



Fifth 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 fifth quarterly report of the Monitor of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California. In January 2010, under the direction of Judge Thelton E. Henderson, the Parties agreed to my appointment as Monitor of the Oakland Police Department (OPD). In this capacity, I oversee the monitoring process that began in 2003 under the previous monitor, and had produced 14 status reports. The current Monitoring Team conducted our fifth quarterly site visit from February 7, through February 11, 2011, to evaluate the Department's progress with the NSA during the three-month period of October 1, through December 31, 2010.

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

During this reporting period, we continue to find the Department in Phase 1, or policy, compliance with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD is in compliance with 13 of the remaining 22 Tasks. This is an increase in compliance by one Task from the fourth reporting period and a disappointing improvement given the eight-year life of the NSA. The status of some of the requirements has changed in this reporting period, and the bases for these are described below.

As noted previously, as a result of Court-ordered technical assistance, the Monitoring Team and OPD representatives have continued to meet and confer to explore ways to enhance the Department's policies and procedures so that they better comport with the trends and innovations in contemporary American policing. We hope that the Department makes the commitment that is necessary to reform its practices and carefully ponders the comments I have added to the Conclusion in Section 3, page 76.



Chief (Ret.) Robert S. Warshaw
Monitor

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Compliance Assessment Methodology

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

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

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

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

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

- **In compliance:** This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).
- **Partial compliance:** This is reported when at least one, but not all, requirements of a Task have achieved compliance, showing progress towards full compliance. Tasks will remain in partial compliance as long as we determine there is continued progress toward reaching substantial, or full, compliance.
- **Not in compliance:** This is reserved for instances where partial compliance has not been achieved and no progress has been made.

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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% to a Yes/No standard.

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

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

Executive Summary

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

From February 7, through February 11, 2011, we conducted our fifth site visit to Oakland. At that time, we met with several Department officials, including the Chief and Assistant Chief of Police and the 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 Division, and Communications Division; OPD officers, managers, supervisors, and commanders, including sergeants, lieutenants, and captains.

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We also conferred with the Plaintiffs' attorneys, City Administrator, and the Office of the City Attorney (OCA). During and since the time of our site visit, we attended Department meetings and technical demonstrations; reviewed Departmental policies; conducted interviews and made observations in the field; and analyzed OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation.

During this reporting period, we continue to find OPD in Phase 1 compliance with all 22 of the remaining active Tasks. We also find that the Department's full compliance level increased by one over the last report. The Department is now in compliance with 13 (59%) of the 22 active Tasks, in partial compliance with seven (32%) Tasks, and not in compliance with one (5%) Task. As in our last report, we deferred a compliance determination with one Task (Task 42: Field Training Program).

Three Tasks have shifted in compliance levels to achieve this cumulative result. Task 25, which addresses the use of force investigations, went from in compliance to partial compliance. Task 33 (Reporting Misconduct) and Task 40 (Personnel Assessment System PAS) both went from partial compliance to in compliance.

Given the duration of the NSA, and that its requirements merely embody generally accepted contemporary police practices, these results are disappointing. The Department's attention to detail and the consistency of implementing policy to assure the delivery of constitutional, respectful policing is wanting. Moreover, the question of sustainability, which must be at the heart of this project's eventual outcome, is perpetually imperiled by OPD's failure to meet the very mandates of the Agreement to which the Department contributed and which it accepted.

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Task	Phase 1: Policy and Training	Phase 2: Implementation			
	In Compliance	In Compliance	Partial Compliance	Not in Compliance	Deferred
Task 2: Timeliness Standards and Compliance with IAD Investigations	√	√			
Task 3: IAD Integrity Tests	√		√		
Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process	√	√			
Task 5: Complaint Procedures for IAD	√		√		
Task 6: Refusal to Accept or Refer Citizen Complaints	√	√			
Task 7: Methods for Receiving Citizen Complaints	√	√			
Task 16: Supporting IAD Process - Supervisor/ Managerial Accountability	√	√			
Task 18: Approval of Field-Arrest by Supervisor	√	√			
Task 20: Span of Control for Supervisors	√		√		
Task 24: Use of Force Reporting Policy	√		√		
Task 25: Use of Force Investigations and Report Responsibility	√		√		
Task 26: Use of Force Review Board (UFRB)	√	√			
Task 30: Firearms Discharge Board of Review	√	√			
Task 33: Reporting Misconduct	√	√			
Task 34: Vehicle Stops, Field Investigation, and Detentions	√		√		
Task 35: Use of Force Reports - Witness Identification	√	√			
Task 37: Internal Investigations - Retaliation Against Witnesses	√	√			
Task 40: Personnel Assessment System (PAS) - Purpose	√	√			
Task 41: Use of Personnel Assessment System (PAS)	√			√	
Task 42: Field Training Program	√				√
Task 43: Academy and In-Service Training	√	√			
Task 45: Consistency of Discipline Policy	√		√		
<i>Total Tasks</i>	22	13	7	1	1

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Section Two

Compliance Assessments

Task 2: Timeliness Standards and Compliance with IAD Investigations

Requirements:

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

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

(Negotiated Settlement Agreement III. B.)

Comments:

We found OPD in compliance with Task 2 during all of the previous reporting periods. Per Departmental policy, in order to be considered timely, at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days.¹ During our last quarterly review, we found that 91% of Class I cases and 97% of Class II cases were in compliance with established timelines – a slight increase from the previous reporting period. Additionally, for those cases that involved at least one sustained finding, 100% were in compliance with established discipline timelines.

Discussion:

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

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

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

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sustained) that were approved between October 1, and December 31, 2010, and calculated the number of days between the complaint date and the approval date for each case.² We excluded from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or service complaints, and those that did not involve Manual of Rules (MOR) violations. We segregated the remaining cases into Class I or Class II categories. If a case involved at least one alleged Class I violation, we classified it as Class I.

Of the 105 Class I cases we reviewed, 95, or 90%, were in compliance with established timelines – a slight decrease from the last reporting period, when 91% of the Class I cases were timely. Of the 97 Class II cases we reviewed, 100% were in compliance with established timelines – an increase from the last reporting period, when 97% of the Class II cases were timely. Of the 25 sustained findings that we reviewed, 100% were in compliance with established discipline timelines.³ This is the third consecutive reporting period in which this was the case. OPD is in compliance with Task 2.1.

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

In addition to the reports, the IAD Commander discusses pending deadlines for key open investigations during IAD's weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. IAD also occasionally, as needed, emails individual reminders on cases approaching due dates to investigators and their supervisors. During this reporting period, we received and reviewed copies of individual Bureau and Department-wide Open Investigation Reports, Cases Not Closed Reports, 180-Day Timeline Reports, and agendas for the weekly meetings between the Chief and IAD staff. The content of these documents demonstrates active monitoring of case timeliness. A Monitoring Team representative also attended many of these weekly meetings. The Department is in compliance with Task 2.2.

Task 2.3 requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards (compliance standard: Yes/No). During this reporting period, IAD opened 337 cases, a decrease from the 397 cases opened in the previous quarter. In addition, the Chief approved 478 cases, an increase from the 435 cases that he approved in the previous quarter. IAD Command attributed the slight decrease in complaints to overall decreased Department staffing.

² It is possible that extensions were granted in some of those cases that, based on these comparisons, appear to be out of compliance. Because of the high compliance rate, we did not review investigation extensions.

³ We reviewed 21 cases involving sustained findings – three cases involved more than one sustained finding.

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We note that the vast majority of cases that were approved in a particular quarterly review period were opened prior to the beginning of the review period, and that there is not necessarily a direct correlation between cases opened and cases approved in any given quarter. In any event, there was not a proliferation of cases during the reporting period that would have triggered a staffing increase pursuant to the NSA. 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:

We are currently reviewing proposed changes to DGO M-03, and we met extensively with Department personnel during our most recent site visit to discuss the policy revisions. These changes will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if approved, do not jeopardize compliance. In addition, during the next reporting period, we will again confer with IAD command staff regarding workload trends and staffing requirements.

Task 3: IAD Integrity Tests

Requirements:

IAD shall be proactive as well as reactive.

- 1. IAD shall conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct.*
- 2. IAD shall have frequency standards, among other parameters, for such integrity tests.*

(Negotiated Settlement Agreement III. C.)

Comments:

During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with this Task. During the last reporting period, we continued to advise OPD that the Department's methods need to be more effective if it is to achieve consistent, credible, and reliable testing that helps it perform at a high level absent of a high level of misconduct complaints.

Discussion:

As previously reported, OPD published Internal Affairs Policy & Procedures 07-01, *Integrity Testing*, which incorporates the requirements of this Task on January 25, 2007. The Department updated this policy in January 2009. The revised policy also incorporates the requirements of Task 3. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

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Task 3.1 requires that IAD conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct (compliance standard: Yes/No); and **Task 3.2** requires that IAD's integrity tests be conducted in accordance with the frequency standards and other parameters IAD has established (compliance standard: 90%).

To assess the Department's Phase 2 compliance with these subtasks, we reviewed files – including operations plans, after-action reports, and supporting documents – related to the nine integrity tests that were conducted from October 1, through December 31, 2010. Our review focused on the scope of the investigations, whether OPD conducted integrity tests where members/employees were the subject of repeated allegations, and whether the selective integrity tests that OPD conducted complied with the parameters established by IAD.

Of the nine tests conducted during this reporting period, four were planned tests, in which the Integrity Testing Unit reviewed the records of four OPD members to verify that their vital information was current and that they were compliant with Departmental policy.⁴ All four planned tests passed. While all four planned tests focused on individual members and employees of OPD, only one was a current subject of repeated allegations of misconduct.

Five of the nine integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies. The first test verified whether officers who were employed outside of OPD maintained the proper outside employment work permits as authorized by the Department. In the second test, Integrity Testing Unit staff inspected Mobile Data Terminal logs to ensure that officers adhered to Department directives on the use of the terminals. The third test monitored the Internet usage of a Department member. The fourth test tested a desk officer to determine if he properly handled a complaint against an officer by a citizen. The final integrity test focused on multiple OPD officers who failed to appear in traffic court pursuant to issued subpoenas.

The types of integrity tests described above support the intended purpose of the Integrity Testing Unit, and we encourage OPD to improve the quality of its integrity tests. In three of the five selective integrity tests, the subject officers failed, and subsequently, IAD opened investigations of the officers. These IAD cases are currently under investigation.

During our most recent site visit, we met with the IAD commander and the sergeant who oversees the Integrity Unit, who informed us of their plans to improve and expand the Department's integrity testing. We also reviewed the integrity tests that OPD recently conducted, and discussed how the Department can achieve full compliance with this Task.

⁴ OPD conducts two different types of integrity tests. Planned 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. Selective tests are tests conducted regarding a specific Departmental policy to determine if OPD members or employees are acting in compliance with the policy.

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Despite OPD's progress in integrity testing, we remain concerned that the Department is not conducting integrity testing under the standards that are required to test its compliance with policy and the Negotiated Settlement Agreement properly.

Based on our observations during this reporting period – specifically, the scope of the investigations of members and employees who are the subjects of repeated allegations – we continue to find the Department in partial compliance with this Task. Compliance is dependent on the increased performance of investigating employees who are the subject of repeated allegations, and the consistency of quality investigations in future reporting periods.

OPD is in partial Phase 2 compliance with Task 3.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will again meet with the sergeant who oversees the ITU and the IAD Commander to discuss the Department's efforts to strengthen Integrity Unit and its testing. We will also verify OPD's compliance with established frequency standards for testing and compliance with procedures.

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.*

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2. *IAD shall establish a central control system for complaints and Departmental requests to open investigations. Every complaint received by any supervisor or commander shall be reported to IAD on the day of receipt. If IAD is not available, IAD shall be contacted at the start of the next business day. Each complaint shall be assigned an Internal Affairs case number and be entered into a complaint database with identifying information about the complaint. OPD personnel shall notify IAD and the Chief of Police, or designee, as soon as practicable, in cases likely to generate unusual public interest.*
3. *Criteria shall be established which must be met prior to moving, from “open” to “closed,” any investigation in the complaint database.*⁵

(Negotiated Settlement Agreement III. D.)

Comments:

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

Discussion:

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

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

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

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

Task 4.7 requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt (compliance standard: Yes/No). If IAD is not available, the supervisor or commander shall contact IAD at the start of the next business day. To assess Phase 2 compliance for Task 4.7, we reviewed 57 Daily Incident Log (DIL) entries and a random sample of 70 IAD case files that were approved during the period of October 1, through December 31, 2010. We also reviewed the complaint intake process in IAD during our November 2010 site visit, verifying by observation and interview the daily transfer of complaints to IAD via the DILs. The Office of Inspector General (OIG) now forwards completed DILs to us on a daily basis. We found no evidence of unwarranted delay in the delivery of these complaints, or in the intake process once IAD was made aware of them. OPD is in compliance with Task 4.7.

Task 4.10 requires that OPD comply with criteria it has established when resolving complaints through informal complaint resolution (ICR), administrative closure, or summary finding (compliance standard: 90%). This subtask is intended to ensure that OPD provides the proper level of investigation for each complaint and does not resolve meritorious complaints of misconduct without determining – and documenting – whether the OPD member or employee committed misconduct.

During this reporting period, from a sample of IAD cases that were approved between October 1, and December 31, 2010, we reviewed 11 cases in which at least one allegation was resolved via administrative closure, 10 cases in which at least one allegation was resolved via informal complaint resolution, and one case that was resolved via summary finding. In one of these cases – a complaint regarding an officer's demeanor and an allegation that he failed to provide assistance – IAD used both an administrative closure and an ICR for different allegations of the same complaint. In all of the ICRs we reviewed, the complainants agreed to the informal complaint resolution process. Where an agreement was secured in a telephone conversation, that information was contained in the case documentation.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. In two of the cases, it could not be definitively ascertained that the acts complained of involved OPD personnel. One incident occurred during the unrest associated with the sentencing of a BART (Bay Area Rapid Transit) police officer in a high-profile case. Several agencies provided mutual aid to Oakland during that time period, and the subject officers' identity and agency could not be identified despite efforts on the part of IAD. In another case, allegations of property damaged during the booking process were appropriately administratively closed because Alameda County Sheriff's Office personnel conducted the prisoner intake.

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The remaining allegations that were closed administratively complied with policy, in that they lacked specificity or did not constitute MOR violations. Again, where they were accompanied by allegations that warranted a full investigation, these additional allegations were investigated in accordance with policy.

The cases resolved via summary finding were all approved for such designation as required by policy. These cases are further discussed in Task 5. OPD is in compliance with Task 4.10.

OPD is in Phase 2 compliance with Task 4.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We are currently reviewing proposed changes to DGO M-03, and we met extensively with Department personnel during our most recent site visit to discuss the policy revisions. These changes will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if approved, do not jeopardize 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,*

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- would be an MOR violation; or*
- 6) *Complaints limited to California Vehicle Code citations and resulting tows, where there is no allegation of misconduct, shall be referred to the appropriate competent authorities (i.e. Traffic Court and Tow Hearing Officer).*
 - g. *Administrative Closures shall be approved by the IAD Commander and entered in the IAD Complaint Database.*
6. *The disposition category of "Filed" is hereby redefined and shall be included under Administrative Dispositions as follows:*
 - a. *An investigation that cannot be presently completed. A filed investigation is not a final disposition, but an indication that a case is pending further developments that will allow completion of the investigation.*
 - b. *The IAD Commander shall review all filed cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed and may direct the closure or continuation of the investigation.*
 7. *Any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions.*

(Negotiated Settlement Agreement III. E.)

Comments:

During all of the previous reporting periods, we found OPD in partial compliance with Task 5. Tasks 5.1-5.5 address the information gathered at the time a complaint is lodged and the notifications that are required. During the previous reporting period, we found OPD in compliance with the subtasks in this group. In addition, we found that 52% of the cases we reviewed were in compliance with all elements of Tasks 5.15 and 5.16. We also found that the verification of all notes being contained in the file, as required by Task 5.17, was present in all of the cases we reviewed. In 16% of the cases we reviewed, the preponderance of evidence standard was not applied to some or all of the allegations, as required by Task 5.18. We found OPD in compliance with Task 5.6 (jail complaints), Task 5.19 (proper dispositions), Task 5.20 (tolling and filed cases), and Task 5.21 (employee interviews).

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Discussion:

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

- **Departmental General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 5.)
- **Communications Division Operations & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007.
- **Training Bulletin V-T.1:** As previously reported, OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006.
- **Special Order 8270:** As previously reported, OPD published Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility*, on June 24, 2005.
- **Special Order 8565:** As previously reported, OPD published Special Order 8565, *Complaints Against Department Personnel*, on May 11, 2007.
- **IAD Policy & Procedures 05-02:** As previously reported, OPD published IAD Policy & Procedures 05-02, *IAD Investigation Process*, on December 6, 2005.

In addition, NSA stipulations issued on December 12, 2005, and March 13, 2007, incorporate the requirements of this Task.

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

To verify Phase 2 compliance with Tasks 5.1 through 5.5, we reviewed 57 entries that appeared on the Daily Incident Logs (DILs) that were completed in November and December 2010.⁶ As noted in our previous reports, we met with representatives from IAD and Communications during our May and August 2010 site visits to discuss issues with the completion of DILs potentially affecting OPD's compliance with Task 5.4. (See details in the Task 5.4 section below.) Following these meetings, OPD committed to change the format of the DIL to ensure that information required by Task 5 is captured.

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 57 DIL entries, three cases were received in IAD, which, in turn,

⁶ During our November 2010 site visit, we verified that the agreed-upon format changes to the Daily Incident Logs were instituted, and we also arranged to receive DILs contemporaneous to their completion. Accordingly, we confined our reviews to DILs sent to us after that visit.

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notified Communications. (One complainant called both locations, but OPD identified the duplication.) In two of the 57 DIL records, there was no reference to any contact with the complainant by a supervisor. One was filed by a chronic complainant well-known to OPD; given the nature of the complaint, IAD determined that further contact with the complainant would have served no useful purpose. In the other, a complaint of difficulty in filing a report, the “time assigned to a supervisor” and the “watch commander notified” sections of the DIL were blank. Nonetheless, OPD has a 96% compliance rate with Task 5.1.

Task 5.2 requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay be documented (compliance standard: 85%). Of the 57 DIL entries we reviewed, there were no obvious instances of a three-hour delay. In one record, however, while a field supervisor was identified, the “time complainant contacted” is listed as “unknown,” and so there could potentially have been a three-hour delay in contacting the complainant. Even so, OPD has a 98% compliance rate with this subtask. OPD is in compliance with Task 5.2.

Task 5.3 requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint (compliance standard: 90%). Of the 57 records in our dataset, we identified six instances in which the complainant “refused” interaction with a supervisor. In all of these cases, the complainants did not answer a contact or callback number provided; and since OPD personnel had no advance notice of the refusal prior to the attempted callback, we removed these incidents from consideration. In one case, a doctor called to complain that officers failed to refer his patient for a psychiatric evaluation, but the doctor left his office prior to a supervisor returning his call. In another case, a nurse called in a complaint on behalf of a patient who was in the process of being discharged from a medical facility. The complainant, via the nurse, was given an incident number and advised to call when he arrived home. The complainant did not do so; nor did he answer calls to his residence from OPD. In all six of these “refused” cases, Communications personnel obtained sufficient information to generate a complaint and forward the relevant information to IAD. OPD is in compliance with Task 5.3.

Task 5.4 requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander (compliance standard: 85%). In order to be in compliance with this subtask, the DIL should contain the identification of personnel; witnesses or identifying information, if known (log should say “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 94% compliance rate with this subtask. This was primarily due to the changes OPD made to the DIL form over the previous two reporting periods to ensure that the appropriate information was captured. OPD’s compliance with this subtask had been as low as 27% in the past. OPD committed to altering the DIL form to contain “forced response” boxes for the items mandated by this subtask. All of the forms we reviewed contained the required information (or “unknown” if applicable). During this reporting period, OPD has a 100% compliance rate with this subtask, and is in compliance with Task 5.4.

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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 77% with this subtask during the last reporting period. The DILs are administered by the Communications Division 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 blank in six, or 11%, of the 57 records we reviewed. While this is an improvement over the previous reporting period, with a compliance rate of 89%, OPD is not in compliance with Task 5.5. We reiterate our caution to the Department that creating a form or a system to record information is not sufficient. Personnel must be held accountable for properly capturing required information. OPD is not in compliance with Task 5.5.

To assess Task 5.6 during this reporting period, we reviewed all complaints that appeared to have originated from North County Jail, Santa Rita Jail, or Juvenile Hall, and were approved between October 1, and December 31, 2010. We identified seven such complaints using the IAD database. We reviewed each complaint for two triggering events: an allegation of Class I misconduct; and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was “handled in the same manner as other civilian complaints.”

Of the seven cases we reviewed, only one met the criteria for an immediate response by a supervisor; and in this case, an on-duty supervisor did, in fact, respond, make the required notifications, and forward the appropriate information. The alleged Class 1 misconduct was a use of force comparable to Level 3 (an arrestee was allegedly punched during his apprehension). The supervisor responded to the scene and interviewed the subject. He was not the complainant, and did not wish to make a complaint. Nonetheless, OPD conducted an investigation based on the statements of witnesses at the scene.

The other six cases in our dataset did not meet the criteria for this subtask. In three of these cases, Class I misconduct was not alleged. In five of these cases, the complaint was not lodged contemporaneous with the arrest. One incident dated back to 2006, and another – previously investigated by IAD – dated back to 2007. In two other cases, the alleged misconduct was not incidental to any arrest. In one, the complainant complained of activity that allegedly took place at his grandmother’s house while he was in jail, and the other was a complaint against an Alameda County Sheriff’s Office employee.

OPD is in compliance with Task 5.6.

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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, complaints that are received and/or handled by on-duty supervisors must be recorded by the Communications Division on the Daily Incident Log (DIL), which is forwarded daily to IAD. Just as with the notifications and duties of the Watch Commander outlined in Tasks 5.1-5.5, we deem the DIL system as functionally equivalent to the requirements of Task 5.12, and the Department is thus 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, 2010. This sample included investigations completed by IAD and Division-Level Investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.⁷

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 52% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 16, or 64%, in compliance with *all* of these required elements. OPD is not in compliance with Tasks 5.15 and 5.16.

In all of the cases we reviewed, it appeared that OPD gathered and considered all relevant evidence.⁸ In all but two cases, follow-up interviews were conducted, where warranted. Both involved third-party complaints of force used on arrested subjects. In one, a witness indicated that he observed an officer knee a suspect in the head during his apprehension. During the interview of the arrestee, the investigator never asked if this occurred, despite the fact that the interview occurred three weeks after the complaint and the investigator knew of the allegation. Rather, the investigator relied on the fact that the suspect would certainly have complained about the act had it occurred; therefore, it must not have. In the other, a mother – who was not at the scene of the arrest – complained that her son was punched in the face. Again, in his interview this subject never complained of the act, and he was not asked if this occurred. The interviewer may not have known of the allegation, as the interview was done contemporaneous with the use of force investigation. However, the sergeant tasked with the complaint investigation should

⁷ Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

⁸ For purposes of our review, we consider evidence to be physical evidence and/or photographs of same. We distinguish evidence from interviews, as does the subtask.

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have re-interviewed the complainant on this point, rather than relying on the fact that he did not complain of being punched in the face in his initial interview. In our previous reports and during our site visits, we have brought to the attention of OPD instances in which investigators failed to ask salient questions when presented with specific allegations.

The Department recently trained IAD investigators and field supervisors on this topic, and as we have begun to review investigations completed after this training, we see more credibility assessments meeting the required standards. In several cases, not sustained findings were assigned because the officers and the civilians were both deemed credible. In three cases, the credibility of civilians was inappropriately challenged. In one of these, the investigator speculated as to the motive the complainant had for filing the complaint (retaliation against the officers), and also posited, without basis, where allegedly missing property might be.

In another case, the credibility assessment of a witness officer was missing. Coincidentally, this officer could not remember key details of the incident. In the same investigation, the complainant's credibility was questioned because the investigator felt that she was less than truthful in an area that really had no bearing on the complaint. We listened to her interview and she sounded very credible; she freely admitted that her own behavior was at times inappropriate.

We also reviewed a case where, in accordance with policy, the credibility of the officers involved was questioned because of a pattern of similar complaints.

The NSA requires that "OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses." Where OPD makes such efforts and is unable to resolve inconsistent statements, the underlying charge would presumably, by definition, be not sustained. Therefore, in our review of this subtask, we removed from consideration not sustained findings based on inconsistent statements. We noted five cases where it appeared that inconsistent statements were not resolved. These include the two use of force cases mentioned above, where the subjects were not asked questions that may have provided definitive conclusions. In another case, a complaint of rudeness which an officer denied, the investigator indicated neither of the two witnesses "reported hearing such comment." A review of both interviews, however, revealed that neither was directly asked if the officer said what was alleged.

OPD is not in compliance with Tasks 5.15 and 5.16.

Task 5.17 requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file (compliance standard: 85%). OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). During our previous quarterly review, we found OPD in 100% compliance with this subtask. During this review, the form was improperly completed in two of the 25 cases we reviewed. The same investigator signed and dated the form, but did not

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indicate whether or not the file contained investigative notes. However, with 92% compliance, OPD is in compliance with this subtask.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard (compliance standard: 90%). During the previous reporting period, OPD complied with this subtask in 84% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 20 cases, or 80%. In one of the non-compliant cases, an allegation of force involving an unknown officer was exonerated – even though no officer documented or admitted to using the force – because the force would have been justified under the circumstances. In the four others that were out of compliance, investigators reached determinations of exonerated or unfounded, where we believe the documentation supports not sustained findings. In one of these, an investigator wrote, “I cannot prove or disprove whether a search actually occurs,” but the finding was listed as unfounded. OPD is not in compliance with Task 5.18.

Task 5.19 requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure (compliance standard: 95%). While we do not agree with all of the findings for the cases we reviewed (see Task 5.18 above), each allegation identified in all of the 25 cases was resolved with one of the acceptable dispositions, or administratively closed per policy. OPD is in compliance with this subtask.

Task 5.20 requires that the IAD Commander review all “filed” cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed (compliance standard: 90%). A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. According to our review of the IAD database, OPD currently does not have any cases classified as filed. Cases categorized as “tolling” appear to fit this definition.⁹

During our most recent site visit, we met with the IAD commanding officer, who advised that as of that date, four cases were classified as tolling. Two involve civil litigation against the City and/or the Department, and two involve criminal cases in which the complainants are not cooperating, most likely on the advice of legal counsel. All cases appear to be tolling according to policy. These cases are reviewed with the Chief during his weekly IAD meetings and listed by case number on the printed meeting agendas. OPD is in compliance with this subtask.

Task 5.21 requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken (compliance standard: 90%). However, with the approval of the IAD Commander, investigators are not

⁹ OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304.

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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. In one of the 25 cases we reviewed, not all subject members or employees were interviewed. This case – an improper arrest complaint resulting from a “buy bust” operation – was approved to be resolved via summary finding based on the information in the arrest reports, and so interviews were not required. In another case, IAD contemplated a summary finding, but on the advice of a City attorney reviewing the investigation, it was handled as full investigation and all interviews were conducted. OPD is in compliance with Task 5.21.

OPD is in partial Phase 2 compliance with Task 5.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our February site visit, we had extensive discussions regarding the Department’s proposed changes to DGO M-03. OPD committed to provide follow-up information before that process moves forward. If not resolved by our next site visit, we will follow up with OPD on this matter while onsite. These policy changes will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if approved, do not jeopardize compliance.

As we have done previously, we will also meet with IAD and OIG personnel regarding specific cases of concern.

Task 6: Refusal to Accept or Refer Citizen Complaints

Requirements:

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

(Negotiated Settlement Agreement III. F.)

Comments:

During the first, second, third, and fourth reporting periods, we found the Department in Phase 2 compliance with Task 6.

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Discussion:

As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 6, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 6. The requirements of this Task are also incorporated into Manual of Rules sections 314.07, 398.70, and 398.76. As the Department has trained at least 95% of relevant personnel on this policy, we find OPD in continued Phase 1 compliance with this Task.

Task 6 requires that OPD members/employees, who refuse to accept a citizen complaint, fail to refer a citizen to IAD (when the citizen can be reasonably understood to want to make a citizen's complaint), discourage a person from filing a complaint, and/or knowingly provide false, inaccurate, or incomplete information about IAD, are disciplined (compliance standard: 95%).

To assess Phase 2 compliance with this Task, we reviewed 57 Daily Incident Log entries from November and December 2010; and a random sample of 25 IAD investigations (conducted by both IAD and via Division-level investigation) that were closed during the period of October 1, through December 31, 2010. 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 six such cases. None of the cases resulted in sustained allegations. Three were classified as unfounded; one was administratively closed based on the complainant's inability to identify OPD employees (or even confirm if they were, in fact, Department employees); and one was informally resolved along with three other allegations. In another case, the investigator recommended a sustained finding but the Chief, as is his prerogative in the process, determined that the allegation was not sustained.

OPD is in Phase 2 compliance with Task 6.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We are currently reviewing proposed changes to DGO M-03, and we met extensively with Department personnel during our most recent site visit to discuss the policy revisions. These changes will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if approved, do not jeopardize compliance.

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Task 7: Methods for Receiving Citizen Complaints

Requirements:

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

1. *IAD or Communication Division personnel shall staff a recordable toll-free complaint phone line, 24-hours a day, and receive and process complaints in accordance with the provisions of Departmental General Order M-3. The complainant shall be advised that the call is being recorded when a complaint is taken by IAD.*
2. *Guidelines for filing a citizen's complaint shall be prominently posted and informational brochures shall be made available in key Departmental and municipal locations.*
3. *OPD shall accept anonymous complaints. To the extent possible, OPD shall ask anonymous complainants for corroborating evidence. OPD shall investigate anonymous complaints to the extent reasonably possible to determine whether the allegation can be resolved.*
4. *OPD personnel shall have available complaint forms and informational brochures on the complaint process in their vehicles at all times while on duty. Members/employees shall distribute these complaint forms and informational brochures when a citizen wishes to make a complaint, or upon request.*
5. *IAD shall be located in a dedicated facility removed from the Police Administration Building.*
6. *Complaint forms and informational brochures shall be translated consistent with City policy.*
7. *Complaint forms shall be processed in accordance with controlling state law.¹⁰*

(Negotiated Settlement Agreement III. G.)

Comments:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the second, third, and fourth reporting periods, we found OPD in compliance with this Task.

Discussion:

OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 7, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 7. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

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

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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 1, and December 31, 2010. 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.

During our May 2010 site visit, we met with IAD staff to encourage personnel to standardize the manner in which these cases are recorded in the database, to make them easier to identify. However, not all have “Anonymous” in the complainant’s last name database field, as agreed to during our meeting and in our subsequent email communications with IAD staff. During our most recent site visit, we again raised this issue with IAD. It is incumbent on IAD staff to identify these cases in the database properly and uniformly so that we can be assured we have access to all cases that fit the Task 7.3 criteria.

Based on the above-listed criteria, we identified 10 cases as potential anonymous complaints during this reporting period. From these, we removed one that we determined was not a true anonymous complaint. This involved a traffic stop that was captured on in-car video. Two of the three occupants were spoken to and identified, and the third did not wish to make a complaint. In two other cases, the complainants were identified during the course of the investigation. One was identified via caller ID in Communications, and she was subsequently interviewed by the investigator. In the other, the complainant’s identity was protected as he was a confidential informant, but he was known and interviewed extensively during the course of the investigation.

The seven remaining cases were true anonymous complaints. We determined that these cases were investigated to the extent reasonably possible. One of the cases was administratively closed based on the fact that a supervisor counseled the employee regarding making inappropriate comments prior to the complaint being received. While this is in accordance with policy, the case file’s chronological log references a Letter of Discussion that, based on a review of the employee’s PAS record, was apparently never issued to the employee. We brought this to the attention of IAD command.

However, the Department complied with Task 7.3 in all seven cases, or 100%. OPD is in Phase 2 compliance with Task 7.3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

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Next Steps:

We are currently reviewing proposed changes to DGO M-03, and we met extensively with Department personnel during our most recent site visit to discuss the policy revisions. These changes will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if approved, do not jeopardize compliance.

Task 16: Supporting IAD Process - Supervisor/Managerial Accountability

Requirements:

On or before December 1, 2003, OPD shall develop a policy to ensure that supervisors and commanders, as well as other managers in the chain of command, shall be held accountable for supporting the IAD process. If an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, then that supervisor or manager shall be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene.

(Negotiated Settlement Agreement III. O.)

Comments:

During the first reporting period, we found the Department out of compliance with Task 16 due to our concerns with the disciplinary hearing process. During subsequent reporting periods, our reviews showed that OPD had improved in this area, and we found the Department in compliance with this Task.

Discussion:

As previously reported, two Department policies, Department General Order M-03 and Training Bulletin V-T.1, incorporate the requirements of Task 16. OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 16.) OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 16.1 requires that supervisors and commanders, as well as other managers in the chain of command, are held accountable for supporting the IAD process (compliance standard: Yes/No); and **Task 16.2** requires that if an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, the supervisor or manager is held accountable, through OPD's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene (compliance standard: 90%).

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To assess Task 16, we examined the 57 Daily Incident Log entries from November and December 2010; a random sample of 25 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between October 1, through December 31, 2010; and the five sustained Class I investigations that were approved by the Chief between October 1, through December 31, 2010. From this review, we identified one case in which a supervisor was alleged to have failed to adhere to the required standard. In this case, a lieutenant made inappropriate comments that included profanity and a sexually inappropriate joke during a patrol line-up. While the lieutenant insulted the Department and told an inappropriate story, two captains were present and took no action to stop the lieutenant's conduct. The Department provided counseling and re-training for the captains who were present. We continue to find the Department in Phase 2 compliance with Task 16.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We are currently reviewing proposed changes to DGO M-03, and we met extensively with Department personnel during our most recent site visit to discuss the policy revisions. These changes will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if approved, do not jeopardize compliance.

Also during our next site visit, we will again meet with the IAD Commander to discuss any Task 16-applicable cases for the next reporting period, and we will assess the propriety of IAD's findings and actions.

Task 18: Approval of Field-Arrest by Supervisor

Requirements:

Within 260 days from the effective date of this Agreement, the Chief of Police shall, based on contemporary police standards and best practices, develop and implement policies to address the following standards and provisions:

Approval of Field-Arrest by Supervisor

1. *OPD shall develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates on calls for service. The policies developed in this Section shall require supervisors to respond to the scene of (at least) the following categories of arrest, unless community unrest or other conditions at the scene make this impractical:*
 - a. *All Felonies;*
 - b. *All drug offenses (including narcotics, controlled substances and marijuana arrests if the subject is taken to jail).*

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- 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.¹¹

(Negotiated Settlement Agreement IV. A.)

Comments:

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

Discussion:

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

Task 18.2.2 requires that supervisors review arrest documentation to verify that available witnesses are identified (compliance standard: 90%). To assess Phase 2 compliance with this subtask, we reviewed arrest documentation for all of the applicable arrest categories, as well as documentation for arrests resulting in an investigated use of force. Specifically, we reviewed a random sample of 43 adult arrest reports, and eight juvenile arrest reports documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); and documentation for 24 arrests resulting in an investigated use of force; that occurred between October 1, and December 31, 2010. We reviewed these to determine if the reports listed witnesses or appropriately noted “no known witnesses,” or referred to a canvass with no witnesses produced. In keeping with previous practice, if there was no mention of any witnesses in the crime report narrative, we accepted a “0” in the “witness” box on the cover sheet as sufficient documentation.

Of the 44 adult arrest reports, we excluded 27 from our dataset for one or more of the following reasons: the arrest involved a warrant; 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 17 remaining adult arrests, 14 were in compliance with Task 18.2.2. This represents an 82% compliance rate among adult arrests for this subtask. The three other felony arrest reports (one felony firearm arrest, one stolen vehicle arrest, and one PC 148 arrest) did not, as per the requirement, list witnesses, appropriately note “no known witnesses,” or refer to a canvass with no witnesses produced.

¹¹ The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

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Of the eight juvenile arrest reports, we excluded three from our dataset for one or more of the following reasons: the arrest involved a warrant; the arrest occurred outside of our selected time period; the incident was, in fact, a psychiatric detention or juvenile runaway 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. The remaining five juvenile arrests were in compliance with Task 18.2.2. This represents a 100% compliance rate among juvenile arrests for this subtask. Of the 24 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.¹² This represents a 100% compliance rate among arrests resulting in an investigated use of force for this subtask.

We learned during our November 2010 site visit that the Deputy Chief of the Bureau of Field Operations (BFO) began assigning personnel to review the bureau's adult and juvenile arrest reports, and take appropriate corrective action if the requirements of Task 18.2.2 were not met. BFO has now instituted bi-monthly Task 18 audits, in which patrol lieutenants or administrative sergeants review five felony arrest reports for the documentation of witness identification. The sergeant or lieutenant who conducts the audit submits a memorandum that details the audit's findings. We encourage OPD to continue these audits to ensure sustained compliance with Task 18.2.2.

Our review revealed an overall 93% compliance rate for Task 18.2.2. This is a slight drop from the last reporting period, when OPD had a 98% compliance rate with Task 18.2.2. OPD is in continued Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with representatives from OIG, the Bureau of Field Operations, and the Training Division to encourage them to scrutinize felony adult and juvenile arrest reports, and supporting documentation to confirm that a felony arrest warrant or a parole detention existed at the time of the arrest that appropriately excludes these arrests from our assessment.

¹² 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.

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Task 20: Span of Control for Supervisors

Requirements:

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

- 1. Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
- 2. During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and operational needs, whether or not to backfill for the absence of the sergeant on leave.*
- 3. If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
- 4. If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Comments:

During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with Task 20. During the last reporting period, we found that 95% of the squads we reviewed met the 1:8 span of control. However, only 79% of the squads we reviewed were supervised by their primary, or assigned, supervisors; most of the remainder were supervised by certified acting sergeants who were not actually assigned to supervise their squads.

Discussion:

As previously reported, directives relevant to this Task include: Departmental General Order A-19, *Supervisory Span of Control*, issued on July 26, 2006; Departmental General Order D-13, *Assignment to Acting Higher Rank or Classification*, issued on June 17, 1999; and Special Order 8435, *Acting Sergeant Selection Process*, issued on July 26, 2006. Although Special Order 8435 updates the Department's policy on acting supervisors, we have previously encouraged OPD to update DGO D-13 so that it incorporates the updated information. We learned recently from the Bureau of Field Operations (BFO) Deputy Chief that these revisions are currently underway.

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

Task 20.1 requires that sufficient primary sergeants be assigned at the draw board/master detail level to permit one primary sergeant for every eight officers under normal conditions (compliance standard: Yes/No).

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During the first two reporting periods, we did not assess this subtask due to the lack of reliable documentation. At that time, we reported that there was no official OPD “master detail” that both listed sergeants’ assignments as of the time of the “draw” at the beginning of the year and was also updated throughout the year as loans, transfers, and other personnel changes alter supervisory assignments. During the third reporting period, we were granted access to Telestaff, the Department’s electronic scheduling system. Telestaff functions as a “master detail” that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. During this reporting period, we continued to use Telestaff to conduct our assessments. OPD is in compliance with Task 20.1.

Task 20.2 requires that relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%). To assess this subtask, we reviewed a stratified random sample of 14 days (within our selected time period) of Daily Details for the squads listed above. Specifically, we reviewed Daily Details for the following dates: October 5, 14, 19, 23, and 30; November 1, 12, 14, and 26; and December 6, 8, 9, 19, and 22, 2010. For the purposes of this requirement, we considered certified acting sergeants to be primary supervisors if they were assigned to supervise their particular squads; we considered them to be in compliance if the Department’s weekly Personnel Orders listed the certified acting sergeants’ acting assignments.

Of the 358 applicable squads we reviewed, 277 (77%) were supervised by their primary supervisors. This was a slight drop from the last reporting period, when we found 79% of the squads in compliance with this subtask. Of the squads *not* supervised by their primary supervisors, 33 (9% of the total) were supervised by “backfill” sergeants working overtime, 34 (9% of the total) were supervised by certified acting sergeants who were *not* assigned to supervise their particular squads, and 13 (4% of the total) were not supervised. During this reporting period, only one squad was supervised by an officer who was not certified to act as a sergeant.

OPD is not in compliance with Task 20.2.

Task 20.3 requires that a supervisor’s span of control for the Department’s relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio on a day-to-day basis (compliance standard: 90%). To assess Task 20.3, we reviewed the above-referenced Daily Details and counted the number of officers being supervised and the supervisors for each relevant squad. For the purposes of this requirement, canine officers, field trainees, desk personnel, and police technicians do not count toward the eight. In addition, we considered certified acting sergeants to be supervisors, but any instance of a squad supervised by an “acting” supervisor who was not certified by the Department’s program was considered out of compliance. Of the 358 applicable squads we reviewed, 341 (95%) met the 1:8 span of control. During the fourth reporting period, we found the same percentage of squads to be in compliance with this requirement. OPD is in compliance with Task 20.3.

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Task 20.4 requires that the Department's Area Commanders make backfill decisions and that these decisions are consistent with policy and operational needs (compliance standard: 90%). An Area Commander "backfills" a sergeant slot when the assigned, or primary, sergeant is unable to supervise his/her squad on a short-term basis ("due to sickness, vacation, compensatory time off, schools, and other leaves").

To assess this subtask, we reviewed the above-referenced Daily Details and noted the squads that were supervised by backfill sergeants on short-term bases. We found 33 instances (9% of the total we reviewed) of backfill supervisors in our sample. During the last reporting period, backfill sergeants represented 4% of the total. OPD is in compliance with Task 20.4.

Task 20.5 requires that the span of control for special operations is determined by an Area Commander and is reasonable (compliance standard: 90%). In addition, the Department requires that sergeants or certified acting sergeants supervise all special operations.

To assess this subtask, we reviewed a random sample of 25 special operations plans of the 107 total operations conducted between October 1, through December 31, 2010, to determine whether the span of control for these operations was determined by the relevant commander and was reasonable. Specifically, we looked at the nature of the operations; the number of officers involved in the operations; and, if any acting supervisors were certified acting sergeants. Our review found that all 25 of the special operations in our sample met these requirements.

OPD is in compliance with Task 20.5.

Task 20.6 requires that the Chief or his designee make decisions regarding any loans or transfers for long-term backfill (compliance standard: 85%). As noted above in our discussion of Task 20.4, an Area Commander "backfills" a sergeant's slot when the primary, or assigned, sergeant is unable to supervise his/her squad on a short-term basis. However, the Chief or his designee (generally, the Assistant Chief or Deputy Chief) is required to determine any loans or transfers for *long-term* backfill.

We reviewed the Department's weekly Personnel Orders issued between October 1, through December 31, 2010, for the signature of the Chief or his designee, usually the Assistant Chief. We found that all of the Personnel Orders during this time period contained such a signature, indicating the Chief's approval.

The NSA does not require written documentation of loans and transfers for long-term backfills – merely that the Chief or his designee approves such loans and transfers. However, OPD policy requires such documentation. Specifically, Departmental General Order B-4, *Personnel Assignments, Selection Process, and Transfers*, states, "A unit commander/manager who needs a loan of personnel shall submit a justifying loan request to his/her Deputy Chief/Director requesting the loan." As noted previously, 35% of loans and transfers reviewed by the Office of Inspector General (OIG) in a recent assessment were not included on the weekly Personnel

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Orders nor otherwise documented. Following these findings, Bureau of Field Operations (BFO) staff committed to improve its documentation of loans and transfers. Based on our recent discussions with the BFO Deputy Chief and other BFO personnel, as well as our review of Personnel Orders for other purposes (see above), it appears that OPD's practice comports with Departmental policy. OPD is in compliance with Task 20.6.

OPD is in partial Phase 2 compliance with Task 20.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

As part of Court-ordered technical assistance, we have been working closely with OPD to explore the Department's options to improve its consistency of supervision, or Task 20.2, so that it falls within the standards required by the NSA, Departmental policy, and best practices in policing. The Department has advised of its intention to transfer additional sergeants to Patrol, and plans to reorganize the division to implement a team supervision model. We continue to encourage the Department to undertake the bold steps that may be required in order to meet this requirement.

Task 24: Use of Force Reporting Policy

Requirements:

The policy shall require that:

1. *Members/employees notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force.*
2. *In every investigated use of force incident, every member/employee using force, and every member/employee on the scene of the incident at the time the force was used, shall report all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor.*
3. *OPD personnel document, on the appropriate form, any use of force and/or the drawing and intentional pointing of a firearm at another person.*
4. *A supervisor respond to the scene upon notification of an investigated use of force or an allegation of excessive use of force, unless community unrest or other conditions makes this impracticable.*
5. *OPD notify:*
 - a. *The Alameda County District Attorney's Office immediately or as soon as circumstances permit, following a use of lethal force resulting in death or injury likely to result in death.*
 - b. *The City Attorney's Office as soon as circumstances permit following the use of lethal force resulting in death or serious injury. At the discretion of*

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the City Attorney's Office, a Deputy City Attorney shall respond to the scene. The Deputy City Attorney shall serve only in an advisory capacity and shall communicate only with the incident commander or his/her designee.

c. *Departmental investigators regarding officer-involved shootings, in accordance with the provisions of Section V, paragraph H, of this Agreement.*

6. *OPD enter data regarding use of force into OPD's Personnel Assessment System (PAS).*

(Negotiated Settlement Agreement V. A.)

Comments:

We found OPD in partial compliance with Task 24 during all of the previous reporting periods. During the last reporting period, OPD was in compliance with all of the Task 24 subtasks except for the requirement that OPD enter data regarding uses of force into its Personnel Assessment System (PAS). We noted that the system contains only limited information about these incidents, and thus, is limited in its utility to supervisors.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 24. OPD revised DGO K-4 on August 1, 2007. On April 15, 2009, OPD issued Special Order 8977, amending DGO K-4. The revised policy also incorporates the requirements of Task 24. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, we requested and reviewed 88 use of force reports, including: two Level 1, 13 Level 2, and nine Level 3 use of force reports; and a sample of 64 Level 4 use of force reports; that were completed between October 1, and December 31, 2010.

Task 24.1 requires that members/employees notify their supervisor as soon as practicable following any reportable use of force or allegation of excessive use of force (compliance standard: 95%). To assess this subtask, we reviewed the UOF reports, crime reports (when applicable), and Computer Assisted Dispatch (CAD) purges for all of the force incidents in our dataset. We found that the documentation for all of the incidents we reviewed, with the exception of one Level 3 use of force, was in compliance with this requirement. The supervisor in the one Level 3 case was not notified as required until two hours and 25 minutes after the use of force occurred. Level 4 uses of force are self-reporting, and consequently, less documentation is required than for Levels 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 64 Level 4 incidents in our sample, a supervisor was promptly notified regarding the force incident. OPD is in compliance with Task 24.1.

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During our November 2010 site visit, we urged OPD to be diligent in the report review process to prevent the conflicts that occur when OPD personnel who were involved in a use of force incident conduct the investigation or review of the incident. OPD has assigned a sergeant full-time to review submitted use of force reports for quality and completeness. The sergeant returns reports for any necessary corrections, and counsels' investigators not to conduct an investigation in the future if they are in any way involved in the use of force that is being investigated.

However, during this reporting period, we noted investigator conflicts in two of the use of force reports we reviewed. In the first case, the supervisor conducting the investigation was an active participant in, and witness to, the use of force. During the command review process, this issue was noted, documented, and addressed through training. In the second report, the investigator listed himself on Part 3 of his use of force report as a witness to the force, but did not articulate *what* he witnessed. The Incident Recall Sheet indicates that the UOF investigator was at one of the two related incident scenes. In this case, the investigator conflict was not noted or addressed by the chain of command review process.

During our most recent site visit, we followed up with OPD regarding the Department's research into a possible technology solution to prevent investigator and reviewer conflicts from occurring, by using computer database tracking in the use of force report intake and assignment process. OPD advised that a technology solution is not available at this time. We will continue to review use of force reports closely for such conflicts, and will follow up on this issue during future reporting periods.

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%). Ninety-nine percent of the use of force reports, crime reports, and supplemental reports for the incidents in our sample met these requirements. In one Level 4 case, only three of six officers completed the required reports documenting that they drew and pointed their firearms intentionally at another person. 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 UOF reports; and for Level 4 incidents, the information frequently appeared in the actual crime or offense reports. 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 but one of the 24 applicable Level 1, Level 2, and Level 3 incidents in our sample. This represents a 96% compliance rate. The one incident involved a traffic accident and arrest of the driver for driving under the influence of alcohol and/or drugs. As noted above, the involved officers did not report the use of force until two hours and 25 minutes

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after the use of force. As a result, the investigator was prevented from observing or collecting physical evidence from the scene and from identifying and interviewing any witnesses. The investigator interviewed both involved officers and contacted possible witnesses over the telephone. Conducting some or all of an investigation over the telephone can have an adverse impact on the quality and thoroughness of the inquiry. The supervisor documented the lack of timely notification in the report, and the Department took corrective supervisory action to address the involved officers' failure to report the use of force in a timely fashion. 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%). We reviewed two Level 1 use of force reports during this reporting period, and the required notifications were made in both cases. OPD is in compliance with these subtasks.

Task 24.9 requires OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS), now the Personnel Assessment System (PAS) (compliance standard: 95%). During the third reporting period, we noted that PAS contained only limited information about the use of force reports – namely, the report number, corresponding crime report number, the force level and type of force used, the incident date, and some other basic information. During the fourth reporting period, OPD began to enter narratives from the use of force reports into PAS. While we have reviewed a selection of this data, we conclude that OPD has not yet sufficiently institutionalized a sustained practice of supervisory scrutiny that would warrant a compliance finding.

OPD is in partial Phase 2 compliance with Task 24.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

¹³ Task 24.7 is no longer applicable.

Task 25: Use of Force Investigations and Report Responsibility

Requirements:

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

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

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

Comments:

During the fourth reporting period, we found the Department in compliance with Task 25.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 25. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 25. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, we requested and reviewed 88 use of force reports, including: two Level 1, 13 Level 2, and nine Level 3 use of force reports; and a sample of 64 Level 4 use of force reports; that were completed between October 1, and December 31, 2010.

Task 25.1 requires IAD to complete a use of force report for every Level 1 use of force, and an on-scene supervisor to complete a use of force report for every Level 2 and 3 use of force (compliance standard: 95%). To assess this requirement, we reviewed documentation for 24 Level 1, Level 2, and Level 3 incidents. In all of the Level 2 and 3 incidents in our sample, a

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

Task 25.2 requires that use of force reports/investigations include NSA-required elements (compliance standard: 90%) and are timely pursuant to DGO K-4 (compliance standard: 95%). All of the reports we reviewed for this subtask included the NSA-required elements. During our most recent site visit, we discussed with OPD use of force investigators' use of "boilerplate" or "pat" language. We advised the Department that the language included in the NSA (such as "fighting stance") serves merely as an *example* of such language. We noted that we have seen in our assessments several different instances of "boilerplate" or "pat" language. OPD commanders should look for such language when examining use of force reports.

To assess investigation timeliness, we used a 60-day time limit for Level 1 incidents, and a 15-day time limit for Level 2 and Level 3 incidents. For Level 4 incidents, OPD now requires a review of the report by the end of the reviewing supervisor's next scheduled workday. This is a recent change – which we supported – from requiring a supervisor's review by the end of the tour of duty.

Six of the reports we reviewed were not submitted in a timely fashion, according to their respective requirements. In four of the six cases, investigators did not request extensions. We reviewed the two reports in which extensions *were* requested; neither met the new timelines granted by the authorized extensions. In one of these reports, the investigator requested three different extensions, but the report still did not meet the final deadline. In the other investigation, the first request for an extension was not made until eight days after the report had already passed the 60-day timeline. As only 93% of the reports we were reviewed were submitted in a timely fashion, OPD is not in compliance with Task 25.2.

Task 25.3 requires that all supervisors are trained on how to conduct use of force investigations and such training is part of a supervisory training course (compliance standard: 95%). During our most recent site visit, we met with OPD personnel to determine if periodic refresher training regarding use of force reporting requirements was provided to all officers and supervisors in the fall of 2010; and to discuss the lesson plans on this subject that we received from the Training Division. According to the Department, OPD provided use of force refresher training to 92% of its supervisors and officers who conduct or review 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.

We will review a new sample of supervisors' training records during the next reporting period to verify that they received the required use of force training. OPD is in compliance with Task 25.3.

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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. All of the Level 1, Level 2, and Level 3 reports we reviewed during this reporting period were in compliance with this requirement. 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 the Level 1, Level 2, and Level 3 reports we reviewed, with the exception of one Level 3 incident, the chain of command reviewed and commented on the quality of the investigations, as required. As noted in Task 24 above, in this case, the investigator listed himself on Part 3 of his use of force report as a witness. The investigator does not articulate *what* he witnessed in this case. The Incident Recall Sheet indicates that the investigator was at one of two related incident scenes. The conflict was not noted or addressed with the chain of command review process.

All of the Level 4 reports were reviewed by supervisors, as required.

OPD is in compliance with Task 25.5.

Task 25.6 addresses the need to keep officers involved in use of force incidents resulting in serious injury or death, or involved in a shooting, be separated from each other at the scene, and kept apart until they have been interviewed and completed their reports (compliance standard: 95%). We found the applicable Level 1, Level 2, and Level 3 reports in compliance with this requirement. OPD is in compliance with Task 25.6.

OPD is in partial Phase 2 compliance with Task 25.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will discuss with OPD the timeliness issues associated with the Level 1 use of force cases, and the new timelines established by report extension requests.

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Task 26: Use of Force Review Board (UFRB)

Requirements:

OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:

- 1. Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
- 2. Require the FRB to review all use of force investigations;*
- 3. Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
- 4. Require the FRB to forward sustained policy violations to the Discipline Officer.*
- 5. Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
- 6. Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
- 7. Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
- 8. Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
- 9. Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Comments:

During all the previous reporting period, we found OPD in compliance with Task 26.

Discussion:

As previously reported, our review of Department General Order K-4.1, *Force Review Boards* (August 1, 2007), determined that this policy comports with the requirements of Task 26. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 26.1 requires that the Force Review Board (FRB) review all Level 2 use of force investigations following the completion of the internal investigation (compliance standard: 95%). DGO K-4.1 requires that the FRB chair convene an FRB to review the factual circumstances of all Level 2 cases within 90 days of receipt of the use of force packet from IAD. OPD provided documentation for 23 incidents that were heard by the board during this reporting period of October 1, through December 31, 2010. We determined that all but one of the 23 reports, or 96%, were in compliance. OPD is in compliance with this subtask.

Task 26.2 requires that for every Level 2 use of force investigation, the FRB make a recommendation as to whether the use of force was in or out of policy (compliance standard:

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95%). Of the cases we reviewed, all 23, or 100%, contained a recommendation noting the use of force was in compliance or not in compliance with policy. The one case that was found to be not in compliance with policy involved an accidental discharge of a firearm. All but one of the 23 FRB reports noted agreement with the recommendation of the FRB by the Chief or his designee. OPD is in compliance with this subtask.

Task 26.3 requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to IAD for investigation (compliance standard: 95%). There was one case during this reporting period in which that determination was made. The board directed the Force Board Coordinator to refer the use of force incident to IAD for a finding of policy non-compliance. OPD is in compliance with this subtask.

Task 26.4 requires that the FRB make recommendations to the Chief of Police regarding additional use of force training, changes in policies or tactics, additional standards, investigatory policies, or training for use of force investigations (compliance standard: Yes/No). During the current reporting period, the FRBs identified policy needs and training issues, including difficulty communicating with subjects due to the lack of Spanish-speaking OPD personnel on scene; and in the areas of tactical training, equipment, use of force reporting, and corrective supervisory counseling. OPD is in compliance with this subtask.

Task 26.5 requires that the FRB conduct an annual review of use of force cases examined to identify any patterns of use of force practices (including K-3) that may have policy or training implications (compliance standard: Yes/No).

Of the 92 reports tracked, the following is a breakdown of the types of force used:

Type of Force	Number
TASER incident	4
Strikes to the head, other than intentional with an impact weapon	33
Impact/impromptu weapon with contact	23
Canine bites	23
Any use of force resulting in an injury other than Level 1	15
Unintentional firearm discharge with no injury	1
Carotid restraint without loss of consciousness	2
Other	17

The above totals 118 – higher than the 92 use of force incidents due to multiple types of force used and reported in several of the incidents.

Several patterns or practices were identified and addressed by the FRB:

- Officers continue to chase suspects who they believed to be armed with handguns into yards “Code 5.”

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- Officers are striking resisting suspects to the head with either their fists and/or palm-hammer strikes.
- Officers document in their reports they had to use force because of the risk that a suspect may be armed; however, they are not appropriately considering tactics during high-risk situations.
- Canine officers, supervisors, and commanders need to consider modifying the canine announcement to fit the incident in question – for example, circumstances in which the warning announcement would jeopardize officer safety.

The FRBs have been tasking supervisors to train their officers at the board's direction after the board has identified training issues. The supervisors are required to document this training in the officer's Supervisory Note File and enter the information into PAS. More involved training is conducted by subject-matter experts, and a training roster is submitted to the Training Division. 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 creates new information or training bulletins, which are distributed to OPD personnel via the Department's electronic PowerDMS system.

OPD is in compliance with this subtask.

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). Subtasks 26.5 and 26.6 are addressed in a memorandum submitted to the Chief dated March 14, 2011. The memorandum identifies use of force patterns or practices, identified in Task 26.5 above. The memorandum also makes training recommendations, related to the board's tasking of supervisors with conducting training on issues identified by the board, and the submission of the training conducted to the board. The memorandum states that the FRB now orders that involved officers attend hearings so that, if necessary, command personnel can also provide training during the actual hearings. OPD is in compliance with this subtask.

OIG audited seven use of force incidents that were heard by the FRB in October 2010, and found them to be 100% in compliance with Task 26. OIG also audited six incidents heard by the FRB in November 2010, and found that one case – involving an accidental discharge of a firearm – was untimely and therefore out of compliance. This case was part of our sample for this reporting period, and is mentioned above.

During our November 2010 site visit, we observed one FRB hearing. The Deputy Chief of the Bureau of Field Operations advised us that the involved officer(s) will be questioned in future boards, and noted that the police union was notified about this change.

OPD is in Phase 2 compliance with Task 26.

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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. However, the Department did not schedule any FRBs during our most recent site visit. Upon our arrival in Oakland, we inquired about this with OIG, and were told that it was not feasible to hold the FRB until a few weeks after our site visit. We again strongly urge the Department to schedule its FRB hearings during our quarterly site visit; it is critical to our assessments that we be able to observe and evaluate the FRB process.

During our next site visit, we will meet with the Force Board Coordinator and IAD to determine what additional measures the Department is taking to coordinate information between the units for the purposes of sustaining compliance.

Task 30: Firearms Discharge Board of Review

Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
2. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Comments:

During the fourth reporting period, we found the Department in compliance with Task 30.

Discussion:

As previously reported, OPD published Departmental General Order K-4.1, *Force Review Boards* (February 17, 2006), which incorporates the requirements of Task 30. OPD revised DGO K-4.1 on August 1, 2007. The revised policy also incorporates the requirements of Task 30. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

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During our most recent site visit, we followed up with OPD regarding the Department's proposed revisions to DGO K-4.1. According to the Department, no changes to this policy will be implemented at this time.

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%). During this reporting period, we reviewed documentation for one Level 1 force incident in which an off-duty OPD officer intervened after observing the assault of a baby near a roadway. The officer was assaulted by the suspect, so he used his Department-issued firearm to strike the suspect over his head to stop the threat.

During our November 2010 site visit, we observed the EFRB for this incident. As required by policy, OPD convened this EFRB within 45 days of the completion of the use of force report covering the incident. In addition, the EFRB report was completed within the 60-day required timeframe. 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). In the documentation we reviewed, recorded statements and/or transcripts were available from all officers on the scene and other personnel needed to testify. OPD remains in compliance with this subtask.

Task 30.3 requires that OPD complies with the policies and procedures set forth in DGO K-4.1, *Force Review Boards* (compliance standard: Yes/No). This policy outlines several requirements, including who comprises the board, the material to be made available for the board, the conduct of the board, the information to be memorialized and follow-up actions, if warranted. We reviewed the report that was prepared for the one incident that was heard by the board during the current reporting period. The required attendees were present; and after review and deliberations, the board determined that the subject officer's actions were in compliance with Departmental policy. The EFRB finding was endorsed by the Chief. The board ordered that the Department distribute a policy about officers taking police action while in plainclothes, the adequacy of equipment, tactics, and training issues. After the board concluded its duties, an officer received training through the board's chair. OPD is in compliance with this subtask.

OPD is in continued Phase 2 compliance with Task 30, though this finding is based on only one case for the second consecutive reporting period.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

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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. However, the Department did not schedule any EFRBs during our most recent site visit. Upon our arrival in Oakland, we inquired about this with OIG, and were told that it was not feasible to hold the EFRB until a few weeks after our site visit. However, we learned that OPD held one EFRB just two weeks before we arrived in Oakland. We again strongly urge the Department to schedule its EFRB hearings during our quarterly site visit; it is critical to our assessments that we be able to observe and evaluate the EFRB process.

Task 33: Reporting Misconduct

Requirements:

Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

Misconduct

OPD personnel shall report misconduct by any other member or employee of the Department to their supervisor and/or IAD. The policy shall state that corrective action and or discipline shall be assessed for failure to report misconduct. OPD shall require every member and employee encountering a use of force that appears inappropriate, or an arrest that appears improper, to report the incident to his/her supervisor and/or IAD. OPD shall establish and maintain a procedure for a member/employee to report police misconduct on a confidential basis.

- 1. Any member/employee of OPD may report a suspected case of police misconduct confidentially to the commander of IAD.*
- 2. The member/employee reporting this conduct shall indicate clearly to the commander of IAD that the report is being made under these confidential provisions.*
- 3. The report may be made in person, by telephone, or in writing. The IAD Commander shall document the report in a confidential file that shall remain accessible only to the IAD Commander.*
- 4. The case shall be investigated without disclosure of the complainant's name, unless and until such disclosure is required by law.*
- 5. This confidential reporting procedure shall be made known to every member/employee of OPD and to all new members/employees of OPD within two (2) weeks of hiring.*

(Negotiated Settlement Agreement VI. A.)

Comments:

During the first three reporting periods, our queries of the IAD database revealed no cases in which a member failed to report the misconduct of another member. In light of the fact that

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there was no new data and that the Department was previously found not in compliance, we found there was no affirmative justification for altering the previous findings, and determined the Department to be not in compliance with this Task. During the last reporting period, we identified one case in which it appeared that misconduct should have been recognized and reported by OPD employees. We were disturbed that IAD opened the case based on the complaints of citizens who had learned of the event via news coverage. However, we found OPD in compliance with the procedural subtasks (Tasks 33.3-33.3.4) of Task 33. Accordingly, we held OPD in partial compliance with this Task.

Discussion:

As we have noted previously, OPD has developed several policies that, in concert, incorporate the requirements of this Task. These include: *Manual of Rules* (MOR) Section 314.48, Reporting Violations of Laws, Ordinances, Rules or Orders; MOR Section 314.49, Confidential Reporting of Police Misconduct; Departmental General Order D-16, Check-In and Orientation; MOR Section 370.18, Arrests; and MOR Section 370.27, Use of Physical Force. The Department has trained at least 95% of relevant personnel on these policies, and is in continued Phase 1 compliance with this Task.

Task 33.1 requires that in all sustained internal investigations, OPD conducts an assessment to determine whether members/employees/supervisors knew or should have known that misconduct occurred (compliance standard: 95%); and **Task 33.2** requires that where OPD determines that members/employees/supervisors knew or should have known that misconduct occurred but did not report it as required, OPD is required to take appropriate action (compliance standard: 95%).

To assess OPD's Phase 2 compliance with these subtasks during this reporting period, we met with IAD personnel and queried the IAD database to identify any cases with sustained findings that were approved during October 1, 2010, through December 31, 2010, that were applicable to Task 33. We found no cases identified by OPD where a member failed to report the misconduct of another member.

We found that during the quarter under review, one case had been reported confidentially to IAD. The IAD captain personally took the complaint and established a confidential file that he has maintained in his safe. He briefed the Chief concerning the complaint but, at the Chief's direction, did not identify the complainant to the Chief. The captain developed a plan to investigate the complaint without revealing to anyone else in OPD that IAD had even received such a complaint.

We also reviewed all 31 of the IAD cases in which findings were sustained during the current reporting period to determine if officers or employees were or should have been aware of misconduct and failed to report it. We found no case in which it appeared that misconduct should have been recognized and was not reported by OPD employees.

In our last report, we noted one case in which there was a failure of a member of the Department to report the conduct of another member to IAD. Several OPD members had attended a public

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event during which an OPD sergeant engaged in inappropriate conduct; however, the case was opened by IAD based on the complaints of citizens who had learned of the event via news coverage. The fact that numerous officers failed to report this problem is more than sufficient to justify our finding. We remain deeply concerned that the true dimensions of this failure were not better appreciated up the chain of command in the Department.

Despite this, OPD is in compliance with Tasks 33.1 and 33.2.

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%).

The 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. During this reporting period, OPD hired two new employees; both were briefed on the Department's confidential reporting procedures. The Department is in compliance with Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4.

OPD is in Phase 2 compliance with Task 33.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:

- a. *Time, date and location;*
- b. *Identification of the initiating member or employee commencing after the first year of data collection;*
- c. *Reason for stop;*

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- d. *Apparent race or ethnicity, and gender of individual(s) stopped;*
 - e. *Outcome of stop (arrest, no arrest);*
 - f. *Whether a search was conducted, and outcome of search;*
 - g. *Offense categories (felony, misdemeanor or infraction).*
2. *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*
 3. *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to "Promoting Cooperative Strategies to Prevent Racial Profiling."*

(Negotiated Settlement Agreement VI. B.)

Comments:

During the first two reporting periods, we found the Department out of compliance with Task 34, as officers were not completing the required forms as set forth in the NSA, and we were concerned with the accuracy of data entry. During the third reporting period, we deferred our compliance determination, due to the issuance of a new Departmental policy that set new procedures for the collection and storage of the data concerning all investigative stops of citizens. During the fourth reporting period, we were encouraged by the efficiency of officers entering the required stop data into the Field Based Reporting (FBR) computer system. However, we were concerned that the "reason for the stop" was not being clearly identified to support a constitutional basis and authority for the stops, and found OPD in partial compliance with Task 34.

Discussion:

As previously reported, General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*; and Report Writing Manual (RWM) Inserts R-2, N-1, and N-2 incorporate the requirements of Task 34. As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

On June 12, 2010, OPD issued Special Order 9042, *New Procedures Regarding Stop Data Collection*, which updates DGO M-19 and RWM R-2; and used its electronic PowerDMS system to disseminate Special Order 9042 to the Department. As reported during the fourth reporting period, although we verified via PowerDMS that nearly 96% of relevant personnel received and read the new procedures, we are concerned that this sort of computer-based instruction is insufficient to train officers on this critical new Department policy. We urge OPD to provide more substantial *in-person* training on Special Order 9042.

Task 34.1 requires that Stop Data Forms be filled out for every vehicle stop, field investigation, and detention (compliance standard: 90%). To assess Task 34.1 during this reporting period, we reviewed a random sample of 390 stops to match them with corresponding completed Stop Data Forms. Our sample included: 190 Computer Aided Dispatch (CAD) entries; 100 Field Contact Cards; and 100 traffic citations entered by Alameda County. Using the Department's Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 95% of the stops in our sample. OPD is in compliance with Task 34.1.

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Task 34.2 requires that Stop Data Forms are filled out with the following information: 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop (arrest or no arrest); 9) whether a search was conducted; 10) outcome of any search; and 11) offense category (felony, misdemeanor, or infraction) (compliance standard: 85%). The entry of stop data into the Field Based Reporting (FBR) system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system does not allow the form to be completed.

Despite OPD's progress in officers' completion of Stop Data Forms, we remain concerned that, in pedestrian stops, the reason for the stop is not clearly identified to support the Constitutional standards requirement. More specifically, none of the options available for officers to select under "5) reason for the stop" clearly elicit or help to articulate an identifiable basis and/or authority for the stop.

Special Order 9042 mandates that, for each investigative encounter and consent search not resulting in an arrest, a Field Contact Card be completed that documents the reason for the encounter or search. The necessary supporting information may be documented on a Field Contact Card, but that report is independent from the Stop Data Form. The Department has discussed the possibility of integrating these forms in the future. Such an integration – if the Department conducts accompanying training on the Constitutional standards – may meet the necessary documentation requirements.

As we identified OPD's failure to justify or adequately document the reasons for the stop in the sample we reviewed during the last reporting period, we examined a selection of pedestrian stops during this reporting period, and found that many of them documented the justification/reason for the stop. We will continue to follow this issue closely. OPD is currently conducting line-up training on properly articulating the reason and legitimacy of stops and searches. We will observe this training, and determine if officers are adequately documenting the reasons for their stops in future reporting periods. The Department is not in compliance with Task 34.2.

Task 34.3.1 requires that OPD have a stop data database that can be summarized, searched, queried, and reported by personnel authorized by OPD (compliance standard: Yes/No). As per Special Order 9042, officers "complete an electronic FPR [Field Based Reporting] Stop Data Collection Form (SDF) for certain arrests, every detention not resulting in an arrest (vehicle, walking, and bicycle stops), every consent search of a person conducted and any other investigative encounter. A SDF shall also be completed for consensual encounters (contacts) where the member talks with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, although the person is free to leave." Data from the electronic Field Based Reporting system is automatically sent to the Department's Forensic Logic Quicksearch program. Quicksearch allows Department personnel to search for and query officers' stop data. We experimented with the Quicksearch program and found that the stop data is summarized and easy to review. The Department is in compliance with Task 34.3.1.

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Task 34.3.2 requires that the data captured on the Stop Data Forms be entered completely and accurately into the database (compliance standard: 85%). As noted above, the entering of stop data into the Field Based Reporting system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system will not allow the form to be completed. Task 34.3.2 was created to govern the submission of data from the written forms to the computerized system. Since this type of data entry is no longer necessary, the Department is in compliance with Task 34.3.2.

OPD is in partial Phase 2 compliance with Task 34.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will meet with the sergeant who oversees the Department's stop data systems and other relevant Department personnel to discuss the Department's progress. We will further discuss with the Department its various Task 34-related data systems to assess their operability, accuracy, and utility in storage and ease of access to stop data. We will continue to work with OPD on ways to verify the legal basis for stops, searches, and other related activities expeditiously. During the next reporting period, we will again review a sample of Field Contact Cards to analyze the legitimacy of stops and/or subsequent activity.

Task 35: Use of Force Reports - Witness Identification

Requirements:

1. *OPD shall require, by policy, that every use of force report, whether felonies were involved or not, include the names, telephone numbers, and addresses of witnesses to the incident, when such information is reasonably available to the members/employees on the scene.*
2. *In situations in which there are no known witnesses, the report shall specifically state this fact. Policy shall further require that in situations in which witnesses were present but circumstances prevented the author of the report from determining the identification or phone number or address of those witnesses, the report shall state the reasons why the member/employee was unable to obtain that information. Reports shall also include the names of all other members/employees of OPD witnessing the use of force incident.*

(Negotiated Settlement Agreement VI. C.)

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Comments:

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

Discussion:

As previously reported, OPD published Special Order 8066, *Use of Force—Witness Identification* (April 12, 2004), which incorporates the requirements of Task 35. Additionally, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which also incorporates the requirements of Task 35. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 35. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for Task 35 for this reporting period, we reviewed 24 use of force reports, including: two Level 1, 13 Level 2, and nine Level 3 use of reports covering incidents that occurred between October 1, and December 31, 2010. (Per DGO K-4, Level 4 use of force reports does not require witness identification.)

We assessed Task 35.1 in conjunction with Task 35.2. **Task 35.1** requires that UOF 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, UOF reports specifically state this fact (compliance standard: 90%). All but one of the 24 UOF reports in our dataset comported with these requirements. In the one case, the investigator documented in his report that he was not notified promptly by the officers involved after the incident; and by the time he responded to the scene, the witnesses had already dispersed. This lack of timely notification, required by OPD policy, prevented the investigator from expeditiously identifying and interviewing witnesses at the scene. The overall compliance rate for these subtasks is 96%. OPD in compliance with these subtasks.

Task 35.3 requires reports to document instances where witnesses are present but circumstances prevent the author of the report from gathering the data (compliance standard: 90%). Of the 24 applicable UOF reports we reviewed, none fell into this category. OPD is in compliance with Task 35.3.

Task 35.4 requires that UOF reports include the names of all other OPD members/employees witnessing the incident (compliance standard: 90%). We found no instances when an OPD witness was not documented in any of the 24 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

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Next Steps:

During our next site visit, we will discuss with OIG any of its recent Task 35 audits, and incorporating into OIG's annual planning the scheduling of periodic announced and unannounced audits of this Task to sustain compliance, oversight, and accountability.

Task 37: Internal Investigations - Retaliation Against Witnesses

Requirements:

OPD shall prohibit retaliation against any member or employee of the Department who:

- 1. Reports misconduct by any other member or employee, or*
- 2. Serves as a witness in any proceeding against a member or employee.*

The policy prohibiting retaliation shall acknowledge that retaliation may be informal and subtle, as well as blatant, and shall define retaliation as a violation for which dismissal is the presumptive disciplinary penalty. Supervisors, commanders and managers shall be held accountable for the conduct of their subordinates in this regard. If supervisors, commanders or managers of persons engaging in retaliation knew or reasonably should have known that the behavior was occurring, they shall be subject to the investigative, and if appropriate, the disciplinary process.

(Negotiated Settlement Agreement VI. E.)

Comments:

During previous reporting periods, we found that all of the cases alleging retaliation against an employee or member of OPD were investigated appropriately, and that the IAD findings were reasonable. As a result, we found the Department in compliance with Task 37.

Discussion:

As previously reported, we found OPD in continued Phase 1 compliance with this Task. OPD published Special Order 8092 on November 23, 2003, which incorporated the requirements of Task 37. This policy consists of two Manual of Rules (MOR) sections: 398.73, *Retaliation Against Witnesses*; and 398.74, *Retaliation Against Witnesses, Accountability*. These MOR provisions (revised in lieu of a City policy on retaliation) incorporate the requirements of Task 37. OPD has trained at least 95% of relevant personnel on these policies.

Task 37.1 requires that officers be held accountable for retaliating against employees or members who report misconduct or serve as witnesses in proceedings against other members/employees (compliance standard: 95%); and **Task 37.2** requires that supervisors, commanders, and managers be held accountable if they knew or reasonably should have known that persons under their supervision engaged in retaliation (compliance standard: 95%).

We noted in our last report a case involving an officer who claimed that his supervisor had subjected him to a number of petty insults. The officer claimed that after he reported his supervisor's harassment to IAD, his supervisor continued to harass him and his fellow officers

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shunned him. During the last reporting period, we found OPD in compliance with Task 37, but questioned the IAD investigative process that produced denials by the supervisor and the complainant's fellow officers who said they had observed no such incidents. Since all officers denied his allegations, the investigation was concluded and the allegations in the case were held as "not sustained." In this particular case, we were concerned that all the investigative remedies might not have been exhausted and the investigation might very well have been concluded prematurely. Further, the Department missed the opportunity to conduct a more confidential inquiry involving tactics such as integrity tests or close command observation.

In a case that was closed during the current reporting period, an employee of OPD alleged that her supervisors harassed her with rude and demeaning comments, and an unfair performance deficiency notice (PDN); and that after she complained to IAD, they retaliated against her by eliminating her position. IAD conducted an investigation of the charges, interviewing and re-interviewing the complainant, the subjects, and a number of witnesses. The complainant's two allegations of retaliation were investigated, analyzed, and determined to be unfounded and not sustained. Regarding the allegation that the complainant's job was being eliminated as retaliation was determined to be unfounded, as apparently the idea of eliminating the position in order to save the Department money had been a pending recommendation for at least two years (and was outlined in a September 2008 report from the Mayor).

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)*

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- If such force occurs, a Use of Force report is required.*
4. *All officer-involved shootings and firearms discharges, both on duty and off duty, excluding an intentional discharge while at a range facility; a discharge while engaged in a lawful recreational activity, such as hunting or target practice; a discharge by Criminalistics Division personnel for the purpose of scientific examination; and a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury;*
 5. *All on-duty vehicle pursuits and on-duty vehicle collisions;*
 6. *All complaints, whether made to OPD or CPRB;*
 7. *All civil suits and/or tort claims related to members' and employees' employment at OPD, or which contain allegations which rise to the level of a Manual of Rules violation;*
 8. *Reports of a financial claim as described in Section VI, paragraph G (3).*
 9. *All in-custody deaths and injuries;*
 10. *The results of adjudications of all investigations related to items (1) through (9), above, and a record of investigative findings, including actual discipline imposed or non-disciplinary action administered;*
 11. *Commendations and awards;*
 12. *All criminal arrests of and charges against OPD members and employees;*
 13. *All charges of resisting or obstructing a police officer (Penal Code §§69 and 148), assault on a police officer (Penal Code §243(b)(c), or assault-with-a-deadly-weapon on a police officer [Penal Code §245(c)(d)];*
 14. *Assignment history and rank history for each member/employee;*
 15. *Training history for each member/employee;*
 16. *Line-of-duty injuries;*
 17. *Sick leave usage, particularly one-day sick leaves;*
 18. *Report Review Notices or Case Evaluation Reports for the reporting member/employee and the issuing investigator;*
 19. *Criminal cases dropped due to concerns with member veracity, improper searches, false arrests, etc.; and*
 20. *Other supervisory observations or concerns.*

(Negotiated Settlement Agreement VII. A.)

Comments:

In the last reporting period, we found the Department in partial Phase 2 compliance with Task 40. We had found OPD not in Phase 2 compliance with Task 40 in the previous, or third, reporting period. At that time, we found that OPD had no way to ensure that data was posted in a timely fashion or to inform its users as to when data had been last posted.

Discussion:

As previously reported, OPD published Departmental General Order D-17, Personnel Assessment Program (February 24, 2007) which incorporates the requirements of Task 40 and Task 41. OPD published a revised version of D-17 on August 20, 2008. The revised version

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also incorporates the requirements of Task 40 and Task 41. Based on verification that the Department has trained at least 95% of relevant personnel on the revised policy, we found OPD in continued Phase 1 compliance with this Task.

Tasks 40 and 41 require that OPD develop and implement a computerized relational database to manage risk; promote professional practices; and evaluate and audit the performance of all OPD employees, units, subunits, and shifts. Task 40 governs the data requirements of the system, and Task 41 governs the way the system is to operate as a risk management tool. By all indications, these two Tasks are critical to the overall Agreement, in that they provide a system for assessing the conduct of OPD personnel, identifying those who need early intervention to prevent more substantial problems, and carrying out and managing that intervention. Together, Tasks 40 and 41 define a complex system involving the collection and analysis of numerous pieces of information, and clear action on that analysis, when appropriate.

The system in place to address Tasks 40 and 41 is known as the Personnel Assessment System (PAS). In our previous reports, we commented on the bifurcation of this system and the potential problems related to limited computerization of some parts of the system. OPD has had only limited success addressing these problems with one vendor with whom the Department had a longstanding relationship, and it is currently exploring alternative approaches. Key staff will be in a position to report on their exploration of alternative systems during our next site visit.

During our February site visit, we once again reviewed a variety of data relevant to these Tasks, including a wide range of documents covering all aspects of PAS. Tasks 40 and 41 are divided into 33 practice-related subtasks that include 12 additional lower-level provisions. As with our previous reviews, we requested and received from OPD material for each of the Tasks and subtasks, and our data analysis replicated and extended the data request of the previous monitor in its last review of these Tasks.

With regard to Phase 2 compliance, PAS records for the quarter of October 1, through December 31, 2010 show that data were entered for all fields required by Task 40. A total of 34,647 pieces of information were entered for the quarter. This included 981 uses of force; 215 misconduct complaints; 3,225 notes by supervisors; and 2,532 arrests. The largest categories of information are training history (3,493), sick leave hours (12,207), assignment history (8,460) and rank/class history (2,229). A further breakdown of the types of use of force shows that for the quarter, there were three Level 4 incidents, 15 Level 2 incidents, 42 Level 3 incidents and 920 Level 4 incidents. While the previous quarter had no reported case review notices, 490 positive case review notices and three negative reviews were reported for this quarter. No cases were reported dropped due to concerns about search or arrest procedures. One civil suit and 25 financial claims were documented. See the table below for a summary of indicators and changes over time.

Task 40 requires that PAS contain information on each of the elements required by the NSA. In earlier reporting periods, we found the Department's data collection and input process to be accurate. In our third quarterly report, however, we raised concerns about the timeliness of data entry and the lack of a system for tracking and report when data were entered. These issues were

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resolved with changes in data verification practices during the last reporting period, and they remain resolved for the quarter under review.

For this review, our interviews, examinations of reports, and queries of the system all indicate that the data collection continue to be timely and accurate. OPD has also continued to develop its own quarterly compliance assessment report for Task 40 and 41. This has remained an important quality control measure in the Department, and is consistent with a commitment to systematically address compliance requirements.

This process of quarterly self-assessment, examination, and remedial planning is a critical part of any complex data collection and storage program. It is an important quality control step developed by OIG. Our review of the recent document shows that it is again sufficient. The generation and use of this report is an important part of the PAS processes in the Department.

We noted in our last report that we were tracking one issue related to the data requirements of this Task. At that time, no instances of criminal cases dropped as a result of concerns over search or arrest practices, and no case review notices and evaluations, were reported. OPD has indicated that no cases in these categories have been reported. If the Department had, this data would be made available in PAS through IAD. As noted above, cases in these categories were reported for the quarter currently under review, thus resolving this concern. We will continue to review material related to this issue during our next site visit.

The following table was prepared by OPD and reviewed by the Monitoring Team. The tracking of these data allows OPD to use the system to not only assess individual officers, but also to consider trends at the overall Department level as well as in commands within the Department. The data presented here are not intended to reflect compliance criteria, but simply to serve as an indicator of how the process of risk management is proceeding. OPD has added several key components to its collection and display of the data. In particular, the PAS Administration Unit presents the data for each quarter since our tenure began. It presents comparisons between the last two quarters with a summary statement regarding increase or decrease. It also compares the last quarter to the average of all quarters since the last quarter of 2009, and includes a similar summary statement. The table shows decreases in five indicators and increases in four others in the comparisons with the last quarter and with the average. The table also shows decreases in the total number of arrests.

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PAS ADMIN UNIT STATISTICAL ANALYSIS									
OPD KEY INDICATOR - 4TH QUARTER 2010									
	4th 2009	1st 2010	2nd 2010	3rd 2010	4th 2010	increase / decrease from last quarter	average	above/ below	
Percent of Arrests Associated with									
A Use of Force (levels 1,2,3 - per reporting officer)	2.63	2.52	1.17	3.74	2.26	decrease	2.46	below	
A Use of Force (levels 1,2,3,4** - per reporting officer)	34.06	37.68	28.17	32.78	36.67	increase	33.87	above	
A Police Pursuit (per reporting officer)	3.09	2.63	4.61	3.65	3.08	decrease	3.41	below	
An IA Complaint (per subject officer sworn only)	8.09	7.42	6.94	9.56	6.67	decrease	7.74	below	
An In-Custody Injury	2.93	2.24	1.63	2.08	2.34	increase	2.24	above	
Each Hour of Sick Leave (excludes civilians)	170.01	201.55	169.77	279.48	362.81	increase	236.72	above	
Number of Arrests per									
Officer Involved Shooting (includes shootings involving animals which includes force types 1,21, 24, 27 and 26-21)*	1150	464	2767	462	337	decrease	1036.00	below	
Vehicle Collisions (excludes civilians)	139	186	461	231	300	increase	263.40	above	
Civil Suit (excludes civilians)	511	1546	2767	0	2697	decrease	1504.20	above	
All Arrest	4601	4639	5534	3694	2697	decrease	4233.00	below	

In the last reporting period, OPD had addressed our significant concern over unexplored delays in the recording of critical data. The Department instituted a system to check the timeliness of data entered into the system using a weekly report from the data custodians who are responsible for uploading information. The new procedures addressed our concern, allowing OPD to achieve partial Phase 2 compliance. The PAS Administration Unit is now working with the Information Technology Department to fully reflect the dates of data entry in the opening page of the PAS display.

It is important to note that we recognize that the PAS system is, and should be, subject to continuous improvement. Key personnel are working to ensure that the system continues to meet Departmental needs. There are, of course, limits to changes that would be consistent with the requirements of the NSA. For example, a question that has arisen within the Department involves the possibility of removing some officers, who are seen in a positive light, from full consideration under the system. Such a change would significantly diminish the completeness of data needed for the risk management system.

At the current time, existing policy reflects the requirements of the NSA. Issues regarding the accuracy and completeness of data have been addressed, making it possible to move forward from partial compliance in our last report. OPD is thus in Phase 2 compliance with Task 40.

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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.*

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15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Comments:

In the last two reporting periods, we found OPD not in Phase 2 compliance with Task 41. In each of our reports, we raised concerns about OPD's analysis of the application of the risk management process. In our third quarterly report, we expressed our concerns that the outcomes of the PAS review process did not fully address officer behavior in a manner consistent with the management of risk. In our fourth quarterly report, we noted improvement, but also that a large number of PAS cases were returned through the chain of command for review and rehearing. We judged the ultimate outcomes to be more satisfactory. However, the large volume of

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administratively prompted revisions was regarded as an indicator that the risk management system had not been sufficiently integrated into the operation of the Department as a whole.

Discussion:

As previously reported and noted above, OPD published Departmental General Order D-17, *Personnel Assessment Program*, which incorporates the requirements of Task 40 and Task 41. The Department trained at least 95% of relevant personnel on the policy. During the current reporting period, OPD also enhanced the training of supervisors in their role in the PAS process. Part of the training incorporates the new Information Bulletin, *Documenting PAS Activity Reviews and Analysis*. This was reported to us as a means of addressing the review problems mentioned above. Based on existing policy and the ongoing training, we find OPD in continued Phase 1 compliance with this Task.

During the current reporting period, we continued our examination of the stages of the PAS process consistent with this Task. We examined the threshold analyses that were performed for the period of October 1, through December 31, 2010. This included a review of the histogram analysis completed by the PAS Administration Unit and the identification of officers meeting the single event threshold.

During this reporting period, 40 officers were identified as meeting PAS thresholds or were referred by supervisors for review. Thirteen officers passed the threshold for complaints. Six exceeded the threshold for use of force. PAS Administration Unit staff have also indicated that they will continue to evaluate their use of the distributions of threshold data for the selection of officers recommended for review.

Along with the analyses noted above, we also reviewed notification memoranda and other PAS activity review and report documents, as well as the use of PAS for reasons other than threshold-initiated reviews. In accordance with this Task requirement, PAS processes were reviewed for the system's use in placement of officers on special assignment (six officers), transfer of officers (18 officers), and commendations (20 officers).

An important function of PAS is to regularly provide supervisors with relevant information on officers. To consider that function, we also verified reports of regular quarterly PAS command reviews of officers by supervisors in all OPD divisions.

The PAS process also calls for follow-up reports of officers under supervision or monitoring, as well as reports of officers not discharged from the process by the end of one year. We reviewed reports completed during the quarter under review. Our examination of 17 follow-up reports and reports of three officers not discharged from monitoring found that the documents provide sound descriptions of the officer/supervisor interaction and explanations for its current status.

The most critical use of PAS is in the supervisory review of officers who may be experiencing work-related problems. These officers are identified for PAS review through the threshold analyses. An examination of the processes and outcomes of these meetings, and the review of

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them up the chain of command, have been central in our compliance review process. For this reporting period, we examined the reports of 17 PAS reviews completed during the quarter under review. In the completed cases, no further action was recommended in six cases. In five cases, the recommendation was made for monitoring or supervision, and it was supported in the command review process. In six cases, recommendations for no action were rejected through the command review process. It is significant to note that the proportion of members or employees recommended for intervention or monitoring is substantially higher for this reporting period than was evident in our reviews for previous reporting periods.

The return of some cases for reconsideration by sergeants, and the increased use of recommendations for monitoring and supervision, reflect important progress in the operation of the risk management process at OPD. The Department is making progress regarding the concerns we raised in our two last reports. Continuation of that progress is critically important.

Finally, we also examined usage levels among supervisors in the Department. While there is variation across commands, there were also indications of substantial use. For the relevant quarter, supervisors continued to enter a large volume of supervisory notes. As noted in our previous two reports, supervisors appear to be making good use of the system.

Overall, the data continue to provide positive indicators of use of this system considering the problems noted in our previous reports. The basic processes of entry, storage, and analysis of data are taking place. The system is being managed well by the PAS Administration Unit. PAS reviews are held, and officers are placed in intervention and supervisory monitoring. The ongoing training of all sergeants in the use of PAS is also an important development during this reporting period. There is value in the bi-weekly PAS meetings, which were intended to identify and address system problems, as well as focus on issues linked to officer needs.

We attended one of these meetings during our most recent site visit. It was evident at this meeting that command staff were prepared to address questions about officers who were under review or selected for monitoring or supervision. However, we were concerned that during the meeting, an unexpected amount of time was spent discussing why surpassing thresholds did not accurately reflect the otherwise positive accomplishments of officers. This response reflects a limited and unjustified view of the risk management process. This process addresses measurable events that could negatively impact officers' careers and the Department as a whole. The system is intended to serve as a mechanism to assess all such events, evaluate them, and – when appropriate – respond in a constructive manner. The information collection and use can never be independent of a responsible process of supervisory review, but the processes of identification and review also cannot function without complete and accurate data and analyses.

We again acknowledge the efforts of OPD with regard to continued developments in the structure and use of PAS. The Department continues to be responsive to concerns that we have raised about the system. We continue to be hopeful about the progress being made.

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In our last report, we recognized that commanders' review of the risk management system resulted in a large volume of PAS reviews being returned to sergeants for reconsideration. We argued, however, that although this ultimately resulted in sound decisions, the volume of reversals was also an indicator that full implementation and commitment across the Department had not yet been achieved. We continue to regard this as a transitory problem that the Department can ameliorate with increased training, and as command staff continue to work closely with the supervisors who fall below them on the organizational chart.

We note a degree of progress in this area during the quarter under review. As described above, in PAS reviews, sergeants are now more likely to recommend mentoring or intervention, and fewer reviews are being rejected by command staff. These are positive steps, and reflect continued progress in the development and implementation of risk management in the Department. It would be premature to report that the current findings are sufficient to indicate that the issues raised in our earlier reports are resolved. Phase 2 compliance will thus depend on continued progress in this area, as reflected in evidence of proper functioning of the risk management system.

The integrity of this system rests equally on the quality of data available to the system and on the responsible use of the system by supervisors and managers. As might be expected, the Department first made progress on the technical aspects of data management. It is now making progress on the use of the system. As it does, we will look for results that achieve and sustain a level of quality that is consistent with expectations based on the Negotiated Settlement Agreement.

OPD is not in Phase 2 compliance with Task 41.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

We will continue to closely examine the processes of collection and storage of data and the use of that data in the PAS review process during our next site visit. We are particularly interested in the developments in the information technology part of this process, in light of the fact that OPD is considering major changes for the system. We recognize these as having significant implications for compliance. We will also examine reports of PAS activity reviews, with an interest in the quality of the reviews and the justification for decisions regarding monitoring or intervention. Of special interest to us will be the extent to which quality is reflected in the initial recommendations in the review process.

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During our next site visit, we will move forward with our analysis of both the data and PAS processes. As indicated above, we will examine documentation of the process for a sample of officers who have gone through it. We will also sample reports that are expected to be reflected in the in the PAS database. Finally, we will continue to support OPD's work on the risk management dashboard, for its overall value in supporting PAS and as a means of assessing the reliability of data. We do not regard this particular endeavor as affecting compliance but, along with the Department, recognize its indirect benefit to OPD as it pursues the goals of risk management consistent with the Negotiated Settlement Agreement.

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,

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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.

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Field Commander and FTO Supervisor Training

OPD shall provide field commanders and supervisors with training on the FTO program, including the field-training curriculum, the role of the FTO, supervision of FTOs and probationary employees, the evaluation process and the individual duties and responsibilities within the FTO program.

Focus Groups

The Field Training Program Coordinator and Academy staff shall conduct focus groups with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six (6) months after completion of the field training program, to determine the extent to which the Academy instructors and curriculum prepared the new officers for their duties.

Consistency of Training

The results of these focus group sessions shall be reviewed at a meeting to include the Training Division Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief. If it is determined that there is a substantial discrepancy between what is taught in the Academy and what is taught in the FTO program, there shall be a determination as to which is correct, and either the training Academy or the FTO program shall make the necessary changes so that the desired training information is consistent. In the event that the discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program as a whole, the review group shall determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The results of the meeting of this review group shall be documented and this information shall be provided to the Monitor. (Negotiated Settlement Agreement VIII. A.-L.)

Comments:

In August 2009, since no Academy was planned for the near future, the Parties agreed that there would be no active monitoring of this Task. In addition, since there were no new officers being trained, OPD decertified all then-current Field Training Officers (FTOs). During the past year, OPD recruited and began training 21 new officers and five lateral officers through the FTO program; however, during the second reporting period, due to the City's budget cuts, OPD laid off all new officers, both trainees and laterals, and 80 full-time OPD officers.

In January 2011, OPD returned 10 of the officers who had been laid off to the force. Those officers will be required to attend at least 40 hours of in-service training prior to returning to active duty. None of those returning officers are eligible for the FTO Program.

Discussion:

Due to the termination of the recruitment and training of new officers, this requirement has been placed in a deferred compliance status.

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Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

Task 43: Academy and In-Service Training

Requirements:

A. Academy Training Plan

Within 540 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Academy and in-service training to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions, and aware of and able to implement the most contemporary developments in police training. This plan shall include a review of OPD's training curriculum, with additional emphasis on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community. The plan shall also address the criteria and method for selecting OPD training instructors, the training provided to instructors, procedures for evaluating the content and quality of training provided to OPD personnel and procedures for maintaining training records for OPD personnel. In arriving at the plan regarding staffing, training content and methodology, OPD shall consult with at least four (4) other, large law-enforcement agencies within the United States which have excellent reputations for professionalism. In particular, OPD shall consult with these agencies about qualifications and other criteria to be used in selecting staff for training positions. OPD shall also review the approach of these other law enforcement agencies in training both new staff and experienced staff on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community.

B. Professionalism and Ethics

OPD shall expand professionalism and ethics as a training topic within the recruit academy, in-service training, and field training. Wherever possible, OPD shall include and address issues of professionalism and ethics using curricula that employ realistic scenario-based training exercises.

C. Supervisory and Command Training

OPD shall provide all sergeants and commanders with mandatory 40-hour in-service supervisory and leadership training. Officers shall attend training prior to promotion to the rank of sergeant. Lieutenants shall attend training within six (6) months of promotion. Such training shall include supervisory and command accountability, and ethics and professionalism, with emphasis on supervisory and management functions and situations, and shall include both scenario-based training and case studies.

D. In-Service Training

OPD shall provide all members with forty (40) hours of in-service training every eighteen (18) months.

1. *Sergeants shall receive at least 20 hours of training designed for supervisors*

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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.¹⁴

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

Comments:

Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. During the last reporting period, we reviewed a random sample of the training records for 100 employees in these positions, and found that OPD training records were complete, and that 100% of the members and employees in our sample received the required in-service training within the prescribed 24 months.

Discussion:

As previously reported, OPD published General Order B-20, *Departmental Training Program* (April 6, 2005), which incorporates the requirements of Task 43. As the Department has trained at least 95% of relevant personnel on this policy, we found OPD in continued Phase 1 compliance with this Task.

Task 43.1.1 requires that OPD's training plan ensures that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions (compliance standard: Yes/No). To assess this subtask, we interviewed OPD Training Division personnel; and, in previous on-site reviews, reviewed training schedules, course outlines, and lesson plans. We also reviewed the training records of a stratified random sample of 100 OPD members and employees, including 55 officers, 28 sergeants, three evidence technicians, and 14 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 member or employee, we reviewed the training s/he received during previous years, and calculated the number of hours recorded in his/her record. For the sworn officers in our sample, we credited the California Peace Officer Standards and Training (POST) certified Continued Professional Training (CPT) as counting toward the requirement. Ninety-seven (97%) of the 100 members and employees in our random sample received adequate training for their positions. All of the officers, sergeants, and evidence technicians in our random sample received the required training. Three dispatchers did not receive adequate training for their positions during the past two years.

¹⁴ The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

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OPD is in Phase 2 compliance with Task 43.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will again review the training records of a stratified random sample of OPD members and employees, including officers, civilian evidence technicians, sergeants, and dispatchers; to determine if the members and employees received adequate training for their positions.

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.¹⁵*

(Negotiated Settlement Agreement X. B.)

Comments:

Only two provisions of Task 45 (45.1 and 45.4) are being actively monitored under the MOU. During the last two reporting periods, we found the Department in compliance with Task 45.4; but out of compliance with Task 45.1, which requires that OPD maintain a centralized system for

¹⁵ The underlined requirements are the only provisions of Task 45 that are being actively monitored under the MOU.

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documenting and tracking all forms of discipline and corrective action. Previously, we determined that the IAD database can be used to identify cases in which findings were sustained, but that there are gaps in the data.

Discussion:

As previously reported, on December 5, 2006, OPD published General Order M-03, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy and Procedure Manual; and the Departmental Discipline Policy (Training Bulletin Index Number V-T), incorporate the requirements of Task 45. OPD published revised versions of the Training Bulletins on May 30, 2007, and is in the process of finalizing a new series of revisions to the policy. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 45.1 requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level (compliance standard: Yes/No). To assess Phase 2 compliance with this subtask, we queried the IAD database to identify all of the cases that were approved with at least one sustained finding between October 1, and December 31, 2010. This query revealed 31 cases, resulting in 37 sustained findings. On March 30, 2011, we reviewed the IAD database and found that only 84% of the sustained findings had the dates of discipline listed. During the last reporting period, we found that only 77% of the sustained findings had the dates of discipline listed. OPD is not in compliance with Task 45.1.

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

We found that in 31 of the 37 sustained findings in the 31 cases in our dataset, the discipline imposed fell within the Discipline Matrix then in use. In the remaining six findings, deviation from the Matrix was for sufficient purposes. In one case, the discipline range on the Matrix was up to a three-day suspension, and the Chief imposed a six-day suspension. In light of the facts of the case and the officer's behavior, this departure to impose a more severe penalty than set out in the Discipline Matrix was reasonable. In four cases, the officer responsible retired, was laid off, or resigned from the Department before discipline could be imposed. Where appropriate, OPD wrote letters to these officers advising them that should they return to active employment, the discipline would be imposed. In one case, the allegation was upheld, but the identity of the officers responsible could not be determined and, accordingly, no discipline could be imposed.

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During the period of October 1, through December 31, 2010, OPD decided and reported two cases following Skelly hearings.¹⁶ Our review revealed that both cases were decided after Skelly hearings on reasonable grounds. In both cases, the original discipline was upheld. OPD is in compliance with Task 45.4.

OPD is in partial Phase 2 compliance with Task 45.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We are currently reviewing proposed changes to DGO M-03, and we met extensively with Department personnel during our most recent site visit to discuss the policy revisions. These changes will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if approved, do not jeopardize compliance.

¹⁶ In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, the California Supreme Court ruled that as a part of due process, public employees are entitled to certain procedural safeguards before discipline is imposed against them. These include: (1) notice of the disciplinary action proposed to be taken; (2) a statement of the reasons therefor; (3) a copy of the charges and materials upon which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing the discipline. The ruling applies to dismissals, demotions, and suspensions, but not to so-called "informal discipline," such as reprimands, warning letters or oral warnings (It also does not apply to probationary employees).

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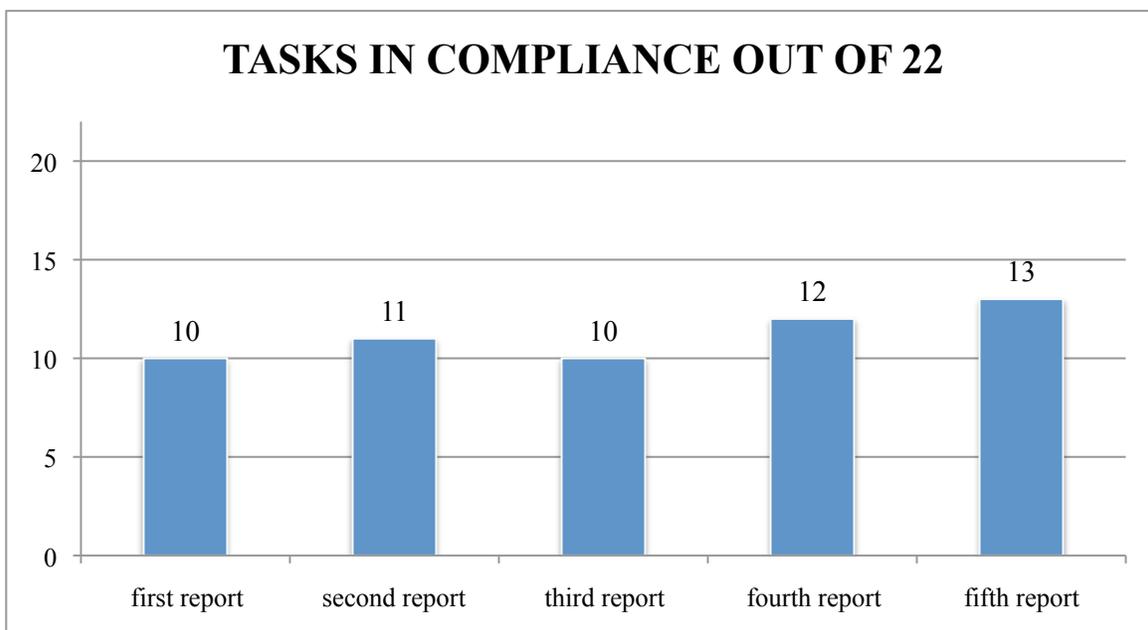
Section Three

Conclusion: Critical Issues

This is our fifth quarterly report. The review period under examination here closes out the year 2010, and places us squarely in the eighth year of the reform effort of the Negotiated Settlement Agreement. It is a fitting time to assess progress.

The NSA began with a total of 51 Tasks agreed upon by the involved Parties. Before this Monitoring Team began our work, the Tasks had been divided; the 22 remaining were described as the active Tasks. This is a distinction that has helped direct our work, but it should be clear that this division does not absolve the Oakland Police Department from fulfilling the requirements of all NSA Tasks – nor does it relieve the Monitor from responsibility for ensuring that the expectations set forth in the *whole* Agreement are met. We recognize our ongoing responsibility to assess the implementation of reforms under the totality of NSA Tasks. At various times, without notifying the Department in advance, we have selected one or two inactive Tasks or key subtasks to evaluate. We found two of these Tasks to be non-compliant; and of the two, we eventually found one to be in compliance by the narrowest of margins. It is our intention to continue this practice as a barometer of OPD's organizational commitment to sustainability and self-monitoring.

Of course, we continue to track closely the policy- and implementation-related compliance of the *active* Tasks. The number of Tasks reported in full compliance across all of our reports is presented in the chart below.



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After more than a year of monitoring the Department's progress with this Agreement, and on top of seven years spent by the previous monitor, it is clear that no one involved should be satisfied by this progress. To be stagnant in the pursuit of what should be our shared goal, as memorialized in the Agreement between the Parties, is completely unacceptable.

My purpose here, however, is not simply to express frustration. Our collective interests must lie in understanding the impediments to greater progress and charting a new path to success. We can never lose sight of the serious matters that brought the Parties to this Agreement. We must remain motivated by our shared purpose in supporting constitutional and effective policing for the citizens of Oakland.

I believe that a close reading of this report can help us to understand some of the reasons behind the Department's slow progress, and provide direction for the future. There are three critical and interrelated problems that are evident based on our compliance assessments of the active Tasks. First, too often, there is a failure in the level of detail and degree of completeness of documentation necessary for compliance. Second, on key issues, there are breakdowns and failures of the systems designed to help eliminate the problems that prompted the NSA in the first place. Finally, in some areas, there have been significant problems in spreading important reforms throughout the entire Department and in institutionalizing those changes.

The first point, regarding concern with incomplete documentation and inattention to detail, is seen in our compliance assessment of Task 45, which addresses the consistency of discipline. Compliance was affected by the fact that the Internal Affairs Division database failed to provide many of the dates of disciplinary action. This point also illustrates the too-frequent problem of the failure or breakdown of systems that have been put in place to address specific NSA-identified problems. The policy requirements in this area are clear. The mechanisms for meeting those requirements are in place. Still, only 84% of the database discipline information was complete.

The problem of system failure was well illustrated in our last report, when we discussed that officers present at a public gathering failed to report the known misconduct of another officer. That failure was compounded when press coverage of the misconduct also did not lead to action by the Internal Affairs Division. It took a citizen – who took offense based on press coverage of the misbehavior – to prompt action on the part of the Department. It was a systems failure at multiple levels. In this report, we found a similar failure with regard to OPD's integrity tests. Despite their centrality to good policing and the NSA itself, these tests lack consistency and quality. Even though the system is in place to conduct high-quality tests, the actual instances of testing are not likely to assure that integrity-related problems are actively discouraged.

The Department's response to complaints also illustrates the problem of the failure of systems specifically implemented to address problems recognized under the NSA. Ensuring that complaints are taken, recorded, and acted upon is required under Task 5. Despite that, in some significant cases, proper information regarding complaints was not forwarded to IAD. It is disheartening when health care professionals, acting within their professional responsibilities,

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raise detailed concerns about officers and police practices, and they are ultimately listed as “refusing to proceed,” even though the information provided was more than sufficient for the complaint to move forward. When this happens to professionals conducting police-related business, one is left to wonder how other citizens may be treated. Other problems noted in our Task 5 review also raise questions about the proper functioning of systems designed to address discipline-related problems. So too do problems with use of force investigations (as in Task 25), where OPD failed to seek extensions for the completion of investigations and to meet important deadlines – despite the Department’s specific obligations, which were based on problems that resulted directly from the underlying case of the NSA.

Finally, another significant problem is evident and discussed in our reviews. Put simply, the Department has not succeeded well in promulgating significant change throughout the Department and institutionalizing the reforms required under the NSA. Even where there are apparent successes, they too often seem tenuous and insecure, and likely to fade quickly without proper stewardship. This is reflected in problems with integrity tests and use of force investigations. It is most obvious in Task 41, which addresses the Personnel Assessment System (PAS). Here the Department struggles to achieve the appropriate Department-wide adoption of a sound, technologically sophisticated, and useful system. Over the last three reporting periods, we have reported on what must ultimately be regarded as the Department’s resistance to change. Although we note progress by OPD in this area, the level of revision needed to correct the outcomes of reviews is deeply troubling and continues to reflect poorly on the Department.

Some may believe that we overestimate the significance of some of the issues noted above. Yet even the insufficiency of reports must be regarded as a serious deficiency with wide implications. It is not just the conduct of those filing the paperwork that is at issue. In these cases, and clearly in the cases of system failure and failure to institutionalize change, there is an obvious failure on the part of supervisors to correct the problems. That, in turn, reveals an equally obvious failure, up the chain of command, to unambiguously lead the reform effort. Ultimately, these illustrate the widespread similarly obvious failure of commitment to the reform process. That, I believe, is the root of the problems we face and the cause for the Department’s unacceptably slow progress. It must be addressed.

I do not feel that is a complete or even adequate exercise of my professional responsibility to express my frustrations or to only diagnose the underlying problems. My assignment is to monitor the process of reform agreed to by the City and the Plaintiffs’ attorneys and overseen by a United States District Court Judge. In carrying out my responsibilities, I can never ignore or forget the seriousness of the problems in the Oakland Police Department that brought us all to this point.

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At the same time, I recognize that my recollection and understanding of these problems may not be fully shared in the Department. Eight years is a long time. Since the NSA was signed by the Parties, many things have changed in the Department – including its leadership and command staff. A whole new generation of police officers has joined the ranks of those who remain from the time when this odyssey began. Perhaps, it should be no wonder that we all do not seem to share an understanding of what prompted the mutually recognized need for change that was memorialized in the NSA.

We should appreciate and then change our lack of common foundation. To rebuild that common foundation, with the hope of making progress, I believe it is important that we all look back to where this process began. Perhaps the Department should consider mandatory training of all personnel on the precipitating events that brought us to this day. As the ranks are now populated by some officers who were not members of the Department at the time, and still others who have simply forgotten, perhaps a sobering reminder of how a police department can lose its moral compass will be of value to the organization as it endeavors to serve the very community it is sworn to protect.

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Appendix

Acronyms

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

Acronym	Definition
ACSO	Alameda County Sheriff's Office
BART	Bay Area Rapid Transit
BFO	Bureau of Field Operations
BOI	Bureau of Investigation
BOS	Bureau of Services
CAD	Computer Assisted Dispatch
CHP	California Highway Patrol
CID	Criminal Investigation Division
CPRB	Citizens' Police Review Board
CPT	Continued Professional Training
DGO	Departmental General Order
DIL	Daily Incident Log
DLI	Division-level investigation
EFRB	Executive Force Review Board
FRB	Force Review Board
FTO	Field Training Officer
FTP	Field Training Program
FTU	Field Training Unit
IAD	Internal Affairs Division
IB	Information Bulletin
ICR	Informal Complaint Resolution
IPAS	Input for Personnel Assessment System
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
POST	Peace Officer Standards and Training
RMM	Risk Management Memorandum
RWM	Report Writing Manual
SDF	Stop Data Form
SO	Special Order
TB	Training Bulletin
UOF	Use of force