

OAKLAND POLICE DEPARTMENT

Office of Inspector General



AUDIT OF INFORMAL COMPLAINT RESOLUTION PROCESS

December 18, 2012

CITY OF OAKLAND

Memorandum

To: Chief Howard A. Jordan
From: Captain Steven Tull
Date: December 18, 2012
Subject: **Audit of Informal Complaint Resolution Process**

On August 8, 2012, the Audit and Inspections Unit of the Office of Inspector General initiated an audit of the Oakland Police Department's (OPD) informal complaint resolution process. The purpose of the audit was to determine if the Oakland Police Department's (OPD) informal complaint resolution process is in accordance with the established guidelines in Departmental General Order (DGO) M-3.1, *Informal Complaint Resolution Process*. Additionally, the intent of the audit was to identify policy, procedure, and/or practice deficiencies and to propose solutions that will aid in the Department's supervisors', or any authorized personnel's, abilities to effectively, efficiently, and expediently informally resolve complaints against members/employees.

To conduct this audit, the Audit Team had to coordinate with the Department's Internal Affairs Division (IAD). The Audit Team informed IAD of the audit in order to gain access to the complaint cases resolved via the ICR process. Additionally, the Audit Team conferred with IAD supervisors/commanders, when necessary, to aid in clarifying information and/or audit questions.

Lastly, the audit team reviewed a random sample of ICR case files closed in the months of April, May, and June 2012.

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EXECUTIVE SUMMARY

In August, the Audit and Inspections Unit of the Office of Inspector General began conducting an audit the Oakland Police Department's (OPD) informal complaint resolution process. The purpose of the audit was to determine if OPD's informal complaint resolution process is in accordance with the established guidelines in Departmental General Order (DGO) M-3.1, *Informal Complaint Resolution Process*. Additionally, the intent of the audit was to identify policy, procedure, and/or practice deficiencies and to propose solutions that will aid in the Department's supervisors', or any authorized personnel's, abilities to effectively, efficiently, and expediently informally resolve complaints against members/employees.

The audit indicated that the Department's process for informally resolving complaints is not efficient, and based on current policies, procedures, and practice, the goal of the ICR process is unclear. Its documented policies and procedures do not provide sufficient direction to its supervisors, commanders and managers and authorized Internal Affairs Division personnel. The following is a list of policy, procedure, and/or practice deficiencies found during the audit:

The auditor was unable to determine how complaints that qualify to be informally resolved should be received and processed from beginning to end. When referencing DGO M-3.1 to determine how to receive and process a complaint, the policy refers the reader to DGO M-3 and vice versa. Since both policies reference each other, this creates circular reasoning and not an answer for executing the process.

The auditor was unable to determine whether allegations should be investigated prior to being informally resolved, and if they are, to what degree. DGO M-3.1 does not state to what degree complaints against a member/employee should be investigated while DGO M-3 states that all complaints shall be investigated. Hence, it is unclear how the process of informally resolving a complaint differs from formally resolving a complaint. It is also unclear whether the allegations that qualify for the ICR process should be resolved immediately or within Government Code 3304's one year resolution time frame.

The auditor was unable to determine who, primarily, should informally resolve complaints. DGO M-3.1 states that complaints can be received by IAD and an organizational unit other than IAD. For more details, the policy refers the reader to DGO M-3, and, again, the start of circular reasoning. In practice, the Department appears unsure of who should use the ICR process, because in some cases, field supervisors and IAD officers are receiving and/or investigating the same complaint. Therefore, there is on-scene or unit handling, as well as IAD investigative processing taking place, making the ICR process inefficient.

The auditor was unable to determine whether Department personnel understood when to close a complaint using the ICR process versus the administrative closure process. DGO M-3.1 states the intent of the ICR process is to resolve complaints against members and employees. However, it does not state what to do when, upon investigation, the complaint is actually against the Department's policy, procedure or

practice. In practice, the Department's personnel are using the ICR process to resolve incidents that are related to policy, procedure, and/or practice issues.

The auditor was unable to determine whether the action taken against a member/employee as a result of an informally resolved complaint is considered disciplinary action or non-disciplinary action. DGO M-3.1 states that informally resolving a complaint does not establish that the member/employee is admitting guilt or wrong doing. While on the other hand, the alleged Class II or service infraction becomes part of the member/employee's complaint history. In addition, the policy mentions that the action taken can consist of "non-disciplinary corrective action," but it does not provide a definition for non-disciplinary corrective action. Therefore, it is unknown what the term means and how it relates to what happens to a member/employee who is the subject of an allegation of misconduct that is informally resolved.

Overall, the audit found that the Department needs to create a more comprehensive policy for informally resolving complaints; therefore, we present the following recommendations:

1. The Department should revisit its policies, procedures, and practices regarding informal complaint resolutions to address the following issues:
 - Circular reasoning and inconsistencies between DGO M-3.1 and DGO M-3
 - On-scene or unit handling versus IAD investigative processing
 - Immediate resolution time frame versus 3304 resolution time frame
 - The degree of investigation required
 - When to close a complaint using the ICR process versus administrative closure
 - Disciplinary action versus non-disciplinary action
2. The Department should ensure its practices coincide with its policies and procedures.
3. The Department should ensure that the correct supervision structure is monitoring each member/employee and has the responsibility of issuing an ICR, when appropriate.

The Department is in technical compliance with ensuring required information (i.e., name, serial number of person receiving complaint, IAD case number or CAD incident number, summary of complaint, etc.) is documented on the Informal Complaint Resolution form. However, the aforementioned issues must be addressed by creating informal complaint resolution policies, procedures, and practices that are transparent and efficient. In addition, those policies, procedures, and practices must include the presence of adequate supervision and accountability mechanisms.

PURPOSE

On August 8, 2012, the Audit and Inspections Unit of the Office of Inspector General began conducting an audit of the Oakland Police Department's (OPD) informal complaint resolution process. The purpose of the audit was to determine if OPD's informal complaint resolution process is in accordance with the established guidelines in Departmental General Order (DGO) M-3.1, *Informal Complaint Resolution Process*. Additionally, the intent of the audit was to identify policy, procedure, and/or practice deficiencies and to propose solutions that will aid in the Department's supervisors', or any authorized personnel's, abilities to effectively, efficiently, and expediently informally resolve complaints against members/employees.

BACKGROUND

This audit was conducted at the request of the Deputy Chief of the Bureau of Risk Management.

Last Report by the Independent Monitoring Team (IMT)

The former monitor, the Independent Monitoring Team, worked closely with the Department to develop an adequate foundational system for tracking and processing complaints. In their last published report, *Fourteenth Status Report of the Independent Monitor*, dated January 13, 2010, it was determined that OPD was "in compliance with Task 4" for the following reasons:

- Every complaint reviewed complied with the Task 4 requirements;
- IMT was able to confirm that OPD initiated the formal complaint process as required when the ICR process did not resolve the complaint;
- OPD personnel did not unduly influence complainants to consent to the informal complaint resolution process.
- OPD had a central control system for complaints and Departmental requests to open investigations; and
- Every complaint received by any supervisor or commander was reported to IAD on the day of receipt or at the start of the next business day.

The IMT also noted that they were finally able to assess compliance with this task since previously "OPD did not have a reliable system for receiving or tracking complaints received outside IAD by field supervisors or other OPD members and employees." Although OPD was in compliance, the IMT did state that "portions of this task (4.7 and 4.10) will be actively monitored under the MOU."

Most Recent Reports by Current Monitor

The *Tenth and Eleventh Quarterly Reports of the Independent Monitor* were published and dated July 30, 2012 and October 15, 2012, respectively. The Monitor found the Department to be in compliance with Tasks 4.7 and 4.10. Task 4.7 requires OPD to ensure that every complaint received by any supervisor or commander be reported to IAD on the day of receipt. In addition, Task 4.10 requires that OPD comply with criteria it has established when resolving complaints through informal complaint resolution (ICR), administrative closure, or summary finding.

SCOPE AND POPULATION

Audit Scope

This audit had two key objectives. The first objective was to determine if the Oakland Police Department's (OPD) informal complaint resolution process is in accordance with the established guidelines in Departmental General Order (DGO) M-3.1, *Informal Complaint Resolution Process*. The second objective of the audit was to identify policy, procedure, and/or practice deficiencies and to propose solutions that will aid in the Department's supervisors', or authorized personnel's, abilities to effectively, efficiently, and expediently informally resolve complaints against members/employees.

Audit Population

The audit population consisted of the Department's complaints, recorded by its Internal Affairs Division, which were informally resolved and closed in the months of April, May, and June 2012. There were a total of 65 informally resolved complaints during the audit period.

Identification of the Random Sample

Using a one-tailed test, a random sample of the population of 65 informally resolved complaints was chosen to achieve a 95 percent confidence level (with a +/-4 percent error rate) that OPD is following the documented process, outlined in DGO M-3.1, when informally resolving complaints against its members/employees. In computing the sample size, it was determined that the sample size should be 39. In addition, the *Research Randomizer* program was used to randomly select the 39 informally resolved complaints from the population. Although there were 39 informally resolved complaints reviewed, only 38 complaints were considered applicable to the ICR process. There was one instance, Case 11-1242, in which the allegation was formally investigated and the allegation was sustained. Although the corrective action was deemed informal, counseling and training, the actual processing of the incident was formal and therefore not considered applicable to this task.

METHODOLOGY/ANALYSIS

To determine if OPD's informal complaint resolution process is in accordance with the established guidelines in DGO M-3.1, *Informal Complaint Resolution Process*, the auditor reviewed the process outlined in the aforementioned general order and a random sample of 38 informally resolved complaints closed in the months of April, May and June 2012. The auditor sought documentation of the following information, outlined in DGO M-3.1:

- 1) The name and serial number of the person receiving the complaint;
- 2) IAD Case Number or CAD Incident Number;
- 3) Summary of the complaint;
- 4) The date, time, location, and means of contact (i.e., in person, via phone, mail, or email);
- 5) The name of the complainant;
- 6) Identity of involved personnel;

- 7) How the matter was resolved;
- 8) Detail any recommendations for corrective action to address service complaints; and
- 9) Indicate if the subject/member or employee is not eligible, if known, and advise that a formal internal investigation has been initiated.
- 10) If the complainant agrees to the ICR process, attempt to obtain the complainant's signature on the ICR form.
 - a. In the absence of the complainant's signature, the supervisor, commander, or manager shall attest that the complainant agreed to the ICR process and sign his/her name in the blank signature block. The supervisor, commander, or manager shall document the reason for the absence of the signature.
- 11) Hand-deliver or route the completed form and other pertinent documents through the first-level commander/manager for administrative review and then to the IAD.

To determine whether policies, procedures, and practices were efficient and effective, the auditor sought the presence of transparency, adequate supervision, and accountability mechanisms in the Department's process of informally resolving complaints.

Reference Material

The documents and systems below were used to evaluate the correct procedures for the Oakland Police Department's process of informally handling complaints against its members and employees:

1. "California Government Code Section 3300-3313," *California Law*. WAIS Document Retrieval, online at <http://www.leginfo.ca.gov/calaw.html>.
2. *Complaints against Departmental Personnel and Procedures*, Departmental General Order M-3, effective February 15, 2008.
3. *Informal Complaint Resolution Process*, Departmental General Order M-3.1, effective November 10, 2008.
4. *Oakland Police Department Manual of Rules*, effective September 30, 2010.
5. *Supervisory Span of Control*, Departmental General Order A-19, effective July 26, 2006.
6. Negotiated Settlement Agreement with Stipulations, revised December 2008.
7. Research Randomizer (www.researchrandomizer.org)

PRACTICES, FINDINGS, AND RECOMMENDATIONS

Policy, Procedure, and Practice Deficiencies

The audit identified that the Department's policy, procedure, and practice for informally resolving complaints are confusing because its formal handling of complaints and informal handling of complaints do not each have its own distinguishing properties. Specifically, it is unclear how the informal complaint resolution differs from the formal complaint resolution. Therefore, it is impossible to determine why the Department is using the ICR process as a method for resolving complaints. In addition, it is impossible to determine the goal of the process. The confusion arises because of the lack of policy guidance in the following areas:

Field Supervision versus Authorized IAD Personnel

There is no indication of who the policy was meant to assist when informally resolving complaints. DGO M-3.1 states that "the ICR process may only be offered by a supervisor, commander, manager, or authorized IAD member." However, it does not advise the reader which specific supervisor, commander, manager, or IAD member should offer the ICR process and his/her relationship to the subject member/employee. It does not state under what condition(s) a specific supervisor, commander, manager, or IAD member should offer the ICR process. It does not state what it means to be an *authorized* IAD member when using the ICR process.

The audit indicated that the Department is unsure of who should use the ICR process because, in some cases, field supervisors and IAD officers are receiving and/or investigating the same complaint. The file documentation of only 29 cases was reviewed, and all 29 case files contained a Chronological Log that documented the receipt and investigation of a complaint by an IAD officer. There were 18 case files that included a Complaint Memorandum form¹ completed by a field supervisor. However, there were 11 case files that did not include a Complaint Memorandum completed by a field supervisor. Having both a field supervisor and IAD officer investigate the same complaint is not efficient, especially given the Department's limited resources.

On Scene or Unit Handling versus IAD Investigative Processing

There is no clear indication of the location where service complaints and Class II complaints against a member/employee are to be informally resolved. DGO M-3.1 does not indicate whether this policy is specifically meant to assist in handling complaints on-scene or within the unit in which the member/employee is assigned. It does not indicate specifically under what condition(s) a complaint should be handled on-scene or within the unit in which the member/employee is assigned. In addition, the policy does not indicate whether this policy is specifically meant to assist IAD in informally resolving a complaint against a member/employee. It does not indicate specifically under what condition(s) IAD should informally resolve a complaint against a member/employee.

¹ According to a statement found in Power DMS, the Complaint Memorandum form (TF-3329) ... will assist supervisors in obtaining information from complainants as well as forwarding the complaint information in a clear and concise format to IAD. The complaint form shall be used for every complaint received by a supervisor/commander/manager outside IAD.

Immediate Resolution Time Frame versus 3304 Resolution Time Frame

There is no clear indication of the desired time frame in which a service complaint or Class II complaint against a member/employee should be informally resolved. DGO M-3.1 states “The intent of the ICR process is to expedite the resolution of less serious types of complaints against members and employees.” In addition, the policy states, “IAD personnel shall receive and process complaints in accordance with the provisions of DGO M-3,” and that if a complaint is received by an organizational unit other than IAD, “The person receiving the complaint shall receive and process the complaint in accordance with the provisions of DGO M-3.” However, the policy does not clearly define the word *expedite* when informally resolving a complaint. It does not state how such expeditious handling contrasts with formally resolving a complaint. It does not indicate whether the resolution should be immediate, and, if so, what the time frame is for *immediate*. In addition, it does not indicate whether the resolution should be made within the 3304 guidelines, and, if so, how the 3304 guidelines are considered expediting the resolution of a complaint. It does not state the applicable section(s) of DGO M-3 that should be adhered to when informally resolving complaints.

Investigate or Do Not Investigate

There is no clear indication whether informally resolving a complaint requires an investigation, as in the case of formally resolving a complaint. If an investigation is required, the policy does not state to what degree the matter should be investigated. If no investigation is required, the policy does not state what specifically should happen to declare that an incident should be informally resolved. DGO M-3.1 states “IAD personnel shall receive and process complaints in accordance with the provisions of DGO M-3,” and that if a complaint is received by an organizational unit other than IAD, “The person receiving the complaint shall receive and process the complaint in accordance with the provisions of DGO M-3.” DGO M-3 states,

“The Department **shall investigate all complaints** from any source (including anonymous) against a member or employee alleging misconduct in accordance with the provisions of...DGO M-3.1, Informal Complaint Resolution Process... The Department shall receive, evaluate, and respond to service complaints regarding a policy, procedure, practice, service level, or legal standard or statute required of the Department. When possible, service complaints shall be resolved by a supervisor, commander, manager, or authorized IAD personnel, using the ICR process in accordance with the provisions of DGO M-3.1, Informal Complaint Resolution Process...”

According to DGO M-3, all complaints shall be investigated. It infers that even informally resolved complaints should be investigated prior to their resolution. DGO M-3.1 does not state whether Class II and service complaints against a member/employee should be investigated prior to being informally resolved, and if so, to what degree. Since both policies reference each other, this creates circular reasoning and not an answer to whether complaints against a member/employee should be investigated prior to being informally resolved.

Informal Complaint Resolution Process versus Administrative Closure

There is no clear indication when the ICR process should be used to resolve a service complaint. DGO M-3.1 and DGO M-3 mention the resolution of service complaints. DGO M-3.1 states,

“The intent of the ICR process is to expedite the resolution of less serious types of complaints against members and employees...The following allegations may be considered for the ICR process: (1) Service complaints; or (2) Any Class II violation that does not indicate a pattern of misconduct.”

Although DGO M-3.1 states the intent is to resolve complaints against members and employees, it does not state what to do when, upon investigation, the complaint is actually against the Department’s policy, procedure, or practice. For example, the auditor reviewed the entire file documentation of 29 cases and there were 12 complaints related to the Department’s response time to an incident. Although there was insufficient documentation to determine whether a member/employee was not at fault, there was sufficient documentation to determine the Department’s position was that the lengthy delay was due to one of its policies, procedures, or practice. In all 12 instances, an ICR form was completed, even though the delays were deemed not to be caused by the actions of a member/employee but rather a policy, procedure, or practice.

DGO M-3 lists various measures for administratively closing a complaint, but its language does not provide sufficient guidance in determining when to use this procedure and not the ICR process. The policy reads in part,

“Administrative Closure shall be used to:

- Indicate a service complaint, not involving an MOR violation, was resolved without an Informal Complaint Resolution; OR...Complainant fails to articulate an act or failure to act that, if true, would be an MOR violation...”

Part of the above policy suggests that if a member/employee is following the Department’s policy, procedure, and/or practice in executing his/her assignment, the complaint should be administratively closed since the complainant did not articulate an act or failure to act that, if true, would be an MOR violation. However, since DGO M-3.1 and DGO M-3 do not articulate how the ICR process differs from the administrative closure process, these policies are not transparent in guiding the Department when to use one in place of the other.

Disciplinary Action versus Non-Disciplinary Action

There is no clear indication of whether informally resolved complaints are considered discipline. DGO M-3 states,

“...A resolution achieved through the ICR process: (1) Does not constitute an admission of guilt or wrong doing; (2) Shall not be considered a factor (considered a prior offense or an aggravating circumstance) in determining progressive discipline; (3) Shall not be considered a *sustained* finding; (4) Shall not limit the discretion of a supervisor, commander, or manager to provide training or take non-disciplinary corrective action; and (5) **Is incorporated into the subject member/employee’s complaint history.**”

An analysis of the policy indicates that the language used is quite confusing. There are many contradictions relating to whether using the ICR process is a disciplinary measure. The policy issues are stated below:

- The policy states that informally resolving a complaint does not establish that the member/employee is admitting guilt or wrong doing. While on the other hand, the alleged Class II or service infraction becomes part of the member/employee's complaint history. The policy does not state why, if a member/employee is not admitting guilt or wrong doing, it is necessary to add the allegation to the member/employee's complaint history.
- The policy also states that the allegation should be added to the subject member/employee's complaint history but the allegation shall not be considered a factor in determining progressive discipline. However, the policy does not state the purpose or importance of adding an allegation to a member/employee's complaint history when the addition is not to be considered a factor in determining progressive discipline.
- Moreover, the policy states that the informal resolution of a complaint does not limit the discretion of a supervisor, commander, or manager to provide training or take non-disciplinary corrective action. However, the policy does not articulate under what condition(s) a supervisor, commander, or manager may want to provide training or take non-disciplinary corrective action if the member/employee has not admitted guilt or wrong doing and has not been found guilty of committing a Class II or service infraction.
- Lastly, the policy does not provide a definition for non-disciplinary corrective action and therefore it is unknown what the term means and how it relates to what happens to a member/employee who is the subject of an allegation of misconduct that is informally resolved.

It should be noted that a review of the Oakland Police Department *Manual of Rules* indicated that the Department's methods of informally resolving complaints (i.e., counseling, training, and a documented reprimand in the member/employee's PAS Supervisory Notes File) are, indeed, considered discipline. Manual of Rules, Chapter IV, *Departmental Discipline*, Section 436.00 states,

"Penalties—Subject to the provisions of the Charter of the City of Oakland, the rules of the Civil Service Board, and, when necessary, the approval of the City Manager, the following penalties may be assessed against any member or employee of the Department as disciplinary action:

Counseling and Training;

Written reprimand;

Fine, loss or compensatory time, or salary reduction;

Suspension;

Demotion; or

Termination."

Policy Compliance

1. *Members and employees shall explain to all persons making a complaint the formal complaint and ICR process, as well as their right to file a complaint with the CPRB² (DGO M-3.1, II.A, pg. 1).*

Audit Steps

The auditor reviewed 38 informally resolved complaints and the respective completed ICR forms and/or case files to determine whether members/employees documented that they explained to all persons making a complaint the formal complaint and ICR processes and how to file a complaint with the CPRB.

If the respective ICR forms did not include said documentation, the auditor sought other documentation in the case files to determine whether members/employees documented that they explained to all persons making a complaint the formal complaint and ICR processes and how to file a complaint with the CPRB.

Findings

The audit indicated that the Department is in compliance. There were 38 informally resolved complaints reviewed, but there were 37³ completed ICR forms reviewed. Of the 37 forms reviewed, there were 35 instances in which the member/employee documented that the complainant was advised of the ICR process. In addition, there were two instances, Cases 11-1183 and 12-0123, in which the auditor was unable to find documentation on the ICR form that stated the member/employee advised the complainant of the ICR process. However, in both instances there were documented letters in the case files that were sent to the respective complainants, reminding them of their agreement to the ICR process.

Moreover, of the 37 completed ICR forms reviewed, there were only four instances (Cases 11-1183, 12-0630, 12-0645, and 12-0696) in which the member/employee documented that the respective complainant was advised of his/her ability to file a complaint with the CPRB. In addition, there were 33 instances in which the auditor was unable to find documentation on the ICR forms that stated the member/employee advised the complainant of his/her ability to file a complaint with the CPRB. However, there were response letters that were sent to the respective complainants in the case files, and the letters documented that each complainant was advised of his/her ability to file a complaint with the CPRB.

The auditor notes that it is the Department's practice to document in the response letter to each complainant confirmation of the complainant's agreement to the ICR process and his/her ability to file a complaint with the CPRB.

² CPRB is an acronym for Citizens' Police Review Board.

³ IAD entered case number 12-0107 twice in its database, representing two separate complaints. However, the complaints were resolved using only one ICR form.

2. *The ICR process may only be offered by a supervisor, commander, manager, or authorized IAD member (DGO M-3.1, II.C, pg. 1).*

Audit Steps

The auditor reviewed 38 informally resolved complaints to determine whether there was documentation that indicated the ICR process was offered by a supervisor, commander, manager, or authorized IAD member. The Department was considered to be in compliance if there was documentation to support that a supervisor, commander, or manager offered the ICR process to the complainant. The Department was also considered to be in compliance if there was documentation to support that an IAD supervisor, commander, manager, or authorized IAD personnel offered the ICR process to the complainant.

Findings

The audit indicated that the Department is in compliance. There were 38 informally resolved complaints, and in each instance the ICR process was offered by a supervisor, commander, manager, or an IAD member.

Although technically in compliance, the audit indicated that the Department's policies, procedures, and practices are not transparent in defining what the relationship should be between the person offering the informal complaint resolution and the subject member/employee. The policy and procedure issues are listed below:

DGO M-3.1, section III.A, mentions two methods of processing a complaint, via IAD or an organizational unit other than IAD. However, the policy does not indicate when IAD has the responsibility of processing the complaint and when an organizational unit other than IAD has the responsibility of processing the complaint. In addition, DGO M-3.1 references DGO M-3 for more detailed information regarding receiving and processing complaints. However, when referencing DGO M-3, section III.A refers the reader back to DGO M-3.1. It states,

“Supervisors, commanders, and managers may offer the Informal complaint Resolution (ICR) process to a complainant as a means to resolve service complaints and allegations of Class II misconduct that do not indicate a pattern of misconduct in accordance with the provisions of DGO M-3.1.”

Referring the reader back to DGO M-3.1 provides circular reasoning. Such references make both policies vague in terms of who is authorized to offer an informal resolution to a complainant and what the relationship should be between the person making the offer and the subject member/employee.

3. *Complainants shall be notified of the ICR resolution in-person, by phone, mail, or email (DGO M-3.1, II.E, pg. 1).*

Audit Steps

The auditor reviewed the case files of 38 informally resolved complaints to determine the method used to notify each respective complainant of the resolution.

Findings

The audit indicated the Department is in compliance. There were 38 informally resolved complaints reviewed, and each respective complainant(s) was notified in writing, via US mail, of the agreed upon resolution.

4. *The following allegations may be considered for the ICR process:*

- *Service complaints; or*
- *Any Class II violation that does not indicate a pattern of misconduct (DGO M-3.1, II.F, pg. 2).*

Audit Steps

The auditor reviewed the case files of the 38 informally resolved complaints to determine whether the following criteria were met:

- Documentation to support that the allegation was actually against a particular member/employee; and
- Complainant consented to the ICR process;
- Subject did not receive a sustained finding for any Class I offense within the past 12 months;
- The alleged offense is not a Class I offense;
- The IAD Commander did not, at his/her discretion, initiate the formal complaint process; or
- The subject's complaint history did not indicate a pattern of misconduct involving any Class II offenses.

Findings

The audit indicated that the Department is in compliance. There were 38 informally resolved complaints in the sample, but there were 37⁴ completed ICR forms reviewed. Of the 37 forms reviewed, there were only 11 forms that documented a subject officer(s)/employee(s). None of the allegations constituted a Class I offense. There were six forms that documented a total of nine officers in which the respective complainants alleged misconduct. Two of the six ICR forms documented a service complaint in addition to the misconduct complaint.

Of the 11 forms that documented a subject officer(s)/employee(s), there were five forms that documented a total of five employees in which three respective complainants alleged misconduct and one respective complainant alleged a service infraction.

Of the 11 applicable incidents, each officer/employee's respective iPAS profile was reviewed. None of the officers/employees had received a sustained finding for a Class I offense within the past 12 months of their respective incidents. In addition, none of the officers/members' respective Internal Affairs complaint history showed any patterns of misconduct.

⁴ IAD entered case number 12-0107 twice in its database, representing two separate complaints. However, the complaints were resolved using only one ICR form.

In reviewing each officer/employee's iPAS profile to determine whether the respective incident was recorded, the audit indicated the following:

- 12-0107—auditor unable to find recorded supervisory notes about complaint
- 12-0331—auditor unable to find complaint recorded under IAD complaint history
- 12-0448—ICR form states employee “was made aware of her [complainant] complaint and concerns,” but auditor unable to find recorded complaint in IA complaint history or supervisory notes
- 12-0695—there were two involved members and auditor unable to find recorded supervisory notes for one member.

The remaining 26 ICR forms did not document a subject officer/employee and therefore these forms were not applicable to the above objective. However, it is noted that there were 25 forms documented as service complaints and one form documented as a misconduct complaint in which the subject officer/employee box was marked “unknown.” In reviewing the respective case file for the one ICR documented as misconduct, there was documentation that stated, “We are going to keep the case classified as a misconduct complaint. However, we are not listing a subject officer (person unknown) because we cannot determine who may have caused the damage (suspect, officer, another party) or if in fact any damage actually occurred.”

5. *Determining a resolution: Resolutions may include but are not limited to measures such as:*

- *Explaining to the complainant relevant Departmental policy and procedures, and/or applicable legal requirements(s) regarding the subject matter...*
- *Imposing remedial or non-disciplinary corrective action on personnel;*
- *Revising Departmental/Unit policy or procedures; or*
- *Notifying the COP and/or the appropriate Bureau Deputy Chief/Director for follow-up and resolution.*

Ensure that the provisions of the resolution are reasonable, appropriate, and address the issues and concerns of the complaint (sic).

(DGO M-3.1, Section III.B1-4, pgs. 4-5).

Audit Steps

The auditor reviewed the case files of the 38 complaints to determine how the Department resolved service and misconduct complaints.

Findings

The auditor was unable to determine whether complainants were advised of relevant Departmental policies and procedures and/or applicable legal requirement regarding the subject matter. There were 26 informally resolved complaints deemed by the Department to be service complaints. A review of the respective case files found that each complainant receives a letter from the Department regarding the respective “allegations and the investigating findings.” In the letter, the Department states the complaint was determined to be a service complaint and provides a definition of a service complaint. However, the relevant *policy, procedure, practice, service level, or legal standard or statute* is not cited.

There were 11 informally resolved complaints deemed by the Department to be Class II complaints against a member/employee. The audit indicated that the Department documents counseling, training, and reprimands for allegations of misconduct.

6. *Completing the Form: The supervisor, commander, manager, or authorized IAD personnel utilizing the ICR process shall:*

Obtain an IAD Case Number from IAD or a CAD Incident Number...from the Communications Division...on the day the ICR was initiated.

Ensure the completed Form documents the following:

- *The name and serial number of the person receiving the complaint;*
- *IAD Case Number or CAD Incident Number;*
- *Summary of the complaint;*
- *The date, time, location, and means of contact (i.e., in person, via phone, mail, or email);*
- *The name of the complainant;*
- *Identity of involved personnel;*
- *How the matter was resolved;*
- *Detail any recommendations for corrective action to address service complaints; and*
- *Indicate if the subject member or employee is not eligible (if known) and advise that a formal internal investigation has been initiated;*

If the complainant agrees to the ICR process, attempt to obtain the complainant's signature on the ICR form. In the absence of the complainant's signature, the supervisor, commander, or manager shall attest that the complainant agreed to the ICR process and sign his/her name in the blank signature block. The supervisor, commander, or manager shall document the reason for the absence of the signature (DGO M-3.1, Section III.C, pgs. 5-6).

Audit Steps

The auditor reviewed the respective completed ICR forms for the 38 informally resolved complaints to determine whether each form documented the aforementioned information.

Findings

The audit indicated that, overall, the Department is in compliance with the completion of the form. However, the Department is not ensuring that a supervisor, commander, or manager attests that the complainant agreed to the ICR process by signing his/her name in the signature block. In addition, the supervisor, commander or manager is not documenting the reason for the absence of the signature. There were 37⁵ completed ICR forms reviewed, and there were 36 completed ICR forms that did not include the respective complainant, supervisor, commander, or manager's signature. In addition there was not any documentation explaining the reason for the absence of said signature.

⁵ Again, there were 38 informally resolved complaints in the sample, but there were 37 completed ICR forms reviewed. IAD entered case number 12-0107 twice in its database, representing two separate complaints. However, the complaints were resolved using only one ICR form.

It should be noted that there was only one completed ICR form, case number 11-1183, that included the complainant's signature.

The audit also indicated that although the Department's policy states "ensure the completed form documents the following...the *Identity of involved personnel*...", it does not state how the complaint should be handled if there is not a subject officer/employee identified. There were 26 ICR forms that did not include a documented subject officer/employee. However, it is noted that there were 25 forms documented as service complaints and one form documented as a misconduct complaint, in which the subject officer/employee box was marked "unknown." In reviewing the respective case file for the one ICR documented as misconduct, there was documentation that stated, "We are going to keep the case classified as a misconduct complaint. However, we are not listing a subject officer (person unknown) because we cannot determine who may have caused the damage (suspect, officer, another party) or if in fact any damage actually occurred."

7. *ICR Administrative Review: The investigator's first level commander/manager shall review the form and other pertinent documents for accuracy, completeness, quality, and the appropriateness of the resolution and...:*

Concur with the ICR process and/or resolution:

- *Endorse the Form; and*
- *Ensure the completed and endorsed Form is delivered directly to IAD for review...*

...The IAD Commander or designee shall make the final decision regarding any dispute, discrepancy, or the appropriateness of the use or resolution of the ICR process (DGO M-3.1, III.D1-1(a1) and 3, pgs. 6-7).

Audit Steps

The auditor reviewed 38 informally resolved complaints to determine who investigated the alleged complaint against the subject member/employee and whether the investigator was the first level in the subject member/employee's chain-of-command.

The auditor reviewed the case files to determine whether each respective investigator's first level commander/manager reviewed the ICR forms and investigative documentation for accuracy, completeness, quality, and appropriateness of the resolution.

The auditor reviewed the cases files to determine whether there was documentation to support that the IAD Commander or designee made the final decision regarding any dispute, discrepancy, or the appropriateness of the use or resolution of the ICR process.

Findings

The audit indicated that the Department has developed a practice in which the onus of informally resolving complaints is placed upon its IAD personnel and not the subject member/employee's direct supervision. The aforementioned DGO M-3.1 policy implies that there will be an investigator and a review of the ICR form by the investigator's first level commander/manager. The policy also implies that the investigator and his/her respective first level commander/manager are not part of IAD since the first level

commander/manager has to concur with the ICR process and/or resolution, endorse the form, and ensure the completed and endorsed form is *delivered to IAD* for review. In practice, IAD *officers* are predominantly responsible for investigating the incident and other pertinent documents for accuracy, completeness, quality, and the appropriateness of the resolution. In addition the IAD chain of command, a sergeant, lieutenant, and captain, are responsible for concurring with the ICR process and/or resolution, and endorsing and reviewing the form. In essence, the Department is using IAD *officers* to informally resolve complaints in which there are allegations of service or Manual of Rules infractions against other *officers*.

It is also noted that there was one instance, case 11-1242, in which a police annuitant, working in IAD, conducted an investigation of an allegation of officer misconduct. In this instance, a non-sworn, retiree investigated the conduct of a sworn officer. Again, the aforementioned DGO M-3.1 policy implies that there will be an investigator and a review of the ICR form by the investigator's first level commander/manager. The policy also implies that the investigator and his/her respective first level commander/manager are not part of IAD since the first level commander/manager has to concur with the ICR process and/or resolution, endorse the form, and ensure the completed and endorsed form is *delivered to IAD* for review.

In reviewing the Department's Manual of Rules, the audit indicates that the language in the MOR places the onus on a member/employee's direct supervisor and chain of command for informally resolving complaints. The MOR, sections 222, 226, 234, and 285, respectively, reads as follows:

“Area Commanders

...Captain of Police...Be accountable for field service objectives...[and] the conduct of subordinates...Authority includes supervision over and responsibility for all Departmental personnel in area...

Area Lieutenant

...Ensuring the good order of his/her command during a tour of duty to include...proper discipline, conduct...

Commander Officers

...a commanding officer is responsible for ...the inspection, direction, and control of personnel under his/her command to assure the proper performance of duties and compliance with established rules, regulations, policies and procedures...The maintenance of discipline and morale with the command and the investigation of assigned misconduct complaints...The promulgation of appropriate directives within his/her unit to assure proper performance of Departmental functions and personnel of his/her command...Preparation and/or review of required correspondence, reports, and maintenance of records relating to the activities of his/her command...

Supervisors

...each supervisor is specifically responsible for the following...he/she shall closely supervise the activities of subordinates, making corrections where necessary and commending where appropriate...Supervisors shall exercise direct oversight in a manner that ensures the good order, conduct, discipline and efficiency of subordinates...Supervisors shall enforce Departmental rules and regulations and ensure compliance with Departmental policies and procedures...Supervisors are responsible for inspection of activities [and] personnel...under their supervision and initiation of suitable action in the event of a failure, error, violation, misconduct, or neglect of duty by a subordinate...Supervisors shall have a working knowledge of the duties and responsibilities of their subordinates. They shall observe contacts made with the public by subordinates, be available for assistance or instruction as may be required and take active charge when necessary...”

The language in the MOR suggests that a member/employee’s direct supervisor and chain of command are responsible for handling routine issues regarding conduct. The issues that arise in complaints resolved via the ICR process are routine. Below are a few examples of the allegations that were listed on the ICR forms in the sample:

- Rudeness
- Took too long for an officer to arrive
- Did not receive a report number
- Property damage

8. *IAD Responsibilities: ...The IAD shall forward copies of approved ICRs to the subject member/employee; and complainant (in person or via mail).*

(DGO M-3.1, Section IV.B, pg 8).

Audit Steps

The auditor reviewed 38 informally resolved complaints and their respective case files to determine whether there was documentation to substantiate that the subject member/employee and the complainant received copies of the approved ICR forms.

Findings

The auditor was unable to find any documentation in the case files to determine that copies of the approved ICR forms were forwarded to each respective subject member/employee and/or complainant.

Recommendations

1. The Department should revisit its policies, procedures, and practices regarding informal complaint resolutions to address the following issues:
 - Circular reasoning and inconsistencies between DGO M-3.1 and DGO M-3
 - On-scene or unit handling versus IAD investigative processing
 - Immediate resolution time frame versus 3304 resolution time frame
 - The degree of investigation required
 - When to close a complaint using the ICR process versus administrative closure
 - Disciplinary action versus non-disciplinary action
2. The Department should ensure its practices coincide with its policies and procedures.
3. The Department should ensure that the correct supervision structure is monitoring each member/employee and has the responsibility for issuing an ICR, when appropriate.