active" monitoring to the current list of 22.

During this reporting period, we continue to find the Department in Phase 1, or policy, compliance with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD is in compliance with 13 of the remaining 22 Tasks – the same number as we reported in our last report. This is disappointing, as it was our expectation that the Department would advance in the aggregate. The status of some of the requirements has also shifted in this reporting period, and the bases for these shifts are described below. Further, in this report, the Monitoring Team, as part of our comprehensive review of the agency, undertook a more concentrated look at an important issue that can be found in a Supplementary Assessment. It is our hope that the Department be introspective as it carefully reviews this serious issue.

As noted previously, as a result of Court-ordered technical assistance, the Monitoring Team and OPD representatives have continued to meet and confer to explore ways to enhance the Department's policies and procedures so that they better comport with the trends and innovations in contemporary American policing.



Chief (Ret.) Robert S. Warshaw
Monitor

Monitoring Team:

Chief (ret.) Charles D. Reynolds

Deputy Monitor

Lt. Colonel (ret.) J. Rick Brown

Robin Busch-Wheaton

Eric P. Daigle, Esq.

Commander (ret.) John M. Girvin

Chief (ret.) Melvin C. High

John M. Klofas, Ph.D.

Assistant Director (ret.) Joseph R. Wolfinger

Compliance Assessment Methodology

The body of this report is comprised of our assessments of compliance with the individual requirements of the 22 active Tasks of the NSA. Each requirement is followed by information about the compliance status of the requirement during our previous reporting period, a discussion regarding our assessments and the current status of compliance, a summary notation of Phase 1 and Phase 2 compliance (see below), and our planned next steps in each area.

The Monitor's primary responsibility is to determine the status of the Oakland Police Department's compliance with the requirements of the 22 active Tasks. To accomplish this, the Monitoring Team makes quarterly visits to Oakland to meet with OPD's Office of Inspector General (OIG) and other Department personnel – at the Police Department, in the streets, or at the office that we occupy when onsite in the City. We also observe Departmental practices; review Department policies and procedures; collect and analyze data using appropriate sampling and analytic procedures; and inform the Parties and, on a quarterly basis, the Court, with information about the status of OPD's compliance.

Our Team determines compliance through an examination of policies and implementation of practices that are relevant to each of the active Tasks. First, we determine if the Department has established an appropriate policy or set of procedures to support each requirement. Following this, we determine if the Department has effectively implemented that policy.

Based on this process, we report the degree of compliance with requirements on two levels. First, we report if the Department has met policy compliance. Compliance with policy requirements is known as **Phase 1 compliance**, and the Department achieves it when it has promulgated appropriate policies and trained relevant Department members or employees in their content. Second, we report on the extent to which the Department has implemented the required policies. Implementation-level compliance is reported as **Phase 2 compliance**. In general, to achieve full compliance, the Department must achieve both Phase 1 and Phase 2 compliance; that is, an appropriate policy must be adopted, trained to, and operationally implemented.

Our conclusions with regard to Phase 1 or Phase 2 compliance will fall into the following categories:

- **In compliance:** This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).
- **Partial compliance:** This is reported when at least one, but not all, requirements of a Task have achieved compliance, showing progress towards full compliance. Tasks will remain in partial compliance as long as we determine there is continued progress toward reaching substantial, or full, compliance.

- **Not in compliance:** This is reserved for instances where partial compliance has not been achieved and no progress has been made.

Many sub-requirements of the 22 active Tasks require the analysis of multiple instances of activity, cases, or observations. In these circumstances, our analysis is based on a review of all cases or data, or, when appropriate, on statistically valid samples of the population. To reach our conclusions based on analyses of cases, the Department must meet a minimal standard. The Parties have agreed upon these compliance standards, which range from 85% to 95% to a Yes/No standard.

This methodology supports a sound and rigorous review of the Department's compliance with the requirements of the 22 active Tasks. We recognize, however, that the high demands of this methodology may not be fully realized in all elements of all reviews. There will be circumstances in which we will be unable to determine fully the compliance status of a particular requirement due to a lack of data, incomplete data, or other reasons that do not support the completion of our work in a manner consistent with timely reporting. Under such circumstances, we will opt not to compromise our methodology by forcing a conclusion regarding compliance levels. Instead, we will report a finding as **"Deferred."** This finding is not intended to reflect negatively on the Department or to otherwise imply insufficient progress. In such circumstances, we expect that a more complete assessment of compliance in the area in question will be determined in our next report.

Our compliance assessment methodology directs the Monitoring Team in our work and underlies the findings presented in this report. We fully expect that this methodology will govern our work throughout our tenure in this project. Any consideration of revision or change of this methodology will be presented to the Parties and the Court.

Executive Summary

This is the sixth report of the Monitoring Team in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* This Executive Summary is not intended to replicate the body of the entire report. Instead, it highlights the more significant findings, trends, patterns, or concerns that materialized as a result of our evaluation.

From May 23, through May 26, 2011, we conducted our sixth site visit to Oakland. At that time, we met with several Department officials, including the Chief and Assistant Chief of Police and the Deputy Chiefs; as well as personnel from the Office of Inspector General (OIG), Bureau of Field Operations (BFO), Bureau of Investigations (BOI), Bureau of Services (BOS), Internal Affairs Division (IAD), Training Division, and Communications Division; OPD officers, managers, supervisors, and commanders, including sergeants, lieutenants, and captains. We also conferred with the Plaintiffs' attorneys, City Administrator, and the Office of the City Attorney (OCA). During and since the time of our site visit, we attended Department meetings and technical demonstrations; reviewed Departmental policies; conducted interviews and made observations in the field; and analyzed OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation.

During this reporting period, we continue to find OPD in Phase 1 compliance with all 22 of the remaining active Tasks. The Department is also in Phase 2 compliance with 13 (59%) of the 22 active Tasks, in partial compliance with seven (32%) Tasks, and not in compliance with one (5%) Task. As in our last two reports, we deferred a compliance determination with one Task (Task 42: Field Training Program).

Four Tasks have shifted in compliance levels to achieve this cumulative result. Task 3 (IAD Integrity Tests) and Task 25 (Use of Force Investigations and Report Responsibility) went from partial compliance to in compliance. Task 6 (Refusal to Accept or Refer Citizen Complaints) went from in compliance to not in compliance, and Task 30 (Firearms Discharge Board of Review) went from in compliance to partial compliance.

Sixth Quarterly Report of the Independent Monitor
for the Oakland Police Department
August 2, 2011
page 7

| Task | Phase 1: Policy and Training | Phase 2: Implementation | | | |
|---|------------------------------------|----------------------------|-----------------------|----------------------|----------|
| | In Compliance | In Compliance | Partial Compliance | Not in Compliance | Deferred |
| Task 2: Timeliness Standards and Compliance with IAD Investigations | √ | √ | | | |
| Task 3: IAD Integrity Tests | √ | √ | | | |
| Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process | √ | √ | | | |
| Task 5: Complaint Procedures for IAD | √ | | √ | | |
| Task 6: Refusal to Accept or Refer Citizen Complaints | √ | | | √ | |
| Task 7: Methods for Receiving Citizen Complaints | √ | √ | | | |
| Task 16: Supporting IAD Process - Supervisor/ Managerial Accountability | √ | √ | | | |
| Task 18: Approval of Field-Arrest by Supervisor | √ | √ | | | |
| Task 20: Span of Control for Supervisors | √ | | √ | | |
| Task 24: Use of Force Reporting Policy | √ | | √ | | |
| Task 25: Use of Force Investigations and Report Responsibility | √ | √ | | | |
| Task 26: Use of Force Review Board (UFRB) | √ | √ | | | |
| Task 30: Firearms Discharge Board of Review | √ | | √ | | |
| Task 33: Reporting Misconduct | √ | √ | | | |
| Task 34: Vehicle Stops, Field Investigation, and Detentions | √ | | √ | | |
| Task 35: Use of Force Reports - Witness Identification | √ | √ | | | |
| Task 37: Internal Investigations - Retaliation Against Witnesses | √ | √ | | | |
| Task 40: Personnel Assessment System (PAS) - Purpose | √ | √ | | | |
| Task 41: Use of Personnel Assessment System (PAS) | √ | | √ | | |
| Task 42: Field Training Program | √ | | | | √ |
| Task 43: Academy and In-Service Training | √ | √ | | | |
| Task 45: Consistency of Discipline Policy | √ | | √ | | |
| <i>Total Tasks</i> | 22 | 13 | 7 | 1 | 1 |

Section Two

Compliance Assessments

Task 2: Timeliness Standards and Compliance with IAD Investigations

Requirements:

Fairness to complainants, members/employees and the public requires that internal investigations be completed in a timely fashion.

- 1. On or before December 1, 2003, OPD shall develop policies regarding timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.*
- 2. Compliance with these timeliness standards shall be regularly monitored by IAD command and the Department's command staff. If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.*

(Negotiated Settlement Agreement III. B.)

Comments:

We found OPD in compliance with Task 2 during all of the previous reporting periods. Per Departmental policy, in order to be considered timely, at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days.¹ During our last quarterly review, we found that 90% of Class I cases and 100% of Class II cases were in compliance with established timelines. Additionally, for those cases that involved at least one sustained finding, 100% were in compliance with established discipline timelines.

Discussion:

As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 2, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 2. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

Task 2.1 requires that internal investigations (IAD and Division Level) – including review, approval, findings, and discipline – be completed in accordance with the timeliness standards developed by OPD (compliance standard: 85%). To assess this subtask, we reviewed a list of all internal investigations resulting in formal findings (unfounded, sustained, exonerated, or not

¹ OPD classifies misconduct as either “Class I” or “Class II.” Per DGO M-03, Class I offenses “are the most serious allegations of misconduct and, if sustained, shall result in disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution.” Class II offenses include “all minor misconduct offenses.”

sustained) that were approved between January 1, and March 31, 2011, and calculated the number of days between the complaint date and the approval date for each case. We excluded from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or service complaints, and those that did not involve Manual of Rules (MOR) violations. We segregated the remaining cases into Class I or Class II categories. If a case involved at least one alleged Class I violation, we classified it as Class I.

Of the 101 Class I cases we reviewed, 91, or 90%, were in compliance with established timelines – the same percentage we found during the last reporting period. Of the 66 Class II cases we reviewed, 65, or 98% were in compliance with established timelines – a slight decrease from the last reporting period, when 100% of the Class II cases were timely. Of the 25 sustained findings that we reviewed, 100% were in compliance with established discipline timelines.² This is the fourth consecutive reporting period in which this was the case. OPD is in compliance with Task 2.1.

Task 2.2 requires that IAD and OPD command staff regularly monitor compliance with these timeliness standards (compliance standard: Yes/No). The primary responsibility for monitoring compliance with timeliness standards rests with IAD, which generates weekly reports listing the Department's open investigations and critical deadlines for investigations retained in IAD and those handled at the Division level. The reports are distributed to IAD command staff and the respective Bureau Deputy Chiefs.

In addition to the reports, the IAD Commander discusses pending deadlines for key open investigations during IAD's weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. IAD also occasionally, as needed, emails individual reminders on cases approaching due dates to investigators and their supervisors. During this reporting period, we received and reviewed copies of individual Bureau and Department-wide Open Investigation Reports, Cases Not Closed Reports, 180-Day Timeline Reports, and agendas for the weekly meetings between the Chief and IAD staff. The content of these documents demonstrates active monitoring of case timeliness. A Monitoring Team representative also attended many of these weekly meetings. The Department is in compliance with Task 2.2.

Task 2.3 requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards (compliance standard: Yes/No). During this reporting period, IAD opened 322 cases, a decrease from 395 cases opened in the previous quarter. In addition, the Chief approved 368 cases, a decrease from 436 cases approved in the previous quarter. IAD Command attributes the decrease in complaints to overall decrease of Department staffing.

During this reporting period, there was not a proliferation of cases that would have triggered a staffing increase pursuant to the NSA. OPD is in compliance with Task 2.3.

² We reviewed 16 cases involving sustained findings – six cases involved more than one sustained finding.

OPD is in Phase 2 compliance with Task 2.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our February and May site visits, we had extensive discussions with OPD regarding the Department's proposed changes to DGO M-03. As of the May visit, although our concerns with the policy's content were addressed, OPD was uncertain if the Department would implement the changes. These policy changes will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if implemented, do not jeopardize compliance.

In addition, during the next reporting period, we will again confer with IAD command staff regarding workload trends and staffing requirements.

Task 3: IAD Integrity Tests

Requirements:

IAD shall be proactive as well as reactive.

- 1. IAD shall conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct.*
- 2. IAD shall have frequency standards, among other parameters, for such integrity tests.*

(Negotiated Settlement Agreement III. C.)

Comments:

During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with this Task. During the last reporting period, we continued to advise OPD that the Department's methods need to be more effective if it is to achieve consistent, credible, and reliable testing that helps it perform absent of a high level of misconduct complaints.

Discussion:

As previously reported, OPD published Internal Affairs Policy & Procedures 07-01, *Integrity Testing*, which incorporates the requirements of this Task on January 25, 2007. The Department updated this policy in January 2009. The revised policy also incorporates the requirements of Task 3. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

Task 3.1 requires that IAD conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct (compliance standard: Yes/No); and **Task 3.2** requires that IAD's integrity tests be conducted in accordance with the frequency standards and other parameters IAD has established (compliance standard: 90%).

To assess the Department's Phase 2 compliance with these subtasks, we reviewed files – including operations plans, after-action reports, and supporting documents – related to the 22 integrity tests that were conducted from January 1, through March 31, 2011. This is a substantial increase from the nine that were reviewed during the previous reporting period. Our review focused on the scope of the investigations, whether OPD conducted integrity tests on members/employees who were the subject of repeated allegations, and whether the selective integrity tests that OPD conducted complied with the parameters established by IAD.

Of the 22 tests conducted during this reporting period, eight were planned tests, in which the Integrity Testing Unit reviewed the records of OPD members and employees to verify that their vital information was current and that they were compliant with Departmental policy.³ All eight planned tests passed. While all eight planned tests focused on individual members and employees of OPD, four members and employees were selected because they were current subjects of repeated allegations of misconduct.

Fourteen of the 22 integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies. Six of the 14 tests were conducted to determine whether members and employees were receiving and properly handling complaints against an officer, as mandated in Department General Order M-03 and as outlined in the NSA. A decoy, using a script, telephoned Animal Control, the Police Administration Building desk officer, Youth and Family Services Division, Communications, Backgrounds and Recruiting Unit, IAD, and the Training Division, to make a complaint against an officer. Of the six tests conducted, one officer failed when he did not follow proper policy. The officer was provided refresher training on how to accept complaints properly. None of the six officers tested were the subject of repeated allegations.

The eight remaining selective tests included four that were intended to address members and employees who have been the subject of repeated allegations. In one test, the Integrity Testing Unit inspected Stop Data Forms to ensure that a specific officer was completing them when required. Another test involved found property, where a purse with money was provided to an officer by a decoy to ensure that the found property was correctly handled and entered into

³ OPD conducts two different types of integrity tests. Planned tests are designed specifically to test the compliance – with Departmental policies or procedures – of specific members or employees who are identified as the subject of the test. Selective tests are used to address specific Departmental policy to determine if specific OPD members, employees, or units are acting in compliance with the policy.

evidence. The third test involved monitoring calls for service for two officers to ensure that they responded and properly handled their assigned calls. The employees who were the subject of all of these tests successfully passed.

The remaining three tests did not involve members or employees who had been the subject of repeated allegations. The Integrity Testing Unit used speed recording equipment on Department cruisers while operating in the City; conducted surveillance to ensure that officers were calling supervisors for arrest approval, as required; and audited an impress account used to pay informants.

In addition, the Integrity Testing Unit conducted a test to ensure that the Animal Services Division's hearings for labeling "potentially dangerous dog" and/or "vicious dog" are being conducted in accordance with all applicable local, state, and federal statutes. The test was productive, in that it identified the need for the Department to revise the policy for operation of the Animal Services Division, restructure the division's leadership, and develop a tracking mechanism to manage the division's case files.

The types of integrity tests described above support the intended purpose of the Integrity Testing Unit, and we encourage OPD to continue to improve the quality of its integrity tests.

During our most recent site visit, we again met with the IAD commander and the sergeant who oversees the Integrity Unit, who informed us of their plans to improve and expand the Department's integrity testing. We also reviewed the integrity tests that OPD recently conducted, and discussed how the Department can achieve full compliance with this Task.

Based on our observations during this reporting period – specifically, the scope of the investigations of members and employees who are the subjects of repeated allegations – we find the Department in compliance with this Task. Continued compliance is dependent on the increased performance of investigating members and employees who are the subject of repeated allegations – in tests that are relevant to the member or employee's repeated offenses – and the consistency of quality investigations in future reporting periods.

OPD is in Phase 2 compliance with Task 3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will again meet with the sergeant who oversees the ITU and the IAD Commander to discuss the Department's efforts to strengthen Integrity Unit and its testing. We will also verify OPD's compliance with established frequency standards for testing and compliance with procedures.

Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process

Requirements:

1. *Within 90 days, OPD shall develop a policy regarding an informal complaint resolution process which may be used by supervisors and IAD to resolve service complaints and Class II violations that do not indicate a pattern of misconduct as described in Section III, paragraph H (2). This process shall document the receipt of the complaint, date, time, location, name or the person making the complaint, the name of the person receiving the complaint, how the matter was resolved and that the person making the complaint was advised of the formal complaint process with the CPRB. The documentation shall be forwarded to an IAD Commander for review. If the informal complaint resolution process fails to resolve the complaint or if the person making the complaint still wishes to make a formal complaint, the person receiving the complaint shall initiate the formal complaint process pursuant to Section III, paragraph E. An IAD Commander shall make the final determination whether the ICR process will be utilized to resolve the complaint. OPD personnel shall not unduly influence persons making a complaint to consent to the informal complaint resolution process.*
2. *IAD shall establish a central control system for complaints and Departmental requests to open investigations. Every complaint received by any supervisor or commander shall be reported to IAD on the day of receipt. If IAD is not available, IAD shall be contacted at the start of the next business day. Each complaint shall be assigned an Internal Affairs case number and be entered into a complaint database with identifying information about the complaint. OPD personnel shall notify IAD and the Chief of Police, or designee, as soon as practicable, in cases likely to generate unusual public interest.*
3. *Criteria shall be established which must be met prior to moving, from “open” to “closed,” any investigation in the complaint database.⁴*

(Negotiated Settlement Agreement III. D.)

Comments:

Only two provisions of Task 4 (4.7 and 4.10) are being actively monitored under the MOU. During all of the previous reporting periods, we found OPD in compliance with both of these requirements. Overall, we found that complaints received by any supervisor or commander were reported to IAD on the day of receipt or at the start of the next business day. We also found that OPD complied with criteria it has established when resolving complaints via informal complaint resolution, administrative closure, or summary finding.

⁴ The underlined requirements are the only provisions of Task 4 that are being actively monitored under the MOU.

Discussion:

There are four Departmental policies that incorporate the requirements of Tasks 4.7 and 4.10:

- **Department General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of these subtasks.
- **Department General Order M-3.1:** As previously reported, OPD published Department General Order M-3.1, *Informal Complaint Resolution Process*, which incorporates the requirements of these subtasks, on December 6, 2005. General Order M-3.1 was revised in February 2008, and August 2008. The revised policy also incorporates the requirements of these subtasks.
- **Special Order 8552:** As previously reported, OPD published Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual*, on February 1, 2007. This policy incorporates the requirements of these subtasks.
- **Communications Division Policy & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007. This policy incorporates the requirements of these subtasks.

As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 4.7 requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt (compliance standard: Yes/No). If IAD is not available, the supervisor or commander shall contact IAD at the start of the next business day. To assess Phase 2 compliance for Task 4.7, we reviewed 83 Daily Incident Log (DIL) entries and a random sample of 73 IAD case files that were approved during the period of January 1, through March 31, 2011. We also reviewed the complaint intake process in IAD during our November 2010 site visit, verifying by observation and interview the daily transfer of complaints to IAD via the DILs. The Office of Inspector General (OIG) now forwards completed DILs to us on a daily basis. We found no evidence of unwarranted delay in the delivery of these complaints, or in the intake process once IAD was made aware of them. OPD is in compliance with Task 4.7.

Task 4.10 requires that OPD comply with criteria it has established when resolving complaints through informal complaint resolution (ICR), administrative closure, or summary finding (compliance standard: 90%). This subtask is intended to ensure that OPD provides the proper level of investigation for each complaint and does not resolve meritorious complaints of misconduct without determining – and documenting – whether the OPD member or employee committed misconduct.

During this reporting period, from a sample of IAD cases that were approved between January 1, and March 31, 2011, we reviewed 13 cases in which at least one allegation was resolved via

administrative closure, eight cases in which at least one allegation was resolved via informal complaint resolution, and four cases that were resolved via summary finding. In five other cases, IAD used both an administrative closure and an ICR for different allegations of the same complaint. In all of the ICRs we reviewed, the complainants agreed to the informal complaint resolution process. Where an agreement was secured in a telephone conversation, that information was contained in the case documentation and in follow-up letters to the complainants.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. In one case, the complainant wished to withdraw his complaint after he spoke with officers and learned the parameters of his son's probation search clause. We listened to the recorded withdrawal, and it was clear that this was the complainant's desire. He, in fact, initiated the phone call to IAD. Two administrative closures pertained to cases that were opened based on litigation. In one, IAD was notified by the Office of the City Attorney of a claim filed for damages caused by an OPD canine. In the other, an officer notified IAD – as is required by policy – that he was being personally sued as a result of an off-duty motor vehicle accident. Neither of these involved MOR violations, and they were appropriately administratively closed.

We determined that one case was improperly administratively closed. IAD closed an allegation that an officer taunted a complainant whose dog was just shot by OPD, as per IAD, her complaint lacked specificity. The complainant was seated in a police vehicle when this alleged incident occurred. She described the actions of the officer, but was unable to provide a car number or his description. The allegation was clearly specific enough to constitute rudeness if sustained, and other officers – particularly the driver of the vehicle in which the complainant was seated – should have been interviewed on this point.

The remaining allegations that were closed administratively complied with policy, in that the complaints either lacked specificity, claimed innocence of charges best left to appropriate adjudication venues to decide, or otherwise did not constitute MOR violations. Again, where they were accompanied by allegations that warranted a full investigation, these additional allegations were investigated in accordance with policy.

The cases resolved via summary finding were all approved for such designation as required by policy. These cases are further discussed in Task 5. OPD is in compliance with Task 4.10.

OPD is in Phase 2 compliance with Task 4.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 5: Complaint Procedures for IAD

Requirements:

1. *On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the person receiving the complaint. In the event that such a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant and any witnesses. This information, as well as a description of the complaint, shall immediately, or as soon as circumstances permit, be documented on a Complaint Form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a complaint. The supervisor or appropriate Area Commander notified of the complaint shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.*
2. *An on-duty supervisor shall respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest. The supervisor shall ensure the Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints, by a jail inmate shall be handled in the same manner as other civilian complaints.*
3. *In each complaint investigation, OPD shall consider all relevant evidence, including circumstantial, direct and physical evidence, and make credibility determinations, if feasible. OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.*
4. *OPD shall develop provisions for the permanent retention of all notes, generated and/or received by OPD personnel in the case file.*
5. *OPD shall resolve each allegation in a complaint investigation using the “preponderance of the evidence” standard. Each allegation shall be resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure. The Department shall use the following criteria for determining the appropriate disposition:*
 - a. *Unfounded: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.*
 - b. *Sustained: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.*
 - c. *Exonerated: The investigation disclosed sufficient evidence to determine*

- that the alleged conduct did occur, but was in accord with law and with all Oakland Police Department rules, regulations, or policies.*
- d. *Not Sustained: The investigation did not disclose sufficient evidence to determine whether or not the alleged conduct occurred.*
 - e. *Administrative Closure: The investigation indicates a service complaint, not involving an MOR violation, was resolved without conducting an internal investigation; OR*
 - f. *To conclude an internal investigation when it has been determined that the investigation cannot proceed to a normal investigative conclusion due to circumstances to include but not limited to the following:*
 - 1) *Complainant wishes to withdraw the complaint and the IAD Commander has determined there is no further reason to continue the investigation and to ensure Departmental policy and procedure has been followed;*
 - 2) *Complaint lacks specificity and complainant refuses or is unable to provide further clarification necessary to investigate the complaint;*
 - 3) *Subject not employed by OPD at the time of the incident; or*
 - 4) *If the subject is no longer employed by OPD, the IAD Commander shall determine whether an internal investigation shall be conducted.*
 - 5) *Complainant fails to articulate an act or failure to act, that, if true, would be an MOR violation; or*
 - 6) *Complaints limited to California Vehicle Code citations and resulting tows, where there is no allegation of misconduct, shall be referred to the appropriate competent authorities (i.e., Traffic Court and Tow Hearing Officer).*
 - g. *Administrative Closures shall be approved by the IAD Commander and entered in the IAD Complaint Database.*
6. *The disposition category of "Filed" is hereby redefined and shall be included under Administrative Dispositions as follows:*
- a. *An investigation that cannot be presently completed. A filed investigation is not a final disposition, but an indication that a case is pending further developments that will allow completion of the investigation.*
 - b. *The IAD Commander shall review all filed cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed and may direct the closure or continuation of the investigation.*
7. *Any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident*

when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions.

(Negotiated Settlement Agreement III. E.)

Comments:

During all of the previous reporting periods, we found OPD in partial compliance with Task 5. Tasks 5.1-5.5 address the information gathered at the time a complaint is lodged and the notifications that are required. During the previous reporting period, we found OPD in compliance with four of the five subtasks in this group. In addition, we found that 64% of the cases we reviewed were in compliance with all elements of Tasks 5.15 and 5.16. We also found that the verification that all notes were contained in the file, as required by Task 5.17, was present in all but two of the cases we reviewed. In 20% of the cases we reviewed, the preponderance of evidence standard was not applied to some or all of the allegations, as required by Task 5.18. We found OPD in compliance with Task 5.6 (jail complaints), Task 5.19 (proper dispositions), Task 5.20 (tolling and filed cases), and Task 5.21 (employee interviews).

Discussion:

There are several Departmental policies that incorporate the various requirements of Task 5:

- **Departmental General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 5.)
- **Communications Division Operations & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007.
- **Training Bulletin V-T.1:** As previously reported, OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006.
- **Special Order 8270:** As previously reported, OPD published Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility*, on June 24, 2005.
- **Special Order 8565:** As previously reported, OPD published Special Order 8565, *Complaints Against Department Personnel*, on May 11, 2007.
- **IAD Policy & Procedures 05-02:** As previously reported, OPD published IAD Policy & Procedures 05-02, *IAD Investigation Process*, on December 6, 2005.

In addition, NSA stipulations issued on December 12, 2005, and March 13, 2007, incorporate the requirements of this Task.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

To verify Phase 2 compliance with Tasks 5.1 through 5.5, we reviewed 83 entries that appeared on the Daily Incident Logs (DILs) that were completed between January 1, and March 31, 2011. We identified these by randomly selecting 40 dates during this period and reviewing the entries for each of those dates (some dates have multiple entries). As noted in our previous reports, we met with representatives from IAD and Communications during our May and August 2010 site visits to discuss issues with the completion of DILs potentially affecting OPD's compliance with Task 5.4. Following these meetings, OPD committed to change the format of the DIL to ensure that information required by Task 5 is captured. This is the first *complete* reporting period in which the new form was used.

Task 5.1 requires that when a citizen wishes to file a complaint, the citizen is brought to a supervisor or IAD, or a supervisor is summoned to the scene (compliance standard: 95%). During the last reporting period, we found OPD in compliance with this subtask. During the current reporting period, of the 83 DIL entries, two cases were received in IAD, which, in turn, notified Communications. In the remainder of the cases, either a supervisor in the field initially took the complaint and notified Communications, or the complainants called 911 to express their dissatisfaction. In these latter cases, field supervisors were notified, except when the complaints were against Communications personnel (these were handled by a Communications supervisor) or were clearly service complaints (e.g., slow response time with no specific officer complained of). During this review period, OPD has a 100% compliance rate with Task 5.1.

Task 5.2 requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay be documented (compliance standard: 85%). Of the 83 DIL entries we reviewed, there were no obvious instances of a three-hour delay. OPD has added a checkbox to the DIL to record such delays. In addition to reviewing this area of the logs, we also checked the times of complaint receipt and supervisor contact with the complainant (or attempted contact where the complainant was unavailable – see Task 5.3). OPD is in compliance with Task 5.2.

Task 5.3 requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint (compliance standard: 90%). Of the 83 records in our dataset, we identified 11 instances in which the complainant “refused” interaction with a supervisor. In six of these cases, the complainants did not answer a contact or callback number provided; and since OPD personnel had no advance notice of the refusal prior to the attempted callback, we removed these incidents from consideration. In another case, a field supervisor responded to the complainant's address and made contact with the complainant over an apartment intercom, but the complainant refused to allow the sergeant access to the building or answer subsequent phone calls. In three of the cases, while the complainant refused to wait for a supervisor, enough information was gleaned from the initial call to complete a complaint form, including one instance where the officer recorded the interaction with the complainant. In the last case, the complainant refused to supply any contact information to Communications, and indicated that he had already called IAD; Communications completed a DIL anyway. OPD is in compliance with Task 5.3.

Task 5.4 requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander (compliance standard: 85%). In order to achieve compliance with this subtask, the DIL should contain the identification of personnel; witnesses or identifying information, if known (log should say “unknown” if not known); the date, time, and location of the incident; and the time of contact or attempt to contact the complainant by a supervisor.

During the last reporting period, OPD had a 100% compliance rate with this subtask. This was primarily due to the changes OPD made to the DIL form over the previous three reporting periods to ensure that the appropriate information was captured. All but two of the logs we reviewed contained the required information (“unknown” was checked in 30 records). The two records missing this information documented investigations initiated by supervisors against their own employees, and the information appeared to be intentionally left off. Even if these are deemed noncompliant, OPD has a 98% compliance rate during this review period, and is in compliance with Task 5.4.

Task 5.5 requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD (compliance standard: 95%). OPD had a compliance rate of 89% with this subtask during the last reporting period. The DILs are administered by the Communications Division and forwarded to IAD each business day. Additionally, the DIL contains a field to record the name of Area Commander notified and the time of notification. This field was blank in two records, and “unk” was indicated in another. In still another log, there was a notation that “Lt. P[] will be notified via email.” Nonetheless, OPD has achieved 95% with Task 5.5.

To assess **Task 5.6** during this reporting period, we reviewed all complaints that appeared to have originated from North County Jail, Santa Rita Jail, or Juvenile Hall, and were approved between January 1, and March 31, 2011. We identified six such complaints using the IAD database. We reviewed each complaint for two triggering events: an allegation of Class I misconduct; and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was “handled in the same manner as other civilian complaints.”

Of the six cases we reviewed, none met the criteria for an immediate response by a supervisor. Four involved allegations of Class I misconduct, but none of these complaints were lodged at the time of or immediately after arrest. Two were received by letter months after the incidents; one was received by a third party complainant the day after the arrest; and one complaint was lodged five months after the incident while the complainant was being interviewed (in jail – hence, the reference in the IAD database) as a witness in another matter.

Two cases involved Class II misconduct allegations, and we note that in the complaint made contemporaneous with the arrest, a supervisor responded to the North County Jail to interview the complainant.

OPD is in compliance with Task 5.6.

Task 5.12 requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD (compliance standard: 90%). Since by definition these complaints must be made contemporaneous with the arrest, an on-duty supervisor must respond to the jail. Under current policy, the Communications Division must record on the DIL complaints that are received and/or handled by on-duty supervisors; the DIL is forwarded daily to IAD. As mentioned in past reports, we deem the DIL system as functionally equivalent to the requirements of Task 5.12, and the Department remains in compliance with this subtask.

To assess **Tasks 5.15 through 5.19**, and **Task 5.21**, we reviewed a random sample of 25 IAD cases that were approved between January 1, and March 31, 2011. This sample included investigations completed by IAD and Division-Level Investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.⁵

As in our previous reviews, we treated **Tasks 5.15 and 5.16** as a single subtask with several elements, specifically that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements (compliance standard: 85%). During the previous assessment period, we deemed the Department in compliance with *all* of these required elements 64% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 14, or 56%, in compliance with *all* of these required elements. OPD is not in compliance with Tasks 5.15 and 5.16.

In all of the cases we reviewed, it appeared that OPD gathered and considered all relevant evidence.⁶ In all but one case, OPD conducted follow-up interviews, where warranted. We note that in eight cases, officers and/or civilians were re-interviewed when IAD needed further clarification. In the above referenced case of alleged rudeness in the wake of the complainant's dog being shot (see Task 4), the officers on the scene should have been questioned regarding this allegation, particularly since the complainant was re-interviewed on this specific point.

Despite extensive training on what constitutes appropriate credibility assessments (we observed one such training program during our last site visit), the quality of the assessments continues to be an issue. One investigation we reviewed – a summary finding case – was missing them.⁷ The

⁵ Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

⁶ For purposes of our review, we consider evidence to be physical evidence and/or photographs of same. We distinguish evidence from interviews, as does the subtask.

⁷ During a recent site visit, we advised OPD that handling an investigation as a summary finding does not relieve the Department of the obligation to make credibility assessments, even if they are based on the information at hand. During this reporting period, we reviewed one summary finding that was returned to the investigator for the addition of credibility assessments.

assessments were problematic in seven other cases. For example, in one case – a complaint stemming from a “buy bust” operation, seven officer assessments were rote and repeated nearly verbatim. In the same case, an investigator questioned the complainant’s credibility because of his criminal history and the claim of a witness who could not be located during the investigation. In another, IAD deemed an officer to be credible even though he denied the allegations verified by an uninvolved witness, who was also deemed credible. (“Aside from the profanity allegation, Officer C[] appeared truthful when interviewed. His statement was almost entirely consistent with that of witness B[]’s.”)

In one case, an investigator questioned the credibility of a complainant because he admittedly received some of his information third-hand, from a spouse at the scene. That in and of itself does not make the information suspect. Alcohol was mentioned as a factor in three credibility assessments. Not surprisingly, it was used to discredit civilians in two different cases, and yet had no impact on an off-duty officer’s credibility in another, and even served to explain some of her actions, somehow relieving her of intent to violate policy because she had been drinking.

We noted two cases in which reviewers corrected deficient credibility assessments. In one, the reviewer handwrote notes on the Report of Internal Investigation (ROI), a practice we have discouraged in favor of returning the investigations for correction. In the other, a memo from IAD addressed deficiencies from an investigator who was no longer a sergeant. We deemed this appropriate because of the circumstances.

In another case, an investigator inappropriately speculated regarding the reasons that a complainant’s statement had inconsistencies. While identifying the inconsistencies is valid, proposing theories for them serves no purpose. In another, an investigator called into question a witness’ credibility due to minor discrepancies in her statement. Listening to the interview, we noted that the witness’ answers were in response to the investigator’s rapid-fire questions, and any inconsistencies were inconsequential.

The NSA requires that “OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.” Where OPD makes such efforts and is unable to resolve inconsistent statements, the underlying charge would presumably, by definition, be not sustained. Therefore, in our review of this subtask, we removed from consideration findings that were resolved as not sustained based on inconsistent statements. We noted three cases where it appeared that inconsistent statements were not resolved. In one, a complaint of excessive force during an arrest, there was an allegation that a suspect was kicked in the face. The investigator provides two theories on how a facial injury might have occurred. One incredulously involves a possible unknown, unintentional boot strike, possibly caused by the officers’ adrenaline rush and the thickness of their boots.

OPD is not in compliance with Tasks 5.15 and 5.16.

Task 5.17 requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file (compliance standard: 85%). OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). During the fifth reporting period, we found OPD in 92% compliance with this subtask. During this review, the form was properly completed in all 25 cases we reviewed. OPD is in compliance with this subtask.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard (compliance standard: 90%). During the previous reporting period, OPD complied with this subtask in 80% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 20 cases – also 80%. In one of the non-compliant cases, an allegation of an officer refusing to provide his badge number, the allegation was not sustained even though the request for the officer’s badge number was caught on the officer’s recording device. Much was written about intent and the spirit versus the letter of the MOR. Another case involved the force case mentioned above, which was exonerated despite the lack of a plausible explanation for the complainant’s facial injury. Two others involved officers’ off-duty behavior. In one, a complaint of profanity, an unbiased, uninvolved witness indicated it occurred, and we believe the finding should have been sustained. In the other, two off-duty officers were accused by California Highway Patrol officers of attempting to intervene in the arrest of a friend. While all officers were, not surprisingly, deemed credible, there are glaring differences in their statements and we disagree with the findings on some of the allegations. OPD is not in compliance with Task 5.18.

Task 5.19 requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure (compliance standard: 95%). While we do not agree with all of the findings for the cases we reviewed (see Task 5.18 above), each allegation identified in all of the 25 cases was resolved with one of the acceptable dispositions, or administratively closed per policy, with one exception. In the dog shooting case, the complainant questioned the legality of the search of her home. This concern was not addressed. OPD addressed her complaint regarding the state her home was left in, but not the propriety of the search itself. Nonetheless, OPD is in compliance with this subtask.

Task 5.20 requires that the IAD Commander review all “filed” cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed (compliance standard: 90%). A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. According to our review of the IAD database, OPD currently does not have any cases classified as filed. Cases categorized as “tolling” appear to fit this definition.⁸

⁸ OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304.

During our most recent site visit, we met with an IAD lieutenant, who advised that as of that date, six cases were classified as tolling. Three involve civil litigation against the City and/or the Department; two involve criminal cases in which the complainants are not cooperating, most likely on the advice of legal counsel; and one involved the unavailability of the subject officer due to medial leave. All cases appear to be tolling according to policy. These cases are reviewed with the Chief during his weekly IAD meetings and listed by case number on the printed meeting agendas. OPD is in compliance with this subtask.

Task 5.21 requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken (compliance standard: 90%). However, with the approval of the IAD Commander, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Four of the 25 cases we reviewed were resolved via summary finding. All were appropriately approved for such closure. While we disagree with the approach in one case, the process for summary findings was followed and OPD is in compliance with Task 5.21.

OPD is in partial Phase 2 compliance with Task 5.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our February and May site visits, we had extensive discussions with OPD regarding the Department's proposed changes to DGO M-03. As of our May visit, although our concerns with the policy's content were addressed, OPD was uncertain if the Department would implement the changes. These potential policy changes will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if implemented, do not jeopardize compliance.

As we have done previously, we will also meet with IAD and OIG personnel regarding specific cases of concern that are referenced herein.

Task 6: Refusal to Accept or Refer Citizen Complaints

Requirements:

Refusal to accept a citizen complaint, failure to refer a citizen to IAD (when that citizen can be reasonably understood to want to make a citizen's complaint), discouraging a person from filing a complaint, and/or knowingly providing false, inaccurate or incomplete information about IAD shall be grounds for discipline for any OPD member or employee.

(Negotiated Settlement Agreement III. F.)

Comments:

During all of the previous reporting periods, we found the Department in Phase 2 compliance with Task 6.

Discussion:

As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 6, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 6. The requirements of this Task are also incorporated into Manual of Rules sections 314.07, 398.70, and 398.76. As the Department has trained at least 95% of relevant personnel on this policy, we find OPD in continued Phase 1 compliance with this Task.

Task 6 requires that OPD members and employees who refuse to accept a citizen complaint, fail to refer a citizen to IAD (when the citizen can be reasonably understood to want to make a citizen's complaint), discourage a person from filing a complaint, and/or knowingly provide false, inaccurate, or incomplete information about IAD, are disciplined (compliance standard: 95%).

To assess Phase 2 compliance with this Task, we reviewed 83 Daily Incident Log entries from November and December 2010; and a random sample of 25 IAD investigations (conducted by both IAD and via Division-level investigation) that were closed during the period of January 1, through March 31, 2011. We found no cases in which an allegation of failure to accept or refer a complaint went unaddressed.

We also queried the IAD database to identify any allegations of MOR 398.70-1, Interfering with Investigations; MOR 398.76-1, Refusal to Accept or Refer a Complaint; and MOR 398.76-2, Failure to Accept or Refer a Complaint; that were investigated and approved during this same time period. We identified ten such cases. Of these ten, two cases resulted in not sustained findings for the applicable charges. In six cases, the allegations were unfounded. While we believe that one of these allegations would more appropriately be classified as not sustained, the case still does not meet the requirements of this Task. In two cases, violations of MOR 398.76-2 (Failure to Accept or Refer a Complaint – unintentional) were sustained. Both resulted in discipline. In one, an officer received a letter of reprimand; and in the other, a Police Records Specialist received a two-day suspension.

In one case, IAD recommended a sustained finding for an allegation that an officer violated MOR 398.76-2. During a presentation at the weekly IAD meeting, the department determined that the officer should be counseled, and removed the allegation from the final version of the Complaint Investigation Report (CIR). IAD explained that it considered this a “discovery violation” since the IAD intake officer, in effect, determined that the allegation was appropriate based on his knowledge of Departmental policy (and his belief that the officer violated it), rather than the complainant specifically alleging that the officer failed to take her complaint. IAD maintains that it has more latitude over how to handle violations it discovers, as compared to allegations made directly by a complainant. While this overly legalistic distinction may be in accordance with the Department’s processes, it does not comport with the requirements of this Task. IAD substantiated a violation of an applicable MOR, and the disciplinary process should have been invoked.

Due to our concerns regarding the removal of the allegation from the CIR in the above-described action, OPD is not in Phase 2 compliance with Task 6.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Task 7: Methods for Receiving Citizen Complaints

Requirements:

On or before December 1, 2003, OPD shall develop a policy to strengthen procedures for receiving citizen complaints:

- 1. IAD or Communication Division personnel shall staff a recordable toll-free complaint phone line, 24-hours a day, and receive and process complaints in accordance with the provisions of Departmental General Order M-3. The complainant shall be advised that the call is being recorded when a complaint is taken by IAD.*
- 2. Guidelines for filing a citizen’s complaint shall be prominently posted and informational brochures shall be made available in key Departmental and municipal locations.*
- 3. OPD shall accept anonymous complaints. To the extent possible, OPD shall ask anonymous complainants for corroborating evidence. OPD shall investigate anonymous complaints to the extent reasonably possible to determine whether the allegation can be resolved.*
- 4. OPD personnel shall have available complaint forms and informational brochures on the complaint process in their vehicles at all times while on duty. Members/employees shall distribute these complaint forms and informational brochures when a citizen wishes to make a complaint, or upon request.*
- 5. IAD shall be located in a dedicated facility removed from the Police*

Administration Building.

6. *Complaint forms and informational brochures shall be translated consistent with City policy.*

7. *Complaint forms shall be processed in accordance with controlling state law.*⁹

(Negotiated Settlement Agreement III. G.)

Comments:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the second, third, fourth and fifth reporting periods, we found OPD in compliance with this Task.

Discussion:

OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 7, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 7. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance with this Task, we reviewed all cases listed in the Internal Affairs Division database as originating from complainants who were “anonymous,” “unknown,” “refused,” or any forms of those terms (such as “unk”) and that were approved between January 1, and March 31, 2011. We also reviewed all complaints during this selected time period that were tagged by IAD as originating from an anonymous complainant, and complaints in which the complainant field in the database was blank, to determine whether any were made anonymously.

Based on the above-listed criteria, we identified six cases as potential anonymous complaints during this reporting period. From these, we removed three that we determined were not true anonymous complaints. Two involved third parties who were making complaints on behalf of others who actually had no interest in filing a complaint or participating in the complaint process. These third parties were, in fact, the complainants and were known to IAD. In the other case, three people independently expressed dissatisfaction, based on a news story, with an OPD policy that purportedly exempts unlicensed undocumented immigrants from having their vehicles towed. While two of the complainants did not identify themselves, one did, and he was designated as a known complainant. In any event, no MOR violation was alleged and the investigation was appropriately administratively closed.

The three remaining cases were true anonymous complaints. We determined that these cases were investigated to the extent reasonably possible. One was received by letter, and alleged that an officer was inappropriately working out in a gym while out of work because of an on-duty injury. The investigation, which included outreach to the officer’s doctor, exonerated the officer. Another involved a complaint by an anonymous, uninvolved third party of a vehicle being towed

⁹ The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

during a traffic stop. No MOR violations were alleged, and the case was administratively closed. In the third case, a caller to a non-emergency line was upset at the amount of time it took to answer the phone, and also with the fact that the line contained a recorded Spanish message. He hung up without provided his name, and the non-emergency line was not equipped with caller identification software. Again, no MOR violations were alleged and the case was administratively closed.

The Department complied with the requirements of this Task in all three cases, and remains in Phase 2 compliance with Task 7.3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 16: Supporting IAD Process - Supervisor/Managerial Accountability

Requirements:

On or before December 1, 2003, OPD shall develop a policy to ensure that supervisors and commanders, as well as other managers in the chain of command, shall be held accountable for supporting the IAD process. If an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, then that supervisor or manager shall be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene.

(Negotiated Settlement Agreement III. O.)

Comments:

During the first reporting period, we found the Department out of compliance with Task 16 due to our concerns with the disciplinary hearing process. During subsequent reporting periods, our reviews showed that OPD had improved in this area, and we found the Department in compliance with this Task.

Discussion:

As previously reported, two Department policies, Department General Order M-03 and Training Bulletin V-T.1, incorporate the requirements of Task 16. OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 16.) OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 16.1 requires that supervisors and commanders, as well as other managers in the chain of command, are held accountable for supporting the IAD process (compliance standard: Yes/No); and **Task 16.2** requires that if an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, the supervisor or manager is held accountable, through OPD's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene (compliance standard: 90%).

To assess Task 16, we examined the 83 Daily Incident Log entries from January 1, through March 31, 2011; a random sample of 73 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between January 1, through March 31, 2011; and the five sustained Class I investigations that were approved by the Chief between January 1, through March 31, 2011. From this review, we identified one case in which a supervisor was alleged to have failed to adhere to the required standard. In this case, a complaint alleging harassment, retaliation, and discrimination was filed against a Department director. The employee alleged that she was harassed and discriminated against because of her race and country of origin. In addition, the complainant alleged an allegation of retaliation against her because she would not assist in the wrongful termination of another employee. IAD conducted an investigation and sustained findings of harassment against Department volunteers and resolved the allegations against the director as not sustained.

We also reviewed two Integrity Testing Unit investigations involving officers who failed to appear in court while under subpoena. The two investigations found that a total of 14 officers had failed to appear in traffic court when under authorized subpoenas. The investigations lead to seven sustained findings against the officers and resulted in discipline.

Notwithstanding our finding in Task 6, we continue to find the Department in Phase 2 compliance with Task 16.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We are continuing to review proposed changes to DGO M-03, and we met extensively with Department personnel during our most recent site visit to discuss the policy revisions. These changes will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if approved, do not jeopardize compliance.

During our next site visit, we will again meet with the IAD Commander to discuss any Task 16-applicable cases for the next reporting period, and we will assess the propriety of IAD's findings and actions.

Task 18: Approval of Field-Arrest by Supervisor

Requirements:

Within 260 days from the effective date of this Agreement, the Chief of Police shall, based on contemporary police standards and best practices, develop and implement policies to address the following standards and provisions:

Approval of Field-Arrest by Supervisor

1. *OPD shall develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates on calls for service. The policies developed in this Section shall require supervisors to respond to the scene of (at least) the following categories of arrest, unless community unrest or other conditions at the scene make this impractical:*
 - a. *All Felonies;*
 - b. *All drug offenses (including narcotics, controlled substances and marijuana arrests if the subject is taken to jail).*
 - c. *Where there is an investigated use of force;*
 - d. *Penal Code §§69, 148 and 243(b)(c).*

*The responding supervisor shall review the arrest documentation to determine whether probable cause for the arrest, or reasonable suspicion for the stop, is articulated, to ensure that available witnesses are identified, to approve or disapprove the arrest in the field, and to log the time of the contact.*¹⁰

(Negotiated Settlement Agreement IV. A.)

Comments:

Only one provision of Task 18 (18.2.2) is being actively monitored under the MOU. During all of the previous reporting periods, we found the Department in compliance with this subtask.

Discussion:

As previously reported, OPD published an arrest approval and report review policy, DGO M-18, *Arrest Approval and Review in the Field* (May 13, 2004; and updated October 1, 2005), which incorporates the requirements of Task 18. In December 2006, OPD published Special Order 8536, *Probable Cause Arrest Authorization and Report Review*. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 18.2.2 requires that supervisors review arrest documentation to verify that available witnesses are identified (compliance standard: 90%). To assess Phase 2 compliance with this subtask, we reviewed arrest documentation for all of the applicable arrest categories, as well as documentation for arrests resulting in an investigated use of force. Specifically, we reviewed a random sample of 48 adult arrest reports, and two juvenile arrest reports documenting felony

¹⁰ The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); and documentation for 36 arrests resulting in an investigated use of force; that occurred between January 1, and March 31, 2011. We reviewed these to determine if the reports listed witnesses or appropriately noted “no known witnesses,” or referred to a canvass with no witnesses produced. In keeping with previous practice, if there was no mention of any witnesses in the crime report narrative, we accepted a “0” in the “witness” box on the cover sheet as sufficient documentation.

Of the 48 adult arrest reports, we excluded 39 from our dataset for one or more of the following reasons: the arrest involved a warrant; the arrest occurred outside of our selected time period; the incident was, in fact, a psychiatric detention that did not involve an arrest; or the arrest involved a misdemeanor offense that was not one of the arrests applicable to Task 18.2.2. Of the nine remaining adult arrests, five were in compliance and four were not in compliance with Task 18.2.2. One case involved the issuance of a misdemeanor citation for possession of narcotics and drug paraphernalia, and listed no witness information or review/approval by a supervisor. The NSA does not provide an exception or waiver for citations related to drug offenses. This represents a 56% compliance rate among adult arrests for this subtask. The arrest reports did not, as per the requirement, list witnesses, appropriately note “no known witnesses,” or refer to a canvass with no witnesses produced.

We did not have to exclude either of the two juvenile arrest reports in our dataset from our review. One of the two juvenile arrests was not in compliance with Task 18.2.2. This felony robbery case involved a witness identification of the suspect. The arrest was approved by a supervisor; and the arrest report did not list witnesses, no known witnesses, or a canvass with no witnesses produced. This represents a 50% compliance rate among juvenile arrests for this subtask.

Of the 36 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.¹¹ This represents a 100% compliance rate among arrests resulting in an investigated use of force for this subtask.

During our most recent site visit, we met with representatives from OIG to encourage the Department to scrutinize felony adult and juvenile arrest reports and supporting documentation to verify that a felony arrest warrant or a parole detention existed at the time of the arrest that appropriately excludes these arrests from our assessment. Such supporting documentation is missing from many of the arrest reports we have reviewed.

Our review revealed an overall 89% compliance rate for Task 18.2.2. This is a drop from the last reporting period, when OPD had a 93% compliance rate with Task 18.2.2. Although the 89% falls below the 90% compliance standard for this subtask, OPD is in Phase 2 compliance with

¹¹ This number includes only Level 1, 2, and 3 uses of force because per DGO K-4, the documentation of witnesses of Level 4 uses of force is not required.

this requirement during this reporting period. If OPD falls below this figure with this requirement during the next reporting period, we will hold the Department not in compliance with Task 18.2.2.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will discuss with representatives from OIG, BFO, and the Training Division the problems we identified with the adult and juvenile arrest reports in our review, as well as BFO's weekly audit reports of witness information.

Task 20: Span of Control for Supervisors

Requirements:

On or before August 14, 2003, OPD shall develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The policy shall provide that:

- 1. Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
- 2. During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and operational needs, whether or not to backfill for the absence of the sergeant on leave.*
- 3. If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
- 4. If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Comments:

During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with Task 20. During the last reporting period, we found that 95% of the squads we reviewed met the 1:8 span of control. However, only 77% of the squads we reviewed were supervised by their primary, or assigned, supervisors; most of the remainder were supervised by certified acting sergeants who were not actually assigned to supervise their squads.

Discussion:

As previously reported, directives relevant to this Task include: Departmental General Order A-19, *Supervisory Span of Control*, issued on July 26, 2006; Departmental General Order D-13, *Assignment to Acting Higher Rank or Classification*, issued on June 17, 1999; and Special Order 8435, *Acting Sergeant Selection Process*, issued on July 26, 2006. Although Special Order 8435 updates the Department's policy on acting supervisors, we have previously encouraged OPD to update DGO D-13 so that it incorporates the updated information. We learned recently from the Bureau of Field Operations (BFO) Deputy Chief that these revisions are currently underway.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

Task 20.1 requires that sufficient primary sergeants be assigned at the draw board/master detail level to permit one primary sergeant for every eight officers under normal conditions (compliance standard: Yes/No).

During the first two reporting periods, we did not assess this subtask due to the lack of reliable documentation. At that time, we reported that there was no official OPD "master detail" that both listed sergeants' assignments as of the time of the "draw" at the beginning of the year and was also updated throughout the year as loans, transfers, and other personnel changes alter supervisory assignments. During the third reporting period, we were granted access to Telestaff, the Department's electronic scheduling system. Telestaff functions as a "master detail" that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. During this reporting period, we continued to use Telestaff to conduct our assessments. OPD is in compliance with Task 20.1.

Task 20.2 requires that relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%). To assess this subtask, we reviewed a stratified random sample of 14 days (within our selected time period) of Daily Details for the squads listed above. Specifically, we reviewed Daily Details for the following dates: January 4, 7, 18, and 29; February 10, 12, 16, 21, 24, and 27; and March 7, 13, 23, and 25, 2011. For the purposes of this requirement, we considered certified acting sergeants to be primary supervisors if they were assigned to supervise their particular squads; we considered them to be in compliance if the Department's weekly Personnel Orders listed the certified acting sergeants' acting assignments.

Of the 375 applicable squads we reviewed, 291 (78%) were supervised by their primary supervisors. This was a slight increase from the last reporting period, when we found 77% of the squads in compliance with this subtask. Of the squads *not* supervised by their primary supervisors, 42 (11% of the total) were supervised by "backfill" sergeants working overtime, 34 (9% of the total) were supervised by certified acting sergeants who were *not* assigned to

supervise their particular squads, and eight (2% of the total) were not supervised. During this reporting period, no squads were supervised by an officer who was not certified to act as a sergeant.

OPD is not in compliance with Task 20.2.

Task 20.3 requires that a supervisor's span of control for the Department's relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio on a day-to-day basis (compliance standard: 90%). To assess Task 20.3, we reviewed the above-referenced Daily Details and counted the number of officers being supervised and the supervisors for each relevant squad. For the purposes of this requirement, canine officers, field trainees, desk personnel, and police technicians do not count toward the eight. In addition, we considered certified acting sergeants to be supervisors, but any instance of a squad supervised by an “acting” supervisor who was not certified by the Department's program was considered out of compliance. Of the 375 applicable squads we reviewed, 366 (98%) met the 1:8 span of control. During the fifth reporting period, we found 95% of squads to be in compliance with this requirement. OPD is in compliance with Task 20.3.

Task 20.4 requires that the Department's Area Commanders make backfill decisions and that these decisions are consistent with policy and operational needs (compliance standard: 90%). An Area Commander “backfills” a sergeant slot when the assigned, or primary, sergeant is unable to supervise his/her squad on a short-term basis (“due to sickness, vacation, compensatory time off, schools, and other leaves”).

To assess this subtask, we reviewed the above-referenced Daily Details and noted the squads that were supervised by backfill sergeants on short-term bases. We found 42 instances (11% of the total we reviewed) of backfill supervisors in our sample. During the last reporting period, backfill sergeants represented 9% of the total. OPD is in compliance with Task 20.4.

Task 20.5 requires that the span of control for special operations is determined by an Area Commander and is reasonable (compliance standard: 90%). In addition, the Department requires that sergeants or certified acting sergeants supervise all special operations.

To assess this subtask, we reviewed a random sample of 25 special operations plans of the 111 total operations conducted between January 1, through March 31, 2011, to determine whether the span of control for these operations was determined by the relevant commander and was reasonable. Specifically, we looked at the nature of the operations; the number of officers involved in the operations; and, if any acting supervisors were certified acting sergeants. Our review found that all 25 of the special operations in our sample met these requirements.

OPD is in compliance with Task 20.5.

Task 20.6 requires that the Chief or his designee make decisions regarding any loans or transfers for long-term backfill (compliance standard: 85%). As noted above in our discussion of Task 20.4, an Area Commander “backfills” a sergeant’s slot when the primary, or assigned, sergeant is unable to supervise his/her squad on a short-term basis. However, the Chief or his designee (generally, the Assistant Chief or Deputy Chief) is required to determine any loans or transfers for *long-term* backfill.

We reviewed the Department’s weekly Personnel Orders issued between January 1, through March 31, 2011, for the signature of the Chief or his designee, usually the Assistant Chief. We found that all of the Personnel Orders during this time period contained such a signature, indicating the Chief’s approval.

The NSA does not require written documentation of loans and transfers for long-term backfills – merely that the Chief or his designee approves such loans and transfers. However, OPD policy requires such documentation. Specifically, Departmental General Order B-4, *Personnel Assignments, Selection Process, and Transfers*, states, “A unit commander/manager who needs a loan of personnel shall submit a justifying loan request to his/her Deputy Chief/Director requesting the loan.” As noted previously, 35% of loans and transfers reviewed by the Office of Inspector General (OIG) in a recent assessment were not included on the weekly Personnel Orders nor otherwise documented. Following these findings, Bureau of Field Operations (BFO) staff committed to improve its documentation of loans and transfers. Based on our recent discussions with the BFO Deputy Chief and other BFO personnel, as well as our review of Personnel Orders for other purposes (see above), it appears that OPD’s practice comports with Departmental policy. OPD is in compliance with Task 20.6.

OPD is in partial Phase 2 compliance with Task 20.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

As part of Court-ordered technical assistance, we have continued to work closely with OPD to explore the Department’s options to improve its consistency of supervision, or Task 20.2, so that it falls within the standards required by the NSA, Departmental policy, and best practices in policing. The Department has advised of its intention to transfer additional sergeants to Patrol, and plans to reorganize the division to implement a team supervision model. We continue to encourage the Department to undertake the bold steps that may be required in order to meet this requirement.

Task 24: Use of Force Reporting Policy

Requirements:

The policy shall require that:

1. *Members/employees notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force.*
2. *In every investigated use of force incident, every member/employee using force, and every member/employee on the scene of the incident at the time the force was used, shall report all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor.*
3. *OPD personnel document, on the appropriate form, any use of force and/or the drawing and intentional pointing of a firearm at another person.*
4. *A supervisor respond to the scene upon notification of an investigated use of force or an allegation of excessive use of force, unless community unrest or other conditions makes this impracticable.*
5. *OPD notify:*
 - a. *The Alameda County District Attorney's Office immediately or as soon as circumstances permit, following a use of lethal force resulting in death or injury likely to result in death.*
 - b. *The City Attorney's Office as soon as circumstances permit following the use of lethal force resulting in death or serious injury. At the discretion of the City Attorney's Office, a Deputy City Attorney shall respond to the scene. The Deputy City Attorney shall serve only in an advisory capacity and shall communicate only with the incident commander or his/her designee.*
 - c. *Departmental investigators regarding officer-involved shootings, in accordance with the provisions of Section V, paragraph H, of this Agreement.*
6. *OPD enter data regarding use of force into OPD's Personnel Assessment System (PAS).*

(Negotiated Settlement Agreement V. A.)

Comments:

We found OPD in partial compliance with Task 24 during all of the previous reporting periods. During the last reporting period, OPD was in compliance with all of the Task 24 subtasks except for the requirement that OPD enter data regarding uses of force into its Personnel Assessment System (PAS). We noted that the system contains only limited information about these incidents, and thus, is limited in its utility to supervisors.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 24. OPD revised DGO K-4 on August 1, 2007. On April 15, 2009, OPD issued Special Order

8977, amending DGO K-4. The revised policy also incorporates the requirements of Task 24. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, we requested and reviewed 90 use of force reports, including: two Level 1, 13 Level 2, and 21 Level 3 use of force reports; and a sample of 54 Level 4 use of force reports; that were completed between January 1, and March 31, 2011.

Task 24.1 requires that members/employees notify their supervisor as soon as practicable following any reportable use of force or allegation of excessive use of force (compliance standard: 95%). To assess this subtask, we reviewed the UOF reports, crime reports (when applicable), and Computer Assisted Dispatch (CAD) purges for all of the force incidents in our dataset. We found that the documentation for all of the incidents we reviewed – with the exception of one Level 2, two Level 3 and two Level 4 uses of force – was in compliance with this requirement. The supervisor in the one Level 2 case was not notified, as required, until two hours and five minutes after the use of force occurred. Supervisor notifications were also delayed in two Level 3 use of force incidents. The untimely notifications ranged from one hour and 15 minutes in one incident, to two hours and 40 minutes in the other incident.

Level 4 uses of force are self-reporting, and consequently, less documentation is required than for Level 1, 2, and 3 incidents. DGO K-4, Section VI A.1., states that involved personnel shall notify and brief their supervisors immediately or as soon as practicable. In all but two of the 54 Level 4 incidents in our sample, a supervisor was promptly notified regarding the force incident. The two incidents involved multiple officers pointing their firearms at subjects. In one incident, the supervisor was not notified until one hour and 56 minutes following the incident; in the other incident, the supervisor was notified after two hours and 13 minutes.

Overall, five of the incidents in our sample did not meet the requirements of this Task, leaving OPD with a 94% compliance rate. Despite this, OPD is in compliance with Task 24.1.

During our November 2010 site visit, we urged OPD to be diligent in the report review process to prevent the conflicts that occur when OPD personnel who were involved in a use of force incident conduct the investigation or review of the incident. As previously noted, OPD has assigned a sergeant full-time to review submitted use of force reports for quality and completeness. The sergeant returns reports for any necessary corrections, and counsels' investigators not to conduct an investigation in the future if they are in any way involved in the use of force that is being investigated. During this reporting period, we noted no investigator conflicts in the use of force reports we reviewed.

Task 24.2 requires that in every reportable use of force incident, every member/employee on the scene of the incident at the time the force was used, reports all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor (compliance standard: 95%); and **Task 24.3** requires that OPD personnel document, on the appropriate form, every use of force

and/or the drawing and intentional pointing of a firearm at another person (compliance standard: 95%). All of the use of force reports, crime reports, and supplemental reports for the incidents in our sample met these requirements. In one Level 2 case, the officers who pointed or drew their firearms were listed in the use of force report narrative or their individual reports, but not in Part 2 of the use of force report for entering into PAS. Two officers pointed their firearms at the suspect and were about to use lethal force; one officer un-holstered his weapon and had it ready. The three officers should be listed in Part 2 of the use of force report. We found that for Level 1 deadly force incidents, this information was contained in the crime and Internal Affairs Division reports; for Level 2 and Level 3 incidents, this information was contained in the use of force reports; and for Level 4 incidents, the information frequently appeared in the actual use of force, crime, or offense reports. Accordingly, we find OPD in compliance with *the reporting requirements* of Tasks 24.2 and 24.3.

Notwithstanding the above, due to our increased concerns regarding the high number of events involving the drawing and pointing of firearms – which is categorized as a Level 4 use of force – we conducted a more in-depth analysis of a random sample of these reports that were closed during this reporting period. The purpose of our analysis was to determine whether the reported pointing of firearms was not only *reported* in accordance with policy, but that it was also necessary and appropriate. Our sample included 80 events during which 215 officers drew and pointed their firearms at 177 subjects. In each instance we found there to be a question whether the officers' actions were appropriate, we ultimately found in the affirmative. Although in their totality, we found officers' actions appropriate in the majority of cases, we are troubled by the high number of instances, 28%, where an officer's pointing of a firearm was not necessary or appropriate. Equally concerning to us is the apparent approval of these reports and the officers' actions by supervisors, without any comments or corrective measures. Accordingly, we do not find OPD in compliance with Tasks 24.2 and 24.3. See *Supplemental Assessment: Officers Pointing Firearms*, on page 78.

Task 24.4 requires that a supervisor respond to the scene upon notification of a Level 1, 2, or 3 use of force or an allegation of excessive use of force, unless community unrest or other conditions makes such response impracticable (compliance standard: 95%). Supervisors responded to the scene in all but one of the 36 applicable Level 1, Level 2, and Level 3 incidents in our sample. This represents a 97% compliance rate. The one incident involved a dispute at a residence where a subject was fighting with his mother and sister. As noted above, the involved officers did not report the use of force until they had already cleared the scene. The supervisor was not notified in accordance with OPD policy. The supervisor was notified one hour and 25 minutes after the use of force. The supervisor documented the lack of timely notification in the report, and the Department took corrective supervisory action to address the involved officers' failure to report the use of force in a timely fashion. OPD is in compliance with Task 24.4.

Tasks 24.5, 24.6, and 24.8 require certain notifications in uses of force relative to officer-involved shootings and the use of lethal force.¹² Specifically, **Task 24.5** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the Alameda County District Attorney's Office immediately or as soon as circumstances permit (compliance standard: 95%). **Task 24.6** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the City Attorney's Office as soon as circumstances permit (compliance standard: 95%). **Task 24.8** requires that following every officer-involved shooting, OPD notify Homicide and Internal Affairs investigators (compliance standard: 95%). We reviewed two Level 1 use of force reports during this reporting period, and the required notifications were made in both cases. In one Level 1 case, the Alameda County District Attorney's Office was notified of the officer-involved shooting, but elected not to respond to the scene. The OPD homicide report indicated that the next day, an Assistant District Attorney indicated that the District Attorney's Office reviewed the OIS and determined the use of lethal force was justified. OPD is in compliance with these subtasks.

Task 24.9 requires OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS), now the Personnel Assessment System (PAS) (compliance standard: 95%). During the third reporting period, we noted that PAS contained only limited information about the use of force reports – namely, the report number, corresponding crime report number, the force level and type of force used, the incident date, and some other basic information. During the fourth reporting period, OPD began to enter narratives from the use of force reports into PAS. Although in our last report we expressed concerns over the completeness of information being entered into PAS, our review this quarter has allayed those concerns. A finding of Phase 2 compliance with this section is now warranted

OPD is in partial Phase 2 compliance with Task 24.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During the next reporting period, we will consider the completeness and accuracy of the data entry of use of force reports into PAS.

¹² Task 24.7 is no longer applicable.

Task 25: Use of Force Investigations and Report Responsibility

Requirements:

An on-scene supervisor is responsible for completing an investigated use of force report in accordance with the provisions of Departmental General Order K-4, "Reporting and Investigating the Use of Force."

1. *OPD shall develop and implement a policy for conducting and documenting use of force investigations that include, at a minimum:*
 - a. *Documentation of the incident in either an Offense or Supplemental Report from the member(s)/employee(s) using force; and/or, when necessary, a statement taken from the member(s)/employee(s) using force;*
 - b. *Separating and separately interviewing all officers who were at the scene at the time of the incident;*
 - c. *A Supplemental Report from other members/employees on the scene or a statement taken, if deemed necessary by the investigating supervisor;*
 - d. *Identification and interviews of non-Departmental witnesses;*
 - e. *Consideration of discrepancies in information obtained from members, employees and witnesses, and statements in the reports filed;*
 - f. *Whether arrest reports or use of force reports contain "boilerplate" or "pat language" (e.g., "fighting stance", "minimal force necessary to control the situation");*
 - g. *Documentation of physical evidence and/or photographs and a summary and analysis of all relevant evidence gathered during the investigation; and*
 - h. *Consideration of training/tactical issues involving the availability and practicality of other force options.*
 - i. *Supervisor's justification as to why any element of the policy was not documented; and*
2. *All supervisors shall be trained in conducting use of force investigations and such training shall be part of a supervisory training course.*
3. *Use of force investigations shall include a recommendation whether the use of force was objectively reasonable and within Department policy and training. The recommendation shall be based on the totality of the circumstances and shall consider, but is not limited to, the following factors:*
 - a. *Whether the force used was pursuant to a legitimate law-enforcement objective;*
 - b. *Whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the members/employees were attempting to achieve;*
 - c. *Whether the member/employee used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts;*
 - d. *Whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped;*

4. *use of force reports shall be reviewed by the appropriate chain-of-review as defined by policy.*
The type of force used, the identity of the involved members, and the report preparer shall be the determining criteria for utilizing the appropriate chain-of-review. Reviewers may include, when appropriate, the chain-of-command of the involved personnel, the appropriate Area Commander on duty at the time the incident occurred, other designated Bureau of Field Operations commanders, and as necessary, the chain-of-command of the involved personnel up to the Division Commander or Deputy Chief/Director, and the Internal Affairs Division. Reviewers for Level 1-3 use of force investigations shall:
 - a. *Make a recommendation as to whether the use of force was in or out of policy,*
 - b. *Order additional investigation and investigative resources when necessary, and*
 - c. *Comment on any training issue(s) when appropriate.*
5. *Any recommendation that the use of force did not comply with Department policy shall result in the incident being referred to the Internal Affairs Division to conduct additional investigation/analysis, if necessary.*
6. *Members/employees involved in a use of force incident resulting in serious injury or death and/or an officer-involved shooting, shall be separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed.*
(Negotiated Settlement Agreement V. B.)

Comments:

During the fourth reporting period, we found the Department in compliance with Task 25.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 25. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 25. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, we requested and reviewed 90 use of force reports, including: two Level 1, 13 Level 2, and 21 Level 3 use of force reports; and a sample of 54 Level 4 use of force reports; that were completed between January 1, and March 31, 2011.

Task 25.1 requires IAD to complete a use of force report for every Level 1 use of force, and an on-scene supervisor to complete a use of force report for every Level 2 and 3 use of force (compliance standard: 95%). To assess this requirement, we reviewed documentation for 36 Level 1, Level 2, and Level 3 incidents. In all of the Level 2 and 3 incidents in our sample, a

supervisor responded to the scene and completed a use of force investigation. In addition, five Level 3 incidents in our sample were downgraded from a Level 3 to a Level 4 use of force incident by a supervisor who was at the scene; the changes were documented and comported with the governing documents. OPD is in compliance with Task 25.1.

Task 25.2 requires that use of force reports/investigations include NSA-required elements (compliance standard: 90%) and are timely pursuant to DGO K-4 (compliance standard: 95%). All of the reports we reviewed for this subtask included the NSA-required elements. To assess investigation timeliness, we used a 75-day time limit for Level 1 incidents (including IAD Commander approval) plus one documented extension approved by the Chief of Police in advance of the due date, and a 15-day time limit for Level 2 and Level 3 incidents. For Level 4 incidents, as of November 23, 2010, OPD requires a review of the report by the end of the reviewing supervisor's next scheduled workday. This is a recent change – which we supported – from requiring a supervisor's review by the end of the tour of duty; it became effective by Special Order 9057.

Three of the reports we reviewed – two Level 1 and one Level 2 reports – were not submitted in a timely fashion, according to their respective requirements. In one of these instances, the supervisor failed to conduct the proper investigation at the time of the incident for a firearm discharge by an off-duty officer; the investigation was not commenced in a timely fashion. The investigator requested one extension for this investigation, and the extension was approved, but the use of force report was already late.

In another of these reports, the investigator requested two different extensions – both at the 60-day timeline. The investigator requested one of these extensions after being directed to work on another high-priority case. On the same day, the investigator requested another extension (for two months) to accommodate vacation and compensatory time off. Also, we understand that lab work can delay the final resolution of an investigation; however, the investigator's delay in obtaining an interview with the attending physician who treated the wounded suspect until after five months from the day of the incident was not justified. This was a necessary interview because the suspect's wounds and analysis of evidence in this case was linked to conflicts in eyewitness statements.

In the case described above, an unarmed suspect was shot and seriously injured. We urge the Department to make the investigations of all officer-involved shootings – whether fatal or not – a high priority.

OPD's compliance rate for this subtask is 97%. OPD is in compliance with Task 25.2.

Task 25.3 requires that all supervisors are trained on how to conduct use of force investigations and such training is part of a supervisory training course (compliance standard: 95%). OPD is incorporating use of force training into its sergeants' continued professional training that is offered every 18 months to two years. We reviewed a sample of supervisors' training records during this reporting period, and verified that the supervisors received the required training. We encourage

OPD to continue to provide periodic refresher training to underscore to supervisors the importance of conducting complete, thorough, and impartial use of force investigations that are submitted in a timely fashion. OPD is in compliance with Task 25.3.

Task 25.4 requires that the investigations include required recommendations (compliance standard: 90%). Areas of recommendation include: whether the force used was pursuant to a legitimate law enforcement objective; whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the officers were attempting to achieve; whether the officers used reasonable verbal means to attempt to resolve the situation without force, if time and circumstance permitted such attempts; and whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped.

All of the Level 1, Level 2, and Level 3 reports we reviewed during this reporting period were in compliance with this requirement. However, in the two Level 1 cases, one subject was fatally injured and the other subject received serious bodily injury. Two of the four officers involved in these incidents were not equipped with Tasers. In the first case, a Taser was used, leaving the second officer without such an option. In the second incident, the assisting officer considered using a Taser, and the officer who actually used lethal force did not have a Taser. In both cases, the officers believed that the suspects were armed. However, in both cases, the suspects were *unarmed*, and a Taser was used in the first incident and was considered being used as an option in the second incident.

OPD is in compliance with Task 25.4.

Task 25.5 speaks to the review process, which includes chain of command review, making assessments as required by the NSA and policy, and ensuring that any violation of policy results in the incident being referred to Internal Affairs to conduct additional investigations or analysis (compliance standard: 95%). During this reporting period, we found that the supervisors included the required details, and the chain of command conducted critical reviews. In the Level 1, Level 2, and Level 3 reports we reviewed, the chain of command reviewed and commented on the quality of the investigations, any corrective action that was identified, and the appropriate documentation required for Supervisory Notes Files.

All of the Level 4 reports were reviewed by supervisors, as required.

OPD is in compliance with Task 25.5.

Task 25.6 addresses the need to keep officers involved in use of force incidents resulting in serious injury or death, or involved in a shooting, be separated from each other at the scene, and kept apart until they have been interviewed and completed their reports (compliance standard: 95%). We found the applicable Level 1, 2, and 3 reports in compliance with this requirement. OPD is in compliance with Task 25.6.

OPD is in Phase 2 compliance with Task 25.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will discuss with OPD the continued timeliness issues associated with its Level 1 use of force cases, and what corrective action the Department is taking to manage them.

Task 26: Use of Force Review Board (UFRB)

Requirements:

OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:

- 1. Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
- 2. Require the FRB to review all use of force investigations;*
- 3. Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
- 4. Require the FRB to forward sustained policy violations to the Discipline Officer.*
- 5. Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
- 6. Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
- 7. Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
- 8. Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
- 9. Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Comments:

During all of the previous reporting periods, we found OPD in compliance with Task 26.

Discussion:

As previously reported, our review of Department General Order K-4.1, *Force Review Boards* (August 1, 2007), determined that this policy comports with the requirements of Task 26. As the

Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 26.1 requires that the Force Review Board (FRB) review all Level 2 use of force investigations following the completion of the internal investigation (compliance standard: 95%). DGO K-4.1 requires that the FRB chair convene an FRB to review the factual circumstances of all Level 2 cases within 90 days of receipt of the use of force packet from IAD. OPD provided documentation for 16 incidents that were heard by the board during this reporting period of January 1, through March 31, 2011. We determined that all of the 16 reports, or 100%, were in compliance. OPD is in compliance with this subtask.

Task 26.2 requires that for every Level 2 use of force investigation, the FRB make a recommendation as to whether the use of force was in or out of policy (compliance standard: 95%). Of the cases we reviewed, all 16, or 100%, contained a recommendation noting the use of force was in compliance or not in compliance with policy. The one case that was determined by the board to be not in compliance with policy involved the discharge of a firearm attributed to operator error. All of the 16 FRB reports noted agreement with the recommendation of the FRB by the Chief or his designee. OPD is in compliance with this subtask.

Task 26.3 requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to IAD for investigation (compliance standard: 95%). There was one case during this reporting period in which that determination was made. The board directed the Force Board Coordinator to refer the use of force incident to IAD for a finding of policy non-compliance. OPD is in compliance with this subtask.

Task 26.4 requires that the FRB make recommendations to the Chief of Police regarding additional use of force training, changes in policies or tactics, additional standards, investigatory policies, or training for use of force investigations (compliance standard: Yes/No). During the current reporting period, the FRBs identified policy needs, training issues, tactical training, equipment, use of force reporting, and corrective supervisory counseling. OPD is in compliance with this subtask.

Task 26.5 requires that the FRB conduct an annual review of use of force cases examined to identify any patterns of use of force practices (including K-3) that may have policy or training implications (compliance standard: Yes/No); and **Task 26.6** requires that the FRB issue an annual report to the Chief of Police reporting on its annual review (compliance standard: Yes/No). The FRB conducted its most recent annual review, which tracked 92 reports, on March 14, 2011. The review identified several patterns and practices, including: officers are continuing to chase suspects who they believed to be armed with handguns into yards; and are striking resisting suspects to the head with either their fists and/or palm-hammer strikes. In addition, the review found that many officers are documenting in their reports they had to use force because of the risk that a suspect may be armed; and they are not appropriately considering tactics during high-risk situations. The review also noted that canine officers, supervisors, and commanders need to consider modifying the canine announcement to fit the incident in question – for

example, circumstances in which the warning announcement would jeopardize officer safety.

According to the annual review, the FRBs have been tasking supervisors to train their officers at the board's direction after the board has identified training issues. The supervisors are required to document this training in the officer's Supervisory Notes File and enter the information into PAS. More involved training is conducted by subject-matter experts, and a training roster is submitted to the Training Division. The involved officer(s) are directed to be present during the presentation to receive training from the board's voting members and subject-matter experts, and/or praise for any outstanding work. Additionally, as a result of the findings of the FRB, the Department revises or creates new information or training bulletins, which are distributed to OPD personnel via the Department's electronic PowerDMS system.

OPD is in compliance with these subtasks.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule FRBs during our quarterly site visits, so that we may attend and observe the proceedings. We again strongly urge the Department to schedule its FRB hearings during our quarterly site visits; it is critical to our assessments that we be able to observe and evaluate the FRB process.

Task 30: Firearms Discharge Board of Review

Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
2. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Comments:

During the fifth reporting period, we found the Department in compliance with Task 30.

Discussion:

As previously reported, OPD published Departmental General Order K-4.1, *Force Review Boards* (February 17, 2006), which incorporates the requirements of Task 30. OPD revised DGO K-4.1 on August 1, 2007. The revised policy also incorporates the requirements of Task 30. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 30.1 requires that OPD convene an EFRB within 45 days of the completion of the use of force (UOF) report by IAD (compliance standard: 95%). During this reporting period, we reviewed documentation for two Level 1 force incidents. In one incident, according to the report, on-duty OPD officers initiated a discretionary pedestrian stop to investigate if a suspect, who was carrying a cane, was engaged in illegal activity based on the officers' knowledge of crime in the area and the suspect's behavior. The suspect ran from the officers, who pursued him on foot. While fleeing, still carrying the cane, the suspect discarded narcotics from his person and ignored one officer's commands to stop. The suspect eventually turned and faced the officer, with the cane in his left hand and his right hand concealed in his jacket pocket. The officer gave commands for the suspect to show his hands. According to the officers' report, the suspect appeared to be digging in his jacket pocket, instead of removing his hand so the officer could see if he had a weapon. The officer fired two rounds at the suspect; the officer later said that he believed that the suspect may have been armed with a firearm. No firearm was found on the suspect. The suspect survived and sustained serious bodily injury. The Alameda County Deputy District Attorney deemed the shooting justified. The EFRB found the incident in compliance with OPD policy.

The second officer-involved shooting reviewed by the EFRB involved three OPD officers discharging their firearms and three OPD officers deploying their Department-issued Tasers. OPD officers assisted BART officers with a subject armed with two knives walking toward the Fruitvale BART Station. The subject advanced toward OPD officers with the knives in his hands. The officers shot and fatally injured the subject. The EFRB found the officers' use of deadly force in compliance with policy.

During our February 2011 site visit, no EFRBs were scheduled. As required by policy, OPD convened two EFRBs within 45 days of the completion of the use of force report covering the incidents. In addition, both EFRB reports were completed within the 60-day required timeframe. OPD is in compliance with this subtask.

Task 30.2 requires that the EFRB has access to recordings and/or transcripts of interviews of all personnel on scene, including civilian witnesses, and is empowered to call in any OPD personnel it believes should testify (compliance standard: Yes/No). In the documentation we reviewed, recorded statements and/or transcripts were available from all officers on the scene and other personnel needed to testify. OPD remains in compliance with this subtask.

Task 30.3 requires that OPD complies with the policies and procedures set forth in DGO K-4.1, *Force Review Boards* (compliance standard: Yes/No). This policy outlines several

requirements, including who comprises the board, the material to be made available for the board, the conduct of the board, the information to be memorialized and follow-up actions, if warranted. We reviewed the reports that were prepared for the two incidents that were heard by the board during the current reporting period. The required attendees were present in one case; however, in the second EFRB, the subject officer's commander was absent from the proceedings. After review and deliberations, the board determined that the subject officer's actions in both cases were in compliance with Departmental policy. The EFRB findings were endorsed by the Chief. The board identified the adequacy of equipment, tactics, investigative concerns, and training issues that required the appropriate corrective action. OPD is not in compliance with this subtask.

OPD is in partial Phase 2 compliance with Task 30.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule EFRBs during our quarterly site visits, so that we may attend and observe the proceedings. However, the Department once again did not schedule any EFRBs during our most recent site visit. We strongly urge the Department to schedule its EFRB hearings during our quarterly site visit; it is critical to our assessments that we be able to observe and evaluate the EFRB process.

Task 33: Reporting Misconduct

Requirements:

Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

Misconduct

OPD personnel shall report misconduct by any other member or employee of the Department to their supervisor and/or IAD. The policy shall state that corrective action and or discipline shall be assessed for failure to report misconduct. OPD shall require every member and employee encountering a use of force that appears inappropriate, or an arrest that appears improper, to report the incident to his/her supervisor and/or IAD. OPD shall establish and maintain a procedure for a member/employee to report police misconduct on a confidential basis.

- 1. Any member/employee of OPD may report a suspected case of police misconduct confidentially to the commander of IAD.*
- 2. The member/employee reporting this conduct shall indicate clearly to the commander of IAD that the report is being made under these confidential*

- provisions.*
3. *The report may be made in person, by telephone, or in writing. The IAD Commander shall document the report in a confidential file that shall remain accessible only to the IAD Commander.*
 4. *The case shall be investigated without disclosure of the complainant's name, unless and until such disclosure is required by law.*
 5. *This confidential reporting procedure shall be made known to every member/employee of OPD and to all new members/employees of OPD within two (2) weeks of hiring.*

(Negotiated Settlement Agreement VI. A.)

Comments:

During the first three reporting periods, our queries of the IAD database revealed no cases in which a member failed to report the misconduct of another member. The previous monitor had expressed concern with the handling of a confidential complaint and, accordingly, withheld a finding of compliance. During the fourth reporting period, we found a case had been reported confidentially to IAD, and determined that it was handled as required. During the last reporting period, we found OPD in compliance with Task 33.

Discussion:

As we have noted previously, OPD has developed several policies that, in concert, incorporate the requirements of this Task. These include: *Manual of Rules* (MOR) Section 314.48, Reporting Violations of Laws, Ordinances, Rules or Orders; MOR Section 314.49, Confidential Reporting of Police Misconduct; Departmental General Order D-16, Check-In and Orientation; MOR Section 370.18, Arrests; and MOR Section 370.27, Use of Physical Force. The Department has trained at least 95% of relevant personnel on these policies, and is in continued Phase 1 compliance with this Task.

Task 33.1 requires that in all sustained internal investigations, OPD conducts an assessment to determine whether members/employees/supervisors knew or should have known that misconduct occurred (compliance standard: 95%); and **Task 33.2** requires that where OPD determines that members/employees/supervisors knew or should have known that misconduct occurred but did not report it as required, OPD is required to take appropriate action (compliance standard: 95%).

To assess OPD's Phase 2 compliance with these subtasks during this reporting period, we met with IAD personnel and queried the IAD database to identify any cases with sustained findings that were approved during January 1, through March 31, 2011, that were applicable to Task 33.

During this reporting period, we found one case where an OPD employee failed to report the misconduct of another member. This fact was documented in the IAD case file. In the case, a sergeant drafted an inappropriate email to a citizen, and his supervisor simply forwarded the message to the complainant, instead of reviewing and addressing it. The supervisor was cited in

the Member/Employee Accountability section of the Manual of Rules. This lieutenant's accountability was described in the report as an "oversight" that should be addressed through training.

In another case, two OPD officers confronted two California Highway Patrol officers who had stopped one of their friends (who was not an OPD member or employee) and were applying a field sobriety test. According to the CHP report of the incident, one OPD officer tried to intervene and request that her friend be released without being charged. The IAD investigation concluded that the preponderance of the evidence showed that the OPD officer became verbally argumentative, "bringing disrepute to the Oakland Police Department." This officer was sustained for General Conduct – Demeanor (MOR 314.03-2). The second officer, who observed the incident, was not cited for failing to report it. This case was the only one we reviewed where it was clear that an officer had observed serious misconduct and failed to report it. Thus, 34 of the 35 sustained cases (97%) we reviewed during this reporting period were handled according to Task 33 reporting requirements.

Task 33.3 requires that OPD must maintain a functioning procedure that incorporates the NSA requirements related to establishing and maintaining confidential reporting of misconduct. These requirements include: **Task 33.3.1**: confidential reports of suspected misconduct may be made in person, by telephone, or in writing (compliance standard: Yes/No); **Task 33.3.2**: any OPD member/employee may report suspected misconduct confidentially to the IAD Commander, who shall document the report in a confidential file that shall remain accessible only to this IAD Commander (compliance standard: Yes/No); **Task 33.3.3**: confidentially reported cases are investigated without disclosure of the complainant's name, unless and until such disclosure is required by law (compliance standard: 95%); and **Task 33.3.4**: OPD informs all new and current employees of OPD's confidential reporting procedures (compliance standard: 95%).

OPD has established procedures as required by Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4. Confidential reports of suspected misconduct may be made by various means to the IAD Commander; cases are investigated without identifying the complainant; and documentation of the report and investigation are kept in a confidential file maintained by the IAD Commander.

During this reporting period, OPD hired 13 new employees; all were trained, as required by Task 33, on the Department's confidential reporting procedures. The Department is in compliance with Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4.

OPD is in Phase 2 compliance with Task 33.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

- OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:*
- a. Time, date and location;*
 - b. Identification of the initiating member or employee commencing after the first year of data collection;*
 - c. Reason for stop;*
 - d. Apparent race or ethnicity, and gender of individual(s) stopped;*
 - e. Outcome of stop (arrest, no arrest);*
 - f. Whether a search was conducted, and outcome of search;*
 - g. Offense categories (felony, misdemeanor or infraction).*
2. *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*
 3. *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to "Promoting Cooperative Strategies to Prevent Racial Profiling."*

(Negotiated Settlement Agreement VI. B.)

Comments:

During the first two reporting periods, we found the Department not in compliance with Task 34, as officers were not completing the required forms as set forth in the NSA; and we were concerned with the accuracy of data entry. During the third reporting period, we deferred our compliance determination, due to the issuance of a new Departmental policy that set new procedures for the collection and storage of the data concerning all investigative stops of citizens. During the fourth and fifth reporting periods, we were encouraged by the efficiency of officers entering the required stop data into the Field Based Reporting (FBR) computer system. However, we were concerned that the "reason for the stop" was not being clearly identified to support a Constitutional basis and authority for the stops, and found OPD in partial compliance with Task 34.

Discussion:

As previously reported, General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*; and Report Writing Manual (RWM) Inserts R-2, N-1, and N-2 incorporate the requirements of Task 34. As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

On June 12, 2010, OPD issued Special Order 9042, *New Procedures Regarding Stop Data Collection*, which updates DGO M-19 and RWM R-2; and used its electronic PowerDMS system to disseminate Special Order 9042 to the Department. As we noted during the fourth reporting period, although we verified via PowerDMS that nearly 96% of relevant personnel received and read the new procedures, this sort of computer-based instruction is insufficient to train officers on this critical new Departmental policy.

During this reporting period, OPD developed and began training on the definition and articulation of a consensual encounter and detention, along with training on how to complete Field Investigation Reports to adequately document investigative encounters. In future reporting periods, we will verify that the Department has trained at least 95% of relevant personnel on these subjects and Special Order 9042.

Task 34.1 requires that Stop Data Forms be filled out for every vehicle stop, field investigation, and detention (compliance standard: 90%). To assess Task 34.1 during this reporting period, we reviewed a random sample of 300 stops to match them with corresponding completed Stop Data Forms. This sample included 200 Computer Aided Dispatch (CAD) entries and 100 Field Contact Cards. Using the Department's Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 89% of the stops in our sample.

As part of our assessment of this subtask, we also intended to review an additional 100 randomly sampled traffic citations. However, the list of traffic citations that was produced by the Department contained data from multiple Alameda County agencies – not only OPD. As a result, we were unable to review and match the traffic citations. Accordingly, OPD is not in compliance with Task 34.1.

Task 34.2 requires that Stop Data Forms be filled out with the following information: 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop (arrest or no arrest); 9) whether a search was conducted; 10) outcome of any search; and 11) offense category (felony, misdemeanor, or infraction) (compliance standard: 85%). The entry of stop data into the Field Based Reporting (FBR) system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system does not allow the form to be completed.

Despite OPD's progress in officers' completion of Stop Data Forms, we remain concerned that, in pedestrian stops, the reason for the stop is not clearly identified to support the Constitutional standards requirement. More specifically, none of the options available for officers to select under "5) reason for the stop" clearly elicit or help to articulate an identifiable basis and/or authority for the stop.

Based on OPD's failure to justify or adequately document the reasons for the stop in the sample we reviewed during the fourth and fifth reporting period, we examined an increased selection of pedestrian stops during this reporting period, and continued to find that many of them documented the justification/reason for the stop. However, our search of 300 found that 30% of the stops were questionable as to whether the stop was justified under Constitutional standards. Of those 30% that were not clearly justified, 65% did not have Field Contact Cards; therefore, we could not independently determine justification. We will continue to monitor this issue closely. As noted above, OPD is currently conducting line-up training on properly articulating the reason and legitimacy of stops and searches. The Department is not in compliance with Task 34.2.

Task 34.3.1 requires that OPD have a stop data database that can be summarized, searched, queried, and reported by personnel authorized by OPD (compliance standard: Yes/No). As per Special Order 9042, officers “complete an electronic FPR [Field Based Reporting] Stop Data Collection Form (SDF) for certain arrests, every detention not resulting in an arrest (vehicle, walking, and bicycle stops), every consent search of a person conducted and any other investigative encounter. A SDF shall also be completed for consensual encounters (contacts) where the member talks with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, although the person is free to leave.” Data from the electronic Field Based Reporting system is automatically sent to the Department’s Forensic Logic Quicksearch program. Quicksearch allows Department personnel to search for and query officers’ stop data. We experimented with the Quicksearch program and found that the stop data is summarized and easy to review.

On March 16, 2011, the Department produced an OPD Stop Data Summary that analyzed the statistics on stops conducted between July 1, and December 31, 2010. Yet although the data appears to allow for a comprehensive analysis, we are concerned that the focus is superficial. We are convinced – based on a review of the reports of the data that OPD performed – that the data is sufficient to draw some conclusions and design an action plan to address the conclusions.

However, OPD focuses on issues that do not serve to determine whether OPD officers are engaging in disparate treatment of minority groups – or, for that matter, any specific sub-population. For example, we note the number of searches of persons within one sub-group is significantly higher than others; interestingly enough, these searches appear to form the basis for an arrest less often than searches conducted in other sub-groups. We acknowledge that this raw data alone does not – and should not – form the basis to conclude that OPD officers are knowingly engaging in racial profiling. It does, however, clearly indicate the need for OPD command staff to conduct further analysis and appropriately address any appearance of disparate treatment with explanation or intervention.

We will have a continued interest in what steps OPD will take to address the outcomes of its analysis to ensure continued compliance with this Task. While the ability to summarize, search, and analyze stop data is an important aspect of this requirement, the results, intervention, and other strategies developed from the analyses are even more critical. The Department is in compliance with Task 34.3.1, but we will continue to monitor the above-described issues closely.

Task 34.3.2 requires that the data captured on the Stop Data Forms be entered completely and accurately into the database (compliance standard: 85%). As noted above, the entering of stop data into the Field Based Reporting system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system will not allow the form to be completed. Task 34.3.2 was created to govern the submission of data from the written forms to the computerized system. Since this type of data entry is no longer necessary, the Department is in compliance with Task 34.3.2.

OPD is in partial Phase 2 compliance with Task 34.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will meet with the sergeant who oversees the Department's stop data systems and other relevant Department personnel to discuss the Department's progress. We will further discuss with the Department its various Task 34-related data systems to assess their operability, accuracy, and utility in storage and ease of access to stop data. We will continue to work with OPD on ways to verify the legal basis for stops, searches, and other related activities expeditiously. During the next reporting period, we will again review an expanded sample of Field Contact Cards to analyze the legitimacy of stops and/or subsequent activity.

Task 35: Use of Force Reports - Witness Identification

Requirements:

1. *OPD shall require, by policy, that every use of force report, whether felonies were involved or not, include the names, telephone numbers, and addresses of witnesses to the incident, when such information is reasonably available to the members/employees on the scene.*
2. *In situations in which there are no known witnesses, the report shall specifically state this fact. Policy shall further require that in situations in which witnesses were present but circumstances prevented the author of the report from determining the identification or phone number or address of those witnesses, the report shall state the reasons why the member/employee was unable to obtain that information. Reports shall also include the names of all other members/employees of OPD witnessing the use of force incident.*

(Negotiated Settlement Agreement VI. C.)

Comments:

During all of the previous reporting periods, we found OPD in compliance with Task 35.

Discussion:

As previously reported, OPD published Special Order 8066, *Use of Force—Witness Identification* (April 12, 2004), which incorporates the requirements of Task 35. Additionally, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which also incorporates the requirements of Task 35. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 35. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for Task 35 for this reporting period, we reviewed 36 use of force reports, including: two Level 1, 13 Level 2, and 21 Level 3 use of reports covering incidents that occurred between January 1, and March 31, 2011. (Per DGO K-4, Level 4 use of force reports do not require witness identification.)

We assessed Task 35.1 in conjunction with Task 35.2. **Task 35.1** requires that use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene (compliance standard: 90%); and **Task 35.2** requires that when there are no known witnesses, UOF reports specifically state this fact (compliance standard: 90%). All 36 UOF reports in our dataset comported with these requirements. OPD is in compliance with these subtasks.

Task 35.3 requires reports to document instances where witnesses are present but circumstances prevent the author of the report from gathering the data (compliance standard: 90%). Of the 36 applicable UOF reports we reviewed, one fell into this category.

The incident involved the unrest associated with the sentencing of a BART (Bay Area Rapid Transit) police officer in a high-profile case; the investigator was prevented from gathering additional witness data in this incident due to a large, unruly crowd-control situation. OPD is in compliance with Task 35.3.

Task 35.4 requires that UOF reports include the names of all other OPD members/employees witnessing the incident (compliance standard: 90%). We found no instances when an OPD witness was not documented in any of the 36 reports we reviewed. OPD is in compliance with Task 35.4.

During our most recent site visit, we discussed with the OIG its recent Task 35 audits; and incorporating into OIG's annual planning the scheduling of periodic announced and unannounced audits of this Task to sustain compliance, oversight, and accountability.

OPD is in Phase 2 compliance with Task 35.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will continue to monitor OIG's audits and compliance reviews to ensure the sustainability of this Task.

Task 37: Internal Investigations-Retaliation Against Witnesses

Requirements:

OPD shall prohibit retaliation against any member or employee of the Department who:

- 1. Reports misconduct by any other member or employee, or*
- 2. Serves as a witness in any proceeding against a member or employee.*

The policy prohibiting retaliation shall acknowledge that retaliation may be informal and subtle, as well as blatant, and shall define retaliation as a violation for which dismissal is the presumptive disciplinary penalty. Supervisors, commanders and managers shall be held accountable for the conduct of their subordinates in this regard. If supervisors, commanders or managers of persons engaging in retaliation knew or reasonably should have known that the behavior was occurring, they shall be subject to the investigative, and if appropriate, the disciplinary process.

(Negotiated Settlement Agreement VI. E.)

Comments:

During previous reporting periods, we found that all of the cases alleging retaliation against an employee or member of OPD were investigated as required, and that the IAD findings fell within policy. As a result, we found the Department in compliance with Task 37.

Discussion:

As previously reported, we found OPD in continued Phase 1 compliance with this Task. OPD published Special Order 8092 on November 23, 2003, which incorporated the requirements of Task 37. This policy consists of two Manual of Rules (MOR) sections: 398.73, *Retaliation Against Witnesses*; and 398.74, *Retaliation Against Witnesses, Accountability*. These MOR provisions (revised in lieu of a City policy on retaliation) incorporate the requirements of Task 37. OPD has trained at least 95% of relevant personnel on these policies.

Task 37.1 requires that officers be held accountable for retaliating against employees or members who report misconduct or serve as witnesses in proceedings against other members/employees (compliance standard: 95%); and **Task 37.2** requires that supervisors, commanders, and managers be held accountable if they knew or reasonably should have known that persons under their supervision engaged in retaliation (compliance standard: 95%).

We reviewed all eight cases adjudicated during the quarter under review (January 1, through March 31, 2011) that OPD regards as containing allegations of retaliation. We found that two of the eight cases did not meet the definition of retaliation in Task 37; they involved complaints of citizens that an officer or officers “retaliated” against them. Task 37 addresses retaliation by an *employee* or *member* of OPD, not retaliation against a citizen, which is, of course, addressed by other areas of the NSA. Six of the eight cases involved allegations of retaliation against a member or employee of OPD.

Our review determined that the six allegations of retaliation against a member of the Department were properly investigated and reported. None resulted in a sustained finding of retaliation. In

the most extensive case in our review, involving allegations against senior officers of the Department, OPD contracted with an outside firm to conduct the investigation. The firm's investigation found three allegations of retaliation against three different members of OPD to be unfounded.

In our review of the six cases meeting the definition of Task 37, we found no instance where supervisors, commanders, and managers knew or reasonably should have known that persons under their supervision engaged in retaliation and failed to report it.

OPD is in Phase 2 compliance with Task 37.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 40: Personnel Assessment System (PAS) - Purpose

Requirements:

Within 635 days from the effective date of this Agreement, OPD shall enhance its existing complaint-tracking and select indicator systems so that it has a fully implemented, computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of OPD and its personnel. This data shall be used by OPD: to promote professional police practices; to manage the risk of police misconduct; and to evaluate and audit the performance of OPD members of all ranks, employees, and OPD units, subunits and shifts. PAS shall contain information on the following:

1. *All uses of force required to be reported by OPD;*
2. *OC spray canister check-out log (see Section V, paragraph D)*
3. *All police-canine deployments; where the canine is deployed in a search for or to apprehend a suspect(s). It does not include, deployments for the purpose of locating bombs, narcotics, missing persons, etc., where the canine is not involved in an investigated use of force (i.e., deliberately or inadvertently bites or injures a person) If such force occurs, a Use of Force report is required.*
4. *All officer-involved shootings and firearms discharges, both on duty and off duty, excluding an intentional discharge while at a range facility; a discharge while engaged in a lawful recreational activity, such as hunting or target practice; a discharge by Criminalistics Division personnel for the purpose of scientific examination; and a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury;*
5. *All on-duty vehicle pursuits and on-duty vehicle collisions;*
6. *All complaints, whether made to OPD or CPRB;*

7. *All civil suits and/or tort claims related to members' and employees' employment at OPD, or which contain allegations which rise to the level of a Manual of Rules violation;*
8. *Reports of a financial claim as described in Section VI, paragraph G (3).*
9. *All in-custody deaths and injuries;*
10. *The results of adjudications of all investigations related to items (1) through (9), above, and a record of investigative findings, including actual discipline imposed or non-disciplinary action administered;*
11. *Commendations and awards;*
12. *All criminal arrests of and charges against OPD members and employees;*
13. *All charges of resisting or obstructing a police officer (Penal Code §§69 and 148), assault on a police officer (Penal Code §243(b)(c), or assault-with-a-deadly-weapon on a police officer [Penal Code §245(c)(d)];*
14. *Assignment history and rank history for each member/employee;*
15. *Training history for each member/employee;*
16. *Line-of-duty injuries;*
17. *Sick leave usage, particularly one-day sick leaves;*
18. *Report Review Notices or Case Evaluation Reports for the reporting member/employee and the issuing investigator;*
19. *Criminal cases dropped due to concerns with member veracity, improper searches, false arrests, etc.; and*
20. *Other supervisory observations or concerns.*

(Negotiated Settlement Agreement VII. A.)

Comments:

In the last reporting period, we found the Department in Phase 2 compliance with Task 40. Prior to that, the Department had been in partial compliance. Our recognition of the Department's progress was interrupted when compliance was reported and later withdrawn because problems with the timeliness of data in PAS were identified. Those problems were rectified in the last reporting period, and the Department was again reported as being in compliance with this requirement.

Discussion:

As previously reported, OPD published Departmental General Order D-17, Personnel Assessment Program (February 24, 2007) which incorporates the requirements of Task 40 and Task 41. OPD published a revised version of D-17 on August 20, 2008. The revised version also incorporates the requirements of Task 40 and Task 41. Based on verification that the Department has trained at least 95% of relevant personnel on the revised policy, we found OPD in continued Phase 1 compliance with this Task. OPD is now completing new training with first-line supervisors and preparing to provide additional training on the risk management system to all officers.

Tasks 40 and 41 require that OPD develop and implement a computerized relational database to manage risk; promote professional practices; and evaluate and audit the performance of all OPD

employees, units, subunits, and shifts. Task 40 governs the data requirements of the system, and Task 41 governs the way the system is to operate as a risk management tool. These two Tasks are critical to the Negotiated Settlement Agreement in that they provide a system for assessing the conduct of OPD personnel, identifying those who need early intervention to prevent more substantial problems, and for carrying out and managing that intervention. Together, Tasks 40 and 41 define a complex system involving the collection and analysis of numerous pieces of information. It supports clear action based on that analysis, when appropriate.

The Personnel Management System (PAS) was developed to address the requirements of Tasks 40 and 41. In previous reports, we have commented on several issues that were related to the overall effectiveness of this system. In particular, we raised concerns about the bifurcation of the system into processes – those that are substantially automated and those that require extensive manual calculations and personal communications. We also noted limited flexibility for change and growth in the system, and potential problems due to the high degree of dependence upon the work of key individual staff members. We noted that, while none of these precluded achieving and maintaining compliance with NSA requirements, they do represent significant inefficiencies and limitations on the system. This remains true.

OPD continues to search for ways to address issues that may limit the value of PAS. These include some considerations that go beyond the context of compliance, and are therefore not specifically germane to the Monitorship. Consistent with our focus, however, a staff member has been added to the PAS unit to assist in managing the work needed to maximize the usefulness of the system. A second addition to the staff is also reportedly forthcoming. OPD is exploring more efficient ways of analyzing data and identifying candidates for intervention. Additionally, the Department is working to ensure that the database and software meet contemporary technical standards, and that they can develop with increasing value in the management of the Department.

During our most recent site visit, we once again reviewed a variety of data relevant to these Tasks, including a wide range of documents covering all aspects of PAS. Tasks 40 and 41 are divided into 33 practice-related subtasks that include 12 additional lower-level provisions. As with our previous reviews, we requested and received from OPD material for each of the Tasks and subtasks. Our data request allowed for replication and extension the data analysis reflected in our earlier reports.

With regard to Phase 2 compliance, PAS records for the quarter of January 1, through March 31, 2011 indicate that data were entered for all fields required by Task 40. A total of 41,800 pieces of information were entered for the current reporting period. This included 934 uses of force; 270 misconduct complaints; 3,350 notes by supervisors; and 2,982 arrests. The largest categories of information are training history (21,818); sick leave hours (9,712); assignment history (8,379); and rank/class history (2,239). A further breakdown of the types of use of force shows that for the quarter, there were five Level 1 incidents, 22 Level 2 incidents, 44 Level 3 incidents, and 863 Level 4 incidents. During the last reporting period, there were three Level 1 uses of force. For all other levels, the total number of uses of force is similar to that of the

previous reporting period. Sixteen positive case review notices and no negative reviews were reported for this quarter. Once again, no cases were reported dropped due to concerns about search or arrest procedures. Thirty-one civil suits were noted, and one financial claim was documented. The information recorded in PAS for this quarter is generally similar in volume to that which was reported during the last quarter; they once again provide evidence of significant levels of use of the system. See the table below for a summary of indicators and changes over time.

Task 40 requires that PAS contain information on each of the elements required by the NSA. After raising concerns about the timely recording of data in our third quarterly report, we again recognize that data are reported for all fields; and they appear to be thorough and reported on the proper schedule.

In past reports, we have also noted that the Department had taken several steps to ensure quality control in the process of collecting and using PAS data. One element of that process has involved OPD instituting its own compliance review meetings, which started as bi-weekly meetings and were expected to become monthly. After initiating those meetings before our last quarterly report, the Department has now, apparently, put the meetings on hiatus. Although the oversight of PAS is managed directly through the chain of command, we hope that the absence of the PAS compliance meetings does not hamper the ability to identify and solve risk management related concerns.

The table below was prepared by OPD and reviewed by the Monitoring Team. The tracking of these data allows OPD to use the system to not only assess individual officers, but also to consider trends at the overall Department level as well as in commands within the Department. These analyses are consistent with the audit provisions of this Task. The material presented here provides outcome indicators based on data from the risk management system.

The table presents the data for each quarter since our tenure began. It presents comparisons between the last two quarters with a summary statement regarding increase or decrease. It also compares the last quarter to the average of all quarters since the last quarter of 2009, and includes a similar summary statement. Finally, we have added a trend line covering all quarters.

The table shows decreases in six indicators and increases in four others in the comparisons with the last quarter and with the average. The table also shows that the total number of arrests had decreased over time but leveled off in the current reporting period.

| PAS ADMIN UNIT STATISTICAL ANALYSIS | | | | | | | | | | | |
|--|--|----------|----------|----------|----------|----------|----------|--------------------------------------|------------------|------------------------------------|---------------------------|
| OPD KEY INDICATOR - 1st QUARTER 2011 | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | 4th 2009 | 1st 2010 | 2nd 2010 | 3rd 2010 | 4th 2010 | 1st 2011 | increase /decrease from last quarter | average all qtrs | current quarter above / below ave. | Trend across all quarters |
| A Use of Force (levels 1,2,3 - per reporting officer) | Percent of Arrests Associated with | 2.63 | 2.52 | 1.17 | 3.74 | 2.26 | 2.17 | decrease | 2.42 | below | |
| A Use of Force (levels 1,2,3,4- per reporting officer) | A Use of Force (levels 1,2,3,4- per reporting officer) | 34.06 | 37.68 | 28.17 | 32.78 | 36.67 | 28.1 | decrease | 32.91 | below | |
| A Police Pursuit (per reporting officer) | A Police Pursuit (per reporting officer) | 3.09 | 2.63 | 4.61 | 3.65 | 3.08 | 3.02 | decrease | 3.35 | below | |
| An IA Complaint (per subject officer sworn only by allegation) | An IA Complaint (per subject officer sworn only by allegation) | 8.09 | 7.42 | 6.94 | 9.56 | 10.6 | 11.13 | increase | 8.96 | above | |
| An In-Custody Injury | An In-Custody Injury | 2.93 | 2.24 | 1.63 | 2.08 | 2.34 | 1.75 | decrease | 2.16 | below | |
| Each Hour of Sick Leave (excludes civilians) | Each Hour of Sick Leave (excludes civilians) | 170.01 | 201.55 | 169.77 | 279.48 | 362.81 | 216.64 | decrease | 233.38 | below | |
| | | | | | | | | increase /decrease from last quarter | average | above / below | |
| Officer Involved Shooting (includes shootings involving animals which includes force types 1,21, 24, 27 and 26-21) | Number of Arrests per | 1150 | 464 | 2767 | 462 | 337 | 440 | increase | 936.67 | below | |
| Vehicle Collisions (excludes civilians) | Vehicle Collisions (excludes civilians) | 139 | 186 | 461 | 231 | 300 | 440 | increase | 292.83 | above | |
| Civil Suit (excludes civilians) | Civil Suit (excludes civilians) | 511 | 1546 | 2767 | 739 | 245 | 237 | decrease | 1007.50 | below | |
| All Arrests | All Arrests | 4601 | 4639 | 5534 | 3694 | 2697 | 3086 | increase | 4041.83 | below | |

The PAS unit data is now collecting this data on a monthly basis. With this, the Department has developed a valuable tool for supporting and tracking a process of continuous improvement. According to the Department, it is seeking to ensure that the system continues to meet management needs.

At the current time, existing policy reflects the requirements of the NSA. As noted earlier, improvements regarding the accuracy and completeness of data were made and have been sustained over three quarters. OPD is thus in Phase 2 compliance with Task 40.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 41: Use of Personnel Assessment System (PAS)

Requirements:

Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole. The policy shall include the following elements:

- 1. The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
- 2. The Department shall retain all PAS data for at least five (5) years.*
- 3. The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
- 4. PAS, the PAS data, and reports are confidential and not public information.*
- 5. On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
- 6. Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*
- 7. When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose*

of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).

8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.

Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the*

purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.

10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*
15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer*

shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the “no public contact” restriction. Sustained complaints from incidents subsequent to a member/employee’s referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee’s exclusion from, or continued inclusion in, PAS. The member/employee’s exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.

16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department’s rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Comments:

In previous reporting periods, we found OPD not in Phase 2 compliance with Task 41. Our concerns focused on OPD’s application of the risk management process. In each of the last three reporting periods, our attention focused on various issues relating to the outcomes of the PAS review process. In our third quarterly report, we expressed concerns that the outcomes of the PAS review process did not fully address officer behavior in a manner consistent with the management of risk. Specifically, too often, reviews by sergeants did not seem to address adequately what appeared to be serious issues raised in patterns or series of complaints and use of force reports.

In our fourth quarterly report, we noted improvement in the final outcomes of decisions, but were concerned that a large number of PAS cases were returned through the chain of command for review and rehearing. We offered this as evidence that the concept of risk management and the PAS system itself had not been sufficiently integrated into the operation of the Department as

a whole. We sought indications that risk management principles were reflected in the daily operation of the Department across ranks and geographic areas, and that outcomes did not depend significantly on administrative oversight.

In our last quarterly report, we noted that our analysis of PAS reviews showed that sergeants were increasingly likely to recommend mentoring or intervention, and that fewer reviews were being rejected by the PAS committee or by command staff.

Discussion:

As previously reported and noted above, OPD published Departmental General Order D-17, *Personnel Assessment Program*, which incorporates the requirements of Task 40 and Task 41. The Department trained at least 95% of relevant personnel on the policy. As noted above during the current reporting period, OPD completed the training of supervisors regarding their role in the PAS process, and has initiated the training of all officers on the topic of risk management and specifically on PAS. The training also incorporates the Information Bulletin, *Documenting PAS Activity Reviews and Analysis*. Based on existing policy and the ongoing training, we again find OPD in continued Phase 1 compliance with this Task.

During the current reporting period, we continued our examination of the stages of the PAS process consistent with this Task. We examined the threshold analyses that were performed for the period of January 1, through March 31, 2011. This included a review of the histogram analyses completed by the PAS Administration Unit and the identification of officers meeting the single-event threshold.

During this reporting period, 47 officers were identified as meeting PAS thresholds or were referred by supervisors for review. Eight officers passed the threshold for complaints. Twelve exceeded the threshold for use of force, and eight others were scheduled for review based on their connections with officer-involved shootings. PAS Administration Unit staff have also indicated that they continue to consider adjustments in the threshold levels used to selected officers for review. We have encouraged them to use thresholds that identify a substantial but not overwhelming number of officers for review.

Along with the analyses noted above, we also reviewed notification memoranda and other PAS activity review and report documents, as well as the use of PAS for reasons other than threshold-initiated reviews. In accordance with this Task requirement, we reviewed PAS processes for the system's use in placement of officers on special assignment (seven officers), transfer of officers (10 officers), and commendations (25 officers).

An important function of PAS is to regularly provide supervisors with relevant information on officers. To consider that function, we also verified reports of regular quarterly PAS command reviews of officers by supervisors in OPD divisions.

The PAS process also calls for follow-up reports of officers under supervision or monitoring, as well as reports of officers not discharged from the process by the end of one year. We reviewed

reports completed during the current reporting period. Our examination of 39 intervention follow-up reports, and reports of two officers not discharged from monitoring after one year, found that the documents provide sound descriptions of the officer/supervisor interaction and explanations for its current status.

The most critical use of PAS is in the supervisory review of officers who may be experiencing work-related problems. These officers are identified for PAS review through the threshold analyses. An examination of the processes and outcomes of these meetings, and the review of them up the chain of command, have been central in our compliance review process. For this reporting period, we examined the reports of 39 PAS reviews completed and/or signed during the quarter under review. In seven cases (18%), the decision was made for monitoring or supervision. In one of those cases, the original recommendation of “no action” was changed after review up the chain of command. It is also noteworthy that among the cases reviewed, there was a significant number of cases involving a single-event threshold for such events as an arrest of an officer an officer-involved shooting. Those cases contributed to the relatively low rate of recommendations for monitoring or intervention when the officer’s complete records were considered.

The examination of PAS reviews revealed them to be generally thorough and complete. Two new elements of these reviews appeared to have been recent and productive additions. The reviews include analyses of complaints and uses of force in which information is presented with percentage breakdowns regard the circumstances of the event. For example, complaints are characterized as involving “demeanor” or “use of force.” The summary of outcomes such as “exonerated” or “sustained” is also presented as percentages. Likewise, circumstances in use of force reports are summarized as percentages. Circumstances such as “armed suspects” or “search warrants” are noted. These appear to provide useful summaries and valuable information for reviewers.

The other addition to these reports involves the expansion of the command review to include not only the documentation and recommendations of the PAS review conducted by the first-line supervisors but also a more general evaluation of that supervisor. This is, no doubt, of value further up the chain of command but also provides additional support for quality work at the supervisory level.

Finally, we also examined usage levels among supervisors in the Department. While there is variation across commands, there were also indications of substantial use. For the relevant quarter, supervisors continued to enter a large volume of supervisory notes. As noted in our previous two reports, supervisors appear to be making good use of the system.

Over several reports, we have recognized the development and refinement of the PAS review system while also identifying the continuing need to address problems. In those reports, we have documented increases in the quality of reviews and improvement in the review process itself. OPD has responded to concerns with further system improvements, training and improved scrutiny and oversight of the process. In this report, we note the value of encouraging sergeants

to conduct analysis of patterns of complaints and uses of force and in summarizing those in percentage tables. With all of these changes, we have seen the needs for reversal and reconsideration in the review process diminish.

Ultimately, the goal of the processes described in this Task involves the management of risk for the purpose of changing the outcomes which prompted this requirement and which are assessed by the data collected. This analysis shows that OPD continues to pursue that goal. The progress noted here justifies a finding of partial compliance. The Department can advance toward full compliance if it sustains quality and consistency in the process, as it is reflected in the information captured and used by this system.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will continue to closely examine the processes of collection and storage of data and the use of that data in the PAS review process during our next site visit. We are particularly interested in the developments in the information technology part of this process, and how any contemplated changes may impact the risk management system. We will also further examine reports of PAS activity reviews, with an interest in the sustained quality of the reviews. Finally, we will also continue to examine outcomes of the risk management process with the expectation that a consistently strong process will influence those outcomes at the individual and Departmental levels.

Task 42: Field Training Program

Requirements:

Within 323 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Field Training Program. This plan shall address the criteria and method for selecting FTOs, the training provided to FTOs to perform their duty, supervision and evaluation of FTOs, the length of time that trainee officers spend in the program, and the methods by which FTOs assess and evaluate trainee officers in field training. The plan must ensure proper reporting, review and approval of probationary officers' reports.

Field Training Program Coordinator

The Chief of Police shall assign a full-time sergeant for the first year who shall develop and implement the new policies and procedures described in this section. The Chief of Police shall determine, upon successful completion of the development and implementation of these policies, if it is necessary to continue the position at the rank of sergeant, but in any event, the position shall continue as a full-time position.

Trainee Rotation

During their field training, trainee officers shall rotate to a new FTO and a new geographic area of the City at predetermined intervals. Prior to rotation, trainee officers shall be interviewed by the Field Training Program Coordinator or his/her designee and given an opportunity to raise any questions or concerns they may have about the quality of training provided to them.

FTO Participation Incentives

OPD shall increase the incentives for participation in the FTO program so that the Department will have a larger pool of qualified, experienced candidates from which to choose.

FTO Candidate Nomination and Requirements

FTO candidates shall be nominated by field supervisors and commanders, but shall be approved for assignments to this duty, and for retention in it, by the Chief of Police. All FTO candidates must have completed three (3) years of Departmental service before selection, unless specifically authorized by the Chief of Police. FTO candidates shall be required to demonstrate their commitment to community policing, and their problem-solving and leadership abilities. Ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy shall be primary criteria in the selection of FTOs. Excessive numbers of sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304, or excessive numbers of use of force incidents shall bar a candidate from selection as an FTO for no less than two (2) years.

Decertification

The presumptive result of sustained disciplinary action, completed within the time limits imposed by Government Code Section 3304, against an FTO or the FTO Program Coordinator for excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation or gender-based discrimination or slurs, or other serious examples of police misconduct, shall be removal from the FTO program. The Deputy Chief of the member's chain of command may recommend to the Chief of Police to grant an exception to this presumption after conducting a hearing on the facts of the matter. The Chief of Police shall document the approval/disapproval in writing.

FTO Assignment

Assignment to an FTO position shall be contingent upon successful completion of a training course designed for this position and shall be approved by OPD and the State of California Peace Officers' Standards and Training.

FTO Evaluation

At the end of a complete FTO cycle, trainee officers leaving the FTO program shall anonymously evaluate each of their FTOs. OPD shall develop a form for such evaluations which emphasize effectiveness at training and effectiveness at supervision. The evaluation form shall also assess the degree to which the FTO program reflected policies, procedures, values and other information taught in the recruit academy. The FTO evaluation forms shall be reviewed by the Field Training Program Coordinator and the individual FTO's commander and supervisor. The Field Training Program Coordinator shall provide evaluation information to the FTOs as a

group, concerning program effectiveness. Each FTO shall also be provided with evaluation information regarding their individual performance. The individual evaluation forms shall not be made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms.

Daily Evaluation Audit

The Field Training Program Coordinator, or his/her designee, shall conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers and that the selection standards for FTOs are maintained.

Trainee Officer Assignment

When a trainee officer's FTO is absent, the trainee officer shall not be assigned to field duties with an "acting" FTO. They shall be placed with another certified FTO, or shall be assigned to non-field duties, pending the availability of a certified FTO.

Field Commander and FTO Supervisor Training

OPD shall provide field commanders and supervisors with training on the FTO program, including the field-training curriculum, the role of the FTO, supervision of FTOs and probationary employees, the evaluation process and the individual duties and responsibilities within the FTO program.

Focus Groups

The Field Training Program Coordinator and Academy staff shall conduct focus groups with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six (6) months after completion of the field training program, to determine the extent to which the Academy instructors and curriculum prepared the new officers for their duties.

Consistency of Training

The results of these focus group sessions shall be reviewed at a meeting to include the Training Division Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief. If it is determined that there is a substantial discrepancy between what is taught in the Academy and what is taught in the FTO program, there shall be a determination as to which is correct, and either the training Academy or the FTO program shall make the necessary changes so that the desired training information is consistent. In the event that the discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program as a whole, the review group shall determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The results of the meeting of this review group shall be documented and this information shall be provided to the Monitor. (Negotiated Settlement Agreement VIII. A.-L.)

Comments:

In August 2009, since no Academy was planned for the near future, the Parties agreed that there would be no active monitoring of this Task. In addition, since there were no new officers being

trained, OPD decertified all then-current Field Training Officers (FTOs). During the past year, OPD recruited and began training 21 new officers and five lateral officers through the FTO program; however, during the second reporting period, due to the City's budget cuts, OPD laid off all new officers, both trainees and laterals, and 80 full-time OPD officers.

In January 2011, OPD returned 10 of the officers who had been laid off to the force. Those officers will be required to attend at least 40 hours of in-service training prior to returning to active duty. None of those returning officers are eligible for the FTO Program.

Discussion:

Due to the termination of the recruitment and training of new officers, this requirement has been placed in a deferred compliance status.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

Task 43: Academy and In-Service Training

Requirements:

A. Academy Training Plan

Within 540 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Academy and in-service training to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions, and aware of and able to implement the most contemporary developments in police training. This plan shall include a review of OPD's training curriculum, with additional emphasis on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community. The plan shall also address the criteria and method for selecting OPD training instructors, the training provided to instructors, procedures for evaluating the content and quality of training provided to OPD personnel and procedures for maintaining training records for OPD personnel. In arriving at the plan regarding staffing, training content and methodology, OPD shall consult with at least four (4) other, large law-enforcement agencies within the United States which have excellent reputations for professionalism. In particular, OPD shall consult with these agencies about qualifications and other criteria to be used in selecting staff for training positions. OPD shall also review the approach of these other law enforcement agencies in training both new staff and experienced staff on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community.

B. Professionalism and Ethics

OPD shall expand professionalism and ethics as a training topic within the recruit academy, in-service training, and field training. Wherever possible, OPD shall include and address issues of professionalism and ethics using curricula that employ realistic

- scenario-based training exercises.*
- C. *Supervisory and Command Training*
OPD shall provide all sergeants and commanders with mandatory 40-hour in-service supervisory and leadership training. Officers shall attend training prior to promotion to the rank of sergeant. Lieutenants shall attend training within six (6) months of promotion. Such training shall include supervisory and command accountability, and ethics and professionalism, with emphasis on supervisory and management functions and situations, and shall include both scenario-based training and case studies.
- D. *In-Service Training*
OPD shall provide all members with forty (40) hours of in-service training every eighteen (18) months.
1. *Sergeants shall receive at least 20 hours of training designed for supervisors every 18 months.*
 2. *Members at the rank of lieutenant and above shall receive at least 20 hours of training designed for commanders every 18 months.*
- E. *Training Staff Record Review*
Appointment to the Academy staff or other staff training position shall also require a review of the record of the individual being considered, to ensure that the individual does not have a record of any Class I offense, as defined in Section III, paragraph H (1), within the prior two (2) years, and that the individual is supportive of the philosophy and values of OPD.¹³
- (Negotiated Settlement Agreement IX. A.-E.)

Comments:

Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. During the last reporting period, we reviewed a random sample of the training records for 100 employees in these positions, and found that OPD training records were complete, and that 100% of the members and employees in our sample received the required in-service training within the prescribed 24 months.

Discussion:

As previously reported, OPD published General Order B-20, *Departmental Training Program* (April 6, 2005), which incorporates the requirements of Task 43. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 43.1.1 requires that OPD's training plan ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions (compliance standard: Yes/No). To assess this subtask, we interviewed OPD Training Division personnel; and, in previous on-site reviews, reviewed training schedules, course outlines, and lesson plans. In addition, we interviewed the Police Evidence Technician Coordinator and reviewed the files of

¹³ The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

the nine evidence technicians currently employed by OPD. We also reviewed the training records of a stratified random sample of 108 OPD members and employees, including 78 officers, 14 sergeants, nine evidence technicians, and seven dispatchers; to determine if the members and employees received adequate training for their positions.

The Department produced a record for each member and employee in our sample. For each member or employee, we reviewed the training s/he received during previous years, and calculated the number of hours recorded in his/her record. For the sworn officers in our sample, we credited the California Peace Officer Standards and Training (POST) certified Continued Professional Training (CPT) as counting toward the requirement. CPT is, according to California state requirements, to be delivered to every officer every two years; OPD uses an 18-month cycle. We found that 102 (94%) of the 108 members and employees in our sample received adequate training for their positions.

One of the sergeants in our random sample did not receive the required training. This sergeant retired in June 2011. In addition, one of the officers in our sample had not attended in-service training in the past 18 months. The record of one dispatcher in our sample revealed only six hours of non-computer based training over two years. Overall of the 108 randomly selected records that we reviewed, we found that 104 (96%) were in compliance.

According to the Training Division, the Evidence Technician Coordinator is responsible for training the Department's evidence technicians (ETs). During our most recent site visit, he advised that he has no budget to fund training or acquire equipment and, consequently, no plan to train ETs. In the absence of formal training, ETs are trained in basic skills by more experienced ETs. Despite the limited resources available for training ETs, only one of the nine ETs did not receive adequate training in the last two years. The other eight received a total of 574 hours of training in 2010. Individual ETs received training ranging from a low of 24 hours of instruction to a high of 278 hours.

OPD revises its CPT every 18 months and delivers the new course to Department members. There is, however, no formal procedure in place to identify the most important Departmental training requirements or to conduct a needs assessment. According to the Training Division, about 50% of the CPT is dictated by California POST requirements. The Chief, other commanders, and training officers identify the Department's needs and construct courses accordingly.

We note that at a time of limited resources, as at the present, training is critically important. Every hour spent in training removes an officer from the street and therefore, all training should be focused at the Department's most critical needs. Those needs can hardly be identified through an informal process as exists at OPD. In conjunction with its revision of the CPT, the Department should conduct a needs assessment that is contributed to by a wide range of persons throughout the Department. Such an assessment should ensure that the most important training needs are identified and addressed.

OPD is in Phase 2 compliance with Task 43.1.1.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 45: Consistency of Discipline Policy

Requirements:

On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.

1. *The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*
2. *The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*
3. *All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.*

The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.

Comments:

Only two provisions of Task 45 (45.1 and 45.4) are being actively monitored under the MOU. During the last three reporting periods, we found the Department in compliance with Task 45.4; but out of compliance with Task 45.1, which requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action.

Discussion:

As previously reported, on December 5, 2006, OPD published General Order M-03, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy and Procedure Manual; and the Departmental Discipline Policy (Training Bulletin Index Number V-T), incorporate the requirements of Task 45. OPD published revised versions of the Training Bulletins on May 30, 2007, and is in the process of finalizing a new series of revisions to the policy. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 45.1 requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level (compliance standard: Yes/No). To assess Phase 2 compliance with this subtask, we observed a demonstration of the computer system, discussed it with IAD personnel who operate it and with senior IAD officers, and queried the IAD database to identify all of the cases that were approved with at least one sustained finding between January 1, and March 31, 2011. This query identified 35 cases containing 46 sustained findings. On April 21, 2011, we reviewed the IAD database and found that only 87% of the sustained findings had the dates of discipline listed. This is a slight improvement from the last reporting period, when we found that 84% of the sustained findings had the dates of discipline listed.

OPD is not in compliance with Task 45.1.

Task 45.4 requires that discipline be imposed in a manner that is fair and is consistent (compliance standard: 95%). To this end, the Department has developed and revised a Discipline Matrix. The Department most recently updated and revised its Discipline Matrix on September 2, 2010.

We found that 45 (98%) of 46 sustained findings in which discipline was required, the discipline was reasonable and fell within the Discipline Matrix in use. In one case, however, the Department appeared to try to justify discipline that was lighter than required. In that case, a citizen asked an officer for his name and badge number and he did not provide it. The incident occurred before September 2010, when the new Discipline Matrix was in effect and was initially investigated as a violation of MOR 398.77-1, Refusal to Provide Name or Serial Number, for which the minimum discipline was a three-day suspension.

According to the officer, he did not provide his name and number because he believed that he had to stabilize the situation by placing the citizen who requested the information in handcuffs while he investigated. Fifteen minutes later, according to the officer, he released the citizen who did not elicit the information again, and the officer said he forgot. The IAD Pre-Discipline Report observed that the officer “did not *intentionally* refuse to provide” his name and number to the citizen, “...it appears he forgot to provide it.”

The IAD recommendation argued that the sustained finding for a Class 1 MOR violation should be changed to sustained for MOR Violation 413.39-2f, Performance of Duty – General. In the final adjudication, the Chief elevated counseling and training, the recommendation, to a written reprimand.

While we believe that OPD went too far in justifying the conduct in the case discussed here, it still met the 95% standard set forth in its agreement. As noted above, 98% of its disciplinary actions were within the Discipline Matrix.

During the period of January 1, through March 31, 2011, OPD decided and reported three cases following Skelly hearings.¹⁴ Our review revealed that all three cases were decided after Skelly hearings on reasonable grounds. In all three, the original discipline was upheld.

OPD is in partial Phase 2 compliance with Task 45.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

¹⁴ OPD consolidated two separate cases pertaining to the same employee into a single Skelly hearing.

Supplementary Assessment: Officers Pointing Firearms

Due to our increased concern regarding the high number of events involving the drawing and pointing of firearms, which is categorized as a Level 4 use of force, we conducted an in-depth analysis of a random sample of reports completed during the period of January 1, through March 31, 2011. The purpose of our analysis was to gain a greater understanding of the circumstances involved in such incidents; and to determine whether the *reported* pointing of firearms was not only reported in accordance with policy, but that it was also necessary and appropriate.

Our sample included 80 events, during which 215 officers drew and pointed their firearms – that is, the incidents involved a single officer or multiple officers pointing their firearms at a single subject or multiple subjects. In each instance where there was a question as to whether an officer's action was appropriate, we gave any benefit of doubt to the involved officers and found in the affirmative. In addition, we found in cases where officers were responding to a burglary or criminal trespass involving an actual structure search, we assumed that the pointing of firearms was justified. Similarly, if officers legitimately believed that they were dealing with a stolen vehicle, we assumed that a high-risk vehicle stop was justified.

Our review found officers' actions appropriate in the majority of cases, and we saw many examples of fine, proactive police work, and officers making good arrests – both in response to dispatched calls and as a result of self-initiated activity. Overall, we determined officers' pointing of their firearms to be appropriate in 121, or 56%, of the 215 instances we assessed.

We are, however, troubled by the high number of instances where the officers' pointing of a firearm was not necessary or appropriate, given the documentation we reviewed. We were unable to find the pointing of a firearm necessary in 60 instances, or 28%, of the 215 instances we assessed, due to the absence of any indication that the officer(s) or others faced imminent threat of harm. In another 34 instances, or 16%, we were unable to make a determination based on the limited information available in the use of force report and accompanying documentation.

We also tabulated the racial breakdown of the subjects involved in the events where, in our opinion, the pointing of a firearm was not necessary or appropriate. This tabulation found the following: Black, 78%; Hispanic, 17%; White, 3%; Other 2%.

The majority of the incidents we reviewed fell into one of the following categories: officers making high risk vehicle stops; officers searching and entering buildings or premises; and officers attempting to detain subjects, either by foot pursuit or by searching areas such as alleys and yards. As indicated above, in any case where we had any doubt or question as to whether the pointing of a firearm was necessary and appropriate, we found it in the affirmative; however, we identified several issues of concern in the reports we reviewed:

- Officers frequently presumed – often, with no basis – that whomever they were contacting was armed. In many situations, the subjects turned out to be unarmed; sometimes, officers pointed their firearms at victims and witnesses. In several reports,

officers gave no information to support their presumptions that subjects may have been armed, other than citing their own training and law enforcement experience, the placement (near the waist area) of a subject's hand, and the type of offense that a subject had committed. In several reports, officers justified their pointing of firearms by indicating that drug dealers, car thieves, trespassers, burglars, and others, are generally known to have weapons.

- Officers tended to escalate immediately to pointing a firearm – regularly bypassing other options, including hands-on techniques and less lethal tactics. In some cases, officers pointed their firearms simply to gain compliance. Pointing a Taser would have had the same deterrent effect, and if required, could have been deployed, whereas the discharge of a firearm, with lethal consequences, would not have been justified.
- We saw several examples of apparent over-response. While the pointing of firearms may have been justified the number of officers pointing firearms and the type of weapons (often a combination of handguns, shotguns, and patrol rifles), in some incidents, appeared to be excessive. For example, in one case, six officers drew down on a vehicle in a McDonald's drive-thru at 4:45 in the afternoon. Some incidents involved anywhere from five to 13 officers, with cover officers also deploying their weapons. We believe that this poses a safety risk to both police personnel and citizens, particularly if “contagious gunfire” occurs because of an intentional or accidental discharge by one of the officers on the scene.
- We were concerned by the regular deployment of patrol rifles in busy, urban environments. The Department should evaluate its policies and protocols on when such weapons may be deployed.
- In a few instances, it seemed that the only offense that a subject “committed” was running from the police. While it is reasonable to assume that someone may be running because s/he is wanted or guilty of an offense, running is not, in and of itself, against the law; and it does not serve as justification for pointing a firearm.
- We noted several instances of officers drawing their firearms during foot chases. This can be unsafe, and officers have limited options if the fleeing person does not comply, as occurred in a few examples in our review.
- While we gave officers the benefit of the doubt if they had *legitimate* reason to believe that they were dealing with stolen vehicles, in some cases officers assumed without justification that vehicles were stolen, without further investigation or confirmation.

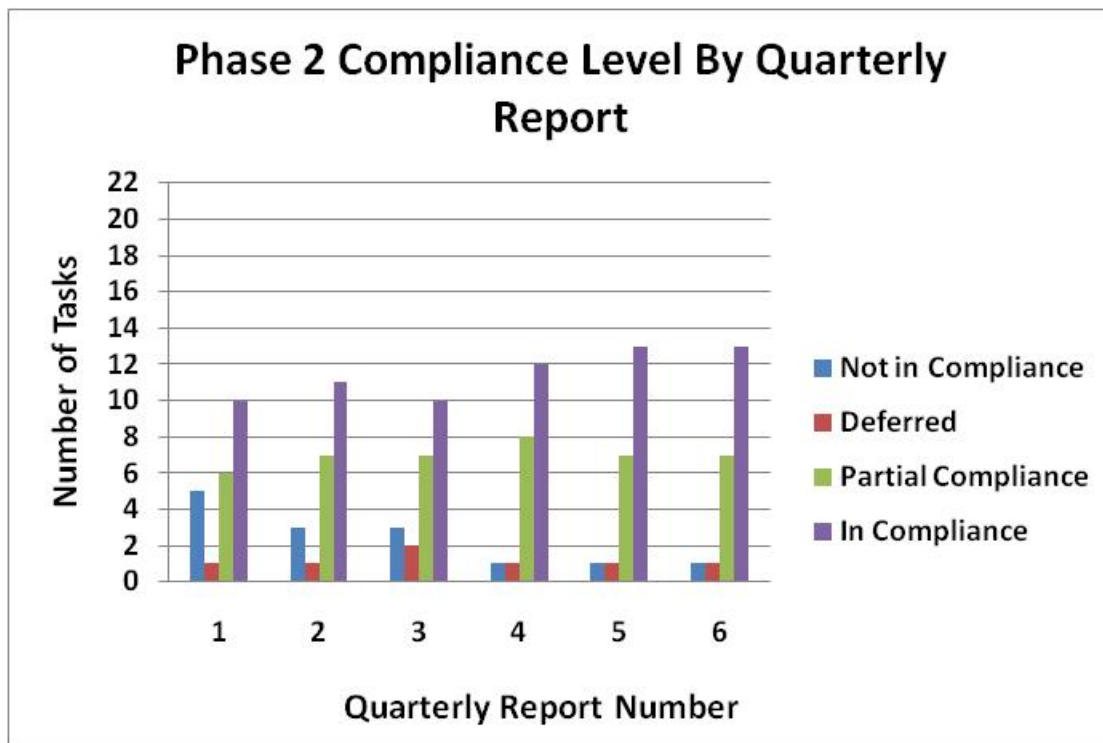
While these observations and findings are troubling, even more troubling is the apparent unquestioned supervisory and command approval of both the documentation of officers' actions and the actions themselves. We look forward to an opportunity to review OPD's affirmative steps to address these concerns and the serious issue of pointing firearms – the act of which may not only be unnecessary and inappropriate, but also elevate the risk for unfortunate and unjustified shootings.

Section Three

Conclusion: Critical Issues

This is our sixth quarterly report. The status of compliance with the 22 active requirements of the Negotiated Settlement is shown for all of our quarterly reports in the graph below. On the positive side, the graph shows that there was an early decline in the number of requirements found to be not in compliance. However, there has not been a corresponding equal increase in the number of Tasks found to be in compliance. Instead, change has occurred in the number of requirements reaching partial compliance.

Understand that the distinction in compliance levels is important. Partial compliance is achieved when sections, or subtasks, of the monitored Tasks come into compliance, while others remain out of compliance. As a close reading of this report reveals, in many cases, less complicated portions of a Task can come into compliance – while more challenging portions remain outstanding. The number of Tasks in compliance is the most significant issue, and that has been slow to change.



In our last report, we noted three problem areas that were reflected in our analyses. These concerns remain. Task 20, regarding Span of Control, and our work on Level 4 uses of force, illustrate the need for self-analysis and reform throughout the Department. The documented inadequacies of assessing the credibility of civilians and officers in the complaint process – noted with regard to Task 5 – indicate problems with the internal systems designed to address critical issues. Finally, the collection of stop data remains problematic and illustrates the ongoing difficulties in completing written requirements sufficiently.

This report includes an analysis of a sample of instances in which officers pointed their guns at citizens. These actions are recorded by officers as Level 4 uses of force. This issue became a concern for the Monitoring Team, as we noted what seemed to be high numbers of these events across all of the reporting periods we have examined. In this quarter alone, approximately 800 use of force reports were recorded for such actions. The experienced police executives who make up our Team found this number to be unexpectedly high. That concern prompted the analysis described above.

Our analysis shows that, using decision rules that clearly gave the benefit of the doubt to the officers involved, 56% of the times that officers reported pointing their guns at people, that choice seemed appropriate based on the content of the officers' reports. In 28% of the reports we reviewed, we classified the action as not necessary, and in 16% we were unable to determine the appropriateness of the action from the documentation.

This continues to be a very serious concern, which raises many issues relevant to the civil rights concerns that led to the original NSA. It has implications for the safety of the public and for relationships between the police and the community that, in turn, have implications for crime prevention and crime reduction. The overall levels of force used by the Oakland Police Department cannot be understood without considering officers' decisions to point their weapons in encounters with members of the community. This issue will require much greater consideration by all Parties involved in the NSA.

An important element reflected in our analysis of these uses of force relates to the capacity for the Department to closely examine its own practices. The Negotiated Settlement Agreement should never be regarded as merely a list of jobs to complete to remove the burden of oversight. Instead, the NSA should be viewed as a foundation upon which to continue to build a Constitutional and effective police organization. Such an organization would have the ability to grow and learn from its own introspective analyses and from the concerns of its external constituencies. Our review of these uses of force challenges the Department to increase its capacity to do just that. We know that this will require heavy lifting. For that task, we must place our faith in the leadership of the Department and the City. The specific work of the Department to fully address the Level 4 uses of force – and the Department's general ability to identify and address areas of potential problems – are at the core of the letter and the spirit of the Agreement we have been tasked with monitoring.

Appendix

Acronyms

The following is a listing of acronyms frequently used in our quarterly reports.

| Acronym | Definition |
|----------------|---------------------------------------|
| ACSO | Alameda County Sheriff's Office |
| BART | Bay Area Rapid Transit |
| BFO | Bureau of Field Operations |
| BOI | Bureau of Investigation |
| BOS | Bureau of Services |
| CAD | Computer Assisted Dispatch |
| CHP | California Highway Patrol |
| CID | Criminal Investigation Division |
| CPRB | Citizens' Police Review Board |
| CPT | Continued Professional Training |
| DGO | Departmental General Order |
| DIL | Daily Incident Log |
| DLI | Division-level investigation |
| EFRB | Executive Force Review Board |
| FRB | Force Review Board |
| FTO | Field Training Officer |
| FTP | Field Training Program |
| FTU | Field Training Unit |
| IAD | Internal Affairs Division |
| IB | Information Bulletin |
| ICR | Informal Complaint Resolution |
| IPAS | Input for Personnel Assessment System |
| MOR | Manual of Rules |
| NSA | Negotiated Settlement Agreement |
| OCA | Office of the City Attorney |
| OIG | Office of Inspector General |
| OPD | Oakland Police Department |
| PAS | Personnel Assessment System |
| POST | Peace Officer Standards and Training |
| RMM | Risk Management Memorandum |
| RWM | Report Writing Manual |
| SDF | Stop Data Form |
| SO | Special Order |
| TB | Training Bulletin |
| UOF | Use of force |