

# **OAKLAND POLICE DEPARTMENT**

## **Office of Inspector General**



### **AUDIT OF TASK 46**

### **PROMOTIONAL CONSIDERATION**

December 20, 2012

# CITY OF OAKLAND

## Memorandum

To: Office of the Chief of Police  
Attn: Chief Howard Jordan  
From: Captain Tull, Officer of Inspector General  
Date: December 20, 2012  
Re: Task 46, Promotional Consideration

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In September 2012, the Office of Inspector General initiated an audit of Task 46, Promotional Consideration. The purpose of the audit was to assess whether Departmental policy, which incorporates the mandates outlined in Task 46, Promotional Consideration, of the Negotiated Settlement Agreement, is being adhered to. Specifically, the audit focused on whether specified criteria (i.e. sustained complaints and commitment to community policing) were considered prior to promoting sworn members.

To determine compliance, the promotional files for candidates promoted between December 2010 and September 2012 were reviewed.

Steven Tull  
Captain of Police  
Office of Inspector General

**OFFICE OF INSPECTOR GENERAL**  
Audit and Inspections Unit



**Audit of Task 46**

**Promotional Consideration**

December 20, 2012

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## EXECUTIVE SUMMARY

The Office of Inspector General (OIG) initiated an audit of Task 46, Promotional Consideration, in September 2012. For this audit, a review of all promotions occurring between December 1, 2010 and September 1, 2012 was conducted. Task 46 requires that the Chief consider the following prior to making promotional decisions:

- Sustained misconduct cases within three years preceding promotion;
- Candidates with sustained Class I offenses within 12 months preceding the promotion are presumptively ineligible for promotion;
- Commitment to community policing;
- Quality of citizen contacts;
- Sustained and not sustained complaints, including sustained use of force; and
- Support for Department integrity measures.

During the audit period, there were six promotional processes, resulting in 28 promoted candidates and two appointed candidates. Promoted candidates included three captains, seven lieutenants, and eighteen sergeants. In addition, there were two appointed candidates, an assistant chief and a deputy chief. To assess compliance with Task 46, the audit team reviewed each of the 28 candidate's discipline history and other promotional consideration documents. For the appointed candidates, the discipline history was reviewed.

The audit found that none of the promoted candidates had a sustained finding of a Class I offense three years prior the promotion. There were three promoted candidates and one appointed candidate with a Class II sustained finding during the three years prior to promotion. The Chief of Police informed the audit team that he was aware of the details of three of the cases, along with the sustained findings, and considered them during the promotion process. The Chief stated that he did not recall the details of the fourth case. The fourth case was sustained in June 2011. Although the audit team found this one case out of compliance, documentation in the Internal Affairs case file indicates that the Deputy Chief was aware of the complaint.

All 28 promoted candidates met the remaining criteria. The promotional packets, which are reviewed by the Chief, included matrices summarizing risk management data and notes from promotional interviews, which address community policing.

No promotional packets were created for the appointed positions, assistant chief and deputy chief. The Chief informed the audit team that he was very familiar with the sustained finding for one of the candidates and did take it under consideration. In addition, the Chief carefully selects his candidates for appointed positions and considers many factors, including the criteria required by Task 46.

Subsequent to a January 2012 Court Order requiring the Chief to consult with the Monitor on promotions, all promoted and appointed candidates were approved by the Monitor.

## OIG COMPLIANCE OVERVIEW

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

### Task 46.1

Promotions of candidates with sustained misconduct cases within three years preceding the promotion include consideration of misconduct history as an important factor.

<b>In Compliance</b>	<b>97%</b>
Compliance Requirement	95%

### Task 46.2

Candidates with sustained Class I offenses within 12 months preceding the promotion are presumptively ineligible for promotion.

<b>In Compliance</b>	<b>100%</b>
Compliance Requirement	95%

### Task 46.3

Promotional decisions include considerations of a candidate's commitment to community policing; quality of citizen contacts; number of sustained and not sustained complaints completed with the time limits imposed by Government Code Section 3304; instances of unnecessary use of force; and support for Departmental integrity measures.

<b>In Compliance</b>	<b>Y</b>
Compliance Requirement	Y/N

## **AUDIT SCOPE AND POPULATION**

The audit team reviewed the promotional packets of all candidates promoted between December 11, 2010 and September 1, 2012. During the audit period, there were a total of 28 promoted candidates and six promotional processes. Promoted candidates included, three captains, seven lieutenants, and eighteen sergeants. Since there were two appointed candidates, assistant chief and deputy chief, the audit team reviewed the discipline history for both, and interviewed the Chief regarding the appointment.

There were three sergeants who were reinstated during the audit period, but were not included in the population. These sergeants were originally promoted in 2009, but were reverted to officers during budget cuts and layoffs. They were reinstated in December 2011, as required, when the budget allowed.

## **METHODOLOGY AND ANALYSIS**

To determine compliance with Task 46, the audit team reviewed the discipline history, promotional consideration packets, and interview questions for each promoted candidate. Promotional consideration packets were reviewed to determine if the historical summaries, Supervisor/Commander Input Form, and supporting documents were included and forwarded to the Chief of Police. For the two appointed candidates, assistant chief and deputy chief, the audit team was only able to review their discipline history. The audit team also interviewed the Chief about the promotional process and specific promotional decisions.

### **Reference Material**

The documents and systems below were used to evaluate the correct procedures for OPD's personnel practices regarding performance appraisals:

1. Internal Personnel Assessment System (iPAS)
2. Negotiated Settlement Agreement
3. ALL IAD Case Report
4. IAD CIR Index Log

## PRACTICES, FINDINGS, AND RECOMMENDATIONS

### Task 46.1

*Promotions of candidates with sustained misconduct cases within three years preceding the promotion include consideration of misconduct history (Class II) as an important factor.*

### Audit Steps

For the 28 promoted candidates, the audit team reviewed the promotional consideration packets, the discipline history for each member, and interviewed the Chief.

For the two appointed candidates the audit team reviewed the discipline history and interviewed the Chief regarding the appointment.

### Findings

The Department was found in compliance with Task 46.1. Of the 28 promotional candidates reviewed, there were only three that had a sustained Class II violation in the three years prior to promotion. For one candidate, the sustained case was listed in the promotional packet for consideration by the Chief. For two candidates, their sustained cases were not listed in their promotional packets. The Chief confirmed that he was aware of the allegation and sustained finding and had considered it before making the promotional decision for one of these candidates. However, there was one promotional candidate that was held out of compliance because there was a sustained Class II violation within the three years prior to promotion, which was not listed in the packet, and the Chief stated that he could “not recall” the candidate’s case.

There were two appointed candidates reviewed, and one had a sustained Class II violation within the three years prior to promotion. The Chief confirmed that he was very familiar with the case and had considered it prior to making the appointment.

The audit team found that, in some cases, there is a significant delay between the time the Personnel Division creates the promotional packets and the time that the promotional decision is made by the Chief. This may be problematic, especially if an Internal Affairs case is sustained after the promotional packet is created, but prior to the decision being made. The Chief may not have the most up to date information. For example, for one promotional candidate, the Internal Affairs case history in the promotional packet was dated March 29, 2011, but the member was not promoted until December 10, 2011.

During the interview with the Chief, he informed the audit team that his current practice is to make potential promotional candidates who have an open Internal Affairs case ineligible for promotion. Once the open case is resolved, the Chief may consider that candidate for promotion.

Finally, the majority of promotional packets included an Internal Affairs case history that showed all allegations and their findings (exonerated, unfounded, not sustained, and sustained). California Penal Code 832.5(c) prohibits law enforcement agencies from considering exonerated or unfounded complaints for the purposes of promotion.

Therefore, only sustained and not sustained cases should be provided to the Chief for his consideration.

**Task 46.2**

*Candidates with sustained Class I offenses within 12 months preceding the promotion are presumptively ineligible for promotion.*

**Audit Steps**

The auditor reviewed the Internal Affairs Index Log for any sustained Class I offenses 12 months preceding the promotions. If a promoted candidate had a sustained Class I violation, the auditor interviewed the Chief to determine whether he was aware of any sustained Class I violations prior to promoting the candidate.

**Findings**

The auditor found the Department in compliance with Task 46.2. There were 28 promotional candidates files reviewed, and none of the candidates had a sustained Class I violation in the 12 months prior to being considered for promotion. In addition, the two appointed candidates had no sustained Class I violations within the 12 months prior to their appointment.

**Task 46.3**

*Promotional decisions include consideration of a candidate's commitment to community policing; quality of citizen contacts; number of sustained and not sustained complaints completed with the time limits imposed by Government Code Section 3304; instances of unnecessary use of force; and support for Departmental integrity measures.*

**Audit Steps**

The auditor reviewed the promotional materials, including interview questions asked during the interview process, for each of the candidates.

**Findings**

The auditor found the Department in compliance with Task 46.3. Of the 28 promotional candidates reviewed, there was documentation in all of their files (100%) regarding commitment to community policing; quality of citizen contacts; number of sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304; instances of unnecessary use of force; and support for Departmental integrity measures.

All promotional candidates are interviewed by high level commanders. Interview questions cover the criteria required by 46.3. The Chief may participate in the interviews, but if not, he is briefed by the interviewing commanders before promotional decisions are made. In addition, promotional packets are prepared by the Personnel Division, which include historical summary matrices summarizing various risk management data, discipline data, and other career data. The packets and the candidate's personnel file are forwarded to the Chief of Police for his review.

In addition, the Chief, Executive Commanders, an Internal Affairs commander, and the Personnel Division Manager participate in a promotional consideration meeting to

discuss the candidates for promotion. The promotional packets, along with candidate interviews and input from commanders, assist the Chief of Police in ensuring that all promotional criteria are met and in making insightful decisions about the best candidates to promote.

There were no promotional packets created for the two appointed candidates during the audit period. However, the Chief informed the audit team that he was very familiar with the candidate's history at OPD and had carefully considered them for appointment. In addition, the Chief consulted with the Monitor prior to appointing them. Appointed positions are based on the discretion of the Chief and do not require the traditional merit based testing process used for other ranks.

During review of the promotional packets, the audit team could not locate clear documentation (Chief's signature) indicating that the Chief approved the candidate and on what date. The Chief and the Personnel Division Manager were made aware of this and they are implementing a form that will be signed by the Chief to document his decision to promote the candidate.

### **Recommendations**

1. The Personnel Division should ensure that only cases resulting in sustained and not sustained findings should be provided to the Chief for consideration.
2. The Personnel Division Manager must ensure that the Chief is aware of all sustained and not sustained complaints at the time he makes his promotional decision, since there can be significant delays between the creation of the promotional packet and the actual decision being made.

**APPENDIX A:****Promoted**

Full Name	Serial #	Promoted Classification	Date Promoted
Hubbard, Bryan A.	8309	Sergeant	11-Dec-10
Bacon, William D.	8423	Sergeant	28-Jan-11
Doolittle, Jack S.	8007	Sergeant	28-Jan-11
Nowak, Steven C.	8118	Sergeant	28-Jan-11
Porrirt, Gregory H.	8228	Sergeant	28-Jan-11
Coleman, Kirk A.	7979	Lieutenant	11-Jun-11
Cunningham, Oliver K.	7925	Lieutenant	11-Jun-11
Elzey, David E.	8407	Lieutenant	11-Jun-11
Gonzalez, Carlos A.	7617	Lieutenant	11-Jun-11
Ausmus, Lisa L.	8432	Sergeant	9-Jul-11
Beere, James P.	8115	Sergeant	9-Jul-11
Joshi, Holly J.	8486	Sergeant	9-Jul-11
Supriano, Robert J.	7859	Sergeant	9-Jul-11
Thomason, Jeffrey R.	8238	Sergeant	9-Jul-11
Tisdell, Ross A.	8039	Sergeant	9-Jul-11
Valladon, Michael J.	8172	Sergeant	9-Jul-11
Yu, Alan K.	8605	Sergeant	9-Jul-11
Wong, Clifford W.	8196	Sergeant	3-Dec-11
Anderson, James E.	7738	Sergeant	10-Dec-11
Armstrong, Leronne	8280	Lieutenant	10-Dec-11
Battle, Mark W.	8189	Sergeant	10-Dec-11
Medeiros, Brian K.	7774	Captain	10-Dec-11
Rojas, Francisco	8438	Sergeant	10-Dec-11
Sem, Sophal R.	8436	Sergeant	10-Dec-11
Whent, Sean C.	8047	Captain	10-Dec-11
Chan, Robert D.	7939	Lieutenant	1-Sep-12
Lewis, Eric D.	7976	Lieutenant	1-Sep-12
Williams, Sharon J.	7760	Captain	1-Sep-12

**Appointed**

Toribio, Anthony G.	7724	Assistant Chief	4-Feb-12
Whent, Sean C.	8047	Deputy Chief	4-Feb-12