

OAKLAND POLICE DEPARTMENT

Office of Inspector General



AUDIT OF TASK 35

USE OF FORCE – WITNESS IDENTIFICATION

June 21, 2012

CITY OF OAKLAND

Memorandum

To: Chief Howard A. Jordan
From: Captain Steven Tull
Date: June 21, 2012
Subject: **Audit of Policy and Procedures for Use of Force Witness Identification**

On March 14, 2012, the Audit and Inspections Unit of the Office of Inspector General began conducting an audit of Task 35, *Use of Force Report-Witness Identification*. The purpose of the audit was to determine if the Oakland Police Department's (OPD) practices and procedures regarding identifying witnesses in use of force incidents are in accordance with the established guidelines in the Negotiated Settlement Agreement (NSA) and OPD's Departmental General Order (DGO) K-4, *Reporting and Investigating the Use of Force*. Additionally, the intent of the audit was to identify policy and/or practice deficiencies and to propose solutions that will aid in the Department's ability to comply with policy.

To conduct this audit, the Audit Team informed the Internal Affairs Department (IAD) of the audit in order to gain access to the Department's uses of force documentation. The Audit Team also conferred with other supervisors/commanders, when necessary, to aid in clarifying information and/or audit questions.

The audit's population and/or sample were retrieved from use of force incidents that occurred October 2011 through December 2011. The Audit Team examined Level 2 and Level 3 use of force incidents reported to IAD.

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Table of Contents

PURPOSE	5
BACKGROUND.....	5
NEGOTIATED SETTLEMENT AGREEMENT REQUIREMENTS	6
OIG COMPLIANCE OVERVIEW	7
SCOPE AND POPULATION	8
METHODOLOGY/ANALYSIS	8
PRACTICES, FINDINGS, AND RECOMMENDATIONS	9
CONCLUSION.....	10
APPENDIX A: CASES REVIEWED AND COMPLIANCE FINDINGS.....	11

PURPOSE

On March 14, 2012, the Audit and Inspections Unit of the Office of Inspector General (OIG) began conducting an audit of Task 35, *Use of Force - Witness Identification*. The purpose of the audit was to determine if the Oakland Police Department's (OPD) practices and procedures regarding identifying witnesses in use of force incidents are in accordance with the established guidelines in the Negotiated Settlement Agreement (NSA) and OPD's Departmental General Order (DGO) K-4, *Reporting and Investigating the Use of Force*. Additionally, the intent of the audit was to identify policy and/or practice deficiencies and to propose solutions that will aid in the Department's ability to comply with policy.

BACKGROUND

The Oakland Police Department has been in compliance with Task 35 since December 2009, as determined by previous audits, reviews, and reports conducted by the OIG, the former Independent Monitoring Team, and the present Monitor.

Most Recent Monitor Report

The most recent report (*Ninth Quarterly Report of the Independent Monitor*), dated April 30, 2012, found the Department to be in compliance with Task 35, *Use of Force-Witness Identification*.

NEGOTIATED SETTLEMENT AGREEMENT REQUIREMENTS

TASK 35

Task 35.1

Use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene

Task 35.2

When there are no witnesses, use of force reports specifically state this fact

Task 35.3

Where witnesses are present but circumstances prevent the author of the report from determining the identification, phone number, or address of the witnesses, the report states the reason why the member/employee was unable to obtain the information

Task 35.4

Use of force reports include the names of all other OPD members/employees witnessing the incident

OIG COMPLIANCE OVERVIEW

The following pages detail the scope, methodology, and compliance findings, for this audit.

TASK 35

Practice: Use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene (Task 35.1).

In Compliance

Compliance Requirement: 90%

Audit finding: 100%

When there are no witnesses, use of force reports specifically state this fact (Task 35.2).

In Compliance

Compliance Requirement: 90%

Audit finding: 100%

Where witnesses are present but circumstances prevent the author of the report from determining the identification, phone number, or address of the witnesses, the report states the reason why the member/employee was unable to obtain the information (Task 35.3).

In Compliance

Compliance Requirement: 90%

Audit finding: 100%

Uses of force reports include the names of all other OPD members/employees witnessing the incident (Task 35.4).

In Compliance

Compliance Requirement: 90%

Audit finding: 95%

SCOPE AND POPULATION

Audit Scope

The audit concentrated on the proper recording of witness identification in use of force incidents. The members' use of force witness identification (Task 35) was compared to the Department's policies and procedures.

Audit Population

The audit population consisted of the Department's Level 2 and Level 3 use of force cases, as recorded by the Internal Affairs Division, for the period October 2011 through December 2011. There were 6 Level 2 cases and 23 Level 3 cases, for a total of 29 cases reviewed.

METHODOLOGY/ANALYSIS

The audit focused on comparing the Department's documented use of force practices to its documented use of force policies and procedures. Specifically, the members' use of force witness identification (Task 35) was compared to the policies and procedures. The auditor used the following criteria¹ to determine compliance:

Task 35

- Use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene
- When there are no witnesses, use of force reports specifically state this fact
- Where witnesses are present but circumstances prevent the author of the report from determining the identification, phone number, or address of the witnesses, the report states the reason why the member/employee was unable to obtain the information
- Use of force reports include the names of all other OPD members/employees witnessing the incident

Reference Material

The documents and systems below were used to evaluate the correct procedures for the Oakland Police Department's use of force investigations and reporting:

1. *Reporting and Investigating the Use of Force*, Departmental General Order K-4, August 1, 2007.
2. *Review Protocols*, Office of Inspector General, Oakland Police Department, November 2010.
3. *Use of Force Report (TF-967)*, Report Writing Manual Insert U-1, May 27, 2010.

¹ The criteria were taken from the NSA since the Department's own policies and procedures model the NSA.

PRACTICES, FINDINGS, AND RECOMMENDATIONS

Task 35.1

Use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene

Audit Steps

The Audit Team reviewed the Use of Force and Crime/Supplemental Reports for 6 Level 2 and 23 Level 3 uses of force cases. The Use of Force and Crime/Supplemental Reports for each case were reviewed to determine if each report included the appropriate witness identification information as required.

Findings

The Department is in compliance with Task 35.1. The Audit Team reviewed 6 Level 2 and 23 Level 3 use of force cases. Witnesses were identified in 3 of the Level 2 cases and 15 of the Level 3 cases. There were no witnesses to the use of force in the remaining 11 cases, so documenting witness identification was not applicable. In all applicable cases (100%), the required information was listed in the report.

Task 35.2

When there are no witnesses, use of force reports specifically state this fact

Audit Steps

The Audit Team reviewed the Use of Force and Crime/Supplemental Reports for 6 Level 2 and 23 Level 3 uses of force cases. The Use of Force and Crime/Supplemental Reports for each case were reviewed to determine if each report included the appropriate witness identification information as required.

Findings

The Department is in compliance with Task 35.2. The Audit Team reviewed 29 use of force cases. Eleven of the 29 cases reviewed were applicable to Task 35.2 (no known witnesses to the UOF). In all applicable cases (100%), the reports specifically stated that there were “no known witnesses”.

Task 35.3

Where witnesses are present but circumstances prevent the author of the report from determining the identification, phone number, or address of the witnesses, the report states the reason why the member/employee was unable to obtain the information

Audit Steps

The Audit Team reviewed the Use of Force and Crime/Supplemental Reports for 6 Level 2 and 23 Level 3 uses of force cases. The Use of Force and Crime/Supplemental Reports for each case were reviewed to determine if each report included the appropriate witness identification information as required.

Findings

The Department is in compliance with Task 35.3. Of the 29 cases reviewed, there were two incidents in which witnesses were present but circumstances prevented the author of the report from gathering the information. In one incident the name and description of a witness that left the scene was provided by a witness that remained on scene and in the other incident, the members were unable to get any of the season ticket holders name as they had already left the stadium. As stipulated by Task 35.3, both reports (100%) documented the reasons why the information was not obtained.

Task 35.4

Use of force reports include the names of all other OPD members/employees witnessing the incident

Audit Steps

The Audit Team reviewed the Use of Force and Crime/Supplemental Reports for 6 Level 2 and 23 Level 3 uses of force cases. The Use of Force and Crime/Supplemental Reports for each case were reviewed to determine if each report included the appropriate witness identification information as required.

Findings

The Department is in compliance with Task 35.4. The review found that there were 20 incidents in which OPD members witnessed the reported use(s) of force. Nineteen reports (95%) documented the name, rank/classification and serial number of the witnessing member/employee as required. The one remaining incident was missing the rank/classification for 4 of 8 members listed that witnessed the use of force. The other 10 incidents reviewed had no OPD member(s)/employee(s) that witnessed the use of force. Therefore, the corresponding reports were not applicable to Task 35.4.

CONCLUSION

The Oakland Police Department continues to be in compliance with Task 35. OPD has been successful in incorporating the requirements of Task 35 into its policies and procedures (i.e. Special Order 8066, *Use of Force-Witness Identification*, April 12, 2004 and Departmental General Order K-4, *Reporting and Investigating the Use of force*, revised August 1, 2007). In regards to the recording of witness identification information in Level 3 use of force incidents, OPD has consistently gone beyond the stated requirements and performed a higher level of compliance equal to that of Level 2 use of force incidents. Level 1 & 2 use of force witness identification policy and procedures requirements are stricter than the Level 3 use of force incidents.

APPENDIX A: CASES REVIEWED AND COMPLIANCE FINDINGS

Task 35.1

Use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene.

Task 35.2

When there are no known witnesses, use of force reports specifically state this fact.

Task 35.3

Where witnesses are present but circumstances prevent the author of the report from determining the identification, phone number, or address of the witness(es), the report states the reason(s) why the member/employee was unable to obtain the information.

Task 35.4

Use of force reports include the names of all other OPD members/employees *witnessing* the incident.

Case No.	Incident Date	35.1	35.2	35.3	35.4
		Y / N	Y / N	Y / N	Y / N
11F-1129	9-Oct-11	Y	Y	Y	Y
11F-1216	15-Oct-11	Y	Y	Y	Y
11F-1296	21-Oct-11	Y	Y	Y	Y
11F-1297	29-Oct-11	Y	Y	Y	Y
11F-1298	18-Oct-11	Y	Y	Y	Y
11F-1322	28-Nov-11	Y	Y	Y	N
11F-1196	2-Oct-11	Y	Y	Y	Y
11F-1237	18-Oct-11	Y	Y	Y	Y
11F-1239	3-Nov-11	Y	Y	Y	Y
11F-1299	23-Oct-11	Y	Y	Y	Y
11F-1300	16-Oct-11	Y	Y	Y	Y
11F-1301	16-Oct-11	Y	Y	Y	Y
11F-1302	23-Oct-11	Y	Y	Y	Y
11F-1311	23-Oct-11	Y	Y	Y	Y
11F-1312	23-Oct-11	Y	Y	Y	Y
11F-1315	4-Nov-11	Y	Y	Y	Y
11F-1316	8-Nov-11	Y	Y	Y	Y
11F-1317	10-Nov-11	Y	Y	Y	Y
11F-1318	11-Nov-11	Y	Y	Y	Y
11F-1319	14-Nov-11	Y	Y	Y	Y
11F-1321	27-Nov-11	Y	Y	Y	Y

11F-1323	2-Dec-11		Y	Y	Y	Y
11F-1350	19-Dec-11		Y	Y	Y	Y
11F-1383	24-Dec-11		Y	Y	Y	Y
11F-1384	24-Dec-11		Y	Y	Y	Y
11F-1388	30-Nov-11		Y	Y	Y	Y
11F-1469	29-Nov-11		Y	Y	Y	Y
11F-1475	24-Nov-11		Y	Y	Y	Y
11F-1478	23-Dec-11		Y	Y	Y	Y
Total In Compliance			29	29	29	28
Total Not In Compliance			0	0	0	1
Total Cases Reviewed			29	29	29	29