

# OAKLAND POLICE DEPARTMENT

## Office of Inspector General



### AUDIT OF USE OF FORCE REPORTING AND INVESTIGATION

August 14, 2012

**CITY OF OAKLAND**

Memorandum

**To:** Chief Howard A. Jordan  
**From:** Captain Steven Tull  
**Date:** August 14, 2012  
**Subject:** **Audit of Use of Force Reporting and Investigation**

On June 22, 2011, the Audit and Inspections Unit of the Office of Inspector General began conducting its annual audit the Oakland Police Department's (OPD) use of force reporting by its members and use of force investigation and report responsibilities of its supervisors. This audit had two key objectives. The first objective was to evaluate the quality of the Department's documented Use of Force Reports. Secondly, 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 use of force documentation. The Audit Team also conferred with other supervisors/commanders, when necessary, to aid in clarifying information and/or audit questions. Lastly, to interpret the Department's definitions and terminology related to use of force, the Audit Team used the Department's *Use of Force Policy Manual*.

The audit population was retrieved from use of force incidents that occurred April 2011 through June 2011. The Audit Team examined all Level 2 and Level 3 use of force incidents for the time period that were in the Use of Force database at the time of the request.

Due to Occupy Oakland activities, the audit was delayed. Although the use of force incidents reviewed in this audit occurred over a year ago, we believe the findings and recommendations are relevant to the Department's current use of force policy and practices.

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## EXECUTIVE SUMMARY

On June 22, 2011, the Audit and Inspections Unit of the Office of Inspector General began conducting an audit of the Oakland Police Department's (OPD) use of force reporting by its members, and use of force investigation and report responsibilities of its supervisors. This audit had two key objectives. The first objective was to evaluate the quality of the Department's documented Use of Force Reports. Secondly, 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.

Although the audit identified a number of areas in need of improvement, there are three main issues that need the Department's immediate attention. First, the audit indicated that the Department should improve its policies, procedures and practices for use of force reporting and investigation to increase the transparency of information gained throughout the process. The current policies and procedures do not state the goal of the investigation. In addition, they do not provide guidance to the Department's supervisors on information that is important for them to elicit during their investigations. Also, in practice, supervisors are not systematically assessing information they obtained while conducting the investigation to determine compliance or noncompliance of the force used. The lack of documented analysis and assessment forces the readers (i.e., command staff, Monitor, attorneys, etc.) of the reports to speculate how the investigators came to their respective conclusions of compliance/noncompliance.

Secondly, the audit indicated that the Department should thoroughly investigate any allegations of excessive use of force. The main issue with the investigations is that the reader is unable to determine if the investigator took additional steps to fully resolve the allegations. The confusion is a result of the investigators' failure to specifically articulate the supporting facts, evidence, and observations to justify the outcomes of their respective investigations of the allegations in their reports.

Lastly, the audit indicated that the Department should ensure the entries on its Chronological Activity Logs are legible. Some of the entries are very difficult to read, and the serial numbers of those making entries are omitted or illegible. Not being able to read entries and/or serial numbers of those making notations impairs the ability of the Department to produce an accurate timeline for completing a Use of Force Report. Therefore, when an extension is requested by a member and the entry is not legible, the report is held out of compliance since it is impossible to determine the reason for extending the timeline.

In closing, it should be noted that the Department is complying with many of the technical use of force directives specified in its policies and procedures. However, these directives are merely starting points and not end points. The audit has indicated that there is a need for the Department to exceed its own minimum requirements to elevate the quality of its use of force reporting and investigation. This can be accomplished by instituting additional policies and procedures and practices that clearly define what is expected of investigators and how they are to achieve the Department's desired outcomes.

## PURPOSE

On June 22, 2011, the Audit and Inspections Unit of the Office of Inspector General began conducting an audit of the Oakland Police Department's (OPD) use of force reporting by its members and use of force investigation and report responsibilities of its supervisors. This audit had two key objectives. The first objective was to evaluate the quality of the Department's documented Use of Force Reports. Secondly, 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 continues to be partially in compliance with Task 24, *Use of Force Reporting Policy*, and Task 25, *Use of Force Investigation and Report Responsibilities*, notwithstanding the numerous audits, reviews, and reports conducted by the OIG, the former Independent Monitoring Team, and the present Monitor.

At the time this audit began, the *Seventh Quarterly Report of the Independent Monitor* was published and dated October 7, 2011. The Monitor found the Department to be only *partially* in compliance with Task 24, *Use of Force Reporting Policy*, and Task 25, *Use of Force Investigations and Report Responsibility*. The report indicated that OPD was in compliance with only seven of Task 24's nine subtasks and five of Task 25's six subtasks.

The Department was held out of compliance with Tasks 24.2 and 24.3 because supervisors and commanders approved use of force reports in which the Monitor was "unable to find the pointing of a firearm necessary or justified in 20 [16%] instances of the 124 instances assessed. There was an absence of [documentation] that indicated the officer(s) or others faced imminent threat of harm." The Monitor found in another three instances that the information and documentation found in the Use of Force Reports was so limited that they could not make a determination on whether officers were justified in pointing their respective firearms.

Additionally, the Department was held out of compliance with Task 25.5, because of the failure to "effectively manage departmental risk, enhance officer accountability, and maintain the integrity of investigation[s]." In particular, the Monitor specified issues in three cases. First, they identified that an investigator did not obtain the suspect's x-rays. The x-rays were critical in determining whether the suspect received a broken nose or sustained injury from the use of force. Secondly, the Monitor identified a case in which the investigator and the reviewers took the testimony of an intoxicated subject over that of a citizen who allegedly observed the officer slamming the intoxicated subject's head to the ground and another citizen who allegedly heard the officer tell the subject to "get up before I hurt you." Lastly, the Monitor found that a subject's claims of excessive force were discredited by the investigator because the subject was intoxicated. Subsequently, the subject's allegations were not referred to IAD.

### Most Recent Monitor Reports

The *Eighth and Ninth Quarterly Reports of Independent Monitor* were published and dated respectively January 17, 2012 and April 30, 2012. The Eighth Quarterly Report found the Department out of compliance with Tasks 24.1 and 25.4. The Department was

out of compliance with Task 24.1 because there were seven instances (3 Level 2's; 2 Level 3's; and 2 Level 4's) in which officers who used force did not promptly notify their respective supervisors. Also, the Department was held out of compliance with Task 25.4 because the Monitor found nine incidents that involved unjustified pointing of firearms.

The Ninth Quarterly Report found the Department out of compliance with Tasks 24.2, 24.3, and 25.2. The Department was held out of compliance with Tasks 24.2 and 24.3 because the Monitor was unable to find the pointing of a firearm necessary or justified in 21 instances. Also, the Monitor found it troubling that the Department's supervisory and command staff did not question these pointing of the firearms. The Department was held out of compliance with Task 25.2 because the Chronological Activity Logs lacked adequate documentation to show that timeline extensions were properly requested and authorized by command personnel.

## SCOPE AND POPULATION

### Audit Scope

This audit had two key objectives. The first objective was to evaluate the quality of the Department's documented Use of Force Reports. Secondly, 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.

### Audit Population

The audit population consisted of the Department's Level 2 and 3 use of force cases, as recorded by its Internal Affairs Division, for the period April 2011 through June 2011. There were 16 Level 2 cases and 18 Level 3 cases.

## METHODOLOGY/ANALYSIS

To evaluate the quality of the Department's use of force reports, the auditor reviewed the Department's documented use of force policies and procedures and the Department's documented Level 2 use of force incidents that occurred April 2011 through June 2011. The auditor sought transparency of information and based it upon the Department's documented policies, procedures, and practices abilities to elicit the following outcomes:

- 1) The reason for police presence.
- 2) The factors that caused officer(s) to use force.
- 3) The type of force used.
- 4) Who was notified about the force used? And when?
- 5) The investigator's reasoning for finding the force in or out of compliance with the Department's policies, procedures, and/or practices. This includes the following:
  - a) Who the investigator interviewed.
  - b) How the investigator assessed the intelligence he/she received when conducting interviews with members, employees, and/or witnesses (i.e., civilians, medical personnel, etc.).
  - c) How the investigator assessed the intelligence he/she received from his/her observations of physical evidence such as photographs; injuries on subjects, members, employees, etc.; the scene(s) of the incident, etc.
  - d) How the investigator handled any known discrepancies in his/her investigation.

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- e) The ability of the investigator to gather intelligence and provide a chronological order of events in the report.

To identify policy and/or practice deficiencies, the auditor compared the Department's documented policies, procedures, and practices to the following Tasks 24 and 25 criteria:<sup>1</sup>

Task 24

- Members notified their respective supervisors following Level 2 or 3 uses or force or allegations of excessive uses of force.
- Each member who used force and each member who witnessed said force reported the use(s) of force on the appropriate Crime or Supplemental Report.

Task 25

- The use of force investigation was conducted by the direct supervisor of the member(s) who used force, a field supervisor, or a commander.
- The investigating supervisor ensured the use(s) of force was documented in the appropriate report of each member who used or witnessed the force.
- The investigating supervisor interviewed all officers who were at the scene at the time of the incident.
- The investigating supervisor interviewed the subject(s) upon whom force was used.
- The investigating supervisor ensured Supplemental Reports were completed by other members on the scene of the incident.
- Non-Departmental witnesses were identified and interviewed.
- The investigating supervisor addressed all discrepancies in the information obtained from members, employees, and witnesses.
- The investigating supervisor ensured photographs were taken of the subject(s) involved in the force; the location of the incident; and any other relevant evidence.
- The investigating supervisor ensured the use of force was justified in the Supplemental or Crime Report of the member(s) who used force.
  1. Was the force used pursuant to a legitimate law enforcement objective?
  2. Was the type and amount of force used proportional to the resistance encountered and reasonably related to the objective the member(s)/employee(s) achieved?
  3. Did the member(s) use reasonable verbal means to resolve the situation without force if time and circumstance permitted such attempts?
  4. Was the force used de-escalated or stopped reasonably when resistance decreased or stopped?
- Each Use of Force Report was reviewed by the appropriate chain-of-review.
  1. Did the use of force reviewers make the required assessments?
  2. Were uses of force that did not comply with departmental policy result in the incident being referred to IAD f or further investigation/analysis, if necessary?

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

## **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. *Complaints against Departmental Personnel and Procedures*, Departmental General Order M-3, February 15, 2008.
2. Negotiated Settlement Agreement with Stipulations, revised December 2008.
3. *Portable Video Management System*, Departmental General Order I-15.1, March 16, 2011.
4. Research Randomizer ([www.researchrandomizer.org](http://www.researchrandomizer.org))
5. *Reporting and Investigating the Use of Force*, Departmental General Order K-4, August 1, 2007.
6. *Review Protocols*, Office of Inspector General, Oakland Police Department, November 2010.
7. *Use of Force Handbook*, Departmental General Order K-3, August 1, 2007.
8. *Use of Force Report (TF-967)*, Report Writing Manual Insert U-1, May 27, 2010.

## **PRACTICES, FINDINGS, AND RECOMMENDATIONS**

### **Quality of Use of Force Investigations**

#### Audit Steps

##### *Use of Force Investigation and Report Responsibilities*

To evaluate the quality of the Department's use of force investigations, the auditor reviewed the Department's documented use of force policies and procedures and the Department's documented Level 2 use of force incidents that occurred April 2011 through June 2011. The auditor sought transparency of information and based it upon the Department's documented policies, procedures, and practices abilities to elicit the following outcomes:

- 1) The reason for police presence.
- 2) The factors that caused officer(s) to use force.
- 3) The type of force used.
- 4) Who was notified about the force used? And when?
- 5) The investigator's reasoning for finding the force in or out of compliance. This includes the following:
  - a) Who the investigator interviewed.
  - b) How the investigator assessed the intelligence he/she received when conducting interviews with members, employees, and/or witnesses (i.e., civilians, medical personnel, etc.).
  - c) How the investigator assessed the intelligence he/she received from his/her observations of physical evidence such as photographs; injuries on subjects, members, employees, etc.; the scene(s) of the incident, etc.
  - d) How the investigator handled any known discrepancies in his/her investigation.
  - e) The ability of the investigator to gather intelligence and provide a chronological order of events in the report.

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## Findings - Documented Policies and Procedures

### *Reporting and Investigating the Use of Force, Departmental General Order K-4*

#### Member/Employee Responsibilities for Reporting a Use of Force

The audit indicated that DGO K-4 provides clear direction about most of the responsibilities of a member who uses Level 2 force. The policy states that each member who uses force or witnesses said force has to immediately contact his/her supervisor to inform him/her of the incident, summarizing what occurred. Additionally, the member has to complete a report that includes the reason for police presence, the factors that caused him/her to use force, and the type of force used. However, the policy does not state that the member has to document the date and time that he/she notified his/her supervisor about the use of force in his/her report.

#### Supervisor Responsibilities for Investigating and Reporting a Use of Force

The audit indicated that DGO K-4 is not as forthright about the responsibilities of the respective supervisor investigating the Level 2 force. The policy states that the supervisor has to inform the watch commander<sup>2</sup> of the incident. The policy also provides the investigator with guidance on how to conduct an investigation. In part, it states:

- *Interview involved and witness personnel;*<sup>3</sup>
- *Interview personnel on scene at time of incident;*
- *Interview the subject upon whom force was used;*
- *When practical, contact medical personnel who evaluated and/or provided treatment to the subject; and*
- *Ensure photographs are taken.*

Although DGO K-4 does direct the investigator to conduct interviews, contact medical personnel, and ensure photographs are taken, it lacks important guidance about conducting the investigation. The policy does not:

- inform the investigator that the main goal of the investigation is to determine compliance or noncompliance of the force used.
- specify that the investigator has to analyze each interview or conversation and document his/her analyses and assessment of the statements made by each member, employee, subject, medical person, and/or witness as they relate to the compliance or noncompliance of the force used.
- specify that the investigator has to document the significance of the pictures taken, or any other physical evidence, and their relationship to the compliance or noncompliance of the force used.
- state that the investigator has to create a timeline of the events.
- state that the investigator has to define and document his/her reasoning for finding the use of force in or out of compliance, using only the pertinent facts and/or evidence gathered during his/her investigation and using his/her own observations of the scene of the incident.

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<sup>2</sup> In the absence of the watch commander, a commander is to be notified.

<sup>3</sup> Personnel denote members and employees.

In addition, the audit indicated that DGO K-4 is missing other pertinent information regarding the investigator's documentation of compliance or noncompliance of the Level 2 use of force. The policy does not require the investigator to document:

- who notified him/her about the Level 2 use of force incident.
- how it came to be that he/she was assigned as the investigator.
- the date and time he/she was notified of the incident.
- the date and time he/she arrived at the incident.
- that he/she was not involved in or a witness to the use of force.

*Use of Force Report (TF-967), Report Writing Manual Insert U-1*

The audit indicated that RWM U-1's policy/procedure is not transparent when attempting to determine what fields and type of information are required in the Use of Force Reports. Specifically, the manual does not state the type of information the investigator should document to determine compliance or noncompliance of the force used. RWM U-1's Part 6, Narrative, provides inadequate guidance on how to write the Use of Force Report. Part 6 reads, in part:

*Investigators of Level 2 or 3 force incidents shall document the narrative in the Use of Force Narrative Report. Use the suggested headers to facilitate organizing the narrative and for suggested content for discussion, as appropriate. Delete unnecessary headers and suggested content text.*

Additionally it reads:

- 1) *Document investigative steps taken not indicated on the Checklist;*
- 2) *Any pertinent observations or discoveries not covered by any other listed topic section;*
- 3) *Ensure the appropriate page number is indicated.*

The instructions in RWM U-1 are brief and vague and do not provide comprehensive guidance for completing the Use of Force Report. The manual states that the investigator shall document the *narrative*, but it does not specify what the Department considers to be a narrative or how the narrative relates to the compliance or noncompliance of the force used. It states that the investigator shall use the *suggested headers* to facilitate organizing the narrative, but it does not articulate the names of the suggested headers. It states that the investigator shall use the suggested headers for suggested content for discussion, as appropriate, but it does not communicate to the investigator what type of information should be documented in each header he/she uses in the Use of Force Report. Lastly, the manual does not advise the investigator how to use the documented information to determine compliance or noncompliance of the force used.

### Findings - Documented Practices

The Audit Team reviewed 16 Level 2 Use of Force Reports. The audit indicated that the use of force reports lacked transparency because of ambiguity surrounding the investigators' documentation of their respective reasons for finding the Level 2 uses of force in compliance. The investigators did not articulate, in writing, from their respective points of view, using facts, evidence and observations, how they determined

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compliance/noncompliance of the force(s) used. Listed below are sections in the Department's Use of Force Report and the type of ambiguity found in each section.

#### *Use of Force Report Headers*

##### Summary of Incident

The information documented in this section is not a summary of the incident from the point-of-view of the investigator, detailing the reason for police presence; the factors that caused officer(s) to use force; and the type(s) of force used. Instead, the information is written in third person by the investigator, and it is often a duplication of information that can be found in individual members' Crime/Supplemental Reports. In addition, the investigators do not provide the readers with any information that demonstrates their use of the information in assessing compliance of the force(s) used.

##### Investigation (Officer, Subject, and Witness Statements)

The investigators are not clearly documenting the facts, evidence and/or observations they obtained from the interviews that are related to the force(s) used. In many cases, the investigators do not summarize the statements of each person they interviewed. In addition, the investigators do not provide the readers with any information that demonstrate their use of the information in assessing compliance of the force(s) used.

##### Injuries/Medical Care or Treatment Provided

It is difficult to determine how the investigators obtained their information since they do not state the name of the medical person who gave them their respective information. In addition, the investigators do not provide the readers with any information that demonstrate their use of the information in assessing compliance of the force(s) used.

##### Discrepancies

For issues associated with this section, please see the section below entitled *Allegations of Use of Force*.

##### Analysis of Use of Force

The information documented in this section was often written in third person and not from the perspective of the investigator. Also, the investigators do not cite facts, evidence, and observations from all the aforementioned categories (Summary of Incident, Investigation, Medical, etc) in assessing compliance, causing the readers to have to speculate how the investigators came to their respective conclusions or came to their own conclusion.

##### Reviewer Signature Page(s)

The audit indicated that the Department's respective commanders found force used in the 16 Level 2 incidents in compliance even though the reports lack adequate documentation of the investigators' respective reasons for finding the Level 2 uses of force in compliance.

##### Recommendation 1

The Department should update policy to clearly define the expected outcomes of use of force investigations and ensure that members are trained to write use of force reports that clearly document those outcomes.

## Recommendation 2

The Department should update policy to require the documentation of:

- who notified investigator about the Level 2 use of force incident;
- how it came to be that the investigator was assigned to the incident;
- the date and time the investigator was notified of the incident;
- the date and time the investigator arrived at the incident; and
- confirmation that the investigator was not involved or a witness to the use of force.

## Recommendation 3

The Department should ensure its command staff critically evaluate use of force reports and ensure that reports have supporting documentation for finding the force(s) used in or out of compliance.

## **Reporting and Investigating the Use of Force - Practice**

### Allegations of Use of Force

#### Audit Steps

The Audit Team reviewed 19 Level 3 Use of Force Reports and their respective associated Crime and Supplemental Reports to determine whether excessive use of force was alleged to have happened during the incidents. If there was such an allegation, the Audit Team perused the reports to determine who made the allegation and which Departmental representative (i.e., officer, sergeant, etc.) took the alleged complaint. If the complainant advised the member who allegedly used excessive force of the complaint, the Audit Team reviewed the member's respective Crime/Supplemental Report to determine whether the member documented that he/she notified his/her direct supervisor, a field supervisor, or a commander as soon as possible of the allegation. Lastly, when there was an allegation of excessive force, the Audit Team reviewed the Use of Force Report to determine the transparency of the information documented in the reports.

#### Findings

Of the 19 Level 3 cases, there were six (6)<sup>4</sup> Use of Force Reports involving allegations of excessive use of force, and, collectively, there were 10 members documented as having used force. The audit of the six incidents indicated that there were two instances, case 11F-0677 and case 11F-0326, in which members should have immediately notified their respective supervisors of the allegations of excessive force. In case 11F-0677, the respective member documented in his Crime Report that he advised his sergeant of the subject's claims. However, in case 11F-0326, the respective member did not document in his Crime Report that he advised his supervisor of the allegation.

<sup>4</sup> There were four (4) Uses of Force Reports in which each report documented only one member used force, and there were two (2) UOF Reports in which each report documented three members used force.

The six (6) Use of Force Reports involving allegations of excessive use(s) of force were also examined to determine the transparency of the information documented in the reports. The audit indicated that the respective investigators investigated the reported uses of force, but the reader is unable to determine if the investigator took additional steps to fully resolve the allegations. The confusion is a result of the investigators' failure to specifically articulate the facts, evidence, and observations to justify the outcomes of their respective investigations of the allegations in their reports. Based on the auditor's review of the reports, the investigator's conclusions were not clearly supported by the evidence listed. See Appendix A, which includes a table listing the documented allegation for each case, the documented outcome, and the lack of defined supporting evidence.

#### Recommendation 4

The Department should ensure that each allegation of excessive force is clearly addressed by the investigator and that the investigator's decision about the allegation is based on documented facts, evidence, and/or observations.

#### Submission of Appropriate Crime/Supplemental Report

##### Audit Steps

The Audit Team reviewed 19 Level 3 Use of Force, Crime, and Supplemental Reports to ensure that each member who was on scene completed the appropriate report. In doing so, they noted the names, serial numbers, and call signs of the members who used force, those who witnessed the force, and those who did not use or witness the force but were on scene at the time of the incident. Once it was determined who these various members were, the Audit Team ensured there was documentation submitted by each of them, unless otherwise directed by the respective investigating supervisor and noted in the Use of Force Report.

##### Findings

The audit indicated that there were 86 members on-scene who did not use and did not witness any force. Of those, 74 (86%) submitted the appropriate Crime/Supplemental report as required. There were 12 (14%) members who did not submit the appropriate Supplemental report as required. There were two police officers who did not submit a report. There were seven sergeants who did not submit a report. There was one acting lieutenant who did not complete a report. There were two police evidence technicians who did not submit a report. In each case, there was not any documentation in the use of force report from the respective investigators authorizing the members/employees not to submit reports (See Appendix B).

#### Recommendation 5

The Department should ensure that each member or employee, regardless of rank, completes the required Crime/Supplemental Report when he/she is on scene, or the investigator should document why a member/employee was directed not to complete a report.

#### Timeliness of Investigations

##### Audit Steps

The Audit Team reviewed 19 Level 3 Use of Force Report packets and their respective Chronological Activity Logs to determine whether each investigation was completed within 15 days or less. The investigation was considered to be completed in a timely manner if the Chronological Activity Log showed that the respective captain of the member who used force forwarded the use of force packet to BFO on or before the 15<sup>th</sup> day after the date of the incident.

## Findings

The audit indicated that 14 (78%) of the 19 cases were completed and submitted through the Department's chain-of-command within 15 calendar days. However, the audit also indicated that there were five (25%) cases found out of compliance for timeliness or inadequate chain-of-command review: The reasons for noncompliance are listed in the following table:

**Completed and forwarded packet within 15 calendar days through appropriate chain-of-review, plus one documented extension approved by the Division Commander in advance of the due date.**

Case No.	Incident Date	Appropriate Chain-of-Review Dated	Total Extensions Granted	Comments
11F-0417	4/26/2011	5/4/2011	1	Review and Signature Page signed through Lieutenant
11F-0420	4/28/2011	5/17/2011	1	Approved extension to 5/16/11.
11F-0541	5/22/2011	5/31/2011	1	Review and Signature Page signed through Lieutenant
11F-0677	6/20/2011	8/1/2011	3	Investigation was sent to BFO without the Captain's signature, extension requested for Captain's review after 15 calendar day deadline date.
11F-0711	6/29/2011	8/31/2011	6	Problem getting PDRD videos occurred (noted) on 2Aug11, however the timeline deadline had already been missed.

The audit indicated serial numbers were not always clearly documented on the Chronological Activity Log, leaving the reader unable to determine who wrote certain information or granted an extension.

The audit also indicated that supervisors/commanders are unnecessarily asking for multiple extensions. When an extension is granted, the additional days are given to the requestor but the additional days are not added to the due date, causing the lieutenant and/or the captain in the chain-of-command to have to request or authorize an additional extension.

## Recommendation 6

The Department should ensure that extensions are requested and clearly documented on the Chronological Activity Log prior to the due date, and when an extension is granted, the number of additional authorized days is added to the pre-existing due date.

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## Review of Use of Force Report by the Chain-of-Review

### Audit Steps

The Audit Team examined 19 Level 3 Use of Force Report packets to determine whether each of the use of force investigation packets was reviewed by the appropriate chain of review. Each packet was considered to be in compliance if it included two Use of Force Review and Signature Pages (TF-967c), one signed by a lieutenant and one signed by a captain.

### Findings

The audit indicated that of the 19 Use of Force Report packets examined, there were 17 (90%) packets that were reviewed by the appropriate chain of review. There were two (10%) packets, 11F-0417 and 11F-0541, that were held out of compliance because they did not include Use of Force Review and Signature Pages signed by the respective Captain. In addition, there is not a provision in Departmental policy that allows for the omission of the review from a captain or a lieutenant.

### Recommendation 7

The Department should ensure that each Use of Force Report is reviewed by the appropriate chain-of-review of the member/employee who used force. The Department should consider revising policy if there are circumstances where it would be appropriate for a Captain, or other rank, to be missing in the review process.

## **Other Issues Identified**

### Outdated Policies and Procedures

The audit indicated that there are two expired Information Bulletins that should be removed from the Department's active policies and procedures list in PowerDMS:

*Use of Force—Common Mistakes*, Information Bulletin, December 15, 2008.

*Use of Force Preparation Format*, Information Bulletin, December 15, 2008.

### Recommendation 8

The Department should remove outdated policies and procedures from PowerDMS.

### Unclear, Illegible, and Incomplete Documentation

It is imperative that all paperwork and documentation (Crime and Supplemental Reports, Chronological Activity Log, Statements, etc.) be clear, legible and complete. In reviewing the Level 3 use of force cases, there were a few instances in which this was not the case.

- Case #11F-0534
  - The Use of Force Control No. and IAD Case No. fields are completely blacked out so that the contents can not be read.
- Case #11F-0541
  - The Use of force Chronological Activity Log includes entries that are not only very difficult to read but also have no clear indication of who made the entry.
- Case #11F-0417

- Reporting officer's Crime Report did not include his name. It appeared that he used the template that belonged to another member and did not change the "Reported By" box to his name.

#### Use of Force Policy Handbook

The Department's *Use of Force Policy Handbook*, DGO K-3, is called a "handbook" on the front cover, but in the header of the remaining pages it is referred to as a "manual."

#### Recommendation 9

The Department should ensure consistency in what the document is called by using "handbook" or "manual" throughout the document.

## CONCLUSION

In closing, it should be noted that the Department is complying with many of the technical use of force directives specified in its policies and procedures. However, these directives are merely starting points and not end points. The audit has indicated that there is a need for the Department to exceed its own minimum requirements to elevate the quality of its use of force reporting and investigation. This can be accomplished by instituting additional policies and procedures and practices that clearly define what is expected of investigators and how they are to achieve the Department's desired outcomes

## APPENDIX A

### Allegations of Use of Force

The table below provides a breakdown of the allegations of excessive force, the case number, the member(s) involved, and the respective documented supervisors' notification of the allegations:

Case #	Complaint	Documented Supervisor Notification?	Comment(s)
11F-0326	Subject advised...the member that "he struck him in the face with his flashlight."	No	Member documented in his Crime Report that..."I advised Sergeant ...of my use of force. Member did use force but did not document if he mentioned the allegation to his sergeant. However, the allegation is documented in UOF Report.
11F-0359	Subject stated "he was not resisting when they started hitting him and pulling his hair." Subject also stated "he was struck 25-30 times by 6-7 officers with their legs, knees, and hands."	N/A	Subject advised the UOF investigator of the allegation while being interviewed at Alameda County Hospital (ACH). Therefore, allegation documented in UOF Report.
11F-0417	Subject stated "as he was being handcuffed, he described (sic) he was roughed up."	N/A	Subject advised the UOF investigator of this allegation while the investigator was taking a taped statement from him. Therefore, allegation documented in UOF Report.
11F-0420	Witness 1 stated "the officer pulled up and told the intoxicated subject...get up before I hurt you." Witness 2 stated "the officer pulled up to the intoxicated individual and tried to wake him...the officer got frustrated and turned the individual over...picked the individual's head up and slammed it to ground, [used profanity] and slapped the individual."	N/A	Witnesses were found during a canvas conducted by an officer and the officer directed the witnesses to speak with the UOF investigator. Therefore the complaints are documented in the UOF Report.

**Appendix A: Allegations of Use of Force (cont.)**

Case #	Complaint	Documented Supervisor Notification?	Comment(s)
11F-0677	Subject advised the member that “officers had punched him in the face while he was being handcuffed.”	Yes	The officer documented in his Crime Report that he advised the sergeant of the subject’s claims.
11F-0711	Subject 1 stated a member “grabbed her by the hair, [used profanity several times] and dragged her down the front stairs.” Subject 2 “alleged a member slapped and punched her in the face, [used profanity], threw her down the stairs, kicked her in the head and stepped on her fingers, all while she was handcuffed.”	N/A	Supervisor was immediately called out to the scene by a member when the member was asked for his badge number by an unknown male. The scene was chaotic and the supervisor took the complaints once there was order at the scene. The UOF Report contains the allegations.

Each table below lists the facts, evidence, and/or observations collected by the respective investigators. The documented information are examples of what the reader has to use to speculate how each investigator came to his/her conclusion about the allegation(s) of excessive use of force.

Case #11F-0326

<p>Allegation</p> <p>Subject advised...the member that “he struck him in the face with his flashlight.”</p>
<p>Outcome Determined by UOF Investigator</p> <p>The alleged strike to the face with a flashlight could not have occurred as stated by the Subject.</p>
<p>Documented Evidence</p> <p><u>Member who allegedly used excessive force</u></p> <ul style="list-style-type: none"> <li>• Member reports the only force used against the Subject was the intentional pointing of his firearm and pushing the Subject in the back while he was running causing the suspect to fall forward with is face striking the street.</li> <li>• Another member advised the investigator that he responded to a call with member and that member requested his assistance because member needed him to use his flashlight to illuminate the exterior of the residence while looking for the POE</li> <li>• Investigator states “nor did I see a flashlight in member’s vehicle.</li> </ul> <p><u>Complainant</u></p> <ul style="list-style-type: none"> <li>• Subject reluctant to answer questions in regards to the incident.</li> <li>• Subject refused to tell investigator which officer struck him.</li> <li>• Subject refused to provide any additional identifying officer information.</li> </ul>

- Subject denied being in vehicle.
- Subject denied being involved in vehicular accident.
- Subject stated he was walking in the area when he was confronted by an officer. The subject was struck in the face with a flashlight and subsequently pushed to the ground; face first, as he approached the officer.
- Subject did not state why he thought the officer was contacting him.
- Subject admitted he had a glass of wine but claimed he was not intoxicated. Investigator could smell the scent of an alcoholic beverage on subject's person and on his breath when he spoke.
- Subject appeared/pretended to be very tired during the interview and became unresponsive at times causing investigator to repeat his questions several times.
- Subject's vehicle had funeral sticker in the front windshield.
- Along with the investigator, a sergeant was present during the interview and the Sergeant asked the Subject if he had been to a funeral earlier in the day.

Case #11F-0359

**Allegation**

Subject stated "he was not resisting when they started hitting him and pulling his hair." Subject also stated "he was struck 25-30 times by 6-7 officers with their legs, knees, and hands."

**Outcome Determined by UOF Investigator**

The evidence supports that the Subject's description of the force used against him did not occur.

**Documented Evidence**

Members who allegedly used excessive force

- Three members reported placing a knee on Subject to control him.
- Member reported placing his hand on back of Subject's head to control it.
- Another member reported using 4-5 palm strikes to Subject's rib cage area.
- All members reported that Subject was not following verbal commands to stop resisting as they attempted to handcuff and arrest him.

Witness

- Stated he was on the phone when he heard a disturbance outside...leaned out of window to see what was happening.
- Witness saw Subject on ground with officers around him when member ran up and hit the Subject 4-5 times in the chest area.
- Stated it was unnecessary for member to hit Subject because Subject was already on the ground.
- Stated he saw about three officers on top of/around Subject and he heard them telling Subject to stop resisting.
- Member should have helped the other officers hold the Subject down instead of beating him.
- Initially stated subject was handcuffed when Subject was hit. Investigator states that he clarified with Witness that about three officers were on top of/around the Subject...trying to handcuff the Subject when member arrived and hit the Subject. Witness stated, "Yeah."

- Had clear view from second story window directly above and at a slight angle to the arrest.
- Clearly stated only one officer...struck Subject.
- Witness's account of what occurred matches that which the officers individually told investigator and what each ...reported in their respective reports.
- Clear that no officer pulled the Subject's hair nor did he see any other force being used on Subject.
- Witness did state Subject was being held down.
- Witness stated that Subject was not resisting.
- Witness appeared credible in his statement of what occurred by giving an account that matched the officers' account as to the actual use of force and an account that matched the Subject's as to the act of resisting. This indicates a **perception issue** on the part of the witness not any indication of misconduct.

#### Complainant

- Stated he was in an "agitation" with his lady when he decided to run from the police because he had a warrant.
- Stated he stopped and [lay] on the ground.
- Stated he was not resisting when they started hitting him and pulling his hair.
- Stated he was struck 25-30 times by 6-7 officers with their legs, knees, and hands.
- Stated his head, face and neck hurt.
- Stated he complied with the officers' orders and did not resist.

#### Investigator

- Even without an independent witness, it would have been reasonable for Subject to have believed and subsequently stated that he was struck 2-3 more times than what was reported due to the nature of the struggle on the ground.
- It is unreasonable to believe and later state that he, [the Subject], was struck 20-25 more times than what was reported and in the manner he describes.
- It is clear that Subject is being untruthful about the amount of force that was used and his act of resistance against the officers.
- Officers would not have had to hold Subject down on ground had Subject complied with the officers' verbal order to place his hands behind his back while grabbing his arms, trying to place them behind his back.

Case #11F-0417

#### Allegation

Subject stated "as he was being handcuffed, he was roughed up."

#### Outcome Determined by UOF Investigator

"The initial use of force investigation failed to determine any use of force was used to place handcuffs on the Subject."

#### Documented Evidence

##### Complainant (Subject)

- While taking a taped statement from Subject, Subject stated as he was being handcuffed he described (sic) he was "roughed up."
- Investigator proceeded to ask Subject if he was punched, slapped or kicked and the Subject replied "No."

Members who allegedly used excessive force

- Interviewed both members who handcuffed Subject.
- The members stated they did not use any force to place handcuffs on Subject.
- A member witnessed two other members handcuff Subject and he stated he did not witness any use of force to place handcuffs on Subject.

Witness

- Civilian Witness witnessed members place handcuffs on Subject and she stated the members did not use any force to place handcuffs on Subject.

Investigator

- The initial use of force investigation failed to determine any use of force was used to place handcuffs on Subject.

Case #11F-0420

Allegation(s)

Witness One stated “the member pulled up and told the intoxicated subject...get up before I hurt you.” Witness Two stated “the member pulled up to the intoxicated individual and tried to wake him...the member got frustrated and turned the individual over...picked the individual’s head up and slammed it to ground, [used profanity] and slapped the individual.”

Outcome Determined by UOF Investigator

Investigator “did not observe any physical evidence to support the claims that the Subject was slapped or his head was slammed onto the ground...was unable to corroborate the Witness Two’s claim that the Officer used profanity toward Subject or that he slapped him...By review of the video, it appeared that the general feeling from the citizens is that Subject was only a sleeping drunk and should have been left alone.”

Documented EvidenceComplainants (Two Witnesses)Witness One

- Investigator took recorded statement from witness.
- Witness stated that member pulled up and told intoxicated Subject to get up.
- Witness said that the member told the subject, “Get up before I hurt you.”
- Witness stated that he did not want to make a complaint and thought it would be best if the investigator talked with the member.
- Witness felt that investigator should tell the member he should not say that type of stuff.
- Investigator explained the complaint process to Witness One.
- Witness never advised that member used profanity towards Subject.

Witness Two

- Investigator took a statement from witness.
- Witness also stated that she did not wish to make a complaint.
- Witness stated that the member pulled up to the intoxicated Subject tried to wake him.
- Witness said that the member got frustrated and turned the Subject over.

- Witness said that the member picked the Subject's head up and slammed it to the ground.
- Witness stated that the member used profanity.
- Witness also stated that the member slapped the Subject.
- Witness described the member was white and bald.
- Investigator explained complaint process to Witness Two.
- Witness advised investigator that she had captured a portion of the incident on her cell phone.
- Witness allowed investigator to view the video and to make a copy of it for the purpose of this investigation.

#### Video

- Review of video revealed that Witness was standing on...sidewalk directly across from incident.
- Showed member hold Subject on ground.
- Member was giving Subject order to stay on ground and to place his hands behind his back.
- Showed members arriving on scene and member assisting in handcuffing Subject.
- Witness Two can be heard laughing on the video and asking other if they saw member slap Subject.
- Investigator initially thought Witness made above statement on the video when she saw the slap occur. During questioning, investigator asked her if the slap occurred while she was taping and she stated that it occurred before she started to video the incident.
- Investigator told Witness it sounded like she described the slap on the video while it was occurring and Witness replied she was not sure when it occurred because she was so caught up in the incident.
- Witness Two also stated that member used profanity towards Subject.
- Video showed no evidence of any misconduct.
- Investigator writes, "I did not observe any physical; evidence to support the claim that Robinson was slapped or his head was slammed onto the ground."

#### Member who allegedly used excessive force

- Member's report stated that he told Subject he needed to get up before he had to help him up, which would probably hurt.
- Member described the incident in his report, "...he was in close contact with Robinson and trying to control his arms."
- Member described lifting and pulling Subject in a clockwise manner to expose his left arm.
- Investigator writes, "Member was clearly moving Subject on the ground by lifting and pulling him. Witness Two may have perceived this as member slamming Subject's head to the ground."
- Interviewed both members who handcuffed Subject. They stated they did not use any force to place handcuffs on Subject.
- Member witnessed members handcuff Subject and he stated he did not witness any use of force to place handcuffs on Subject.

Subject

- Investigator took recorded statement from Subject regarding incident.
- Subject advised that he did not think he was lying on the sidewalk.
- Investigator asked Subject what happened when the officer tried to arrest him and the Subject stated, “Nothing. I did not fight.”
- Investigator noticed small amount of dirt on right side of Subject’s face and small amount of blood on Subject’s left cheek. After close inspection...did not appear that Subject had any laceration to his cheek or face. Investigator writes, “I was unable to determine the source of blood.”

Investigator

- The statement that the member made to Subject was very similar to the allegation made by Witness One. Both statements contain the terms “get up” and “hurt.” This discrepancy may be resolved by the fact that Witness One was standing across the street from the incident and may not have clearly heard exactly what member said to Subject.
- None of the claims that member slapped Subject, slammed Subject’s head against ground and used profanity towards Subject...were support by the Subject.
- Investigator wrote, “Even though Subject was intoxicated, he responded to my questions with appropriate responses.”

Case #11F-0677

Allegation(s)

Subject stated he “was struck on the back of his head while he was lying face down on the sidewalk...he spit blood and saliva onto the sidewalk”

Outcome Determined by UOF Investigator

The physical evidence does not support Subject’s allegation that he was struck on the back of the head five times, and that his mouth and lips were bounced off of the ground causing any injury.”

Documented EvidenceSubject

- Stated he was tackled and handcuffed, but while on the ground, was struck five times on the back of his head...while he was lying face down on the sidewalk.
- Stated he spit blood and saliva onto the sidewalk.
- Stated in his taped statement that he was “punched” by the officers.
- Said he did not know who these officers were because he did not see them and could not recognize his assailants.
- Confirmed he had taken his seatbelt off and his injuries were from being thrown into the steering wheel.
- Added that he hit the side of his head on an unknown part of the car and had blacked out for a short time.
- Ran toward the rear of the vehicle and recalled that an officer told him to stop or he would be “tased.”

Investigator

- There were no injuries to Subject’s mouth, inside or on the exterior.
- Physical evidence does not support Subject’s allegation that he was struck on the

back of the head five times, and that his mouth and lips were bounced off of the ground causing any injury.

- Photos document that there was no evidence of injury to Subject's mouth or any other area of his body.
- Checked the surrounding area and did not locate any surveillance equipment in the vicinity.

#### Officer One

- Briefed investigator on the pursuit and his part of the foot chase and his UOF on Subject.
- Advised investigator of Subject's allegation of being struck on the back of his head.
- Forth coming with his information that he pushed Subject to ground to end his attempt to escape.
- Was pursuing Subject ...closed distance between Subject and himself ...elected to push Subject to the ground?
- Advised that he also fell to the ground which is consistent with Officer Two's observation of Officer One also falling to the ground.

#### Medical

- AMR Paramedic confirmed this while a taped statement was taken in the rear of AMR #551.
- Medical staff at Children's Hospital did not locate any injury to the area of Subject's mouth.
- Standing near Subject's location when he was contacted by medical personnel...overheard Subject's account of taking off his seatbelt prior to the collision, his complaint of pain to his torso and head due to vehicle collision with the utility pole.

Case #11F-0711

#### Allegation(s)

Subject One stated a member "grabbed her by the hair, [used profanity several times] and dragged her down the front stairs." Subject Two "alleged a member slapped and punched her in the face, [used profanity], threw her down the stairs, kicked her in the head and stepped on her fingers, all while she was handcuffed."

#### Outcome Determined by UOF Investigator

There is no evidence that the officer assaulted or called Subject One names as she alleged.

The allegations made by Subject Two are totally false and did not occur as she alleges. There is no evidence to support Subject Two's allegations.

#### Documented Evidence

##### Complainants (Subjects One and Two)

##### Subject One

- Subject stated to investigator that she wanted to make a complaint regarding

member

- Subject pointed out member.
- Subject claimed member grabbed her by the hair, called her a black [expletive] several times and dragged her down the front stairs of the residence at 1578 32<sup>nd</sup> Street.
- Subject stated her friend took video of incident and she intends to sue Department.
- Subject refused to tell investigator who made video.
- Subject said she will go to IAD to file a complaint.

#### Subject Two

- Subject interviewed by investigator at Summit Medical Center.
- Subject alleged member slapped and punched her in the face, called her a black [expletive], threw her down the stairs, kicked her in the head, and stepped on her fingers—all while she was handcuffed.
- Subject only person that said member acted inappropriately toward her.

#### Civilian Witnesses

##### Witness One (Father)

- Witness told investigator his daughters, Subject Two, Subject One, and Daughter Three were lying regarding how the officers treated them.
- Witness stated that none of the officers did anything inappropriate towards his daughters.
- Witness said Subject Two was fighting Daughter Three, when the officer arrived, over issues involving her children.
- Witness said that when Subject Two saw that member arrived, Subject Two tried to run into the house.
- Witness said his other daughters rushed member while he was at the top of the stairs and tried to prevent member from detaining Subject Two.
- Witness stated it was his daughters who were in the wrong and not the members.
- Witness stated Subject Two was being untruthful as to the allegations she made toward member.
- Witness stated member did not do anything inappropriate during the incident.

##### Witness Two (Daughter)

- Witness also stated member did not do anything inappropriate during the incident.

#### Investigator

- A review of member's PDRD clearly shows the allegations made by Subject One are totally false and did not occur as she alleges.
- Used PDRD to record interviews with the family.
- The photos taken of Subject Two at the hospital do not corroborate her allegations that member threw her down stairs, kicked her in the head, slapped and punched her in the face and stepped on her finger—all while she was handcuffed.
- The photos show a very minor scratch on Subject Two's upper left arm.
- There were no obvious injuries to Subject Two's head or face substantiating her allegations.

- There are 12 cement stairs from the ground to the top of the stairs at the front of 1578 32<sup>nd</sup> Street.
- It is more likely than not [that] had member threw (sic) Subject Two down the stair as she claimed Subject Two would have sustained a serious injury.
- Subject Two was transported to Summit Medical center for medical clearance prior to being transported to John George Pavilion.
- Subject Two sustained a dislocated left index finger. The finger was reset by the attending physician while she was being treated at Summit.
- The investigator writes, “Subject Two’s finger may have been injured during the struggle with member or while she had grabbed onto member’s shirt and microphone cord.”

#### Portable Digital Recording Device(s)

- Review of PDRD shows a struggle between member and Subject Two at the top of the stairs.
- Member loses his PDRD during struggle but manages to get it back on.
- Member seen walking Subject Two Down the stairs and when they get to the bottom of the stairs, Subject Two is seen collapsing at the bottom of the stairs.
- Review of recording does not clearly show how she falls.
- There is no evidence on the PDRD supporting Subject Two’s allegation

#### NOTE

Member writes in his Supplemental Report. “...I heard the sound of someone behind me slip and fall on the steps. I turned around and member was up about three or four steps and the Subject was lying on the first two steps. Several family members were stepping up closer and yelling profanity and how they were going to sue the POLICE.”

The above statement from member is not mentioned in the UOF Report.

## APPENDIX B

### Level 3 Use of Force Reports Missing Crime/Supplemental Reports

Case No.	Incident Date	Total Members on Scene	Comments
11F-0326	4/9/2011	9	No Supplemental Report, Statement and/or Supervisor authorization for non-submission of report or statement documented in case files from three members
11F-0357	4/15/11	9	No Supplemental Report or Statement and/or Supervisor authorization for non-submission of report or statement documented in case files from three members
11F-0537	4/30/11	5	No Supplemental Report or Statement and/or Supervisor authorization for non-submission of report or statement documented in case files from one member
11F-0429	4/30/11	8	No Supplemental Report or Statement and/or Supervisor authorization for non-submission of report or statement documented in case files from one member
11F-0430	5/1/11	14	No Supplemental Report or Statement and/or Supervisor authorization for non-submission of report or statement documented in case files from one member
11F-0534	5/13/11	5	No Supplemental Report or Statement and/or Supervisor authorization for non-submission of report or statement documented in case files from one member
11F-0541	5/22/11	7	No Supplemental Report or Statement and/or Supervisor authorization for non-submission of report or statement documented in case files from one member