



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

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Independent Monitor

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Section One

Introduction

This is the tenth 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 tenth quarterly site visit from May 14, through 18, 2012, to evaluate the Department's progress with the NSA during the three-month period of January 1, through March 31, 2012.

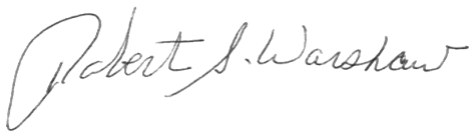
In the body of this report, we again report the compliance status with the remaining active Tasks of the Agreement. By the end of the seven-year tenure of the previous monitor, the Department was in full compliance with 32 of the 51 required Tasks, and in partial compliance with 16 additional Tasks.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

During this reporting period, we continue to find the Department in Phase 1, or policy, compliance with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD is in compliance with 13 of the 22 remaining Tasks; this is one more than we found in compliance in the last three reporting periods.

During this reporting period, we examined inactive Task 51, which requires that the Office of the Inspector General (OIG) conduct several annual audits in various areas related to the NSA. We reviewed the audits conducted by OIG in 2011 and thus far in 2012, and consulted with OIG personnel regarding audits that are currently in progress or planned for the remainder of 2012. Based on this information, we find the Department in compliance with this Task. However, as we have discussed with the Department, we encourage OPD to conduct more regular mini-assessments or inspections to help determine in "real time" if the Department is in compliance with various Tasks. We will closely monitor this effort, and continue to provide technical assistance to the Department in this area.

The site visit that led to this report occurred at a time of substantial tumult – in the midst of investigations associated with the earliest Occupy Oakland activities. Since then, the critical results of the external investigation have been released to the public. During the same time period, officer-involved shootings – and the Department's response to those incidents – garnered the attention and concern of the Monitoring Team. (See Appendix A.) The state of Oakland's reform process – now nearly a decade old – remains very much in doubt.

This is the environment in which we – the Court; the Monitor; and the leadership of the Police Department and the City of Oakland – all find ourselves. These reforms are at the heart of generally accepted practices among police organizations in this country. Despite years of involvement in this NSA, the Department remains behind: almost stagnant, as agencies throughout the country succeed in their commitment to enforce the law while simultaneously respecting the Constitutional rights of those they serve. We can only hope that the Department, its leadership, and the citizens of Oakland can find a common course that adheres to the principles of collaboration and partnership, and in so doing, forge a new future for the City of Oakland.

A handwritten signature in cursive script that reads "Robert S. Warsaw".

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Monitor

Monitoring Team:

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

From May 14, through 18, 2012, we conducted our tenth 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 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 a slight improvement in compliance. We continue to find OPD in Phase 1 compliance with all 22 of the remaining active Tasks. The number of Phase 2 compliance findings has increased from the last three reporting periods; we now find the Department in Phase 2 compliance with 13 (59%) of the 22 active Tasks. This results *only* from the return to compliance of Task 41, which addresses the use of the Personnel Assessment System (PAS), the Department’s risk management system. In addition, Task 40, which addresses the state of the database itself, is now in partial compliance – after two reporting periods of being not in compliance. The Department is in partial compliance with eight (36%) Tasks. We again deferred a compliance determination with one Task (Task 42: Field Training Program).

During our most recent quarterly site visit, and in the weeks that surrounded it, the City of Oakland and its Police Department were again engaged in activities associated with what is now known as Occupy Oakland. As we have noted previously, those activities are subject to the Task requirements of the NSA. Following the Federal Court order of May 31, 2012, our Team is conducting two supplemental examinations: first, of the issues raised by the independent Frazier Group report on the Occupy Oakland events of October 25, 2011; and second, of the “systemic problems that exist in the process by which [OPD] evaluate[s]” its officer-involved shootings. Appendix A of this report provides an overview of our assessment of the implications of the Frazier report. Between this and our eleventh quarterly report, we will file an additional report with the Court on these subjects.

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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 Training	√	√			
Task 45: Consistency of Discipline Policy	√	√			
<i>Total Tasks</i>	22	13	8	0	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 93% of Class I cases and 98% 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

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.”

internal investigations resulting in formal findings (unfounded, sustained, exonerated, or not sustained) that were approved between January 1, and March 31, 2012, 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 69 Class I cases we reviewed, 64, or 93%, were in compliance with established timelines – the same percentage as we found during the last reporting period. Of the 94 Class II cases we reviewed, 93, or 99%, were in compliance with established timelines – a slight increase from what we found during the last reporting period. Of the 40 sustained findings that we reviewed, 100% were in compliance with established discipline timelines.² This is the eighth 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). For the first reporting period since the beginning of our tenure, there was such a proliferation of cases – resulting primarily from the high number of complaints received by the Department following the Occupy Oakland-related events of January 28, 2012, and surrounding dates. During this reporting period, according to OPD, IAD opened 548 cases, an increase from the 403 cases opened during the previous reporting period. To address this volume, OPD added two sergeants to serve as investigators in IAD; and developed plans to add additional personnel and

² We reviewed 25 cases involving sustained findings; several cases involved more than one sustained finding.

contractors in future reporting periods. In addition, during this reporting period, the Chief approved 418 cases, an increase from the 336 cases approved during the previous reporting period.

OPD is in compliance with Task 2.3.

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, including how the Department handles the proliferation of cases related to 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 sixth reporting period, we determined that OPD had improved its integrity testing, and we found the Department in compliance with this Task. OPD has maintained compliance with this Task since that time.

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 17 integrity tests that were conducted from January 1, through March 31, 2012. Our review focused on the scope of the investigations, whether OPD conducted integrity tests on members and 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 17 tests conducted during this reporting period, seven 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 Our review of these tests found that all seven focused on individual members and employees of OPD who were the subjects of high numbers of allegations of misconduct over the prior 18 months; all seven planned tests passed.

The remaining 10 integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies.⁴ Eight of these tests were conducted on officers who were the subjects of repeated allegations, and addressed the sources of the repeated allegations. As a result of the 10 selective tests, two cases were referred to IAD for investigation, and three officers were assigned to receive additional training. The remaining five tests passed.

One selective integrity test involved ensuring that officers attended Traffic Court as mandated by their subpoenas. ITU initiated this test based on a February 2, 2012 media report in which a local Traffic Court judge stated that OPD officers fail to show up in his courtroom “about 40 percent of the time.” ITU monitored four court dates in February and one in March 2012. Over these five days, 28, or 88%, of the 32 officers who were required to appear in Traffic Court did so. This was an improvement from the ITU subpoena tests conducted in 2009 and 2010; however, the ongoing IAD investigation of this issue continues to identify issues with the subpoena tracking system within OPD.

Another selective integrity test conducted by the Bureau of Field Operations reviewed the use of Portable Digital Recording Devices (PDRDs) by Field Training Officers to determine if an officer was utilizing his PRPD properly pursuant to Departmental policy. OPD's review of the videos showed that one officer may have conducted an improper search; and that a second officer used profanity. The issue of the improper search was forwarded to IAD for investigation.

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.

Seven selective integrity tests involved 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. Following the tests, three officers received entries in their Supervisory Notes Files; and were assigned to retraining for specific job tasks, including tactics and officer safety, report-writing, and the use of profanity. In one case, officers failed to take a runaway report for a missing 14-year-old when they should have, pursuant to both Departmental policy and State Penal Code. ITU conducted the investigation and made the required notifications. The officer failed the ITU test, and the case was referred to IAD for a complete investigation.

The types of integrity tests described above support the intended purpose of the Integrity Testing Unit.

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.

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 ITU and the IAD Commander to discuss the Department's efforts to strengthen the 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 subjects 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.

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

- **Special Order 8552:** As previously reported, OPD published Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual*, on February 1, 2007. This policy incorporates the requirements of these subtasks.
- **Communications Division Policy & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007. This policy incorporates the requirements of these subtasks.

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

Task 4.7 requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt (compliance standard: Yes/No). If IAD is not available, the supervisor or commander shall contact IAD at the start of the next business day. To assess Phase 2 compliance for Task 4.7, we reviewed 92 Daily Incident Log (DIL) entries and a random sample of 75 IAD case files that were approved during the period of January 1, through March 31, 2012. 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%).⁶ This subtask is intended to ensure that OPD provides the proper level of investigation for each complaint, and does not resolve meritorious complaints of misconduct without determining – and documenting – whether the OPD member or employee committed misconduct.

During this reporting period, from a sample of IAD cases that were approved between January 1, and March 31, 2012, we reviewed 28 cases in which at least one allegation was resolved via administrative closure, 10 cases in which at least one allegation was resolved via informal complaint resolution (ICR), and four cases in which at least one allegation was 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 informal resolution. For example, two involved slow or no response to calls for service, both a consequence of higher priority calls taking precedence.

⁶ 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.

Four complainants expressed displeasure over a perceived lack of investigative resources devoted to their reports of incidents such as crimes or motor vehicle accidents. In another case, a complainant took exception to tow fees associated with the recovery of a stolen vehicle. In another, a caller complained that the resources devoted to Occupy Oakland were adversely impacting police presence in areas not affected by the protests.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. Twenty involved anonymous complaints and are discussed in Task 7.3. In two cases, IAD determined that OPD personnel were not involved. In one case, the Alameda County Sheriff's Office initiated a traffic stop that was the subject of the complaint. In the other, a case alleging civil rights abuses, IAD concluded that the Oakland Unified School District Police Services and the Alameda County Sheriff's Office were the agencies involved. In two other cases, complainants alleged that they were not provided with *Miranda* warnings.

We determined that one case was improperly administratively closed. A complainant took exception to a particular comment she thought that a dispatcher made. While the complainant agreed to an ICR, on one portion of her complaint (response time), she insisted that IAD conduct a formal investigation of the demeanor allegation. An investigator listened to recordings of the complainant's eight calls to the Communications Divisions, and concluded that no employees made the offending remark. Yet rather than reaching an appropriate unfounded determination, IAD administratively closed the allegation.

The remaining allegations that were administratively closed comported 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. In two cases, the complainants' versions of events corresponded with reports completed by the involved officers. One involved the stop of a possible truant, and the other pertained to the issuance of a parking citation. In another case, the police/complainant interactions were captured on two officers' Portable Digital Recording Devices (PDRDs), negating the need for some interviews. In one case – a complaint that a dispatcher failed to transfer a caller to a supervisor as requested – a summary finding was not approved by the IAD commanding officer, who required that a dispatcher be interviewed before a determination was reached. Summary findings 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 5.⁷ 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 88% 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 12% 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.

⁷ Pursuant to an agreement among the Parties, Tasks 5.7- 5.11, and 5.13-5.14 are not subject to active monitoring.

- **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 92 entries that appeared on the Daily Incident Logs (DILs) that were completed between January 1, and March 31, 2012. We identified these by randomly selecting 23 dates during this reporting period and reviewing the entries for each of those dates. (Some selected dates had no entries, but most 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 92 DIL entries, only one case was received by IAD, which, in turn, notified the Communications Division. In the remainder of the cases, either supervisors 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 15 such service complaints. During this reporting 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%). OPD has added a checkbox to the DIL to record such delays. In addition to reviewing this section 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). Of the 92 DIL entries we reviewed, we noted only one case in which there appeared to be greater than a three-hour delay in contacting the complainant. The reason for the delay was not documented. A complainant, who OPD appears to be familiar with because of his repeated calls, called in a complaint at 09:55 hours. After no apparent response to his initial call, he called back nearly 10 hours later, at 19:30 hours.

He spoke to a supervisor nine minutes later. Despite this isolated case, OPD remains 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 92 records in our dataset, we identified 12 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, a citizen complained to officers that he felt they were harassing him. The officers called their supervisor as required, but the complainant left the scene prior to the sergeant’s arrival. In the remaining seven cases, the complainants terminated their calls without providing a means to re-contact them. Most of these were anonymous complaints called in on OPD telephone lines without automatic number identification (ANI). 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 reporting period, all of the logs we reviewed contained the required information (“unknown” was checked in 27 records). However, we believe that “unknown” was inappropriately checked in one record. In the case noted above, where the complainant left prior to the sergeant’s arrival, the involved officers were listed as unknown, though they appeared to be the officers who called the sergeant to the scene. Despite this record, OPD has a 99% compliance rate during this reporting 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 January 1, and March 31, 2012. We identified

only three such complaints using the IAD database. We reviewed these complaints 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.”

Only one complaint was lodged contemporaneous to the arrest of the complainant. Although no Class I misconduct was alleged, the supervisor nonetheless responded to the scene and to the jail. The complainant, who was highly intoxicated at the time, alleged false arrest in a domestic violence incident. The case was ultimately administratively closed after the complainant withdrew his complaint.

OPD learned of the other two complaints well after the associated arrests. One case involved Class II allegations (care of property), and was lodged 11 days after the incident. In the other case, the complainant filed a lawsuit, which triggered a corresponding IAD investigation. OPD determined that the complaint was actually against the Oakland Unified School District Police Services and the Alameda County Sheriff’s Office, and administratively closed the case.

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 January 1, and March 31, 2012. 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.

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 88% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 23, or 92%, in compliance with *all* of these required elements. This is only the second reporting period in which OPD reached the compliance standard for the requirements of these subtasks.

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 reporting period, 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 88% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 22 cases, or, again, 88%. In one case, we believe that the finding should have been not sustained rather than unfounded. In another case, an allegation that an officer smelled of an alcoholic beverage and had possibly been drinking, the finding was unfounded, despite the fact that the investigator wrote, “The investigation did not disclosed [sic] sufficient evidence to determine if [] did or did not consume an intoxicant or was under the influence of an alcoholic beverage.” This finding should have been not sustained. The third case involved the inappropriate posting of defaced photographs on a bulletin board; this case is discussed in detail in Task 33. At some point, a failure of supervision allowed for the offensive photographs to be posted and/or remain on display in a well-traveled area of the Police Administration Building (PAB), and the investigation failed to appropriately address this issue as it pertains to named and unnamed supervisors.

We noted one case in which the recommended findings of the investigator were overturned during the review process. An officer admitted to using profanity after being assaulted by a suspect as the officer attempted to place him in a police vehicle. The officer volunteered this information during his interview – it was not an allegation made by the complainant. While the investigator recommended a sustained finding, the Chief deemed it a Class II violation discovered by OPD, and directed that the officer be counseled. This is in accord with existing policy (MOR 314.48).

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 that we deemed appropriately administratively closed (there were six such allegations), our sample of 25 cases contained 102 allegations that received dispositions as follows: 28 exonerated; 10 not sustained; 51 unfounded; and 13 sustained. As noted in Task 5.18, we disagree with some of these findings. Specifically, we believe that two of the unfounded dispositions should have been not sustained, and one of the not sustained findings should have been sustained. Accordingly, OPD has a 96% compliance rate, and is in compliance with this subtask.

Task 5.20 requires that the IAD Commander review all “filed” cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed

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

During our most recent site visit, we met with the Bureau of Risk Management Deputy Chief, who advised that as of that date, 14 cases were classified as tolling, a significant increase over the last reporting period. Seven involved civil litigation against the City and/or the Department; and three involved the unavailability of the subject or witness officers. Four were awaiting the results of ongoing criminal investigations, and relate to Occupy Oakland incidents. All cases appeared to be tolling according to policy. These cases are reviewed with the Chief during his weekly IAD meetings and are 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. Five of the 25 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. (These do not include the cases referenced in Task 4, for which summary findings were also appropriate.) In all cases, available documentation negated the need for certain interviews. For example, in two cases, Communications Division recordings were sufficient to reach a determination in complaints against dispatch personnel. In another case, PDRD video and officer reports were utilized in lieu of interviewing all of the involved officers. In yet another case, the IAD commanding officer approved a summary finding after a witness (the complainant’s daughter) and one involved officer were interviewed. Their statements were consistent and the complainant had a diagnosed mental illness.

OPD is in compliance with Task 5.21.

OPD is in partial Phase 2 compliance with Task 5.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

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

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 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 92 Daily Incident Log entries from January 1, through March 31, 2012; 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 five such cases. Of these, one case resulted in a finding of

unfounded. The allegation occurred during a neighbors' dispute, and both of the involved officers activated their Portable Digital Recording Devices (PDRDs). The recordings refuted the complainant's allegation.

Another case was administratively closed. A sergeant initiated the investigation after learning from an officer that a traffic violator asked the officer if his name and badge number were on the citation she had received. OPD contacted the citizen, and clarified that she had no complaint against the officer – she was merely asking if he was identified on the citation for court purposes. The officer replied that the information was indeed on the ticket, and determined that there was no MOR violation.

Three cases resulted in sustained findings; and in each, OPD imposed discipline. In one case, an arrestee advised a sergeant that he believed an officer used excessive force during his arrest. The sergeant failed to initiate the complaint process; after an investigation that resulted in a sustained finding, he received a five-day suspension without pay. In another case, a civilian employee complained of retaliation for engaging in union activities. While it was determined that retaliation did not, in fact, occur, a lieutenant failed to document the employee's initial complaint and received a five-day suspension. In the last case, an arrestee alleged that officers planted evidence on him in a prior case, unassociated with the event the subject was being arrested for. A sergeant failed to document this as a separate complaint, and received a letter of reprimand.

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.⁹*

(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 January 1, and March 31, 2012. 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 28 cases as potential anonymous complaints during this reporting period. After review, we determined that 20 were true anonymous complaints, and the complainants were not identified during the course of the investigation. Five of these cases were related to Occupy Oakland protests, and are further described below. In the remaining cases, the complainants were identified and cooperated to some extent with the investigations.

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

The majority of anonymous complaints were received via telephone calls to the Communications Division. Additionally, two were received in person, one was called into the Police Administration Building (PAB) front desk, and one was received via telephone call directly to IAD. One was referred from the California Highway Patrol, and one was sent to IAD via e-mail.

Where possible, complainants were asked to provide corroborating evidence. In nearly all cases, the complainants terminated the contact before OPD could secure additional details of the complaint. However, the complaints were investigated to the extent reasonably possible as required by this subtask. IAD or field supervisors attempted to re-contact complainants if a call-back number was available, even if the complainants expressly stated they wished to remain anonymous. In one case involving an arrest of an Occupy Oakland participant, the female complainant only gave her first name. IAD checked arrest records on two separate occasions, but her rather unique first name did not match any given by arrestees. In the case received by e-mail, IAD investigators attempted to identify a telephone number based on the name provided in the correspondence, but the fairly common name resulted in several hundred possibilities.

All of the anonymous cases were closed via administrative closure. While we were initially concerned by the high incidence of administrative closure, each met the criteria for such closure, and most lacked the details to identify the specific alleged misconduct and/or OPD personnel involved in the incidents. One complainant alleged that an unknown sergeant was rude, but failed to provide any details regarding the perceived rudeness or any information that could help to identify the sergeant. In another case, a caller using a payphone complained that “all female officers and dispatchers were not responsive to his needs.”

Four of the complaints we reviewed involved the same officer, and were apparently lodged by the same complainant. The nature of the allegations – such as claiming the subject officer is a threat to national security – suggest that the complainant might be a bit unbalanced.

Four cases did not, in our opinion, rise to the level of a complaint. The fact that OPD classified them as complaints is not a compliance concern; we merely make the observation that the complaint process could have been avoided. Two involved Occupy Oakland. In one, a caller expressed displeasure over the noise made by the police helicopter; and in the other, a caller observed that the resources being devoted to Occupy Oakland lessened OPD’s ability to address crimes like murder and robbery. Another case contained one allegation from an anonymous source: “OPD is racist.” In the last case, Communications Division personnel recognized the voice of a chronic complainant who they know by name, and as he routinely lodges complaints, OPD generated complaint paperwork even though he never identified himself or made any type of complaint on this particular call.

As referenced above, five cases stemmed from Occupy Oakland activities. Three are described above, involving the arrest of a female, the helicopter, and the diversion of resources. The two remaining cases involved a consolidation of several hundred complaints that met certain criteria previously approved by the Monitoring Team to address the high volume of complaints received by those not involved directly with the event, but who complained about activities they observed

primarily via the media. OPD received hundreds of such complaints from across the country and several other countries around the world. One case consolidated 548 complaints, and the other, 94. Not all complainants were anonymous, but many of them were. The protocol approved by the Monitor allowed, in part, for administrative closure if complainants:

- a) Were not directly involved; and
- b) Were not a direct witness; and
- c) Did not have direct contact with a person who was present at Occupy Oakland events who may have been subject to police misconduct; or
- d) Only knew of the event via media: newspapers, television, radio, blogs, etc.

These two consolidated cases comported with the protocol.

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 during this reporting period, we examined 92 Daily Incident Log entries from January 1, through March 31, 2012; a random sample of 75 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between January 1, through March 31, 2012; and the five sustained Class I investigations that were approved by the Chief between January 1, through March 31, 2012.

One of the five sustained Class I cases was troubling. IAD opened an investigation in response to a legal claim made by five plaintiffs against 20 officers and one supervisor. The five claimants alleged that they were attending a peaceful demonstration protesting the verdict of a BART police officer's trial when OPD violently attacked and falsely arrested them. A portion of the investigation focused on the arrest of a subject for attempted arson. The arresting officer claimed that, while on the skirmish line, he observed the subject ignite a match near his backpack; and feared that he intended to cause harm to officers. The IAD investigation found that the subject was pulled through the skirmish line and taken into custody. The allegation against the officer for false arrest was sustained due to the lack of any evidence to support the attempted arson arrest of the subject; the officer did not find any flammable items or matches on the subject's person.

In this case, we were concerned that the supervisor failed to review the arrest of the subject, causing him to be jailed unlawfully. IAD concluded that the allegations against the sergeant were unfounded because the officer did not tell him about the lack of any evidence to support the charge of attempted arson; however, the supervisor did not *ask* about any evidence. The subject was arrested and held in custody until the District Attorney dropped the charges. The failure of IAD to hold the sergeant accountable for failing to determine if there was any evidence to support the charge directly lead to the alleged Constitutional violation of the subject's rights.

The remaining four IAD investigations involved sustained Class I offenses; however, the supervisors were not found to have failed to properly supervise their subordinates. Our review of the investigations found that OPD evaluated the actions of the supervisors, and the Department's conclusions were supported. We will closely monitor the manner in which IAD continues to evaluate supervisors' responsibility in future IAD complaints, and we encourage IAD to do the same.

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.¹⁰

(Negotiated Settlement Agreement IV. A.)

Comments:

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

Discussion:

As previously reported, OPD published an arrest approval and report review policy, DGO M-18, *Arrest Approval and Review in the Field* (May 13, 2004; and updated October 1, 2005), which

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

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.

During this reporting period, OPD provided us with a copy of Training Bulletin I-O.4, *Legal Aspects Of Searching Persons On Parole And Probation*, effective November 23, 2011. The purpose of the Training Bulletin is to guide OPD members on documenting the means of confirming the status of the parolee or, if a probationer, their status and whether an appropriate search clause exists. The Training Bulletin also provides guidance in situations where inconsistent information is discovered in AWS, CORPUS, or CRIMS regarding a probationer's status.¹¹

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 99 adult arrest reports documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); as well as documentation for 32 arrests resulting in an investigated use of force; that occurred between January 1, and March 31, 2012.¹² 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 99 adult arrest reports, we excluded 64 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 remaining 35 adult arrests, one case did not document the presence of witnesses or no known witnesses; and another arrest was not approved by a supervisor. This represents a 94% compliance rate relating to adult arrests for this subtask. In addition, of the 32 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.

Our review revealed an overall 97% compliance rate for Task 18.2.2. OPD is in Phase 2 compliance with this requirement during this reporting period.

¹¹ Automated Warrant System, Criminal Oriented Records Production Unified System, or Consolidated Records Information Management System.

¹² There were no arrests involving juveniles in our sample during this reporting period.

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.

Arrests of Parolees and Probationers

In our eighth quarterly status report, we closely examined a sample of instances where OPD interacted with and searched individuals who were found to be on probation or parole. Our analysis identified several serious and concerning issues. During this reporting period, as we reviewed data for compliance with Task 18, we identified six arrests that were directly related to a subject's status as a parolee or probationer. One of these incidents involved a use of force (pointing of a firearm). Of these arrests:

- All six subjects lived in the area of their arrests. Five individuals were Black, and one was Hispanic.
- Three individuals were identified via specialized OPD teams conducting probation compliance checks, two involved pedestrian encounters, and one resulted from officers who smelled marijuana emanating from a parked vehicle.
- OPD searched all six of the subjects, and three of their residences. Five criminal arrests directly resulted from a parole or probation search that led to the seizure of illegal drugs or paraphernalia.

We were troubled by one of the arrests – a self-initiated field investigation by OPD patrol officers who smelled marijuana emanating from the cracked window of a parked vehicle. In this incident, after officers encountered resistance from the occupants of the vehicle, an officer gave pepper spray bursts to the faces of two women who were in the car.

Officers conducted two probation searches for the subject in custody. The first search occurred at a residence that was not listed in the police reports as the subject's current address. (Officers obtained the address through an Automated Warrant System [AWS] check; it was no longer valid for the subject.) After announcing their presence, the officers entered the residence, without a search warrant, through an unlocked rear entrance door. An officer entered an upstairs bedroom, and pointed his duty weapon at a woman who had been sleeping with her two-year-old child. Three other officers on the scene had their duty weapons un-holstered. No apparent exigency existed: the subject probationer was already in police custody; and of no threat to the officers. The woman in the residence did not know the arrested probationer and was unrelated to the incident.

It is troubling that the command review of this incident did not address this issue in terms of the training, investigative, or tactical concerns it raises. The gun-pointing was not assessed during the review process, and the involved officer's actions were found to be in compliance with OPD policy. Additional police investigation could have prevented this unfortunate incident from occurring.

At the second residence, listed in the use of force report, OPD also conducted a probation search. The occupants of the residence confirmed that the suspect resided at the location. Later, one of the involved officers gave a complex explanation – based on his supposed experience with probationers and parolees using multiple addresses to evade police – as a justification for searching the first residence.

These two cases once again raise our concerns relating to so-called probationary searches of private residences without assuring that there is a legal basis for doing so. Although OPD officers have a legitimate right to search the residences of probationers, this right, in our opinion, is not unlimited and should be exercised with great caution.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with OIG to discuss any recently completed or upcoming Departmental audits of Task 18, and to determine if the implementation of Training Bulletin I-O.4 has had any operational impact related to arrests made for probation and parole violations.

Task 20: Span of Control for Supervisors

Requirements:

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

- 1. Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
- 2. During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and*

operational needs, whether or not to backfill for the absence of the sergeant on leave.

3. *If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
4. *If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Comments:

During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with Task 20. We did not assess Tasks 20.2, 20.3, and 20.4 during the last reporting period because OPD recently (February 2012) implemented a new, tiered system of supervision in BFO, using relief sergeants. As we noted in our last report, this change will affect significantly the way in which we assess these subtasks.

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 Department's 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 continues to function as a "master detail" that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. OPD remains 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%); **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%); and **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%).

In February 2012, the middle of the current reporting period, OPD implemented a new, tiered system of supervision in BFO, using relief sergeants; this change will affect significantly the way in which we assess Tasks 20.2, 20.3, and 20.4. For this reason, for the second consecutive reporting period, we did not assess these subtasks during this reporting period. As a result, OPD maintains our compliance findings from the eighth reporting period. Therefore, OPD is not in compliance with Task 20.2; and is in compliance with Task 20.3 and 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 222 total operations conducted between January 1, through March 31, 2012, 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%). An Area Commander “backfills” a sergeant’s slot when the primary, or assigned, sergeant is unable to supervise his/her squad on a short-term basis. However, the Chief or his designee (generally, the Assistant Chief or Deputy Chief) is required to determine any loans or transfers for *long-term* backfill.

We reviewed the Department’s weekly Personnel Orders issued between January 1, through March 31, 2012, 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 noted above, in February 2012, the Department reorganized its patrol division to implement a team supervision model. In the next reporting period, we look forward to reviewing the impact of this change on Task 20.

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 the last reporting period, as the Department was not in compliance with 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, the sample we requested for review (73 total) included: one Level 1; 13 Level 2; 18 Level 3; and 41 Level 4 reports completed between January 1, and March 31, 2012.¹⁴

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 three of the 73 incidents in our sample, a supervisor was promptly notified regarding the force incident. The three incidents involved Level 3 uses of force. The supervisors in these cases were not notified for periods ranging from one-hour-and-15-minutes to one-hour-and-eight-minutes following the incident. OPD has an overall 96% compliance rate with this subtask. OPD is in compliance with Task 24.1.

¹⁴ We requested 84 use of force reports, but determined that 11 of the reports were completed outside of the current reporting period.

Task 24.2 requires that in every reportable use of force incident, every member/employee on the scene of the incident at the time the force was used, reports all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor (compliance standard: 95%); and **Task 24.3** requires that OPD personnel document, on the appropriate form, every use of force and/or the drawing and intentional pointing of a firearm at another person (compliance standard: 95%). All of the use of force reports, crime reports, and supplemental reports for the incidents in our sample met these requirements. 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 73 use of force incidents, and 42 of those incidents involved officers pointing firearms. The 42 events included five Level 2, three Level 3, and 34 Level 4 uses of force. The 42 incidents involved 135 instances of OPD officers drawing and pointing their firearms.¹⁵

Overall, we determined officers' pointing of their firearms to be appropriate in 121, or 90%, of the 135 instances we assessed.¹⁶ We were unable to find the pointing of a firearm necessary or justified in 14 instances, or 10%, of the 135 instances we assessed, due to the absence of any indication that the officer(s) or others faced imminent threat of harm.

The total racial breakdown for the 42 use of force events reviewed is as follows: Black, 64%; Hispanic, 27%; White, 2%; Asian, 7%; and Other, 0%. 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 the following: Black, 91%; and Hispanic, 9%.

In all cases, the 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 are 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.

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.

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

Tasks 24.5, 24.6, and 24.8 require certain notifications in uses of force relative to officer-involved shootings and the use of lethal force.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%). During this reporting period, we reviewed one Level 1 use of force report that involved the use of a drag-stabilized round or beanbag. Due to the less lethal application of force in this incident, the requirements of the above subtasks are not applicable. 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.

During this reporting period, we discussed with OPD command personnel supervisory deficiencies relating to the pointing of firearms, such as: failing to include the Constitutional basis for the encounter; failing to address officers' not exercising other force options available prior to resorting to a lethal option; and the lack of assessments, during the use of force report review process, of the appropriateness of the pointing of firearms.

OPD is in partial Phase 2 compliance with Task 24.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

¹⁷ Task 24.7 is no longer applicable.

Next Steps:

We will continue to meet with OPD to provide specific feedback and 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.

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 eighth 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 74 use of force reports, including: two Level 1; 13 Level 2; and 18 Level 3 use of force reports; and a sample of 41 Level 4 use of force reports; that were completed between January 1, and March 31, 2012.

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 during this reporting period, we reviewed documentation for 32 Level 1, 2, and 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, five Level 3 incidents in our sample were downgraded to Level 4 use of force incidents by supervisors who were 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 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, one Level 1, two Level 2, and six Level 3 reports were not submitted in a timely fashion. The remaining 65 completed use of force incidents were submitted within the time limits established by this subtask. As noted above, Level 2 and Level 3 force investigations are considered timely if they are completed (including Division Commander approval) within 15 calendar days of the incident, with one documented approved extension by the Division Commander allowed. We only consider extensions if they were approved by the appropriate personnel *prior* to the pre-extension due date. The chronological logs that we assessed for this reporting period often lacked adequate – or legible – documentation to show that the extensions were both properly requested and authorized by command personnel. Once an extension is authorized, new due dates must be established and the timelines must be met.

During this reporting period, we noted that, in some cases, supervisors addressed discrepancies in the reports, and the use of “boilerplate” or “pat” language by investigators. In addition, we noted slight improvement in the documentation of physical evidence, the inclusion of photographs, analyses of relevant evidence gathered, and consideration of tactical and training issues.

Although we noted some instances in which supervisors addressed officers who did not use their Portable Digital Recording Devices (PDRDs), we are troubled by the large number of officers opting not to activate their recording devices when required. OPD mandates, by policy, the activation of PDRDs by officers in certain circumstances. We are further troubled that many supervisory personnel routinely address these violations of policy merely as training matters requiring counseling and an entry into officers' Supervisory Notes Files.

OPD's overall compliance rate for timeliness is 89%, and for NSA-required elements is 100%. OPD is not 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. As we have noted previously, 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 currently identifying new trainers for future use of force courses. 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 eight incidents that involved the unjustified pointing of firearms. These eight 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.

We also noted an OPD policy concern related to the pointing of firearms. OPD Training Bulletin TB III., *Use of the Taser*, H.1., paragraph 10., which states "Officers who are designated to deploy less-lethal weapons such as a Taser shall be provided with close lethal cover immediately in front or next to them. This cover will ensure the officer has lethal force protection if confronted by an armed subject and the less-lethal weapon either fails or cannot be deployed effectively." We reviewed one Level 3 use of force where a Taser was deployed on an unarmed subject on a busy street in a business district of Oakland. The cover officer deployed lethal

cover. Another officer did not pull his firearm due to safety concerns for citizens in close proximity. OPD policy is not clear on this issue and only broadly states “absent exigent circumstances.” The policy only mentioned confrontations with armed subjects.

In another Level 3 event, the officers opted not to use lethal cover involving an unarmed subject when deploying the Taser. We agreed that the level of force used to gain control of the situation under review was appropriate in this case; however, during the review process, the investigator identified a training point, and the involved officer was counseled on not obtaining lethal cover before Taser deployment, and an entry was made in his Supervisory Notes File. We are concerned that OPD is sending mixed messages relating to lethal cover when using less-lethal options that do not involve armed subjects or an imminent threat to officer safety.

OPD’s compliance rate for this subtask is 89%. 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 1, 2, and 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. However, we noted two areas of concern resulting from the same use of force report reviewed. The incident, discussed further in Task 18, subjected an uninvolved woman and her two-year-old child to an officer pointing his firearm. The review process failed to address the gun-pointing, and the use of force investigator justified why the incident occurred based on his own experience with probationers. The investigator should have investigated why the incident occurred and not attempted to provide an explanation for the officer’s conduct. The command review process did not address this issue.

OPD’s compliance rate for this subtask is 97%. 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 discuss with OPD the use of force command review process, investigator impartiality, and lack of use of the Portable Digital Recording Devices (PDRDs) by officers in violation of OPD policy.

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 15 incidents that were heard by the board during this reporting period of January 1, through March 31, 2012. We determined that 12, or 80%, of the 15 FRB reports were timely. One of the three late cases was not heard by the FRB until 17 months past the 90-day due date. Additionally, according to the documentation we reviewed, the §3304 date had been expired for eight months, preventing the initiation of any disciplinary action if deemed appropriate. In this case, the FRB directed the following deliverables: (1) the Assistant Chief shall develop better methods to handle use of force investigations and reporting for large scale operations; and (2) the Training Commander shall convene an Incident Board of Review to replace FRBs when force is used in large-scale operations. OPD is not in compliance with this subtask.¹⁸

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 15 FRB reports we reviewed contained recommendations noting that the use of force was in or not in compliance with policy. We noted in one case that the Deputy Chief admonished the investigator from commending officers who have actions under review by the FRB and IAD. We discussed this concern with OPD during our most recent site visit. Supervisors commending officers prior to completion of a use of force or IAD investigation diminishes the impartiality of the investigation, and provides officers who are found to be in violation of the Manual of Rules a defense to violations of OPD policy. This practice weakens the officer accountability process. During our next site visit, we will ascertain if OPD is implementing any additional training or corrective action to prevent this problem from interfering with the internal investigation process. All 15 FRB reports that we reviewed 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 two cases during this reporting period in which that determination was made, and neither case was referred to IAD. In one of the cases, involving the use of palm strikes, the FRB requested a supplemental interview with the involved officer. During the interview, the officer and his attorney contended that no discipline could be imposed, claiming that the officer was initially informed that he was exonerated – and that only after further review, was the case not sustained. Based upon the interview, the FRB found the officer’s use of palm strikes to be not in compliance, but the FRB never referred the case to IAD. OPD is not in compliance with this subtask.

¹⁸ After we submitted a draft version of this report to OPD, the Department provided us with information listing dates for the completion of the IAD investigations associated with the three FRBs that we found to be not in compliance with Task 26.1. As this information was not included in the initial documentation we were provided, we deem OPD to be not in compliance with this subtask during this reporting period.

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 training issues; and discussed improper tactics, use of force reporting, activation of the PDRD, and the need for 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 emphasized the need for canine officers, supervisors, and commanders to consider modifying the canine announcement to fit the incident in question – for example, circumstances in which a warning announcement could 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.

OPD is in partial Phase 2 compliance with Task 26.

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 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. 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 ninth 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, two OPD officers observed a speeding vehicle with a non-functioning rear brake light and conducted a vehicle stop for the traffic and equipment violations. The officers were unable to confirm the identities of the two subjects – the driver and front seat passenger – because they could not provide valid identification. The passenger exited the vehicle and fled. One officer stayed with the driver, while the second officer pursued the fleeing man on foot. During the foot pursuit, the officer caught the subject, a

brief struggle ensued, and the subject allegedly drew a loaded revolver or the revolver fell to the ground from the subject's person. The subject allegedly grabbed the firearm, and the officer fired three shots that struck the subject, who died at the scene.

- In the second, during an Occupy Oakland protest, a subject kicked an officer who used a bullhorn to deflect him. A second assisting officer struck the subject in the face two times with a closed fist. A third OPD officer fired a less-lethal drag stabilized round or bean bag round to the right thigh of the subject, knocking him backward. The subject became unconscious and was taken to the hospital.

We verified that the two EFRBs held during this reporting period both fell within 45 days of the completion of the use of force reports covering the incidents. However, as noted in Task 25, the fatal officer-involved shooting investigation was untimely.

In addition to reviewing reports, during our February site visit, we observed one EFRB to verify the Department's compliance with this Task. The EFRB determined that the officer's use of lethal force, resulting in one fatality, was in compliance with OPD policy. Yet this determination was troubling, for several reasons: the finding was not based on the preponderance of the evidence standard; the board presenter did not address the officer's statement that the deceased pointed a gun at him – an assertion that conflicted with PDRD still-frame analysis; the investigator inappropriately offered an explanation for the officer's conduct, but the EFRB did not address this; and the investigator did not discuss the officer's failure to provide first aid on the scene. The EFRB hearing ultimately focused on lesser procedural issues instead of the justification for the use of lethal force.

After deliberating, the EFRB found by a majority but not unanimous vote, the officer's use of lethal force to be in compliance with policy. The EFRB's finding was forwarded to the Chief, who reversed the board's decision.

We are currently reviewing 10 of the Department's most recent officer-involved shootings to assess if the troubling findings described above exist in any of those cases; the results of this review are forthcoming.

OPD is not in compliance with this subtask.

Task 30.2 requires that the EFRB has access to recordings and/or transcripts of interviews of all personnel on scene, including civilian witnesses, and is empowered to call in any OPD personnel it believes should testify (compliance standard: Yes/No). In the documentation we reviewed, recorded statements and/or transcripts were available from all officers on the scene and other personnel needed to testify. OPD 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 all but one case were in compliance with Departmental policy. The Chief endorsed the EFRB findings within 60 days of the board's decision, and reversed the EFRBs finding of in compliance for an officer's use of lethal force that led to a fatality. The board identified the adequacy of equipment, tactics, analysis of each application of force, 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. We observed one EFRB – for an officer-involved shooting at an armed subject, and the use of the police vehicle as a lethal application of force – during our February 2012 site visit. 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 five 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 the Deputy Chief of the Bureau of Risk Management; and queried the IAD database to identify any cases with sustained findings that were approved between January 1, through March 31, 2012, that were applicable to Task 33. We identified and reviewed 37 cases with 51 sustained findings that were approved during this reporting period.

One of these cases was troubling. An employee observed that photographs of a Federal Judge and elected City official placed on a bulletin board outside the patrol line-up room in the Police Administration Building (PAB) had been defaced in a manner that IAD found to be racist, insulting, and inappropriate. The employee said that he reported the matter to a lieutenant, and

that the pictures were taken down within two days. The lieutenant advised that the employee alleged that his building access card had been cancelled as retaliation because he was a union steward, but the lieutenant denied that the employee made a complaint about the offensive photographs. The lieutenant was sustained for failing to take a complaint about the alleged retaliation, but not sustained for failing to report the offensive photos. IAD found insufficient evidence to determine whether the lieutenant had knowledge of the photos.

We note that the lieutenant was responsible for supervising his command and knowing what was occurring within it. There is little doubt that the incident was important to the complaining employee who photographed the postings. In fact, IAD found that an unknown person(s) had defaced the photographs. The defacing in a racially offensive manner of the photographs of public officials – or, for that matter, anyone – in the PAB strikes at the heart of the NSA.

In addition to the lieutenant to whom the employee complained, eight other lieutenants used the line-up room around the time of the alleged posting, and all eight claimed that they did not see it. Either they were incompetent and did not know what was going on in their commands; or they knew, failed to act, and then lied. The lieutenant failed to manage his command, and OPD failed to hold him accountable.

Despite this case, OPD remains in compliance with these subtasks.

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 13 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 six reporting periods, we found the Department in partial compliance with Task 34. We noted that officers increasingly entered the required stop data into the Field Based Reporting (FBR) computer system; however, we expressed concerns that the "reason for the stop" was not being clearly identified to support a Constitutional basis and authority for the stops.

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. 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 eighth 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 94% 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 seventh reporting period, OPD combined the Stop Data Form with the Field Contact Card in order to provide officers with a section upon which they could better articulate the totality of the circumstances supporting the stop. Our review of the implemented form during the current reporting period showed continued progress in the officers' articulation of the Constitutional standards requirement. Our review focused on the officers' articulation of the reasonable suspicion that existed *prior* to the detention that justifies the detention.

Since the implementation of the combined Stop Data Form and the Field Contact Card, we have noted that officers are not accurately recording the "reason for the encounter." Officers have been found to classify this based on the final disposition for the contact, or their perception of the anticipated reason. We are concerned that the reason for the encounter is not accurately being captured, and we find that this failure is significantly inhibiting the analysis of the data by OPD. The ability to properly search data regarding activities related to the stop is severely inhibited by the manner in which they record – or do not record – data when a group is stopped. We

encourage OPD to continue training and audits to ensure that the justification exists prior to the temporary detention and that the reason for the encounter is properly identified.

Based on OPD's failure to justify or adequately document the reasons for the stops in the samples we reviewed during the last five reporting periods, we again examined an expanded selection of pedestrian stops during this reporting period, and found that 94% identified the justification/reason for the stop. We will continue to monitor this issue closely.

OPD is currently revising a new Special Order that is intended to update DGO M-19, *Racial Profiling*. During the current reporting period and our most recent site visit, we provided substantial feedback on the policy's substance and language. After multiple efforts to clarify the legal standards for conducting a stop, we look forward to reviewing the final Special Order and observing subsequent training. 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. During this reporting period, we continued to experiment with the Quicksearch program and found that the stop data is summarized and easy to review. As noted above, in May 2011, OPD merged the Stop Data Form with the Field Contact Card, 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.

The Department produced multiple draft stop data summaries of the stop data collected between July 1, and June 30, 2011. Our review of these summaries found the data contained therein sufficient to suggest whether or not officers are engaging in disparate treatment of minority groups – or, for that matter, any specific sub-population – and to design an appropriate action plan accordingly. For example, we noted that the number of searches of persons within one sub-group is significantly higher than others; and, interestingly enough, that these searches appeared to form the basis for arrests less often than searches conducted in other sub-groups. While acknowledging that this raw data alone does not – and *should* not – form the basis to conclude that OPD officers are engaging in bias-based policing or racial profiling, it clearly indicates the need for OPD command staff to conduct further analysis and appropriately address any appearance of disparate treatment with explanation or intervention.

During our most recent site visit, we again met with OPD personnel responsible for this analysis and discussed with them how and why the Department should conduct further analysis of its stop

data. OPD did not produce any additional data collection analysis during the current reporting period. However, we were alerted to an issue with data collection that significantly impacts the value of the data, which we optimistically believed would be the basis for OPD compliance with this and related Tasks. We learned that when OPD officers interact with groups of individuals, they do not record the data on each and every person in the group, which leaves the global data used for analyses significantly flawed. We have discussed this issue in detail with Department personnel, and are hopeful that OPD will expeditiously implement corrective measures.

We have a significant interest in OPD resolving the above issue in order that it can conduct appropriate analyses and, where necessary, address the outcomes of its analysis to ensure 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 not in compliance with Task 34.3.1.

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. 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 32 use of force reports, including: one Level 1; 13 Level 2; and 18 Level 3 use of reports covering incidents that occurred between January 1, and March 31, 2012. (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 32 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%). During this reporting period, two incidents fell into this category; both incidents were properly documented in the reports. OPD is in compliance with Task 35.3.

Task 35.4 requires that use of force 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 the 32 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 an expanded 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 three cases that OPD considered as containing allegations of retaliation during the period of January 1, through March 31, 2012. We found that two of the three cases did not apply to Task 37 because they involved complaints lodged by citizens that an officer(s) “retaliated” against them. Such cases do 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.

One case involved an employee, a union steward, who alleged that he was retaliated against by a person unknown to him due to his participation in a protected activity (attending court proceedings for the union). The IAD investigation on this point was thorough and resulted in an unfounded finding.

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 OPD to be not in Phase 2 compliance as a result of persistent problems in accurately recording the number of arrests made by individual officers.

Although the problems were identified earlier, and rectified during the last reporting period, OPD remained out of compliance because the Department had not yet corrected the data file so that it was accurate and useable by the risk management system.

Discussion:

General Order D-17, Personnel Assessment Program (November 11, 2011) incorporates the requirements of Tasks 40 and 41. A revised version of the policy was recently completed and signed off by the Chief of Police. The policy reflects several changes, including changes in the review period from 30 months to 18 months, and the requirement that threshold analyses will be completed every six weeks rather than quarterly. The new policy also lowers thresholds for review based on Level 4 uses of force, and will support supervisory review based on referrals from the PAS Administration Unit. These and other changes draw on the Department's experience and analysis, and are consistent with the approach of continuous improvement that the PAS Administration Unit has worked to support. The Department has trained at least 95% of relevant personnel on the current policy. OPD, therefore, remains in Phase 1 compliance with this Task.

As noted in our previous report, the data problems had severely limited the utility of the risk management system. The major data problems were temporarily resolved by reverting to entering arrest data manually rather than automatically from the Alameda County data feed. There are, however, plans to automatically enter data into the County system from electronic reports completed by officers. With that, Oakland will join most other police departments in the County that have reliable systems for automatically uploading arrest data. According to the Department, these changes are expected to occur within the next two months.

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 material for each of the Tasks and subtasks. Our data request allowed for the replication and extension of the data analysis reflected in our earlier reports.

With regard to Phase 2 compliance, PAS records for the quarter of January 1, through March 31, 2012 indicate that data were entered for all of the fields required by Task 40 – including, as noted above, the arrest data. The required data for the quarter included reports of 1,116 uses of force. This is an increase of 8% from the last reporting period, for which there was an increase of 15% from the previous reporting period. The data for the current reporting period indicate that there were 3,656 arrests.

A further breakdown of the types of use of force shows that, for this reporting period, there were four Level 1 (up from three in the last reporting period); 28 Level 2; and 50 Level 3 uses of force. The table also shows an increase of 17% in Level 4 uses of force, to a total of 1,034. The Level 4 increase is the major contributor to the overall increase in reported uses of force. The data count for the current reporting period and the three prior reporting periods is presented in the table below.

OPD Performance Activity Comparison by Quarter				
Performance Activity	April 1 to June 30 2011	July 1 to Sept 30 2011	Oct 1 to Dec 31 2011	Jan 1 to March 31 2012
Level 1 Uses of Force	4	6	3	4
Level 2 Uses of Force	21	19	48	28
Level 3 Uses of Force	37	38	108	50
Level 4 Uses of Force	1154	1066	797	1034
Unintentional Firearms Discharge	0	0	0	0
Sick Leave Hours	9378.39	10406.31	12084.56	12734.56
Line of Duty Injuries	40	52	43	47
Narcotics Related Possessory Offenses Arrests	426	482	445	641
Vehicle Collisions	15	11	7	13
All Vehicle Pursuits	82	117	89	77
All Arrest	3374	3470	3402	3656
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	63	61	61	58
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	17	16	24	38
Awards	160	70	65	66
Assignment History	9498	9498	9498	9414
Case Evaluation Reports	629	321	193	209
Report Review Notices--Positive	2	0	1	6
Report Review Notices--Negative	0	0	0	1
Canine Deployments	92	112	71	96
Financial Claims	0	0	3	0
Internal Affairs Complaints	286	386	316	404
In-Custody Injuries	70	56	97	75
Civil Suits (Tort Claims)	32	7	22	11
Criminal Cases Dropped	0	0	0	20
O.C. Checkouts	42	41	34	55
Officer Involved Shootings	7	4	2	4
Rank / Class History	2336	2336	2336	2286
Training History	14159	21017	21084	26100
Supervisory Notes	3589	3338	3281	3568
Criminal Arrest Made Against OPD	0	0	0	0

The PAS Administration Unit continues to audit the database to assure its accuracy on a nearly daily basis. That work has repeatedly identified problems with the data and contributed to formulating solutions. We are pleased that, in recent months, the Department added to the unit two civilian staff members to support its functions. Undoubtedly, those functions will increase in number and complexity as system use expands. Most recently, officers have been permitted access to their PAS data and to comment on it for the record through their supervisors. At the time of our most recent site visit, these changes were too recent to evaluate.

OPD is currently in the process of considering significant upgrades to the early warning system database. This is likely to include new software. The preparatory work has included an analysis of relevant workflow from data collection through storage. The City also released a request for qualifications (RFQ) in a search for a technical consultant who will oversee the selection of a vendor for the new database system. Interviews of the three candidates who have submitted material were slated for June; we will report more on these developments in our next report. This work has great significance for the work of the PAS Administration Unit. As it relies on data collected by others, it is imperative that the system function well and that good working relations continue with the PAS Administration Unit data partners.

OPD has made progress in resolving the problems with the arrest data that removed the Department from compliance with this Task for the last two reporting periods. The Department's reversion to entering data by hand has served as an inelegant, but necessary, response to keep the risk management system functioning. OPD recognizes, however, that this is not a permanent fix; and is working to stabilize the database with electronic reporting. The current temporary solution restores the status of partial compliance, as further improvement hinges upon the implementation of the more complete data collection process.

OPD is now in partial Phase 2 compliance with Task 40.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial 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 our last report, we noted that we were overly optimistic in our expectations that the arrest data problems would be resolved quickly. As a result of lingering problems, it was not possible to identify officers for review based on ratios that required arrest data. The appropriate reviews could not be scheduled. We now note that the data problems were resolved, and the PAS Administration Unit has been able to initiate reviews that should have been requested earlier. The process is now current.

Discussion:

As noted above and in our last report, OPD revised and issued Departmental General Order D-17, *Personnel Assessment Program*. The risk management process is now operating under the revised policy. Based on the new policy and the related ongoing training, we again find OPD in continued Phase 1 compliance with this Task.

For this reporting period, we continued our examination of the stages of the PAS process consistent with this Task. We examined the threshold analyses that were performed for the period of January 1, through March 31, 2012. This included a review of peer-based threshold analyses completed by the PAS Administration Unit and the identification of officers meeting the single-event threshold. The unit's analyses also included reexamination of the data from the previous reporting period as a means of compensating for the earlier problems with the arrest data.

During this reporting period, 86 officers were initially identified as meeting PAS thresholds. This figure reflects the reanalysis of data from the period when some thresholds could not be calculated because of the previously noted data problems. Consistent with established practice, 23 officers were not selected for review based on recent review history. That left 63 officers for notification for review. We 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 select OPD units, including IAD and the Training Section.

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 the reports that were completed during the current reporting period. Our examination included

reviews of dispositions or follow-up reports on 36 officers. We again found that the documents provide sound descriptions of the officer/supervisor interaction and explanations for its current status. These meetings all document supervisory reviews of officers who have been selected for some form of action as a result of PAS reviews.

Our reviews of the risk management process focus on the selection of officers for review and the process of review by supervisors, and then the consideration of those reviews up the chain of command. For this reporting period, we examined the reports of 63 officers completed and/or signed during the quarter under review. In 26 of the cases (41%), the reviews were prompted by Level 4 use of force activity. In one of those cases, other uses of force combined with the Level 4 uses of force prompted the placement of the officer on intervention status.

Our examination of PAS reviews during this reporting period determined them to be generally satisfactory. First-level supervisors are providing adequate detail to justify their decisions and appropriate action. Some of those decisions are overturned under further review by the chain of command. Sound explanations are also provided for those decisions. The reviews continue to include analyses of officer histories of complaints and uses of force. The review also separately considers officer histories along all 20 risk indicators. The command review include not only the documentation and recommendations of the PAS review conducted by the first-line supervisors, but also a more general brief evaluation of that supervisor.

For the reporting period ending March 31, 2012, OPD concluded a total of 56 PAS reviews. Reviews are included in the table below only after they are signed off through the level of the PAS Review Panel. The table shows that superiors recommended that no action be taken in as many as 38, or 71%, of the 56 reviews. The table also shows that commanders disagreed with lower-level recommendations and prompted additional monitoring and supervision in only 16% of cases. Deputy Chiefs disagreed with the commanders' decisions in 18% of their decisions, and the PAS Review Panel suggested revisions in 16% of the findings of the Deputy Chiefs. This indicates that OPD may be beginning to recognize the importance of risk reduction. The value of the data in the chart below is in tracking data over time, and using it to increase the rigors of the review process as it serves the goal of risk reduction.

Summary of PAS Reviews and Recommendations 2011-12																	
	PAS Reviews Completed	Supervisor Rec. no action	%	Recognition	%	Supervisor Rec - Monitoring	%	Supervisor Rec - Intervention	%	Commander rec Concursw Supervisor	%	Dep. Chief Concursw Commander	%	PAS Panel Concursw DC	%	Pending	Number of personnel that exceeded a threshold
2011																	
January	11	9	82%	0	0%	2	18%	0	0%	10	90%	11	100%	10	90%	0	11
February	9	8	89%	0	0%	1	11%	0	0%	9	100%	9	100%	8	89%	0	5
March	17	10	59%	1	5%	4	24%	2	12%	17	100%	17	100%	17	100%	0	11
April	12	11	92%	0	0%	0	0%	1	8%	12	100%	12	100%	12	100%	0	18
May	10	6	60%	0	0%	2	20%	2	20%	10	100%	10	100%	10	100%	0	7
June	8	6	80%	0	0%	1	10%	1	10%	8	100%	8	100%	8	100%	0	7
July	11	7	63%	0	0%	4	36%	0	0%	9	90%	10	90%	10	100%	0	16
August	2	2	100%	0	0%	0	0%	0	0%	2	100%	2	100%	2	100%	0	23
September	19	13	68%	0	0%	5	26%	1	5%	18	94%	18	94%	19	100%	9	16
October	12	10	83%	0	0%	2	17%	0	0%	11	92%	11	92%	12	100%	0	26
November	16	11	69%	1	1%	2	13%	3	19%	15	94%	10	63%	12	75%	0	47
December	22	16	73%	0	0%	6	27%	0	0%	21	95%	19	86%	22	100%	0	14
Total	149	109		2		29		10		142		137		142		9	201
Average	12.4	9.1	77%	0.2	1%	2.4	0	0.8	6%	11.8	96%	11.4	94%	11.8	96%	0.8	16.8
2012																	
January	7	5	71%	0	0%	2	29%	0	0%	7	100%	7	100%	7	100%	7	14
February	5	4	80%	0	0%	1	20%	0	0%	2	40%	2	40%	2	40%	0	59
March	19	12	63%	0	0%	4	21%	3	16%	18	95%	17	89%	18	95%	33	7
Total	56	38		0		12		6		52		51		52		62	121
Average	14.0	9.5	71%	0.0	0%	3.0	23%	1.5	7%	13.0	84%	12.8	82%	13.0	84%	15.5	30.3

We also reviewed the important additional steps in the risk management process, including reviews of PAS data by command and the regular reports of supervisors regarding ongoing monitoring and intervention. These reports and the review of them also suggest the appropriate implementation and use of the risk management system. Our review also indicated the appropriate use of PAS when transfers and commendations are considered.

In summary, our analysis of PAS suggests that the risk management process is being used in a manner consistent with policy, even as the Department struggles with data issues; and, more importantly, as it confronts a variety of issues that bear directly on risk associated with uses of force and issues of crowd control. The juxtaposition of this reasonably smoothly functioning system and the magnitude of the coexisting risk issues should be considered carefully. It raises questions about both the meaning and value of compliance with the requirements of the NSA, as opposed to accomplishing meaningful substantive change. Perhaps the most clinical summary of the current condition would be to suggest that it raises the question of whether the concept of risk is being considered in far too narrow a context. With what should be seen as a circumscribed definition of risk, OPD returns to compliance with this requirement. At the same time, this

suggests the need for the Monitoring Team to continue to also consider the review and intervention records of officers identified with known instances that raise concerns about the appropriateness of the actions taken.

Compliance Status:

Phase 1: In compliance

Phase 2: In 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 will, of course, focus attention on the data questions that OPD has had to deal with over the past several reporting periods. We also continue to be interested in the Department's efforts to adopt and implement new technology that may help to stabilize the system. That will include considering new systems for maintaining the data, as well as new automation of arrest data collection with a return to using the county's database. Finally, as noted above, we will focus additional attention on the review and intervention histories of officers identified in recent reports of activities that raise issues related to risk.

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:

The previous monitor found that the Department was in compliance with all of Task 42 except for two areas – namely, the Field Training Officer (FTO) selection process, and ensuring consistency of training in the Academy and Field Training Program (FTP) for trainee officers.

Since no Academy was planned for the near future, in August 2009, 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. 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. As the program had been inactive and was reinstated only recently, when OPD was able to hire new trainees; we have deferred our compliance finding for Task 42 since the beginning of our tenure.

Discussion:

During the last reporting period, we learned that OPD was authorized to rehire 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. With the need for FTOs apparent, OPD selected and certified a group of FTOs. The Department received applications from 59 officers for the FTO position. A selection panel – composed of two Deputy Chiefs, the IAD Captain, three patrol captains, and two Field Training Officers – reviewed the candidates, assessed their qualifications, and made recommendations. The Chief ultimately approved 36 FTOs. The 10 trainees entered the FTO Program on February 4, 2012; and began their first week of field training.

During the last reporting period, we found that OPD had followed the FTO selection procedures required by the NSA. We deferred assessment of compliance, as the FTO Program had not fully resumed.

During our most recent site visit, we interviewed the Deputy Chief of the Bureau of Risk Management, as well as the captain and officer who are responsible for the Field Training Program. We also reviewed memoranda, evaluation forms, and other documentation.

While we continue to defer our assessment with this Task until the next reporting period, we note the following related to each Task 42 requirement:

- *Field Training Program Coordinator:* The Department has appointed an officer to serve as a full-time Field Training Coordinator.
- *Trainee Rotation:* Trainees are rotated every four weeks to a new assignment and new FTO. The trainees are provided an opportunity to raise questions and concerns that they have prior to rotation when they are interviewed by the FTO Coordinator.
- *FTO Participation Incentives:* Officers who serve as FTOs are paid incentive pay for their service. In addition, the FTO Program includes several incentives (e.g., chevrons, administrative days, and priority for selection as training officers) designed to encourage officers to participate.
- *FTO Candidate Nomination and Requirements:* As we noted in our last report, the process to select FTO candidates included their nomination and recommendation by their supervisors and field commanders and approval by the Chief. Recommended candidates

were required to have completed three years of service and have work records that demonstrated their commitment to community policing, and their problem-solving and leadership abilities. Complaints and use of force incidents were factors in their selection. In February 2012, we reviewed the IAD histories for the FTOs who were selected. We found that no Class I incident was sustained in the years 2009, 2010, or 2011 for any selected FTOs.

- *Decertification:* No FTOs have been decertified as a result of sustained disciplinary action, use of force, or other serious misconduct or criminal activity.
- *FTO Assignment:* Officers are assigned to FTO positions after successfully completing the FTO training course.
- *FTO Evaluation:* Trainees are evaluated by their FTO on a daily basis beginning with their second week of field assignment. The patrol sergeant prepares a weekly progress report; and at the end of each four-week cycle, the FTO prepares an End of Phase Report. Trainee officers anonymously evaluate their FTOs at the end of each phase. All evaluations are reviewed by the individual FTO's commander and supervisor, and reviewed and filed by the FTO Program Coordinator.
- *Daily Evaluation Audit:* The FTO Program Coordinator receives and reviews all daily evaluation forms and files them. The FTO Program Coordinator receives Daily Observation Reports (DOR) weekly. If a form is missing, the coordinator contacts the FTO and trainee to locate it.

In addition, during the past reporting period, the program audited two FTOs' Portable Digital Recording Devices (PDRDs) for one training week to determine if the FTOs were compliant with Departmental policy. The audit did not identify any issues related to the technology; however, in a consent search, one FTO failed to obtain the required additional clarification with the involved homeowner. The program scheduled additional training for this FTO to address this deficiency; and discussed the test and results with IAD.

- *Trainee Officer Assignment:* When an FTO is not available, trainees are assigned a different FTO, if one is available. If none is available, the trainee is assigned to a sergeant or non-patrol function. To verify that trainees are properly assigned, the sergeant completes a Daily Observation Report.
- *Field Commander and FTO Supervisor Training:* Officers selected to serve as FTOs, who had served in the program in the past, were trained in a 34-hour course held in December 2011. New FTOs received 50 hours of training during the same month. All sergeants and commanders to whom FTOs would be assigned were trained by the program in both group and individual sessions before they were assigned FTO duties.

- *Focus Groups:* The Field Training Program Coordinator is required to meet with a randomly selected group of trainee officers at the end of each phase and again six months after completion of the program, to determine the extent to which the Academy instructors and curriculum prepared the new officers for their duties. The coordinator and a Training Section representative met with a randomly selected group of trainees who had completed the first phase of their FTO training. They elicited the trainees' comments about their training and prepared a memorandum recording the meeting for the Deputy Chief, the Training Section Commander, and the BFO Commander.
- *Consistency of Training:* The results of these focus group sessions were reviewed at a panel meeting that included the Training Section Commander, the FTO Program Coordinator, the BFO Commander, and the Deputy Chief of the Bureau of Risk Management. The recommendations generated as a result of this focus group process and command panel review resulted in a recommendation for additional training in the OPD Transitional Academy; the Academy training will be increased from eight weeks to 10.

As noted above, the first cycle of the Field Training Program is not yet complete. Accordingly, we again defer a compliance finding with this Task.

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.¹⁹

(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 97% of the members and employees in our sample received the required in-service training.

¹⁹ The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

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, OPD is in continued Phase 1 compliance with this Task.

Task 43.1.1 requires that OPD’s training plan ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions (compliance standard: Yes/No). During the last reporting period, we learned that leadership of the OPD Training Section had changed, and a captain had taken command. During our most recent site visit, we learned that the leadership of the Training Program has changed again; another captain was assigned to lead the Training Section. We interviewed the new Training Section Commander, as well as other training personnel, and reviewed memoranda and other documents pertaining to the OPD Training Program. During previous site visits, we reviewed training schedules, course outlines, and lesson plans.

For this reporting period, we reviewed the training records of a stratified random sample of 100 OPD members and employees – including 74 officers, 14 sergeants, and 12 dispatchers; as well as all 12 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, 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 101 of the 112 members and employees in our sample received training appropriate to their jobs. In addition, eight employees were considered excused due to their medical leave, recent hiring, or limited duty status. Thus, 101 (97%) of 104 applicable members and employees in our sample received training appropriate to their positions. The following chart reflects the results of our survey.

	Excused	Records Reviewed	Training Received	%
PETs	0	12	12	100%
PCDs	0	12	12	100%
Officers	8	66	63	95%
Sergeants	0	14	14	100%
Total	8	104	101	

We noted in our last two reports that a lack of planning and attention to the training of PETs constituted a negative trend that needed to be addressed to ensure that the Department remains in

Phase 2 compliance with this requirement. We also noted that OPD had begun to address the issue. Again during this reporting period, we reviewed the PET records to determine whether progress had been made in this area. We noted the attendance of several evidence technicians at CPT classes as a positive trend in the training of PETs. This review revealed that PETs had attended a seven-and-one-half-hour “Crime Lab Overview and Process” course. Undoubtedly, a better understanding of the Crime Lab will enhance the capabilities of the Department’s PETs.

OPD is in Phase 2 compliance with Task 43.1.1.

The new Training Section Commander initiated a comprehensive training needs assessment, and has begun surveying OPD officers and employees in order to elicit training requirements. As we have observed in the past, a needs assessment is particularly important at a time when resources are declining to enable the Department to focus its training assets on its most urgent needs.

The needs assessment was begun with two focus groups. One group was composed of OPD executives and included the Chief, Deputy Chiefs, and Deputy Director. The second group was composed of commanders at the rank of lieutenant and above. The two groups identified a number of issues that training can address, including use of force, tactics, legal justifications, written reporting, search and seizure, supervisory and management review, and supervisory mentoring. We look forward to learning more about the progress of the needs assessment.

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:

During the last reporting period, we found OPD in compliance with Task 45.1, which requires that the Department maintain a centralized system for documenting and tracking all forms of discipline and corrective action. We found that discipline had been uniformly administered.

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 demonstrations 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 January 1, through March 31, 2012. This query identified 37 cases containing 51 sustained findings.

We found that 35 of the 37 cases, and 48 of the 51 sustained findings, had listed the dates of discipline conference and letter and the discipline imposed. Our review revealed that one of the cases containing two of the sustained findings lacked this information because the two findings were assessed against an unknown employee or officer; the offense occurred but a subject had not been identified. Thus, the IAD records were accurate and complete in 36 (97%) of the 37 cases and 50 (98%) of the 51 sustained findings in that they contained the discipline imposed, and the dates of the disciplinary conference and disciplinary letter; or there was an adequate explanation for why the data was not on the list.

OPD is in compliance with Task 45.1.

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

We found that in all (100%) of the 51 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.

During the period of January 1, through March 31, 2012, there were 12 Skelly hearings requested by employees who received sustained findings. One case involved an “at will” employee who was not entitled to a Skelly hearing; the employee was fired. In three cases, the officer declined the Skelly hearing before it was held, and the discipline that was originally recommended was imposed. In seven cases, the Skelly hearing was held, and the originally recommended discipline was upheld and imposed. In the remaining case, the recommended discipline, a 10-day suspension, was reduced to a five-day suspension. The five-day suspension also fell within the Discipline Matrix.

OPD is in Phase 2 compliance with Task 45.

Compliance Status:

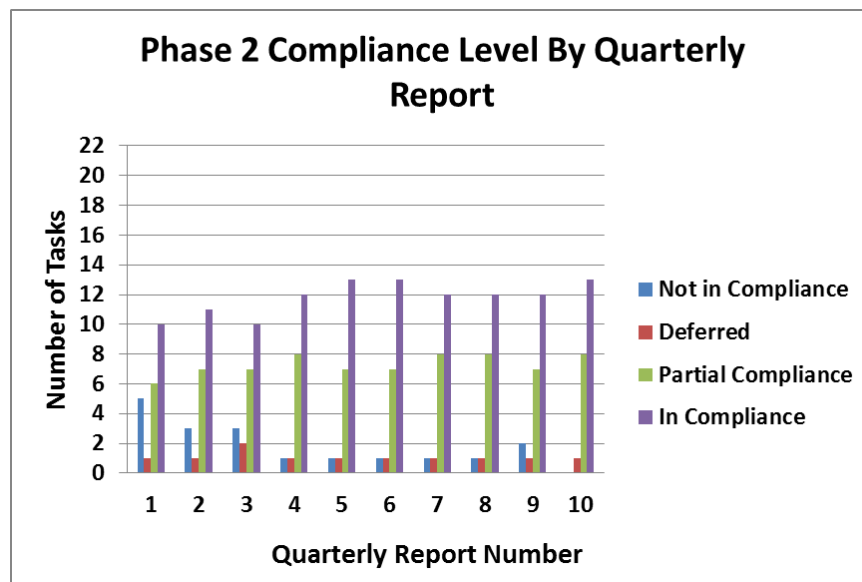
Phase 1: In compliance

Phase 2: In compliance

Section Three

Conclusion: Critical Issues

This is our tenth 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. It shows that compliance has increased by one Task over the level noted in our previous three reports. The increase reflects the return to compliance of Task 41. We found its companion requirement, Task 40, which addresses the state of the database itself, in partial compliance because the data problems were resolved with the data management equivalent of duct tape – reverting to the recording of arrest data by hand.



In our past reports, we have sought to identify and summarize issues that appear to thwart the Department's progress toward compliance. For this reporting period, these issues remain largely unchanged but bear repeating. Supervision and the review of work by officers remain of concern. Inadequate documentation continues to be a limitation. These issues are, at the same time, seemingly minor and also nearly all-encompassing. And, they are interrelated. Certainly it seems that the requirement of documentation should not stymie progress. It is a matter of disciplined attention to detail in which improvement would not seem to be overly difficult to achieve. But it is, of course, linked to the other outstanding issue, supervision. And therein lies the issue of greatest importance. Supervision is among the most important functions in police organizations. Police agencies are powerful institutions – where officers confront difficult situations, often on their own, and are given extraordinary powers by the state to address them. Getting supervision – and its companion, documentation – “right” are therefore critical to both quality and Constitutionality in policing.

We have remarked in the past about the slow pace of reform. Three months and one minor step forward have done nothing to change our perspective. In fact, the gravity of the issues raised in the external investigation of the police response to Occupy Oakland; and the issues raised in some officer-involved shootings, and the Departmental responses to those; raise even greater concerns. (See Appendix A.) Even with the struggle for progress here, it should be clear that real reform takes more than checking off compliance with predetermined tasks. The pursuit may be aided by those tools, but achieving progress will require commitments not yet fully recognized by the Oakland Police Department.

Appendix A

An Overview Assessment, Part I: Implications of the Independent Frazier Group Report

During our most recent site visit, we discussed at length with Department and City officials our concerns regarding the conduct and findings of recent Executive Force Review Boards (EFRBs). We also advised the Federal Court of our concerns; and on May 31, 2012, the Court issued an order that reads, in part:

The Court hereby directs the Monitor to identify any systemic problems that exist in the process by which Defendants evaluate (officer-involved shootings), as well as whether unique problems arose in any individual case, and recommend solutions to those problems. This analysis shall be included in the Monitor's next quarterly report.

The order, in another section, further stated:

Finally, the Court understands that, in connection with his approval of the (Occupy Oakland investigations) plan, the Monitor has reviewed the report prepared by the Frazier Group on the Occupy Oakland Events of October 25, 2011. The Monitor's next quarterly report shall address any implications of the Frazier report relevant to this case.

We have initiated significant activity with regard to both of these charges, as outlined in detail below. Given the scope of these issues, we have additional work to complete, and with the Court's permission, we will file separate reports with the Court on each of these topics, between this and our eleventh quarterly report.

As we sample some of the use of force investigations for our quarterly assessments – rather than look at each investigation conducted by OPD – we do not necessarily review each Level 1 investigation. Additionally, not every Level 1 use of force involves an officer discharging a firearm. OPD defines Level 1 uses of force as:²⁰

1. Any use of force resulting in death;
2. Any intentional firearm discharge at a person, regardless of injury;
3. Any force which creates a substantial risk of causing death;
4. Serious bodily injuries, to include:
 - a. Any use of force resulting in the loss of consciousness; and
 - b. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis).
5. Any unintentional firearms discharge:

²⁰ Source: DGO K-4, *Reporting and Investigating the Use of Force*.

- a. If a person is injured as a result of the discharge; or
 - b. As directed by the BOI [Bureau of Investigation] Deputy Chief.
6. Any intentional impact weapon strike to the head.
 7. Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.

To ensure a thorough review, and to ensure that we focus on the subject of the Court Order – officer involved shootings – we have requested the completed investigations for the 10 most recent such cases, including the results of associated reviews by the EFRBs. We are analyzing these investigations according to multiple criteria associated with the actual incidents and the quality of the subsequent investigations and reviews. The criteria include, but are not limited to: demographic information of involved officers and subjects; initial reasons for the encounter; weapons for both officers and subjects; presence of an imminent threat; nature of injuries, if any, to both officers and subjects; quality of forensic evidence; statements in conflict with other statements and/or physical evidence; use of boilerplate language; use of the preponderance of the evidence standard; findings of IAD; findings of the EFRBs; and findings of the Chief of Police, who has the ultimate responsibility to make a determination in these cases.

In addition to the in-depth analysis of these specific cases, we will incorporate what we have learned from our interactions with the Department both during and in between site visits. The Department notifies us of officer-involved shootings as soon as is practicable after they occur, and we also receive regular briefings on the status of “high-profile cases,” including officer-involved shootings, as needed or requested and during our site visits. It is our practice to attend any Force Review Boards and Executive Force Review Boards that coincide with our regular inspections. (In fact, we specifically request that if investigative deadlines allow, at least some boards be scheduled during our visits.)

Drawing from our case analysis and our interactions described above, we will identify what we believe may be systemic issues with OPD’s Level 1 use of force investigations and their reviews, as well as any perceived deficiencies with the specific cases reviewed.

Finally, OPD is in the process of revising DGO K-4.1, *Force Review Boards*. We have taken the opportunity to provide input for several drafts of this Department General Order. At our direction, OPD is delaying the issuance of this policy until after this Court-ordered review, so that any additional recommendations we make can be incorporated.

On June 14, 2012, the City of Oakland released “The Independent Investigation into the Occupy Oakland Response of October 25, 2011,” a report it commissioned from the Frazier Group, a team of independent and experienced law enforcement professionals lead by Thomas C. Frazier, retired Police Commissioner of the Baltimore Police Department. The Frazier Group was tasked by the City with conducting an investigation into the City’s response to the Occupy Oakland

movement, and in particular, its handling of events on October 25, 2011. The report consisted of 68 findings and corresponding recommendations. Many of the findings were critical of the City's and OPD's decisions and actions, as well those of other law enforcement agencies responding in a mutual aid capacity.

The City, in turn, acknowledged the report and conceded that most of the criticisms contained therein were justified. OPD also offered an appraisal of its progress in implementing the recommendations. Its initial assessment indicated that 74% of these recommendations "were completed or underway." We have had subsequent communications with the Department's administration, and received an update of progress towards implementing the recommendations as of the end of June.

Clearly – and as was contemplated in the Court Order – the actions of OPD on and after October 25, 2011 are related to provisions of the NSA. There is a direct linkage to the report's findings on command and control, tactics, arrests, use of force, and investigations; and nearly all of the report's findings have some correlation to one or more provisions of the NSA.

We began our analysis – which is still in progress – by cross-referencing the NSA Tasks, both active and inactive, with each of the report's findings. Where the findings identify issues or concerns, we are comparing them with the applicable NSA provisions. There is the potential that some of the findings may affect our compliance determinations with some of the Tasks. That will depend on a variety of factors, including the severity of the issues and whether the actions identified are isolated incidents or more encompassing. While the report covers OPD's response to what some might argue was a single event, the response was, in fact, Department-wide and involved nearly all of its employees.

Our preliminary review suggests that the report's findings will have the greatest impact on the following NSA Tasks:

- Task 5: Complaint Procedures for IAD
- Task 16: Supporting IAD Process - Supervisor/Managerial Accountability
- Task 19: Unity of Command
- Task 20: Span of Control for Supervisors
- Task 24: Use of Force Reporting Policy
- Task 25: Use of Force Investigations and Report Responsibility
- Task 33: Reporting Misconduct
- Task 43: Academy and In-Service Training

Forty-six of the report's recommendations and findings pertain to these key areas.

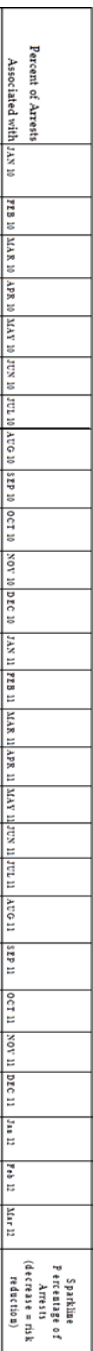
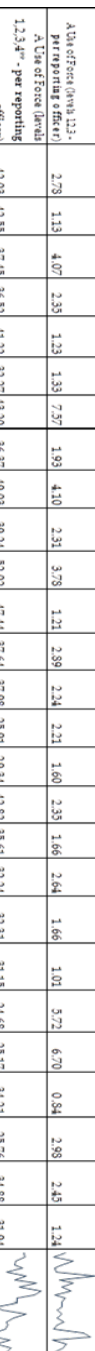
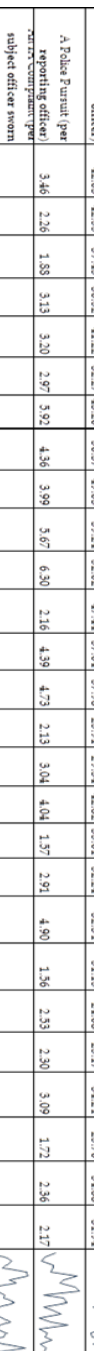
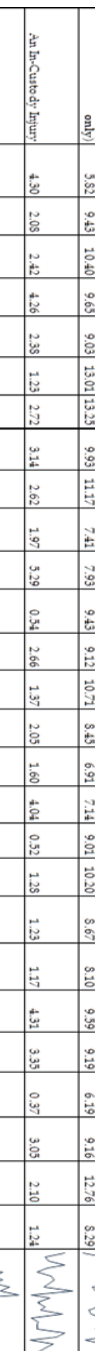
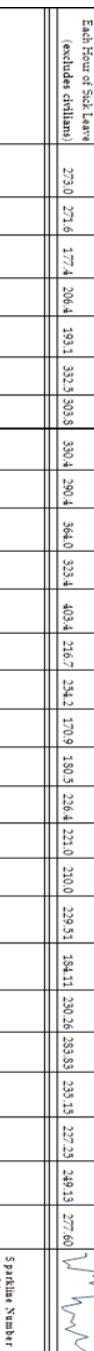

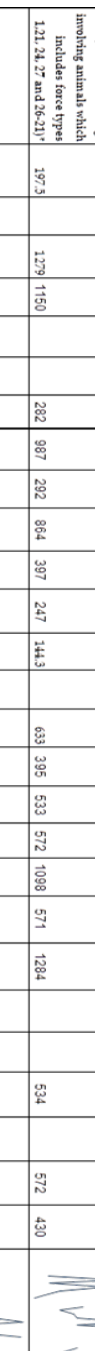
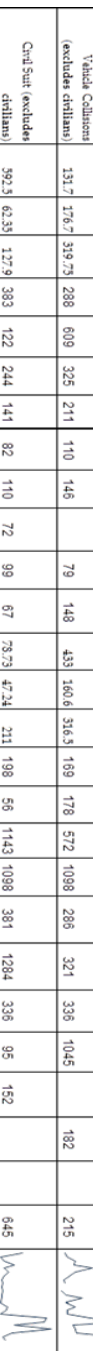
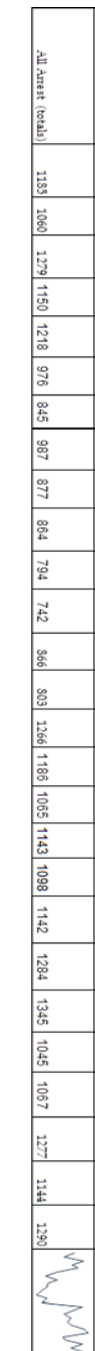


Our goal is not to duplicate the investigation conducted by the Frazier Group. Nor is it to comment on every finding and recommendation. Some of the findings do *not* have a direct bearing on compliance with the NSA, which will be the main focus of our supplemental report. For those findings with clear correlations to NSA Tasks, we will be particularly interested in OPD's efforts to identify and implement corrective measures.

OPD has indicated that at least 20 of the recommendations will require policy development, consisting of updating existing policies or creating new ones. We noted at least eight other recommendations for which OPD indicated that activity identified is not its normal response, but rather an exception required by extraordinary circumstances. While these claims may be accurate, moving forward, the activity should be prohibited by policy.

At least seven of the recommendations require new or additional training, and OPD has indicated that the training offerings are in various stages of development. Additionally, 11 recommendations depend on the work product of outside vendors that have been contracted to conduct various investigations related to the Department's October 25, 2012 response. We remind OPD that for those activities governed by NSA requirements, the Department is, of course, responsible to ensure that the contractors' work comports with the provisions of the NSA.

Appendix B

Cumulative Key Indicator Data

PAS ADMIN UNIT STATISTICAL COMPARISON																															
OAKLAND POLICE DEPARTMENT - KEY INDICATOR BY MONTH 1/10-3/12																															
	JAN 10	FEB 10	MAR 10	APR 10	MAY 10	JUN 10	JUL 10	AUG 10	SEP 10	OCT 10	NOV 10	DEC 10	JAN 11	FEB 11	MAR 11	APR 11	MAY 11	JUN 11	JUL 11	AUG 11	SEP 11	OCT 11	NOV 11	DEC 11	JAN 12	FEB 12	MAR 12				
Percent of Arrests Associated with JAN 10																															
A Unit of Force (Units 1,2,3 - per reporting officer)	2.78	1.13	4.07	2.35	1.23	1.33	7.57	1.93	4.10	2.31	3.78	1.21	2.89	2.24	2.21	1.60	2.35	1.66	2.64	1.66	1.01	5.72	6.70	0.84	2.98	2.45	1.24				
A Unit of Force (Units 1,2,3,4** - per reporting officer)	42.03	42.35	37.45	36.52	41.22	32.27	43.20	36.37	49.03	39.24	32.02	47.44	37.64	37.95	23.91	29.34	42.82	33.61	32.24	32.31	31.13	24.68	23.17	34.21	23.76	34.85	31.94				
A Police Pursuit (per reporting officer) per subject officer sworn only)	3.46	2.26	1.58	3.13	3.20	2.97	3.92	4.36	3.99	3.67	6.30	2.16	4.39	4.73	2.13	3.04	4.04	1.57	2.91	4.90	1.56	2.33	2.30	3.09	1.72	2.36	2.17				
Air In-Custody Injury	4.30	2.05	2.42	4.26	2.38	1.23	2.72	3.14	2.62	1.97	3.29	0.54	2.66	1.37	2.03	1.60	4.04	0.52	1.28	1.23	1.27	4.31	3.33	0.37	3.03	3.03	2.10	1.24			
Each Hour of Suit Lavers (excludes civilians)	273.0	271.6	177.4	206.4	193.1	332.3	303.3	330.4	290.4	364.0	323.4	403.4	216.7	234.2	170.9	180.3	226.4	221.0	210.0	229.31	184.11	230.26	233.33	231.13	227.23	249.13	277.60				
Number of Arrests per (blank if cases)																															
Officer involve d Shooting (includes shootings involving animals which includes force types 1,2,1, 24, 27 and 36-31)	197.3				1279	1150		282	987	292	864	397	247	144.3		633	395	533	572	1098	571	1284			534			572	430		
Vehicle Collisions (excludes civilians)	131.7	176.7	319.75	288	609	325	211	110	146		79	148	433	160.6	316.3	189	178	572	1098	286	321	336	1045				182		215		
Civil Suit (excludes civilians)	992.3	62.33	127.9	383	122	244	141	82	110	72	99	67	75.73	47.24	211	198	56	1143	1098	381	1284	336	95	152				645			
All Arrest (totals)	1133	1040	1279	1150	1218	976	845	987	877	864	784	742	866	803	1266	1188	1085	1143	1098	1142	1284	1345	1045	1087	1277	1144	1390				

Appendix C

Acronyms

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

Acronym	Definition
ACSO	Alameda County Sheriff's Office
AWS	Automated Warrant System
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