



Fourteenth Quarterly Report  
*of the Independent Monitor*  
*for the Oakland Police Department*

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## Section One

### *Introduction*

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This is the fourteenth 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. The current Monitoring Team conducted our fourteenth quarterly site visit from May 6, through 10, 2013, to evaluate the Department's progress with the NSA during the three-month period of January 1, through March 31, 2013.

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.

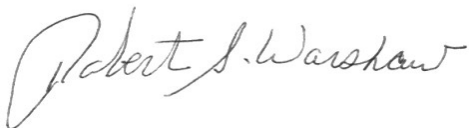
During this reporting period, we continue to find the Department in Phase 1, or policy compliance, with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD is in compliance with 13 of the 22 remaining Tasks, in partial compliance with seven Tasks, and not in compliance with one Task. We deferred our assessment with one Task during this reporting period. These overall numbers reflect a change from partial compliance to in compliance with two Tasks (Task 5, Complaint Procedures for IAD; and Task 16, Supporting IAD Process - Supervisor/Managerial Accountability); from in compliance to partial compliance with one Task (Task 26, Force Review Board [FRB]); from in compliance to not in compliance with one Task (Task 37, Internal Investigations - Retaliation Against Witnesses); and from deferred compliance assessment to in compliance with two Tasks (Task 24, Use of Force Reporting Policy; and Task 25, Use of Force Investigations and Report Responsibility). During the last (thirteenth) reporting period, we found the Department in Phase 2 compliance with 12 Tasks and in partial compliance with seven Tasks. We deferred our assessments on three Tasks. The Department is still working to address issues captured in Task 34.2, Stop Data. This is an important undertaking, as this information is intended to assess and remedy instances of disparate treatment in either vehicular or pedestrian stops – a core issue in the NSA. We expect the Department to make this a priority as it strikes at the heart of constitutional policing should there be incidences of inappropriate, discretionary police activity. Chief Whent has continued to demonstrate sensitivity to this, and we look forward to working with him in this important metric.

Despite the slight improvement in the Department's overall compliance picture, the number of Tasks in full compliance has merely returned to the highest number we have found to be in full compliance since the beginning of our tenure. (We found 13 Tasks in full compliance during the fifth, sixth, and tenth reporting periods.)

During our last site visit, there was a change in leadership at the Oakland Police Department. Interim Chief Sean Whent has demonstrated the requisite leadership essential to moving the Department forward. Chief Whent's integrity has been the hallmark of his career, and we believe that his personal and professional commitment to reforming the Department should begin the road to sustained reform. In addition, the leadership of the Oakland Police Officers' Association (OPOA) has worked closely with both the Monitor and the Compliance Director; and the OPOA is to be commended for helping to further the collaborative process that is needed in this effort.

Mayor Jean Quan and her staff have been active and engaged participants. I am confident that the Mayor understands the importance of her leadership in this undertaking. She has been an important communicator for the City. Others in the administration and City's leadership have been less committed to this undertaking – and foster an environment that is counterproductive and harmful to the efforts of the officers on the streets and the needs of the diverse communities of the City.

Chief Whent and his officers need and deserve the support of key decision makers. Citizens rely on the wisdom and skills of the City's elected and appointed officials. It is my hope that those who impede forward progress alter their behaviors so that the City of Oakland can fulfill its mandate to be the best it can be. Should that not occur, I will recommend that appropriate remedies that hold responsible parties to account be pursued.



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*Monitor*

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## *Compliance Assessment Methodology*

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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.

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## *Executive Summary*

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This is the fourteenth 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 6, through May 10, 2013, we conducted our fourteenth 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, we find that there has been a slight increase in compliance levels from those noted in our last report. For the quarter under review, we once again found OPD in Phase 1 compliance with all 22 of the remaining active Tasks. The Department is in Phase 2 compliance with 13 (59%) of the 22 active Tasks, in partial compliance with seven (32%) Tasks, and not in compliance with one Task (5%). We also deferred our assessment on one Task.

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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: Force Review Board (FRB)	√		√		
Task 30: Executive Force Review Board (EFRB)	√				√
Task 33: Reporting Misconduct	√		√		
Task 34: Vehicle Stops, Field Investigation, and Detentions	√		√		
Task 35: Use of Force Reports – Witness Identification	√	√			
Task 37: Internal Investigations - Retaliation Against Witnesses	√			√	
Task 40: Personnel Assessment System (PAS) – Purpose	√		√		
Task 41: Use of Personnel Assessment System (PAS)	√		√		
Task 42: Field Training Program	√	√			
Task 43: Academy and In-Service Training	√	√			
Task 45: Consistency of Discipline Policy	√		√		
<i>Total Tasks</i>	22	13	7	1	1



## Section Two

### *Compliance Assessments*

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#### 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:

During the last reporting period, we found OPD in compliance with Task 2. During the twelfth reporting period, we found the Department to be not in compliance due to its non-compliance with Task 2.1, the essence of this Task. 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.<sup>1</sup>

##### Discussion:

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

**Task 2.1** requires that internal investigations (IAD and Division Level) – including review, approval, findings, and discipline – be completed in accordance with the timeliness standards developed by OPD (compliance standard: 85%). To assess this subtask, we reviewed a list of all internal investigations resulting in formal findings (unfounded, sustained, exonerated, or not sustained) that were approved between January 1, and March 31, 2013, 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

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<sup>1</sup> 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.”

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.

As noted above, Departmental policy requires that investigations be completed within 180 days. Of the 134 Class I cases we reviewed, 124, or 93%, were in compliance with established timelines – an increase from the 85% we found during the last reporting period. Nine of the Class I cases were completed in exactly 180 days, and 81 cases were completed in between 170 and 179 days. Of the 176 Class II cases we reviewed, 173, or 98%, were in compliance with established timelines – a slight increase from the 96% we found during the last reporting period. Fourteen of the Class II cases were completed in exactly 180 days, and 141 cases were completed in between 170 and 179 days. Of the 42 sustained findings that we reviewed, 40 (95%) were in compliance with established discipline timelines.<sup>2</sup> This was a slight decrease from the 98% that we found during the last reporting period.

OPD is in compliance with Task 2.1. Despite this finding, we learned recently that in a few instances during the last reporting period, the Department missed the window to discipline officers who were sustained for misconduct. In these cases, OPD completed the investigations, and informed the subjects of the sustained findings and the Department's *intent* to discipline them, in a timely fashion. However, because OPD did not inform the subjects what their discipline would be within the one-year timeframe dictated by California Government Code Section 3304, the Department was unable to mete out the discipline.<sup>3</sup> OPD changed its procedures to assure appropriate and timely notifications in the future.

IAD has made real strides under the NSA: it has improved processes and procedures; it now conducts more thorough and streamlined investigations; and it sustains more misconduct violations than it did in the past. Yet we are seriously concerned that officers who were found by OPD to violate the Department's Manual of Rules could not receive the discipline approved by the Chief due to the Department's violation of the Government Code. We will continue to monitor this issue closely in future reporting periods.

**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

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<sup>2</sup> We reviewed 29 cases involving sustained findings; several cases involved more than one sustained finding.

<sup>3</sup> California Government Code Section 3304 governs many aspects of the internal affairs functions of police departments in California. In part, 3304 states:

“[N]o punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct... In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2). The public agency shall not be required to impose the discipline within that one-year period.”

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 occasionally attends and observes 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). Due to recent changes in IAD leadership, we did not receive this information before the publication of this report. As a result, we are deferring our assessment of 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.

## 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:

OPD has been in compliance with this Task since the sixth reporting period.

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, supporting documents and evidence – related to the 14 integrity tests that were conducted from January 1, through March 31, 2013. 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 14 tests conducted during this reporting period, five 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.<sup>4</sup> We found that all five focused on individual members and employees of OPD who were the subjects of high numbers of allegations of misconduct over the 18 months prior; all five planned tests passed.

The remaining nine integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies.<sup>5</sup> Two of these tests were conducted on officers who were the subjects of repeated allegations, and addressed the sources of the repeated allegations. Of the nine selective tests, seven passed. One of the remaining tests was inconclusive, and one failed administratively.

Five of the selective integrity tests monitored the performance of officers – including how they monitored radio traffic, documented stops, responded to calls, drove Department vehicles, and interacted with the public. One of these tests was inconclusive; and one – in which an officer was found to make inappropriate comments during a citizen arrest – failed.

Another selective test monitored an officer's use of the PDRD. A prior audit had discovered that the officer was not activating the PDRD. ITU compared the PDRD recordings with the CAD to determine if the PDRD was being activated when required. The audited officer successfully passed the test.

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<sup>4</sup> 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.

<sup>5</sup> 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.

Another selective test audited the Property Room to determine if a high-value piece of evidence that was placed in the property room a few years ago was properly documented, processed, and stored. The Property Room successfully passed.

In the two remaining selective tests, ITU personnel conducted audits of officers who had sustained prior arrests to ensure that they were following required Department policies on reporting.

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 Integrity Testing Unit and its testing.

## 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.*<sup>6</sup>

(Negotiated Settlement Agreement III. D.)

Comments:

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

Discussion:

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

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

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

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<sup>6</sup> The underlined requirements are the only provisions of Task 4 that are being actively monitored under the MOU.

**Task 4.7** requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt (compliance standard: Yes/No). If IAD is not available, the supervisor or commander shall contact IAD at the start of the next business day. To assess Phase 2 compliance for Task 4.7, we reviewed 93 Daily Incident Log (DIL) entries and a random sample of 133 IAD case files that were approved during the period of January 1, through March 31, 2013. The Deputy Chief for the Bureau of Risk Management 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%).<sup>7</sup> 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, 2013, we reviewed 11 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 (in many cases, the exact minute/second mark of the agreement was recorded) and in follow-up letters to the complainants. One of the cases stemmed from the complainant's dissatisfaction with OPD's response times to her call for service, a delayed report of domestic battery in which the suspect was no longer at the scene. In two other cases, complainants were not satisfied with OPD's general response to quality of life issues such as loud noise and public intoxication.

Two ICRs involved allegations of poor demeanor. In one, officers on the midnight shift were inadvertently sent to the wrong address for a call, and woke the complainant. In the other, the complainant felt that a Communications supervisor was rude during their phone interaction. In two cases, complainants felt officers should have arrested the individuals they called the police about, and lodged complaints over their failure to do so. Once the concept of probable cause was explained to the complainants, they agreed to the ICR process.

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<sup>7</sup> 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.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. One of the cases was administratively closed because it was determined that OPD employees were not involved in the alleged acts. A caller complained that an off-duty officer displayed his badge in order to coerce the caller into moving her car. The name and badge number provided by the caller did not correspond to any OPD officers.

Three cases were administratively closed because they did not involve MOR violations. In one, the complainant was upset because officers failed to secure her gate during a neighborhood search. In the other, a caller expressed displeasure with the tones emitted from a TTY machine. In the third, a caller complained about being referred to an online reporting system rather than having an officer dispatched to her residence.

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. We also identified several administrative closures in our Task 7.3 sample (Anonymous Complaints), and they are further discussed in that section.

The cases resolved via summary finding were approved for such designation as required by policy. In two of the cases, PDRD videos negated the need to interview the involved officers. In one case, a complainant alleged that her arrest for public intoxication was unjustified. Video evidence exonerated the officers. In the other case, PDRD footage, along with a witness' statement, refuted claims of excessive force during an arrest. In two other summary finding cases, audio recordings from Communications allowed investigators to reach definitive conclusions without the need to interview the involved employees. 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.<sup>8</sup> 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 92% of the cases we reviewed, the preponderance of evidence standard was 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 5.20 (tolling and filed cases), and Task 5.21 (employee interviews), but not in compliance with Task 5.19 (proper dispositions).

Discussion:

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

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

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<sup>8</sup> Pursuant to an agreement among the Parties, Tasks 5.7- 5.11, and 5.13-5.14 are not subject to active monitoring.

- **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 93 entries that appeared on the Daily Incident Logs (DILs) that were completed between January 1, and March 31, 2013. We identified these by randomly selecting 23 dates during this reporting period and reviewing the entries for each of those dates.

**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 93 DIL entries, three cases were received by IAD, which, in turn, notified the Communications Division. Supervisors took 40 complaints in the field; and in the remainder of the cases, 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 39 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). We did not identify any cases in which there appeared to be greater than a three-hour delay in contacting the complainant. 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 two cases, complainants refused to wait for the arrival of responding supervisors. One involved a traffic stop; in the other, the complainant was upset that a scene perimeter had been established in her neighborhood, impeding access to her home. In two other cases, the complainants asked to speak with supervisors, but disconnected the calls before supervisors could answer the telephone. In one of these cases, no callback number was available, and in the other, the callback number

provided by the complainant was associated with a disconnected phone line. In the remaining cases, the complainants simply did not answer the callback numbers provided, and supervisors left voicemail messages. 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 22 records). OPD has a 100% 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, Glenn E. Dyer Detention Facility, or Juvenile Hall, and were approved between January 1, and March 31, 2013. We identified four 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.”

Three of the four complaints were lodged contemporaneous to the arrest of the complainant, but only one contained at least one allegation of Class I misconduct. In this case, the complainant alleged that arresting officers planted evidence in order to charge him with a robbery. PRPD video refuted his allegations. A supervisor responded to the North County Jail to take the complaint as required by this Task. We note that in two other cases, complaints were taken at the Glenn E. Dyer Detention Facility, even though Class I misconduct was not alleged. One of these complaints involved an October 2012 Occupy Oakland arrest, and the complaint was taken by IAD’s Mobile Complaint Unit, which was deployed because of the pre-planned demonstration. The complainant was not pleased with his arrest, but otherwise did not allege any misconduct.

The remaining case involved a complaint that was not lodged contemporaneously with an arrest. A juvenile who was transferred from a detention facility in San Francisco to the Santa Rita Jail alleged that his money was missing. He filed his complaint more than one month after the incident. IAD's preliminary investigation revealed that the San Francisco facility still had the complainant's funds in an account, and the case was administratively closed.

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, 2013. 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 22, or 88%, in compliance with *all* of these required elements.

In seven cases, investigators conducted follow-up interviews with officers or civilians to seek clarification. In four of the cases, the complainants were re-interviewed, and in one of these cases, a witness was re-contacted as well. In the remaining three cases, some of the involved officers were interviewed more than once. In one case involving an allegation of missing property, we believe additional interviews should have been conducted to clarify the actions of one of the subject officers.

In one case, a credibility assessment was problematic. A complainant who was cited for ticket scalping at the Oakland Coliseum alleged that officers used force during his detention and failed to return his identification. Both of these claims were refuted by clear PDRD video evidence. Yet the investigator noted in his Report of Internal Investigation, "Although the PDRD clearly shows that J[]'s identification was returned to him and that J[] exaggerated the amount of force used during his detention, his version of events is generally consistent with the evidence and the officers' statements." This is simply not accurate. As we noted in our last report, OPD has made

great progress in addressing its issues with faulty credibility assessments, and we found that all determinations of “not credible” in the cases we reviewed were supported. There were five such cases. However, a determination of “credible” must be supported as well, and it was clearly not in the case cited above.

We noted two cases in which we believe relevant evidence was not considered, and both resulted in flawed dispositions. In one, both involved officers failed to activate their PDRDs until a suspicious person they were investigating was detained and in handcuffs. There is no dispute that this occurred, and both officers received counseling. However, both officers have a documented history of not turning on their PDRDs when appropriate, and formal findings should have been assessed. In the other case, an allegation of a prisoner’s missing money, it is clear that one of the involved officers handled the case inappropriately, and this was not explored.

**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 last reporting period, OPD complied with this subtask in 92% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 24, or 96%, of the 25 cases in our sample. In the missing property case mentioned above, an allegation was appropriately sustained for one of the involved officers. Based on the manner in which another officer handled the matter once it was brought to his attention, the findings as they pertained to him should have been different.

We did not note any cases in which the recommended findings of the investigator were overturned during the review process. However, in one of the cases mentioned above, the officers’ failures to activate their PDRDs were handled informally as “discovery violations.” OPD policy allows this practice if the infraction is minor in nature and is discovered by a supervisor rather than raised by a complainant, provided the subject officer does not have a history of similar conduct. In this case, their history was well documented. OPD is 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%). Our sample of 25 cases contained 94 allegations that received dispositions as follows: 33 exonerated; four not sustained; 43 unfounded; 10 sustained; and four administratively closed. PDRD video is being used in more and more cases to arrive at definitive conclusions. Overall, we disagreed with two of the findings, as described in Task 5.18. With a 98% compliance rate, OPD is in Phase 2 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. As part of our review of this Task, we also review cases that are tolling. OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304.

During our most recent site visit, we met with the Deputy Chief of the Bureau of Risk Management and the commanding officer of IAD, who advised that as of that date, one case was classified as filed, and five cases were designated as tolling. Two involved civil litigation against the City and/or the Department; and in the remaining four cases the subject or witness officers were unavailable. All cases appeared to be filed or 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. Seven of the 25 cases we reviewed were resolved via summary finding, but only five were appropriately approved for such closure. (These do not include the cases referenced in Task 4, for which summary findings were also appropriate.) In three of these cases, the availability of PDRD video was the primary reason interviews were unnecessary. In three others, audio recordings such as taped phone conversations negated the need for interviews. In the remaining case, a complainant alleged that he was stopped because of his race. However, a citizen called 911 to report the activities of the complainant, and it was clear that officers approached the complainant as a result of that dispatched call. Interviews were not necessary to address the allegation.

OPD is in compliance with Task 5.21.

OPD is in Phase 2 compliance with Task 5 – a major milestone for which we shall closely monitor sustainability.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance



Next Steps:

As we have done previously, during our next site visit, we will meet with IAD and OIG personnel regarding specific cases of concern that are referenced herein.

## Task 6: Refusal to Accept or Refer Citizen Complaints

Requirements:

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

(Negotiated Settlement Agreement III. F.)

Comments:

During the previous reporting period, we found the Department 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 93 Daily Incident Log entries from January 1, through March 31, 2013; 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 nine such cases. One of these cases resulted in sustained findings for one or more of the applicable MOR violations.

A sergeant assigned to Communications failed to generate a complaint after a citizen reported that an officer failed to enforce a temporary restraining order at her request. The officer's actions were ultimately exonerated, but the investigation revealed that the supervisor neglected to initiate the complaint process. The sustained finding resulted in counseling and training, the lowest level of discipline identified in OPD's discipline matrix.

In the remaining cases applicable to this Task, allegations for the identified MOR violations were not sustained. We reviewed the investigations and concur with those findings in all but one case. In this case, an arrestee alleged that he was missing some of his money, and the loss occurred after he was taken into custody by OPD. The officer he reported this to did not initiate the complaint process.

OPD remains in Phase 2 compliance with Task 6, but with an 89% compliance rate, the Department risks falling out of compliance if next quarter's compliance rate falls below the required 95%.

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.<sup>9</sup>*
- (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, 2013. 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 60 cases as potential anonymous complaints during this reporting period. After review, we determined that 59 were true anonymous complaints. Of these 59, the complainant was identified during the course of the investigations in one case. The third party complainant, who was not present during the incident, alleged that officers struck her brother with a baseball bat. Investigators also identified the brother, who indicated that the alleged conduct never occurred, and confirmed that he had no complaint with OPD.

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

Forty of the remaining 58 complaints were received via telephone calls to the Communications Division. Nine were reported to officers or supervisors in the field, and one was received directly in IAD. Three were received via email, and one each was received via inter-departmental mail and US mail. Three complaints were also taken by IAD's Mobile Complaint Unit, which is deployed when a high volume of complaints might be reasonably expected, such as during protests and demonstrations. Two of these complaints were directly related to these types of situations. One complainant expressed general displeasure with the arrests being made, and another objected to the confiscation of some of the demonstrators' homemade shields.

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, with the exception of one case, 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 callback number was available, even if the complainants expressly stated they wished to remain anonymous. In one case, we believe the investigator could have taken the investigation further. The anonymous complainant mailed a letter to IAD, accusing an OPD employee of potential inappropriate or illegal off-duty behavior related to selling copyrighted material on the Internet. The investigator was unable to determine whether the activity complained of was illegal. However, there is no documentation that the possible subject employee was ever approached. The results of the investigation may well have been the same – an administrative closure – but an interview should have been conducted.

Forty-eight of the 58 cases were closed via administrative closure. Each met the criteria for such closure (although we believe the case described above was closed prematurely), and most lacked the details to identify the specific alleged misconduct and/or OPD personnel involved in the incidents. Thirteen involved complaints of poor response time to calls for service. Four involved complaints of displeasure with general service delivery, such as failure to address quality of life issues. Three complaints pertained to Animal Control Activities. Three were related OPD's towing of – or failure to tow – vehicles. Three complaints stemmed from OPD's involvement at the Oakland Coliseum for Raiders games.

Eight 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. For example, in three cases, the "complainants" overtly stated that they did not wish to make a complaint. One had a general question about crime in his neighborhood, and in another a caller expressed displeasure with people sleeping in their own cars. In another case, OPD generated a complaint after an anonymous caller, calling from a payphone, indicated that he wanted to make a complaint and then immediately hung up. In still another case, the Complaint Investigation Report simply stated, "The complainant refused to provide any information related to the complaint." As is our practice, we will discuss all of these cases with IAD during our next site visit.

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:

In the last reporting period, we found the Department to be in partial Phase 2 compliance with Task 16.

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 93 Daily Incident Log entries from January 1, through March 31, 2013; a random sample of 133 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, 2013; and the nine sustained Class I investigations that were approved by the Chief between January 1, through March 31, 2013.

Our review of the nine sustained Class I investigations found that two did not sufficiently address the role of the subjects' supervisors or managers in the sustained misconduct. Task 16 requires, in part, that a 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.

Two of the nine sustained Class I sustained IAD investigations resulted from allegations related to Occupy Oakland demonstrations. As noted in our two last quarterly reports, the Occupy Oakland-related response presented a unique situation where squads or officers and supervisors were available to witness the conduct of each other. In the first of two related cases, the IAD investigation found that use of the "baton jab" was inappropriate against individuals during the protest who were merely failing to disperse. While the allegations against the involved officers were sustained, the IAD investigation found no evidence that members or supervisors should have known the baton jabs were out of compliance.

The second of the two Occupy Oakland-related cases involved claims that a demonstration participant was pushed to the ground without cause. The IAD investigation included an analysis of the supervisor's accountability. IAD concluded that at the time of the incident, an officer or supervisor did not recognize the conduct to be improper.

The remaining seven IAD investigations involved sustained Class I offenses that OPD found to be in compliance. All found that the IAD investigator sufficiently addressed the role of the subject's supervisors in the sustained conduct. As we discussed with OPD during our last site visit, the investigation report's member/employee accountability section should analyze if it was reasonable for a supervisor – through reviewing reports, investigating force, or supervising an officer – to identify misconduct. A transparent organization identifies – through close and effective supervision – any possible misconduct of its members.

During the last two reporting periods, we found OPD in partial compliance with Task 16, as OPD did not sufficiently analyze the role of the supervisor in the misconduct in several of the cases we reviewed. During this reporting period, the cases that we reviewed properly evaluated supervisors' accountability. OPD is in compliance with this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will, as in the past, meet with the IAD Commander to discuss any Task 16-applicable cases for the next reporting period.

## 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.<sup>10</sup>*

(Negotiated Settlement Agreement IV. A.)

### Comments:

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

### Discussion:

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

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

We reported in our tenth quarterly report that 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.<sup>11</sup>

**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 69 adult and six juvenile arrest reports documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); as well as documentation for 16 arrests resulting in an investigated use of force; that occurred between January 1, and March 31, 2013. We reviewed these to determine if supervisors reviewed the reports that 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 69 adult arrest reports, we excluded 54 from our dataset; and of the six juvenile arrest reports, we excluded three 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 15 adult arrests and three juvenile arrests, there were two reports that did not document the presence of witnesses or no known witnesses; and all arrests were approved by a supervisor. This represents an 89% compliance rate relating to adult/juvenile arrests for this subtask. In addition, of the 16 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.<sup>12</sup> This represents a 100% compliance rate among arrests resulting in an investigated use of force for this subtask.

Our review revealed an overall 94% compliance rate for Task 18.2.2. OPD is in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

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<sup>11</sup> Automated Warrant System, Criminal Oriented Records Production Unified System, or Consolidated Records Information Management System.

<sup>12</sup> 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.



Next Steps:

We will meet with OIG to discuss the Department's protocols for conducting audits of this Task to ensure sustainability.

## 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.

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.

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%).

In February 2012, OPD implemented a new, tiered system of supervision in the Bureau of Field Operations (BFO). Under this system, each squad is assigned one primary sergeant and one relief sergeant. In the absence of both the squad’s primary and relief sergeant, the squad is supervised by one of four “Tier 2 relief supervisors.” These changes significantly alter the way in which we assess both Tasks 20.2 and 20.3: we no longer examine the supervision of patrol squads on only a random sample of days, but the supervision of *each squad on each day* of the reporting period.

We considered supervision by both primary sergeants and relief sergeants as in compliance for this subtask. We did not, however, consider OPD’s “certified acting sergeants” to be legitimate supervisors for this purpose – even if, according to the Department, these individuals were “assigned” as primary or relief sergeants for a particular squad. Since the beginning of our tenure, we have expressed our concerns regarding the Department’s practice of certified acting sergeants. Sergeants are the building blocks of a police department’s supervisory structure – they respond to scenes, handle complaints from citizens, approve arrests made by officers, and review and write reports that are eventually sent up the chain of command. Officers must know who they report to; the consistency of supervision makes a police organization effective and increases officers’ accountability to their department, and the department’s accountability to the community it serves. A so-called acting sergeant who is assigned to supervise a squad of officers does not provide the mentoring, training, guidance, and intervention that his/her squad needs.

To assess Task 20.2 during this reporting period, we reviewed spreadsheets prepared by the Department for the months of January, February, and March 2013 that, by date, note which type of sergeant supervised each squad – a primary sergeant, relief sergeant, Tier 2 relief sergeant, or other. Using Telestaff, we also spot-checked this data to verify its accuracy.

We calculated per squad the compliance percentages for this subtask during this reporting period. Every Task 20.2-applicable squad must be supervised by a legitimate primary or relief sergeant at least 85% of its working shifts in order for the Department to be in compliance with this subtask.

During the last reporting period, 39 of the 49 applicable squads were in compliance with this subtask. During this reporting period, of 51 applicable squads, 36 were in compliance – that is, 36 squads were supervised by either a primary or relief sergeant at least 85% of the reporting period. As 15 squads were not in compliance with this subtask, OPD is not in compliance with Task 20.2.

**Task 20.3** requires that a supervisor’s span of control for the Department’s relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio on a day-to-day basis (compliance standard: 90%).

As noted above, the Department’s new, tiered system of supervision in BFO significantly affects the way in which we assess Task 20.3. During the last reporting period, due to technical problems preventing our access to Telestaff, we deferred our compliance determination with Task 20.3. During this reporting period, 47 of the 51 applicable squads were in compliance – that is, 47 squads did not exceed the 1:8 supervisor: officer ratio at least 90% of the reporting period. As four squads were not in compliance with this subtask, OPD is not in compliance with Task 20.3.

**Task 20.4** requires that the Department’s Area Commanders make backfill decisions and that these decisions are consistent with policy and operational needs (compliance standard: 90%). Due to the Department’s new supervisory structure, this subtask may no longer be applicable. We have initiated conversations with the Parties regarding this issue. For now, we are deferring our compliance determination with Task 20.4.

**Task 20.5** requires that the span of control for special operations is determined by an Area Commander and is reasonable (compliance standard: 90%). In addition, the Department requires that sergeants supervise all special operations. To assess this subtask, we reviewed a random sample of 25 special operations plans of the 124 total operations conducted between January 1, through March 31, 2013, to determine whether the span of control for these operations was determined by the relevant commander and was reasonable. 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, 2013, 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.” 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

## 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:

During the last reporting period, 30% of the reports that we requested and received were completed outside of the current reporting period. As a result, we deferred our Phase 2 assessment of Task 24.

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 our May 2013 site visit, we again met with OPD command personnel and OIG to discuss ongoing problem areas in use of force reports and their supervisory reviews, and the Force Review Boards (FRB)/Executive Force Review Boards. We also reminded the Department of our continued concern with the lack of adequate justification in citizen encounters that lead to an investigated use of force. We continue to encourage OPD command personnel to pay close attention to these issues.

OPD is currently revising its confidential informant policy and process to address our concerns about how its members use confidential informants that lead to citizen encounters and the pointing of firearms. We are troubled that OPD officers are initiating stops and pointing their firearms at subjects based on information that has not been determined to be reliable. Most informants have issues with their own conduct and credibility. In our review of use of force reports, we have noted occasions where no further investigation was conducted to support the information provided by an OPD "confidential informant."

OPD recently hired an external auditor to evaluate OPD's search warrants and confidential informant files. The audit revealed seven areas for improvement involving search warrants, and 14 areas of concern involving the OPD's use of confidential informants. The audit noted, among other points, that OPD does not mandate any experience or training requirements for managing confidential informants. It also recommended that no informant should be used before proper vetting, and that the Department should deactivate any informant who is deemed unreliable.

During this reporting period, the sample we requested for review (85 total) included: one Level 1; five Level 2; 10 Level 3; and 69 Level 4 reports completed between January 1, and March 31, 2013.<sup>13</sup>

**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. 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 85 incidents in our sample, a supervisor was promptly notified regarding the force incident. OPD has a 100% compliance rate with this subtask. OPD is in compliance with Task 24.1.

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

**Officers Pointing Firearms:** During this reporting period, we reviewed a total of 85 use of force incidents; 67 of those incidents involved officers pointing firearms. The 67 events included one Level 1, two Level 2, three Level 3, and 61 Level 4 uses of force, and involved 171 instances of OPD officers drawing and pointing their firearms.<sup>14</sup>

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<sup>13</sup> We requested 90 use of force reports, but determined that five of the reports were completed outside of the current reporting period.

<sup>14</sup> 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.

Overall, we determined officers' pointing of their firearms to be appropriate in 163, or 95%, of the 171 instances we assessed.<sup>15</sup> We were unable to find the pointing of a firearm necessary or justified in eight instances of the 171 instances we assessed, due to the absence of any indication that the officer(s) or others faced imminent threat of harm. In addition, several events lacked justification for the initial detention that led to the pointing of the firearms.

The total racial breakdown for the 67 use of force events reviewed is as follows: Black, 85%; Hispanic, 12%; White, 3%; and Asian, 1%. 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: the eight unjustified pointing of firearms all involved Black subjects.

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 continued 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 in compliance with Tasks 24.2 and 24.3.

**Task 24.4** requires that a supervisor respond to the scene upon notification of a Level 1, 2, or 3 use of force or an allegation of excessive use of force, unless community unrest or other conditions makes such response impracticable (compliance standard: 95%). Supervisors responded to the scene in all 16 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.<sup>16</sup> 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, there was one Level 1 use of force reports in our dataset. OPD made the required notifications as required by the NSA. OPD is in compliance with these subtasks.

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<sup>15</sup> 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.

<sup>16</sup> Task 24.7 is no longer applicable.

**Task 24.9** requires OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS), now the Personnel Assessment System (PAS) (compliance standard: 95%). We previously noted that PAS contained only limited information about the use of force reports – namely, the report number, corresponding crime report number, the force level and type of force used, the incident date, and some other basic information. During the fourth reporting period, OPD began to enter narratives from the use of force reports into PAS. Our review during this reporting period indicated that use of force data continued to be entered into PAS. OPD is in compliance with Task 24.9.

OPD is in partial Phase 2 compliance with Task 24.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

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

## 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 last reporting period, 30% of the reports that we requested and received were completed outside of the current reporting period. As a result, we deferred our Phase 2 assessment of 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 85 use of force reports, including: one Level 1; five Level 2; 10 Level 3; and a random sample of 69 Level 4 use of force reports; that were completed between January 1, and March 31, 2013.

**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 16 Level 1, 2, and 3 incidents. In all of the incidents, a supervisor responded to the scene and completed a use of force investigation. In addition, six Level 3 incidents in our sample were downgraded to a Level 4 use of force incident by a supervisor who was at the scene; the changes were documented and comported with the governing documents. OPD is in compliance with Task 25.1.

**Task 25.2** requires that use of force reports/investigations include NSA-required elements (compliance standard: 90%) and are timely pursuant to DGO K-4 (compliance standard: 95%). All of the reports we reviewed for this subtask included the NSA-required elements. To assess investigation timeliness, we used a 75-day time limit for Level 1 incidents (including IAD Commander approval) plus one documented extension approved by the Chief of Police in advance of the due date, and a 15-day time limit for Level 2 and Level 3 incidents. For Level 4 incidents, as of November 23, 2010, OPD requires a review of the report by the end of the reviewing supervisor's next scheduled workday. This is a 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, 84, or 99%, of the 85 reports we examined 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. We noted that six Level 4 cases received extensions during this reporting period. One extension was not requested within the required five calendar days. OPD DGO K-4 requires that first-level commanders authorize extensions, as needed, and document this fact in the Chronological Activity Log. Extensions for the six aforementioned Level 4 events were authorized by captains and not by the first-level commanders (lieutenants) as required by OPD DGO K-4. The six extensions were authorized contrary to OPD policy; future instances of extensions granted in this manner will result in a non-compliance finding.

During this reporting period, 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 again troubled by the number of officers opting not to activate their recording devices when required. During this reporting period, OPD commanders took supervisory action by admonishing officers for not using their PDRDs as required in the Level 2, 3, and 4 cases we assessed. 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 99%, and for NSA-required elements is 99%. OPD is in compliance with Task 25.2.

**Task 25.3** requires that all supervisors are trained on how to conduct use of force investigations and such training is part of a supervisory training course (compliance standard: 95%). OPD is incorporating use of force training into its sergeants' continued professional training that is offered every 18 months to two years. 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. During this reporting period, according to the Department, OPD provided use of force training for 41 new or acting sergeants, 75 sergeants, and 30 commanders. 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 four Level 4 use of force incidents that involved the unjustified pointing of firearms. These four reports did not comport with NSA-required elements; each of the incidents involved an unnecessary escalation to potentially using lethal force in situations where other less lethal force options were available to the officers or should have been considered.

The remainder of the cases, however, contained information showing that the force was used for a legitimate law enforcement purpose, was reasonable to the resistance encountered, and was de-escalated when resistance decrease or stopped; and that verbal means were used to attempt to resolve the situation without force.

OPD's compliance rate for this subtask is 95%. OPD is in compliance with Task 25.4.

**Task 25.5** speaks to the review process, which includes chain of command review, making assessments as required by the NSA and policy, and ensuring that any violation of policy results in the incident being referred to Internal Affairs to conduct additional investigations or analysis (compliance standard: 95%). During this reporting period, we found that the supervisors included the required details, and the chain of command conducted critical reviews. In all but four of the Level 1, 2, 3, and 4 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.

OPD's compliance rate for this subtask is 95%. 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 Level 2 reports in compliance with this requirement. OPD is in compliance with Task 25.6.

OPD is in Phase 2 compliance with Task 25.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will continue to 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: Force Review Board (FRB)

### 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 the last two reporting periods, we found OPD in partial 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 seven incidents that were heard by the board during this reporting period of January 1, through March 31, 2013. We determined that all seven of the FRB reports we reviewed were timely. OPD is in compliance with this subtask.

**Task 26.2** requires that for every Level 2 use of force investigation, the FRB makes a recommendation as to whether the use of force was in or out of policy (compliance standard: 95%). All seven FRB reports we reviewed contained recommendations noting that the use of force was in or not in compliance with policy, and all seven noted agreement with the recommendation of the FRB by the Chief or his designee.

Despite this, we are concerned with the board's handling of one of the events we reviewed. The incident (which we also described in our twelfth quarterly report, under Task 25.2) involved an unjustified pointing of firearms at a subject on a rooftop believed by officers to be involved in prostitution activity. One of the three officers also pointed his Department-issued Taser at the subject.

When the FRB convened regarding this incident during this reporting period, it determined that the force used was reasonable and in compliance with OPD policy. The board issued a Training Bulletin reminding officers "that the use of a TASER on a subject in an elevated position where a fall may cause substantial [injury] or death is prohibited except where the encounter rises to a deadly force situation." The FRB failed to assess during their review the three officers' intentionally pointing their firearms at the unarmed subject on the rooftop when no immediate threat existed.

Accordingly, we find OPD out of compliance for Task 26.2.

**Task 26.3** requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to the Internal Affairs Division for disposition (compliance standard: 95%). Of the seven incidents that were heard by the board during this reporting period, no UOF events were found out of compliance, thereby requiring a referral to IAD. OPD is in compliance with this subtask.

**Task 26.4** requires that the FRB make recommendations to the Chief of Police regarding additional use of force training, changes in policies or tactics, additional standards, investigatory policies, or training for use of force investigations (compliance standard: Yes/No). During the current reporting period, the FRBs identified 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 issued its most recent annual review on April 23, 2013. 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 four FRBs during our most recent site visit; we will discuss these 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: Executive Force Review Board (EFRB)

### 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 last reporting period, we deferred our Phase 2 assessment of Task 30 due to an EFRB that fell outside of the reporting period.

### 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 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.

During this reporting period, on January 29, 2013, an external auditor hired by the Department released a special report on OPD's officer-involved shootings (OIS). The audit examined the protocols and processes the OPD uses to investigate OIS incidents, and assessed 14 recent OIS events (occurring between 2010-2012, and including instances where suspects were killed, wounded, or shot at and missed). The auditor made nine recommendations for consideration – some similar to those made in the past by the Monitoring Team. These recommendations included: inconsistent tactics and decision-making by officers using personalized approaches to field work made during initial contact was flawed; EFRB finding the incident in compliance with policy, despite recognizing very poor tactics and other policy violations which resulted in discipline in some cases (though both the Monitoring Team and the external auditor noted that these cases often focused on secondary, less serious violations); the failure to address conflicts or ask more probing questions; the inappropriate use of SMEs to justify force; and the inclusion of the suspect's criminal history – though, of course, this is not related to why deadly force was used.



During this reporting period, OPD provided us with three EFRBs for assessment. One EFRB was completed during this reporting period; the other two EFRBs were commenced and their compliance findings were held in abeyance by the EFRB, due to additional interviews being requested by the Board to facilitate their assessments. As a result, we are deferring our assessment of Task 30, and will assess this during the next reporting period.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

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 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 reporting period, for the first time in six reporting periods, we found OPD to be not 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%). 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, and March 31, 2013, that were applicable to Task 33. We identified and reviewed 34 cases with 37 sustained findings that were approved during this reporting period. We found, however, that seven of the cases containing 11 findings did not have a discipline conference of discipline letter until the second quarter of 2013. We reviewed the remaining 26 cases and 35 findings. Included in this count were three cases with eight sustained findings that were generated during the Occupy Oakland events.

During the last two reporting periods, we found OPD to be not in compliance and in partial compliance, respectively, with these subtasks as a result of IAD cases involving incidents that occurred during Occupy Oakland demonstrations. In those cases: many officers claimed not to have observed actions that occurred close to them; OPD officers consistently avoided commenting about the misbehavior – and sometimes, felonious actions – of their fellow officers; and while officers apparently remembered seeing participants in the demonstrations and riots clearly, they often could not say which officers were next to them even when they viewed videos of the incidents. We found the failures of supervisors to lead their subordinates or to comment on their actions particularly troubling. We found instances where supervisors, even when viewing videos of clearly improper behavior, were evasive and reluctant to comment.

During this reporting period, we reviewed three Occupy Oakland-related cases in which eight findings were sustained. In one of these cases, two officers arrested a demonstrator and one used profanity. The sergeant and lieutenant identified the officer from viewing a PDRD, but the other arresting officer failed to positively identify him even though he was his FTO and he was familiar with his voice.

A second Occupy Oakland-related case involved an officer who was sustained for excessive force in pushing a woman to the ground. A sergeant who assisted in making the arrest claimed to have only a vague recollection of the incident; he stated that he did not observe the officer pushing the woman to the ground. Further, that sergeant did not have his PDRD activated as required by OPD policy, but was only cited as needing additional training regarding his use of the PDRD.

The third Occupy Oakland-related case involved six officers who were sustained for delivering baton strikes that were not in compliance with the law and OPD policies. The IAD report noted that there was no evidence discovered during the investigation to suggest that a member knew or should have known the baton jabs delivered by the officers were out of compliance with OPD policy. The OPD expert on crowd control acknowledged that the policy regarding the use of baton jabs to disperse protestors was confusing, and that its related training bulletins and general orders were “incongruently written.” In spite of the rather obvious leadership failure to properly equip and train officers to handle demonstrations and crowd control duties, no OPD leader was held accountable for the failure.

The activation of PDRDs can be key in resolving allegations of use of force that arise from citizen contacts – particularly during demonstrations. Accordingly, it is a serious violation for an officer dealing with such circumstances to fail to activate his/her PDRD. During this reporting period, we examined several cases in which PDRDs were not activated. (See Task 45.)

**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 40 new employees, including 37 police officer trainees and three civilian employees. All were trained in confidential reporting procedures as required by Task 33.

Based on our review, OPD is in partial Phase 2 compliance with Task 33.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial 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 ten reporting periods, we found the Department in partial compliance with Task 34. We noted that officers 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. We also noted that officers were not correctly classifying the "reason for the stop," and that the Department has not conducted any analysis of the available data as prescribed in the Department Policy.

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.

On November 24, 2012, OPD issued Special Order 9101, *Revised Stop Data Collection Procedures*, which updates DGO M-19, *Racial Profiling*; and used its electronic PowerDMS system to disseminate Special Order 9101 to the Department. During the current reporting period, OPD developed and began training on the definitions of racial profiling to include the definition of a consensual encounter, what a detention is, and the scope of the policy. During our most recent site visit, we verified from records provided by OPD that the Department trained at least 95% of relevant personnel on these subjects and Special Order 9101.

During this reporting period, on March 1, 2013, OPD issued revised Special Order 9101, *Revised Stop Data Collection Procedures*, which updates DGO M-19, *Racial Profiling*; and used its electronic PowerDMS system to disseminate Special Order 9101 to the Department. On March 19, 2013, OPD issued a revision to the Report Writing Manual, addressing the completion of the Stop Data Form. The manual addresses the revisions to Special Order 9101 specific to when a Stop Data Form will be completed. Both the manual and policy clarify that Stop Data Forms will be completed when self-initiated encounters are conducted. Stop Data Forms are not required for radio dispatch calls for service, citizen flag-downs, search warrants, and community caretaking incidents. Also during the current reporting period, OPD continued training on the definitions of racial profiling to include the definition of a consensual encounter, what a detention is, and the scope of the policy. During our most recent site visit, we verified from records provided by OPD that the Department trained at least 95% of relevant personnel on these subjects and Revised Special Order 9101.

**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 375 stops to match them with corresponding completed Stop Data Forms. This sample included 125 Computer Aided Dispatch (CAD) entries, 125 Field Contact Cards, and 125 traffic citations. As per Special Order 9101, 333 of the 375 required a corresponding Stop Data Form. Using the Department's Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 99% 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.

During this reporting period, OPD did not conduct any internal audit of its stop data forms. We again encourage OPD to continue to conduct these audits in future reporting periods. We urge the Department to focus its attention on making and implementing applicable policy revisions – and developing necessary training – to ensure that the justification exists *prior* to the temporary detention of persons; that data be entered on each person who is detained; and that the reason for the encounter be properly identified. The implementation of such a strategy will help the Department to identify any disparities in its treatment of citizens. After ten quarters of requesting that OPD improve its reporting to ensure that the data collected is suitable for analysis, we are encouraged by the steps taken within this reporting period to move in that direction. OPD represents that the implementation of the revised Special Order will sufficiently address and clarify issues related to the collection of data; however, OPD 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 FBR [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.

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. During the current reporting period, OPD did not produce any summary of data collection or analysis of data, noting a continuing issue with data collection (forms), specifically regarding the selections options for the reason for the stop. This problem significantly affects the value of the data, which we optimistically believed would be the basis for OPD compliance with this and

related Tasks. We have discussed this issue in detail with Department personnel, and are hopeful that OPD will expeditiously implement corrective measures. The policy dated November 15, 2004 requires that the Racial Profiling Manager shall produce a written report to the Chief of Police at least twice per year that includes an analysis of the data collected, and appropriate policy recommendations. Based on our knowledge, OPD has not prepared such a report in the last 12 quarters; however, OPD has advised of its intent to analyze the collected data once the data is accurate. 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 and upcoming technical assistance visits, we will again meet with relevant Department personnel to discuss the Department's progress in this area. We will further discuss the Department's 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 discuss how conducting internal audits of its stop data forms can help the Department to identify any disparities in its treatment of citizens.

## 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*

3. *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 16 use of force reports, including: one Level 1; five Level 2; and 10 Level 3 use of reports covering incidents that occurred between January 1, and March 31, 2013. (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 16 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 no incidents fell into this category. 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 16 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 continue to examine any related audits completed by OIG 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. 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 seven cases that OPD considered as containing allegations of retaliation during the period of January 1, through March 31, 2013. In six of the seven cases, OPD conducted a thorough investigation appropriate to the allegations and concluded that the charge of retaliation was unfounded.

In the remaining case, an officer was present when his partner – apparently angered at a drunk person they had arrested who would not stop spitting – entered the back seat of the patrol car that was parked at the jail and beat the handcuffed prisoner. The officer reported the misconduct, and the subject officer was terminated following an IAD investigation that confirmed the brutality. The officer who had displayed courage in making the report was promoted to sergeant and transferred to CID where he soon suffered retaliation. Someone spit tobacco juice on a towel that he hung on the outside of his locker door and crumpled up papers containing an OPD special order about retaliation at the foot of his locker and on his desk. The IAD investigation failed to identify the perpetrator(s), but resulted in a sustained finding that “an unknown officer” retaliated. The victim officer has been off-duty in a medical status since the retaliation incident.

We regard as weak the investigation that was conducted to identify the person who spit on the towel and left the crumpled up papers containing the retaliation order. OPD did not employ available investigative techniques – including interviewing the supervisors of the officers who use the locker room, processing evidence for fingerprints and/or DNA, or conducting integrity tests.

Finally, we recognize that the current leadership of OPD wrestled with its response to this case, and that it tried to protect the officer by promoting him and transferring him. However, the Department once again missed an opportunity to make a strong statement regarding expected standards of conduct – this time against the bullying tactics of the officers who resist the cultural change demanded by the NSA.

The officer who beat the prisoner was attacking a helpless drunk. No one could defend or rationalize such unprofessional behavior on the part of the bullying officer. The officer who reported the misconduct was reporting a felony committed in his presence. He had no choice about it. Yet, not enough was done to identify the perpetrator or protect the reporting officer when the retaliation came to light. The former chief might have personally intervened and made it clear that such behavior would not be tolerated.

We have consistently found OPD in compliance with Task 37. We cannot do so now in light of the Department’s response to the most serious such case that has arisen in the past three years.

OPD is not in Phase 2 compliance with Task 37.

Compliance Status:

Phase 1: In compliance

Phase 2: Not 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 five reporting periods, we found OPD to be in partial Phase 2 compliance with this requirement – following reporting periods of non-compliance that were related to data problems. The temporary solution to these problems has been to enter arrest data by hand and move forward with plans for the arrest data to be incorporated into the County’s data system. As of the quarter under review, arrest data remain problematic, but progress toward a solution continues. A test is underway of an auto-feed to the County system, but currently, all vehicles do not have the necessary equipment. The automatically entered arrest data should be complete and accurate when all the new equipment is available and installed. There is no estimate of when that may occur. In the interim, to ensure accuracy in PAS, arrest data continue to be entered manually.

There has also been limited progress on a second major initiative relating to PAS. The implementation of a new computer system for PAS continues to be delayed. A vendor to develop a request for proposals, and to then manage the implementation process, was selected nearly a year ago – but contract issues have stalled the process and its future remained uncertain as of our most recent site visit.

The two issues noted above have hampered movement toward compliance with Tasks 40 and 41.

Discussion:

General Order D-17, Personnel Assessment Program, which incorporates the requirements of Tasks 40 and 41, was revised in July 2012; however, a significant revision has been completed more recently but had not been signed off on as of the time of our site visit. In the existing draft, the relevant material is divided into two separate policies: one addressing general risk management issues; and the other dealing with the technical aspects of managing the database. The policy also alters the PAS review procedures to incorporate an initial internal review by the PAS unit when officers meet thresholds, and then engaging supervisors in developing and implementing risk reduction plans when appropriate. This procedure is intended to reduce the number of false positive findings that have created substantial work for supervisors and, in some cases, required resubmission when the supervisory reviews were judged inadequate.

The Department continues to operate under the existing version of General Order D-17, thus continuing to meet requirements for Phase 1 compliance. Progress on moving the new policy forward is important, however, to avoid long lags in which the operation of the system does not accurately reflect the procedures described in the extant policy.

Tasks 40 and 41 are divided into 33 practice-related subtasks that include 12 additional lower-level provisions. As with all 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.

PAS records for the quarter of January 1, through March 31, 2013 indicate that data were entered for all of the fields required by Task 40 – including the arrest data. The required data for the quarter included reports of 549 total uses of force. This is a reduction of over 50% from the same quarter one year ago, continuing the overall trend of declines in every quarter over that time period. The data for the current reporting period indicate that there were 2,853 arrests, a decline of 3% from the previous quarter, and a 22% decline since the same quarter one year ago. Reported uses of force have thus fallen faster than the number of arrests.

A further breakdown of the types of use of force shows that, for this reporting period, there were a total of 40 Level 1, 2, and 3 uses of force, which is an increase of 45% from the previous quarter; however, the table also shows a decrease of 17% in Level 4 uses of force, to a total of 509. Accordingly, this is the fourth consecutive quarter with significant reductions in the total number of uses of force and represents a total decline of 51%. As expected, the overall drops in uses of force reflect the major drop in Level 4 cases, which may be attributed to a revision to the reporting requirements pertaining to officers' drawing and pointing firearms. While the revised policy does not change when uses of force need to be reported, it does change when pointing is or is not considered to be an appropriate use of force.

The data count for the current reporting period and the seven 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 September 30, 2011	October 1 to December 31, 2011	Jan 1 to March 31, 2012	April 1 to June 30, 2012	July 1 to September 30, 2012	October 1 to December 31, 2012	January 1 to March 31, 2013
Level 1 Uses of Force	4	6	3	4	3	1	0	1
Level 2 Uses of Force	21	19	48	28	14	5	7	13
Level 3 Uses of Force	37	38	108	50	31	29	15	26
Level 4 Uses of Force	1154	1066	797	1034	962	741	612	509
Unintentional Firearms Discharge	0	0	0	0	0	0	0	0
Sick Leave Hours	9378.39	10406.31	12084.56	12734.56	11229.36	9634.3	9857.65	11286.53
Line of Duty Injuries	40	52	43	47	50	46	30	32
Narcotics Related Possessory Offenses Arrests	426	482	445	641	452	508	280	407
Vehicle Collisions	15	11	7	13	15	15	7	18
All Vehicle Pursuits	82	117	89	77	99	83	57	18
All Arrest	3374	3470	3402	3656	3649	3516	2943	2853
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	63	61	61	58	72	58	31	34
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	17	16	24	38	24	8	7	9
Awards	160	70	65	66	99	121		76
Assignment History	9498	9498	9498	9414	9588	9720	9791	10361
Case Evaluation Reports	629	321	193	209	191	453	203	635
Report Review Notices--Positive	2	0	1	6	7	12	12	5
Report Review Notices--Negative	0	0	0	1	0	0	0	0
Canine Deployments	92	112	71	96	93	63	43	64
Financial Claims	0	0	3	0	0	0	0	0
Internal Affairs Complaints	286	386	316	404	375	465	277	186
In-Custody Injuries	70	56	97	75	39	24	13	21
Civil Suits (Tort Claims)	32	7	22	11	7	11	3	4
Criminal Cases Dropped	0	0	0	20	87	300	91	416
O.C. Checkouts	42	41	34	55	29	15	11	58
Officer Involved Shootings	7	4	2	4	3	2	1	2
Rank / Class History	2336	2336	2336	2286	2272	2338	2326	2391
Training History	14159	21017	21084	26100	11255	5182	2096	20108
Supervisory Notes	3589	3338	3281	3568	3139	3072	3117	3139
Arrest Made Against OPD	0	0	0	0	2	1	0	0

The PAS Administration Unit continues to audit the database to assure its accuracy on a nearly daily basis. As noted in our previous report, those audits will now extend to reviews of the original reports and not simply the summaries of data forwarded to the risk management database. This provides a valuable enhancement to the process of assessing the validity and reliability of the data.

Except for the change in the data noted above, the status of the PAS data issues remains largely unchanged from our last report. The department continues to enter arrest data manually while working to automate the process and assure accuracy. The Department's interest in implementation of a new risk management database remains but is mired in contractual problems

with the selected vendor. Policy changes have been drafted and were awaiting the needed endorsement at the time of the site visit. These issues support continued recognition of partial compliance with this requirement.

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:

The processes of identifying officers for review based on passing risk thresholds remained current for the quarter. Consideration of supervisor reviews up the chain of command again appeared to progress well for the quarter. As the table below shows, reviews in the final stages

of the process - that is, those by the PAS panel- resulted in significant numbers of revisions of decisions made at lower levels. Consistent with problems we have identified in past reports, the initial reviews by supervisors continued to result in large numbers of recommendations for “no action.” Over the first three quarters of the past year, and the first month of this quarter, there were significant increases in the number of officers selected for risk-related reviews. That rate has been reduced in the last two months of the quarter. This decline has started to reflect procedural changes intended to reduce false positive levels. As the quarter ended the PAS units was implementing a system of initial internal reviews to avoid sending inappropriate cases to supervisors for review. It is expected that full implementation of this process will be achieved in the next reporting period.

#### Discussion:

As noted above, OPD revised and issued Departmental General Order D-17, *Personnel Assessment Program*, in July 2012. A new version is currently in revision awaiting appropriate signatures. Training of supervisors in the operation of the system is continuing. Based on the policy and the related training that is ongoing, we again find OPD in continued Phase 1 compliance with this Task. We must note, however, our expectations that the revised policy will be full adopted in the near future.

During our most recent site visit, the Department also held its semi-annual PAS meeting as required in this Task. The meeting was attended by the Chief and Deputy Chief and involved a detailed presentation by the Director of the PAS Administration Unit. Key issues, including the status of the governing policy and efficiency of the review process, were discussed. There was limited discussion of the data presented. That suggests that it may be desirable to develop a process by which command staff can clarify the data they would value and how they would like it presented. This would help achieve the maximum benefit from these meetings.

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, 2013. 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.

During this reporting period, 25 officers were initially identified as meeting a total of 26 PAS thresholds. In 11 of cases in which thresholds were exceeded, they dealt with complaints. Eleven others involved uses of force. Ten of those involved Level 4 uses of force. This is substantially below the level in previous reports. Consistent with established practice, some officers were not selected for review based on recent review history. For the selected officers, 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 again reviewed 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 28 officers. These all document supervisory reviews of officers who have been selected for some form of action as a result of PAS reviews.

For the reporting period ending March 31, 2013, OPD concluded a total of 50 PAS reviews, the same as the previous quarter. These include some review held in the previous quarter but not signed off on in the review quarter. Reviews are included in the table below only after they are signed off through the level of the PAS Review Panel. The table below tracks the review process and shows that supervisors recommended that no action be taken in 42, or 84%, of the 50 reviews for the current reporting period. However, that included all review in the second and third months of the quarter. The table also shows that commanders disagreed with lower-level recommendations and prompted additional monitoring and supervision in 10% of cases. Deputy Chiefs also disagreed with the commanders' decisions in almost 16% of their decisions, and the PAS Review Panel suggested revisions in 20% of the findings of the Deputy Chiefs. These figures again suggest increased scrutiny of reviews across the levels.

A greater scrutiny of cases by first-line supervisors is warranted. This problem, however, will be addressed by procedural changes that will provide for internal reviews by the PAS Administration Unit when thresholds are met. While that process will encourage efficiency, additional steps to encourage first-line supervisors should be taken since they will lose the benefits of conducting those original reviews. The Department also has to be concerned that the burden shifted to the PAS Administration Unit is not so substantial that it overwhelms the unit and impinges on its other related work. The danger is that, without appropriate resources and reasonable expectations about the detail required in the internal reviews, the risk management system could suffer. Elsewhere, where similar reviews are done, the workload is managed by limiting the breadth of reviews focusing most attention on the areas where thresholds are surpassed.

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.

<b>Summary of PAS Reviews and Recommendations 2011-13</b>																	
	PAS Reviews Completed	Supervisor Rec- no action	%	Recognition	%	Supervisor Rec - Monitoring	%	Supervisor Rec- Intervention	%	Commander rec Concurs w Supervisor	%	Dep. Chief Concurs w Commander	%	PAS Panel Concurs w DC	%	Pending number of personnel that exceeded a threshold	
<b>2011</b>																	
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
<b>Total</b>	149	109		2		29		10		142		137		142		9	201
<b>Average</b>	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
<b>2012</b>																	
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
April	25	17	68%	0	0%	5	20%	3	12%	25	100%	25	100%	25	100%	22	41
May	27	17	63%	0	0%	2	7%	0	0%	26	96%	25	92%	27	100%	14	58
June	43	41	95%	0	0%	2	5%	0	0%	41	95%	42	98%	43	100%	15	17
July	66	61	92%	1	5%	3	5%	2	30%	65	98%	65	98%	64	97%	0	18
August	32	29	90%	1	0%	2	6%	0	0%	27	84%	26	81%	27	84%	8	35
September	15	10	67%	1	0.1	3	20%	1	7%	15	100%	11	73%	13	87%	1	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
<b>Total</b>	289	233		4		34		12		273		260		272		100	352
<b>Average</b>	24.1	19.4	76%	0.3	1%	2.8	0	1.0	7%	22.8	91%	21.7	84%	22.7	90%	8.3	29.3
January	27	19	70%	1	4%	7	26%	0	0%	27	100%	27	100%	24	89%	5	14
February	13	13	100%	0	0%	0	0%	0	0%	9	69%	8	62%	10	77%	5	7
March	10	10	100%	0	0%	1	10%	0	0%	10	100%	10	100%	6	60%	6	11

For our quarterly reports, we also review the PAS histories of officers who had either a Level 1 use of force or been arrested for a criminal offense in the past quarter. For the period under review, one officer met these criteria for examination by virtue of a Level 1 use of force. The officer had no prior history of meeting PAS thresholds and had no prior PAS reviews.

As we regularly do, during our most recent site visit, we met with the Deputy Chief of Risk Management and key PAS Administration Unit staff. We received updates on several critical issues. The Department is making progress in making the full text of use of force reports available to supervising officers in the review process. We also discussed the concern about the apparent overlap of monitoring and intervention strategies. This issue should also be addressed through the changes in reviews process in which the distinctions will be clarified in the results of review by the PAS Administration Unit.

As noted above, the Department is now making efforts to address the complexities of the risk management process by considering revision in the review process. To do this, it is examining practices in other departments and considering the complexities of risk identification and intervention to reduce risk. We welcome and support the aggressive management of this process, and recognize that it will continue to move the Department forward.

It is clear that, as PAS continues to operate, OPD's risk management system is in transition. Cases in which a threshold is met but closer examination indicates monitoring or supervision are not needed. The Department's new monthly risk management meetings should provide for good use of the data to manage risk. All of these changes are early, some are not yet fully in place, and none have been institutionalized. OPD must overcome the data and system issues discussed above to move in an appropriate direction.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will continue to work with the Department to examine the processes of collecting and storing data, and the use of that data in the PAS review process. We will focus on issues relating to the reliability of data with special attention to the audit function and its focus on the quality of original reports. We will continue to monitor the Department's test of new data entry processes and the progress on the new database project. Our chief focus will remain on the effective use of the risk management system during the quarter. We will focus attention on: 1) the availability and use of the necessary information in the review process; 2) whether outcomes of the review process, and management oversight of it, are consistent with the goals of risk reduction; and 3) whether the review and intervention processes are effective in identified cases. We will support the Department's review of the overall process and its consideration of the appropriateness and effectiveness of its response to identified 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:

In 2009, the Parties agreed that there would be no active monitoring of this Task, since hiring had ceased and no Academy was planned for the near future. OPD decertified all then-current Field Training Officers. We deferred our compliance finding for Task 42 until the program was reinstated to address the needs of new officers.

During the twelfth reporting period, we found that OPD had followed the FTO selection procedures required by the NSA and was, for the first time, in compliance with Task 42. We also found OPD in compliance with this Task during the last reporting period.

### Discussion:

During our most recent site visit, we met with and interviewed the officer who serves as Field Training Coordinator, his supervising lieutenant, and the Deputy Chief of the Bureau of Field Operations. We also reviewed related memoranda, evaluation forms, and other documentation.

At the time of our site visit, 38 trainees were in week six in the field assigned to FTO officers. None had dropped out or been terminated. One, however, was assigned to the Medical Unit.

The trainees have completed one rotation. FTOs have rated the trainees as required by the FTO Program and trainees were interviewed at the end of the first rotation by the FTO Coordinator. With the recent reorganization of OPD, there are now three field entities to which trainees may be rotated. All but three trainees were rotated to field entities in different geographic areas of the City. Three trainees could not be rotated due to the limited number of FTOs available.

The first focus group was set for May 25, 2013, at the halfway mark.

The current Basic Academy started with 51 trainee officers, and at the time of this review was down to 46. The group was expected to graduate on September 28, 2013. In preparation for this group of officer trainees OPD has been working to select additional FTOs. There were 55 approved FTOs; however, seven were not available to serve as FTOs due to their current assignment. Another 23 officers were in the process of being approved as FTOs.

In order to ensure that Training and the FTO Program are consistent a biweekly meeting attended by the Training Commander, the FTO Coordinator, and his lieutenant. In addition, a quarterly review panel – composed of the two BFO Deputy Chiefs, the Bureau of Risk Management Deputy Chief, the Training Section captain, and the FTU captain, sergeant, and Program Coordinator – was held in March 2013. The biweekly meeting and quarterly panel discussions included the need for more training regarding handcuffing and searches; issues relating to equipment, PDRDs, memorization of the Penal Code, report-writing, use of the radio, high-risk traffic stops, and practical exercises; and making time available in training to complete required PowerDMS policy reviews.

**Task 42.1** requires that the Field Training Program Coordinator is a full-time position (compliance standard: Yes/No). A full-time officer is currently assigned to supervise the program. OPD is in compliance with this subtask.

**Task 42.2.1** requires that trainee officers rotate to a new Field Training Officer (FTO) and a new geographic area of the City at predetermined intervals (compliance standard: 90%). Trainees are rotated every four weeks to a new assignment and new FTO. While the limited number of FTOs prevented 100% of trainees to be rotated to different geographic areas, OPD rotated all but three trainees and remains in compliance with this subtask.

**Task 42.3.1** requires that incentives for participation as an FTO are increased (compliance standard: Yes/No). Officers who serve as FTOs are paid incentive pay for their service. In addition, the program includes several incentives (e.g., chevrons, administrative days, and priority for selection as training) as incentives for participation. No changes to the incentives for participation in the FTO Program have occurred. OPD is in compliance with this subtask.

**Task 42.4.1** requires that field supervisors and commanders nominate FTO candidates (compliance standard: 90%), and the Chief of Police determines FTO assignments and retention (compliance standard: Yes/No); **Task 42.4.2** requires that FTO candidates complete three years of service before selection, unless authorized by the Chief (compliance standard: Yes/No); **Task 42.4.3** requires that FTO candidates are required to demonstrate commitment to community policing and problem solving and leadership abilities (compliance standard: 95%); **Task 42.4.4** requires that ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy are primary criteria in the selection of FTOs (compliance standard: 95%); and **Task 42.4.5** requires that candidates with excessive numbers of citizen complaints, sustained investigations or excessive numbers of use of force incidents are barred from selection as an FTO for no less than two years (compliance standard: 95%). Candidates are recommended by their supervisors and commanders; and must have work and performance records as required by this section. FTOs are screened for commitment to community policing and candidates with excessive numbers of complaints and/or sustained instances of uses of force are not selected. The selection of all FTOs to be certified (newly

selected FTOs) and those to be recertified (FTO previously selected and decertified when new officers were not being hired) followed the requirements outlined in the NSA. The screening of the new candidates to be added to the FTO Program had been completed at the time of our May 2013 review. OPD is in compliance with these subtasks.

**Task 42.5** requires that FTOs be decertified following sustained disciplinary action for serious misconduct specified (compliance standard: Yes/No). OPD is in compliance with this subtask.

**Task 42.6** requires that assignment to a FTO position is contingent upon successful completion of a training course for the position (compliance standard: Yes/No). FTOs are not assigned until they have successfully completed program training. OPD is in compliance with this subtask.

**Task 42.7.1** requires that at the end of a complete FTO cycle, trainee officers anonymously evaluate each of their FTOs (compliance standard: 95%); **Task 42.7.2** requires that FTO evaluation forms are reviewed by the Program Coordinator and the FTO's commander and supervisor (compliance standard: 95%); **Task 42.7.3** requires that the Field Training Program Coordinator provides evaluation information to the FTOs as a group, concerning program effectiveness (compliance standard: Yes/No); **Task 42.7.4** requires that each FTO is provided with evaluation information regarding his/her individual performance (compliance standard: Yes/No); and **Task 42.7.5** requires that individual evaluation forms are not made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms (compliance standard: Yes/No). Trainees are evaluated by their FTOs 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. Trainees are provided evaluations of their performance throughout the program. FTOs do not receive individual evaluation forms but do receive feedback regarding their performance. The evaluation forms are reviewed by the FTP Coordinator, Commander and Supervisor and filed in the FTO Coordinator's office. OPD is in compliance with these subtasks.

**Task 42.8** requires that the Field Training Program Coordinator, or his/her designee, conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers (compliance standard: Yes/No). FTOs complete a daily evaluation of the trainees; and the program coordinator receives, reviews, audits, and files all evaluation forms. OPD is in compliance with this subtask.

**Task 42.9** requires that when a trainee officer's FTO is absent, the trainee officer is not assigned to field duties with an "acting" FTO, but is placed with another certified FTO, or assigned to non-field duties, pending the availability of a certified FTO (compliance standard: 95%). If a trainee's FTO is unavailable, the trainee is assigned to another FTO. If no FTO is available, the trainee is assigned to a sergeant or non-patrol assignment. In April 2013, during a staff meeting, the FTO Coordinator discovered that a trainee officer had been assigned for a two-day period to work with an officer who had attended FTO training but had not been approved as an FTO by the Chief. The FTO Coordinator reassigned the trainee to an approved FTO. By email, he advised

all sergeants and commanders of the requirement that trainees can only work with OPD-certified FTOs and explained the option if one is not available. The FTO Coordinator met personally with the sergeant where the mistake occurred. OPD moved promptly to rectify the problem and remains in compliance with this subtask.

**Task 42.10** requires that Field Commanders and FTO Supervisors are provided training (compliance standard: 95%). 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. OPD is in compliance with this subtask.

**Task 42.11** requires that focus groups are conducted by the Field Training Program Coordinator and Academy staff with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six months after completion of the field training program (compliance standard: Yes/No). The coordinator conducts focus groups with randomly selected trainees, as required by the NSA. The focus group is designed to elicit issues encountered in the program and ensure that inconsistencies in training are identified and rectified. The results of the focus group are recorded in a memorandum and reviewed by the Chief, the Assistant Chief, the Deputy Chief overseeing the Bureau of Field Operations, the Training Section Commander, and the captain and sergeant who oversee the program. During this and our previous reviews, we found that the required focus groups have been held and documented. OPD is in compliance with this subtask.

**Task 42.12** requires that the results of the focus group sessions be reviewed at a meeting to include the Training Section Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief (compliance standard: Yes/No). The coordinator explores the consistency of field training with that of the Academy at several points during the program. He interviews every trainee every four weeks before they are rotated to new assignments and new FTOs. He also participates in biweekly meetings with the Training Commander in which the FTO training is discussed to identify training issues. At the end of the FTO training cycle, a final evaluation report of the trainee's performance is prepared; and trainees rate the FTOs and the program.

Results of the focus group sessions are reviewed at a meeting that included the Training Section Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief. OPD is in compliance with this subtask.

An annual assessment of the performance of the FTU and all FTOs was conducted on February 19, 2013. The assessment panel was composed of the two BFO Deputy Chiefs, the Deputy Chief of the Bureau of Risk Management, a use of force subject matter expert (SME), the FTO coordinator and captains who command the IAD, three BFO units, and the FTU.

As we observed in our last two reports, OPD has fulfilled the requirements of Task 42. It is now expanding the number of FTOs to address a larger number of trainees in the class that is graduating from basic training.

OPD is in Phase 2 compliance with Task 42.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## 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.<sup>17</sup>*

(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 96% of the members and employees in our sample received the required in-service training.

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). For this reporting period, we reviewed the training records of a stratified random sample of 75 OPD members and employees – including 54 officers, 12 sergeants, one lieutenant, five evidence technicians, and three dispatchers– to determine if the members and employees received adequate training for their positions.

The Department produced a record for each member and employee in our sample. For each, 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.

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<sup>17</sup> The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

Training of the police evidence technicians (PET) is the responsibility of the BFO where they are assigned. The training coordinator has recently been changed. We found that three of the five PETs did not receive training adequate for their positions. One of the three has only seven hours and 30 minutes in Crime Lab Overview on a day in April 2012, but nothing since. The second has the same April 2012 Crime Lab Overview and four hours in a Scenario Evaluator Course attended in August 2012, but nothing since that time. The third attended a few hours of instruction in the officers' CPT in April and February 2012, but has nothing since then. OPD should assess the training needs of the PETs and develop a plan to provide them the training needed for their work. We will examine the training records for all the PETs during our August 2013 site visit.

The remainder of the files in our random sample revealed training appropriate to their position. Four officers were excused for medical reasons. Overall, 68 (96%) of the 71 members and employees in our sample who were available to train received appropriate training to their jobs. The following chart reflects the results of our survey.

	Records Reviewed	Medically Excused	Available to Train	Training Received	%
<b>Officers</b>	54	4	50	50	100%
<b>Sergeants</b>	12	0	12	12	100%
<b>Lieutenants</b>	1	0	1	1	100%
<b>Dispatchers</b>	3	0	3	3	100%
<b>Evidence Technicians</b>	5	0	5	2	40%
<b>Total</b>	75	4	71	68	96%

OPD is in Phase 2 compliance with Task 43.1.1.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 45: Consistency of Discipline Policy

Requirements:

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

- 1. The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*

2. *The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*
3. *All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.*
4. *The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*

(Negotiated Settlement Agreement X. B.)

Comments:

During the last two reporting periods, we found OPD in compliance with Task 45.

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 queried the IAD database to identify all of the cases with at least one sustained finding that were approved between January 1, through March 31, 2013. This query yielded 33 cases, containing 46 sustained findings. Our review revealed that seven cases containing 11 findings listed did not have the discipline conference or discipline letter until the second quarter of 2013. We, therefore, examined 26 cases containing 35 findings in which the discipline conference and discipline letter occurred during the first quarter of 2013. We found that two records on the list of cases containing three findings that did not show the dates for the disciplinary conference or disciplinary letter. Thus, the IAD records were accurate and complete for 24 (92%) of the 32 cases, and 32 (91%) of the 35 sustained findings, on the list for the quarter under review.

During this reporting period, we also examined the list of cases reflecting Skelly hearings during the reporting period. There were 16 Skelly hearings completed during the quarter. However, we found dates closed for only seven (44%).

OPD is not in compliance with Task 45.1.



**Task 45.4** requires that discipline be imposed in a manner that is fair and 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 reviewed all the cases with sustained findings that were decided during the period of January 1, through March 31, 2013. We found that in 31 (89%) of the 35 sustained findings in which discipline was decided during the reporting period, the discipline fell within the Discipline Matrix in use, or was a reasonable application of discipline justified by an analysis of the facts of the case. We found four findings in which we believe inconsistency in enforcing OPD rules and policies has potential to undermine discipline. Activation of PDRDs – particularly in a police department with a culture that prevents officers and supervisors from seeing evidence of fellow officers’ wrongdoing – can be the key to resolving allegations of improper use of force that arise from their citizen contacts. Accordingly, we think it is a serious violation for an officer to fail to activate his/her PDRD. The following three cases involved four findings in which officers failed to activate their PDRDs and were disciplined lightly.

1. One case involved a canine officer whose dog bit a fleeing subject who was arrested. The IAD report of the failure to activate observed that the officer “had the PDRD activation on his list of things to do” but prioritized safety items such as “driving his car, advising radio and drawing his weapon.” The report noted that while he could physically turn it on “his mind was concentrating on more immediate tasks.” The Matrix range for this was C-S2 and the discipline was set at the lowest level within the Matrix, counseling and training.
2. A second case involved an officer who served to back up another officer. He failed to activate his PDRD and claimed that he did not think he had to since he was only the back-up. In spite of the fact that this officer had two supervisory notes files regarding use of the PDRD and another sustained case for failure to activate his PDRD, he was disciplined with a written reprimand, the lowest sanction of the Matrix range for a second offense.
3. A third case involved two officers who failed to activate their PDRDs. Both officers had “numerous violations for failure to activate their PDRD.” One had four supervisory notes for failing to activate his PDRD and was on supervisory monitoring. Both officers received a written reprimand.

During the period of January 1, through March 31, 2013, Skelly hearings were held for 16 IAD cases involving 26 sustained findings in which discipline of a one-day suspension or greater was recommended. In three findings the involved officer retired and in 20 findings, the recommended discipline was upheld or reduced with adequate justification. In the remaining three findings involving two cases the Skelly result was inappropriate. The findings are discussed below:

1. In one case, two officers were found by the Federal District Judge in a civil case to have conducted a strip search of two men in public. Both officers’ testimony was found by the

judge to be “not credible.” The IAD investigation concluded that the officers lied in their testimony. The Skelly hearing was afforded one officer for whom termination was set as the appropriate discipline. That discipline was changed when the hearing official found that the finding should be changed to not sustained. The OPD Skelly hearing official wrote that the termination was “improper,” the Judge’s finding of fact was “wrong and mischaracterized testimony,” and that the officer “never lied or strip searched anyone.” The discipline was set aside for both officers. The Skelly hearing was held on October 3, 2012, but the approval date was recorded as February 22, 2013. The approval was by the former Chief.

2. A second case in which there is insufficient justification for lowering the discipline involves an officer who shared a residence with another officer who was on medical leave. The officer was sustained for interfering with an IAD investigation; he discussed his interview with the officer under investigation. The Matrix discipline was termination but the recommended discipline was set at 30 days. The Skelly hearing reduced this to 20 days. The reduction was not sufficiently justified.

In total, we examined 61 sustained findings, including 35 in IAD cases and 26 from Skelly hearings. The outcomes in five findings were unreasonable; 55 (92%) of the findings we reviewed were fair and consistent. OPD remains in Phase 2 compliance with this Task, but the Department risks falling out of compliance if next quarter’s compliance rate falls below the required 95%.

OPD is in partial Phase 2 compliance with Task 45.

Compliance Status:

Phase 1: In compliance

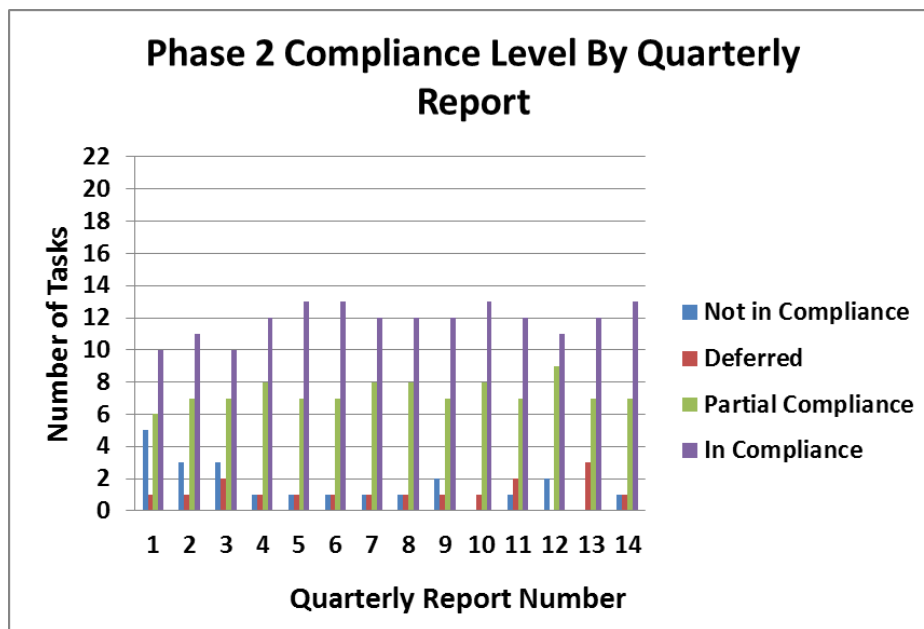
Phase 2: Partial compliance

## Section Three

### *Conclusion: Critical Issues*

This is our fourteenth 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 overall compliance has returned to the highest level that was reestablished three quarters prior to this reporting period. In all, 59%, or 13, of the Tasks are in Phase 2 compliance.

The overall compliance changes include two Tasks that have moved from partial compliance to in compliance (Tasks 5 and 16); one Task (Task 26) that moved from in compliance to partial compliance; one Task (Task 37) that moved from in compliance to not in compliance; and two Tasks (Tasks 24 and 25) that moved from deferred compliance assessment to in compliance. We also deferred our compliance assessment on one force-related Task (Task 30). As noted above, these changes bring overall compliance to the highest level achieved to date. This trend reminds us that this is a fragile process with tenuous capacity for sustainability. The City must take the steps necessary, without further delays, to bring the Department into compliance with the reforms agreed to one decade ago.





## Appendix B

### *Updates on the Recommendations Outlined in the Independent Frazier Group Report on Occupy Oakland*

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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.

We are particularly concerned, of course, with the decisions and actions that relate to provisions of the NSA. As we have noted previously, 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 correlate to one or more provisions of the NSA.

We have had subsequent communications with the Department’s administration, and received an update of progress towards implementing the recommendations as of our most recent site visit, in early May. We intend to have ongoing dialogue with Compliance Director Frazier on these issues. The chart below documents the Department’s progress.

NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
<b>1 – Staffing and Resources</b> [inactive NSA Task]	46 – Review policy and training re: communication of information CID [Criminal Investigation Division] receives from IAD.	Pending	OPD has drafted modifications to DGO M-4.1 (Criminal Investigations Involving: Active Law Enforcement, or Member or Employee of the Department) to address the concerns raised. As of our last site visit, the Compliance Director and the Monitoring Team were reviewing the changes. OPD has also changed the processes for the Force Review Boards, the Executive Force Review Boards, and the IAD/Chief of Police meetings to ensure separation of the internal and criminal investigations.
	57 – Establish policy and accountability with	Pending	OPD has drafted modifications to DGO K-4.1 (Force Review Boards) to prevent

NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	safeguards against broadcast of confidential IAD information outside of IAD purview.		the sharing of IAD information in Executive Force Review Boards. As of our last site visit, the Compliance Director and the Monitoring Team were reviewing the changes. Criminal investigators are not allowed to be present when IAD presents its findings.
	65 – Training program for all CID and IAD investigators and supervisors to raise skill level, organized rotation of members through units involved in crowd management and control activities (i.e., SWAT, HNT, etc.)	Pending	OPD indicated that it has already made some personnel changes in IAD. Training Section staff are working on curriculum development for interview training for IAD and CID personnel, in addition to exploring what training may be available from POST and other outside sources. Some members have been sent to Interview and Interrogation training; more are scheduled to attend. As of our last site visit, OPD advised us that a retired LAPD commander presented an officer-involved shooting class to members of both IAD and CID. Selected IAD investigators were also sent to the Force Science Institute for training and certification, and some IAD members are being sent to Behavior Analysis Training Institute.
<b>Task 2 – Time Limits, Standards, and Compliance with IAD Investigations</b>	51 – Delay of initiating Level 1 use of force investigation must be reviewed.	Completed	Investigation was completed.
<b>Task 5 – Complaint Procedures for IAD</b>	44 – Recommend reviews and audits by Office of Inspector General for CID and IAD investigation quality.	Pending	The OIG function is scheduled to move to the Office of the City Administrator in 2013, which may impact audit schedules. An audit of CID, planned for 2012, was not scheduled. OIG hired an outside auditor to review the Department’s investigations of officer-involved shootings and other Level 1 uses of force. A draft report from the auditor was delivered to OPD. OPD noted that the majority of the recommendations

NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
			<p>pertained to officer tactics as opposed to the quality of investigations. The Training Section is incorporating some of the recommendations into training. OIG plans to audit CID interviews, and is awaiting approval from the Compliance Director for a contract to hire supplemental auditors.</p>
	<p>46 – Review policy and training re: communication of information CID receives from IAD.</p>	<p>Pending</p>	<p>OPD has drafted modifications to DGO M-4.1 (Criminal Investigations Involving: Active Law Enforcement, or Member or Employee of the Department) to address the concerns raised. As of our last site visit, the Compliance Director and the Monitoring Team were reviewing the changes. OPD has also changed the processes for the Force Review Boards, the Executive Force Review Boards, and the IAD/Chief of Police meetings to ensure separation of the internal and criminal investigations.</p>
	<p>52 – OPD must complete a robust review re: the shortfalls of IAD process, policy, supervisory and command accountability.</p>	<p>Pending</p>	<p>The investigation into this Level 1 use of force has been outsourced to an external contract investigator. After a Skelly hearing, it was returned to the contract investigator for additional work. As of our most recent visit, the supplemental work has been completed, and the case has been returned to the Skelly officer to complete his review.</p>
	<p>53 – Quality of IAD investigations: assignment of best available personnel, establish audit process, identify investigative deficiencies and train to improve, cap, etc.</p>	<p>Pending</p>	<p>OPD indicated that several personnel changes have already taken place in CID. Current policy limits assignments in IAD to a maximum of six years, and the Department has no plans to change this limit. IAD assigned five annuitants to the Intake Section to address the backlog of cases in that unit, which was caused by the high influx of complaints related to Occupy Oakland events. OPD has hired an outside contractor to conduct an analysis of the entire IAD process, and has received a draft report. The Training Section staff is working on curriculum</p>

NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
			development for interview training for IAD personnel, in addition to exploring what training may be available from POST and other outside sources. As of our last visit, the administration plans to meet with the Compliance Director to address issues he has raised with the process.
	55 – Policy developed to ensure IAD investigation of ranking Department personnel is investigated by investigator of equal rank or higher.	Pending	While OPD does not plan on changing policy to prevent IAD investigators from investigating higher ranking personnel, TB V-T.1 (Internal Investigation Procedure Manual) was revised to require that a higher ranking person be present for the interviews of subject supervisors and commanding officers. Additional review processes were added for these cases as well. As of our May site visit, T-B V-T.1 has not yet been issued, and it will not be finalized until a revised M-3 is finalized and issued.
	60 – Conduct a needs assessment of the IAD.	Pending	OPD has retained an outside consultant to conduct a comprehensive review of the IA process. A draft report has been provided to the Department. As of our last visit, the administration plans to meet with the Compliance Director to address issues he has raised with the process.
Task 12 – Disclosure of Possible Investigator Biases [inactive NSA Task]	7 – Internal Affairs (IAD) commander should not be utilized as Operations Chief.	Completed	OPD advised that it is not normally Departmental practice to deploy the IAD Commanding Officer in this manner, and this event was an exception. The crowd control policy has been modified to prohibit such assignments in the future.
	49 – OPD should develop a policy where certain CID and IAD personnel are not assigned to uniform field assignments where alleged misconduct or officer-involved criminal complaints may occur.	Completed	OPD advised that it is not normally Departmental practice to deploy IAD and CID personnel in this manner, and this event was an exception. The crowd control policy has been modified to prohibit such assignments in the future.
	57 – Establish policy and accountability with	Pending	OPD has drafted modifications to DGO K-4.1 (Force Review Boards) to prevent



NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	safeguards against broadcast of confidential IAD information outside of IAD purview.		the sharing of IAD information in Executive Force Review Boards. Criminal investigators are not allowed to be present when IAD presents its findings.
<b>Task 16 – Supporting IAD Process-Supervisor/Managerial Accountability</b>	22 – Level One Use of Force: mandatory reporting requirements and providing medical aid were ignored.	Completed	OPD has conducting training on these subjects with supervisors and during continued professional training (CPT).
	39 – Current OPD criminal investigations from OO [Occupy Oakland] require a more in-depth and aggressive review. Includes assessment of delay and preventing future reoccurrence.	Completed	Command staff investigated and addressed Criminal Investigation Division delay and depth of review.
	41 – Review policy and practice for officer-involved criminal activity. CID investigations re: officer-involved criminal activity must be more robust, diligent, and objective.	Completed	DGO M-4.1 Section VI was updated to address this recommendation.
	42 – Review and update current policies and practices when allegations of criminal misconduct are made. COP [Chief of Police] must be notified without delay and make a decision whether to refer the investigation to CID.	Completed	DGO M-4.1 Section VI was updated to address this recommendation.
<b>Task 19 – Unity of Command</b> [inactive NSA Task]	6 – Civilian support staff should not be tasked to fill tactical decision-making roles beyond their training and experience. Future	Completed	OPD incorporated this into practice during the May Day (2012) crowd control event.

NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	plans must have sufficient sworn staff of command rank.		
	23 – Develop policies to ensure post-event follow up to criminal or investigative investigations regarding mutual aid resources. Demobilization to include mutual aid responders to use ICS-214 or supplemental reports detailing force applications, locations, officers injured, and supervisor approval. Assign OPD member to oversee and ensure collection.	Completed	This has been added to the crowd control policy and to the mutual aid policy.
	24 – OPD should not be comingled with Mutual Aid resources.	Completed	This has been added to the crowd control policy and to the mutual aid policy.
	25 – Mutual Aid Policy to include OPD and Responding Agencies responsibilities.	Completed	This has been added to the crowd control policy and to the mutual aid policy.
<b>Task 20 – Span of Control</b>	24 – OPD should not be comingled with Mutual Aid resources.	Completed	See above. This has been added to the crowd control policy and to the mutual aid policy.
<b>Tasks 24 and 25 – Use of Force Reporting; Use of Force Investigation and Report Responsibilities</b>	2 – Revise Use of Force policy.	Pending	As of May 2013, the Office of the City Attorney is revising DGO K.3, <i>Use of Force</i> .
	16 – Concerned with criminal investigation quality regarding serious uses of force.	Pending	The Criminal Investigation Division has completed officer interviews and is working on appropriate follow-up.
	20 – Deployment of Specialty Impact less lethal Weapons on 25 Oct may not have been reasonable. Criminal Investigations Division (CID) and IAD to	Pending	All IAD cases have been completed; the exceptions are cases initiated as a result of lawsuits. The Criminal Investigation Division has 12 open cases.

NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	investigate; Chief of Police to assess and resolve.		
	21 – Accountability system needed for issuance, recovery, and re-supply of any and all munitions to any “Tango Team” officer or supervisor.	Pending	As of May 2013, the Munitions Inventory Policy (including Tango Team Equipment Deployment Inventory Sheets) has been drafted and is in the approval process.
	29 – Enhance use of force reporting policy at departmental and individual levels.	Pending	Same as above. As of May 2013, the Office of the City Attorney is revising DGO K.3, <i>Use of Force</i> .
	32 – Mass use of force reporting & collection, review, and approval by supervisor must be revised.	Pending	As of May 2013, OPD’s draft crowd control policy is in the approval process. Additionally; (1) multiple investigators will be utilized during large-scale events; (2) an IAD Force Investigation Team was developed to respond to all OPD OIS events; (3) the IAD policy and organizational chart needs revisions to include these changes. OPD reported that the IAD policy has not been revised to specify the authority and responsibility of the Force Investigation Team organizationally.
	35 – Strategic deployment of Quick Response Teams and/or simultaneous dynamic movement of squad-sized crowd control elements. Develop POST-certified crowd management training curriculum, utilize modern equipment, modify policy to represent current standards and preferred practices when managing crowds, and appoint Incident Management Team and Crowd Control Coordinator.	Pending	As of May 2013, OPD’s draft crowd control policy is in the approval process. New less lethal munitions have been ordered (sponge rounds and not bean bags). Refer to Task 32.

NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	36 – OPD and Mutual Aid agencies must complete appropriate forms (ICS-214 or supplemental reports) detailing arrests, injuries, force, and location where applied. Supervisors to review and approve, and reports submitted to Planning Section Chief prior to demobilization.	Pending	This is addressed in the draft of the crowd control policy, which is still in the approval process as of May 2013. Refer to Task 32.
<b>Task 26 – Force Review Board (FRB)</b>	26 – Number and types of uses of force from Oct. 25 have not been heard by appropriate force review boards. All uses of force should be reviewed for criminal misconduct before such hearings.	Completed	All FRBs for Level 2 UOF incidents from October 25, 2011 are complete.
<b>Task 27 – Oleoresin Capsicum Log and Check Out Procedures</b> [inactive NSA Task]	2 – Revise Use of Force policy.	Pending	The policy has been revised and is currently in the approval process.
	21 – Accountability system needed for issuance, recovery, and re-supply of any and all munitions to any “Tango Team” officer or supervisor.	Pending	A munitions inventory policy has been drafted and is currently in the approval process.
<b>Task 30 – Executive Force Review Board (EFRB)</b>	26 – Number and types of uses of force from Oct. 25 have not been heard by appropriate force review boards. All uses of force should be reviewed for criminal misconduct before such hearings.	Completed	All EFRBs for Level 1 UOF incidents from October 25, 2011 are complete.
	27 – Develop policy and practices which facilitate evaluation of force (Force Review Board) circumstances contemporaneous to the date of the event.	Pending	A Force Investigation Team was developed through IAD to respond to all OPD officer-involved shooting (OIS) events. OPD reported that the IAD policy has not been revised to specify the authority and responsibility of the Force Investigation Team organizationally.

NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
<b>Task 32 – Use of Camcorders</b>	31- Revise personal recording device policy and enhance reliability of use.	Pending	OPD has revised the PDRD policy; however, the policy was not approved or implemented as of our most recent site visit. OPD reports that the Department is currently ordering additional PDRD units.
<b>Task 33 – Supporting the IAD Process – Supervisory/ Managerial Accountability</b>	22 – Mandatory reporting and medical aid requirements were ignored.	Pending	OPD had been held in compliance with this Task until our November 2012 review in which many Occupy Oakland IAD cases were reviewed and the failure of officers and supervisors to report misconduct was clearly documented.
	39 – Current OPD criminal investigations require a more in-depth and aggressive review. Includes assessment of delay and preventing future reoccurrence.	Pending	During the past two reviews, we found that again there were a number of serious cases involving Class I violations of the MOR that occurred during Occupy Oakland demonstrations in which there were many officers present. There were instances where officers and supervisors serving on a police line said that they had not observed the actions of other officers who were near them.
<b>Task 43 – Academy and In-Service Training</b>	14 – Designate a Crowd Management Coordinator with responsibility for policy updates, department training, etc.	Completed	The IAD Commander has been designated this responsibility.
	17 – Implement immediate training in use of new munitions and strategy and deployment of surveillance and arrest teams in addition to dynamic squad movement to disperse and arrest.	Completed	Tango Teams have been expanded, all sworn personnel trained in small unit tactics, three hours added to both sergeants’ and officers’ Continued Professional Training (CPT).
	65 – Training program for all CID and IAD investigators and supervisors to raise skill level, organized rotation of members through units	Pending	Personnel changes in IAD. Training Section staff is working on curriculum for interview training for IAD personnel. Brought in Los Angeles Police Department (LAPD) level 1 investigator for one-day training. Has arranged for

NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	involved in crowd management and control activities (i.e., SWAT, HNT, etc.)		the FBI to provide interview training.
	66 – Formal training for senior leaders, and formalize a career development program of rotational assignments and temporary detail assignments.	Pending	OPD Assistant Chief (AC) and Deputy Chief attended IACP conference in 2012; AC attended Major Cities Chiefs/Major County Sheriffs joint conference in January 2013; Assistant Chief visited Philadelphia Chief; and new FBI National Academy Associates (NAA) slot planned.
	67 – Provide critical incident and leadership training for all lieutenants.	Pending	In June 2012, OPD held training for commanders on the subject of quick response teams and small unit tactics. In September 2013, training for all commanders took place for pre-planning for crowd control events. Four commanders are scheduled to attend Senior Management Institute for Police (SMIP) in 2013. Some commanders are scheduled to attend upcoming Incident Command System (ICS) training with Urban Areas Security Initiative (UASI) funding.

## Appendix C

### *Selected Inactive Task Assessments*

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During this reporting period, we assessed an inactive NSA Task: Task 48, Departmental Management and Annual Management Report Review. **Task 48** requires that: each functional unit prepares a management report every 12 months; management reports include information required by the NSA; and Division Commanders individually meet with the Chief of Police and their respective Deputy Chiefs to thoroughly review the management report of that division. To assess this subtask, we reviewed the 2012 annual management reports to ensure that a report was submitted for each functional unit of the Department, and to determine whether each included relevant operating data and highlighted ongoing or extraordinary problems and noteworthy accomplishments, as required by Department General Order A-7, *Annual Management and Departmental Reports*.

We reviewed all of the Department's 2012 reports, which were prepared by the following units:

- Bureau of Field Operations 1: BFO 1 Patrol; Criminal Investigation Division (CID); Property and Evidence Unit (PEU)
- Bureau of Field Operations 2: BFO 2 Patrol; Support Operations Division
- Bureau of Risk Management: Criminalistics Division; Internal Affairs Division; Office of Inspector General; Training Division
- Bureau of Services: Fiscal Services Division; Personnel Section; Records Division; Communications Section

Each unit's report included the following information, as required by DGO A-7: Staffing; Fiscal Management Report; Training Received and/or Provided by Unit Personnel; Significant Accomplishments; Productivity Performance Data; Other Performance Data; and Plans and Goals. In general, we found the reports to be well organized and easy to follow, though some units offered more thoughtful analysis of the challenges they faced; and others presented more detailed information about, for instance, training that their members and employees received throughout the year. All of the units' annual reports from 2007 onward are available to the public via the Department's website.

As part of this assessment, we also confirmed that, when the reports are completed, Division Commanders individually meet with the Chief of Police and their respective Deputy Chiefs to thoroughly review the management report of that division.

We will again assess OPD's compliance with this Task during a future reporting period.

**Also during this reporting period, we examined the Department's use of "counseling and training."** We undertook this to determine what exactly takes place when an officer – following a sustained IAD investigation or a Force Review Board examining a Level 2 use of force – is assigned to counseling and training. Our concerns, based upon conversations with OPD staff,

centered on the notion that “counseling and training” is not appropriately defined nor applied. We noted that OPD does not consider counseling one intervention, and training a second – and distinctly separate – intervention.

As part of this assessment, we selected five recent IAD cases in which at least one finding was sustained and for which the subject was assigned counseling and training to determine whether counseling – and in addition, training was a separate and distinct recommendation. We found these records to be limited. Absent requesting an entire case file, there is currently no consistent or reliable way for a supervisor, via PAS, to learn about the content of any counseling and/or training provided to a subordinate following sustained misconduct. One case noted that the officer “was administered C&T [counseling and training] by [his supervisor] on [a specific date].” But there were no additional details regarding the substance of the counseling, if provided, nor the subject matter of any training provided. In two cases, it was difficult to determine from the PAS Supervisory Notes entries if any “counseling” or “training” had occurred at all.

We suggested to the Department that counseling and training dispositions are misleading because they are not administered consistently; and they may, in fact, not include training at all – but instead serve more as the documentation of the first level of discipline, and perhaps nothing else. Department officials informed us that in most situations in which counseling and training is assigned, the supervisor will refer to the policy that was violated. Some supervisors will review the relevant policy with the subject, and others will merely give the subject a copy of the policy and ask him/her to read it. This, in our view, falls short of either counseling or training. While counseling and training is generally assigned for lower level offenses, it is important that officers be instructed that whatever s/he did violated the Department’s Manual of Rules; the misconduct may warrant more than just rereading of a policy.

In addition, although we have observed that Force Review Boards assign many officers to counseling and training, it is not clear whether the board suggests that the officer be counseled regarding his/her conduct or that the officer receive specific training on tactics or other applicable procedures. Further, it is not clear what specifically occurs after this direction. Even when an officer is assigned to attend a specific training course, we do not believe that the Department follows up to ensure that the officer does not repeat the pattern of behavior leading to the assignment in the first place.

We recommended to the Department that it should provide more parameters for supervisors – in terms of what kind of counseling and/or training would be useful, and also how to document and later follow up on what counseling and/or training is provided. This would be valuable in situations resulting from either a sustained IAD investigation or a Force Review Board recommendation.

We will continue these discussions with Department officials in future reporting periods.



## Appendix D

### *Acronyms*

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

<b>Acronym</b>	<b>Definition</b>
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
SME	Subject matter expert
SO	Special Order
TB	Training Bulletin
UOF	Use of force