



Twenty-First Quarterly Report
of the Independent Monitor
for the Oakland Police Department

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Independent Monitor

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Section One

Introduction

This is the twenty-first 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 twenty-first quarterly site visit from February 9, through February 13, 2015, to evaluate the Department's progress with the NSA during the three-month reporting period of October 1, through December 31, 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 in compliance with 19 (86%) of the 22 remaining Tasks, and in partial compliance with three (14%) Tasks. The Department is in partial compliance with Task 5, *Complaint Procedures for IAD*; Task 34, *Vehicle Stops, Field Investigation, and Detention* (commonly referred to as "stop data"); and Task 45, *Consistency of Discipline*. These overall compliance numbers represent the same number of Tasks *in compliance* as we found during the last reporting period – there is a change from *deferred* compliance to *partial* compliance with Tasks 5 and 45.

During the last two reporting periods, we had deferred our assessments of Tasks 5 and 45 due to the then-ongoing investigation of the Department's discipline and arbitration process. 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 Order 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.

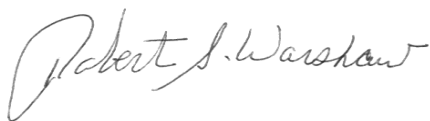
“Failure to address the issues addressed in this order will prevent compliance, let alone sustainable compliance, with the Negotiated Settlement Agreement (“NSA”). Defendants cannot be in compliance with Task 5 if the internal investigations leading to disciplinary decisions by Defendants are inadequate. 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...”

The Order questions, “whether Defendants are adequately preparing cases for arbitration such that consistency of discipline can be assured to the greatest extent possible.”

The investigation of the discipline and arbitration process was recently completed, and the Court-appointed investigator issued his report. The report concludes that Oakland’s police discipline process is “broken” because, among other reasons, it fails “to deliver fair, consistent, and effective discipline.” It continues, “Time and again, when the Oakland Police Department...has attempted to impose significant discipline, its decisions have been reversed or gutted at the arbitration stage, causing the public to question whether the City handles disciplinary cases appropriately.” The report discusses the lack of accountability among City officials for the serious failures of both OPD and the Office of the City Attorney in police discipline cases. It also offers many concrete recommendations in the areas of investigation, discipline, preparation, arbitration, and sustainability.

Just a few days following the report’s release, on April 21, 2015, the Court described the report’s findings as “both disappointing and shocking.” It continued, “[I]t is difficult to reach any conclusion other than that the City has been indifferent, at best, to whether its disciplinary decisions are upheld at arbitration.”

The Court ordered the City to “work to eliminate the problems identified” in the Court-appointed investigator’s report, and to file a status report on or before September 1, 2015 to discuss its progress. In the coming months, the Monitoring Team and I intend to work closely with the Department, the Office of the City Attorney, the Mayor, and other City officials on the City’s efforts to address the findings and work to implement the recommendations listed in the investigator’s report. For as the Court pointed out in its recent Order, the high-profile disciplinary decisions that were later overturned or gutted at arbitration “go to the very heart of this case.” It continued: “[T]he goal in this litigation has always been to protect the public against police misconduct – including the racial bias, excessive force, planting of evidence, and falsifying of reports alleged by Plaintiffs – and to ensure accountability whenever misconduct occurs.”



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Monitoring Team:

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Compliance Assessment Methodology

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

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

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

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

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

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

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

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

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

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

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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 | 3 | 0 | 0 |

Section Two

Compliance Assessments

Task 2: Timeliness Standards and Compliance with IAD Investigations

Requirements:

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

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

(Negotiated Settlement Agreement III. B.)

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 October 1, and December 31, 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.¹ Of the 34 Class I cases we reviewed, 30, or 88%, were in compliance with established timelines – a decrease from the 94% we found during the last reporting period. Also, 11 of the Class I cases were completed in between 170 and 179 days, and one case was completed in exactly 180 days. Of the 44 Class II cases we reviewed, 100% were in compliance with established timelines – the same percentage we found during the last reporting period. Eight of the Class II cases were completed in between 170 and 179 days. Of the 22 sustained findings that we reviewed, all (100%) were in compliance with established discipline timelines.² 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 273 cases, a decrease of 23 cases from the last reporting period. The Chief approved 238 cases, a decrease of 61 cases from the last reporting period.

IAD experienced personnel changes during this reporting period. The IAD commander, a captain, was promoted to Deputy Chief; and a replacement captain transferred into IAD to fill the position. In addition, a sergeant transferred into IAD to fill the vacant Intake Unit administrative sergeant position. There were three civilian technician position vacancies at the close of the quarter. Individual intake caseloads decreased.

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

² We reviewed 14 cases involving sustained findings; several cases involved more than one sustained finding.

OPD is in compliance with Task 2.3.

OPD is in Phase 2 compliance with Task 2.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During the next reporting period, we will again confer with IAD command staff regarding workload trends and staffing requirements. 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 11 integrity tests that were conducted from October 1, through December 31, 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 11 tests conducted during this reporting period, five were planned tests, in which the Integrity Testing Unit reviewed the records of OPD members and employees to verify that their vital information and records were current and, therefore, followed Departmental policy.³ All five of the planned tests focused on individual members and employees of OPD who had been arrested and or subjects of criminal investigations during the last 18 months; all five 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.⁴ Four of the selective tests passed, and two failed.

The selective tests during this reporting period covered multiple topics. The first selective test was a test that had been conducted three times during our tenure. The test was initiated to determine if officers are complying with their subpoenas as mandated by Department policy. More specifically, they must appear in court at the date, time and location listed in the subpoena they are provided. Each of the previous tests that we have reviewed have been a “fail” finding that officers were not appearing in court when required or not receiving their subpoena. During this test, ITU found that on the day of the audit, 13 officers were scheduled and subpoenaed to attend court. Three officers failed to attend as required. One of those officers had signed and returned his subpoena; the two other officers had not returned their subpoenas. The test failed, due to officers not appearing in court, and ITU referred the case to IAD for further investigation.

The second test during this reporting period audited Task 18, which requires that supervisors respond to the location and approve probable cause arrest for specific crimes. ITU conducted surveillance for one day, and found that supervisors appropriately responded to the arrest approval requests. The test passed.

The third test was a random test on a Field Training Officer to ensure that he provided proper training and adhered to Department policy. The FTO who was selected had received a recent citizen complaint. ITU conducted a random review of multiple different incidents involving the FTO and his trainee. This review included a review of reports, field contacts, and viewing PDRD videos; and the test passed.

³ Planned integrity tests are designed specifically to test the compliance – with Departmental policies or procedures – of specific members or employees who are identified as the subject of the test.

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

The fourth test focused on a specialized unit within the Criminal Investigations Division. The purpose of the test was to determine if investigators were complying with law and policy applicable to administering *Miranda* warnings prior to questioning suspects who were in custody. The test passed, as the audit found proper administering of *Miranda* warnings when required.

The fifth test focused on an identifiable concern in patrol regard vehicles not being properly signed out per Department policy. An audit found that vehicles were not being signed out properly. The test failed administratively and was sent to IAD for evaluation.

The sixth test evaluated whether OPD personnel and units had properly used the required risk assessment matrix before determining whether to employ the Tactical Team in the execution of a search warrant. The test passed, and ITU found that the necessary analysis was being conducted.

The Monitoring Team meets with ITU staff during each quarterly site visit to discuss the status of pending tests and any tests that have recently been completed. We encourage ITU staff to focus on areas of the NSA that are high-frequency policy violations based on the sustained cases of each reporting period.

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.*⁵

(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.

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

Task 4.7 requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt (compliance standard: Yes/No). If IAD is not available, the supervisor or commander shall contact IAD at the start of the next business day. To assess Phase 2 compliance for Task 4.7, we reviewed 92 Daily Incident Log (DIL) entries and a random sample of 72 IAD case files that were approved during the period of October 1, through December 31, 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%).⁶ This subtask is intended to ensure that OPD provides the proper level of investigation for each complaint, and does not resolve meritorious complaints of misconduct without determining – and documenting – whether the OPD member or employee committed misconduct.

During this reporting period, from a sample of IAD cases that were approved between October 1, and December 31, 2014, we reviewed 10 cases in which at least one allegation was resolved via administrative closure, eight cases in which at least one allegation was resolved via informal complaint resolution (ICR), and seven cases in which at least one allegation was resolved via summary finding. We also reviewed four 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. Four cases involved an allegation of poor demeanor. In two other cases, the complainants felt that their calls for service were handled inappropriately. Two 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 complained about the response time to his call for service. The issue was traced to the actions of a Communications dispatcher, who had already been counseled regarding the matter before the complaint was received. Repeated attempts to re-contact the complainant were unsuccessful, and an IAD lieutenant directed that the case be informally resolved pursuant to policy M-3.1, Section III.A.1.b.

⁶ Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. Six allegations were classified as service complaints, and all involved either slow response or no response to calls for service. Four cases were administratively closed because they did not involve MOR violations. IAD closed another complaint because the involved officer no longer worked for OPD.

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 all of these cases, the interactions between officers and citizens were recorded on PDRDs, negating the need to interview all of the involved officers. 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 5.⁷ During the 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.

To verify Phase 2 compliance with Tasks 5.1 through 5.5, we reviewed 92 entries that appeared on the Daily Incident Logs (DILs) that were completed between October 1, and December 31, 2014. We identified these by randomly selecting 33 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 92 DIL entries, 36 complaints were taken by supervisors in the field; two complaints were received by IAD directly; two complaints were called into the IAD Complaint Line; and in the remaining 52 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 29 such service complaints. Eighteen were for delayed response to calls for service. Two others involved perceived failure to address quality of life issues such as excessive noise. Another pertained to a change of procedures at the Animal Shelter. 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 identified one case during our review in which there appeared to be greater than a three-hour delay in contacting the complainant. The complainant called from a hospital on Travis Air Force Base, and alleged that officers failed to take a report. A sergeant and two officers responded to both take her complaint and complete a report if one was warranted. Because of the time required to free up a patrol unit and make the drive, the three-hour limit was exceeded. Since the reason for the delay was documented, OPD remains in compliance with Task 5.2.

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

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 seven instances in which the complainant “refused” interaction with a supervisor. All but one were received in Communications, and in each case except one, the complainants did not answer the callback telephone numbers provided during their initial calls. In the remaining case, no call back number was provided. 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 26 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 October 1, and December 31, 2014. Using the IAD database, we identified three 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.”

None of the cases we reviewed met all of the criteria for evaluation under Task 5.6. All involved allegations of Class II misconduct. Only one complaint was lodged at the time of arrest. In this case, the complainant alleged that her psychiatric hold was unjustified. A supervisor responded to Alameda County Hospital and took her complaint. The other complaints were lodged after the complainants were released from Jail. Both individuals called IAD – one 12 days after the arrest occurred.

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 October 1, and December 31, 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 96% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 23, or 92%, in compliance with *all* of these required elements.

In five cases, investigators conducted follow-up interviews with officers or civilians to seek clarification. In four cases, the complainants were re-interviewed, and in one case, the subject officer was interviewed twice.

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, an investigation of alleged inappropriate conduct during a roll call, the investigator failed to reach a credibility determination for three employees who were present, citing their lack of recall of any details. Failure to remember an incident does not absolve the investigator of the obligation to assess credibility. While it may not be the case in this investigation, a claim of forgetfulness may not be believable depending on the circumstances.

In nine cases, complainants or witnesses were appropriately deemed not credible. In seven of the cases, PDRD recordings directly contradicted their statements. (One, ironically, involved an allegation of failing to turn on a PDRD.) In another case, a recorded phone call in Communications disproved the complainant's assertions. In the remaining case, a witness denied having certain phone conversations even when presented with cell phone records to the contrary.

We identified one case in which relevant evidence was apparently not considered. In this case, PDRD recordings support the complainant's assertion of a retaliatory arrest. The investigator's findings appear to disregard what is obvious on the video. This case is further discussed below.

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 20 of the cases we reviewed, PDRD recordings proved material to arriving at the appropriate findings. In another case, 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 stopped for an open container, alleged that he was ultimately arrested for public intoxication because of a comment he made which upset the arresting officer. The case devolved into an investigation of whether or not a public intoxication arrest was justified. (The investigator felt the arrest was exonerated, but command reviewers changed the finding to not sustained.) However, the complainant's real allegation – that his comment triggered his arrest rather than his physical condition – should have been sustained based on the PDRD video. The subject was, in fact, released and moving away from the officers when his parting comment clearly upset the arresting officer and prompted the arrest. The officer was also sustained for demeanor based on his interactions with the complainant during the stop. 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 64 allegations that received dispositions as follows: 13 exonerated; nine not sustained; 37 unfounded; two sustained; and three 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 98% 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. Eight of the 25 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. (These do not include the cases referenced in Task 4, for which summary findings were also appropriate.) In all of these cases, the availability of PDRD video was the primary reason interviews were unnecessary.

OPD is in compliance with Task 5.21.

As described above, during the last two reporting periods, we had deferred our assessment of Tasks 5 and 45 due to the then-ongoing Court-ordered investigation of the Department’s discipline and arbitration process. 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 Order 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...”

The investigation of the discipline and arbitration process was recently completed, and the Court-appointed investigator issued his report. The report concludes that Oakland’s police discipline process is “broken” because, among other reasons, it fails “to deliver fair, consistent, and effective discipline.” It continues, “Time and again, when the Oakland Police Department...has attempted to impose significant discipline, its decisions have been reversed or gutted at the arbitration stage, causing the public to question whether the City handles disciplinary cases appropriately.” The report discusses the lack of accountability among City officials for the serious failures of both OPD and the Office of the City Attorney in police discipline cases. It also offers many concrete recommendations in the areas of investigation, discipline, preparation, arbitration, and sustainability.

Just a few days following the report’s release, on April 21, 2015, the Court ordered the City to “work to eliminate the problems identified” in the Court-appointed investigator’s report, and to file a status report on or before September 1, 2015 to discuss its progress. In the coming months, the Monitoring Team and I intend to work closely with the Department, the Office of the City Attorney, the Mayor, and other City officials on the City’s efforts to address the findings and work to implement the recommendations listed in the investigator’s report.

Consequently, although we found the Task 5 cases we reviewed during this reporting period to be in compliance, until OPD and the City address the serious and systemic issues specifically outlined in the Court Order, we consider OPD to be in partial compliance with Task 5.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

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 92 Daily Incident Log entries from October 1, through December 31, 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 eight such cases. However, none resulted in sustained findings for one or more of the applicable MOR violations.

In seven of the cases, findings of unfounded were made for the applicable MOR violations. In three of these cases, PDRD recordings proved instrumental in determining the finding. In another case, IAD discovered that it had in its possession properly completed complaint forms, refuting the complainant's assertion that the supervisor never followed through in processing his complaint. In another, an officer should have taken a complaint, but was provided with inappropriate direction when he contacted his supervisor. The allegation was therefore unfounded with respect to the officer, but the supervisor was sustained for two MOR violations for failing to properly supervise her subordinates.

In one case, the finding was not sustained. We concur with the finding, as there were conflicting statements between the complainants and the involved officers, with no video or other independent evidence available to provide clarity as to what transpired.

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.⁸*

(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 October

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

1, and December 31, 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 five cases as potential anonymous complaints during this reporting period. After review, we determined that four were true anonymous complaints, and the complainants were not identified during the course of the investigations. The fifth case was a duplicate of a previously filed case.

One of the four complaints was received via telephone to the Communications Division. Another was received by IAD via a telephone call. The remaining two complaints were taken in the field.

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 four cases were administratively closed. Each met the criteria for such closure, and all were classified as service complaints. In one, the complainant was upset with the delayed response to her call for service. In another, the complainant was upset that officers' police vehicles blocked the sidewalk while they were handling a call of a mentally disturbed person. The remaining two cases involved the Animal Shelter. In one, the complainant was upset with a change in procedures. In the other, the complainant objected to the fact that the Shelter would not accept the surrendered dog that she brought in. Shelter personnel refused because the dog was not the complainant's, but rather belonged to her roommate. The complainant did not have standing to turn the dog in.

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 sixth 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 92 Daily Incident Log entries from October 1, through December 31, 2014; a random sample of 72 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief of Police between October 1, through December 31, 2014; and the five sustained Class I investigations that were approved by the Chief of Police between October 1, through December 31, 2014.

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

The first case involved a complaint made by the Office of the Public Defender, alleging misconduct specific to obtaining statements in violation of the *Miranda* law. The investigation

focused on inconsistencies among court testimony, police reports, and PDRD footage – which lead to a sustained *Miranda* violation. The IAD investigation determined that there were no instances of misconduct that a member or supervisor could have discovered. There was PDRD footage taken during the criminal investigation – but IAD had no reason to review it until the inconsistencies were discovered in court.

The second sustained case involved a finding of theft by an officer, which led to his termination. The officer charged a rental vehicle, which he had obtained for several months for his personal use, to the OPD agency account. This violation was discovered through a routine auditing of Departmental financial records, and there were no instances of misconduct that a member or supervisor could have discovered.

The third sustained case involved allegations of false arrest and handcuffs being too tight. During the booking procedure, the supervisor was aware of the complaint and did not follow proper procedures. The misconduct by the supervisor of failing to address the complaint resulted in a sustained finding against the supervisor.

The fourth complaint involved allegations of *Miranda* violations by an arrest team during an undercover narcotics surveillance operation. The IAD investigation determined that there were no instances of misconduct that a member or supervisor could have discovered. There was PDRD footage taken during the investigation, but IAD had no reason to review it until the inconsistencies were discovered in court.

The fifth complaint involved off-duty conduct: an officer was arrested for driving under the influence. The supervisor's failure to address the complaint resulted in a sustained finding against the supervisor.

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.⁹

(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.

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 72 adult and three 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

⁹ The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

arrests resulting in an investigated use of force; that occurred between October 1, and December 31, 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 72 adult arrest reports, we excluded 65 from our dataset, and we excluded the three juvenile arrest reports 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 seven adult arrests, there were no reports that did not document the presence of witnesses or no known witnesses; and a supervisor approved all of the arrests. This represents a 100% compliance rate relating to adult arrests for this subtask. In addition, of the 15 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.¹⁰ This represents a 100% compliance rate among arrests resulting in an investigated use of force for this subtask.

Our review revealed an overall 100% 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.

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*

¹⁰ 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.

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. 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 October, November, and December 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 105 total operations conducted between October 1, through December 31, 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 October 1, through December 31, 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:

As of January 2015, following discussions with our Team, the Department developed and implemented an alternate relief sergeant system. Although the new plan reduced the number of relief sergeants assigned to Patrol, OPD maintains that it will not affect compliance with Tasks 20.2 and 20.3. We are monitoring these developments closely, and we look forward to reviewing Task 20 with an altered methodology that appropriately accommodates these changes in the next reporting period.

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: two Level 2; 13 Level 3; and 75 Level 4 reports completed between October 1, and December 31, 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; 53 of those incidents involved officers pointing firearms. The 53 incidents included one Level 2, one Level 3, and 51 Level 4 uses of force; and involved 138 instances of officers drawing and pointing their firearms.¹¹

¹¹ The majority of the incidents we reviewed fell into one of the following categories: officers making high-risk vehicle stops; officers searching and entering buildings or premises with or without search warrants; and officers were attempting to detain subjects, either by foot pursuit or by searching areas such as alleys and yards.

Overall, we determined officers' pointing of their firearms to be appropriate in 136, or 98%, of the 138 instances we assessed.¹² We also noted with concern, the absence of justification for the pointing of a firearm in two of the 138 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 53 use of force events reviewed is as follows: Black, 78%; Hispanic, 13%; and White, 9%. 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 two unjustified pointing of firearms involved one Hispanic subject 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.

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.¹³ 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.

¹² 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.

¹³ Task 24.7 is no longer applicable.

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.

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: two Level 2; 13 Level 3; and a random sample of 75 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, 17 Level 3 incidents in our Level 4 sample of 75 incidents were downgraded appropriately to Level 4 uses of force by a supervisor who was at the scene; the changes were documented and comported with the governing documents. This unusually high number of downgraded Level 3 reports for this reporting period are attributed to, in part, five large-scale protests and three Oakland Raiders football game-related disorderly conduct incidents. 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, all 90, or 100%, of the 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.

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 October 1, through December 31, 2014. We determined that both 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 during our November 2014 site visit. During the proceedings, the investigator attempted to provide justification for the officer's use of force, witnesses were interviewed together and not separately, all uses of force during the incident were not addressed, an allegation of misconduct was mishandled, and that speculation by the investigator should not be used in the use of force investigation or presentation. Consequently, the FRB adequately addressed these issues with the investigator during the formal process and in the FRB report. We have observed that the FRBs are more routinely addressing deficient investigations conducted by investigators; however, the boards should continue to aggressively address the issue of investigators including justification for the involved officers' actions as part of their presentations.

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 two incidents that were heard by the board during this reporting period, neither was found out of compliance, requiring a referral to IAD.

For the last four reporting periods, we have observed great improvement in the conduct of the boards, due in large part to the significant revisions of DGO K-4.1, *Force Review Boards*. This revised policy, issued on May 14, 2014, 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 two 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. The EFRB did not review any use of force incidents during this reporting period. 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.

We found OPD in Phase 2 compliance with Task 33 during the last four 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 October 1, and December 31, 2014, that were applicable to Task 33. We identified and reviewed 27 cases with a total of 35 sustained findings involving 28 different officers and employees that were approved during this reporting period. We added four cases with eight sustained findings pertaining to four 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 31 cases with 43 findings pertaining to 32 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 31 cases in which there were sustained findings, we found six in which an officer was equipped with an operational PDRD should have activated it. In five of these cases the officers activated their PDRDs as required. In the one remaining case, the officer failed to activate his/her PDRD during his first contact with the citizen, and IAD sustained this violation. A three-day suspension was imposed as discipline in this case.

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. In March 2014, he began speaking to the 2014 CPT classes. During the period from October 1, through December 31, 2014, he addressed 56 sworn officers at Continued Professional Training. 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. Prior to this review and since monitoring under the NSA began, OPD had received confidential reports of misconduct in only four cases. During this reporting period, we found that two additional confidential reports had been made. Both have been handled as procedures for confidential investigations require. Neither investigation has been finalized.

There were 27 new hires (all 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.

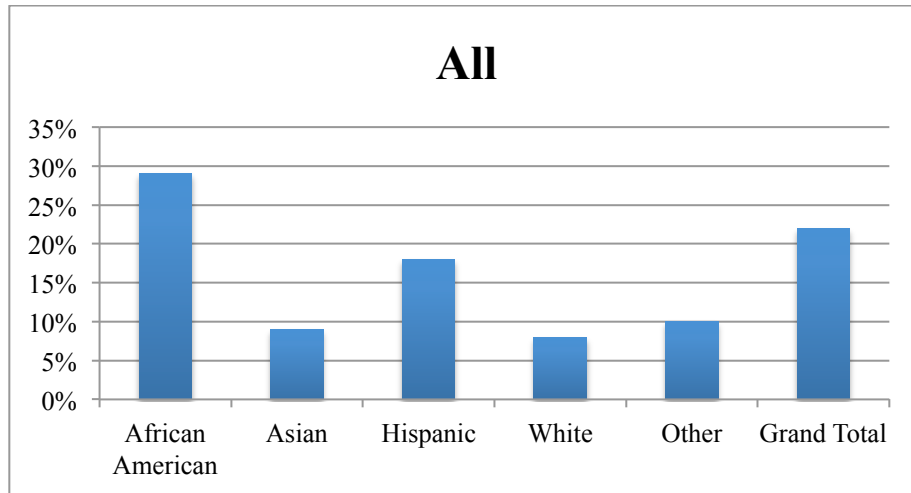
Task 34.2 requires that Stop Data Forms be filled out with the following information: 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop (arrest or no arrest); 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 14 due to the lack of any narrative. Our analysis of the remaining 236 stops found none to be questionable; accordingly, we determined that 100% 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.

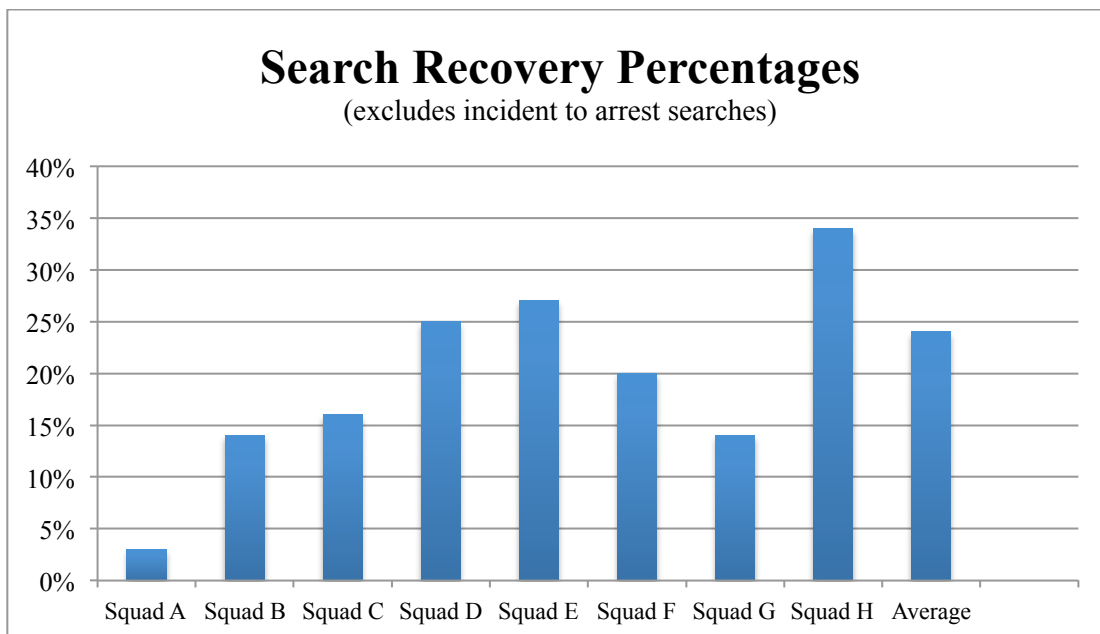
During the prior reporting period, we analyzed and commented on the Department's practice of reviewing stop data within each of the five designated geographic Areas – and as the data compares to the Department as a whole – at its monthly Risk Management Meetings.

During our most recent site visit, we observed the Risk Management Meeting (which included stop data for the period of January 18, through November 14, 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 22% 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.

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 22%; in other words, OPD officers recovered contraband in 22 of every 100 searches. The racial/ethnic breakdown for the specifically categorized population groups however, indicate a significant variance in the recovery rates ranging from 8% to 29%, with the white population group the lowest at 8%, and the African American population group the highest at 29% or 7% above average, during the specified period. (See illustration below.)



There is some identifiable disparity in the above data that is clear between the outliers between the margin demographics identified as the white and African American. Moreover, our detailed review of *the most recently selected Area data* was better than the previous reporting period. First, the overall search recovery rate of the most recently selected Area is at 32% – or, 10% above the overall Department rate of 22% for the squads last reviewed. Second, we noted considerable variance in the search recovery rates of several individual squads within the selected Area, from a low of 3% to a high of 34% with only one squad below 10%. (See illustration below.)



| Squad | Yes | None | Grand Total | % |
|--------------------|-----|------|-------------|-----|
| A | 2 | 57 | 59 | 3% |
| B | 9 | 55 | 64 | 14% |
| C | 5 | 27 | 32 | 16% |
| D | 28 | 82 | 110 | 25% |
| E | 7 | 19 | 26 | 27% |
| F | 32 | 125 | 157 | 20% |
| G | 27 | 164 | 191 | 14% |
| H | 141 | 268 | 409 | 34% |
| Grand Total | 251 | 797 | 1048 | 24% |

Overall, the Area under review identified a total of 1,048 stops that resulted in searches. We selected the three squads with the lowest recovery rates – 3%, 14%, and 14%, respectively – for further review, to include the basis for the stops. 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 94% of the stops we reviewed, as compared with 100% finding in our assessment of data for Task 34.2 cited above.

The three squads with the lowest recovery rates involved a total of 314 searches. Of the 314 searches, however, we were only able to evaluate 262 searches because 52 of the stops/searches did not include a readily available narrative report explaining the justification for the search. 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 96% of the 262 searches; however, we found that 13 of the 262 searches either were not documented or were insufficiently documented.

Our review found that 164 (52%) of the 314 searches involved individuals on probation or parole. Of the 164 searches, 140 included narratives for evaluation. Except for the fact that the individuals searched were on probation or parole, there was no indicated connection between the basis for the stop and the search in 111 of the 140 searches; such searches are often referred to as “could” searches – the officers had no specific reason to make the search, but did so because they could – however, such searches are legally authorized. Of the 164 probation searches, the justification was in question in four, and 31 were not sufficiently explained or missing reports as explained above. In addition, we analyzed the race of the individuals stopped for probation/parole. Of the 164 probation/parole searches, 133 (81%) were African American. Finally, of the 164 probation searches, 14, or 8%, resulted in a recovery.

These numbers are indicators of issues requiring further exploration; however, given the sample size, we do not cite them as an indication of racial or ethnic disparate treatment. OPD must, however, address its lack of documenting justification for each search and the resulting low contraband recovery rate. The large percentage of stops that either initially or subsequently involve searches of individuals on probation/parole are a continuing issue, in particularly in light

of increasing attention being given to procedural justice and its focus on legitimacy. 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.”¹⁴ 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.”¹⁵

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.¹⁶ OPD clearly has the legal 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.

OPD is acutely aware of these findings and has intensified its examination of variances in recovery rates, as well as the several factors surrounding the stops and searches of individuals on probation/parole. We encourage OPD command staff to continue its examination of this data in an effort to address any 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

¹⁴ *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.”].

¹⁵ (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).

¹⁶ 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, 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.

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.

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 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.*
- 3.

(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 15 use of force reports, including: two Level 2 and 13 Level 3 use of reports covering incidents that occurred between October 1, and December 31, 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 15 reports that we reviewed comported with these requirements. OPD is in compliance with these subtasks.

Task 35.3 requires reports to document instances where witnesses are present but circumstances prevent the author of the report from gathering the data (compliance standard: 90%). During this reporting period, two civil unrest 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 15 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.

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 October 1, through December 31, 2014, he spoke to a total of 56 officers who attended CPT.

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%).

During the first three quarters of 2014, we found only 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 unfounded finding for the allegation of retaliation reasonable. During the current reporting period, we found one

additional case in which retaliation was alleged. In that case, an employee alleged that his supervisor retaliated against him because he had made an IAD complaint. The retaliation aspect of this complaint was resolved when it was shown that the employee's supervisor had been changed immediately after the complaint was made, and that the offending behavior was made prior to the complaint. The complaint was determined to be unfounded.

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:

The PAS Unit continues to conduct daily internal audits of the required data and to correct problems as they arise. It remains unclear, however, whether this process has led to addressing the underlying system problems that result in errors – or simply data corrections that have not addressed the basic cause of those problems, particularly with the arrest data. The capacity to address core causes may be critical as OPD moves forward with its new risk management database.

The development of the new risk management database has also continued during this reporting period. The principal contractor, Microsoft Corporation, is in the process of initiating the work, and the coordination of the project under a second vendor is proceeding after a brief moment of confusion. The project is moving forward, with the expectation that the new system will be in place within one year. It appears that the technical issues related to collection and storage of data are being well addressed. As noted in our last report, a matrix of specific processes and outcomes has been added to the more general plan to address outstanding issues in the project.

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 core processes and the new procedures, especially those regarding initial internal review by the PAS Unit when officers meet thresholds, are now fully implemented. The Risk Management Unit sees the new process as supported by supervisors and as an improvement in the review process. As noted, it supports appropriate reviews of data by risk management staff and also maintains an appropriate and desirable role for first line supervisors in the process. The PAS Unit is also in the best position to understand issues related to data that may be relevant to their review process.

PAS records for the quarter of October 1, through December 31, 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 298 uses of force. This is a slight increase from the previous quarter but consistent with the longer term downward trend. This uptick can probably be attributed to the large number of protests the Department responded to over the quarter. The current status continues to reflect stability at low numbers for Level 4 uses of force as well as other force use levels. Arrest data also show small increases over the previous three quarters – and this too is likely tied to the protest activity. Those overall increases are associated with larger increases in the resisting arrest and interfering related categories.

A further breakdown of the types of use of force shows that, for the fifth quarter in a row there were no Level 1 uses of force. There were 17 Level 3, one Level 2, and 280 Level 4 uses of force. IAD complaints have fallen to 174, after a small increase in the previous reporting period. This drop is significant given the protest levels noted above. OC checkouts remain at levels seen prior to increases with the deployment of newly hired officers. Vehicle pursuits remained at 28 for the quarter, down from a recent high of nearly 90 in the third quarter of 2013. Canine deployments have returned to levels prior to the unusual drops associated with canine availability last quarter. 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 | January 1 to March 31, 2013 | April 1 to Jun 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 | October 1 to December 31, 2014 | Graph Last 8 Qrts |
| Level 1 Uses of Force | 1 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | |
| Level 2 Uses of Force | 3 | 10 | 4 | 8 | 1 | 7 | 1 | 1 | |
| Level 3 Uses of Force | 26 | 26 | 12 | 24 | 14 | 16 | 7 | 17 | |
| Level 4 Uses of Force | 509 | 483 | 412 | 314 | 564 | 276 | 280 | 280 | |
| Unintentional Firearms Discharge | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | |
| Sick Leave Hours | 11286.53 | 11041.94 | 11390 | 10935 | 9724 | 7798.08 | 8693.47 | 9745.74 | |
| Line of Duty Injuries | 32 | 54 | 54 | 23 | 54 | 8 | 5 | 0 | |
| Narcotics Related Possessory Offenses Arrests | 407 | 560 | 496 | 669 | 914 | 804 | 690 | 528 | |
| Vehicle Collisions | 18 | 12 | 6 | 17 | 34 | 11 | 13 | 20 | |
| All Vehicle Pursuits | 18 | 64 | 87 | 68 | 43 | 16 | 28 | 28 | |
| All Arrest | 2853 | 3697 | 2759 | 3156 | 3743 | 4161 | 3756 | 4155 | |
| Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d) | 34 | 36 | 28 | 27 | 27 | 25 | 21 | 35 | |
| Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d) | 9 | 4 | 5 | 2 | 1 | 12 | 5 | 14 | |
| Awards | 76 | 55 | 65 | 124 | 102 | 115 | 40 | 92 | |
| Assignment History | 10361 | 10337 | 10257 | 10361 | 11156 | 11337 | 34794 | 36084 | |
| Case Evaluation Reports | 635 | 444 | 338 | 497 | 315 | 198 | 225 | 446 | |
| Report Review Notices--Positive | 5 | 8 | 1 | 1 | 1 | 5 | 5 | 2 | |
| Report Review Notices--Negative | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | |
| Canine Deployments | 64 | 59 | 57 | 50 | 66 | 0 | 2 | 46 | |
| Financial Claims | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Internal Affairs Complaints | 186 | 295 | 140 | 136 | 150 | 192 | 207 | 174 | |
| In-Custody Injuries | 21 | 13 | 2 | 31 | 4 | 12 | 4 | 13 | |
| Civil Suits (Tort Claims) | 4 | 4 | 2 | 4 | 0 | 8 | 13 | 9 | |
| Criminal Cases Dropped | 416 | 282 | 207 | 352 | 226 | 116 | 132 | 290 | |
| O.C. Checkouts | 58 | 16 | 61 | 13 | 116 | 82 | 20 | 57 | |
| Officer Involved Shootings | 2 | 3 | 1 | 0 | 1 | 3 | 0 | 3 | |
| Rank / Class History | 2391 | 2334 | 2357 | 7302 | 2519 | 2521 | 2510 | 2507 | |
| Training History | 20108 | 19589 | 8557 | 13827 | 17239 | 22886 | 13273 | 8711 | |
| Supervisory Notes | 3139 | 3304 | 2852 | 2957 | 3114 | 3721 | 3635 | 4012 | |
| Arrest Made Against OPD | 0 | 0 | 0 | 1 | 1 | 0 | 1 | 0 | |

During this reporting period, the Department continued to collect the necessary data and to audit for potential problems. This continues to support a finding of Phase 1 and Phase 2 compliance with Task 40.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 41: Use of Personnel Assessment System (PAS)

Requirements:

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

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

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

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

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

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

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

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

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

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

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

(Negotiated Settlement Agreement VII. B.)

Discussion:

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.

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 risk reduction effort. During our most recent site visit, the use of risk management concepts and data was well illustrated in the Risk Management Meeting that occurred. The meeting demonstrated high levels of risk relevant knowledge by the Area command staff and supervisors, and it included sound and challenging chairmanship of the meeting.

The Department is also in the process of developing IPAS2, which is a new data system for use in the risk management process. Work has proceeded over this reporting period and, although there were organization problems associated with one vendor, those have been resolved. During our most recent site visit, the Department held a project overview meeting of IPAS2 stakeholders. The major vendor Microsoft Corporation provided the overview. Although the agenda was quite limited, it did seem clear that the technological aspects of the project are on target. Microsoft presented a plan highlighting four expected stages in the process, although no *content* for these stages was on the presentation slide or in its description. The vendor expects an 11-month time period to completion.

When compared with the work on the technology, the Monitoring Team is less sanguine about developments around the expected use and value of the new system for Department management. That is to say, the attention to technological concerns is not matched by the corresponding attention to the potential value of the system for risk reduction in the Department. Repeating here what we noted in the last report: An important step in this process will be to formulate key 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 identification of high 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.

The examples above are suggested only as illustrations. A broad set of question should be formulated at this time. In fact, during the discussion at the IPAS2 stakeholders meeting, several attendees offered additional examples in this area. It would be desirable to have a systematic process in place to address these matters of use. That process would run parallel to the technology developments on the project. During the stakeholders' meeting, the Department noted its plans to form a separate committee to address the critical issues regarding use of the system. The makeup of this committee, its process, and its products will be of interest to the Monitor.

The Department's commitment in this area, as well as the City's, reflects recognition of the importance of the risk management process as outlined in the NSA. As development and implementation moves forward, it would be useful to look beyond the processes associated with the earlier system and toward broader questions as to how IPAS2 can more effectively support the management of the Department.

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 October 1, through December 31, 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 regular quarterly PAS command reviews of officers by supervisors. We again found appropriate use of the system and no significant issues.

The PAS process is initiated through comprehensive risk assessment reviews when thresholds are met. For the period covered in this report, we examined 20 reviews that were completed, and 19 additional reviews that were in process earlier and returned to the PAS Unit during the period. We also examined Command Reviews in five command areas.

For the reporting period ending December 31, 2014, OPD completed a total of 35 PAS reviews which were processed up the chain of command and through the PAS panel. There were 21 in the previous reporting period. The number of reviews for the quarter showed significant increases over recent quarters and returned to the of earlier time periods. 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 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 17 officers exceeded thresholds for review during this quarter and that 59 reviews were listed as pending at the end of the quarter. This, again, will mean a substantial workload for the coming reporting period. We will monitor the progress in this area.

The table below tracks the review process and shows that supervisors recommended that no action be taken in 29, or 83%, of the 35 reviews for the current reporting period. The table also shows that Commanders and the Deputy Chief disagreed with two lower-level recommendations and supported monitoring. The PAS Review Panel also reversed two cases.

The overall situation regarding the level of reviews and related action continues as it was described in recent reporting periods: The system shows moderately high levels of "no action" required on initial review but also shows the willingness and capacity to reverse those decisions up the chain of command. The new procedures have reduced the work required of supervisors by reducing the large number of false positive cases confronted by first line supervisors. However, the procedures have not necessarily reduced the number of officers exceeding thresholds and not recommended for monitoring or intervention by PAS reviewers.

When assessed for the review period, 15 officers were in monitoring (five tolled as unavailable) and nine in intervention (two tolled). This means that, for this quarter, approximately 3% of all officers (totaling 745) are on some risk management-related status, monitoring, or intervention. When the percentage using patrol officers as the base (that is, 453) is considered, it increases to over 5.5% of officers. These numbers are lower than expected under a system intended to continuously lower risk over time. 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.

| Summary of PAS Reviews and Recommendations 1/13-12/14 | | | | | | | | | | | | | | | | | | | |
|---|-----------------------|---------------------------|------------|-------------|------------|-----------------------------|------------|------------------------------|------------|-----------------------------------|------|------------------------------------|------------|--------------------------------|------------|------------------------|------------|------------|---|
| | PAS Reviews Completed | Supervisor Rec- no action | % | Recognition | % | Supervisor Rec - Monitoring | % | Supervisor Rec- Intervention | % | Supervisor concurs with PAS Admin | % | Commander rec Concurs w Supervisor | % | Dep. Chief Concurs w Commander | % | PAS Panel Concurs w DC | % | Pending | Number of personnel that exceeded a threshold |
| 2013 | | | | | | | | | | | | | | | | | | | |
| 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 |
| Total | 117 | 94 | | 3 | 1% | 16 | | 4 | | | | 111 | | 109 | | 97 | | 39 | 108 |
| <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> |
| 2014 | | | | | | | | | | | | | | | | | | | |
| January | 3 | 2 | 67% | 0 | 0% | 1 | 33% | 0 | 0% | 3 | 100% | 3 | 100% | 3 | 100% | 2 | 67% | 5 | 18 |
| February | 0 | 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% | 7 | 100% | 8 | 11 |
| April | 20 | 18 | 90% | 0 | 0% | 1 | 5% | 1 | 5% | 15 | 75% | 19 | 95% | 19 | 95% | 18 | 90% | 0 | 14 |
| May | 9 | 6 | 67% | 0 | 0% | 3 | 0% | 0 | 0% | 9 | 100% | 9 | 100% | 8 | 89% | 8 | 89% | 0 | 1 |
| June | 10 | 9 | 90% | 0 | 0% | 1 | 0% | 0 | 0% | 8 | 80% | 9 | 90% | 9 | 90% | 10 | 100% | 19 | 14 |
| July | 9 | 8 | 89% | 0 | 0% | 1 | 11% | 0 | 0% | 9 | 100% | 9 | 100% | 9 | 100% | 9 | 100% | 20 | 17 |
| August | 9 | 7 | 78% | 0 | 0% | 2 | 22% | 0 | 0% | 9 | 100% | 9 | 100% | 9 | 100% | 8 | 89% | 16 | 1 |
| September | 3 | 3 | 100% | 0 | 0% | 0 | 0% | 0 | 0% | 2 | 67% | 2 | 67% | 3 | 100% | 3 | 100% | 33 | 22 |
| October | 17 | 13 | 76% | 1 | 6% | 3 | 18% | 0 | 0% | 14 | 82% | 15 | 88% | 15 | 88% | 16 | 94% | 4 | 0 |
| November | 3 | 3 | 100% | 0 | 0% | 0 | 0% | 0 | 0% | 3 | 100% | 3 | 100% | 3 | 100% | 3 | 100% | 32 | 14 |
| December | 15 | 13 | 87% | 0 | 0% | 2 | 13% | 0 | 0% | 14 | 93% | 15 | 100% | 15 | 100% | 14 | 93% | 23 | 3 |
| Total | 105 | 86 | | 1 | | 16 | | 2 | | 93 | | 93 | | 101 | | 98 | | | 116 |
| <i>Running Average</i> | <i>11.7</i> | <i>9.6</i> | <i>0.0</i> | <i>0.1</i> | <i>0.0</i> | <i>1.8</i> | <i>0.0</i> | <i>0.2</i> | <i>0.0</i> | | | <i>10.3</i> | <i>0.0</i> | <i>11.2</i> | <i>0.0</i> | <i>10.9</i> | <i>0.0</i> | <i>0.0</i> | <i>12.9</i> |

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

The development work on IPAS2 is continuing and the consulting firm is again available to manage the process in an efficient and effective manner. The system vendor has indicated that an 11-month turnaround time on the project should be expected, beginning soon, now that 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. Given the importance of this project we will continue to review progress on the new system with a particular interest in the Department's consideration of how the system will be used, as noted above.

The Department has continued to make progress in the implementation of its risk management process. That progress is clear in the review of the process noted here and in the direction and quality of discussion at the Area Risk Management Meetings. This is also supported by the substantial reductions in risk-related action, such as uses of force and police pursuits.

As we noted previously and also above, all of this has positioned the Department well to take advantage of the capabilities of the new risk management database which is 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 the data should answer to be of maximum value in the management of the Department.

In the last report we recognize the advancements the Department has made in its application of risk management and the Department was assessed as in compliance with the Task. That finding continues to be supported by the information available at this time.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

Our concern for the next reporting period will again be consistent with 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 continue to prepare to maximize the benefits of the new IPAS2 system and the technology that is put into place. In particular, we will be interested in the progress of the Department's planned committee to identify best uses for the new system.

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.

We have found OPD in Phase 2 compliance with this Task since the twelfth reporting period.

During our most recent review, we reviewed documentation and memoranda and interviewed the sergeant who serves as Field Training Coordinator, the lieutenant who oversees the unit, the senior FTO who assists the coordinator, and the Deputy Chief who has responsibility for oversight of the FTO Program.

As of the last reporting period, there were 87 FTOs, with 78 available for assignment. At the time of our most recent site visit, there were 78 approved FTOs, with 72 available for work assignments in the program. During the last quarter of 2014, no FTOs were lost due to discipline or other such issues. All departures from the program were due to retirement, promotion, or reassignment to specialized units.

At the time of this review, there were 50 trainee officers in the FTO Program, including 18 Alameda County Sheriff's Office Academy graduates.

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, 11 new FTOs completed the FTO selection process and were approved by the chief. 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, no 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. A 40-hour FTO certification course was held for the 11 FTOs who were approved during reporting period. OPD conducted a 24-hour recertification training course, and 16 officers attended and successfully completed it. 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 all necessary 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 coordinator 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 October 9, 2014, the FTO Unit conducted the second focus group for the trainees in the 169th Academy. On November 4, 2014 the third focus group was held for the POST 3 Transitional 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 focus groups held during the third and fourth quarters was held on December 9, 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 nine 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.¹⁷

(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 97% 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

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

Evidence Technicians; in the last three reporting periods, we noted that OPD took 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. During our August and November 2014 site visits, we observed that PET training has progressed positively.

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 24 officers, three sergeants, and three dispatchers to determine if the members and employees received adequate training for their positions.

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

Overall, all 30 (100%) of the members and dispatchers in our sample received training appropriate to their jobs. The following chart reflects the results of our review.

| Title | Records Reviewed | Adequate Training Received | % |
|--------------------|-------------------------|-----------------------------------|----------|
| Officers | 24 | 24 | 100% |
| Sergeants | 3 | 3 | 100% |
| Dispatchers | 3 | 3 | 100% |
| Total | 30 | 30 | 100% |

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 August 2014 review, we reviewed all of the current PETs' training records, and found that all (100%) had received adequate training. During our November 2014 review, two PETs were included in our random sample. Both had received adequate training.

The PET Coordinator submitted a draft of a policy that would require PETs to receive initial basic training and, thereafter, continuing professional training. That draft was reviewed by the officer's commanders and returned for additional work. OPD informs us that it will be revised and resubmitted for approval during mid-2015. As we noted in our last report, we will continue to follow OPD's progress in establishing a policy for training its PETs.

OPD produced its *2014 Annual Training Needs Assessment*, which contained a collection of data from a number of different sources. The document examined trends, issues, and training needs that were identified throughout OPD. The survey included a review of citizen complaints and disciplinary actions, including numbers and types of allegations; a discussion of Training Section comments and course evaluations; a review of incidents of civil liability; a discussion of external reports, such as Monitoring Team reports and articles published by the Police Executive Research Forum; a discussion of internal reports, such as audits and performance reviews; a Department-wide training needs survey; and other data.

The needs assessment is a good first step toward focusing available training resources on the priorities of the Department. Additional work should now be done to evaluate the data that has been collected in order to identify OPD's most important training needs and to establish measures of whether the training that is implemented actually produces the desired results.

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 nineteenth reporting period, we found OPD in compliance with Task 45. During the nineteenth 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 then-City Administrator overruled the OPD discipline process, and reduced the 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 during the Occupy Oakland-related protests of 2011. 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 from October 1, through December 31, 2014. This query yielded 27 cases, containing 35 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 27 cases and 35 sustained findings that were decided during the period of October 1, through December 31, 2014. We also reviewed four cases with eight sustained findings that had been brought to our attention during the previous reporting period but which

were not disciplined until the fourth quarter of 2014. Our review, therefore, encompassed 31 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 October 1, through December 31, 2014, Skelly hearings were held for five IAD cases involving five employees with sustained findings in which discipline of a one-day suspension or greater was recommended. In three of the five cases, discipline was upheld; in one case, 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 had adequate justification for the Skelly results.

One disciplinary case, however, was troubling. The case involved an officer who travelled to a city in another state where he visited a nightclub with friends to celebrate his girlfriend's birthday. He was intoxicated when he entered the club, and was observed by security guards shoving guests and causing a disturbance. He vomited on a table and refused to leave when the club's security guards asked him to leave. The local police were called and observed the officer pushing and shoving security guards. He was handcuffed by police. He told them he was an Oakland police officer and had lost partners in the line of duty. He said that they did not understand. When no one at the club wished to pursue battery charges, the police took the Oakland officer to his hotel room and released him.

The officer was sustained for 314.42-2 (Obedience to Laws – Misdemeanor Infraction), his third such violation, for which the penalty matrix ranges from a 10-day suspension to a 30-day suspension. The original recommendation for discipline was a 30-day suspension. The Skelly hearing officer reduced the recommended discipline to 15 days. The officer's participation in an alcohol addiction rehabilitation program was cited as one of the reasons for reducing the discipline.

Our review showed that in 2012 this same officer had been sustained for 314.42-1 (Obedience to Laws – DUI) for which he received 10 days suspension. His blood alcohol in that incident was .18, over twice the legal limit. His supervisor recommended the 10-day suspension and commented that he was "confident (the officer) will not make this mistake again."

In 2013, the same officer was sustained for 314.42-2 (Obedience to Laws – Misdemeanor Infraction) for an incident in which he was stumbling around outside of a bar in a nearby city and was confronted by police and determined to be intoxicated in public. A recommended discipline of eight days was reduced to a three-day suspension after a Skelly hearing. The captain who chaired the hearing commented that a factor in his decision to recommend a lower discipline was that the officer had sought assistance of a therapist and was meeting with him on a monthly basis.

In the current case, OPD choose to consider this officer's offense as the less serious Obedience to Laws - Misdemeanor (314.42-2), for which the discipline for third offense under the current matrix ranges from a 10-day suspension to a 30-day suspension. It should have considered the

officer's offense as the more serious Obedience to Laws – Felony/Serious Misdemeanor (314.42-1), for which the discipline for a second offense would be termination. The fact that the officer was not charged is not persuasive. It is apparent that had one of the customers or security employees at the club wished to pursue charges, he would have been charged. It is his actions, not whether formal charges were placed, for which he should be accountable.

We note that another case that we reviewed involves an officer who also was disciplined for alcohol-related offenses. In that case, OPD recommended termination but worked out a “last chance agreement” in which the officer will receive a 20-day suspension and be subjected to controls such as random alcohol tests. This is a more viable solution to an officer's alcohol abuse, in that it allows for periodic alcohol testing – and should the officer return to unacceptable behavior, termination.

As described above, during the last two reporting periods, we had deferred our assessment of Tasks 5 and 45 due to the then-ongoing Court-ordered investigation of the Department's discipline and arbitration process. 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 Order 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...”

The investigation of the discipline and arbitration process was recently completed, and the Court-appointed investigator issued his report. The report concludes that Oakland's police discipline process is "broken" because, among other reasons, it fails "to deliver fair, consistent, and effective discipline." It continues, "Time and again, when the Oakland Police Department...has attempted to impose significant discipline, its decisions have been reversed or gutted at the arbitration stage, causing the public to question whether the City handles disciplinary cases appropriately." The report discusses the lack of accountability among City officials for the serious failures of both OPD and the Office of the City Attorney in police discipline cases. It also offers many concrete recommendations in the areas of investigation, discipline, preparation, arbitration, and sustainability.

Just a few days following the report's release, on April 21, 2015, the Court ordered the City to "work to eliminate the problems identified" in the Court-appointed investigator's report, and to file a status report on or before September 1, 2015 to discuss its progress. In the coming months, the Monitoring Team and I intend to work closely with the Department, the Office of the City Attorney, the Mayor, and other City officials on the City's efforts to address the findings and work to implement the recommendations listed in the investigator's report.

Consequently, until OPD and the City address the serious and systemic issues specifically outlined in the Court Order, we consider OPD to be in partial compliance with Task 45.

Compliance Status:

Phase 1: In compliance

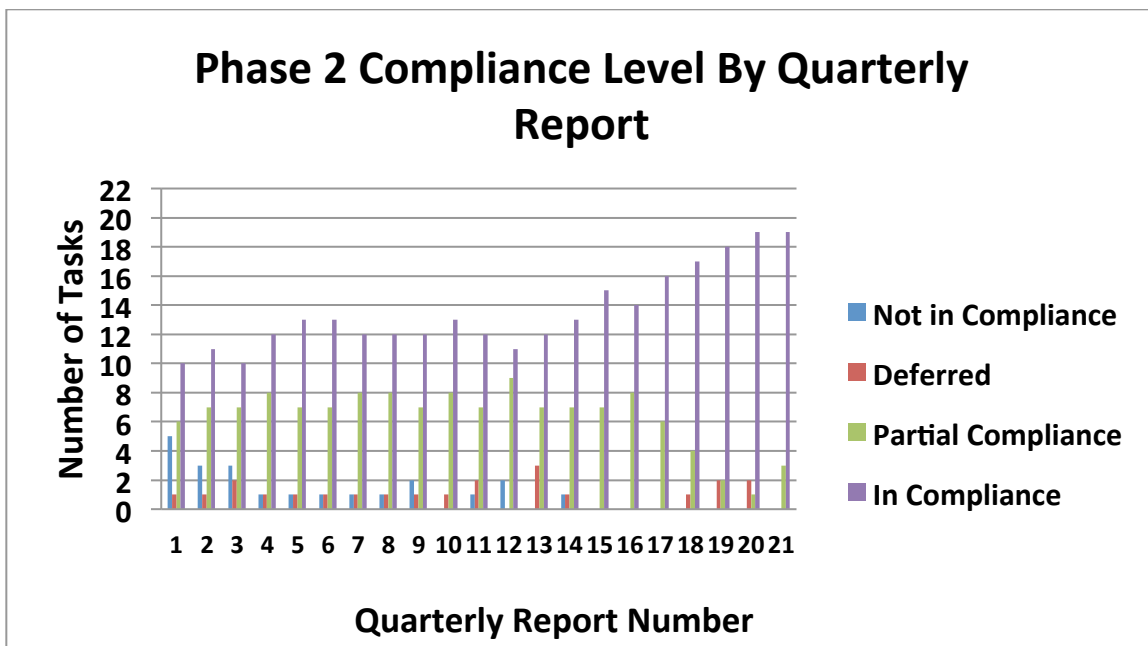
Phase 2: Partial compliance

Section Three

Conclusion

This is our twenty-first 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 three, or 14%, of the Tasks are in partial compliance.

We do not doubt that the agency has come a long way in its attempts to come into full compliance. We recognize that – and the Department is to be credited for its efforts. Recent reports and Orders that have been issued point out that for the Department to fulfill its mandate to the community, and of course, to the Court, that persons and institutions outside of the Police Department, but part of the city structure, must also discharge their duties and obligations, as such might pertain to oversight and support of this undertaking. The Oakland Police Department is part of a larger local government: a government that has legal and ethical responsibilities to be an integral part of this process. We look for recent revelations and developments to serve as an impetus for the requisite changes throughout the system so that the ultimate reforms the Parties seek, and the Court demands, are sustainable and everlasting.



Appendix A

Trends in Risk Measures Over Time

| PAS ADMIN UNIT STATISTICAL COMPARISON | | | | | | | | | | | | | |
|---|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|
| OAKLAND POLICE DEPARTMENT - KEY INDICATOR BY MONTH (12 Months) 2014 | | | | | | | | | | | | | |
| | 14-Jan | 14-Feb | 14-Mar | 14-Apr | 14-May | 14-Jun | 14-Jul | 14-Aug | 14-Sep | 14-Oct | 14-Nov | 14-Dec | Graph |
| Percent of Arrests Associated with | | | | | | | | | | | | | |
| A Use of Force (levels 1,2,3 - per reporting officer) | 0.55 | 0.48 | 0.16 | 0.85 | 0.26 | 0.59 | 0.38 | 0.21 | 0.09 | 0.19 | 0.38 | 0.97 | |
| A Use of Force (levels 1,2,3,4** - per reporting officer) | 11.76 | 6.33 | 4.54 | 9.22 | 6.44 | 5.54 | 6.49 | 7.46 | 6.29 | 6.56 | 7.53 | 8.05 | |
| A Police Pursuit (per reporting officer) | 1.49 | 1.82 | 0.08 | 0.31 | 0.52 | 0.30 | 0.61 | 1.09 | 0.18 | 0.00 | 0.45 | 0.58 | |
| An IA Complaint (per subject officer sworn only) | 3.37 | 2.93 | 2.66 | 5.27 | 2.54 | 3.25 | 5.00 | 3.90 | 3.50 | 4.63 | 3.01 | 3.98 | |
| An In-Custody Injury Each Hour of Sick Leave (excludes civilians) | 0.00 | 0.32 | 0.00 | 0.23 | 0.07 | 0.44 | 0.38 | 0.07 | 0.00 | 0.19 | 0.08 | 0.48 | |
| | 161.29 | 139.90 | 137.74 | 122.40 | 85.49 | 122.80 | 114.60 | 151.78 | 76.51 | 164.50 | 159.49 | 138.51 | |
| Number of Arrests per (blank if no cases) | | | | | | | | | | | | | |
| Officer Involved Shooting (includes shootings involving animals which includes force types 1,21, 24, 27 and 26-21)* | | | | 645 | | 1355 | | | | 1555 | 1328 | 1031 | |
| Vehicle Collisions (excludes civilians) | | 255 | 211 | 258 | | | 260 | 487 | | 311 | 664 | | |
| Civil Suit (excludes civilians) | | 1263 | | 215 | 769 | | | | | 259 | | | |
| All Arrest (totals) | 1276 | 1263 | 1277 | 1290 | 1537 | 1355 | 1301 | 1462 | 1113 | 1555 | 1328 | 1031 | |

*blank=no events to count

Appendix B

Selected Inactive Task Assessments

During this reporting period, we conducted our own audits of inactive Tasks 1 and 13; and we reviewed the Use of Force Reporting Review audit recently conducted by the Office of Inspector General. We discuss our findings below.

Task 1, IAD Staffing and Resources

During this reporting period, we conducted an assessment of inactive Task 1.

Task 1 requires the following:

- **Task 1.1:** IAD assignments are made in accordance with the IAD manual (compliance standard: 85%).
- **Task 1.2:** IAD rotations are in accordance with the IAD manual (compliance standard: 85%). Specifically, this subtask requires that any rotation to IAD is exempt from the transfer policy (compliance standard: Yes/No); IAD is a career development opportunity within OPD (compliance standard: Yes/No); IAD considers rotation of personnel on an annual basis when preparing performance appraisals and this consideration is documented (compliance standard: 85%); and IAD staff may request voluntary transfers and the IAD Commander makes every effort to accommodate such requests as soon as possible in light of the operational needs of the Division and the Department (compliance standard: Yes/No).
- **Task 1.3:** Training and qualifications of members and other personnel in IAD are consistent with the IAD manual (compliance standard: 90%)
- **Task 1.4:** Confidential information is maintained in accordance with the IAD manual (compliance standard: Yes/No).

We conducted this audit to follow up on the nineteenth reporting period, when OIG's external consultant found OPD not in compliance with Task 1. At that time, the external consultant noted, among other issues, that several IAD personnel files were incomplete, IAD case files were not all stored properly, and the Department did not sufficiently review the report-writing and investigative skills of prospective IAD employees.

To assess Task 1, we interviewed the IAD commander and reviewed training records for all 30 personnel currently assigned to IAD.

IAD recently experienced a leadership transition, when the former IAD commander was promoted to Deputy Chief and a new commander who had significant experience in IAD was assigned. Before this transition, the current and former IAD commanders met to discuss the requirements of Task 1 and the results of OIG's recent audit. They also reviewed the existing Task 1 folders for current IAD personnel. The current IAD commander indicated that her prior experience in IAD enhanced her career development – both with respect to her promotion and

her selection for her current assignment. She shared that she seeks the following in candidates for IAD assignments: strong investigative and administrative skills; exposure to other City departments; demonstrated ability to complete a Division-level investigation; aspiration or potential to achieve a higher rank in the Department; and the willingness to eventually return to Patrol and serve as a resource for his/her peers.

IAD acquired seven new personnel as a result of the shift-bidding process at the beginning of the year. These were one-for-one replacements with personnel who left due to their transfer requests. IAD also recently acquired two more intake staff. Currently, there are 10 civilian staff members and 20 sworn personnel assigned to IAD (including the Integrity Testing Unit, or ITU).

Following our request, OPD provided complete training records for all of the civilian and sworn personnel assigned to IAD. We found that 18 of the 20 sworn personnel in IAD attended the Peace Officer Standards and Training (POST)-certified internal affairs investigator's course, as required by IAD 10-01, *Internal Affairs Policy and Procedure Manual*.

IAD has made progress in the area of file security since OIG's external consultant conducted its assessment. Currently, Task 1 folders for active members are stored in a safe in the IAD commander's office unless they are temporarily removed for making entries or notations. The files for former and inactive members are kept under lock and key in the ITU office.

OPD is in compliance with Task 1.

Task 13, Documentation of Pitchess Responses

During this reporting period, we conducted an assessment of inactive Task 13.

Task 13 requires that OPD implement an additional check on responses to Pitchess discovery motion responses. Pitchess motions are filed by criminal defense attorneys seeking pretrial discovery related to complaints against officers involved in their clients' arrests.

To assess this Task, we reviewed related memoranda and other documentation; and interviewed the officer who handles the responses to Pitchess motions, the attorney who has represented the City in the Pitchess process for the past 12 years, and the captain who commands IAD. We found the Pitchess officer to be knowledgeable about the process and requirements for responding to the Pitchess motions. The attorney who handles the Pitchess motions advised us that the work by OPD has been thorough and complete.

OPD estimates that it receives and responds to between 36-42 Pitchess motions each year. In 2014, it responded to 42 Pitchess motions. In 2015, as of the date of our review, the Department received seven Pitchess motions. All are handled by the Pitchess Officer who is assigned to IAD. (A second IAD officer has been trained in Pitchess procedures and can assist if necessary.) The Pitchess officer researches each motion, identifies the allegations, locates the files containing complaints involving the officers who are named, discusses them with the City Attorney, and delivers the list of potential witnesses to the court. A record exists for all

compliance since compliance is sent via email. Final information – including declarations, research notes, discovery granted at in-chambers review, emails, and compliance – are scanned and saved to the IAD server.

OPD is in compliance with Task 13.

Use of Force Reporting Review

During this reporting period, we reviewed the use of force reporting review recently conducted by OIG to determine if OPD members were properly reporting uses of force relating to arrests. OIG selected a random sample of 50 felony incidents due to their potential for a reportable use of force when apprehending a suspect for review. OIG examined all associated crime and supplemental reports, PDRD footage, and use of force reports, to identify all uses of force and verify that each had been properly reported in accordance with OPD policy.

OIG determined that each use of force was properly reported; however, in nine reports, OIG noted ancillary issues that required corrective action by OPD supervisory personnel. In seven of the nine reports, officers failed to activate their PDRDs when required. The other two reports involved tactical issues that created officer safety concerns in potentially lethal situations.

OIG also reviewed use of force complaints from the same time period to determine if IAD had found any instances of officers failing to report their use of force. In only one of the 68 applicable cases, the investigation found that an officer failed to report a use of force – an off-duty instance of intentional pointing of a firearm. For this violation, the officer was sustained.

Appendix C

Acronyms

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 |