



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

Robert S. Warshaw  
Independent Monitor

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

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## Section One

### *Introduction*

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This is the twentieth 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 twentieth quarterly site visit from November 3, through November 7, 2014, to evaluate the Department's progress with the NSA during the three-month reporting period of July 1, through September 30, 2014.

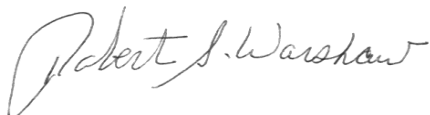
During our site visit, we met with several Department officials, including the Chief and Assistant Chief of Police and Deputy Chiefs; as well as personnel from the Office of Inspector General (OIG), Bureau of Field Operations (BFO), Bureau of Investigations (BOI), Bureau of Services (BOS), Internal Affairs Division (IAD), Training Section, and Communications Section; OPD officers, managers, supervisors, and commanders – including sergeants, lieutenants, and captains. We also conferred with the Plaintiffs' attorneys, City Administrator, and the Office of the City Attorney (OCA). During and since the time of our site visit, we observed 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.

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.

For 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 the Department is now in compliance with 19 (86%) of the 22 remaining Tasks, and in partial compliance with one (5%) Task. These numbers show an increase in compliance levels by one Task from the last reporting period – and the highest number of Tasks in compliance that we have found since the beginning of our tenure. These overall numbers reflect a change from *partial* compliance to *in* compliance with Task 41, *Use of Personnel Assessment System (PAS)*.

We also continued two (9%) Tasks in deferred compliance status. On August 14, 2014, the Court expressed its dismay with the recent reinstatement of an officer whom Chief Sean Whent had terminated, and with the City's poor performance in other recent arbitrations – several of which also overturned terminations of officers who had been sustained for serious misconduct. The Court's Order referred to Tasks 5 (Complaint Procedures for IAD) and 45 (Consistency of Discipline), questioning, "whether Defendants are adequately preparing cases for arbitration such that consistency of discipline can be assured to the greatest extent possible." As described further below, as a result – despite the findings of our most recent assessments of those Tasks – I list those Tasks as in deferred compliance status. The investigation of the discipline and arbitration process is currently underway; I will discuss it further in future quarterly status reports.

Just a few weeks ago, the City of Oakland inaugurated its new mayor. We look forward to working with Mayor Libby Schaaf and her staff as the Department continues to make advances toward sustainable reform.



Chief (Ret.) Robert S. Warshaw  
*Monitor*

**Monitoring Team:**

Chief (ret.) Charles D. Reynolds, *Deputy Monitor*  
Lt. Colonel (ret.) J. Rick Brown  
Robin Busch-Wheaton  
Eric P. Daigle, Esq.  
Commander (ret.) John M. Girvin  
John M. Klofas, Ph.D.  
Assistant Director (ret.) Joseph R. Wolfinger

## *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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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	19	1	0	2

## 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.)

##### Discussion:

OPD published Departmental 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 most recently on August 22, 2013. 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.

OPD has been in Phase 2 compliance with Task 2 since the thirteenth reporting period.

**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 July 1, and September 30, 2014, and calculated the number of days between the complaint date and the approval date for each case. We excluded from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or service complaints, and those that did not involve Manual of Rules (MOR) violations. We segregated the remaining cases into Class I or Class II categories. If a case involved at least one alleged Class I violation, we classified it as Class I.

Departmental policy requires that at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days to be considered



timely.<sup>1</sup> Of the 33 Class I cases we reviewed, 31, or 94%, were in compliance with established timelines – an increase from the 90% we found during the last reporting period. Also, six of the Class I cases were completed in between 170 and 179 days. Of the 74 Class II cases we reviewed, 100% were in compliance with established timelines – an increase from the 93% we found during the last reporting period. Twelve of the Class II cases were completed in between 170 and 179 days. Of the 29 sustained findings that we reviewed, all (100%) were in compliance with established discipline timelines.<sup>2</sup> This was the same percentage that we found during the last reporting period.

OPD is in compliance with Task 2.1.

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

In addition to the reports, the IAD Commander discusses pending deadlines for key open investigations during IAD’s weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. A Monitoring Team representative occasionally attends and observes these weekly meetings. IAD also occasionally, as needed, emails individual reminders on cases approaching due dates to investigators and their supervisors. The Department is in compliance with Task 2.2.

**Task 2.3** requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards (compliance standard: Yes/No). During the current reporting period, IAD opened 296 cases, an increase of 12 cases from the last reporting period. During this reporting period, OPD transferred one sergeant to fill a vacancy left by a retired sergeant, but it did not assign any additional personnel to IAD. Currently, IAD has two civilian intake technician positions open; the hiring process is ongoing as of the publication of this report. Also, the Chief approved 299 cases, an increase of 54 cases from the last reporting period. OPD is in compliance with Task 2.3.

OPD is in Phase 2 compliance with Task 2.

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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.”

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

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. In particular, we are interested in learning more about the recent uptick in complaints, if this trend continues.

### 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.)

Discussion:

On January 25, 2007, OPD published Internal Affairs Policy & Procedures 07-01, *Integrity Testing*, which incorporates the requirements of this Task. The Department updated this policy in January 2009. 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.

OPD has been in Phase 2 compliance with this Task since the sixth reporting period.

**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 10 integrity tests that were conducted from July 1, through September 30, 2014. 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 10 tests conducted during this reporting period, four 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, followed Departmental policy.<sup>3</sup> Three of the planned tests focused on individual members and employees of OPD who were the subjects of high numbers of allegations of misconduct over the prior 18 months; all four planned tests passed.

The remaining six integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies.<sup>4</sup> Two of these tests were conducted on officers who were the subjects of repeated allegations, and addressed the sources of the repeated allegations. Three of the selective tests passed and three failed.

The selective tests during this reporting period covered multiple topics. The first selective test was initiated after a complaint from the Alameda County Public Defender's office alleged that there were discrepancies between an officer's reports and his PDRD footage. These discrepancies led to the suppression of statements made by a criminal defendant. As part of the integrity test, ITU reviewed the officer's written documentation in criminal investigations against available PDRD footage for accuracy. The test failed, due to problems with the officer's documentation of *Miranda* warnings; ITU referred the case to IAD for further investigation.

The second selective test identified an officer who was subject to repeated complaints for performance of duty-related issues and examined whether he was conducting himself in a professional manner and turning on his PDRD in accordance with policy. A lengthy investigation found the officer performing his duties in accordance with Department policies and procedures.

The third selective test was based on allegations that a police records specialist was accessing Department databases for personal purposes. An audit of the history for the employee found no evidence of improper conduct, and the test passed.

The fourth selective test was conducted to test the operations of the Department's 24-hour complaint hotline. A past OPD audit had identified inconsistencies in how long it took the Communications Division to answer the hotline. The test found that Communications had corrected the problems identified in the audit; this test passed..

The fifth selective test focused on the ability of an IAD intake technician to conduct a proper preliminary inquiry and effectively communicate with a complainant. The test found that the technician had difficulty obtaining basic investigative information and effectively communicating with complainants. The test was an administrative failure and was referred to IAD for further investigation.

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<sup>3</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>4</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.

The sixth selective test focused on allegations of an officer who was not properly responding to or handling calls for service or covering assignments, and was allegedly leaving City limits without authorization. After multiple days of surveillance confirmed the allegations, the test failed, and it was referred to IAD for additional investigation.

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>5</sup>

(Negotiated Settlement Agreement III. D.)

#### Discussion:

There are four Departmental policies that incorporate the requirements of Task 4: Department General Order M-03, *Complaints Against Department Personnel and Procedures* (published December 6, 2005 and revised most recently on August 22, 2013); Department General Order M-3.1, *Informal Complaint Resolution Process* (published December 6, 2005 and revised most recently on November 10, 2008); Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual* (published February 1, 2007); and Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents* (published April 6, 2007). 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.

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 Phase 2 compliance with both of these requirements.

**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 95 Daily Incident Log (DIL) entries and a random sample of 75 IAD case files that were approved during the period of July 1, through September 30, 2014. The Office of Inspector General 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>6</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.

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

<sup>6</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.

During this reporting period, from a sample of IAD cases that were approved between July 1, and September 30, 2014, we reviewed 14 cases in which at least one allegation was resolved via administrative closure, six cases in which at least one allegation was resolved via informal complaint resolution (ICR), and eight cases in which at least one allegation was resolved via summary finding. We also reviewed two cases in which a combination of these closures was used.

In all but one 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 involved an allegation of poor demeanor. In one case, the complainant alleged that his report of a larceny was inaccurate. Three other cases were related to perceived driving infractions by officers.

As mentioned above, in one case, the complainant did not agree to the ICR process. A citizen sent an email alleging that an officer ran a red light and did not appear to be on an emergency run. The complainant did not respond to follow-up contacts, and an IAD lieutenant directed that the case be informally resolved pursuant to policy M-3.1, Section III.A.1.b.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. Seven allegations were classified as service complaints. Four of these specifically involved either slow response or no response to calls for service. The other three concerned policies that the complainants were displeased with, such as OPD's policy for handling barking dog complaints, or the information required from a caller to Communications. Five cases were administratively closed because they did not involve MOR violations. Two others were closed because the subjects of the complaints worked for other jurisdictions.

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 (Anonymous Complaints) review, and they are further discussed in that section.

The cases resolved via summary finding were approved for such designation as required by policy. In eight of these cases, the interactions between officers and citizens were recorded on PDRDs, negating the need to interview all of the involved officers. In another case, the recording of the call to Communications allowed for the summary finding. In still another case involving an allegation of perjury during a homicide trial, the completed reports and transcripts from the proceedings were sufficient to reach a determination without the need for further interviews. 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.)

#### Discussion:

There are six Departmental policies that incorporate the requirements of Task 5: Department General Order M-03, *Complaints Against Department Personnel and Procedures* (published December 6, 2005 and revised most recently on August 22, 2013); Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents* (published April 6, 2007); Training Bulletin V-T.1, *Internal Investigation Procedure Manual* (published June 1, 2006); Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility* (published June 24, 2005); Special Order 8565, *Complaints Against Department Personnel* (published May 11, 2007); and IAD Policy & Procedures 05-02, *IAD Investigation Process* (published 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 these policies, we find OPD in continued Phase 1 compliance with this Task.

OPD was in Phase 2 compliance with Task 5 from the fourteenth through the eighteenth reporting periods. In each of the prior reporting periods, we found the Department in partial compliance with Task 5.<sup>7</sup> During the last (nineteenth) reporting period, we placed Task 5 in deferred compliance based on an Order issued by Judge Henderson in the wake of an officer's reinstatement after he had been terminated for his actions during an Occupy Oakland protest.

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

To verify Phase 2 compliance with Tasks 5.1 through 5.5, we reviewed 95 entries that appeared on the Daily Incident Logs (DILs) that were completed between July 1, and September 30, 2014. We identified these by randomly selecting 53 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 95 DIL entries, 40 complaints were taken by supervisors in the field; two complaints were received by IAD directly; and in the remaining 53 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 26 such service complaints. Twelve were for delayed response to calls for service. Three others involved perceived failure to address quality of life issues such as illegal parking, excessive noise, and marijuana use. During this reporting period, OPD remains in compliance 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 during our review 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 95 records in our dataset, we identified 12 instances in which the complainant “refused” interaction with a supervisor. All but one were received in Communications, and in each case, the complainants did not answer the callback telephone numbers provided during their initial calls. In the remaining case, received in the field, the complainant expressly indicated that she did not wish to be contacted due to time – it was after 2:00 a.m. 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%). 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 21 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 July 1, and September 30, 2014. Using the IAD database, we identified eight such complaints. We reviewed these complaints for two triggering events: an allegation of Class I misconduct; and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was “handled in the same manner as other civilian complaints.”

Only one complaint involved allegations of Class I misconduct and was lodged at the time of arrest. Officers transported the complainant for a violation of probation arrest by the U.S. Marshalls Service, and when they arrived at North County Jail, the officers found suspected heroin in the back seat of their patrol vehicle. The complainant alleged that the drugs were planted. A supervisor responded to North County and took the complaint.

Only two of the remaining cases contained allegations of Class I misconduct, and none of the remaining complaints were filed at the time of arrest. In one, while the complainant was being interviewed for an unrelated incident, she alleged excessive force during her son’s arrest over three years earlier. In another, the complainant alleged that officers failed to make an arrest in an incident that occurred 112 days prior to his filing of the complaint.

OPD remains in compliance with Task 5.6.

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

To assess **Tasks 5.15 through 5.19**, and **Task 5.21**, we reviewed a random sample of 25 IAD cases that were approved between July 1, and September 30, 2014. 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 92% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 24, or 96%, in compliance with *all* of these required elements.

In seven cases, investigators conducted follow-up interviews with officers or civilians to seek clarification. In one of these cases, a witness was interviewed multiple times.

Credibility assessments were made in 20 of the 25 cases. Four of the five cases without credibility assessments were handled via summary finding, and by policy, investigators are not required to assess credibility in these instances since a determination can be made without interviewing all involved. In the other case, IAD conducted follow-up on a use of force case referred to IAD by a Force Review Board. This same case was also referred to IAD by the City Attorney's Office because of pending litigation. The issue at hand was whether or not an officer's failure to activate his PDRD was a violation of policy. IAD determined that the officer's actions were in accord with the PDRD policy in effect at the time of occurrence. (The policy has since been updated.) While the case was in our sample, it did not constitute a full investigation by IAD.

We identified one credibility assessment as problematic. The investigating sergeant never made a definitive credibility assessment of one witness, but characterized her credibility as "of concern." We believe there was enough information to make a not credible determination based on the PDRD footage available.

In nine cases, complainants or witnesses were appropriately deemed not credible. In one of these cases, OPD also determined a subject officer to be not credible. In six of the cases, PDRD recordings directly contradicted their statements. In the other three cases, physical evidence and/or their own inconsistent statements appropriately called into question the credibility of some of those interviewed.

We did not identify any cases during this review in which relevant evidence was not identified or considered.

OPD is in compliance with Task 5.15 and 5.16.

**Task 5.17** requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file (compliance standard: 85%). OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). During the previous reporting period, we found OPD in 100% compliance with this subtask. During this 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 96% of the cases we reviewed. During this reporting period, OPD again complied with this subtask in 24, or 96%, of the 25 cases in our sample. OPD's review and consideration of electronic evidence continues to contribute to OPD's success in this area. In 16 of the cases we reviewed, PDRD recordings proved material to arriving at the appropriate findings. In two other cases, phone calls recorded in in the Communications Division were instrumental in determining the correct finding.

In one case, we do not believe that OPD appropriately used the preponderance of the evidence standard. The complainant, who was arrested for domestic violence, alleged that her keys were not returned to her when she was taken into custody. We believe that the correct finding should have been sustained, rather than the not sustained finding by the field investigator. In fact, the officer last in possession of the keys indicates that she gave them to the complainant's brother. He denies ever receiving them, and their whereabouts remains unknown. By the officer's own admission, however, she did not give the keys to the complainant, and that was the allegation. 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 71 allegations that received dispositions as follows: 24 exonerated; 6 not sustained; 32 unfounded; four sustained; and five administratively closed. PDRD video continues to be used in more and more cases to arrive at definitive conclusions. We did not agree with one of the findings, as noted in Task 5.18.

With a 99% compliance rate, OPD remains 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 commanding officer of IAD, who advised that as of that date, no cases were classified as filed or tolling. Filed and tolling cases are reviewed with the Chief during his weekly IAD meetings and are listed by case number on the printed meeting agendas. OPD is in compliance with this subtask.

**Task 5.21** requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken (compliance standard: 90%). However, with the approval of the IAD Commander, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Five of the 25 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. (These do not include the cases referenced in Task 4, for which summary findings were also appropriate.) In four of these cases, the availability of PDRD video was the primary reason interviews were unnecessary. In the fifth, a recorded telephone call to Communications was used to reach a determination.

OPD is in compliance with Task 5.21.

In response to the July reinstatement of an officer who had been terminated for his actions during the Occupy Oakland-related protests of 2011, Judge Henderson issued an Order, which reads in part:

“This is not the first time an arbitrator has overturned an officer’s termination by Defendants, and, indeed, this Court previously ordered the parties to discuss the reinstatement of [another officer] by arbitration at the September 22, 2011 status conference. The City’s promises to correct deficiencies at that time have fallen short, and further intervention by this Court is now required.

“Failure to address the issues addressed in this order will prevent compliance, let alone sustainable compliance, with the Negotiated Settlement Agreement (“NSA”). Defendants cannot be in compliance with Task 5 if the internal investigations leading to disciplinary decisions by Defendants are inadequate. Likewise, they cannot be in compliance with Task 45 if discipline is not consistently imposed. Because imposition of discipline is meaningless if it is not final, the Monitor and the Court must consider whether discipline is upheld at the highest level, most often arbitration...”

Consequently, until such time as OPD addresses the issues specifically outlined in Judge Henderson’s Order, we consider OPD to be in deferred compliance status with Task 5.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

## 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.)

Discussion:

OPD published Departmental 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 most recently on August 22, 2013. 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 these policies, we find OPD in continued Phase 1 compliance with this Task.

OPD has been in Phase 2 compliance with Task 6 since the eighth reporting period.

**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 to IAD, are disciplined (compliance standard: 95%).

To assess Phase 2 compliance with this Task, we reviewed a random sample of 95 Daily Incident Log entries from July 1, through September 30, 2014; 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 three such cases. However, none resulted in sustained findings for one or more of the applicable MOR violations.

One case was administratively closed. The complainant indicated that she advised an employee that she wished to make a complaint, and the complainant was allegedly transferred to another line where she left a voice message. The message was never located, and the employee was never identified, and the case was administratively closed as lacking specificity. Another case was unfounded based on the PDRD-recorded interaction between the complainant and the officer who allegedly failed to take a complaint. The third case was also unfounded based on IAD listening to the recorded conversation between the complainant and a civilian employee in the Traffic Section.

OPD remains in Phase 2 compliance with Task 6.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 7: Methods for Receiving Citizen Complaints

Requirements:

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

- 1. IAD or Communication Division personnel shall staff a recordable toll-free complaint phone line, 24-hours a day, and receive and process complaints in accordance with the provisions of Departmental General Order M-3. The complainant shall be advised that the call is being recorded when a complaint is taken by IAD.*
- 2. Guidelines for filing a citizen's complaint shall be prominently posted and informational brochures shall be made available in key Departmental and municipal locations.*



3. OPD shall accept anonymous complaints. To the extent possible, OPD shall ask anonymous complainants for corroborating evidence. OPD shall investigate anonymous complaints to the extent reasonably possible to determine whether the allegation can be resolved.
4. OPD personnel shall have available complaint forms and informational brochures on the complaint process in their vehicles at all times while on duty. Members/employees shall distribute these complaint forms and informational brochures when a citizen wishes to make a complaint, or upon request.
5. IAD shall be located in a dedicated facility removed from the Police Administration Building.
6. Complaint forms and informational brochures shall be translated consistent with City policy.
7. Complaint forms shall be processed in accordance with controlling state law.<sup>8</sup>

(Negotiated Settlement Agreement III. G.)

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 most recently on August 22, 2013. 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.

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. OPD has been in Phase 2 compliance with this Task since the second reporting period.

To assess Phase 2 compliance with this Task, we reviewed all cases listed in the Internal Affairs Division database as originating from complainants who were “anonymous,” “unknown,” “refused,” or any forms of those terms (such as “unk”) and that were approved between July 1, and September 30, 2014. 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 eight cases as potential anonymous complaints during this reporting period. After review, we determined that all were true anonymous complaints, and the complainants were not identified during the course of the investigations.

Six of the eight complaints were received via telephone calls to the Communications Division. The other two were received by IAD – one in person and the other via a telephone call.

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<sup>8</sup> The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

Where possible, complainants were asked to provide corroborating evidence. In most of the cases, the complainants terminated the contact before OPD could secure additional details of the complaint. However, the complaints were investigated to the extent reasonably possible as required by this subtask. IAD or field supervisors attempted to re-contact complainants if a callback number was available, even if the complainants expressly stated they wished to remain anonymous.

All eight cases were administratively closed. Each met the criteria for such closure, and most lacked the details to identify the specific alleged misconduct and/or OPD personnel involved in the incidents. Four of the eight were classified as service complaints. Three involved a delayed response to calls for service. In the fourth, the complainant alleged that OPD has failed to address her quality of life complaints involving her neighbors.

Three cases were closed for lacking specificity. In one case, the caller felt the dispatcher she spoke to was racist, but offered no reason to support her allegation, and no issues were identified when listening to the recorded call. In another, the complainant alleged that her civil rights were violated because officers summoned an ambulance to her location, but she provided no additional details. In the third case, the complainant alleged that officers used excessive force when arresting his brother (also unidentified), but he provided no further details.

The final case was closed as no Manual of Rules (MOR) violation. The caller alleged that an officer spit gum on the freeway. The OPD vehicle number supplied by the complainant did not exist.

OPD continues to provide citizens with informational business cards when their intent to file a complaint is unclear. The cards contain the information necessary to file a complaint at a later time if desired, and these citizen contacts are documented in a separate log in Communications. Like the Daily Incident Logs, these are forwarded to IAD – and the Monitoring Team – on a daily basis. This is the fifth reporting period in which this system has been used, and it appears to be having the desired effect of limiting those cases in which the complaint process is invoked unnecessarily.

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.)

### Discussion:

Two Department policies, Departmental General Order M-03 and Training Bulletin V-T.1, incorporate the requirements of Task 16. OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised most recently on August 22, 2013. OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006; and Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual*, on February 1, 2007. 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.

OPD has been in Phase 2 compliance with Task 16 since the fourteenth reporting period.

**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 95 Daily Incident Log entries from July 1, through September 30, 2014; a random sample of 75 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief of Police between July 1, through September 30, 2014; and the five sustained Class I investigations that were approved by the Chief of Police between July 1, through September 30, 2014.

Each of the five sustained Class I investigations showed acceptable analyses of supervisors' abilities to identify the sustained misconduct.

The first case involved an allegation against an off-duty OPD officer for using unnecessary force in an incident. Investigators found that the officer pointed a firearm and used unnecessary force. In addition, IAD determined that the officer failed to properly report the use of force, and it sustained the officer for multiple violations. IAD's review found no instance where a member or supervisor should have reported the misconduct.

The second case involved a sustained finding against an OPD officer who was arrested for DUI after being involved in a single car accident. A review found no instance where a member or supervisor should have reported the misconduct.

The third case was an internally generated complaint where it was discovered through PDRD footage and a report that an officer left a handcuffed prisoner unattended. The allegation was discovered by a sergeant who was reviewing the officer's crime report. The sergeant viewed the PDRD footage and addressed the findings. The supervisor reported the misconduct as required.

The fourth incident was also an internally generated complaint referred to IAD by the Force Review Board. This case examined an officer's unintentional discharge of his firearm not resulting in injury, which occurred while the officer was cleaning his service pistol in the locker room. The board concluded that the supervisor investigated the complaint appropriately; the investigation resulted in a sustained finding against the officer for his violation of fundamental firearm safety rules.

The fifth case was also an internally generated complaint referred by the Force Review Board. This case involved another officer's unintentional discharge of his firearm not resulting in injury. In addition, the officer was found to have not activated his PDRD when required. In this incident, officers were dispatched to a burglary in progress involving five subjects. Upon arrival, the subject officer drew his pistol and unintentionally discharged his firearm. The board concluded that the supervisor investigated the complaint appropriately; the investigation resulted in a sustained finding against the officer for his violation of fundamental firearm safety rules.

As we have discussed with OPD, the investigation report's member/employee accountability section should include an analysis of whether 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 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 and steps the Department is taking to improve IAD investigators' evaluations of supervisors' accountability.

## 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>9</sup>*

(Negotiated Settlement Agreement IV. A.)

### Discussion:

Three Departmental policies incorporate the requirements of Task 18.2.2: DGO M-18, *Arrest Approval and Review in the Field* (published May 13, 2004 and updated October 1, 2005); Special Order 8536, *Probable Cause Arrest Authorization and Report Review* (published December 2006); and Training Bulletin I-O.4, *Legal Aspects Of Searching Persons On Parole And Probation* (published November 23, 2011). 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>9</sup> The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

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.

**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 75 adult and one juvenile arrest reports documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); as well as documentation for 12 arrests resulting in an investigated use of force; that occurred between July 1, and September 30, 2014. We reviewed these arrests 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 75 adult arrest reports, we excluded 46 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 29 adult arrests and one juvenile arrest, there were two reports that did not document the presence of witnesses or no known witnesses; and a supervisor approved all of the arrests. This represents a 93% compliance rate relating to adult/juvenile arrests for this subtask. In addition, of the 12 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.<sup>10</sup> This represents a 100% compliance rate among arrests resulting in an investigated use of force for this subtask.

Our review revealed an overall 95% 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

Next Steps:

We will meet with OIG to discuss audits of this Task to ensure sustainability.

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<sup>10</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.

## 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.)

### Discussion:

Three Departmental policies incorporate the requirements of Task 20: 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 Departmental General Order D-13.1, *Assignment to Acting Sergeant of Police*, issued on May 14, 2014. (The publication of DGO D-13.1 cancelled Special Order 8435, which previously governed the selection process of acting sergeants.) 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.

During the eighteenth reporting period, after finding OPD in partial Phase 2 compliance with Task 20 since the beginning of our tenure, we held a series of discussions with Department officials and the Plaintiffs' attorneys regarding our methodology for assessing Tasks 20.2 and 20.3, the two subtasks that held OPD out of full compliance with this Task. With the Department's tiered system of supervision now in place for over one year, we worked with the Parties to develop a new approach to the areas of consistency of supervision (Task 20.2) and span of control (Task 20.3) that is both practicable and sustainable in the long term. We describe this altered methodology further below.

**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 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, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%); and **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, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio on a day-to-day basis (compliance standard: 90%).

Since February 2013, OPD has used a 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 sergeants, the squad is supervised by one of four "Tier 2 relief supervisors" or a sergeant who may be assigned elsewhere who is working overtime.

We are pleased that Department officials discontinued its use of acting sergeants for patrol-related duties. The Department continues to place acting sergeants in non-patrol assignments. As noted above, the Department recently revised its related policy, now known as DGO D-13.1, accordingly.

For Tasks 20.2 and 20.3, we examine the supervision of *each squad on each day* of the reporting period, as opposed to the supervision of patrol squads on only a random sample of days. We only consider supervision by primary sergeants or relief sergeants to be in compliance for these subtasks.

Under our recently altered methodology for Task 20.2, 90% of applicable squads must be supervised by a primary or relief sergeant for at least 85% of their working shifts. Also, if we find that *any* squad is not in compliance for two consecutive quarters; or if *any* squad achieves a compliance percentage of less than 75%, we will find OPD not in compliance with this subtask.

To assess Task 20.2 during this reporting period, we reviewed spreadsheets prepared by the Department for the months of July, August, and September 2014 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. Each of the 43 applicable squads were in compliance – that is, all applicable squads during this reporting period were supervised by either a primary or relief sergeant for at least 85% of their working shifts.



OPD is in compliance with Task 20.2.

Under our recently altered methodology for Task 20.3, 90% of applicable squads must not exceed the 1:8 supervisor to officer ratio at least 90% of their working shifts.

To assess Task 20.3 during this reporting period, we reviewed Telestaff and the spreadsheets described above to determine the ratio of supervisors to officers on all of the applicable squads. We found that all 43 applicable squads were in compliance; 100% of the squads maintained at least the 1:8 supervisor to officer ratio for at least 90% of the reporting period. OPD is in compliance with Task 20.3.

**Task 20.4** requires that the Department's Area Commanders make backfill decisions and that these decisions are consistent with policy and operational needs (compliance standard: 90%). Due to the Department's current supervisory structure, this subtask may no longer be applicable. As noted previously, 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 141 total operations conducted between July 1, through September 30, 2014, 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 July 1, through September 30, 2014 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 Phase 2 compliance with Task 20.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

The Department informed us recently that it plans to reduce the number of relief sergeants assigned to Patrol; it maintains that this change will not affect compliance with Tasks 20.2 and 20.3. We will monitor these developments closely.

## 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.)

#### Discussion:

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. In December 2012, OPD issued a revision to Special Order 8977, *Use of Force Reporting – Pointing of Firearm/Restrained Subject/Use of Vehicle to Intentionally Strike a Subject*. 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.

OPD has been in Phase 2 compliance with Task 24 since the fourteenth reporting period. During this reporting period, the sample we requested for review (90 total) included: three Level 2; nine Level 3; and 78 Level 4 reports completed between July 1, and September 30, 2014.

**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 90 incidents we reviewed, 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.

***Officers Pointing Firearms:*** As indicated above, we reviewed a total of 90 use of force incidents; 70 of those incidents involved officers pointing firearms. The 70 incidents included one Level 2, three Level 3, and 66 Level 4 uses of force; and involved 159 instances of officers drawing and pointing their firearms.<sup>11</sup>

Overall, we determined officers' pointing of their firearms to be appropriate in 155, or 97%, of the 159 instances we assessed.<sup>12</sup> We also noted with concern, the absence of justification for the pointing of a firearm in four of the 159 events; specifically, in these cases, there was no indication that the officer(s) or others faced immediate threat of harm.

The total racial breakdown for the 70 use of force events reviewed is as follows: Black, 75%; Hispanic, 16%; White, 4%; Asian, 4%; and Other, 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 four unjustified pointing of firearms involved two Hispanic subjects and one Black subject.

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. The Department needs to continue to review and address instances of unquestioned supervisory and command approval – of both the documentation of officers' actions and the actions themselves.

OPD is in compliance with Tasks 24.2 and 24.3.

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<sup>11</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.

<sup>12</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.

**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 12 applicable Level 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>13</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 no Level 1 use of force incident in our dataset. OPD remains in compliance with these subtasks.

**Task 24.9** requires OPD to enter data regarding use of force into OPD's Personnel Assessment System (PAS) (compliance standard: 95%). PAS now allows personnel to access use of force reports directly. OPD is in compliance with Task 24.9.

OPD is in 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.

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<sup>13</sup> Task 24.7 is no longer applicable.

## Task 25: Use of Force Investigations and Report Responsibility

### Requirements:

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

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

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

(Negotiated Settlement Agreement V. B.)

Discussion:

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.

OPD has been in Phase 2 compliance with Task 25 since the fourteenth reporting period.

During this reporting period, we requested and reviewed 90 use of force reports, including: three Level 2; nine Level 3; and a random sample of 78 Level 4 use of force reports; that were completed between July 1, and September 30, 2014.

**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 14 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 Level 4 sample of 78 incidents were downgraded appropriately to a Level 4 use of force 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, 91, or 99%, of the 92 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.

During this reporting period, OPD commanders took supervisory action against officers for not using their PDRDs as required in the Level 2, 3, and 4 cases we assessed. We encourage OPD to continue to hold supervisors accountable for ensuring that officers are using their PDRDs in accordance with Department policy.

OPD's overall compliance rate for timeliness is 100%, and for NSA-required elements is 100%. OPD is in compliance with Task 25.2.

**Task 25.3** requires that all supervisors be trained on how to conduct use of force investigations, and that such training is part of a supervisory training course (compliance standard: 95%). As we have noted previously, OPD has incorporated use of force training into the continued professional training (CPT) that is required for all sergeants every 18 months to two years. During this reporting period, as part of CPT, OPD offered use of force training in areas including: firearms/force options; in-service firearms qualifications; and use of force case law review. Although these courses do not specifically address conducting investigations, they help supervisors to develop their knowledge and understanding in critical areas before being assigned



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

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

During this reporting period, we reviewed two Level 4 use of force incidents that involved the unjustified pointing of firearms. These 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 98%. 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 of the Level 2, 3, and 4 reports – with the exception of the two Level 4 cases involving the unjustified pointing of firearms – 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.

We also noted during this reporting period, especially in the unjustified cases of officers pointing their firearms, officers continue citing discussions with senior OPD officers, their “training and experience” and the location (high-crime area) of the event as justification for their initial encounter with citizens. The officers did not, however, document the additional and/or specific *circumstances present* justifying the particular stop. Of course, all citizens who live in high-crime areas are not all involved in criminal activity – and that should not be assumed from the outset.

There has been a decrease of these types of justifications for lethal encounters; however, these justifications still occasionally appear in OPD UOF reports. We will continue to address this issue with OPD command staff and training personnel during our next site visit in an effort to ensure continued compliance with this requirement.

OPD's compliance rate for this subtask is 98%. 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 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 involving the unjustified pointing of firearms.

## 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.)

#### Discussion:

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.

OPD has been in partial Phase 2 compliance with Task 26 since the sixteenth reporting period. Prior to that time, OPD was either in compliance or in partial compliance with Task 26.

**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 three incidents that were heard by the board during this reporting period of July 1, through September 30, 2014. We determined that all three 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 make a recommendation as to whether the use of force was in or out of policy (compliance standard: 95%). All three FRB reports we reviewed contained recommendations noting that the use of force was in or not in compliance with policy, and all three noted agreement with the recommendation of the FRB by the Chief of Police or his designee.

We attended one FRB proceeding during our November 2014 site visit. We will provide an assessment of that FRB during the next reporting period. We have observed in recent reporting periods that the FRBs are more routinely addressing deficient investigations conducted by investigators; however, the boards should more aggressively address the issue of investigators including justification for the involved officers' actions as part of their presentations moving forward.

OPD is in compliance with 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 three incidents that were heard by the board during this reporting period, five events by officers were found out of compliance, requiring a referral to IAD that was appropriately documented in the FRB reports provided. The non-compliant findings involved two unintentional firearm discharges by the subject officers, and three additional events involved officers not activating their PDRDs as required by OPD policy.

Despite the Department's technical adherence to these provisions, we have noted previously that the board's informality and lack of structure was not consistent with the conduct of a review process of this nature. Over the past few months, we have seen great improvement in this area, and we are continuing to provide technical assistance to the Department regarding the conduct of these boards. As of the publication of this report, the revisions of DGO K-4.1, *Force Review Boards*, which incorporate these changes formally, have been completed and adopted by the Department (on May 14, 2014). The revised policy was distributed through PowerDMS, and OPD members received the required training. Accordingly, 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 three 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 August 11, 2014 that summarized EFRBs and FRBs from 2013. In 2013, EFRB personnel heard eight use of force incidents: seven related to officer involved shootings and one vehicle pursuit-related death. Six of the eight incidents heard were deemed in compliance with policy. One lethal firearm discharge and a vehicle pursuit were deemed out of compliance with policy. FRB personnel heard 15 use of force incidents involving 37 use of force reports. 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; investigators are inappropriately providing justification for the involved officers' uses of force in their reports and at the FRBs. 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 Files and enter the information into PAS. Subject-matter experts conduct more involved training, 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 Phase 2 compliance with Task 26.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule FRBs during our quarterly site visits, so that we may attend and observe the proceedings. We again 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.)

Discussion:

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.

**Task 30.1** requires that OPD convene an EFRB within 45 days of the completion of the use of force (UOF) report by IAD (compliance standard: 95%). The EFRB did not review any use of force incidents during this reporting period.

OPD is in compliance with this subtask.

**Task 30.2** requires that the EFRB has access to recordings and/or transcripts of interviews of all personnel on scene, including civilian witnesses, and is empowered to call in any OPD personnel it believes should testify (compliance standard: Yes/No). The EFRB did not review any use of force incidents during this reporting period. OPD is in compliance with this subtask.

**Task 30.3** requires that OPD complies with the policies and procedures set forth in DGO K-4.1, *Force Review Boards* (compliance standard: Yes/No). This policy outlines several requirements, including who comprises the board, the material to be made available for the board, the conduct of the board, the information to be memorialized and follow-up actions, if warranted. We reviewed the reports that were prepared for the one incident that was heard by the board during the current reporting period. The required attendees were present. After review and deliberations, the board determined that the subject officers' actions in the one assessed case were in compliance with Departmental policy. The Chief of Police endorsed the EFRB findings within 60 days of the board's decision. The board assessed tactics, completed an analysis of each application of force, noted investigative concerns, and training issues and directed the required the appropriate corrective action.

Despite the Department's technical adherence to these provisions, we have noted previously that the board's informality and lack of structure was not consistent with the conduct of a review process of this nature. Over the past few months, we have seen great improvement in this area, and we are continuing to provide technical assistance to the Department regarding the conduct of these boards. As of the publication of this report, the revisions of DGO K-4.1, *Force Review Boards*, which incorporate these changes formally, have been completed and adopted by the Department (on May 14, 2014). The revised policy was distributed through PowerDMS, and OPD members received the required training. We will report on the formality and structure of the EFRB proceeding after the next scheduled board we observe. Accordingly, OPD is in compliance with this subtask.

OPD is in Phase 2 compliance with Task 30.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule EFRBs during our quarterly site visits, so that we may attend and observe the proceedings. We again request that the Department schedule any 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.)

Discussion:

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 remains in Phase 1 compliance with this Task.

Since monitoring under the NSA began, OPD has received confidential reports of misconduct in only four cases. No new confidential reports were received during the quarter under review.

We found OPD in Phase 2 compliance with Task 33 during the last three reporting periods.

*Reporting Misconduct*

**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 discussed management of reporting misconduct by officers and employees of the Department with the Commander of IAD. We queried the IAD database to identify any cases with sustained findings that were approved between July 1, and September 30, 2014, that were applicable to Task 33. We identified and reviewed 25 cases with a total of 29 sustained findings involving 24 different officers and employees that were approved during this reporting period. We added eight cases with 14 sustained findings pertaining to eight officers that had been brought to our attention during the previous reporting period but which were not disciplined until the third quarter of 2014. Our review, therefore, encompassed 33 cases with 43 findings pertaining to 42 officers. We found no instances where OPD disregarded indications that its employees or officers failed to report misconduct.

*Management Action to Address Reluctance to Report Misconduct*

We have noted consistently that 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.



In our review of the 43 sustained findings, we found three in which an officer was equipped with an operational PDRD and should have activated it. In one of these cases, the officer failed to activate his/her PDRD during his first contact with the citizen, and IAD sustained this violation. The discipline was not set during the quarter under review and will be reviewed during the next reporting period. In the other two cases, the officer activated the PDRD at the initial contact.

The Chief discusses the requirements of Task 33, in the context of remaining issues needed to satisfy compliance with the NSA, at the Basic Training Academy with new recruits and at Continuing Professional Training (CPT) courses for both officers and sergeants during 2013. In March 2014, he began speaking to the 2014 CPT classes. During the period from July 1, through September 30, 2014, he addressed 176 officers at CPT and 34 officer trainees at the Basic Academy. He plans to continue this discussion to reinforce the requirements.

#### *Confidential Reporting*

**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 four such confidential reports. No new confidential reports were received during the period from July 1, through September 30, 2014.

There were 64 new hires (47 police officers, police officer trainees, one rehired officer, and 17 civilian employees) during the current reporting period. All were briefed and trained on confidential reporting procedures as required by Task 33. All signed documents to memorialize the training that is a part of the hiring module/practice before new employees report for duty/assignment.

OPD is in Phase 2 compliance with this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

1. *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.)

Discussion:

There are four Departmental policies that incorporate the requirements of Task 34: General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*; Report Writing Manual (RWM) Inserts R-2, N-1, and N-2; Special Order 9042, *New Procedures Regarding Stop Data Collection* (published June 2010); and Special Order 9101, *Revised Stop Data Collection Procedures* (published November 2012). 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 34.1** requires that officers complete Stop Data Forms for every vehicle stop, field investigation, and detention (compliance standard: 90%). To assess Task 34.1 compliance 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. Using the Department's

Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 100% 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.

One of the more important data elements required by this Task is the capture of the reason or justification for the stop – essentially the point at which any evaluation of the appropriateness of a stop commences. OIG periodically conducts internal reviews of Stop Data Forms to verify compliance with requirements, including the basis for stops. During this reporting period, we also focused on this important element in our review of 250 CAD entries and Field Contact Cards. Of the 250 stops, we eliminated 19 due to the lack of any narrative. Our analysis of the remaining 231 stops found four to be questionable; accordingly, we determined that 99% of the stops in the sample were valid. This represents a continued improvement by OPD with its documentation of the stops. The Department is in compliance with Task 34.2.

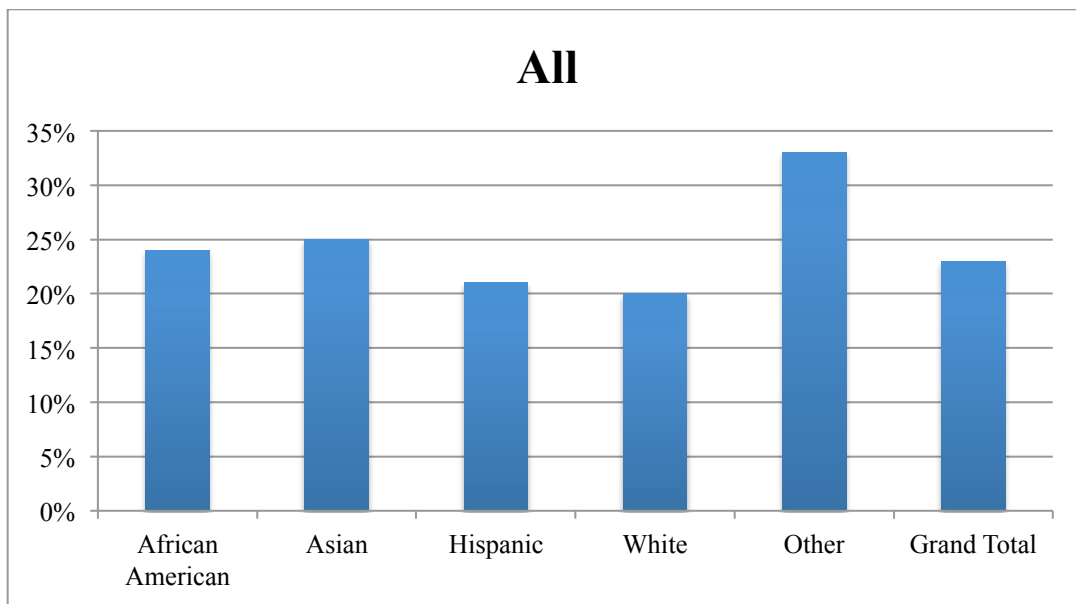
During the last reporting period, we conducted an independent review to determine if the officers were accurately recording their stops. We selected stops and reviewed the accompanying PDRD footage to determine compliance. We found that OPD officers were accurately reporting the details of the stops.

In addition, we commend OPD for its continued practice of reviewing stop data within each of the five designated geographic Areas – and as the data compares to the Department as a whole – at its monthly Risk Management Meetings.

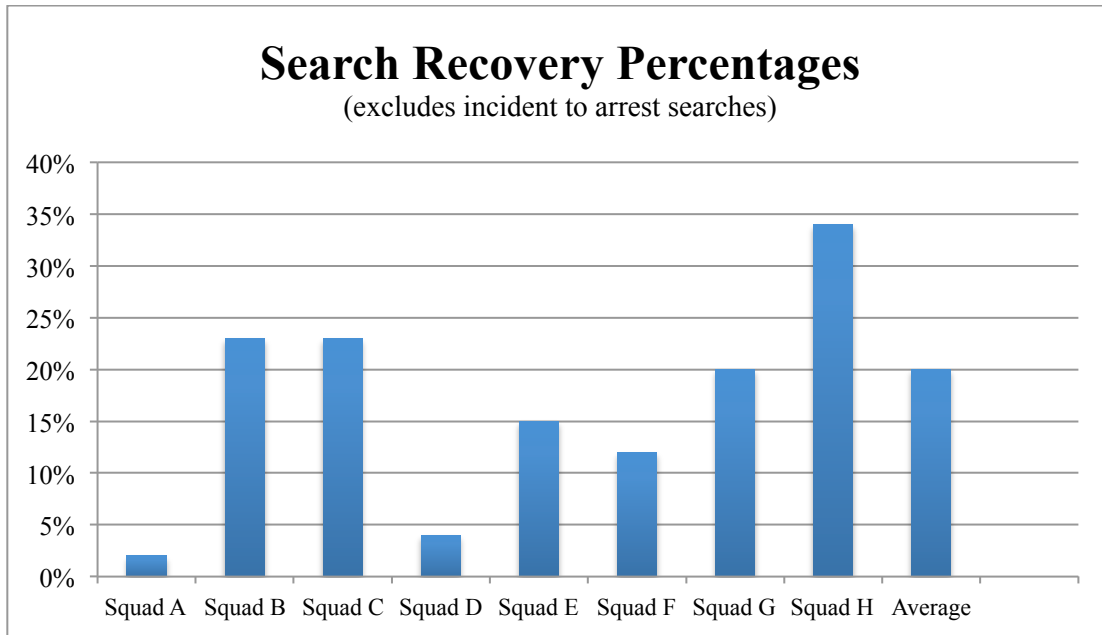
During our most recent site visit, we observed the Risk Management Meeting (which included stop data for the period of January 18, through September 6, 2014), and held discussions with OPD regarding the Area selected for review. We have been particularly interested in stops that result in frisks or searches. We – and others – have raised questions as to whether the present OPD search recovery rate of 23% is consistent with national or other data. We find no credible national or other data suggesting a numerical average or recommended goal; and therefore, at this time, we make no comparative judgment on this percentage. However, it is imperative that the Department makes every effort to increase the present recovery rate, and to examine closely patrol squads with particularly low or high rates.

The OPD search recovery data also provides important information regarding indicia – or more precisely in this instance, the *absence* of indicia – reflective of racially or ethnically disparate treatment related to searches. Put differently, the overall search recovery data for the selected

time period is 23%; in other words, OPD officers recovered contraband in 23 of every 100 searches. The racial/ethnic breakdown for the specifically categorized population groups indicate a recovery rate range from 20 to 25%, with the white population group the lowest at 20% and the Asian population group the highest at 25% during the specified period. (See illustration below.)



Although the lack of demographic disparities in the above data is encouraging, the fact remains that *three of every four OPD searches fail to locate contraband*. Moreover, our detailed review of the most recently selected Area data is of concern. First, the overall search recovery rate of the most recently selected Area is at 20% – or three percent lower than the overall Department rate. Second, we noted considerable variance in the search recovery rates of several individual squads within the selected Area, from a low of 2% to a high of 34%. Accordingly, we further analyzed the searches conducted by the three squads with the lowest recovery rates, 2%, 4%, and 12% respectively. (See illustration below.)



Squad	Yes	None	Grand Total	%
<b>A</b>	1	42	43	2%
<b>B</b>	20	68	88	23%
<b>C</b>	19	65	84	23%
<b>D</b>	4	91	95	4%
<b>E</b>	16	93	109	15%
<b>F</b>	4	30	34	12%
<b>G</b>	34	137	171	20%
<b>H</b>	71	137	208	34%
<b>Grand Total</b>	169	663	832	20%

Our analysis included a review of 1,318 stops that resulted in 172 searches (13%), excluding searches incident to an arrest.<sup>14</sup> We first reviewed documented justification for each stop and the search recovery rate. OPD categorizes the basis for stops as: a) consensual encounters; b) reasonable suspicion; c) probable cause; d) traffic violation; or e) probation/parole. We found sufficient documented justification for 97% of the stops we reviewed, as compared with 99% finding in our assessment of data for Task 34.2 cited above.

Regardless of the reason for the stop/encounter, officers must have additional articulable justification in order to conduct either a subsequent frisk or search – except in cases where the person stopped is on probation or parole. We found sufficient justification for the 85% of the searches; in 26 (15%), the searches were either not documented or insufficiently documented.

<sup>14</sup> “Incident to an arrest” refers to a search conducted by law enforcement personnel as part of a lawful arrest of a suspect.

Our review found that 82 (47%) of the searches involved individuals on probation/parole. Except for the fact that the individuals searched were on probation/parole, there was no indicated connection between the basis for the stop and the search in 76 of the 82 searches; such searches are often referred to as “could” searches, but are clearly legally authorized.

In addition to the lower than average recovery rate of this Area, we found the collective recovery rate for the three referenced squads at 6%, or a total of nine recoveries, from the 172 searches. Of the nine searches from which recoveries were made, five involved individuals on probation/parole, and four were as a result of searches for other reasons. The five probation/parole searches resulting in contraband recovery involved African Americans (three), Hispanics (one), and Whites (one). The four searches for other reasons all involved African Americans.

These numbers are small; accordingly, we do not cite them as an indication of racial or ethnic disparate treatment. However, the Department must address its lack of documenting justification for each search and the resulting low contraband recovery rate. Additionally, we are concerned with the large percentage of stops that either initially or subsequently involve searches of individuals on probation/parole.

Probation and parole searches present a unique law enforcement ability for police officers in the state of California. These searches assist officers with determining whether probationers and parolees are engaging in the same past conduct – i.e. continuing to possess drugs, weapons, stolen property, and/or other contraband. This ability, according to the Court of Appeals, tends to “minimize the risk to the public safety inherent in the conditional release of a convicted offender.”<sup>15</sup> As the California Supreme Court observed in *In re Tyrell J.*, “[A] probationer must thus assume every law enforcement officer might stop and search him at any moment. It is this thought that provides a strong deterrent effect upon the [probationer] tempted to return to his antisocial ways.”<sup>16</sup>

Before conducting a probation/parole search, officers need to make sure that: 1) the person whose property they want to search is subject to a search condition; and 2) the place or thing they want to search is searchable under the terms of probation. Neither reasonable suspicion nor probable cause is required to conduct a probation search. In other words, probation searches may be conducted regardless of whether officers have reason to believe the probationer has committed a new crime or is otherwise in violation of probation.<sup>17</sup> OPD clearly has the legal

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<sup>15</sup> *People v. Constancio* (1974) 42 Cal.App.3d 533, 540. ALSO SEE *People v. Reyes* (1998) 19 Cal.4th 743, 752 [“The state has a duty not only to assess the efficacy of its rehabilitative efforts but to protect the public, and the importance of the latter interest justifies the imposition of a warrantless search condition.”].

<sup>16</sup> (1994) 8 Cal.4th 68, 87. ALSO SEE *People v. Mason* (1971) 5 Cal.3d 759, 763 [“With knowledge he may be subject to a search by law enforcement officers at any time, the probationers will be less inclined to have narcotics or dangerous drugs in his possession.”]; *People v. Bravo* (1987) 43 Cal.3d 600, 610; *In re Anthony S.*, (1992) 4 Cal.App.4th 1000, 1002, fn.1 [“Being on probation with a consent search term is akin to sitting under the Sword of Damocles.”]; *People v. Turner* (1976).

<sup>17</sup> A search clause may specifically require reasonable suspicion. See, for example, *People v. Kasinger* (1976) 57 Cal.App.3d 975, 977; *People v. Constancio* (1974) 42 Cal.App.3d 533, 537; *People v. Bravo* (1987) 43 Cal.3d 600,

authority to conduct these searches; however, when applying the concept of procedural justice, the question goes to whether, though it may be legal, the search is *legitimate* in the eyes of the person searched – or for that matter, others.

We encourage OPD command staff to continue to examine the data in the risk management process. We encourage the Department to expand its focus to the disparity of stop data by race and the recovery rates per squad.

**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). Special Order 9042 requires that 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.” Officers must also complete a SDF “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, which allows Department personnel to search for and query officers’ stop data.

During our quarterly and technical assistance site visits, members of our Team meet with OPD personnel to follow the Department’s progress with data collection and analysis, and with the development of operational and intervention options. OPD organizes the data into tables and graphs depicting – both globally and by district – the breakdown of stops, the reasons for the stops, and any resulting action taken; including searches, the results of searches and arrests, and other actions. The Department, after collecting stop data between July 1, 2013 and June 30, 2014, prepared and issued to the public the second Stop Data Annual Report (on September 15, 2014).

As noted previously, the Department continues to work with Professor Jennifer Eberhardt of Stanford University, who was contracted in June 2014 to administer a stop data analysis report. During our most recent site visit, we observed two training sessions presented by Dr. Eberhardt for supervisors and commanders. The sessions focused on presenting research known to Dr. Eberhardt specific to the biases of citizen as it relates to race – specifically African Americans. The programs were well received and appeared to be a precursor to future training once Dr. Eberhardt completes her analysis.

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607, fn.6 [reasonable suspicion requirement will not be implied]. This is very rare, however, because most judges consider such a term to be counterproductive; i.e., the effectiveness of search clauses depends on the probationer’s knowing that he can be stopped and searched at any time—not just when officers have developed reasonable suspicion. See *In re Tyrell J.* (1994) 8 Cal.4th 68, 87; *People v. Mason* (1971) 5 Cal.3d 759, 763; *People v. Bravo* (1987) 43 Cal.3d 600, 610; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1002, fn.1.

Nevertheless, the data contained in the report that the Department has already issued provides the basis upon which OPD can further explore and/or identify areas where there may be disparities in the treatment of identified population groups. As time passes and the database grows, its predictive value will also increase. The data should provide the basis for determining training and intervention options; and, in accordance with the requirements of the December 12, 2012 Court Order, the development of strategies to “address, resolve and reduce...incidents of racial profiling or biased-based policing.”

We are encouraged by the progress made during recent reporting periods. OPD has developed a data collection process that appears to be reliable and accurate. Yet while the Department periodically verifies the accuracy of its data with internal audits, we have, to date, found these audits insufficient; they have not identified issues relating to the search recovery rate nor the large percentage of stops involving individuals on probation or parole. OPD is at a critical juncture where any indicators of disparate treatment among populations groups must be addressed in order to determine whether there is a constitutionally valid basis for the disparity or there is a need for corrective intervention. Recognizing that this is easier said than done, we stand ready to assist the Department wherever possible. OPD is in partial 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.)

### Discussion:

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.

During all of the previous reporting periods, we found OPD in Phase 2 compliance with Task 35.

To assess Phase 2 compliance for Task 35 for this reporting period, we reviewed 12 use of force reports, including: three Level 2 and nine Level 3 use of reports covering incidents that occurred between July 1, and September 30, 2014. (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 12 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 12 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

## 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.)

Discussion:

We have 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.

Following our review of retaliation cases in the fourteenth reporting period, we found OPD not in Phase 2 compliance with Task 37. In that report, we cited a case we regarded as involving serious retaliation after an officer provided information about another officer's beating of a handcuffed prisoner. We noted that the Department did not do enough to identify the perpetrator or protect the reporting officer when the retaliation came to light. In the seventeenth reporting

period, we found three cases alleging retaliation in which OPD conducted thorough investigations. In all three cases, OPD concluded that the charges of retaliation were unfounded. There were no other cases alleging retaliation fitting the Task 37 definition. In the eighteenth reporting period, we found no extant case fitting the Task 37 definition. In the nineteenth reporting period, we again found no extant cases that contained allegations of retaliation, as defined by Task 37.

During the current reporting period, the Chief personally provided training regarding retaliation to seven Continuing Professional Training (CPT) courses for both officers and sergeants. During the period from July 1, through September 30, 2014, he spoke to a total of 176 sergeants and officers who attended CPT. In addition, he addressed 34 police officer trainees at the Basic Academy.

**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%).

Our review of the cases during the period of July 1, through September 30, 2014 identified one completed case in which an employee of OPD alleged retaliation by another employee of OPD. We reviewed the IAD investigation in that case and determined that the OPD investigation was thorough and the finding of “unfounded” for the charge of Retaliation reasonable.

OPD is in Phase 2 compliance with Task 37.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 40: Personnel Assessment System (PAS) – Purpose

### Requirements:

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

1. *All uses of force required to be reported by OPD;*
2. *OC spray canister check-out log (see Section V, paragraph D)*
3. *All police-canine deployments; where the canine is deployed in a search for or to apprehend a suspect(s). It does not include, deployments for the purpose of locating bombs, narcotics, missing persons, etc., where the canine is not involved in an investigated use of force (i.e., deliberately or inadvertently bites or injures a person) If such force occurs, a Use of Force report is required.*
4. *All officer-involved shootings and firearms discharges, both on duty and off duty, excluding an intentional discharge while at a range facility; a discharge while engaged in a lawful recreational activity, such as hunting or target practice; a discharge by Criminalistics Division personnel for the purpose of scientific examination; and a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury;*
5. *All on-duty vehicle pursuits and on-duty vehicle collisions;*
6. *All complaints, whether made to OPD or CPRB;*
7. *All civil suits and/or tort claims related to members' and employees' employment at OPD, or which contain allegations which rise to the level of a Manual of Rules violation;*
8. *Reports of a financial claim as described in Section VI, paragraph G (3).*
9. *All in-custody deaths and injuries;*
10. *The results of adjudications of all investigations related to items (1) through (9), above, and a record of investigative findings, including actual discipline imposed or non-disciplinary action administered;*
11. *Commendations and awards;*
12. *All criminal arrests of and charges against OPD members and employees;*
13. *All charges of resisting or obstructing a police officer (Penal Code §§69 and 148), assault on a police officer (Penal Code §243(b)(c), or assault-with-a-deadly-weapon on a police officer [Penal Code §245(c)(d)];*
14. *Assignment history and rank history for each member/employee;*
15. *Training history for each member/employee;*

16. *Line-of-duty injuries;*
17. *Sick leave usage, particularly one-day sick leaves;*
18. *Report Review Notices or Case Evaluation Reports for the reporting member/employee and the issuing investigator;*
19. *Criminal cases dropped due to concerns with member veracity, improper searches, false arrests, etc.; and*
20. *Other supervisory observations or concerns.*

(Negotiated Settlement Agreement VII. A.)

Discussion:

As noted in recent reports, the problems with accuracy of arrest data in the risk management database were addressed with the automatic import of arrest data into the County's data system. The process had been pilot-tested and implemented. Even with this solution, data problems can be expected to occur – and thus, the ability to detect and resolve them is critical. The daily audits initiated by the PAS Administration Unit have succeeded in meeting these needs. It is not clear, however, whether the unit is addressing the underlying systemic problems that result in errors – or whether it has simply made data corrections that have not addressed the basic causes of those problems, particularly with the arrest data. This issue may be critical as OPD moves forward with its new risk management database.

The development of the new risk management database has also continued. The complete redesign of this system and its links to other Department data has proceeded with the selection of a highly qualified vendor and the successful coordination by another vendor of a sound management process. The project has been approved through the City Council and is currently in the final stages in preparation for implementation. A matrix of specific processes and outcomes has been added to the more general plan of work to help direct the project. The vendor estimates a 10-month implementation period.

General Order D-17, *Personnel Assessment Program*, which incorporates the requirements of Tasks 40 and 41, was issued on November 20, 2013. As noted in recent reports, the policy altered the PAS review procedures to incorporate an initial internal review by the PAS Administration Unit when officers meet thresholds. Reviews, including any recommendations for monitoring or intervention, are then forwarded to first line supervisors for review and comment. This is a change from the original process that moved directly to reviews up the chain of command. The Risk Management Unit sees the new process as supported by supervisors and as beneficial. It support appropriate reviews of data by risk management staff, and also maintains an appropriate and desirable role for first-line supervisors in the process.

PAS records for the quarter of July 1, through September 30, 2014 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 288 uses of force. This is a decline of 4% from the previous quarter that then showed a significant decline. The current status reflects stability at low

numbers for Level 4 uses of force as well as drops in other levels. Arrests data also show stability across three quarters at levels consistent with earlier periods at approximately 4,000 arrests per quarter prior to a brief period when arrests were approximately 25% lower.

A further breakdown of the types of use of force shows that, for the fourth quarter in a row, there were no Level 1 uses of force. There were seven Level 3, one Level 2, and 280 Level 4 uses of force. Internal Affairs complaints have risen slightly to 207, but remain well below the earlier levels of approximately 300. OC checkouts have fallen to levels prior to increases with the deployment of newly hired officers. Vehicle pursuits have fallen to 28 from a high of nearly 90 one year ago. Canine deployments remain very low at two; however, this number does not include instances of assistance from other departments. Data counts for the current reporting period and the seven prior reporting periods are presented in the table below.

OPD Performance Activity Comparison by Quarter								
Performance Activity	October 1 to December 31, 2012	January 1 to March 31, 2013	April 1 to June 30, 2013	July 1 to Sept 30, 2013	Oct 1 to Dec 30, 2013	Jan 1 to March 31, 2014	April 1 to June 30, 2014	July 1 to September 30, 2014
Level 1 Uses of Force	0	1	3	3	0	0	0	0
Level 2 Uses of Force	7	3	10	4	8	1	7	1
Level 3 Uses of Force	15	26	26	12	24	14	16	7
Level 4 Uses of Force	612	509	483	412	314	564	276	280
Unintentional Firearms Discharge	0	0	0	0	0	0	2	0
Sick Leave Hours	9857.65	11286.53	11041.94	11390	10935	9724	7798.08	8693.47
Line of Duty Injuries	30	32	54	54	23	54	8	5
Narcotics Related Possessory Offenses Arrests	280	407	560	496	669	914	804	690
Vehicle Collisions	7	18	12	6	17	34	11	13
All Vehicle Pursuits	57	18	64	87	68	43	16	28
All Arrest	2943	2853	3697	2759	3156	3743	4161	3756
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	31	34	36	28	27	27	25	21
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	7	9	4	5	2	1	12	5
Awards		76	55	65	124	102	115	40
Assignment History	9791	10361	10337	10257	10361	11156	11337	34794
Case Evaluation Reports	203	635	444	338	497	315	198	225
Report Review Notices--Positive	12	5	8	1	1	1	5	5
Report Review Notices--Negative	0	0	0	0	0	1	0	0
Canine Deployments	43	64	59	57	50	66	0	2
Financial Claims	0	0	0	0	0	0	0	0
Internal Affairs Complaints	277	186	295	140	136	150	192	207
In-Custody Injuries	13	21	13	2	31	4	12	4
Civil Suits (Tort Claims)	3	4	4	2	4	0	8	13
Criminal Cases Dropped	91	416	282	207	352	226	116	132
O.C. Checkouts	11	58	16	61	13	116	82	20
Officer Involved Shootings	1	2	3	1	0	1	3	0
Rank / Class History	2326	2391	2334	2357	7302	2519	2521	7611
Training History	2096	20108	19589	8557	13827	17239	22886	13273
Supervisory Notes	3117	3139	3304	2852	2957	3114	3721	3635
Arrest Made Against OPD	0	0	0	0	1	1	0	1

During the current reporting period, the Department continued to collect the necessary data and to audit for potential problems. The associated policy is in place and implementation of the new arrest data processes continue to function well. This continues to support a finding of Phase 1 and Phase 2 compliance.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 41: Use of Personnel Assessment System (PAS)

### Requirements:

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

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



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

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

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

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

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

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

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

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

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

(Negotiated Settlement Agreement VII. B.)

Discussion:

This requirement addresses the effectiveness of the use of PAS to manage risk in the Department. Much of the discussion below addresses the process with regard to identifying and assessing individual officers based on risk-related behavior – and intervening as appropriate. The system also supports a broader approach to managing risk in which the Department continuously assesses activity and seeks to incorporate those assessments more generally into its activities.

We have commented in the past on the revised process in which initial reviews, when thresholds are met, are completed within the PAS Administration Unit. Again during this reporting period, we examined these reviews and concluded that they are thorough and complete. The process works well, and PAS staff assert that it is preferred by supervisors because of time saved and the quality of reviews.

The Department is also in the process of developing IPAS2, a new data system for use in the risk management process. The Department's – and City's – commitment in this area reflects its recognition of the importance of the risk management system for the Department and for assisting officers whose careers could be damaged by risk-related behavior.

OPD revised and issued Departmental General Order D-17, *Personnel Assessment Program*, in November 2013. Based on the existing policy, we again find OPD in continued Phase 1 compliance with this Task.

As in previous reports, we have continued our examination of the stages of the PAS process consistent with this Task. We examined the threshold analyses that were performed for the period of July 1, through September 30, 2014. 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.

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 quarterly PAS command reviews of officers by supervisors, and again found appropriate use of the system and no significant issues of concern.

The PAS process also calls for follow-up reports of officers under supervision or monitoring, and we reviewed reports of 20 officers not discharged from the process by the end of one year. These 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 September 30, 2014, OPD concluded a total of 21 PAS reviews. There were 39 in the previous reporting period. That was a high level that followed lower numbers associated with transition to the new review process. The procedural change was an effort to reduce the number of false positive finding where reviews revealed no significant problems. Reviews are included in the table below only after they are signed off through the level of the PAS Review Panel. Examination of the reviews as completed by the PAS Administration Unit shows them to be thorough and complete. The reviews include examination of all identified risk-related activity consistent with the policy. The table also shows that 40 officers exceeded thresholds for review during this quarter and that 33 reviews were listed as pending at the end of the quarter. This will mean a substantial workload for the coming reporting period. We will continue to monitor the progress in this area.

The table below tracks the review process and shows that supervisors recommended that no action be taken in 18, or 86% of the 21 reviews for the current reporting period. That is equal to the previous quarter, although total reviews were at 39 then. The table also shows that Commanders and the Deputy Chief disagreed with one lower-level recommendation and supported monitoring. The PAS Review Panel reversed one case by requiring monitoring.

The overall situation regarding level of reviews and related action continues as it was described in recent quarters: The system shows high levels of no action required but also the willingness and capacity to reverse those decisions up the chain of command. The new procedures have reduced the work required of supervisors by the large number of false positive cases but have not necessarily reduced the number of officers misidentified in the initial threshold reviews.

The reporting period ended with 10 officers in intervention and 22 in monitoring. This means that again this reporting period, approximately 5% of all officers are on some risk management-related status. When the percentage uses patrol officers as the base, it increases to over 15% of officers. We will continue to monitor these levels and to scrutinize the process to assure that appropriate standards are maintained.

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 1/13-9/14</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>2013</b>																	
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
April	10	10	100%	0	0%	0	0%	0	0%	10	100%	10	100%	9	90%	2	4
May	14	8	57%	2	14%	2	14%	2	14%	14	100%	13	93%	12	86%	8	18
June	11	10	91%	0	0%	1	9%	0	0%	11	100%	10	91%	8	73%	1	4
July	4	2	50%	0	0%	1	25%	1	25%	4	100%	4	100%	4	100%	2	12
August	9	6	67%	0	0%	3	33%	0	0%	7	78%	8	89%	7	78%	1	12
September	8	7	88%	0	0%	0	0%	1	13%	8	100%	8	100%	7	88%	0	0
October	2	2	100%	0	0%	0	0%	0	0%	2	100%	2	100%	2	100%	0	0
November	2	2	100%	0	0%	0	0%	0	0%	2	100%	2	100%	1	50%	5	11
December	7	6	86%	0	0%	1	14%	0	0%	7	100%	7	100%	7	100%	4	15
<b>Total</b>	<b>117</b>	<b>94</b>		<b>3</b>	<b>1%</b>	<b>16</b>		<b>4</b>		<b>111</b>		<b>109</b>		<b>97</b>		<b>39</b>	<b>108</b>
<i>Average</i>	<i>9.8</i>	<i>7.8</i>	<i>83%</i>	<i>0.3</i>	<i>1%</i>	<i>1.3</i>	<i>11%</i>	<i>0.3</i>	<i>4%</i>	<i>9.3</i>	<i>96%</i>	<i>9.1</i>	<i>95%</i>	<i>8.1</i>	<i>82%</i>	<i>3.3</i>	<i>9.0</i>
<b>2014</b>																	
January	3	2	67%	0	0%	1	33%	0	0%	3	100%	3	100%	2	67%	5	18
February	0	0		0		0		0		0		0		0		13	1
March	7	4	57%	0	0%	2	29%	1	14%	7	100%	7	100%	7	100%	8	11
April	20	18	90%	0	0%	1	5%	1	5%	19	95%	19	95%	18	90%	0	14
May	9	6	67%	0	0%	3	0%	0	0%	9	100%	8	89%	8	89%	0	1
June	10	9	90%	0	0%	1	0%	0	0%	9	90%	9	90%	10	100%	19	14
July	9	8	89%	0	0%	1	11%	0	0%	9	100%	9	100%	9	100%	20	17
August	9	7	78%	0	0%	2	22%	0	0%	9	100%	9	100%	8	89%	16	1
September	3	3	100%	0	0%	0	0%	0	0%	2	67%	3	100%	3	100%	33	22
<b>Total</b>	<b>70</b>	<b>57</b>		<b>0</b>		<b>11</b>		<b>2</b>		<b>67</b>		<b>67</b>		<b>65</b>		<b>114</b>	<b>99</b>
<i>Running Average</i>	<i>7.8</i>	<i>6.3</i>	<i>0.0</i>	<i>0.0</i>	<i>0.0</i>	<i>1.2</i>	<i>0.0</i>	<i>0.2</i>	<i>0.0</i>	<i>7.4</i>	<i>0.0</i>	<i>7.4</i>	<i>0.0</i>	<i>7.2</i>	<i>0.0</i>	<i>12.7</i>	<i>11.0</i>

For our quarterly reports, we also review the PAS histories of officers who had a Level 1 use of force. For this reporting period, as was true during the last reporting period, no officers fell into these categories.

The development work on IPAS2 is continuing, with the consulting firm managing the process in an efficient and effective manner. The system vendor has indicated that a 10-month turnaround time on the project should be expected, beginning after the scope of work is agreed upon and the contract finalized. A matrix of specific tasks has been added to the scope of work to complete the planning process. The City Council has approved the project, and work is expected to begin during the coming quarter. Given the importance of this project, we will continue to review progress on the new system. As we have discussed, however, compliance status does not depend exclusively on the development of IPAS2. We will continue to note any inordinate delays in the City's progress.

During our most recent site visit, we participated in the Semi-Annual PAS Meeting, as required by section 17 of this Task. The meeting – which was attended by command staff and included a detailed presentation by the PAS Administration Unit – included an analysis of patterns of risk behavior, meeting thresholds, and monitoring and interventions. There was additional discussion of issues to consider such as assessing effectiveness by examining officer behavior following monitoring and intervention. There was also interest in examination of other subgroups such as high and low performers.

There were also other contexts that provided insight into the use of risk assessment concepts and data. The Risk Management Meeting we reviewed involved extensive review of police units and activity. The Chief attended the meeting, and led an extended review of risk data and productivity. We are encouraged that OPD continues to demonstrate a commitment to the process of risk management and an incorporation of risk-related concerns into the daily operations of the Department.

The Department has continued to make progress in the implementation of its risk management process. Both the monthly Risk Management Meetings and the Semi-Annual PAS meeting are having positive effects, with the reduction of risk-related activities such as uses of force and police pursuits.

All of this has positioned the Department to take advantage of the capabilities of the new risk management database that is currently under development. The current status of the risk management process, and the development of this new data system, together, can signal a new era in the Department's approach to risk management. Setting and clarifying expectations for this new era is vitally important. This process will be best accomplished by making decisions about the questions that the risk management process and data should answer.

That work is underway. The Semi-Annual PAS Meeting included a discussion of patterns of risk behavior following monitoring and intervention. The monthly Risk Management Meeting included analyses of high and low performing squads. An important step in this process will be to formulate these and other questions so that they may be captured in reports through the new system. Such reports might include a Department analysis of officers repeatedly meeting thresholds, and the identification of highly productive officers who do not regularly exceed risk thresholds, as well as analyses of low-performing officers. There should be a process for systematically considering the questions the risk management process should be answering – and for designing the appropriate reports for the new system. That will allow the Department to take advantage of the capabilities of the new system for accomplishing things the last generation database could not. We will continue to work with – and provide technical assistance to – the Department in these areas.

OPD is in Phase 2 compliance with Task 41.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

Our concern for the next reporting period will be consistent with the direction noted above. We will be interested in the Department's efforts moving beyond the current procedures and structures for risk management. We will focus on the Department's efforts to develop and implement risk-related analyses that can be incorporated into the existing process and new database.

## 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.)*

Discussion:

OPD has not changed its policy regarding the FTO Program since it articulated Departmental Order B-8, *Field Training Program*, which was effective June 2, 2014. This order incorporates the requirements Task 42.

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

OPD has been in Phase 2 compliance with this Task for the last six reporting periods.

During our most recent review, we interviewed the sergeant who serves as Field Training Coordinator, the lieutenant who is the unit's commander and the senior FTO who assists the coordinator and reviewed related memoranda, evaluation forms, and other documentation.

As of our last site visit, there were 79 FTOs, with 68 available for assignment. At the time of this review there were 87 approved FTOs with 78 available for work assignments in the program.

At the time of this review, there were 57 trainee officers in the FTO Program. Twenty-two Basic Class 169 trainees were still in the FTO Program, and 35 Basic Class 170 trainees are scheduled to graduate during the next reporting period.

**Task 42.1** requires that the Field Training Program Coordinator is a full-time position (compliance standard: Yes/No). A full-time sergeant is currently assigned to supervise the program. There are two police officers assigned to assist the FTO Coordinator. 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.

**Task 42.3.1** requires that incentives for participation as an FTO be 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 during the current reporting period. 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 of Police (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%). Prior to June 2014, officers with a sustained Class I violation were ineligible to be nominated or participate in the FTO testing process for a minimum of two years. The policy was revised so that officers with a Class I violation are ineligible to serve as an FTO for 12 months; and such cases shall be considered important in evaluating eligibility for two years following the completion of the investigation. Supervisors and commanders recommend candidates, who 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. During the quarter, 13 FTO candidates were recommended and the chief approved 11. 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). During the current reporting period, one officer was decertified for a sustained Class 1 violation. The FTO Program Coordinator reviews IAD sustained findings on a monthly basis. 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 FTO Program Coordinator receives, reviews, audits, and files all evaluation forms. In addition, the program maintains a color-coded spreadsheet to ensure that documentation is received, reviewed, and filed. 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. No incident in which a trainee was assigned to a non-FTO has occurred for the past year. OPD is in compliance with this subtask.

**Task 42.10** requires that Field Commanders and FTO Supervisors be 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. The FTP met with the Deputy Chief and area commanders on April 3, 2014, and provided an overview of the FTO Program. OPD is in compliance with this subtask.

**Task 42.11** requires that a total of three focus groups are conducted by the Field Training Program Coordinator and Academy staff with randomly selected trainee officers for each group of trainee officers in the FTO Program. The first is conducted midway through the field-training cycle, the second upon completion of field training, and the last 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. Since our last review the FTO Coordinator has held three focus groups. On August 7<sup>th</sup>, 2014, the FTO Unit conducted the second focus group for the trainees in the 168<sup>th</sup> Academy. On November 4, 2014, the unit conducted the third focus group for the Transitional Academy. On October 5, 2014 the first focus group was held for the 169<sup>th</sup> Academy.

**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 two BFO Deputy Chiefs, and the BOS Deputy Chief (compliance standard: Yes/No). The required meeting for the discussion of the results of the two focus groups held during the first quarter was held on September 16, 2014, and attended by the required persons. The results were documented in a memorandum for the Chief of Police.

The FTO Program 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. To ensure that training and the FTO Program are consistent, biweekly meetings attended by the Training Commander, the FTO Coordinator, and his lieutenant are held.

As we observed in our last eight reports, OPD has fulfilled the requirements of Task 42. Increasing the number of approved and trained FTOs who are available to work alongside a larger number of trainees is important to the continued success of the program.

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>18</sup>*

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

Discussion:

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

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 100% of the members and employees in our random sample received the required in-service training. In past reviews we have expressed concern, however, for the training of the Police Evidence Technicians, and, in our last two reviews we have noted that OPD has taken steps to develop a plan to ensure its PETs receive ongoing job training, including enrolling PETs in POST-certified courses on crime scene investigation and evidence recovery, and DNA evidence; developing a PET field training program manual; and exploring the possibility of offering training by Crime Lab personnel. In our August 2014 review we observed that PET training has progressed positively.

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

**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, inasmuch as OPD has been in compliance since our first report (dated April 22, 2010) with providing adequate training to its members and dispatchers for over two years, we have continued to use a sample size of training records pertaining to 30 individuals. Our sample included 16 officers, seven sergeants, one lieutenant, two PETs, and four 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.

Overall, 29 (97%) of the 30 members, evidence technicians and dispatchers in our sample received training appropriate to their jobs. Our review identified one officer on limited duty who had not attended firearms training or qualified with a firearm for a period of 21 months. The officer’s weapon had not been removed in spite of the policy that requires an officer who fails to qualify to surrender his/her Department-issued firearm to the range master.<sup>19</sup> Also, one dispatcher in our random sample had received only seven hours of training over a period of two years. If this dispatcher receives the 24 hours of communications dispatcher training before the end of 2014, she will remain in compliance with California state requirements. The following chart reflects the results of our review.

<b>Title</b>	<b>Records Reviewed</b>	<b>Adequate Training Received</b>	<b>%</b>
<b>Officers</b>	16	15	94%
<b>Sergeants</b>	7	7	100%
<b>Lieutenants</b>	1	1	100%
<b>Dispatchers</b>	4	4	100%
<b>Evidence Technicians</b>	2	2	100%
<b>Total</b>	30	29	97%

Training of Police Evidence Technicians (PETs) is the responsibility of the BFO where PETs are assigned. The PET Coordinator was appointed in January 2013. During our last review, we reviewed all of the current PETs’ training records, and found that all (100%) had received adequate training. During this review, two PETs were included in our random sample. Both had

<sup>19</sup> Departmental General Order, B-12, effective 30 May 2007, *Firearms Range Program*, section II.B.



received adequate training. As we observed in our last report, new PETs have attended DNA Training (three days), Evidence Packaging (two days), Basic Crimes Scene Investigation (one week), and the Police Services Technician (two weeks) training. The PET Coordinator advised that he is drafting policy that would require PETs to receive initial basic training and, thereafter, continuing professional training, as we noted in our last report, we will continue to follow OPD's progress in establishing a policy for training its PETs.

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.)

Discussion:

Five Departmental policies incorporate the requirements of Task 45: Departmental General Order M-03, *Complaints Against Department Personnel and Procedures* (published December 6, 2005 and revised most recently on August 22, 2013); Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual* (published February 1, 2007); Training Bulletin V-T.1 and V-T.2, *Internal Investigation Procedure Manual*

(published June 1, 2006); Internal Affairs Policy and Procedure Manual (published December 6, 2005); and Training Bulletin V-T, *Departmental Discipline Policy* (published September 3, 2010). 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.

For the four quarterly reports prior to the last reporting period, we found OPD in compliance with Task 45. During the last reporting period, however, we placed OPD in deferred compliance status with Task 45 due to two cases that had emerged from the disciplinary process that we found unacceptable. In one case a senior officer struck a subject when he was lying on the ground after being shocked by a Taser. In this case, the city administrator overruled the OPD discipline process and reduced discipline from a 10-day suspension to counseling. The second case involved an officer who threw a noise making explosive device into a crowd of demonstrators. This officer's termination was overruled by an arbitrator who ordered his reinstatement.

**Task 45.1** requires that OPD maintain a centralized system for documenting and tracking all OPD 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 July 1, through September 30, 2014. This query yielded 25 cases, containing 29 sustained findings. All (100%) of these cases and findings contained all of the necessary information available on the printout generated by IAD for our review. OPD is in compliance with the requirement that it maintain an adequate system for documenting and tracking discipline and corrective action.

**Task 45.4** requires that discipline be imposed in a manner that is fair and consistent (compliance standard: 95%). To this end, the Department developed a Discipline Matrix which was adopted on September 2, 2010 and in effect until a new Discipline Matrix was approved on March 14, 2014. This new matrix applies to violations after that date.

We reviewed all 25 cases and 29 sustained findings that were decided during the period of July 1, through September 30, 2014. We also reviewed eight cases with 14 sustained findings that had been brought to our attention during our previous on-site review but which were not disciplined until the second quarter of 2014. Our review, therefore, encompassed 33 cases with 43 findings. The discipline imposed in each case fell within the discipline matrix that was in effect at the time of the action for which the discipline was imposed.

During the period of July 1, through September 30, 2014, Skelly hearings were held for nine IAD cases involving nine employees with sustained findings in which discipline of a one-day suspension or greater was recommended. In four of the nine cases, discipline was upheld; in five cases, the discipline was reduced but fell within the Discipline Matrix. We reviewed each of the reports of the Skelly hearings and found that four of the five cases where the discipline was reduced had adequate justification.

One disciplinary case, however, was troubling. That case involved an officer who: used force to wrestle a subject to the floor; employed deficient tactics that led to the use of force by attempting to handcuff a subject without giving her a verbal command and an opportunity to submit; failed to complete a proper offense report by accurately reporting all the facts; and failed to activate his PDRD as required. The IAD report noted that it appeared from the second officer's PDRD that the officer lost his temper in dealing with a subject, and that this led to his poor tactical approach. The Skelly official reduced the discipline from a five-day suspension to a two-day suspension. His justification for the reduction was insufficient and used only 21 words. He simply said that the use of force was minor, and that there were no injuries, and he cited the officer's lack of sustained findings in the last five years. The analysis does not provide sufficient justification for changing the discipline that was to be imposed.

In response to the July reinstatement of an officer who had been terminated for his actions during the Occupy Oakland-related protests of 2011, Judge Henderson issued an Order, which reads in part:

“This is not the first time an arbitrator has overturned an officer's termination by Defendants, and, indeed, this Court previously ordered the parties to discuss the reinstatement of [another officer] by arbitration at the September 22, 2011 status conference. The City's promises to correct deficiencies at that time have fallen short, and further intervention by this Court is now required.

“Failure to address the issues addressed in this order will prevent compliance, let alone sustainable compliance, with the Negotiated Settlement Agreement (“NSA”). Defendants cannot be in compliance with Task 5 if the internal investigations leading to disciplinary decisions by Defendants are inadequate. Likewise, they cannot be in compliance with Task 45 if discipline is not consistently imposed. Because imposition of discipline is meaningless if it is not final, the Monitor and the Court must consider whether discipline is upheld at the highest level, most often arbitration...”

Consequently, until such time as OPD addresses the issues specifically outlined in Judge Henderson's Order, we consider OPD to be in deferred compliance status with Task 45.

Compliance Status:

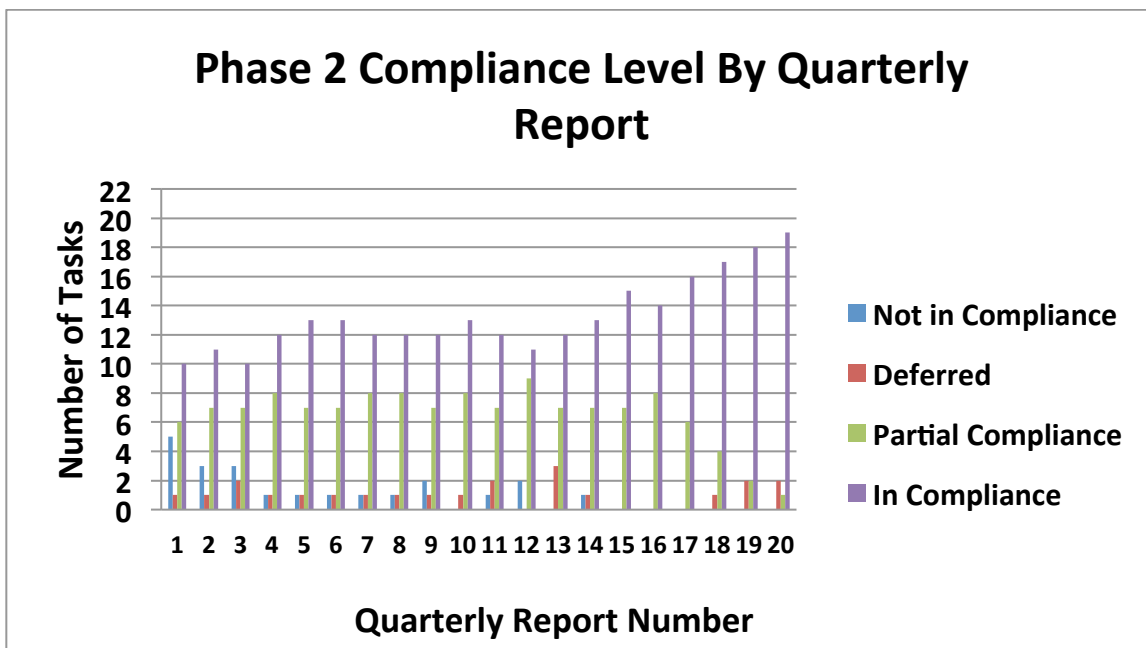
Phase 1: In compliance

Phase 2: Deferred

## Section Three

### *Conclusion*

This is our twentieth 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 19, or 86%, of the Tasks are in Phase 2 compliance; and one, or 5%, of the Tasks is in partial compliance. We also placed two (9%) Tasks in deferred compliance status.



## Appendix A

### *Trends in Risk Measures Over Time*

PAS ADMIN UNIT STATISTICAL COMPARISON													
OAKLAND POLICE DEPARTMENT - KEY INDICATOR BY MONTH (12 Months) 2013 - 2014													
	13-Oct	13-Nov	13-Dec	14-Jan	14-Feb	14-Mar	14-Apr	14-May	14-Jun	14-Jul	14-Aug	14-Sep	Graph
<b>Percent of Arrests Associated with</b>													
A Use of Force (levels 1,2,3 - per reporting officer)	1.30	0.75	0.95	0.55	0.48	0.16	0.85	0.26	0.59	0.38	0.21	0.09	
A Use of Force (levels 1,2,3,4** - per reporting officer)	13.60	9.08	8.73	11.76	6.33	4.54	9.22	6.44	5.54	6.49	7.46	6.29	
A Police Pursuit (per reporting officer)	1.94	1.03	0.28	1.49	1.82	0.08	0.31	0.52	0.30	0.61	1.09	0.18	
An IA Complaint (per subject officer sworn only)	5.64	3.46	3.13	3.37	2.93	2.66	5.27	2.54	3.25	5.00	3.90	3.50	
An In-Custody Injury	1.02	0.75	1.14	0.00	0.32	0.00	0.23	0.07	0.44	0.38	0.07	0.00	
Each Hour of Sick Leave (excludes civilians)	246.99	213.01	237.38	161.29	139.90	137.74	122.40	85.49	122.80	114.60	151.78	76.51	
<b>Number of Arrests per (blank if o cases)</b>	13-Oct	13-Nov	13-Dec	14-Jan	14-Feb	14-Mar	14-Apr	14-May	14-Jun	14-Jul	14-Aug	14-Sep	
Officer Involved Shooting (includes shootings involving animals which includes force types 1,21, 24, 27 and 26-21)*							645		1355				
Vehicle Collisions (excludes civilians)	216.2	356			255	211	258			260	487		
Civil Suit (excludes civilians)		1068			1263		215	769					
All Arrest (totals)	1081	1068	1054	1276	1263	1277	1290	1537	1355	1301	1462	1113	

\*blank=no events to count

## Appendix B

### *Selected Inactive Task Assessments*

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**During this reporting period, we reviewed two audits recently conducted by the Office of Inspector General for Tasks 5 and 44.**

#### **Task 5, Complaint Procedures for IAD**

Task 5 requires, in part:

- 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.
- 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.

On June 24, after consultation with the Monitoring Team, 2013 OPD issued Special Order No. 9112, which introduced and authorized the use of the Informational Business Card (IBC). The policy added the following new requirements concerning complaint procedures:

*A. The Department will furnish IBCs to members.*

*B. Members shall carry and/or have direct access to IBCs while on-duty. "Direct access to" is defined as: A place where a member can quickly and easily obtain an IBC to provide to citizens, when required or asked, without unnecessary delay.*

On August 22, 2013 OPD issued a revision to Departmental General Order (DGO) M-03, *Complaints Against Departmental Personnel or Procedures*. The revision added the following new requirements incorporating the use of the IBC:

*If the complainant refuses or is unable to wait for a supervisor, the member of employee shall:*

- 1.) Make a reasonable attempt to obtain the complainant's name and contact information, the nature of the complaint, and the identity of the personnel involved;*
- 2.) Provide the complainant with an OPD Informational Business Card (IBC) and Complaint Form (TF-3208) with his/her name, serial number and CAD incident number.*
- 3.) Enter a CAD notation to the call;*
- 4.) Use the Radio Disposition Code of "IBC" (Informational Business Card)";*

*and*

- 5.) Call the Communications Section Supervisor with the date of the referral, incident number and brief description of the incident to be added to the Complaint Referral Log (TF-3367) within 24 hours of the referral.*

*If a member or employee is unsure whether a citizen wishes to make a complaint, he/she shall:*

- a. Not discourage or deter citizens from exercising their right to complain to the Department or the CPRB;*
- b. Ask clarifying questions, including but not limited to:*
  - 1.) Would you like to speak to a supervisor?*
  - 2.) Do you want to make a complaint?*
- c. Provide the citizen with an Informational Business Card and/or Complaint Form (TF-3208) with his/her name, serial number and CAD Incident Number;*
- d. Enter a CAD notation to the call;*
- e. Use the Radio Disposition Code of "IBC" (Informational Business Card); and*
- f. Call the Communications Section Supervisor with the date of the referral, incident number and brief description of the incident to be added to the Complaint Referral Log (TF-3367) within 24 hours of the referral.*

Due to the potential impact on the complaint process, OIG audited the implementation of the IBC program. OIG focused primarily on two aspects of the policy requirements: members carrying, or having direct access to, IBCs while on duty; and the circumstances during which members are providing IBCs to citizens.

Over different days and on different watches, the OIG auditor interviewed on-duty members at the Police Administration Building and Eastmont Substation to determine if they had IBCs available on their person, in their equipment bag, or in their vehicle. A total of 46 members were interviewed and asked to provide IBCs. Personnel were compliant if they had an IBC on their person, in their vehicle, or in their equipment bag. Additionally, supervisory personnel were compliant if they had IBCs at their assigned desk. The auditor also inspected the lineup rooms at both police facilities to determine if IBCs were made readily available to officers. OIG found 100% compliance with these inquiries.

Since the inception of the IBC program, Communications has kept a daily log (the Daily Complaint Referral Log) to record when IBCs are issued to citizens. These, like the Daily Incident Logs (DILs), which are used by Communications to record formal complaints, are forwarded to the Monitoring Team on a daily basis. The OIG auditor reviewed a sample of IBC issuance entries on the Daily Complaint Referral Logs from the first six months of 2014. The entries were analyzed to determine if the following policy requirements were met:

- If the complainant refused or was unable to wait for a supervisor
- If the reporting party was unsure if a complaint was desired
- If a CAD notation was made
- If the Communications Division logged the date of referral and incident number.

Between January and June 2014, there were 750 entries on the Daily Complaint Referral Logs. The entries included the following types of situations:

1. Instances in which members/employees physically handed out IBC cards;
2. Instances in which an IBC card was unable to be provided, but the member/employee felt the incident should be documented (e.g., a citizen refuses to take a card, or an officer is working on a skirmish line of a protest); and
3. Instances in which the IBC information was conveyed over the phone.

A sample of 85 IBC log entries was reviewed. Based on how the entries were documented on the log, only seven (8.2%) met one of the two categories required by policy: 1) when a complainant refuses or is unable to wait for a supervisor, or 2) if a member of employee is unsure whether a citizen wishes to make a complaint. Of these seven entries, four were made because the complainant either refused or was unable to wait for a supervisor. The other three were made because the reporting member or employee was unsure if the citizen wished to make a complaint. Six (85.7%) entries were determined to be in compliance with each policy requirement. In one incident, the officer did not make a corresponding CAD notation to the call. This was the only non-compliance occurrence found in this portion of the audit.

While the overwhelming majority of entries on the logs did not fall into either of the two categories described above, most of them complied with all policy requirements. The nature of the remaining entries varied greatly, including requests for badge numbers, juvenile detentions, service complaints where no formal complaint was requested, and allegations that did not rise to



the level of an MoR violation. Our review of the Daily Complaint Referral Logs has also identified this pattern of using IBCs for a wide variety of purposes. We note that this is in accord with the initial training provided when the program went into effect.

The OIG auditor made one recommendation. IAD is proactively reviewing the daily IBC logs for any improper entries. However, there is currently no *formal* policy in place requiring this action or describing the methodology. The auditor recommended that a formalized policy be adopted, requiring an IAD review of all IBC log entries. We concur with this recommendation, and note that IAD command staff is receptive to it as well.

#### **Task 44, Personnel Practices**

During this reporting period, we also reviewed the recent audit of Task 44, Personnel Practices, by the Inspector General. This audit was performed to determine whether personnel practices and procedures are consistent with NSA guidelines. The audit report describes the parameters of the audit and its methods and results. The audit finds several deficiencies including those related to circumstances involving multiple supervisors and reviews of evaluations up the chain of command. Corrective action is recommended for these deficiencies.

One critical area was not included in the outline of the audit procedures and is not addressed in the audit. That is, the audit does not address questions of risk management as they relate to personnel evaluations. The personnel evaluations do not appear to address whether officers have exceeded thresholds for risk-related behavior, whether they have been reviewed as a result, and whether they have been placed on supervisory monitoring of supervision. Consequently, they do not address the outcomes of any risk-related interventions.

The personnel evaluation procedures do not appear to have incorporated any risk management interests or concerns. Instead, these two review systems seem to be isolated from one another. Our view of this separation is that it creates a situation in which reviews are incomplete; can be misleading; and therefore miss an opportunity to consider information that should be relevant to a broad range of personnel decisions, including promotions.

We understand from conversations with OPD that concerns exist around the inclusion of risk related-information in personnel evaluations. We believe that this issue is not resolved and that the arguments raised were extemporaneous and incomplete. The Department should formally address the relation between personnel evaluations and risk management. This will allow a full assessment of the issues identified here.

Our review of the audit also reveals that the distribution of appraisal ratings of employees is not presented or discussed and that similarly, supervisor feedback to employees is not examined. Most people assume that appraisal procedures are justified by the individual feedback they provide from supervisors, and that appraisals will yield variation in employee ratings. These two issues should be addressed in an audit of personnel procedures and practices.

## Appendix C

### *Acronyms*

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

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
IBC	Informational Business Card
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