

OAKLAND POLICE DEPARTMENT

Office of Inspector General



Level 4 Use of Force Policy Compliance Review

December 8, 2011

Memorandum

To: Chief Howard Jordan
From: Office of Inspector General
Date: December 8, 2011
Subject: Use of Force – Level 4 Policy Compliance Review

In August 2011, the Audit and Inspections Unit initiated an audit of Level 4 Use of Force reports to determine if the Department is following policy.

To conduct this review, the review team selected a random sample of 41 Level 4 Use of Force Reports. The reports were reviewed to assess compliance with Department policy. The team also made an assessment as to the quality of the reports and whether the force used was objectively reasonable, considering the facts of the report and details of the incident.

Sean Whent
Captain of Police
Office of Inspector General

OFFICE OF INSPECTOR GENERAL

Audit and Inspections Unit



OIG REVIEWERS

Sergeant Paul Bernard

Kristin Burgess

Captain Sean Whent

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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) conducted a review of Level 4 Use of Force Reports (UOF). The purpose of the review was to determine the Department's compliance with its use of force policies, specifically Departmental General Order (DGO) K-4 and Special Order (SO) Number 9057. The UOF Reports were also examined to assess overall quality, and to determine whether the force was objectively reasonable and if the justification was appropriately articulated in the report.

There were 41 Level 4 UOF Reports reviewed. The review found the Oakland Police Department (OPD) is meeting policy requirements in the majority of the reports; however, improvement is needed in how officers articulate their actions and their force used, and the review process. There were six UOF reports in which the force did not appear to be objectively reasonable and/or the justification for the use of force was poorly articulated. In addition, several of the reports utilized vague language to describe the force. For example, instead of stating "I pointed my firearm at the subject," some officers stated "I provided lethal cover." Other vague phrases included statements like "car thieves are usually armed."

PURPOSE

The purpose of the review was to determine the Department's compliance with its use of force policies, specifically Departmental General Order (DGO) K-4 and Special Order (SO) Number 9057; to assess overall quality; and to determine whether the force was objectively reasonable and if the justification was appropriately articulated in the report.

BACKGROUND

Office of Inspector General

In August 2011, the Office of Inspector General (OIG) initiated a review of Level 4 UOF Reports. This is OIG's first comprehensive review of Level 4 UOF Reports.

In August 2011, the Independent Monitor for the Oakland Police Department published his Sixth Quarterly Report, which included a supplemental assessment of officers pointing their firearms. The Monitor reported that in 28% of the instances assessed, he was unable to find the pointing of the firearm necessary. In 16% of the instances, he was unable to make a determination based on the limited information available. He noted there were several examples of over-response and concluded the response to be excessive based on the number of officers pointing their firearms and the type of firearms pointed. He found officers frequently presumed subjects were armed, often with no basis, and sometimes victims and witnesses had firearms pointed at them. He also found officers bypass other force options and immediately escalate to pointing of a firearm.

In October 2011, the Monitor's Seventh Quarterly report included another assessment of pointing of a firearm as part of his compliance assessment of Task 24, Use of force Reporting Policy. He found the instances of officers pointing their firearms unnecessarily or without proper justification declined from the Sixth Quarterly Report assessment. However, he remained concerned that in 16% of the instances reviewed, officers pointed their firearms unnecessarily or without justification and in 2% of the instances reviewed he could not make a determination based on the limited information in the report. His overall concerns remained the same as the concerns reported in the Sixth Quarterly Report.

SCOPE AND POPULATION

Review Scope

The review focused on the UOF Reports and each report's ancillary documents. Department General Order K-4 and Special Order 9057 were used to determine the compliance requirements for reporting and reviewing Level 4 uses of force. OIG also examined the reports to determine if the uses of force were objectively reasonable considering the facts of the reports and details of the incidents.

Review Population

This review included a random sample of Level 4 UOF reports for incidents occurring between January 1, 2011 and June 15, 2011. According to the IAD database, there were a total of 606 Level 4 UOF reports during this time period. A random sample of 41 reports was selected for the review. A one-tail test, with a 95% confidence level and an error rate of 6%, required a minimum sample of 40 reports.

Reference Material

1. Department General Order K-4, *Reporting and Investigating the Use of Force* (1 Aug 07)
2. Special Order 8977, *Use of Force Reporting – Pointing of Firearm/Restrained Subject/Use of Vehicle to Intentionally Strike Suspect* (15 Apr 09)
3. Special Order 9051 (20 Oct 10)
4. Special Order 9057, *Extension of Level 1 and Level 4 Use of Force Timelines* (23 Nov 10)
5. Information Bulletin, *Use of Force – Common Mistakes* (15 Dec 08)

REVIEW OBJECTIVES AND FINDINGS

Review Objective 1

Were Level 3 uses of force that were lowered to a Level 4 done so properly?

Policy

The responding on-scene supervisor or commander may authorize a Level 3 UOF incident to be reported as a Level 4 when there is no injury to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance, allegation of misconduct, and no indication the UOF was out of policy. An incident where a taser is fired at a person where the probes make contact is not eligible to be lowered to a Level 4 UOF. Affirmative approval shall be made by the supervisor or commander signing the approval box on the UOF - Part 3a. (D.G.O. K-4)

Findings

Of the 41 UOF reports reviewed, six of them were Level 3 uses of force that were lowered to a Level 4.

1. 11F-0066: Four knee strikes delivered to the suspect's body without injury
2. 11F-0208: Takedown
3. 11F-0264: Takedown
4. 11F-0385: Officer shot a dog
5. 11F-0414: Takedown
6. 11F-0590: Takedown as well as 3 palm strikes to the suspect's ribs without injury

All six were eligible uses of force to be lowered. The supervisor responded to the scene and appropriately signed the UOF report, Part – 3a, authorizing the UOF to be lowered to a Level 4.

Review Objective 2

Was the involved member's supervisor notified of the UOF as soon as practical - before the member cleared the call in which the UOF took place?

Policy

The supervisory notification requirement by involved personnel shall occur as soon as practical after the Level 4 use of force. This notification shall take place before the member clears the call in which the UOF incident took place. If circumstances exist that prevent this notification, before the call is cleared, it shall be documented in the UOF report. (S.O. 9057)

Findings

In all 41 UOF incidents, the member notified their supervisor prior to clearing the call in which the UOF took place.

Review Objective 3

Did all members who used force complete a Supplemental Report, Offense Report or UOF Report, when required?

Policy

Involved personnel shall complete a use of force report...The member or employee who uses force shall include the following minimum information regarding use of force incident in their Offense, Supplemental, or UOF report. (D.G.O. K-4)

Findings

Although not official policy, an Information Bulletin, *Use of Force – Common Mistakes*, dated December 15, 2008, states “for traffic stops and search warrants, when the only force is pointing of a firearm (Type 22), one report can be completed documenting all officers and their force used.” There were 18 reports that involved a traffic stop or search warrant and the only force was Type 22.

In some cases, all officers using force submitted a supplemental and in other cases only one report was completed, which listed all officers and the force used.

For the remaining 23 reports, which were not related to a felony car stop or search warrant, all involved members completed the required report documenting the UOF.

The Use of Force packet for report number 11F-0600 was missing one of the involved member's supplemental reports. However, a search of FBR revealed the member did complete a supplemental report documenting the use of force. This report should have been included in the Use of Force packet that is on file.

The *Use of force – Common Mistakes* Information Bulletin was authored post 2007 DGO K-4 policy; however it is not official policy and is not incorporated into a special order, training bulletin, or general order.

Review Objective 4

Did the involved member deliver the original UOF Report, the appropriate Offense Report and any ancillary documents to their supervisor or, if unavailable, to an on-duty supervisor for review prior to the end of their tour of duty?

Policy

Place the original UOF Report and, if applicable, the appropriate Offense Report and ancillary documents in an In-Custody/Case Envelope and deliver to his/her immediate supervisor or, if unavailable, to an on-duty supervisor for review prior to the end of tour of duty. (D.G.O. K-4)

Findings

It was determined the member met this requirement if the date of the incident matched the supervisor's date of review. If the date of supervisor review did not match the date of the incident, the finding was "Unable to determine". The UOF Report does not have a dedicated location for documenting when the supervisor receives the Level 4 use of force packet and none of the narratives included this information.

There were 25 reports where the date of incident matched the supervisor's date of review, which is evidence the report was delivered to the supervisor prior to the end of tour of duty. There were 15 reports where the supervisor's date of review was after the date of the incident. The finding for these reports was unable to determine.

The remaining report was completed by a sergeant who was one of the involved members. It also listed a lieutenant as an involved member (pointing of a firearm); however, a review of all associated reports indicates the lieutenant was likely not an involved member in the use of force. An involved member is required to deliver the original UOF Report, the appropriate Offense Report and any ancillary documents to their supervisor or, if unavailable, to an on-duty supervisor for review prior to the end of their tour of duty. The involved sergeant reviewed and signed the UOF Report, but it is

not clear if he delivered the required documents to his supervisor for review prior to the end of his tour of duty.

Review Objective 5

Did the reviewing supervisor approve and sign the Level 4 Reviewer box on the Use of Force Report?

Policy

Upon approval, the reviewing supervisor shall sign the appropriate Level 4 Reviewers box on the Use of Force Report. (D.G.O. K-4)

Findings

All 41 reports met this requirement.

Review Objective 6

Did the reviewing supervisor forward the original UOF Report packet to the first level commander for review, prior to the end of the reviewing supervisor's next scheduled work day (Not to exceed 5 calendar days)?

Policy

Forward the original Use of Force Report packet to the first-level commander for review by the end of the next scheduled shift not to exceed five (5) calendar days from the date of the incident. (S.O. 9057)

Findings

The review found 39 of the 41 Use of Force Reports met this requirement. The two reports that did not meet the requirement were granted extensions, and therefore were not out of compliance with policy.

Review Objective 7

Did the first level commander review the original UOF Report packet, approve, and sign in the appropriate Level 4 Reviewers box on the UOF Report?

Policy

The first-level commander shall review the original Use of Force Report packet. Upon approval, the commander shall sign the appropriate Level 4 Reviewers box on the Use of Force Report. (D.G.O. K-4)

Findings

All 41 reports met this requirement.

Review Objective 8

Is the Use of Force Report complete, accurate, good quality and free of "Boiler Plate" language?

Policy

Reports shall not contain “boilerplate” or “pat” language (e.g. “furtive movement” or “fighting stance,” etc.) without descriptive or explanatory details of the action. (G.O. K-4)

Findings

Although many of UOF reports were comprehensive and detailed, there were a number of problematic patterns identified. Given the problems identified, it appears that officers reporting Level 4 uses of force are not always taking the time to clearly articulate the justification for the force and a detailed account of the force used. In addition, reviewers are not identifying the problems and are approving reports with insufficient articulation. The common problems are described below.

Use of vague phrases.

There were several examples throughout the reports reviewed where officers used the phrases “challenged the suspect” or “provided lethal cover” without articulating what they did when they challenged the suspect or what lethal cover consisted of. Lethal cover may mean an officer pointed his/her pistol at the subject; it also could mean a shotgun or rifle was used. While it may be assumed when the phrase “challenged the suspect” is used, it means the officer gave commands to the subject to submit to his/her authority. What cannot be assumed is whether an officer pointed his/her firearm at the subject while giving the commands.

The term “deployed” was also used routinely with uses of force involving pointing of a firearm. Sometimes “deployed” appeared to mean that an officer took his/her firearm out of his/her holster. However, there were times when it appeared to mean that an officer pointed his/her firearm at the subject. In some cases it was difficult to tell the difference.

Using generalities to explain why force was necessary for a specific incident.

Officers would consistently report they pointed their firearm at a subject because subjects who commit the type of crime the officer was investigating are often armed. For example, “drug dealers are often armed to protect themselves and thwart the efforts of law enforcement.” This appears to be a common practice. While in some reports this language was supplemented with other more specific information about the incident, in other reports, this appeared to be the only or primary justification for the force.

Missing details about the threat and/or subject’s involvement.

Some reports lacked details necessary to determine the level of threat or the subject’s involvement in the crime/incident. For example, subjects armed with knives or garden shears may be a threat, but officers should articulate their location (distance from officers or other persons) and the specific behaviors/actions. When dispatched to a call where someone is armed and there are multiple persons on scene when officers arrive, if officers point their firearm at the entire group (not just the subject described in call), officers must articulate the justification for doing so.

Connection between the dispatch details and the details of the stop not always articulated. Some reports did not articulate whether a weapon was observed or recovered, even though the dispatcher stated that there was a weapon involved or possibly a weapon involved.

Some reports did not articulate that the subject matched the description provided by dispatch and/or did not articulate the actual description provided by dispatch and the description of the subject stopped.

Inaccurate reporting of force.

There was one UOF report where an involved officer reported their use of force in the offense report; however the UOF report did not list the force in the appropriate box in Part 2 of the report (11F-0066). When officers are not listed in Part 2 of the report, their force is not entered into the UOF database and tracked. There were two UOF reports listing officers as pointing their firearm in Part-2, but some of the officers' listed stated in their supplemental reports that they did not point their firearm (11F-0165, 11F-0600). For example, an officer stated in his supplemental, "I unholstered my firearm...recognizing the person was not a threat, I did not intentionally point my gun." Also, there were UOF reports for pointing of the firearm that were unclear as to whether officers pointed their firearm due to the vague language used, "challenged the suspect," "deployed my firearm," "I had my gun out," etc.

The holstering of a firearm not always included in reports.

When engaged in a foot pursuit of a subject after pointing their firearm at them, officers were not always indicating if and when they holstered. Given the risk associated with chasing subjects while holding a firearm, this is important information to report.

Review Objective 9

Was the force used objectively reasonable?

Findings

The review found the force was objectively reasonable in the majority of the reports. There were five Level 4 reports, where the force used was pointing of a firearm (Type 22), that did not sufficiently articulate the justification for the use of force. There was one Level 4 report, where the force used was an arm-bar take down (Type 16-26), that did not sufficiently connect the detained subject's description and the description of the suspect provided by Communications. The concerns with these six reports are detailed below.

11F-0008

Officers were dispatched to a report of a drunk person with a gun sitting in a car. A felony car stop was conducted on the described vehicle, resulting in a gun being recovered. However, officers also pointed their guns at a person standing next to the car and the occupants of a car (Car 2) behind the suspect car. Information provided by Communications stated that the three males standing near the vehicle did not appear to be with the suspect. There was no explanation in any of the supplemental reports as to if and how the person standing next to the car was associated with the person inside the car.

Also, aside from the officers stating that Car 2 was located behind the suspect car, there was no articulation as to why they thought the occupants of Car 2 were linked to the suspect car or why it was necessary to point their guns at the car's occupants.

11F-0117

A felony car stop was conducted on a car with a license plate that was assigned to a different vehicle. The officer stated in his report, "I know from training and experience that auto thieves often switch license plates in attempts to evade police." The officer suspected the car to be stolen. However, there was no articulation of other suspicious behavior or whether the car make and model was commonly stolen. Based on the information in the report, it appears the officer may have jumped to the conclusion that the car was stolen too quickly.

11F-0264

An officer was searching for a robbery suspect and detained a subject several blocks away, ultimately using an arm-bar take down. The officer did not indicate in his UOF report if the subject detained matched the description provided by Communications. The officer described the subject detained and stated that he was "breathing heavy and sweating." However, there was no indication in the report that the detained subject matched the description provided by Communications. The detained subject turned out not to be the robbery suspect. In the absence of clear articulation as to why the subject was detained (matched the description of the suspect), it was difficult to tell if the force was objectively reasonable.

11F-0439

Officer was dispatched to a call of a violent female in need of psychiatric evaluation and armed with garden shears. Upon arrival, the officer saw the subject holding large garden shears over one shoulder and a beer in the other hand. The Officer does not articulate how close the subject was to either the officer or the person she was arguing with, or the subject's specific behaviors/actions. Without this information, we were unable to determine the level of the threat and therefore, if pointing of a firearm was objectively reasonable.

11F-0582

Officers were dispatched to a possible domestic battery in progress. Upon arrival, the officer observed a male matching the description provided by Communications and a female (who was crying) in the driveway. The subject did not comply with commands to remove his hands from his pockets, so the officer pointed his gun. There was no report of a weapon involved and the officer did not see a weapon, and it appears the officer only made one command before pointing his gun. The subject turned out to be inebriated. Based on this information, the pointing of a firearm did not appear to be objectively reasonable.

11F-0600

Officers were directed to a van in a parking lot during a homicide investigation to look for homicide suspects. Six or seven (the report is unclear) officers pointed their guns at

the van which turned out to be empty; however, seven people in the parking lot walked in front of the officers' guns while the officers attempted to get them to a safer location. Although seven officers were listed on the face page as pointing their firearm, some of the officers' supplemental reports stated they did not point their gun at anyone. Also, a lieutenant was listed as pointing his gun, but he did not write a supplemental and it was unclear if he was even with the others. One officer's supplemental was not attached to the packet, but his supplemental was located in FBR. It was difficult to tell who pointed their guns and at what targets, given the discrepancies in the reports. It appears there could have been better tactics used if in fact the seven juveniles did end up in the line of sight of the officers' guns.

RECOMMENDATIONS

1. DGO K-4 should be revised to include language authorizing officers to complete one UOF Report for traffic stops and search warrants, when the only force is pointing the firearm if this practice is to be accepted.
2. The UOF Report should include a box which would require supervisors to document the date they received the report from the author of the UOF report.
3. Reviewers of Level 4 UOF reports should review each UOF packet carefully (the UOF report and all ancillary reports) to ensure accuracy and proper articulation, identify discrepancies, and determine if the force is objectively reasonable.
4. Officers should be reminded to follow the Department's policy, DGO K-4, by always providing a "detailed description of the force used." They should explain specifically what they did and what commands they issued, in addition to or instead of, using words such as "challenge," "provide lethal cover," or "assisted." For example, "I pointed my Dept. issued pistol at the subject."
5. The Department should conduct training to ensure accuracy of Level 4 UOF reports, uniformity of policy application, and that the justification of the force is properly articulated.