



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

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Section One

Introduction

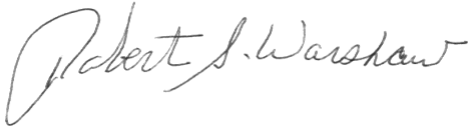
This is the eighth quarterly report of the Monitor of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California. In January 2010, under the direction of Judge Thelton E. Henderson, 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 produced 14 status reports. The current Monitoring Team conducted our eighth quarterly site visit from November 14, through 18, 2011, to evaluate the Department's progress with the NSA during the three-month period of July 1, through September 30, 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 12 of the remaining 22 Tasks. This is the same degree of compliance as reported in our last report, although it reflects improvement in the assessment of one Task and decline in another. The overall level continues to be a marginal improvement, at best, from our first report, when we found the Department in compliance with 10 Tasks. The performance of the Department for this reporting period was under the stewardship of the previous Chief of Police. We remain concerned by this degree of stagnation.

Since our last report, the City has appointed a new – though interim – Chief of Police. The Mayor and the City Administrator, along with the new Chief, have made compliance with the NSA a priority – and by all indications, general police reform a matter of great importance and urgency. The Mayor's leadership has been noteworthy, and the City Administrator's commitment to processes of accountability has fostered an environment that should be conducive to change. Chief Jordan's cooperation and communication with the Monitoring Team mark the beginning of a new era in this endeavor, and we are hopeful that this will serve as the needed impetus to bring the Department on a better defined – and more consistent – road to change.

This report also includes two appendices that discuss issues not addressed in our previous reports. Appendix A discusses how the Monitoring Team will address the police activity associated with Occupy Oakland. Appendix B provides an analysis and discussion of the issue of stops and searches related to parole and probation. It is our intention to monitor the active Tasks and those inactive Tasks that we believe have relevance to ongoing events and issues, should such episodes materialize.



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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%, or 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 eighth 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 November 14, through 18, 2011, we conducted our eighth site visit to Oakland. As we do during each site visit, we met with several Department officials, including the Chief and Assistant Chief of Police and 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 Section, and Communications Section; 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.

For the current reporting period, there has been no change in the overall level of compliance from that was noted in our last report. We continue to find OPD in Phase 1 compliance with all 22 of the remaining active Tasks. With regard to Phase 2 compliance, the Department is in Phase 2 compliance with 12 (55%) of the 22 active Tasks, as it was in the previous reporting period. This status was achieved with the newly attained compliance of one Task (Task 6: Refusal to Accept or Refer Citizen Complaints), and the change of one Task from being in compliance to now being found not in compliance (Task 40: Personnel Assessment System – Purpose).

As was true in our last report, the Department is in partial compliance with eight (36%) Tasks, and remains not in compliance with one (5%) Task. We again deferred a compliance determination with one Task (Task 42: Field Training Program).

A serious matter relevant to the Department’s unusually high number of “unfounded” Internal Affairs investigations surfaced as a result of data compiled by the Department itself. It is our intention to closely scrutinize the manner in which such determinations are made, as a means to ensure that credibility and other assessments are undertaken in such a way that the rights and remedies that should be afforded complainants are, in fact, being respected and assured.

During our quarterly site visit, and in the weeks that surrounded it, the City of Oakland and its Police Department were engaged in activities associated with what became known as Occupy Oakland. Those activities are subject to the Task requirements of the NSA. Appendix A of this report addresses how the Monitoring Team will review these activities with reference to NSA compliance for inclusion in our ninth quarterly report.

In Appendix B, we also present our analysis and discussion of issues surrounding searches involving parolees and probationers. We raised concerns over these issues in our earlier reports.

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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		√	√		
Task 45: Consistency of Discipline Policy	√		√		
<i>Total Tasks</i>	22	12	8	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 87% 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 July 1, and September 30, 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 57 Class I cases we reviewed, 52, or 91%, were in compliance with established timelines – an increase from the 87% we found during the last reporting period. Of the 56 Class II cases we reviewed, 55, or 98%, were in compliance with established timelines – a decrease from the last reporting period, when 100% of the Class II cases were timely. Of the 53 sustained findings that we reviewed, 100% were in compliance with established discipline timelines.² This is the sixth 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 387 cases, an increase from the 335 cases opened during the previous quarter. In addition, the Chief approved 297 cases, a decrease from the 305 cases approved during the previous quarter. The overall numbers of complaints remain lower than the number of complaints received in 2010. IAD Command attributes the decrease in complaints to overall reduced 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 36 cases involving sustained findings – several 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 the next reporting period, we will again confer with IAD command staff regarding workload trends and staffing requirements – and, as discussed later in this report, we will carefully review how the Department handles the proliferation of cases brought on by the Occupy Oakland events.

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 the last reporting period, we determined that OPD had improved its integrity testing, and we found the Department in compliance with this Task.

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 24 integrity tests that were conducted from July 1, through September 30, 2011. 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 24 tests conducted during this reporting period, 11 were planned tests, in which the Integrity Testing Unit reviewed the records of OPD members and employees to verify that their vital information and records were current and therefore compliant with Departmental policy.³

All 11 planned tests focused on individual members and employees of OPD who had high numbers of allegations of misconduct over the prior 18 months; all 11 planned tests passed.

The remaining 13 integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies.⁴ All nine tests were conducted on officers who were the subject of repeated allegations, and addressed the sources of the repeated allegations. Eight of the tests included monitoring the performance of officers and evidence technicians while on duty – including how they monitored radio traffic, documented stops, responded to calls, drove Department vehicles, and interacted with the public. Two selective tests focused on officers who have been the subject of repeated complaints to ensure that they were activating and using the Department-issued Portable Digital Recording Devices (PDRDs) equipment in compliance with OPD policy. One integrity test – conducted by the Bureau of Field Operations – involved searching the secured area of a police vehicle once a prisoner had been processed to ensure that no property was left behind. Another integrity test monitored officers who were subpoenaed to appear in court to ensure that they appeared, as required. In all of the above tests, the subject officers or employees passed and conformed to Departmental policy. The types of integrity tests described above support the intended purpose of the Integrity Testing Unit.

The final selective test conducted by the OPD Integrity Unit focused on the possible abuse of workers' compensation benefits. During the previous reporting period, the Monitoring Team requested that OPD explore the possibility of conducting such tests on any of the members or employees on extended leave, based on our understanding that approximately 10% of the Department was on extended workers' compensation leave. The Integrity Testing Unit worked with the Medical Unit, the Office of the City Attorney, and the private vendor that manages the City's workers' compensation accounts to plan and conduct surveillance of subject employees. Based on the ITU's observations of the employee and the actions of the employee, the test was identified as a failure. OPD initiated an IAD investigation regarding violations of Departmental policy and possible fraud.

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 ongoing efforts to improve and expand the Department's integrity testing. We also reviewed the integrity tests that OPD recently conducted.

³ Planned integrity 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.

⁴ Pursuant to Internal Affairs Policy & Procedures 07-01, selective integrity tests are targeted enforcement tools aimed at addressing specific issues regarding specific members, employees, or units.

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, as well as compliance with procedures specifically addressing officers or members who are the subject of repeat allegations of misconduct.

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.⁵

(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.

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.

⁵ The underlined requirements are the only provisions of Task 4 that are being actively monitored under the MOU.

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 80 Daily Incident Log (DIL) entries and a random sample of 80 IAD case files that were approved during the period of July 1, through September 30, 2011. The Office of Inspector General (OIG) 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 July 1, and September 30, 2011, we reviewed eight cases in which at least one allegation was resolved via administrative closure, 13 cases in which at least one allegation was resolved via informal complaint resolution (ICR), and nine cases that were resolved via summary finding.

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 nature of the various complaints was appropriate for resolving informally. For example, three involved slow or no response to calls for service, all a consequence of higher priority calls taking precedence. Five cases involved rudeness or demeanor allegations. The complainants were satisfied with the involved officers being counseled by OPD.⁶ In one case – a complaint of an officer pointing a patrol rifle at the complainant – an ICR was appropriately overruled by IAD command, even though the complainant agreed to the process. This complaint of force was approved for a summary finding since the complainant's version of what transpired was in accord with what the officer documented.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. Two were found to be duplicate complaints of investigations already underway. In two other cases, the involved officers were determined to work for other agencies. In one – a complaint of rudeness – the alleged officer was allegedly operating a type of vehicle not owned or operated by OPD. In the other – a complaint of an improper stop – the license plate number provided for the vehicle being operated by the “officers” was traced to a private business in San Jose.

⁶ In one of these cases, a complaint of rudeness involving desk officers, the involved officers were never identified. No one on duty at the time of the alleged encounter matched the descriptions provided by the complainant.

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. 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 all five subtasks in this group. In addition, we found that 84% 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 of the cases we reviewed. In 16% 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 also found OPD in compliance with Tasks 5.6 and 5.12 (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 80 entries that appeared on the Daily Incident Logs (DILs) that were completed between July 1, and September 30, 2011. We identified these by randomly selecting 30 dates during this period and reviewing the entries for each of those dates. (Some selected dates had no entries, and some had multiple entries.)

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 80 DIL entries, six 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, IAD or 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). We noted 17 such service complaints. 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 80 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 80 records in our dataset, we identified seven instances in which the complainant “refused” interaction with a supervisor. In four 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, the complainant hung up on the Communications sergeant in the middle of lodging the complaint and called IAD. However, the complainant then refused to speak to a sergeant in IAD. IAD gleaned enough information from the original call to process the complaint. In another case, a caller asked to speak to a Communications supervisor. The call was disconnected during the transfer process, and the caller did not answer a return call. While logged as a complaint, it was only speculation on the part of the Communications supervisor that the caller called to express dissatisfaction with OPD. In the remaining case, an unidentified caller left a voicemail with a sergeant, expressing displeasure with the handling of loud music call. The complainant did not leave his name or callback number in the message. 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 (the log should state “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. During this review, all of the logs we reviewed contained the required information (“unknown” was checked in 16 records). OPD has a 100% 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 100% with this subtask during the last reporting period. The DILs are administered by the Communications Section 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 properly completed in all of the records we reviewed. OPD is in 100% compliance with Task 5.5 during this reporting period.

Task 5.6 requires that an on-duty supervisor 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 of the inmate. 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 July 1, and September 30, 2011. We identified five 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.”

None of the cases met the criteria for an immediate response by a supervisor. First, none involved allegations of Class I misconduct. Second, only one of the complaints was lodged at the time of or immediately after an arrest. While not a requirement of the subtask, in this one case, an on-duty supervisor did, in fact, respond to the North County Jail and arranged for an interview in the presence of a jail deputy. The complainant refused to give a statement when the supervisor’s recorder was turned on, and the supervisor supplied her with information on how to file a complaint with IAD and CPRB. She never made a specific allegation of misconduct.

In the remaining cases, complaints were lodged after the complainants were released from jail – in most cases, days after the alleged misconduct took place. These were handled according to OPD’s protocols. In one case – a complaint of improper arrest and that officers did not allow the complainant to retrieve his cane and knee braces – the allegations were unfounded based on recordings from Portable Digital Recording Devices (PDRDs). The entirety of the officers’ and the supervisor’s interactions with the complainant were recorded, and these refuted his allegations.

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 Section 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 July 1, and September 30, 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.⁷

⁷ 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.

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 84% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 20, or 80%, in compliance with *all* of these required elements. Despite this slight decline, we continue to see improvement in the overall quality of credibility assessments, but this area still poses the greatest compliance challenges for the Department.

In all of the cases we reviewed, it appeared that OPD gathered and considered all relevant evidence.⁸ Follow-up interviews were warranted – and conducted – in 11 of the 25 cases. OPD re-contacted complainants and witnesses for clarifying information, most often after reviewing the initial drafts of the investigations. In two of the cases, employees were re-interviewed as their status changed from witnesses to subjects of the investigations. In the remaining 14 cases, we did not believe follow-up interviews were necessary.

As mentioned in previous reports, OPD has conducted extensive training on what constitutes appropriate credibility assessments. During this reporting period, we found the assessments problematic in five cases. While this represents an improvement over our earlier reviews, OPD needs to do more to ensure that the issues we have documented are identified in the review and quality control processes. In one case – a complaint of an illegal search – the complainant’s credibility was questioned because he did not “understand the concept of probable cause,” and should have known that officers had the right to detain and search him. In another, a complainant’s credibility was challenged because she refused to allow the interviewer to talk on the phone to a woman who was with her at the time of her interview.

In three of the cases, the credibility of complainants and witnesses were questioned because of minor inconsistencies in their statements. In listening to the interviews in these cases, the discrepancies did not appear to affect the overall veracity of those being interviewed. We contrast the scrutiny given to civilian statements with the willingness to overlook inconsistencies in officers’ interviews. In justifying variations between officers in the description of a use of force, an investigator wrote, “The discrepancies do not seem self serving and do appear to be within the normal range of confusion that occurs during a fight.” (We cannot help but conclude that this depends on which side of the fight one is on.) In another case, in which an officer’s statement did not exactly match the information captured on his Portable Digital Recording Device (PDRD), an investigator wrote, “It did not appear that K. omitted the interaction on purpose but rather did not recall the specifics of it.” In still another case, a sergeant’s inability to recall key facts was written off as confusion.

⁸ 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.

We do not assert that all complainants and witnesses are credible. (Nor do we automatically accord that determination to officers.) We reviewed two cases in which video evidence controverted citizens' statements. In another case, a complainant clearly suffered from psychological issues and made outlandish, obviously false, statements. When a witness or a complainant is deemed not credible, we generally listen to the interviews if they are available. We suggest that in such cases, the investigators' supervisors also listen to the recordings before approving the investigation.

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 materially inconsistent statements. Eight cases contained not sustained allegations for this reason. In 12 cases, OPD was able to resolve inconsistent statements via the investigative process. In two cases, inconsistent statements were resolved by improperly questioning the complainants' credibility. We deemed these cases not in compliance with this requirement.

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 previous reporting period, we found OPD in 100% compliance with this subtask. During this review, the form was again 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 84% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 22 cases, or 88%. In one case, a complaint of excessive force during an arrest, an anonymous complainant's version of events was generally consistent with the arrestee's. Both were, inappropriately, deemed not credible, and the allegations should have been not sustained rather than unfounded. In another case, a complaint of minor force and then failing to provide names and badge numbers, IAD reached unfounded findings, again based on a flawed credibility assessment. Minor discrepancies in an elderly complainant's statement were highlighted to discredit him and justify an unfounded finding, when not sustained would have been more appropriate. In the third case, while sustained findings were reached in two of four allegations, we believe the evidence supported additional sustained charges rather than the not sustained conclusions that resulted.

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%). Excluding allegations which we deemed appropriately administratively closed, our sample of 25 cases contained 71 allegations which received dispositions as follows: 19 unfounded, eight sustained, 14 exonerated, and 30 not sustained. As noted in Task 18, we disagree with some of these findings. Specifically, we believe that 12 of the unfounded dispositions should have been not sustained, and two of the not sustained dispositions should have been sustained. Accordingly, OPD has an 80% compliance rate and is not 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.⁹

During our most recent site visit, we met with an IAD lieutenant, who advised that as of that date, five cases were classified as tolling. Three involved civil litigation against the City and/or the Department; one involved a criminal case in which the complainant is not cooperating, most likely on the advice of legal counsel; and one involved the unavailability of the subject officer. All cases appeared 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. Two of the 25 cases we reviewed were resolved via summary finding, and both were appropriately approved for such closure. (These do not include the cases referenced in Task 4, for which summary findings were appropriate.) In both of these cases, the recently issued Portable Digital Recording Devices (PDRDs) captured the police/citizen encounters and negated the need for officer interviews. In a third case, the subject officer was no longer employed by the Department and was not located, despite diligent attempts. OPD is in compliance with Task 5.21.

⁹ 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.

OPD is in partial Phase 2 compliance with Task 5.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

As we have done previously, during our next site visit, we will 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 the previous reporting period, we found the Department not 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 a random sample of 80 Daily Incident Log entries from July 1, through September 30, 2011; and a random sample of 25 IAD investigations (conducted by both IAD and via Division-level investigation) that were closed during the same period. 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 11 such cases. Of these, three cases resulted in not sustained findings for the applicable charges. In one case, the allegations were unfounded. Three cases were administratively closed. In one of these cases, a citizen alleged that her complaint lodged in 2008 was never investigated. Research indicated that her grandmother actually made the complaint and an investigation was completed. In another case, which was closed for lacking specificity, a complainant alleged that a dispatcher did not send an officer to her complaint against her landlord in 2003. In the final case, the plate number given for a vehicle allegedly driven by OPD officers returned to a private business in San Jose. The complainant refused to cooperate further, and it is likely that OPD officers were not involved.

Four cases resulted in sustained findings, and in all cases, the disciplinary process was administered. One officer received counseling and training, three officers received letters of reprimand, and one civilian received a two-day suspension.

OPD is in Phase 2 compliance with Task 6.

Compliance Status:

Phase 1: In compliance

Phase 2: 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.¹⁰
- (Negotiated Settlement Agreement III. G.)

Comments:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the past several 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 July 1, and September 30, 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 15 cases as potential anonymous complaints during this reporting period. After review, we determined 13 to be true anonymous complaints, and the complainants were not identified during the course of the investigation. In the remaining two cases, the complainants were identified and cooperated with the investigations. Additionally, in three other cases, while the complainants remained anonymous, other involved parties cooperated with the investigation, including the objects of alleged police misconduct. Two of these involved uses of force, and one involved rudeness to a storeowner.

¹⁰ The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

One complaint was sent to IAD in writing. Two complaints were received in person: one was at the scene of an arrest; in the other, an employee complained to the Personnel Section. Twelve were received by phone: eight were called into Communications; two were called into IAD; one was called into the Department's Public Information Officer; and one was left as a voicemail on a patrol sergeant's phone.

Where possible, complainants were asked to provide corroborating evidence. In seven cases, this was not possible given the manner in which the complaints were received (i.e., letter or message left) or because the complainant terminated the call. In all cases, the complaints were investigated to the extent reasonably possible as required by this Task. One case – a complaint of an officer's allegedly reckless driving – was closed via the Informal Complaint Resolution (ICR) process. While the complainant wished to remain anonymous, the process was explained to the caller and she agreed to it. Eight other cases were closed via Administrative Closure. Each met the criteria for such closure and seven involved service complaints. The remaining cases received full investigations. We disagreed with the finding in one of these cases – a force complaint lodged by a third party. We believe the appropriate finding was not sustained rather than unfounded.

The Department 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 80 Daily Incident Log entries from July 1, through September 30, 2011; a random sample of 80 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between July 1, through September 30, 2011; and the 40 sustained Class I investigations that were approved by the Chief between July 1, through September 30, 2011. In the 40 sustained Class I cases, we discovered seven where a supervisor received a sustained finding for not properly using his/her authority and responsibility.

From this review, we identified cases in which a supervisor was alleged to have failed to adhere to the required standard. In the first case, a subject filed a complaint alleging that OPD officers entered his apartment and conducted a probation search. The complainant stated that during the time of the search, he was not on probation with an S7 search clause.¹¹ The IAD investigation determined that the supervisor: was aware that there was a discrepancy between two records; should not have authorized the officers to conduct the probation search without taking additional steps to determine the complainant's probation status; and should have required the officers to provide additional supplemental reports. Based on these conclusions, the Department initially sustained a finding that the supervisor did not properly use his authority and responsibility; however, the Chief changed the finding to not sustained.

We also reviewed an investigation where the supervisor was sustained for failing to allow a subordinate the ability to review her information in Personnel Assessment System (PAS). In another investigation, a lieutenant was the subject of a sustained finding for failing to report Class I conduct when notified that an employee was posting inappropriate material on a Departmental bulletin board even after it was taken down. Another investigation sustained a

¹¹ S7 is an Alameda County Probation code indicating: "Submit your person, residence, vehicle and any and all real or personal property to search and seizure at any time of day or night with or without a warrant by P/O or Peace Officer."

complaint against a lieutenant for failing to properly mediate a heated argument between two employees of the Communication Division. Another investigation sustained a complaint against a supervisor for failing to audit and provide proper supervision of the investigation of vehicle collision cases, resulting in a case exceeding the §3304 date. In another investigation, an animal control supervisor was sustained for failing to accept or refer a complaint as directed by OPD policy. Finally, in another investigation, a sergeant was sustained for an authority and responsibilities violation for authorizing a paid day off for an employee in violation of law and/or rules and regulations.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

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.*¹²

(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 70 arrest reports (57 adult and 13 juvenile) documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); as well as documentation for 23 arrests resulting in an investigated use of force; that occurred between July 1, and September 30, 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 57 adult arrest reports, we excluded 38 from our dataset for one or more of the following reasons: the arrest involved a warrant or probation or parole warrant detention; 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 19 remaining adult arrests, 18 were in compliance with Task 18.2.2. This represents a 95% compliance rate among adult arrests for this subtask.

Of the 13 juvenile arrest reports, we excluded eight from our dataset for the following reasons: two incidents involved runaway children, and no charges were filed; three involved authorized warrants of arrest; one involve a probation violation for a misdemeanor theft; one incident involved an incorrigible child where no arrest was made; and one incident involved a verbal argument between a mother and her child where no arrest was made. Of the five remaining

¹² The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

juvenile arrests, four were in compliance with Task 18.2.2. This represents an 80% compliance rate among juvenile arrests for this subtask.

Of the 23 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.¹³ 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 OIG to assess the different technologies (CRIMS, AWS, and CORPUS) and the various confirmation numbers OPD uses to confirm the existence of a valid parole, probation, or warrant and any associated provisions such as search clauses. Please see Appendix B for our further discussion of these issues.

Our review revealed an overall 96% compliance rate for Task 18.2.2. OPD is in Phase 2 compliance with this requirement during this reporting period.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with OIG to discuss audits related to arrests made for probation and parole violations that involve felonies, drug offenses, and arrests made pursuant to P.C. Sections 69, 148, and 243 (b)(c).

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.*

¹³ 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.

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 98% of the squads we reviewed met the 1:8 span of control. However, only 83% of the squads we reviewed were supervised by their primary, or assigned, supervisors; most of the remainder were supervised by backfill” sergeants working overtime and 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: July 5, 7, 17, 18, and 30; August 4, 16, 17, 21, and 22; and September 2, 14, 17, and 23, 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 356 applicable squads we reviewed, 284 (80%) were supervised by their primary supervisors. This was a slight decrease from the last reporting period, when we found that 83% of the squads in compliance with this subtask. Of the squads *not* supervised by their primary supervisors, 28 (8% of the total) were supervised by "backfill" sergeants working overtime, 26 (7% of the total) were supervised by certified acting sergeants who were *not* assigned to supervise their particular squads, and 18 (5% 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 356 applicable squads we reviewed, 349 (98%) met the 1:8 span of control. This is the third consecutive reporting periods with this rate of compliance. 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 28 instances (8% 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 99 total operations conducted between July 1, through September 30, 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 July 1, through September 30, 2011, for the signature of the Chief or his designee. 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 Task 24 except for the requirements that OPD personnel on the scene of the incident report all uses of force on the appropriate form, and document every use of force and/or the drawing and intentional pointing of a firearm.

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, OPD recorded a total of 1,129 uses of force, 1,067 of which were categorized as Level 4. The sample we requested for review (78 total) included: one Level 1; 13 Level 2; nine Level 3; and 55 Level 4 reports completed between July 1, and September 30, 2011.¹⁴

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 was in compliance with this requirement.

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 seven of the 78 incidents in our sample, a supervisor was promptly notified regarding the force incident. The seven incidents included three Level 2, two Level 3, and two Level 4 investigations. The supervisors in these cases were not notified for periods ranging from 53 minutes to five-hours-and-15-minutes following the incident. OPD has an overall 91% compliance rate with this subtask. OPD is not compliance with Task 24.1.

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:

¹⁴ We requested 90 use of force reports, but determined that 11 of the reports covered incidents that occurred outside of the current reporting period; in addition, one file was corrupted and could not be reviewed.

95%). All of the use of force reports, crime reports, and supplemental reports for the incidents in our sample met these requirements. 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 only* of Tasks 24.2 and 24.3.

Officers Pointing Firearms: During this reporting period, we reviewed a total of 56 use of force incidents, including four Level 2, two Level 3, and 50 Level 4 uses of force. The 56 incidents involved 162 instances of OPD officers drawing and pointing their firearms.¹⁵

Overall, we determined officers' pointing of their firearms to be appropriate in 141, or 84%, of the 162 instances we assessed.¹⁶ We were unable to find the pointing of a firearm necessary or justified in 21 instances, or 16%, of the 162 instances we assessed, due to the absence of any indication that the officer(s) or others faced imminent threat of harm.

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 and found three groups represented as follows: Black, 72%; Hispanic, 14%; and Asian, 14%.

In all cases, the OPD supervisory review found the officers' use of force appropriate, objectively reasonable for a legitimate law enforcement purpose, and in compliance with OPD policy. While officers' actions in particular cases is troubling, the apparent unquestioned supervisory and command approval – of both the documentation of officers' actions and the actions themselves – is illustrative of a need to address supervisory deficiencies.

OPD is not in compliance with Tasks 24.2 and 24.3.

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 23 applicable Level 1, Level 2, and Level 3 incidents in our sample. This represents a 100% compliance rate. OPD is in compliance with Task 24.4.

¹⁵ 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 with or without search warrants; and officers were attempting to detain subjects, either by foot pursuit or by searching areas such as alleys and yards.

¹⁶ As in our more in-depth assessment of such incidents during the sixth reporting period, we gave the benefit of the doubt to involved officers whenever there was a question as to whether an officer's action was appropriate. We also assumed that the pointing of firearms was justified in cases where officers were responding to a burglary or criminal trespass involving an actual structure search, or when making a high-risk vehicle stop based on the legitimate belief that the vehicle was stolen.

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.¹⁷ 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 one applicable Level 1 use of force report during this reporting period. OPD notified the Alameda County District Attorney's Office, the Office of the City Attorney, and the OPD Homicide Unit, as required, in the fatal shooting incident assessed. 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%). We previously 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. Our review during this reporting period indicated that use of force data continued to be entered into PAS. OPD is in compliance with Task 24.9.

OPD is in partial Phase 2 compliance with Task 24.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will continue to meet with OPD to assess how the Department is addressing the serious issue of pointing firearms – the act of which may not only be unnecessary and inappropriate, but which also elevates the risk for unfortunate and unjustified firearm discharges.

¹⁷ 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 seventh reporting period, we found the Department in partial 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 78 use of force reports, including: one Level 1; 13 Level 2; and nine Level 3 use of force reports; and a sample of 55 Level 4 use of force reports; that were completed between July 1, and September 30, 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 23 Level 1, Level 2, and Level 3 incidents. In all of the incidents in our sample, a supervisor responded to the scene and completed a use of force investigation. In addition, four 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.

During this reporting period, two Level 2 and four Level 3 reports were not submitted in a timely fashion. Levels 1, 2, and 3 force investigations are considered timely if they are completed (including Division Commander approval) within 15 calendar days of the incident, plus one documented approved extension by the Division Commander. Extensions are only considered if they were approved by the appropriate personnel prior to the pre-extension due date. The chronological report logs assessed for this reporting lacked adequate documentation to show that the extensions were properly requested and authorized by command personnel. Once an extension is authorized, new dates must be established and the timelines must be met.

The reports we assessed addressed discrepancies in information provided by members, employees, and witnesses, and the use of “boilerplate” or “pat” language by UOF investigators. There was documentation of physical evidence and/or photographs, as well as an analysis of all relevant evidence gathered, consideration of tactical and training issues, and supervisors' justification as to why any element of the related policy was not documented. One investigator used boilerplate language that was identified and corrected in the command review process by a supervisor; and in three other cases, supervisors reviewing the reports sufficiently attempted to address discrepancies or conflicts in information obtained during interviews. The completed reports also addressed training and tactical issues, equipment needs, the lack of photographs taken of injured complainants, the lack of use of the issued Personal Data Recording Devices (PDRD), and communication breakdowns during incidents between officers and dispatchers.

OPD's overall compliance rate for timeliness and for the NSA-required elements is 96%. 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 25 supervisors' training records during the last reporting period, and verified that all of 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 did not conduct any such training during this reporting period, but is in the process of identifying new trainers for future courses of UOF instruction. 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.

During this reporting period, we reviewed nine incidents that involved unjustified pointings of firearms. These nine reports did not comport with NSA-required elements: Each of the incidents involved an unnecessary escalation to potentially using lethal force in situations where other less lethal force options were available to the officers or should have been considered. The remainder of the cases, however, contained information showing that the force was used for a legitimate law enforcement purpose, was reasonable to the resistance encountered, and was de-escalated when resistance decrease or stopped; and that verbal means were used to attempt to resolve the situation without force.

OPD's compliance rate for this subtask is 88%. OPD is not 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 nearly all of the 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. Two reports – one Level 2, and one Level 3 – did not include analyses of the pointing of firearms. In addition, in an investigation of a Level 2 use of force, the investigator commended the involved officers on how they handled the situation. The issuance of a commendation by the UOF investigator for a serious incident of force prior to

supervisory review and the Force Review Board (FRB) in this Level 2 incident is inappropriate and undermines the integrity of the review process. OPD DGO K.4 does not provide for UOF investigators to provide commendations in their investigative reports. This finding could have presented disciplinary obstacles if the reviewers and FRB found the UOF not in compliance with policy.

OPD's compliance rate for this subtask is 96%. 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 and 2 reports in compliance with this requirement. OPD is in compliance with Task 25.6.

OPD is in partial Phase 2 compliance with Task 25.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will examine reports outside of our normally requested sample for additional information relating to the NSA-required elements – for example, if the force was used pursuant to a legitimate law enforcement purpose, and if officers attempted to resolve situations verbally without the application of force. We will also review force assessments by investigators, supervisors, and commanders.

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 all 12 incidents that were heard by the board during this reporting period of July 1, through September 30, 2011. We determined that all 12 of the FRB reports were timely, 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%). All 12 of the FRB reports we reviewed contained a recommendation noting that the use of force was in compliance or not in compliance with policy. All 12 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 were no cases during this reporting period in which that determination was made. 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 that they *had* to use force because of the risk that a suspect may be armed; and that 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 after the board has identified training issues. The supervisors are required to document this training in the officers' 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 Section. 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 develops 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. The Department scheduled one FRB during our most recent site visit. (We will discuss this in our next report.) The FRB was conducted in accordance with the requirements of the NSA. We again request that the Department 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 seventh reporting period, we found the Department in partial 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%). The EFRB reviewed two incidents during this reporting period:

- In the first incident, an OPD officer fatally shot a suspect who was carrying an imitation assault rifle (BB gun) that appeared to be a real gun. The suspect also had a knife sheath hidden under his camouflage pants. This shooting was found to be in compliance with policy.
- In the second incident, OPD officers shot a suspect who was armed with a knife. The suspect was under the influence of drugs and alcohol, and aggressively resisted being taken into custody. This shooting was found to be in compliance with policy.

We verified that the two EFRBs held during this reporting period fell within 45 days of the completion of the use of force reports covering the incidents.

In addition to reviewing these reports, during our most recent site visit, we observed one EFRB to verify the Department's compliance with the substance and intent of this Task. We found that the process that the board used to arrive at a finding was problematic. We will discuss this in detail in our next report. Accordingly, OPD is not in compliance with this subtask at this time.

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 is 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 both cases. After review and deliberations, the board determined that the subject officers' actions in both cases were in compliance with Departmental policy. The Chief endorsed the EFRB findings. The board identified the adequacy of equipment, tactics, investigative concerns, and training issues that required the appropriate corrective action. OPD is 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. The Department scheduled one EFRB during our most recent site visit. The EFRB related to an OPD officer-involved shooting at a subject who was armed with a shotgun. We again request that the Department schedule its EFRB hearings during our quarterly site visits; 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:

Since monitoring under the NSA began, OPD has received confidential reports of misconduct in only three cases. During the last two reporting periods, 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 conduct 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%). The IAD Commander now requires investigators to specifically address whether members or employees or supervisors knew or should have known of the misconduct in a section of the investigative report entitled, "Member/Employee Accountability."

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 July 1, through September 30, 2011, that were applicable to Task 33.

We identified and reviewed 38 cases with 56 sustained findings. In our review, we found one case in which as part of a PAS intervention, an officer was ordered to record his citizen contacts for three months. He was equipped with a recording device and instructed how to use it. His supervisor was ordered to monitor his contacts through review of the videos. An integrity test later revealed the officer had more contacts than recordings. The officer was sustained for his failure to record contacts as ordered. IAD assessed the supervisor's responsibility, but he was not found culpable. The investigative report noted that the supervisor had sincere concern for the officer and conducted mentoring, monitoring, and intervention before it was formally initiated by the PAS Activity Review Panel. While it appears that the supervisor was genuinely concerned, and did what was cited, he failed in his most important responsibility. The supervisor failed to determine that fewer recordings than contacts were being made. He should have identified this before the integrity test occurred. Our review of the 37 other cases (97% of the total) revealed no other instances where members or employees should have been held accountable but were not.

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%).

As we have reported previously, 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. Since monitoring began under the NSA, OPD has received only three such confidential reports. No new confidential reports were received during the current reporting period.

During this reporting period, OPD hired 50 new employees who were trained regarding 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 last four reporting periods, we found the Department in partial compliance with Task 34. We noted that officers were increasingly 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. Also during the seventh reporting period, OPD combined the Stop Data Form with the Field Contact Form in order to provide officers with a section to better articulate the totality of the circumstances supporting the stop.

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 the sixth 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. During the prior reporting period, we verified that OPD 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 400 stops to match them with corresponding completed Stop Data Forms. This sample included 200 Computer Aided Dispatch (CAD) entries, 100 Field Contacts, and 100 traffic citations. Using the Department's Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 93% of the stops in our sample. OPD is 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 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. During the prior reporting period, OPD combined the Stop Data Form with the Field Contact Form in order to provide officers with a section to better articulate the totality of the circumstances supporting the stop. A review of the implemented form shows progress in the officers' articulation of the constitutional standards requirement. The review focused on the officers' articulation of the reasonable suspicion that existed prior to the detention that justifies the detention. We encourage OPD to continue training and audits to ensure that the justification

exists prior to the temporary detention. We look forward to the continued implementation of the new form with updated training in future reporting periods.

Based on OPD's failure to justify or adequately document the reasons for the stops in the samples we reviewed during the last four reporting periods, we again examined an expanded selection of pedestrian stops during this reporting period. For the second consecutive reporting period, we found that 93% identified the justification/reason for the stop. We will continue to monitor this issue closely.

We are also concerned that OPD's traffic stops are being conducted pursuant to valid allegations of traffic laws. Due to the manner in which stops were documented on the Stop Data Form, and our inability to view the traffic citations, we are unable to verify the basis for the stops. This is especially true when the officer selected "no action" or "warning" issued as the result of the encounter. With the merger of the Stop Data Form and the Field Contact Form, the officers have begun to enter citation numbers, and we encourage that practice to continue. 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. In May 2011, OPD merged the Stop Data Form with the Field Contact Form, intending to provide one document for officers to enter stop data and providing them with a narrative portion for which they can articulate the factual support for the stop.

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. More recently, OPD updated the analysis to include stop data collected between January 1, and June 30, 2011. OPD has shared multiple drafts of its analysis of stop data, and we look forward to the publication of a final review. Our review of the stop data collected to date found it sufficient to allow for a comprehensive analysis; however, we are concerned that the focus has been, to date, superficial. We are convinced – based on our review – that the data is sufficient to draw some conclusions regarding disparate treatment, or the absence thereof, and design an appropriate action plan.

As we have noted previously, OPD focuses on issues that do not help 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. During this reporting period, we again met with OPD personnel responsible for this analysis and discussed with them how and why the Department should conduct further analysis. We look forward to learning more about the Department’s plans to move forward with such an analysis.

We 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, it is not the purpose; rather, the results, intervention, and other strategies developed from the analyses are critically important to ensuring fair and equal treatment of all people with whom police officers interact. 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 again meet with the sergeant who oversees the Department’s stop data systems and other relevant Department personnel to discuss the Department’s progress in this area. 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 also review an expanded sample of walking stops 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 23 use of force reports, including: one Level 1, 13 Level 2 and nine Level 3 use of reports covering incidents that occurred between April 1, and June 30, 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, the use of force reports specifically state this fact (compliance standard: 90%). All 23 reports that we reviewed 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 23 applicable UOF reports we reviewed, one fell into this category and was properly documented in the report.

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 23 reports we reviewed. OPD is in compliance with Task 35.4.

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 examine a sample of force reports, in addition to our regular document request, to ensure that OPD is moving toward the long-term 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 seven cases adjudicated from the period of July 1, through September 30, 2011 that OPD regards as containing allegations of retaliation. We found that four of the seven cases did not meet the definition of retaliation in Task 37 because they involved complaints lodged by citizens that an officer(s) “retaliated” against them. In addition, one case involved a complaint that an employee was retaliated against because the employee served as the union steward. Such a case does not fit the definitions of retaliation as set forth in Task 37, which addresses retaliation against an *employee* or *member* of OPD who has reported misconduct or served as a witness.

Our review determined that the two allegations of retaliation against members of the Department were appropriately investigated and reported. Neither resulted in a sustained finding of retaliation. In addition, in both cases, 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 two reporting periods, we found the Department in Phase 2 compliance with Task 40. Prior to that, our concerns with the stability of the data collection process affected OPD's compliance.

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 last published a revised version of D-17 on August 20, 2008. The Department is again preparing a revision of the policy that we will review during the next reporting period. The Department has trained at least 95% of relevant personnel on the current policy. OPD, therefore, remains in Phase 1 compliance with this Task.

The Personnel Management System (PAS) was developed to address the requirements of Tasks 40 and 41. Across several reports, we have raised concerns about issues that were related to the overall effectiveness of this system. The Department has reexamined key aspects of the system, and has enhanced functioning with revisions of the process for selecting officers for review. We have also discussed our concerns over 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 preclude achieving and maintaining compliance with NSA requirements, they do represent significant inefficiencies and limitations on the system.

During our most recent site visit, we took note of the expanding usefulness and use of the system. The system is used to maintain data, identify cases for review, and track and follow up on the review process. Additionally, the system maintains lists of officers with high levels of complaints and uses of force. The functionality of the system continues to grow, and our discussions with OPD make it clear that the system is increasingly central to Departmental information management processes. Assuring the stability and smooth running of the system, and then the realization its full potential, will clearly require adequate computing, as well as staff resources. As we have noted in past reports, we remain concerned with staffing levels. These concerns are heightened by the return of data stability issues that have degraded compliance, as noted below.

During this site visit, we once again reviewed the 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 July 1, through September 30, 2011 indicate that data were entered for most but not all of the fields required by Task 40. It is important to note that OPD is unable to report the total number of arrests for the quarter and with that, it cannot report the number of arrests under the specific categories required by the NSA including disorderly conduct, interfering, and assault on officers. As a result of this, OPD also cannot report any of the rates of activities that involve arrest ratios; and therefore, it is also unable to provide the data for the summary chart that we have included in previous reports. That data has been used to track changes in the data over time.

OPD is unable to report accurate arrest counts for the reporting period because of a problem of multiple counting of arrests when data from Alameda County are used in conjunction with the police data management system. The problem was discovered in October, but first affected September arrest counts. The issue remains unresolved as of the writing of this report; and therefore, it will also affect data collection reported in our next report. This is a very significant problem. The inability to report the data required under the NSA prohibits sustaining the compliance finding reported in our two previous reports.

Setting aside the arrest figures, the required data for the quarter included reports of 1,129 uses of force (a decline of 8% from the last reporting period); 317 misconduct complaints (an increase of 19% from the last reporting period); 3,699 notes by supervisors; and 3,394 arrests. The largest categories of information are training history (25,594); sick leave hours (11,461); assignment history (8,957); and rank/class history (2,311).

A further breakdown of the types of use of force shows that, for this reporting period, there were six Level 1 incidents (up from five last quarter); 21 Level 2 incidents (up from 17); 39 Level 3 incidents (unchanged); and 1,067 Level 4 incidents (a decline of 92, or 8%). The data count from the Personnel Management System (PAS) is presented in the table below.

Number of Events in Quarter <i>(July 1-September 30, 2011)</i>	
Level 1 Uses of Force	6
Level 2 Uses of Force	17
Level 3 Uses of Force	39
Level 4 Uses of Force	1,067
Unintentional Firearms Discharge	0
Sick Leave Hours	11460.8
Line of Duty Injuries	53
Narcotics-Related Possessory Offenses Arrests	<i>Unknown</i>
Vehicle Collisions	4
All Vehicle Pursuits	114
All Arrests	<i>Unknown</i>
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	<i>Unknown</i>
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	<i>Unknown</i>
Awards	22
Assignment History	8957
Case Evaluation Reports	220
Report Review Notices--Positive	0
Report Review Notices--Negative	0
Canine Deployments	112
Financial Claims	0

Number of Events in Quarter <i>(July 1-September 30, 2011)</i>	
Internal Affairs Complaints	317
In-Custody Injuries	54
Civil Suits (Tort Claims)	3
Criminal Cases Dropped	0
O.C. Checkouts	46
Officer-Involved Shootings	4
Rank/Class History	2,311
Training History	25,594
Supervisory Notes	3,389
Criminal Arrests Made Against OPD	0

As noted above, **Task 40** requires that PAS contain information on each of the elements required by the NSA. In our earlier reports, we raised concerns about the timely and accurate recording of data. Those issues are again relevant for this quarter due to the Department's inability to report arrest data. We must also note here that our concerns are not limited simply to the temporary lack of complete data. While we recognize that the Department discovered the inaccuracies in the data and that it understands its source, we are deeply troubled that the Department has been unable to rectify the situation in nearly three months. This is a clear indicator of very significant problems in the data management processes in the Department.

Our concerns are amplified by the fact that the issue involves arrest data, which is the most commonly used productivity measure in policing. We are dismayed that at this point in the history of the NSA – and in the development of the risk management system in particular – we can neither report that the Department is meeting NSA data-related requirements, nor do we have confidence in the Department's ability to correct this problem in a timely manner.

Compliance Status:

Phase 1: In compliance

Phase 2: Not 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 the last two reporting periods, we found OPD in partial compliance with Task 41. That status was recognized based on our continued examination of the activity of the PAS Administration Unit, and the processes of selecting and reviewing officers who passed activity thresholds. We noted progress in the quality of the initial supervisory reviews and in their review up the chain of command. The assessment of this Task for the current quarter continues to focus on the quality of the review process and its effectiveness at bringing about changes in risk-related behavior.

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. That policy is currently undergoing revision and the new policy will be reviewed in our next quarterly report. The Department has trained supervisors their role in the PAS process, and has an ongoing training program for officers on the topic of risk management and specifically on

PAS. The training incorporates the Information Bulletin, *Documenting PAS Activity Reviews and Analysis*. Based on existing policy and the related training, we again find OPD in continued Phase 1 compliance with this Task.

For 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 July 1, through September 30, 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, 42 officers were initially identified as meeting PAS thresholds. After the data problems regarding arrests counts were identified, however, 21 of the selections for review were recalled due to lack of certainty when arrest ratios were involved.

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, transfer of officers, and commendations. 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 17 OPD command units.

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 eight disposition, 16 follow-up reports, and reports of three 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. These meeting are all document supervisory reviews of officers who have been selected for some form of action as a result of PAS reviews.

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 58 officers completed and/or signed during the quarter under review. Twenty-one of those cases resulted from officers meeting a threshold involving Level 4 uses of force.

Our examination of PAS reviews during this reporting period again revealed them to be generally thorough and complete. The reviews include analyses of officer histories of complaints and uses of force. These appear to provide useful summaries and valuable information for reviewers. 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 also functions well.

For the quarter ending September 30, 2011, OPD conducted a total of 32 PAS reviews. The quarter included the month with the year's lowest number of reviews (two in August) and the highest number (19 in September). The results of the reviews are included in the table below. The table shows that superiors recommended that no action be taken in 22, or 69%, of the reviews. The table also shows that command staff sometimes disagreed with lower level recommendations and prompted additional monitoring and supervision. This pattern is consistent with our examination of the PAS reviews, and shows a lower rate of concurrence across the layers of the process than we noted in past reports. This is desirable in a risk management process in that it reflects close scrutiny by command staff and a process capable of setting increasingly higher expectations regarding the control of risk. As noted in our last report, if the goal is to move to less risk, reviewers at all stages up the command review process could be expected to decrease their tolerance for risk by always rejecting some number of recommendations for inaction and by setting higher standards for acceptable patterns of behavior. The value of the data in the chart below is in tracking them over time and using them to increase the rigorousness of the review process as it serves the goal of risk reduction.

Summary of PAS Reviews and Recommendations 2011																				
	PAS Reviews Completed		Supervisor Rec- no action		Recognition		Supervisor Rec- Monitoring		Supervisor Rec- Intervention		Commander rec Concurs w Supervisor		Dep. Chief Concurs w Commander		PAS Panel Concurs w DC		Pending		Number of per personnel that exceeded a threshold	
			%	%		%	%	%	%	%	%	%	%	%	%	%				
January	11	9	82%	0%	2	18%	0	0%	10	90%	11	100%	10	90%	0	11				
February	9	8	89%	0%	1	11%	0	0%	9	100%	9	100%	8	89%	0	5				
March	17	10	59%	1%	4	24%	2	12%	17	100%	17	100%	17	100%	0	11				
April	12	11	92%	0%	0	0%	1	8%	12	100%	12	100%	12	100%	0	18				
May	10	6	60%	0%	2	20%	2	20%	10	100%	10	100%	10	100%	0	7				
June	8	6	80%	0%	1	10%	1	10%	8	100%	8	100%	8	100%	0	7				
July	11	7	63%	0%	4	36%	0	0%	9	90%	10	90%	10	100%	0	16				
August	2	2	100%	0%	0	0%	0	0%	2	100%	2	100%	2	100%	0	23				
September	19	13	68%	0%	5	26%	1	5%	18	94%	18	94%	19	100%	9	16				
October																				
November																				
December																				
Total	99	72		1	19		7		95		97		96		9	114				
Average	11.0	8.0	77%	0.1	1%	2.1	0	0.8	6%	10.6	97%	10.8	98%	10.7	98%	1.0	12.7			

* Percentages apply to completed cases only
**

July: One review did not require a commander's recommendation.
September: One review did not require a commander's recommendation.

In our last report, we examined the PAS review histories of officers with the highest numbers of uses of force and those with the highest number of IAD complaints against them for the quarter. That analysis led to useful discussion of approaches to handling cases of continued problems in a manner consistent with paragraph 15 of this Task and to consideration of how that concern may also be emphasized in policy revisions currently underway.

During this reporting period, we examined the list of officers with the highest numbers of uses of force for the quarter. For the top 30 officers, the numbers ranged from a high of 16 to a low of seven uses of force. Among these officers, Level 4 uses of force were overwhelmingly the most prevalent among reported uses of force. The group totaled 293 uses of force for the quarter, of which 275 were Level 4 uses of force.

We also examined the number of arrests attributed to these officers. Although we recognize there may be some problems with the arrest data, we are comfortable with these calculations because the data problems would overstate – rather than undercount – the number of arrests. Despite the level of activity of these officers when uses of force are examined, they recorded very low levels of arrests. No arrests were reported for 23 of the 30 officers. Three officers accounted for two arrests each. That was the highest number of arrests among the officers. In all, 10 arrests were reported for the group, yielding a ratio of 27.5 Level 4 uses of force for each arrest attributed to the officers in the group.

In examining these data, we are not suggesting that the analysis would allow any conclusions about the appropriateness of the uses of force. That would require a separate analysis of the Level 4 uses of force by the officers on the list. Instead, the analysis suggests only that the identification of outliers – in this case, frequent Level 4 users of force – can help identify potentially high-risk behavior patterns more efficiently than focusing on all officers above some preset count of activities.

In our past several reports, we noted the continued improvement of the risk management process – particularly in its review and oversight components. We also noted that, as significant issues have been identified, OPD has responded appropriately by conducting its own analysis and designing and implementing remedial changes. We will continue to examine how the Department addresses unsuccessful changes by officer in monitoring or supervision. And, as data problems are resolved, we look forward to the Department's analysis of Level 4 uses of force when normed by the number of arrests.

As we have noted in prior reports, substantial progress has been made with the risk management system. That has been reflected in our compliance findings. Much of the functioning of the system for the quarter under review is consistent with our recent assessments. However, the data problems noted above are of considerable concern. Problems with arrest data have required recalls and revisions in the review schedule, although they have not impacted the reviews that have occurred. It is clear, though, that many reviews that would take place in the upcoming quarter cannot occur if the data problems are not solved.

Near complete system failure is inevitable if these data problems are not resolved. We cannot ignore that prospect by advancing the Department's compliance status only to move it backwards next quarter. Instead, we prefer to support efforts to resolve the underlying problems, with the hope that the review process will quickly be brought back on track. To accomplish that, we will take the exceptional step of again reporting partial compliance, while making it clear that the

Department will be out of compliance next quarter if the data problems continue to affect the risk management review process.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will continue to work with the Department to examine the processes of collecting and storing data and the use of that data in the PAS review process. We remain interested in understanding developments in the information technology part of this process, and how any contemplated changes may impact the risk management system. However, we are not yet assured that data problems do not plague the system – thus making it far too unreliable to trust. We will therefore, focus on the stability of the system, how the data problems are addressed, and how they impact the review process over time.

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 2010, OPD recruited and began training 21 new officers and five lateral officers. However, due to the City's budget cuts, OPD laid off all new officers, both trainees and laterals, and 80 full-time OPD officers. Accordingly, this requirement was placed in a deferred compliance status.

Discussion:

During this reporting period, we learned that OPD was authorized to hire on December 11, 2011, 10 of the 21 trainee officers who attended the Alameda County Sheriff's Basic Training Course; as well as three additional OPD officers who were laid off. The trainees will attend an eight-week academy at OPD and then enter the full FTO Program.

In February 2012, the Department expects to hire 10 laterals, and will begin a six-week Lateral Academy at OPD. Thereafter, the laterals will enter the FTO Program. In July 2012, the Department expects to hire 25 recruits to attend the 166th Basic Recruit Academy to be held at OPD.

With the need for FTOs now apparent, OPD is moving to select another group of FTOs. At the time of our most recent site visit, the Department had received applications from 58 officers for the FTO position. The 58 officers include both newly volunteered officers and those who had been previously certified as FTOs.

Until this review, we have deferred our compliance finding for Task 42, as OPD had no active FTO Program and its FTOs had been decertified. As noted above, the Department is now reinvigorating its program, but has not yet selected or trained a new group of FTOs. Accordingly, for this reporting period, we will continue to carry Task 42 as deferred.

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.¹⁸

(Negotiated Settlement Agreement IX. A.-E.)

Comments:

Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. This subtask requires OPD to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions. During the last reporting period, we found that 99% 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:

¹⁸ The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

Yes/No). To assess this subtask, we interviewed the OPD Training Section Commander and other personnel; and, during previous site visits, reviewed training schedules, course outlines, and lesson plans. In addition, we interviewed the Police Evidence Technician Coordinator and the Police Dispatcher Training Coordinator, and we again reviewed the files of the evidence technicians currently employed by OPD. We also reviewed the training records of a stratified random sample of 105 OPD members and employees – including 73 officers, 12 sergeants, and nine dispatchers; as well as all 11 police evidence technicians (PETs) – 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 two of the 85 sworn members of our sample (73 officers and 12 sergeants) had not received CPT within 18 months; however, one of the two was on medical leave and was, accordingly, excused. The other officer's last CPT took place one year and 10 months earlier. The remaining 83 sworn members of our sample (98%) attended CPT within the past 18 months.

We found that eight (89%) dispatchers in our sample received adequate training for their jobs in the past 18 months. One dispatcher had received only five-and-one-half hours in 2011, and 11 hours in 2010, of computer-based training; this is inadequate for the employee's position.

During our previous site visit, we noted that our review of the training records for the 11 OPD PETs revealed that while all received adequate training for their jobs in the past two years, training in 2011 was generally absent. We noted that if this trend continued, OPD could fall out of compliance with Task 43. The Training Commander advised that a revised training plan for PETs has been implemented in which PETs will attend the two days of the officers' CPT that relates to their assignments, and that the Department is making arrangements to rotate PETs through the Crime Lab. In our review of the 11 PETs' training records, we found that two had already attended the officers' CPT. We found all (100%) PETs were adequately trained.

Overall our review concluded that 103 (98%) of the 105 training records we examined were in compliance with Task 43 requirements. Thus, OPD continues in compliance.

We noted in our last report that we regard the negative trend in training PETs as serious and one that needs to be corrected to ensure that the Department remains in Phase 2 compliance with this requirement. During this reporting period, we reviewed the PET records to determine whether progress had been made in this area. The attendance of PETs in the officers' CPT is certainly one avenue through which evidence technicians can be exposed to training that will assist them in their jobs. The periodic assignment to the Crime Lab should not only enhance their skills and

understanding of the collection and preservation of evidence – but could build bridges between the PETs and Crime Lab personnel. We will again review evidence technicians’ training during our next site visit in order to determine if progress has been made.

Training is critically important – particularly in times of diminished resources. We learned that the Department is planning to conduct a needs assessment to ensure that its existing training is focused on its most urgent needs. Every hour spent in training removes an officer or employee from his/her work and therefore, all training should be focused on the Department’s most critical needs. A process that takes into account all the Department’s strengths and weaknesses, and identifies training needs that are the most important, is critical to a successful training program.

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

(Negotiated Settlement Agreement X. B.)

Comments:

Only two provisions of Task 45 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. 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 IAD database, 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 July 1, and September 30, 2011. This query identified 38 cases containing 56 sustained findings.

During our most recent site visit, we reviewed the IAD database and found that 54 had the dates of discipline letter and the discipline imposed listed. According to the Department, the other two sustained findings (in one case) lacked this information because IAD returned the case to the division-level investigator for additional work. A third record contained only a notation "Suspension days," but no indication of how many days were imposed. Thus, three of the records pertaining to the 56 sustained findings were incomplete, but only one record was incomplete for which there was no adequate explanation. Thus, 55 (98%) of the records contained the full record – including the discipline imposed, the dates of the disciplinary conference and disciplinary letter, or an adequate explanation for why the data was not on the list.

OPD is in compliance with 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 in 47 (94%) of the 50 sustained findings in which discipline was required and recorded, the discipline fell within the Discipline Matrix in use or it was a reasonable application of discipline justified by an analysis of the facts of the case. We note that the Department is not bound to its Discipline Matrix, but when it finds it necessary to go outside of the range specified

for a particular violation, it must present a reasonable justification for doing so. In the following three cases, the discipline imposed was insufficient:

1. In one case, an officer who, in the past, was the subject of a number of complaints involving demeanor and harassment of citizens, was ordered to record his citizen contacts following the PAS Activity Review Panel. An integrity test revealed that the officer appeared to have had more contacts than recordings. A subsequent investigation determined that on a number of occasions, the officer made contacts with citizens but failed to record them. The officer's explanations included "his battery may have ran [sic] out," the contact may have been "too quick for him to activate his recording device," and "there should be recordings." However, none could be located, and the officer had "no recollection" of the incidents. Further, he apparently remembered recording some incidents for which no recordings could be located. On six days selected for close review, the investigator found CAD entries indicating that the officer made a total of 43 contacts, but only 15 recordings could be located.

The officer was sustained for 314-39.2, Performance of Duty for which the penalties range from counseling and training to a two-day suspension. The officer was given a written reprimand. The allegation that the supervisor failed to discharge his responsibilities was unfounded.

Rather than 314-39.2, Performance of Duty, a more appropriate type of misconduct description would be 314-30.1, Insubordination – Failure or Refusal to Obey a Lawful Order, for which the penalty range was a three-day suspension to termination. By placing the violation in 314-39.2, the Department was able to stay within the Matrix and avoid a more severe sanction. This type of shopping for the violation that fits the penalty that management desires to impose on a particular officer undermines the integrity of the discipline system.

2. A second case involved an officer who was asked for his name and badge number during a chaotic situation following a shooting where an angry crowd had gathered. The officer was sustained for 398-76.2, Failing to Accept or Refer a Complaint, and 398-77.1, Failing to Provide a Name and Badge Number. The Matrix penalties for these violations range from counseling and training to a five-day suspension (for the first offense); and a three-day suspension to termination (for the first offense), respectively. The officer was given a written reprimand for the 398-77.1 violation, where the minimum Matrix penalty is a three-day suspension. The chaotic crowd was cited as the primary reason for selecting a penalty outside of the range of the Matrix.

3. A final case involved an officer's third preventable automobile accident for which the Matrix penalty range begins at a three-day suspension. A two-day suspension was imposed without justification – beyond noting that the officer had displayed “remorse,” an “open attitude,” and “full acceptance of the responsibility of his actions.” Such justification is too weak to remove a penalty from the range specified in the Matrix.

During the period of July 1, through September 30, 2011, OPD decided and reported seven cases following Skelly hearings. Our review revealed that six of the seven cases were decided after Skelly hearings on reasonable grounds; in all six, the original discipline was upheld or the modification to the discipline was minor and reasonable.

In one case, however, we disagree with the Skelly result. In that case, a supervisor with over 20 years' experience was assigned to prepare a written report involving a citizen's complaint lodged against an officer. The complainant alleged that one officer had not acted to address a fight she was involved in with another woman. She also said that a second officer was a “dirty cop” who took drugs from people and forced prostitutes to perform oral sex. The supervisor, in reporting the complaints, made only a brief mention of the “dirty cop” allegation and did not provide enough detail for IAD to recognize there was an allegation of serious criminal behavior by an OPD officer. The allegations only came to light when IAD listened to the recording of the interview. A two-day suspension, which is within the Matrix for 314.39-2, Performance of Duty, was reduced at a Skelly hearing to a written reprimand. While the initial discipline and the final result both fell within the Matrix, if is the Department were serious about addressing officer misconduct and requiring supervisors to supervise their subordinates, this failure would not have been treated so lightly.

OPD is in partial Phase 2 compliance with Task 45.

Compliance Status:

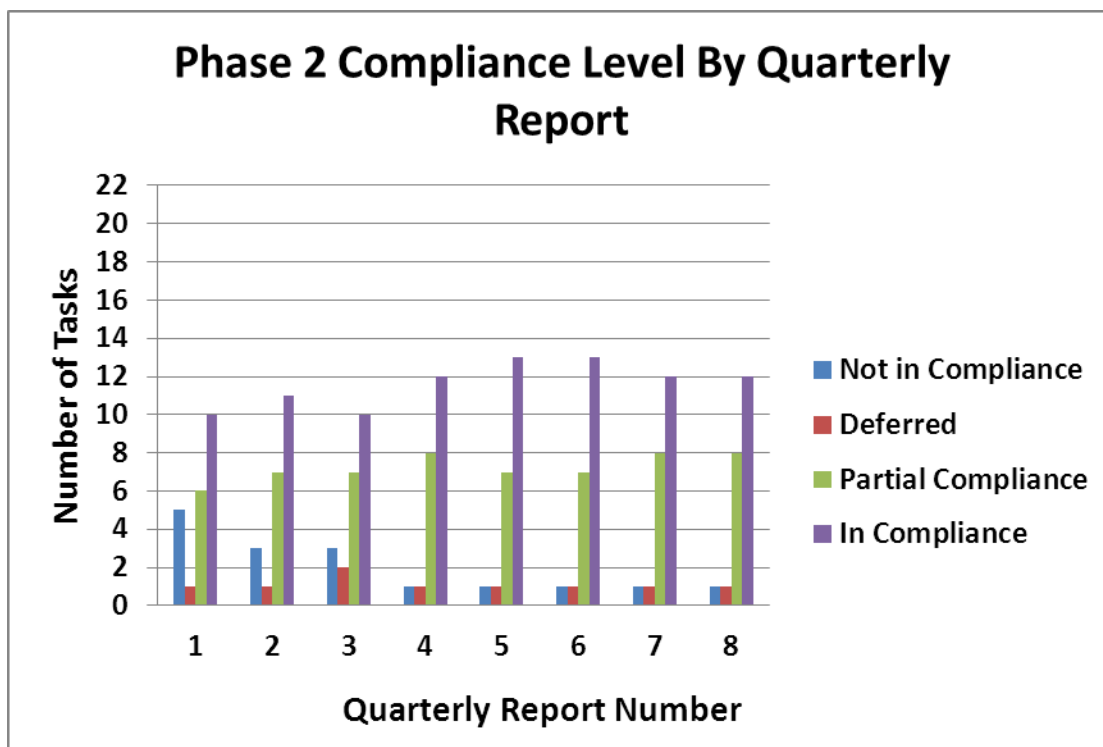
Phase 1: In compliance

Phase 2: Partial compliance

Section Three

Conclusion: Critical Issues

This is our eighth quarterly report. The status of compliance with the 22 active requirements of the Negotiated Settlement Agreement is shown for all of our quarterly reports in the graph below. The graph shows that no improvement in overall compliance levels was achieved during this reporting period, although as noted above, changes in two individual findings offset each other. The current stagnation followed a decline from the highest level, when 13 Tasks were found in compliance. Even change prior to that was marginal, at best, with the number of Tasks reported as in compliance growing only slightly from the 10 that we identified as in compliance during our first quarterly visit two years ago. We continue to be seriously concerned with the Department's limited progress.



In our reports, we always seek to identify and summarize issues that appear to thwart the Department's progress toward compliance. Thoroughness now demands redundancy. The problems noted in our last report remain as barriers to progress. Supervision and the review of work by officers remains a concern. Too often, reports lack sufficient precision and detail. Inadequate documentation continues to be a limitation. The failure to quickly rectify data problems with the risk management system is an important issue. While we can expect that

technological problems will occur in any complex information management system, we are concerned that solving these problems was not of sufficient priority to the Department to prevent the lengthy period of loss of functioning of the risk management system, and the resulting retreat from compliance with the related NSA Task.

We are left to summarize these issues by once again noting the Department's apparent difficulty in recognizing a problem, engaging in a problem-solving process, and staying focused until the problem is resolved.

As we have done in earlier reports, here we use appendices to address issues that are not part of our regular report of Task assessments. This report contains two appendices that address issues not examined in previous quarters.

In Appendix A, we discuss how the Monitoring Team will address the policing issues associated with Occupy Oakland. This has been prompted by deep concerns over what we observed regarding these events, and by the reinforcement of those concerns through our preliminary analyses. We note that we will conduct a review of Occupy Oakland issues, which are related to the Negotiated Settlement Agreement, as part of our next regular quarterly report that will cover the period from October 1, through December 31, 2011. Our report will reflect our established compliance assessment methodology and procedures. We also note that although the law enforcement activities associated with Occupy Oakland may be regarded as unusual or even extraordinary, those circumstances have no bearing on our review standards or on our expectations regarding compliance with the NSA Tasks.

Appendix B addresses issues identified in our earlier analyses of stop and frisk data and related IAD cases. These issues concern police-initiated stops and searches that are associated with parole and probation. We use the word "associated" here because, as the analysis shows, there are a significant number of stops in which police officers do not have complete or reliable knowledge of the probation or parole status of the individuals involved. This raises issues about the justification and appropriateness of some of these enforcement actions. Overall, the analysis shows that this is an area in which there is considerable ambiguity – and, potentially, significant problems. These stops and searches should be the subject of additional review, improved training, and increased supervisory concern.

As we complete this report, we cannot help noting that, in our two years on task here, we have reported little measureable progress by the Department. We also remind ourselves that our task should, in fact, be quite simple: We monitor a process initiated with an *agreement* between the Parties about what would be done. It would be difficult for anyone to explain – let alone justify – the current state of affairs.

As we take note of the current condition, we are also struck by seemingly contradictory sentiments. We see new opportunities for progress under new leadership in the Department. This is a time to expect recommitment to the agreed-upon process of reform. We welcome that. At the same time, we cannot ignore the reality of the numbers or the recent events that have

garnered so much public attention. The events around Occupy Oakland appear to raise some serious concerns about the capacity of the Department to, on its own, adopt and hold true to the best practices in American policing. We will consider the issues posed by the Occupy Oakland events in more detail in our next report. For the moment, we find ourselves facing an uncomfortable reality: The path forward is not clear.

Appendix A

The Negotiated Settlement Agreement and Occupy Oakland

As noted earlier in this report, as the Monitor appointed by the Federal Court in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, I have the responsibility to oversee our Team's assessment of compliance of the City of Oakland and its Police Department with the Tasks agreed upon by the parties in the Negotiated Settlement Agreement (NSA). This includes those Tasks now identified as active Tasks, and described in detail in the body of this report, as well as those Tasks not reviewed each quarter but still subject to periodic assessment to assure continued compliance. The wide range of law enforcement policies and practices subject to review under this Agreement includes the activity associated with what has become known as "Occupy Oakland."

Our goal in this appendix is make clear our intentions to review these activities in the appropriate timeframe, using the methodology established in our regular reporting processes. As such, the review will be incorporated in our next quarterly report, which will cover the period from October 1, through December 31, 2011. We appreciate that the relevant activities have involved both the Oakland Police Department and a large number of other police agencies that participated under agreements for mutual aid. Since all of these activities occurred under the auspices of the City of Oakland and its Police Department, we regard all of the activities as appropriate subjects for review under the NSA.

We also note that unusual circumstances posed by the events surrounding Occupy Oakland do not relieve the Department, in any way, of any of the requirements of NSA compliance. Instead, it is precisely in such times that the reforms agreed upon in the NSA are at their point of greatest significance, as they govern the behavior of the Department and its officers.

Members of the Monitoring Team were present in Oakland during the period from October 25, through 28, 2011; and from November 14, through 18, 2011. Additionally, the local Monitoring Team member was present throughout the October through December Occupy-related activity. During the relevant time periods, we met with police command staff and local officials, and made observations on the street. Following those time periods, Team members reviewed reports and videos from official and unofficial sources. The review of relevant documentation is continuing in preparation for our next quarterly report.

Based on our preliminary examination of the police activity connected with Occupy Oakland, we have concluded that this appendix – as well as a complete analysis, which will be included as a special section in our next report – are appropriate and necessary. We were, in some instances, satisfied with the performance of the Department; yet in others, we were thoroughly dismayed by what we observed. I cannot overstate our concern that although progress on compliance has been slow, even those advancements may have been put in doubt in the face of these events.

At this time, our specific but limited goal is only to note the issues that we regard as relevant to our NSA monitoring role and upon which we expect to report in our next report. Our areas of concern may expand as our assessment progresses, but they clearly involve the NSA Task areas noted below.

We will assess the extent to which NSA requirements are met regarding use of force. These range from concerns with consistency with Departmental policy, through reporting requirements and investigations. Similarly, we will be concerned with Tasks that address reporting misconduct by police employees, including the processes related to complaints and Internal Affairs investigations and discipline.

We will also focus on Tasks that address the supervisory span of control and the required ratio of supervisors and officers. Our concern will also focus on the unity of command requirements, as they address issues of coordination and control involving police personnel serving under mutual aid agreements.

Monitoring Team members will also be concerned with the extent to which the documentation of the relevant events indicates compliance with requirements regarding the adequacy of training, particularly as it pertains to crowd control and policing demonstrations. The adequacy of training with neighboring agencies will also be examined.

We will examine the risk management database to ensure that the reports required by the NSA and OPD policy have been prepared and entered into the system, and that they have been used in the review of officers to determine if any exceed existing thresholds and should undergo supervisory review as required by OPD policy.

We will also examine the risk management review process to assure that the supervisory review process – and its consideration by OPD command staff – incorporates reports resulting from Occupy Oakland activity and that appropriate assessments are made; and when appropriate, results in intervention and monitoring consistent with NSA requirements and OPD policy.

After more than eight years under Federal Court supervision, we cannot help but view the events of Occupy Oakland as a test of the reform mettle of this Department. As the Monitor, I regard it as my responsibility to carefully, but forthrightly, assess the Department's performance in this test.

Appendix B

Parole and Probation Searches

Over the course of our tenure monitoring compliance with the NSA, we have noted the high incidence of searches conducted by OPD personnel based on a citizen's status as a parolee or probationer. While we acknowledge that OPD officers may lawfully conduct these searches, we also recognize that the searching of any person by police officers is a serious matter requiring officers to exercise sound judgment and discretion as to who they will search and as to when, where, and how these searches will be conducted.

Our review of these searches over the past several reporting periods found a number of instances where officers making these searches used good judgment and sound reasoning; however, we also noted instances of concern. For example, we noted situations where there was no documented reason for the stop and/or search of the person; where the searches were not justified because the subjects were, in fact, not on parole or probation; or where the subjects did not have care and control of the areas being searched. We also noted instances where even though the searches may have been justified, there were tangential issues of concern – such as damage to property, use of force, or searching areas beyond the authority of parole and probation conditions – that resulted in complaints.

These concerns prompted our collective review of instances involving searches of individuals on parole or probation. These instances were included in the samples we routinely review or in requested supplementary samples primarily related to field stops, arrests, and Internal Affairs complaints.¹⁹ The results of our review of these samples are outlined below.

Field Stops and Searches

Our largest number of events applicable to this review was derived from our sample of 400 Field Contact Cards, 58 of which we identified as being directly related to the detention and search of individuals who were on probation or parole. Of these 58 detentions:

- Fifty-three (91%) subjects were Black; two (3%) were white; and three (5%) were listed as other.
- Seven (12%) subjects lived in the area of the parole/probation stop.
- Thirty-three (57%) were pedestrian encounters; 16 (28%) were vehicle stops; and nine (16%) were bicycle stops.

¹⁹ The samples of cases for review are drawn for the purpose of assessing compliance with NSA Task 5: Complaint Procedures for IAD; Task 18: Approval of Field-Arrest by Supervisor; and Task 34: Vehicle Stops, Field Investigation, and Detentions.

- Twenty-three (40%) subjects acknowledged, when asked, that they were on parole or probation; officers indicated that they had prior knowledge that the individual was on parole or probation in 17 (29%) instances; and officers learned of the individual's status via computer records in 16 (28%) instances. Two (3%) Field Contact Cards contained no information indicating how officers learned of the individuals status.
- The individual's status was confirmed via computer check in 44 (76%) instances; there was no computer check in seven (12%) instances; and in seven (12%) other instances, we were unable to determine whether the individual's status was confirmed via computer check.
- Fifty (86%) subjects were searched; five (9%) were not. In three cases (5%), we were unable to determine if a search took place.
- Fifty (86%) subjects were not arrested; eight (14%) were arrested. A majority of those who were arrested were arrested for outstanding warrants.
- Five (9%) stops resulted in searches of residences. On three occasions, subjects were transported from the area of detention to search a residence, which resulted in two searches; in one instance, there was no search conducted. An additional three residences were searched without the parolee or probationer being present; OPD officers conducted a total of five (9%) residence searches.
- Six (10%) subjects were stopped and detained for no other reason than they were believed to be on parole or probation. In another 11 cases (19%), we were unable to determine the initial reason for the stop based on the information provided.

Arrest-Approval by Supervisors

Our second largest number of events applicable to this review was derived from our sample of 70 arrests reports and one Level 4 use of force report, from which we identified 22 arrest situations directly related to an individual's status as a parolee or probationer. One of these incidents involved a use of force (pointing of a firearm). Of these 22 arrests:

- Twenty (91%) of the arrestees were Black; one (5%) was Asian; and one (5%) was listed as other.
- Fourteen subjects (64%) lived in the area of the arrest.
- Three (14%) were pedestrian encounters; 10 (45%) were vehicle stops; one (5%) was a bicycle stop; six (27%) were listed as "other" (warrants, etc.); and we were unable to determine the nature in two cases (9%) based on the documentation provided.
- Eleven (50%) of the arrests were the direct result of a parole or probation search, or the execution of a warrant that led to criminal charges based upon what was found.

- Eleven (50%) of the arrests included an additional charge of a parole or probation violation, incidental to the arrest.
- Sixteen (73%) of the subjects were searched. We were unable to determine, based on the documentation provided, if the remaining six were searched.
- Three (14%) residences were also searched.
- A supervisor reviewed or approved the arrest in 18 (82%) of the cases.

Similar to our findings throughout this review, we noted a number of instances where OPD officers' actions were clearly justified; however, we also noted arrest situations that were of concern, which we summarize below:

- A subject was riding a bicycle (described as riding or loitering) for approximately two to three hours, in what was described as a known high drug activity area. At one point, the subject was observed talking with an unknown Black male. The officers initiated a stop, and during the encounter, asked the subject if he was on parole or probation. He replied in the affirmative, whereupon he was searched with negative results, but placed in the rear seat of the police vehicle. As he was being released, officers reportedly noticed a small balloon believed to contain powdered heroin on the ground where the subject was exiting the car. The officers, noting in their reports that they had noticed nothing on the ground when placing the subject in the car, attributed the balloon to the subject. The officers again searched the subject and found nothing of evidentiary value; however, they charged the subject with felony possession of heroin and a parole violation. The loitering that led to the stop and detention was not charged. The arrest was approved by a supervisor.
- An undercover officer reportedly requested that uniformed officers conduct a parole search of a subject's person and vehicle based on his prior arrest/contacts with the subject; his apparent knowledge, training, and experience regarding the behavior of narcotics dealers; and the verification that the subject was on active parole. Officers made the requested stop, but reportedly did so based on information by the undercover officer that he witnessed the subject in possession of marijuana. This leaves an inconsistency between the basis for the stop provided by the undercover officer and the officers making the stop. Regardless, the subject was found in possession of a small amount of marijuana and was charged with felony drug possession and a parole violation. The arrest was approved by a supervisor.
- An undercover officer observed a subject holding his hands in his waist area and believed that he may have been armed. After observing the subject get into a vehicle and allegedly run a red light, the officer requested a vehicle stop by uniformed officers, who conducted a felony stop. The subject was on parole. As a condition of his parole, he was

to stay away from the area, and he was therefore arrested for violating the stay-away order; he was also charged with a felony violation of parole, and a felony violation of probation, following which officers conducted a parole search of the house the subject was seen entering and exiting that day. The residence belongs to the subject's grandmother, who indicated that her grandson did not reside there, but visited occasionally. Nothing of evidentiary value was found. There is no indication that the subject's address of record was searched. The arrest was approved by a supervisor.

Internal Affairs Complaints/Investigations

Our final area of events applicable to this review was derived from our sample of 16 closed Internal Affairs Division investigations.²⁰

Five cases were directly related to one's actual or alleged status as a parolee or probationer. They are briefly summarized below:

- In one case, officers responded to a residence for the express purpose of conducting a probation search of an individual. The subject was not present, but his mother arrived on the scene as the officers were leaving. The officers advised her that they had the right to search her son's room even though the son was not at home. While she reluctantly allowed the officers into her house and they searched the son's room, she filed a complaint afterwards. The officers' actions as they pertain to the search were exonerated.
- In another case, officers attempted to effect a vehicle stop on what was essentially an occupied, illegally parked car. The driver admitted to being on probation, and officers elected to conduct a search of his person and his vehicle. Seeing the driver handcuffed and detained, approximately 15 family and friends of the driver exited the house he was parked in front of. One of these individuals was arrested for interfering with the search by refusing to step back, and the officers used force to effect the arrest. The original driver was not charged and was released. The arrestee complained that his arrest was not justified, and that officers used excessive force when taking him into custody. Both of these allegations were not sustained.
- In another case, officers were conducting a narcotics investigation and using a confidential informant to make controlled purchases. The subject who allegedly sold narcotics to the confidential informant was researched, and the CORPUS/LEWI

²⁰ Based on the relatively high incidence of such cases in our random samples of Internal Affairs Division investigations, we specifically asked for all cases closed during this review period which met the following criteria: (1) case description contained the keywords "parole" or "probation" or "search;" (2) alleged violations of: Performance of Duty -- Intentional Search, Seizure, or Arrest; or Performance of Duty -- Unintentional/Improper Search, Seizure, or Arrest. We identified 16 such cases. An initial review of the sample revealed that 11 cases did not have a parole or probation search as a causal factor for the encounter/complaint. In several cases, the term "search" referred to a search warrant or a search incidental to arrest. In other cases, a notation that a complainant was on parole or probation resulted in the case being included in our sample, even though the status was provided for informational purposes only. Five cases were directly related to one's actual or alleged status as a parolee or probationer.

(Criminal Oriented Records Production Unified System/Law Enforcement Warrants Inquiry System) database indicated that the subject was on probation. While it appears that the investigation was sufficient to prepare a search warrant for approval, the supervisor and his Crime Reduction Team elected to conduct a probation search of the residence. The subject claimed illegal search, excessive force, and evidence planting. During the course of the investigation, it was determined that the supervisor and an officer were aware that while CORPUS/LEWI showed that the subject was on probation with a search clause, CRIMS (Consolidated Records Information Management System) did not indicate that the subject was on probation. When asked why he did not obtain a search warrant, the sergeant responded that the use of the probation search granted the officers broader scope to search within the residence. The IAD investigation found that the sergeant did not meet his supervisory responsibility in that when he knew about the discrepancy regarding the subject's probation status, he should have taken additional steps to make a more accurate determination. However, then-Chief Batts overturned the sustained finding.

- The remaining two cases are somewhat related, in that in each case, the complainant took exception to being asked if s/he was on parole or probation.
 - In one, an officer elected to stop a driver after running her license plate and coming up with a “near miss” for a warrant. He asked her if she was on parole or probation, and she took offense at the question. She was not detained or charged. The officer recorded his conversation with the complainant, and a demeanor allegation was sustained based on the content and tenor of the interaction.
 - In the other case, a traffic stop, the officer asked the driver if he was on parole or probation. Again, the driver was upset by the inquiry, and ultimately lodged a complaint. The officer ran the driver's name, and believing he was on parole, elected to detain and search him. After the driver was in the rear of the police car, the officer realized he had misinterpreted the information on his computer, and the driver was not on parole. An improper search allegation was sustained, but a demeanor allegation stemming from the inquiry regarding the driver's status was unfounded.

Observations and Concerns

We understand that OPD officers are accorded by law a great deal of authority with respect to parole and probation searches. Nonetheless, based on our review of the above-referenced cases, we note the following observations and concerns:

- When officers have a greater amount of discretion, proper supervision and training become more critical in ensuring that discretion is applied uniformly and in accordance with Department expectations. We noted several cases in which it appeared that supervisors merely signed off on reports, rather than evaluating the propriety of searches and correcting deficiencies in the documentation.

- There appears to be a potential disparate use of these searches with respect to race. The overwhelming number of cases we reviewed involved Blacks.
- It appears that OPD officers routinely ask citizens if they are on parole or probation, even when there is no independent justification for the inquiry. This practice can have a chilling effect on police-community relations, and resentment over these inquiries can – and does – result in citizen complaints.
- Even when parole or probation searches are justified, citizens not subject to these search conditions are often collaterally impacted. For example, areas not under the care and control of parolees or probationers, including homes where they do not reside, are sometimes searched. These searches are sometimes conducted without the parolee or probationer present.
- Officers may rely on the authority afforded by these searches to the exclusion of other commonly accepted law enforcement practices such as obtaining a search warrant. The parole or probation search becomes a shortcut to more sound, but more time-consuming, investigative strategies.
- We noted at least two cases in which officers stopped and detained individuals and conducted parole or probation searches at the direction of undercover officers, rather than based on their own observations. While the practice of having uniformed officers make proxy stops for plainclothes or undercover officers is common, these cases must be scrutinized to ensure that there is justification for stops, and that there is consistency in the documentation by all officers involved.

Appendix C

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
CORPUS	Criminal Oriented Records Production Unified System
CPRB	Citizens' Police Review Board
CPT	Continued Professional Training
CRIMS	Consolidated Records Information Management System
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
LEWI	Law Enforcement Warrants Inquiry 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
PDRD	Portable Digital Recording Device
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