



Thirteenth Quarterly Report  
*of the Independent Monitor*  
*for the Oakland Police Department*

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## Section One

### *Introduction*

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This is the thirteenth quarterly report of the Monitor of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California. In January 2010, under the direction of Judge Thelton E. Henderson, the Parties agreed to my appointment as Monitor of the Oakland Police Department (OPD). In this capacity, I oversee the monitoring process that began in 2003 under the previous monitor. The current Monitoring Team conducted our thirteenth quarterly site visit from February 11, through 15, 2013, to evaluate the Department's progress with the NSA during the three-month period of October 1, through December 31, 2012.

In the body of this report, we again report the compliance status with the remaining active Tasks of the Agreement. By the end of the seven-year tenure of the previous monitor, the Department was in full compliance with 32 of the 51 required Tasks, and in partial compliance with 16 additional Tasks. As a result, the Parties agreed to reduce the number of Tasks under "active" monitoring to the current list of 22.

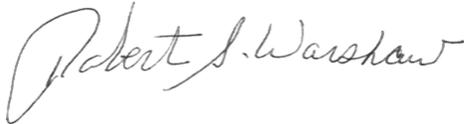
During this reporting period, we continue to find the Department in Phase 1, or policy compliance, with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD is in compliance with 12 of the 22 remaining Tasks and in partial compliance with seven Tasks. During this reporting period, we deferred our assessments with three Tasks. These overall numbers reflect a change from not in compliance to in compliance with one Task (Task 2, Timeliness Standards and Compliance with IAD Investigations); and from not in compliance to partial compliance with two Tasks (Task 16, Supporting IAD Process - Supervisor/Managerial Accountability; and Task 33, Reporting Misconduct). During the last (twelfth) reporting period, we found the Department in Phase 2 compliance with 11 Tasks, in partial compliance with eight Tasks, and not in compliance with three Tasks.

Despite the slight improvement in the Department's overall compliance picture, the number of Tasks in full compliance has returned merely to the number we found in full compliance during the eleventh reporting period. The number of Tasks in full compliance also falls one short of 13, the highest number we have found to be in full compliance since the beginning of our tenure. (We found 13 Tasks in full compliance during the fifth, sixth, and tenth reporting periods.)

Recently, a new chapter opened in the decade-old undertaking toward the reform of the Oakland Police Department: Judge Thelton E. Henderson appointed Thomas C. Frazier, retired Police Commissioner of the Baltimore Police Department, as the new Compliance Director. In this capacity, Commissioner Frazier leads the efforts to bring the Department into compliance with the long-ago agreed-upon reforms outlined in the Negotiated Settlement Agreement. Even more importantly, Compliance Director Frazier can hold to great account those in the City and Department who have the responsibility to institute these reforms.

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We have noted in our past reports our serious dismay with the Department's stagnation in its progress toward effective, just, and constitutional policing. The Department and the City have stifled and sidetracked this effort for far too long. We are hopeful that the Court's appointment of Commissioner Frazier will implement the reforms in the Negotiated Settlement Agreement; invigorate the police leadership; and increase the accountability of the Police Department to its constituency, the citizens of Oakland.



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## *Compliance Assessment Methodology*

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The body of this report is comprised of our assessments of compliance with the individual requirements of the 22 active Tasks of the NSA. Each requirement is followed by information about the compliance status of the requirement during our previous reporting period, a discussion regarding our assessments and the current status of compliance, a summary notation of Phase 1 and Phase 2 compliance (see below), and our planned next steps in each area.

The Monitor's primary responsibility is to determine the status of the Oakland Police Department's compliance with the requirements of the 22 active Tasks. To accomplish this, the Monitoring Team makes quarterly visits to Oakland to meet with OPD's Office of Inspector General (OIG) and other Department personnel – at the Police Department, in the streets, or at the office that we occupy when onsite in the City. We also observe Departmental practices; review Department policies and procedures; collect and analyze data using appropriate sampling and analytic procedures; and inform the Parties and, on a quarterly basis, the Court, with information about the status of OPD's compliance.

Our Team determines compliance through an examination of policies and implementation of practices that are relevant to each of the active Tasks. First, we determine if the Department has established an appropriate policy or set of procedures to support each requirement. Following this, we determine if the Department has effectively implemented that policy.

Based on this process, we report the degree of compliance with requirements on two levels. First, we report if the Department has met policy compliance. Compliance with policy requirements is known as **Phase 1 compliance**, and the Department achieves it when it has promulgated appropriate policies and trained relevant Department members or employees in their content. Second, we report on the extent to which the Department has implemented the required policies. Implementation-level compliance is reported as **Phase 2 compliance**. In general, to achieve full compliance, the Department must achieve both Phase 1 and Phase 2 compliance; that is, an appropriate policy must be adopted, trained to, and operationally implemented.

Our conclusions with regard to Phase 1 or Phase 2 compliance will fall into the following categories:

- **In compliance:** This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).
- **Partial compliance:** This is reported when at least one, but not all, requirements of a Task have achieved compliance, showing progress toward full compliance. Tasks will remain in partial compliance as long as we determine there is continued progress toward reaching substantial, or full, compliance.

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- **Not in compliance:** This is reserved for instances where partial compliance has not been achieved and no progress has been made.

Many sub-requirements of the 22 active Tasks require the analysis of multiple instances of activity, cases, or observations. In these circumstances, our analysis is based on a review of all cases or data, or, when appropriate, on statistically valid samples of the population. To reach our conclusions based on analyses of cases, the Department must meet a minimal standard. The Parties have agreed upon these compliance standards, which range from 85% to 95%, or a Yes/No standard.

This methodology supports a sound and rigorous review of the Department's compliance with the requirements of the 22 active Tasks. We recognize, however, that the high demands of this methodology may not be fully realized in all elements of all reviews. There will be circumstances in which we will be unable to determine fully the compliance status of a particular requirement due to a lack of data, incomplete data, or other reasons that do not support the completion of our work in a manner consistent with timely reporting. Under such circumstances, we will opt not to compromise our methodology by forcing a conclusion regarding compliance levels. Instead, we will report a finding as "**Deferred.**" This finding is not intended to reflect negatively on the Department or to otherwise imply insufficient progress. In such circumstances, we expect that a more complete assessment of compliance in the area in question will be determined in our next report.

Our compliance assessment methodology directs the Monitoring Team in our work and underlies the findings presented in this report. We fully expect that this methodology will govern our work throughout our tenure in this project. Any consideration of revision or change of this methodology will be presented to the Parties and the Court.

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### *Executive Summary*

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This is the thirteenth report of the Monitoring Team in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* This Executive Summary is not intended to replicate the body of the entire report. Instead, it highlights the more significant findings, trends, patterns, or concerns that materialized as a result of our evaluation.

From February 11, through 15, 2013, we conducted our thirteenth site visit to Oakland. As we do during each site visit, we met with several Department officials, including the Chief and Assistant Chief of Police and Deputy Chiefs; as well as personnel from the Office of Inspector General (OIG), Bureau of Field Operations (BFO), Bureau of Investigations (BOI), Bureau of Services (BOS), Internal Affairs Division (IAD), Training Section, and Communications Section; OPD officers, managers, supervisors, and commanders – including sergeants, lieutenants, and captains. We also conferred with the Plaintiffs' attorneys, City Administrator, and Office of the City Attorney (OCA). During and since the time of our site visit, we attended Department meetings and technical demonstrations; reviewed Departmental policies; conducted interviews and made observations in the field; and analyzed OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation.

For the current reporting period, we find that there has been a slight increase in compliance levels from those noted in our last report. For the quarter under review, we once again found OPD in Phase 1 compliance with all 22 of the remaining active Tasks. The Department is in Phase 2 compliance with 12 (55%) of the 22 active Tasks and in partial compliance with seven (32%) Tasks. We also deferred assessments on three Tasks. We did not find any Tasks to be not in compliance.

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Task	Phase 1: Policy and Training	Phase 2: Implementation			
	In Compliance	In Compliance	Partial Compliance	Not in Compliance	Deferred
Task 2: Timeliness Standards and Compliance with IAD Investigations	√	√			
Task 3: IAD Integrity Tests	√	√			
Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process	√	√			
Task 5: Complaint Procedures for IAD	√		√		
Task 6: Refusal to Accept or Refer Citizen Complaints	√	√			
Task 7: Methods for Receiving Citizen Complaints	√	√			
Task 16: Supporting IAD Process - Supervisor/ Managerial Accountability	√		√		
Task 18: Approval of Field-Arrest by Supervisor	√	√			
Task 20: Span of Control for Supervisors	√		√		
Task 24: Use of Force Reporting Policy	√				√
Task 25: Use of Force Investigations and Report Responsibility	√				√
Task 26: Force Review Board (FRB)	√	√			
Task 30: Executive Force Review Board (EFRB)	√				√
Task 33: Reporting Misconduct	√		√		
Task 34: Vehicle Stops, Field Investigation, and Detentions	√		√		
Task 35: Use of Force Reports – Witness Identification	√	√			
Task 37: Internal Investigations - Retaliation Against Witnesses	√	√			
Task 40: Personnel Assessment System (PAS) – Purpose	√		√		
Task 41: Use of Personnel Assessment System (PAS)	√		√		
Task 42: Field Training Program	√	√			
Task 43: Academy and In-Service Training	√	√			
Task 45: Consistency of Discipline Policy	√	√			
<i>Total Tasks</i>	22	12	7	0	3

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## Section Two

### *Compliance Assessments*

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#### Task 2: Timeliness Standards and Compliance with IAD Investigations

##### Requirements:

*Fairness to complainants, members/employees and the public requires that internal investigations be completed in a timely fashion.*

- 1. On or before December 1, 2003, OPD shall develop policies regarding timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.*
- 2. Compliance with these timeliness standards shall be regularly monitored by IAD command and the Department's command staff. If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.*

(Negotiated Settlement Agreement III. B.)

##### Comments:

During the last reporting period, we found OPD to be not in compliance with Task 2 due to its non-compliance with Task 2.1, the essence of this Task. During the eleventh reporting period, we deferred our assessment for one reporting period; prior to that, we had found OPD in compliance with Task 2 during all of the previous reporting periods. Per Departmental policy, in order to be considered timely, at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days.<sup>1</sup>

##### Discussion:

As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 2, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 2. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

**Task 2.1** requires that internal investigations (IAD and Division Level) – including review, approval, findings, and discipline – be completed in accordance with the timeliness standards developed by OPD (compliance standard: 85%). To assess this subtask, we reviewed a list of all internal investigations resulting in formal findings (unfounded, sustained, exonerated, or not sustained) that were approved between October 1, and December 31, 2012, and calculated the number of days between the complaint date and the approval date for each case. We excluded

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<sup>1</sup> OPD classifies misconduct as either “Class I” or “Class II.” Per DGO M-03, Class I offenses “are the most serious allegations of misconduct and, if sustained, shall result in disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution.” Class II offenses include “all minor misconduct offenses.”

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from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or service complaints, and those that did not involve Manual of Rules (MOR) violations. We segregated the remaining cases into Class I or Class II categories. If a case involved at least one alleged Class I violation, we classified it as Class I.

As noted above, Departmental policy requires that investigations be completed within 180 days. Of the 140 Class I cases we reviewed, 119, or 85%, were in compliance with established timelines – an increase from the 81% we found during the last reporting period. Eleven of the Class I cases were completed in exactly 180 days, and 90 cases were completed in between 170 and 179 days. Of the 148 Class II cases we reviewed, 142, or 96%, were in compliance with established timelines – a slight increase from the 95% we found during the last reporting period. Seventeen of the Class II cases were completed in exactly 180 days, and 110 cases were completed in between 170 and 179 days. Of the 66 sustained findings that we reviewed, 65 (98%) were in compliance with established discipline timelines.<sup>2</sup> This is the same percentage that we found during the last reporting period.

OPD is in compliance with Task 2.1.

**Task 2.2** requires that IAD and OPD command staff regularly monitor compliance with these timeliness standards (compliance standard: Yes/No). The primary responsibility for monitoring compliance with timeliness standards rests with IAD, which generates weekly reports listing the Department's open investigations and critical deadlines for investigations retained in IAD and those handled at the Division level. The reports are distributed to IAD command staff and the respective Bureau Deputy Chiefs.

In addition to the reports, the IAD Commander discusses pending deadlines for key open investigations during IAD's weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. IAD also occasionally, as needed, emails individual reminders on cases approaching due dates to investigators and their supervisors. During this reporting period, we received and reviewed copies of individual Bureau and Department-wide Open Investigation Reports, Cases Not Closed Reports, 180-Day Timeline Reports, and agendas for the weekly meetings between the Chief and IAD staff. The content of these documents demonstrates active monitoring of case timeliness. A Monitoring Team representative occasionally attends and observes these weekly meetings. The Department is in compliance with Task 2.2.

**Task 2.3** requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards (compliance standard: Yes/No). While there was no such proliferation during this reporting period; for the past three reporting periods, the Department experienced an influx of cases – resulting primarily from the high number of complaints received by the Department following Occupy Oakland-related events. During this reporting period, IAD opened 645 cases, a decrease of 92 cases from the last

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<sup>2</sup> We reviewed 42 cases involving sustained findings; several cases involved more than one sustained finding.

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reporting period. The Chief approved 718 cases, an increase of 253 cases from the last reporting period. In addition, during this reporting period, OPD created a new Force Investigation Section, which added a lieutenant's position to IAD. There were no additional contractors or annuitants hired. OPD is in compliance with Task 2.3.

After finding OPD to be not in compliance with Task 2 due to its non-compliance with Task 2.1, the essence of this Task, OPD is again in Phase 2 compliance with Task 2.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During the next reporting period, we will again confer with IAD command staff regarding workload trends and staffing requirements, including how the Department continues to handle the cases related to Occupy Oakland events. We will also examine closely the Department's continued delays in processing the investigations of such complaints.

### Task 3: IAD Integrity Tests

Requirements:

*IAD shall be proactive as well as reactive.*

1. *IAD shall conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct.*
2. *IAD shall have frequency standards, among other parameters, for such integrity tests.*

(Negotiated Settlement Agreement III. C.)

Comments:

OPD has been in compliance with this Task since the sixth reporting period.

Discussion:

As previously reported, OPD published Internal Affairs Policy & Procedures 07-01, *Integrity Testing*, which incorporates the requirements of this Task on January 25, 2007. The Department updated this policy in January 2009. The revised policy also incorporates the requirements of Task 3. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

**Task 3.1** requires that IAD conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct (compliance standard: Yes/No); and **Task 3.2** requires that IAD's integrity tests be conducted in accordance with the frequency standards and other parameters IAD has established (compliance standard: 90%).

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To assess the Department's Phase 2 compliance with these subtasks, we reviewed files – including operations plans, after-action reports, supporting documents and evidence – related to the 21 integrity tests that were conducted from October 1, through December 31, 2012. Our review focused on the scope of the investigations, whether OPD conducted integrity tests on members and employees who were the subject of repeated allegations, and whether the selective integrity tests that OPD conducted complied with the parameters established by IAD. Of the 17 tests conducted during this reporting period, seven were planned tests, in which the Integrity Testing Unit reviewed the records of OPD members and employees to verify that their vital information and records were current and therefore compliant with Departmental policy.<sup>3</sup> We found that all seven focused on individual members and employees of OPD who were the subjects of high numbers of allegations of misconduct over the 18 months prior; all seven planned tests passed.

The remaining 10 integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies.<sup>4</sup> Five of these tests were conducted on officers who were the subjects of repeated allegations, and addressed the sources of the repeated allegations. Of the 10 selective tests, seven passed. The two that failed were referred to IAD for investigation, and one was found inconclusive.

Three of the selective integrity tests monitored the performance of officers – including how they monitored radio traffic, documented stops, responded to calls, drove Department vehicles, and interacted with the public. One of these tests failed; the officer was found to be unresponsive to calls for service.

Another selective test monitored the performance of sergeants in the field to ensure that they were responding properly to arrest approval requests; this test passed.

Another selective test audited sick use by an officer. In this test, the ITU discovered photographs posted to social media sites of the officer at various outings while off sick. This test failed, and ITU forwarded it to IAD for investigation.

In another selective test, ITU personnel conducted an unannounced audit of the investigative services impress account. This account is used for confidential informants and investigations. The audit reconciled the cash and receipts to the ledger.

The remaining four selective tests involved an audit of the property room, an audit of customer service at the Major Crime Squad, an audit of the customer service desk, and surveillance of an officer allegedly involved in inappropriate conduct while on duty. The three audits successfully passed, and the surveillance was inconclusive.

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<sup>3</sup> Planned integrity tests are designed specifically to test the compliance – with Departmental policies or procedures – of specific members or employees who are identified as the subject of the test.

<sup>4</sup> Pursuant to Internal Affairs Policy & Procedures 07-01, selective integrity tests are targeted enforcement tools aimed at addressing specific issues regarding specific members, employees, or units.

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OPD is in Phase 2 compliance with Task 3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will again meet with ITU and the IAD Commander to discuss the Integrity Testing Unit and its testing.

## Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process

Requirements:

1. *Within 90 days, OPD shall develop a policy regarding an informal complaint resolution process which may be used by supervisors and IAD to resolve service complaints and Class II violations that do not indicate a pattern of misconduct as described in Section III, paragraph H (2). This process shall document the receipt of the complaint, date, time, location, name or the person making the complaint, the name of the person receiving the complaint, how the matter was resolved and that the person making the complaint was advised of the formal complaint process with the CPRB. The documentation shall be forwarded to an IAD Commander for review. If the informal complaint resolution process fails to resolve the complaint or if the person making the complaint still wishes to make a formal complaint, the person receiving the complaint shall initiate the formal complaint process pursuant to Section III, paragraph E. An IAD Commander shall make the final determination whether the ICR process will be utilized to resolve the complaint. OPD personnel shall not unduly influence persons making a complaint to consent to the informal complaint resolution process.*
2. *IAD shall establish a central control system for complaints and Departmental requests to open investigations. Every complaint received by any supervisor or commander shall be reported to IAD on the day of receipt. If IAD is not available, IAD shall be contacted at the start of the next business day. Each complaint shall be assigned an Internal Affairs case number and be entered into a complaint database with identifying information about the complaint. OPD personnel shall notify IAD and the Chief of Police, or designee, as soon as practicable, in cases likely to generate unusual public interest.*
3. *Criteria shall be established which must be met prior to moving, from "open" to "closed," any investigation in the complaint database.*<sup>5</sup>

(Negotiated Settlement Agreement III. D.)

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<sup>5</sup> The underlined requirements are the only provisions of Task 4 that are being actively monitored under the MOU.

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Comments:

Only two provisions of Task 4 (4.7 and 4.10) are being actively monitored under the MOU. During all of the previous reporting periods, we found OPD in compliance with both of these requirements. Overall, we found that complaints received by any supervisor or commander were reported to IAD on the day of receipt or at the start of the next business day. We also found that OPD complied with criteria it has established when resolving complaints via informal complaint resolution, administrative closure, or summary finding.

Discussion:

There are four Departmental policies that incorporate the requirements of Tasks 4.7 and 4.10:

- **Department General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of these subtasks.
- **Department General Order M-3.1:** As previously reported, OPD published Department General Order M-3.1, *Informal Complaint Resolution Process*, which incorporates the requirements of these subtasks, on December 6, 2005. General Order M-3.1 was revised in February 2008, and August 2008. The revised policy also incorporates the requirements of these subtasks.
- **Special Order 8552:** As previously reported, OPD published Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual*, on February 1, 2007. This policy incorporates the requirements of these subtasks.
- **Communications Division Policy & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007. This policy incorporates the requirements of these subtasks.

As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 4.7** requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt (compliance standard: Yes/No). If IAD is not available, the supervisor or commander shall contact IAD at the start of the next business day. To assess Phase 2 compliance for Task 4.7, we reviewed 92 Daily Incident Log (DIL) entries and a random sample of 122 IAD case files that were approved during the period of October 1, through December 31, 2012. The Deputy Chief for the Bureau of Risk Management forwards completed DILs to us on a daily basis. We found no evidence of unwarranted delay in the delivery of these complaints or in the intake process once IAD was made aware of them. OPD is in compliance with Task 4.7.

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**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 (compliance standard: 90%).<sup>6</sup> This subtask is intended to ensure that OPD provides the proper level of investigation for each complaint, and does not resolve meritorious complaints of misconduct without determining – and documenting – whether the OPD member or employee committed misconduct.

During this reporting period, from a sample of IAD cases that were approved between October 1, and December 31, 2012, we reviewed 45 cases in which at least one allegation was resolved via administrative closure, 11 cases in which at least one allegation was resolved via informal complaint resolution (ICR), and four cases in which at least one allegation was resolved via summary finding.

In all of the ICRs we reviewed, the complainants agreed to the informal complaint resolution process. Where an agreement was secured in a telephone conversation, that information was contained in the case documentation (in many cases, the exact minute/second mark of the agreement was recorded) and in follow-up letters to the complainants. Four of the cases stemmed from the complainants' dissatisfaction with OPD's response times to the complainants' calls for service. In two other cases, complainants were unsatisfied with the progress of homicide investigations in which the victims were their family members.

One ICR involved an allegation of poor demeanor. The complainant described an officer as "brisk" with him, but could not elaborate on the genesis of his perception. Regardless, the complainant agreed to the ICR while on a recorded telephone line. In another case, the complainant was upset that officers divulged that she called the police, causing her to fear possible retaliation. The remaining ICR cases concerned service-related issues and were appropriate for this type of case resolution.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. Four of the cases were administratively closed because it was determined that OPD employees were not involved in the alleged acts. In one complaint, alleging rudeness on the part of a dispatcher, the investigation revealed that a CHP dispatcher took the call. Two other cases involved allegations of excessive force. In one, it was determined that private security officers were involved, and in the other, Alameda County Sheriff's Office deputies – not OPD officers – made the arrest. The fourth, a case involving an allegation of damaged property, implicated an Amtrak officer.

Five cases were administratively closed because they did not involve MOR violations. For example, in two cases, complainants alleged that they were being followed by police. They could not, however, provide any specific information to support their claims. In another, a complainant alleged that he was being harassed because he was stopped for smoking marijuana

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<sup>6</sup> Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

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in public. The case was closed after he refused to cooperate with the investigation and elaborate on what he believed constituted the harassment.

The remaining allegations that were administratively closed comported with policy, in that the complaints either lacked specificity, claimed innocence of charges best left to appropriate adjudication venues to decide, or otherwise did not constitute MOR violations. Where they were accompanied by allegations that warranted a full investigation, these additional allegations were investigated in accordance with policy. We also identified several administrative closures in our Task 7.3 sample (Anonymous Complaints), and they are further discussed in that section.

The cases resolved via summary finding were approved for such designation as required by policy. In three of the cases, PDRD videos negated the need to interview the involved officers. For example, in one case, a complainant alleged that she did not have a backpack containing suspected narcotics, while video clearly showed her in possession of the property. The other cases involved allegations of excessive force – in each case, video evidence refuted the claims. Summary findings are further discussed in Task 5.

OPD is in compliance with Task 4.10.

OPD is in Phase 2 compliance with Task 4.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 5: Complaint Procedures for IAD

Requirements:

1. *On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the person receiving the complaint. In the event that such a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant and any witnesses. This information, as well as a description of the complaint, shall immediately, or as soon as circumstances permit, be documented on a Complaint Form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a complaint. The supervisor or appropriate Area Commander notified*

- of the complaint shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.*
2. *An on-duty supervisor shall respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest. The supervisor shall ensure the Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints, by a jail inmate shall be handled in the same manner as other civilian complaints.*
  3. *In each complaint investigation, OPD shall consider all relevant evidence, including circumstantial, direct and physical evidence, and make credibility determinations, if feasible. OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.*
  4. *OPD shall develop provisions for the permanent retention of all notes, generated and/or received by OPD personnel in the case file.*
  5. *OPD shall resolve each allegation in a complaint investigation using the "preponderance of the evidence" standard. Each allegation shall be resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure. The Department shall use the following criteria for determining the appropriate disposition:*
    - a. *Unfounded: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.*
    - b. *Sustained: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.*
    - c. *Exonerated: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accord with law and with all Oakland Police Department rules, regulations, or policies.*
    - d. *Not Sustained: The investigation did not disclose sufficient evidence to determine whether or not the alleged conduct occurred.*
    - e. *Administrative Closure: The investigation indicates a service complaint, not involving an MOR violation, was resolved without conducting an internal investigation; OR*
    - f. *To conclude an internal investigation when it has been determined that the investigation cannot proceed to a normal investigative conclusion due to circumstances to include but not limited to the following:*
      - 1) *Complainant wishes to withdraw the complaint and the IAD Commander has determined there is no further reason to continue the investigation and to ensure Departmental policy and procedure has been followed;*
      - 2) *Complaint lacks specificity and complainant refuses or is unable to provide further clarification necessary to investigate the complaint;*

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- 3) *Subject not employed by OPD at the time of the incident; or*
- 4) *If the subject is no longer employed by OPD, the IAD Commander shall determine whether an internal investigation shall be conducted.*
- 5) *Complainant fails to articulate an act or failure to act, that, if true, would be an MOR violation; or*
- 6) *Complaints limited to California Vehicle Code citations and resulting tows, where there is no allegation of misconduct, shall be referred to the appropriate competent authorities (i.e., Traffic Court and Tow Hearing Officer).*
- g. *Administrative Closures shall be approved by the IAD Commander and entered in the IAD Complaint Database.*
6. *The disposition category of "Filed" is hereby redefined and shall be included under Administrative Dispositions as follows:*
  - a. *An investigation that cannot be presently completed. A filed investigation is not a final disposition, but an indication that a case is pending further developments that will allow completion of the investigation.*
  - b. *The IAD Commander shall review all filed cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed and may direct the closure or continuation of the investigation.*
7. *Any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions.*

(Negotiated Settlement Agreement III. E.)

Comments:

During all of the previous reporting periods, we found OPD in partial compliance with Task 5.<sup>7</sup> Tasks 5.1-5.5 address the information gathered at the time a complaint is lodged and the notifications that are required. During the previous reporting period, we found OPD in compliance with all five subtasks in this group. In addition, we found that 72% of the cases we reviewed were in compliance with all elements of Tasks 5.15 and 5.16. We also found that the verification that all notes were contained in the file, as required by Task 5.17, was present in all of the cases we reviewed. In 20% of the cases we reviewed, the preponderance of evidence

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<sup>7</sup> Pursuant to an agreement among the Parties, Tasks 5.7- 5.11, and 5.13-5.14 are not subject to active monitoring.

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standard was not applied to some or all of the allegations, as required by Task 5.18. We also found OPD in compliance with Tasks 5.6 and 5.12 (jail complaints), Task 5.19 (proper dispositions), Task 5.20 (tolling and filed cases), and Task 5.21 (employee interviews).

Discussion:

There are several Departmental policies that incorporate the various requirements of Task 5:

- **Departmental General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 5.)
- **Communications Division Operations & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007.
- **Training Bulletin V-T.1:** As previously reported, OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006.
- **Special Order 8270:** As previously reported, OPD published Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility*, on June 24, 2005.
- **Special Order 8565:** As previously reported, OPD published Special Order 8565, *Complaints Against Department Personnel*, on May 11, 2007.
- **IAD Policy & Procedures 05-02:** As previously reported, OPD published IAD Policy & Procedures 05-02, *IAD Investigation Process*, on December 6, 2005.

In addition, NSA stipulations issued on December 12, 2005, and March 13, 2007, incorporate the requirements of this Task.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

To verify Phase 2 compliance with Tasks 5.1 through 5.5, we reviewed 92 entries that appeared on the Daily Incident Logs (DILs) that were completed between October 1, and December 31, 2012. We identified these by randomly selecting 17 dates during this reporting period and reviewing the entries for each of those dates.

**Task 5.1** requires that when a citizen wishes to file a complaint, the citizen is brought to a supervisor or IAD, or a supervisor is summoned to the scene (compliance standard: 95%). During the last reporting period, we found OPD in compliance with this subtask. During the

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current reporting period, of the 92 DIL entries, six cases were received by IAD, which, in turn, notified the Communications Division. Thirty-three complaints were taken by supervisors in the field, and in the remainder of the cases complainants called 911 to express their dissatisfaction. In these latter cases, IAD or field supervisors were notified, except when the complaints were against Communications personnel (these were handled by a Communications supervisor) or were clearly service complaints (e.g., slow response time with no specific officer complained of). We noted 40 such service complaints. During this reporting period, OPD has a 100% compliance rate with Task 5.1.

**Task 5.2** requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay be documented (compliance standard: 85%). OPD has added a checkbox to the DIL to record such delays. In addition to reviewing this section of the logs, we also checked the times of complaint receipt and supervisor contact with the complainant (or attempted contact where the complainant was unavailable – see Task 5.3). Of the 92 DIL entries we reviewed, we identified only one case in which there appeared to be greater than a three-hour delay in contacting the complainant. The Communications Division received a demeanor complaint at 08:49 hours; it was assigned to a Police Communications Supervisor at 09:00 hours. It appears that the first attempt to contact the complainant was at 12:40 hours. The complainant did not answer, and OPD left a message. OPD remains in compliance with Task 5.2.

**Task 5.3** requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint (compliance standard: 90%). Of the 92 records in our dataset, we identified 12 instances in which the complainant “refused” interaction with a supervisor. In two cases, complainants were not available to responding field supervisors. In one, the complainant left before the supervisor arrived. However, the complainant identified the subject officers in the initial call to Communications. In the other, the complainant refused to answer his door to the responding sergeant, and also failed to answer his telephone; the sergeant left him a message. In one case, the complainant wished to remain anonymous, and did not leave a callback number or an address. In the remaining cases, the complainants simply did not answer the callback numbers provided. OPD left messages in all but one instance – in that case, the caller’s voice mailbox was full. OPD is in compliance with Task 5.3.

**Task 5.4** requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander (compliance standard: 85%). In order to achieve compliance with this subtask, the DIL should contain the identification of personnel; witnesses or identifying information, if known (the log should state “unknown” if not known); the date, time, and location of the incident; and the time of contact or attempt to contact the complainant by a supervisor.

During the last reporting period, OPD had a 100% compliance rate with this subtask. During this reporting period, all of the logs we reviewed contained the required information (“unknown” was checked in 21 records). OPD has a 100% compliance rate during this reporting period, and is in compliance with Task 5.4.

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**Task 5.5** requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD (compliance standard: 95%). OPD had a compliance rate of 100% with this subtask during the last reporting period. The DILs are administered by the Communications Section and forwarded to IAD each business day. Additionally, the DIL contains a field to record the name of Area Commander notified and the time of notification. This field was properly completed in all of the records we reviewed. OPD is in 100% compliance with Task 5.5 during this reporting period.

**Task 5.6** requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. To assess Task 5.6 during this reporting period, we reviewed all complaints that appeared to have originated from North County Jail, Santa Rita Jail, or Juvenile Hall, and were approved between October 1, and December 31, 2012. We identified eight such complaints using the IAD database. We reviewed these complaints for two triggering events: an allegation of Class I misconduct; and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was “handled in the same manner as other civilian complaints.”

Four of the complaints were lodged contemporaneous to the arrest of the complainant and contained at least one allegation of Class I misconduct. In one, a complaint of force during an arrest, a supervisor responded to the scene of the arrest and filled out a complaint memorandum prior to the suspect being transported to jail. In two other cases alleging excessive force, one a complaint arising from an Occupy Oakland demonstration, sergeants responded to the North County Jail and took the complaints. In the last case, a detainee erroneously completed her intake screening sheet, indicating that she had been subjected to every type of force listed on the sheet. Alameda County deputies called OPD, and a supervisor responded. It was clear that the “complainant” misunderstood the form, and she assured the sergeant that no force was used on her. The resulting case was administratively closed.

The remaining cases either did not contain Class I misconduct allegations, or were not lodged contemporaneously with the arrest. In two of the cases, while the complainants were being interviewed in the Santa Rita Jail on unrelated matters, they made various allegations of misconduct purportedly occurring in the past – in one case 80 days earlier, and in the other, over four years earlier. In another case involving alleged force on an Occupy Oakland protestor, the complainant called IAD from the North County Jail the day after the incident. A supervisor responded and took his complaint.

OPD is in compliance with Task 5.6.

Task 5.12 requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD (compliance standard: 90%). Since by definition these complaints must be made contemporaneous with the arrest, an on-duty supervisor must respond to the jail. Under current policy, the Communications Section must record on the DIL complaints that are received and/or handled by on-duty supervisors; the DIL is forwarded daily

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to IAD. As mentioned in past reports, we deem the DIL system as functionally equivalent to the requirements of Task 5.12, and the Department remains in compliance with this subtask.

To assess **Tasks 5.15 through 5.19**, and **Task 5.21**, we reviewed a random sample of 25 IAD cases that were approved between October 1, and December 31, 2012. This sample included investigations completed by IAD and Division-level investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.

As in our previous reviews, we treated **Tasks 5.15 and 5.16** as a single subtask with several elements, specifically that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements (compliance standard: 85%). During the previous assessment period, we deemed the Department in compliance with *all* of these required elements 72% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 22, or 88%, in compliance with *all* of these required elements.

In nine cases, investigators conducted follow-up interviews with officers or civilians to seek clarification. In one case stemming from an arrest during an Occupy Oakland protest, the complainant refused to cooperate with IAD. She was, however, interviewed twice by CPRB. In another case involving alleged poor demeanor during a gun arrest, IAD conducted follow-up interviews of three sworn members, even though the initial investigation was handled as a DLI. In another case involving multiple complainants and 13 allegations resulting from the search of a residence, one complainant was interviewed four times, two complainants were each interviewed twice, and one of the involved officers was interviewed twice.

In two cases, credibility assessments were problematic. In one, we were unable to determine if the investigator deemed the complainant credible, although he reached definitive conclusions regarding credibility for all of the other involved parties. He wrote, "Although B[] appeared credible during her statement, her perception of the event was skewed and does not match the statements provided by witnesses E[], B[], and P[]." In another case, a complainant was deemed credible even though her complaint stemmed from a call during which she was placed on an involuntary psychiatric hold, and one of her allegations was that the responding officer stole her fallopian tubes. She also indicated that she was bipolar, heard voices, and had men inside her. OPD has made great progress in addressing its issues with faulty credibility assessments, and we found that all determinations of "not credible" in the cases we reviewed were supported. There were three such cases. However, a determination of "credible" must be supported as well, and it was clearly not in the case cited above.

We noted one case in which relevant evidence was not gathered. One of the complainant's allegations concerned force used in the sally port of the North County Jail. Despite the fact that the complaint was made contemporaneously with complainant's arrest and a supervisor responded to the jail as required, OPD did not request the video from the facility's recording system in a timely manner. When the case was sent to the field as a DLI investigation, the jail's

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45-day video retention period had passed, and any video that may have captured the incident was no longer available.

**Task 5.17** requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file (compliance standard: 85%). OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). During the previous reporting period, we found OPD in 100% compliance with this subtask. During this reporting period, the form was again properly completed in all 25 cases we reviewed. OPD is in compliance with this subtask.

**Task 5.18** requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard (compliance standard: 90%). During the previous reporting period, OPD complied with this subtask in 80% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 23, or 92%, of the 25 cases in our sample. However, in the jail case mentioned above, the not sustained finding might have been different had video evidence been retrieved in a timely fashion. In one case involving allegations of an improper arrest, planting of evidence, and failure to take a complaint, we disagree with the findings. All parties were deemed credible, and while a PDRD was activated during parts of the encounter, key segments of the interaction between the officers and the complainant were not recorded. Findings of unfounded and exonerated should have been not sustained. However, after the complainant was transported to jail, his repeated accusations of misconduct were recorded by PDRD, and should have resulted in the initiation of the complaint process.

In the other non-compliant case, a case alleging poor response time and failure to contact a complainant, OPD failed to come to a finding for one of the allegations. This case is further discussed in Task 5.19.

We noted one case in which the recommended findings of the investigator were overturned during the review process. Allegations of failing to take a statement and failing to make an arrest were appropriately changed from exonerated to unfounded. We also noted two cases in which reviewers, including the Chief, determined that allegations should be handled informally as “discovery violations.” OPD policy allows this practice if the infraction is minor in nature and is discovered by a supervisor rather than raised by a complainant.

OPD is in compliance with Task 5.18.

**Task 5.19** requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure (compliance standard: 95%). Our sample of 25 cases contained 67 allegations that received dispositions as follows: 16 exonerated; 16 not sustained; 30 unfounded; one sustained; and three administratively closed. Additionally, one allegation regarding an officer failing to contact a complainant did not receive a finding. In this same case, a complaint of poor response time was administratively closed, and a discovery violation of failing to properly document a call was handled informally. Overall, we disagreed with five of the findings, as described in Task 5.18. With a 90% compliance rate, OPD is not in Phase 2 compliance with this subtask.

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**Task 5.20** requires that the IAD Commander review all “filed” cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed (compliance standard: 90%). A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. According to our review of the IAD database, OPD currently does not have any cases classified as filed. Cases categorized as “tolling” appear to fit this definition.<sup>8</sup>

During our most recent site visit, we met with the Deputy Chief of the Bureau of Risk Management and the commanding officer of IAD, who advised that as of that date, six cases were classified as tolling. Two involved civil litigation against the City and/or the Department; and in the remaining four cases the subject or witness officers were unavailable. All cases appeared to be tolling according to policy. These cases are reviewed with the Chief during his weekly IAD meetings and are listed by case number on the printed meeting agendas. OPD is in compliance with this subtask.

**Task 5.21** requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken (compliance standard: 90%). However, with the approval of the IAD Commander, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Six of the 25 cases we reviewed were resolved via summary finding, and were appropriately approved for such closure. (These do not include the cases referenced in Task 4, for which summary findings were also appropriate.) In four of these cases, the availability of PDRD video was the primary reason interviews were unnecessary.

We noted two other cases in which subject officers were not interviewed. In one, the subject officer retired from the Department and declined to participate in the investigation. In the other, a subject officer was – and remains – out on extended sick leave.

OPD is in compliance with Task 5.21.

OPD is in partial Phase 2 compliance with Task 5.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

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<sup>8</sup> OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304.

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Next Steps:

As we have done previously, during our next site visit, we will meet with IAD and OIG personnel regarding specific cases of concern that are referenced herein.

## Task 6: Refusal to Accept or Refer Citizen Complaints

Requirements:

*Refusal to accept a citizen complaint, failure to refer a citizen to IAD (when that citizen can be reasonably understood to want to make a citizen's complaint), discouraging a person from filing a complaint, and/or knowingly providing false, inaccurate or incomplete information about IAD shall be grounds for discipline for any OPD member or employee.*

(Negotiated Settlement Agreement III. F.)

Comments:

During the previous reporting period, we found the Department in Phase 2 compliance with Task 6.

Discussion:

As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 6, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 6. The requirements of this Task are also incorporated into Manual of Rules Sections 314.07, 398.70, and 398.76. As the Department has trained at least 95% of relevant personnel on this policy, we find OPD in continued Phase 1 compliance with this Task.

**Task 6** requires that OPD members and employees who refuse to accept a citizen complaint, fail to refer a citizen to IAD (when the citizen can be reasonably understood to want to make a citizen's complaint), discourage a person from filing a complaint, and/or knowingly provide false, inaccurate, or incomplete information about IAD, are disciplined (compliance standard: 95%).

To assess Phase 2 compliance with this Task, we reviewed a random sample of 92 Daily Incident Log entries from July 1, through September 30, 2012; and a random sample of 25 IAD investigations (conducted by both IAD and via Division-level investigation) that were closed during the same period. We found no cases in which an allegation of Failure to Accept or Refer a Complaint went unaddressed.

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We also queried the IAD database to identify any allegations of MOR 398.70-1, Interfering with Investigations; MOR 398.76-1, Refusal to Accept or Refer a Complaint; and MOR 398.76-2, Failure to Accept or Refer a Complaint; that were investigated and approved during this same time period. We identified 16 such cases. Five of these cases resulted in sustained findings for one or more of the applicable MOR violations.

Three of the sustained cases involved civilian employees. Two concerned police communications dispatchers, and in both cases, the PCDs failed to refer callers to their supervisors when appropriate. In one, the complainant expressed displeasure with the manner in which his call was handled. In the other, the PCD, apparently by happenstance, fielded a complaint about his own off-duty conduct, and failed to report the matter immediately. The remaining civilian case involved a Property and Evidence Unit supervisor who failed to initiate the complaint process when advised of potentially missing money.

The remaining two sustained cases involved sworn personnel. In one, an allegation of racial profiling, an officer initiated the complaint process, but when the complainant advised him that she would lodge the complaint from home, he failed to notify his supervisor. In the other, a sergeant actually responded to the scene and took a complaint from one individual, but the sergeant failed to recognize that another party on the scene also wanted to lodge a complaint. A captain reviewing the paperwork from the incident discovered the second complaint and initiated the process.

In one of the cases without sustained charges, Portable Digital Recording Device (PDRD) footage was used to refute a complainant's claim that officers failed to take his complaint. The officers recorded the field stop, and the video revealed that he never lodged a complaint. In the remaining cases applicable to this Task, allegations for the identified MOR violations were not sustained. We reviewed the investigations and concur with those findings in all cases except one. This case is further described in Task 5.

Discipline was administered in all cases resulting in sustained findings for the pertinent MORs. Penalties ranged from counseling and training (which is the first level of discipline in OPD's disciplinary system) to a 20-day suspension.

OPD remains in Phase 2 compliance with Task 6.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

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## Task 7: Methods for Receiving Citizen Complaints

### Requirements:

*On or before December 1, 2003, OPD shall develop a policy to strengthen procedures for receiving citizen complaints:*

1. *IAD or Communication Division personnel shall staff a recordable toll-free complaint phone line, 24-hours a day, and receive and process complaints in accordance with the provisions of Departmental General Order M-3. The complainant shall be advised that the call is being recorded when a complaint is taken by IAD.*
2. *Guidelines for filing a citizen's complaint shall be prominently posted and informational brochures shall be made available in key Departmental and municipal locations.*
3. *OPD shall accept anonymous complaints. To the extent possible, OPD shall ask anonymous complainants for corroborating evidence. OPD shall investigate anonymous complaints to the extent reasonably possible to determine whether the allegation can be resolved.*
4. *OPD personnel shall have available complaint forms and informational brochures on the complaint process in their vehicles at all times while on duty. Members/employees shall distribute these complaint forms and informational brochures when a citizen wishes to make a complaint, or upon request.*
5. *IAD shall be located in a dedicated facility removed from the Police Administration Building.*
6. *Complaint forms and informational brochures shall be translated consistent with City policy.*
7. *Complaint forms shall be processed in accordance with controlling state law.<sup>9</sup>*

(Negotiated Settlement Agreement III. G.)

### Comments:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the past several reporting periods, we found OPD in compliance with this Task.

### Discussion:

OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 7, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 7. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance with this Task, we reviewed all cases listed in the Internal Affairs Division database as originating from complainants who were "anonymous," "unknown," "refused," or any forms of those terms (such as "unk") and that were approved between October

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<sup>9</sup> The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

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1, and December 31, 2012. We also reviewed all complaints during this selected time period that were tagged by IAD as originating from an anonymous complainant, and complaints in which the complainant field in the database was blank, to determine whether any were made anonymously.

Based on the above-listed criteria, we identified 50 cases as potential anonymous complaints during this reporting period. After review, we determined that 43 were true anonymous complaints. Of these 43, the complainant was identified during the course of the investigations in four cases. In one, a sergeant did not interview the complainant regarding her allegations of a racially motivated arrest because the complainant was part of a hostile crowd. However, IAD staff recognized her from PDRD footage and attempted to contact her. Once she was identified, she refused to cooperate with the investigation. In another case, an anonymous third party complained about the arrest of an individual at the Police Administration Building (PAB). While the complainant was not identified, the arrestee was, and IAD opened an investigation. The arrest was also captured on PDRD, which proved instrumental in determining the findings. In still another case alleging poor service, IAD learned the complainant's first name, telephone number, and P.O. Box mailing address. He ultimately withdrew his complaint on a recorded telephone line.

Twenty-four of the remaining 39 complaints were received via telephone calls to the Communications Division. Seven were reported to officers or supervisors in the field, and one was reported to an officer working at the front desk at the PAB. Four were received directly in IAD, and one each was received from the following sources: the Citizen's Police Review Board (CPRB); review of an article posted on the Internet; and an email to a command officer.

Where possible, complainants were asked to provide corroborating evidence. In nearly all cases, the complainants terminated the contact before OPD could secure additional details of the complaint. However, the complaints were investigated to the extent reasonably possible as required by this subtask. IAD or field supervisors attempted to re-contact complainants if a call-back number was available, even if the complainants expressly stated they wished to remain anonymous.

Thirty-four of the 39 cases were closed via administrative closure. Each met the criteria for such closure, and most lacked the details to identify the specific alleged misconduct and/or OPD personnel involved in the incidents. Five involved complaints of poor response time to calls for service. Seven involved complaints of displeasure with general service delivery, such as failure to address gang, drug, or prostitution issues, or quality of life issues such as noise and traffic. Two cases were discovered to be duplicates of other active investigations, and were administratively closed for this reason.

Nine cases did not, in our opinion, rise to the level of a complaint. The fact that OPD classified them as complaints is not a compliance concern; we merely make the observation that the complaint process could have been avoided. For example, a complaint was generated because a caller did not believe a dispatcher was being truthful when the dispatcher advised that a

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helicopter flying over the city was associated with a Presidential visit. In another case, a caller simply stated that OPD kills young black men and terminated the call. In another, a caller expressed concern over the gang activity in her area, but expressly stated twice that she did not have a formal complaint. In still another, an anonymous caller complained that the animal shelter does not pick up pregnant stray cats. As is our practice, we will discuss all of these cases with IAD during our next site visit.

The Department remains in Phase 2 compliance with Task 7.3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 16: Supporting IAD Process - Supervisor/Managerial Accountability

Requirements:

*On or before December 1, 2003, OPD shall develop a policy to ensure that supervisors and commanders, as well as other managers in the chain of command, shall be held accountable for supporting the IAD process. If an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, then that supervisor or manager shall be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene.*

(Negotiated Settlement Agreement III. O.)

Comments:

In the last reporting period, for the first time since the second reporting period, we found the Department not in Phase 2 compliance with Task 16.

Discussion:

As previously reported, two Department policies, Department General Order M-03 and Training Bulletin V-T.1, incorporate the requirements of Task 16. OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 16.) OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 16.1** requires that supervisors and commanders, as well as other managers in the chain of *command*, are held accountable for supporting the IAD process (compliance standard: Yes/No); and **Task 16.2** requires that if an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense,

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the supervisor or manager is held accountable, through OPD's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene (compliance standard: 90%).

To assess Task 16 during this reporting period, we examined 92 Daily Incident Log entries from October 1, through December 31, 2012; a random sample of 25 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between October 1, through December 31, 2012; and the 17 sustained Class I investigations that were approved by the Chief between October 1, through December 31, 2012.

Our review of the 17 sustained Class I investigations found that two did not sufficiently address the role of the subjects' supervisors or managers in the sustained misconduct. Task 16 requires, in part, that a supervisor or manager shall be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene.

During our review of the 17 sustained Class I sustained IAD investigations, we discovered that six resulted from allegations that occurred during Occupy Oakland demonstrations. Of these cases, one did not sufficiently address the role of the subject's supervisors in the sustained conduct. This one case involved allegations from a complainant that a police officer beat a subject with a baton. The IAD investigation found that the subject officer strayed from the skirmish line and struck the subject multiple times, leading to a sustained violation of use of force. (In its own investigation, the Citizens' Police Review Board [CPRB] found that the sergeant on scene should have reported the force used; the Department did not agree.)

As noted in our last quarterly report, the Occupy Oakland-related response presented a unique situation where squads or officers and supervisors were available to witness the conduct of each other. Five cases during this reporting period revealed one analysis of the member/employee accountability that stood out from the others. In this case, video evidence showed a supervisor leaving the scene when he should have stayed to monitor the force being used to take the subject into custody. In another IAD investigation, the Department found that a lieutenant should have recognized that a sergeant was not in a position to adequately supervise his team. The member/employee accountability section found a sustained charge against the lieutenant, finding that the lieutenant should have taken proactive steps to ensure that the acting sergeant was supervising his team.

The remaining 11 IAD investigations involved sustained Class I offenses that OPD found to be in compliance. Of these cases, one did not sufficiently address the role of the subject's supervisors in the sustained conduct. The case found an inappropriate use of force that was discovered by the captain upon review. We are concerned that the officer's supervisor found that the force used fell within Department policy; and that no action was taken against these supervisors. The remaining 10 cases did not demonstrate improper member/employee accountability analysis. As we discussed with OPD during our last site visit, the investigation report's member/employee accountability section should analyze if it was reasonable for a

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supervisor – through reviewing reports, investigating force, or supervising an officer – to identify misconduct. A transparent organization identifies – through close and effective supervision – any possible misconduct of its members.

During the last (twelfth) reporting period, we found OPD not in compliance with Task 16, as OPD did not sufficiently analyze the role of the supervisor in the misconduct in several of the cases we reviewed. For this reason, for this reporting period, we are holding the Department in partial Phase 2 compliance with this Task; we will closely monitor the manner in which IAD evaluates supervisors' responsibility in future reporting periods.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will, as in the past, meet with the IAD Commander to discuss any Task 16-applicable cases for the next reporting period.

## Task 18: Approval of Field-Arrest by Supervisor

Requirements:

*Within 260 days from the effective date of this Agreement, the Chief of Police shall, based on contemporary police standards and best practices, develop and implement policies to address the following standards and provisions:*

Approval of Field-Arrest by Supervisor

1. *OPD shall develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates on calls for service. The policies developed in this Section shall require supervisors to respond to the scene of (at least) the following categories of arrest, unless community unrest or other conditions at the scene make this impractical:*
  - a. *All Felonies;*
  - b. *All drug offenses (including narcotics, controlled substances and marijuana arrests if the subject is taken to jail).*
  - c. *Where there is an investigated use of force;*
  - d. *Penal Code §§69, 148 and 243(b)(c).*

*The responding supervisor shall review the arrest documentation to determine whether probable cause for the arrest, or reasonable suspicion for the stop, is articulated, to ensure that available witnesses are identified, to approve or disapprove the arrest in the field, and to log the time of the contact.<sup>10</sup>*

(Negotiated Settlement Agreement IV. A.)

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<sup>10</sup> The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

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Comments:

Only one provision of Task 18 (18.2.2) is being actively monitored under the MOU. During all of the previous reporting periods, we found the Department in compliance with this subtask.

Discussion:

As previously reported, OPD published an arrest approval and report review policy, DGO M-18, *Arrest Approval and Review in the Field* (May 13, 2004; and updated October 1, 2005), which incorporates the requirements of Task 18. In December 2006, OPD published Special Order 8536, *Probable Cause Arrest Authorization and Report Review*. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

We reported in our tenth quarterly report that OPD provided us with a copy of Training Bulletin I-O.4, *Legal Aspects Of Searching Persons On Parole And Probation*, effective November 23, 2011. The purpose of the Training Bulletin is to guide OPD members on documenting the means of confirming the status of the parolee or, if a probationer, their status and whether an appropriate search clause exists. The Training Bulletin also provides guidance in situations where inconsistent information is discovered in AWS, CORPUS, or CRIMS regarding a probationer's status.<sup>11</sup>

**Task 18.2.2** requires that supervisors review arrest documentation to verify that available witnesses are identified (compliance standard: 90%). To assess Phase 2 compliance with this subtask, we reviewed arrest documentation for all of the applicable arrest categories, as well as documentation for arrests resulting in an investigated use of force. Specifically, we reviewed a random sample of 92 adult and eight juvenile arrest reports documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); as well as documentation for 23 arrests resulting in an investigated use of force; that occurred between October 1, and December 31, 2012. We reviewed these to determine if supervisors reviewed the reports that listed witnesses or appropriately noted "no known witnesses," or referred to a canvass with no witnesses produced. In keeping with previous practice, if there was no mention of any witnesses in the crime report narrative, we accepted a "0" in the "witness" box on the cover sheet as sufficient documentation.

Of the 92 adult arrest reports, we excluded 60 from our dataset; and of the eight juvenile arrest reports, we excluded three from our dataset; for one or more of the following reasons: the arrest involved a warrant or probation or parole warrant detention; the arrest occurred outside of our selected time period; the incident was, in fact, a psychiatric detention that did not involve an arrest; or the arrest involved a misdemeanor offense that was not one of the arrests applicable to Task 18.2.2. Of the remaining 32 adult arrests and five juvenile arrests, there were no reports that did not document the presence of witnesses or no known witnesses; and all arrests were approved by a supervisor. This represents a 100% compliance rate relating to adult arrests for this subtask. In addition, of the 23 arrests resulting in an investigated use of force, all were in

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<sup>11</sup> Automated Warrant System, Criminal Oriented Records Production Unified System, or Consolidated Records Information Management System.

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compliance with Task 18.2.2.<sup>12</sup> This represents a 100% compliance rate among arrests resulting in an investigated use of force for this subtask.

Our review revealed an overall 100% compliance rate for Task 18.2.2. OPD is in Phase 2 compliance with this requirement during this reporting period.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with OIG to discuss the Department's protocols for conducting audits of this Task to ensure sustainability.

## Task 20: Span of Control for Supervisors

Requirements:

*On or before August 14, 2003, OPD shall develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The policy shall provide that:*

- 1. Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
- 2. During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and operational needs, whether or not to backfill for the absence of the sergeant on leave.*
- 3. If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
- 4. If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Comments:

During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with Task 20. During the last several reporting periods, we did not assess Tasks 20.2, 20.3, and 20.4 because of the Department's recent adoption of a tiered system of supervision and other structural changes in the Bureau of Field Operations (BFO).

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<sup>12</sup> This number includes only Level 1, 2, and 3 uses of force because per DGO K-4, the documentation of witnesses of Level 4 uses of force is not required.

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Discussion:

As previously reported, directives relevant to this Task include: Departmental General Order A-19, *Supervisory Span of Control*, issued on July 26, 2006; Departmental General Order D-13, *Assignment to Acting Higher Rank or Classification*, issued on June 17, 1999; and Special Order 8435, *Acting Sergeant Selection Process*, issued on July 26, 2006.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 20.1** requires that sufficient primary sergeants be assigned at the draw board/master detail level to permit one primary sergeant for every eight officers under normal conditions (compliance standard: Yes/No). During the first two reporting periods, we did not assess this subtask due to the Department's lack of reliable documentation. At that time, we reported that there was no official OPD "master detail" that both listed sergeants' assignments as of the time of the "draw" at the beginning of the year and was also updated throughout the year as loans, transfers, and other personnel changes alter supervisory assignments. During the third reporting period, we were granted access to Telestaff, the Department's electronic scheduling system. Telestaff continues to function as a "master detail" that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. OPD remains in compliance with Task 20.1.

**Task 20.2** requires that relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%).

In February 2012, OPD implemented a new, tiered system of supervision in the Bureau of Field Operations (BFO). Under this system, each squad is assigned one primary sergeant and one relief sergeant. In the absence of both the squad's primary and relief sergeant, the squad is supervised by one of four "Tier 2 relief supervisors." These changes significantly alter the way in which we assess both Tasks 20.2 and 20.3: we no longer examine the supervision of patrol squads on only a random sample of days, but the supervision of *each squad on each day* of the reporting period.

We considered supervision by both primary sergeants and relief sergeants as in compliance for this subtask. We did not, however, consider OPD's "certified acting sergeants" to be legitimate supervisors for this purpose – even if, according to the Department, these individuals were "assigned" as primary or relief sergeants for a particular squad. Since the beginning of our tenure, we have expressed our concerns regarding the Department's practice of certified acting sergeants. Sergeants are the building blocks of a police department's supervisory structure – they respond to scenes, handle complaints from citizens, approve arrests made by officers, and review and write reports that are eventually sent up the chain of command. Officers must know who they report to; the consistency of supervision makes a police organization effective and increases officers' accountability to their department, and the department's accountability to the

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community it serves. A so-called acting sergeant who is assigned to supervise a squad of officers does not provide the mentoring, training, guidance, and intervention that his/her squad needs.

To assess Task 20.2 during this reporting period, we reviewed spreadsheets prepared by the Department for the months of October, November, and December 2012 that, by date, note which type of sergeant supervised each squad – a primary sergeant, relief sergeant, Tier 2 relief sergeant, or other. Using Telestaff, we also spot-checked this data to verify its accuracy.

We calculated per squad the compliance percentages for this subtask during this reporting period. Every Task 20.2-applicable squad must be supervised by a legitimate primary or relief sergeant at least 85% of its working shifts in order for the Department to be in compliance with this subtask.

Forty-nine applicable squads worked during this reporting period. Thirty-nine were in compliance – that is, 39 squads were supervised by either a primary or relief sergeant at least 85% of the reporting period. As 10 squads were not in compliance with this subtask, OPD is not in compliance with Task 20.2.

**Task 20.3** requires that a supervisor's span of control for the Department's relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio on a day-to-day basis (compliance standard: 90%).

As noted above, the Department's new, tiered system of supervision in BFO significantly affects the way in which we assess Task 20.3. However, during this reporting period, due to technical problems preventing our access to Telestaff, we were unable to assess this subtask. As of the publication of this report, the City's Information Technology Department is working to restore our access. We are therefore deferring our compliance determination with Task 20.3; we look forward to assessing this subtask during the next reporting period.

**Task 20.4** requires that the Department's Area Commanders make backfill decisions and that these decisions are consistent with policy and operational needs (compliance standard: 90%). Due to the Department's new supervisory structure, this subtask may no longer be applicable. We will discuss this issue with the Department during our next site visit. For now, we are deferring our compliance determination with Task 20.4.

**Task 20.5** requires that the span of control for special operations is determined by an Area Commander and is reasonable (compliance standard: 90%). In addition, the Department requires that sergeants supervise all special operations. To assess this subtask, we reviewed a random sample of 25 special operations plans of the 82 total operations conducted between October 1, through December 31, 2012, to determine whether the span of control for these operations was determined by the relevant commander and was reasonable. Our review found that all 25 of the special operations in our sample met these requirements.

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OPD is in compliance with Task 20.5.

**Task 20.6** requires that the Chief or his designee make decisions regarding any loans or transfers for long-term backfill (compliance standard: 85%). An Area Commander “backfills” a sergeant’s slot when the primary, or assigned, sergeant is unable to supervise his/her squad on a short-term basis. However, the Chief or his designee (generally, the Assistant Chief or Deputy Chief) is required to determine any loans or transfers for *long-term* backfill.

We reviewed the Department’s weekly Personnel Orders issued between October 1, through December 31, 2012, for the signature of the Chief or his designee. We found that all of the Personnel Orders during this time period contained such a signature, indicating the Chief’s approval.

The NSA does not require written documentation of loans and transfers for long-term backfills – merely that the Chief or his designee approves such loans and transfers. However, OPD policy requires such documentation. Specifically, Departmental General Order B-4, *Personnel Assignments, Selection Process, and Transfers*, states, “A unit commander/manager who needs a loan of personnel shall submit a justifying loan request to his/her Deputy Chief/Director requesting the loan.” Based on our recent discussions with the BFO Deputy Chief and other BFO personnel, as well as our review of Personnel Orders for other purposes (see above), it appears that OPD’s practice comports with Departmental policy. OPD is in compliance with Task 20.6.

OPD is in partial Phase 2 compliance with Task 20.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

## Task 24: Use of Force Reporting Policy

Requirements:

*The policy shall require that:*

1. *Members/employees notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force.*
2. *In every investigated use of force incident, every member/employee using force, and every member/employee on the scene of the incident at the time the force was used, shall report all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor.*
3. *OPD personnel document, on the appropriate form, any use of force and/or the drawing and intentional pointing of a firearm at another person.*
4. *A supervisor respond to the scene upon notification of an investigated use of force*

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*or an allegation of excessive use of force, unless community unrest or other conditions makes this impracticable.*

5. *OPD notify:*
  - a. *The Alameda County District Attorney's Office immediately or as soon as circumstances permit, following a use of lethal force resulting in death or injury likely to result in death.*
  - b. *The City Attorney's Office as soon as circumstances permit following the use of lethal force resulting in death or serious injury. At the discretion of the City Attorney's Office, a Deputy City Attorney shall respond to the scene. The Deputy City Attorney shall serve only in an advisory capacity and shall communicate only with the incident commander or his/her designee.*
  - c. *Departmental investigators regarding officer-involved shootings, in accordance with the provisions of Section V, paragraph H, of this Agreement.*
6. *OPD enter data regarding use of force into OPD's Personnel Assessment System (PAS).*

(Negotiated Settlement Agreement V. A.)

Comments:

We found OPD in partial compliance with Task 24 during the last reporting period, as the Department was not in compliance with the requirements that OPD personnel on the scene of the incident report all uses of force on the appropriate form, and document every use of force and/or the drawing and intentional pointing of a firearm.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 24. OPD revised DGO K-4 on August 1, 2007. On April 15, 2009, OPD issued Special Order 8977, amending DGO K-4. The revised policy also incorporates the requirements of Task 24. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

OPD issued a revision to Special Order No. 8977, *Use of Force Reporting – Pointing of Firearm/Restrained Subject/Use of Vehicle to Intentionally Strike a Subject*, on December 17, 2012. The revision to this policy allows OPD officers to use a “low ready”/retention position when un-holstering their firearms. The “low ready”/retention position is where the firearm is pointed at a 45-degree angle or less and not at a person. According to the Department, it began training on the revised policy immediately after its authorization.

During our November 2012 site visit, we met with OPD command personnel and OIG to discuss ongoing problem areas in use of force reports and their supervisory reviews. We also reminded the Department of our continued concern with the lack of adequate justification in citizen

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encounters that lead to an investigated use of force. We continue to encourage OPD command personnel to pay close attention to these issues.

During this reporting period, we requested 90 use of force reports for review, but determined that 27 (30%) of the reports that we requested and received were completed outside of the current reporting period. As a result, we are deferring our Phase 2 assessment of Task 24. During our next site visit, we will meet with the Department to discuss the materials we need to properly conduct our assessment of this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

Next Steps:

We will continue to meet with OPD to provide feedback on specific use of force reports and to assess how the Department is addressing the serious issue of pointing firearms – the act of which may not only be unnecessary and inappropriate, but which also elevates the risk for unfortunate and unjustified firearm discharges.

## Task 25: Use of Force Investigations and Report Responsibility

Requirements:

*An on-scene supervisor is responsible for completing an investigated use of force report in accordance with the provisions of Departmental General Order K-4, "Reporting and Investigating the Use of Force."*

1. *OPD shall develop and implement a policy for conducting and documenting use of force investigations that include, at a minimum:*
  - a. *Documentation of the incident in either an Offense or Supplemental Report from the member(s)/employee(s) using force; and/or, when necessary, a statement taken from the member(s)/employee(s) using force;*
  - b. *Separating and separately interviewing all officers who were at the scene at the time of the incident;*
  - c. *A Supplemental Report from other members/employees on the scene or a statement taken, if deemed necessary by the investigating supervisor;*
  - d. *Identification and interviews of non-Departmental witnesses;*
  - e. *Consideration of discrepancies in information obtained from members, employees and witnesses, and statements in the reports filed;*
  - f. *Whether arrest reports or use of force reports contain "boilerplate" or "pat language" (e.g., "fighting stance", "minimal force necessary to control the situation");*
  - g. *Documentation of physical evidence and/or photographs and a summary and analysis of all relevant evidence gathered during the investigation;*  
*and*



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6. *Members/employees involved in a use of force incident resulting in serious injury or death and/or an officer-involved shooting, shall be separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed.*

(Negotiated Settlement Agreement V. B.)

Comments:

During the last five reporting periods, we found the Department in partial compliance with Task 25.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 25. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 25. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, as noted above, we requested 90 use of force reports for review, but determined that 27 (30%) of the reports that we requested and received were completed outside of the current reporting period. As a result, we are deferring our Phase 2 assessment of Task 25. During our next site visit, we will meet with the Department to discuss the materials we need to properly conduct our assessment of this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

Next Steps:

During our next site visit, we will continue to provide feedback to OPD on the use of force command review process, investigator impartiality, and lack of use of the Portable Digital Recording Devices (PDRDs) by officers in violation of OPD policy.

## Task 26: Force Review Board (FRB)

Requirements:

*OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:*

1. *Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
2. *Require the FRB to review all use of force investigations;*

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3. *Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
4. *Require the FRB to forward sustained policy violations to the Discipline Officer.*
5. *Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
6. *Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
7. *Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
8. *Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
9. *Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Comments:

During the last two reporting periods, we found OPD in partial compliance with Task 26.

Discussion:

As previously reported, our review of Department General Order K-4.1, *Force Review Boards* (August 1, 2007), determined that this policy comports with the requirements of Task 26. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During our November 2012 site visit, we observed five FRB hearings. All five incidents were found in compliance with OPD policy. Training and tactical issues were identified and addressed through supervision; however, we noted the FRB identified in one of these cases a deficient UOF investigation by the assigned investigator and referred their finding to IAD for disposition. The FRB determined there was enough information presented to find the force used in compliance with policy despite the deficiency.

**Task 26.1** requires that the Force Review Board (FRB) review all Level 2 use of force investigations following the completion of the internal investigation (compliance standard: 95%). DGO K-4.1 requires that the FRB chair convene an FRB to review the factual circumstances of all Level 2 cases within 90 days of receipt of the use of force packet from IAD. OPD provided documentation for all 15 incidents that were heard by the board during this reporting period of October 1, through December 31, 2012. We determined that all 15 of the FRB reports we reviewed were timely. OPD is in compliance with this subtask.

**Task 26.2** requires that for every Level 2 use of force investigation, the FRB make a recommendation as to whether the use of force was in or out of policy (compliance standard: 95%). All 15 FRB reports we reviewed contained recommendations noting that the use of force

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was in or not in compliance with policy. All 15 FRB reports noted agreement with the recommendation of the FRB by the Chief or his designee. OPD is in compliance with this subtask.

**Task 26.3** requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to the Internal Affairs Division for disposition (compliance standard: 95%). Of the 15 incidents that were heard by the board during this reporting period, all were in compliance with this subtask. One incident reviewed by the FRB emanated from the large-scale Occupy Oakland Rise Up Festival that occurred on January 28, 2012. The FRB found that five officers who used force were not in compliance with OPD policy. The FRB's findings were referred to IAD for disposition as required. OPD is in compliance with this subtask.

**Task 26.4** requires that the FRB make recommendations to the Chief of Police regarding additional use of force training, changes in policies or tactics, additional standards, investigatory policies, or training for use of force investigations (compliance standard: Yes/No). During the current reporting period, the FRBs identified training issues; and discussed improper tactics, use of force reporting, activation of the PDRD, and the need for corrective supervisory counseling. OPD is in compliance with this subtask.

**Task 26.5** requires that the FRB conduct an annual review of use of force cases examined to identify any patterns of use of force practices (including K-3) that may have policy or training implications (compliance standard: Yes/No); and **Task 26.6** requires that the FRB issue an annual report to the Chief of Police reporting on its annual review (compliance standard: Yes/No). The FRB conducted its most recent annual review, which tracked 92 reports, on March 14, 2011. The review identified several patterns and practices, including: officers are continuing to chase suspects who they believed to be armed with handguns into yards; and are striking resisting suspects to the head with either their fists and/or palm-hammer strikes. In addition, the review found that many officers are documenting in their reports that they *had* to use force because of the risk that a suspect may be armed; and that they are not appropriately considering tactics during high-risk situations. The review also emphasized the need for canine officers, supervisors, and commanders to consider modifying the canine announcement to fit the incident in question – for example, circumstances in which a warning announcement could jeopardize officer safety.

According to the annual review, the FRBs have been tasking supervisors to train their officers after the board has identified training issues. The supervisors are required to document this training in the officers' Supervisory Notes File and enter the information into PAS. More involved training is conducted by subject-matter experts, and a training roster is submitted to the Training Section. The involved officer(s) are directed to be present during the presentation to receive training from the board's voting members and subject-matter experts, and/or praise for any outstanding work. Additionally, as a result of the findings of the FRB, the Department revises or develops new information or training bulletins, which are distributed to OPD personnel via the Department's electronic PowerDMS system. OPD is in compliance with these subtasks.

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OPD is in Phase 2 compliance with Task 26.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule FRBs during our quarterly site visits, so that we may attend and observe the proceedings. The Department scheduled four FRBs during our most recent site visit; we will discuss these in our next report. We again request that the Department schedule its FRB hearings during our quarterly site visits; it is critical to our assessments that we be able to observe and evaluate the FRB process.

## Task 30: Executive Force Review Board (EFRB)

Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
2. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Comments:

During the last reporting period, we found the Department in partial compliance with Task 30.

Discussion:

As previously reported, OPD published Departmental General Order K-4.1, *Force Review Boards* (February 17, 2006), which incorporates the requirements of Task 30. OPD revised DGO K-4.1 on August 1, 2007. The policy also incorporates the requirements of Task 30. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, OPD provided us with EFRBs for assessment. One of the EFRBs fell outside the current reporting period, but was untimely and would have held OPD out of compliance with Task 30. As a result, we are deferring our assessment of this subtask. During our next site visit, we will meet with OPD to discuss the materials the Department provides to us so that we may properly conduct our assessments.

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Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

Next Steps:

Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule EFRBs during our quarterly site visits, so that we may attend and observe the proceedings. We again request that the Department schedule its EFRB hearings during our quarterly site visits; it is critical to our assessments that we be able to observe and evaluate the EFRB process.

## Task 33: Reporting Misconduct

Requirements:

*Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:*

Misconduct

*OPD personnel shall report misconduct by any other member or employee of the Department to their supervisor and/or IAD. The policy shall state that corrective action and or discipline shall be assessed for failure to report misconduct. OPD shall require every member and employee encountering a use of force that appears inappropriate, or an arrest that appears improper, to report the incident to his/her supervisor and/or IAD. OPD shall establish and maintain a procedure for a member/employee to report police misconduct on a confidential basis.*

- 1. Any member/employee of OPD may report a suspected case of police misconduct confidentially to the commander of IAD.*
- 2. The member/employee reporting this conduct shall indicate clearly to the commander of IAD that the report is being made under these confidential provisions.*
- 3. The report may be made in person, by telephone, or in writing. The IAD Commander shall document the report in a confidential file that shall remain accessible only to the IAD Commander.*
- 4. The case shall be investigated without disclosure of the complainant's name, unless and until such disclosure is required by law.*
- 5. This confidential reporting procedure shall be made known to every member/employee of OPD and to all new members/employees of OPD within two (2) weeks of hiring.*

(Negotiated Settlement Agreement VI. A.)

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Comments:

Since monitoring under the NSA began, OPD has received confidential reports of misconduct in only three cases. During the last reporting period, for the first time in six reporting periods, we found OPD to be not in compliance with Task 33.

Discussion:

As we have noted previously, OPD has developed several policies that, in concert, incorporate the requirements of this Task. These include: Manual of Rules (MOR) Section 314.48, Reporting Violations of Laws, Ordinances, Rules or Orders; MOR Section 314.49, Confidential Reporting of Police Misconduct; Departmental General Order D-16, Check-In and Orientation; MOR Section 370.18, Arrests; and MOR Section 370.27, Use of Physical Force. The Department has trained at least 95% of relevant personnel on these policies, and is in continued Phase 1 compliance with this Task.

**Task 33.1** requires that in all sustained internal investigations, OPD conduct an assessment to determine whether members/employees/supervisors knew or should have known that misconduct occurred (compliance standard: 95%); and **Task 33.2** requires that where OPD determines that members/employees/supervisors knew or should have known that misconduct occurred but did not report it as required, OPD is required to take appropriate action (compliance standard: 95%). To assess OPD's Phase 2 compliance with these subtasks during this reporting period, we met with the Deputy Chief of the Bureau of Risk Management; and queried the IAD database to identify any cases with sustained findings that were approved between October 1, and December 31, 2012, that were applicable to Task 33. We identified and reviewed 57 cases with 80 sustained findings that were approved during this reporting period. Included in this count were 12 cases with 31 sustained findings that were generated during the Occupy Oakland events. The Occupy Oakland matters included 13 allegations that were designated as Class I violations.

During the last reporting period, we found OPD to be not in compliance with these subtasks as a result of IAD cases involving incidents that occurred during Occupy Oakland demonstrations. In those cases: many officers claimed not to have observed actions that occurred close to them; OPD officers consistently avoided commenting about the misbehavior – and sometimes, felonious actions – of their fellow officers; and while officers apparently remembered seeing participants in the demonstrations and riots clearly, they often could not say which officers were next to them even when they viewed videos of the incidents. We found the failures of supervisors to lead their subordinates or to comment on their actions particularly troubling. We found instances where supervisors, even when viewing videos of clearly improper behavior, were evasive and reluctant to comment.

During this reporting period, we again found that there were a number of serious cases involving Class I violations of the MOR that occurred during Occupy Oakland demonstrations in which there were many officers present. We found examples of officers providing information about the events under investigation but there were many instances where officers and supervisors were serving on a police line who but said they had not observed actions other officers' who were near them. In several cases, IAD investigations found officers to be not credible. The

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absence of officers as witnesses, however, was notable; OPD sustained many findings through videos (both PDRDs and those by citizens) and civilian witness.

One case involved an officer who assisted another who used excessive force hitting a citizen in the head and elsewhere on the body with his baton. In spite of the fact that the two were shown on a video that appeared on YouTube, the assisting officer denied seeing the baton strikes by the arresting officer. While the assisting officer was sustained for failing to document pertinent information regarding the arrest, the Department did not believe there was sufficient evidence to prove that he had seen the baton strikes.

Activation of PDRDs can be the key to resolving allegations of use of force that arise from citizen contacts particularly during demonstrations. Accordingly, we believe that it is a serious violation for an officer dealing with such circumstances to fail to activate his/her PDRD. We found six of the 80 Occupy Oakland sustained findings involved officers who failed to activate their PDRDs.

**Task 33.3** requires that OPD must maintain a functioning procedure that incorporates the NSA requirements related to establishing and maintaining confidential reporting of misconduct. These requirements include: **Task 33.3.1:** confidential reports of suspected misconduct may be made in person, by telephone, or in writing (compliance standard: Yes/No); **Task 33.3.2:** any OPD member/employee may report suspected misconduct confidentially to the IAD Commander, who shall document the report in a confidential file that shall remain accessible only to this IAD Commander (compliance standard: Yes/No); **Task 33.3.3:** confidentially reported cases are investigated without disclosure of the complainant's name, unless and until such disclosure is required by law (compliance standard: 95%); and **Task 33.3.4:** OPD informs all new and current employees of OPD's confidential reporting procedures (compliance standard: 95%).

As we have reported previously, OPD has established procedures as required by Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4. Confidential reports of suspected misconduct may be made by various means to the IAD Commander; cases are investigated without identifying the complainant; and documentation of the report and investigation are kept in a confidential file maintained by the IAD Commander. Since monitoring began under the NSA, OPD has received only three such confidential reports. No new confidential reports were received during the current reporting period.

During this reporting period, OPD hired 14 new employees, including four police officer trainees and 10 civilian employees. All were trained in confidential reporting procedures as required by Task 33.

Based on our review, OPD is in partial Phase 2 compliance with Task 33.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

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## Task 34: Vehicle Stops, Field Investigation, and Detentions

### Requirements:

- OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:*
- a. Time, date and location;*
  - b. Identification of the initiating member or employee commencing after the first year of data collection;*
  - c. Reason for stop;*
  - d. Apparent race or ethnicity, and gender of individual(s) stopped;*
  - e. Outcome of stop (arrest, no arrest);*
  - f. Whether a search was conducted, and outcome of search;*
  - g. Offense categories (felony, misdemeanor or infraction).*
2. *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*
  3. *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to "Promoting Cooperative Strategies to Prevent Racial Profiling."*

(Negotiated Settlement Agreement VI. B.)

### Comments:

During the last nine reporting periods, we found the Department in partial compliance with Task 34. We noted that officers entered the required stop data into the Field Based Reporting (FBR) computer system; however, we expressed concerns that the "reason for the stop" was not being clearly identified to support a Constitutional basis and authority for the stops. We also noted that in cases where a stop involved multiple subjects, officers were not collecting and entering stop data on each subject involved.

### Discussion:

As previously reported, General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*; and Report Writing Manual (RWM) Inserts R-2, N-1, and N-2 incorporate the requirements of Task 34. As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

On June 12, 2010, OPD issued Special Order 9042, *New Procedures Regarding Stop Data Collection*, which updates DGO M-19 and RWM R-2; and used its electronic PowerDMS system to disseminate Special Order 9042 to the Department. During the sixth reporting period, OPD developed and began training on the definition and articulation of a consensual encounter and detention, along with training on how to complete Field Investigation Reports to adequately document investigative encounters. During the eighth reporting period, we verified that OPD trained at least 95% of relevant personnel on these subjects and Special Order 9042.

On November 24, 2012, OPD issued Special Order 9101, *Revised Stop Data Collection Procedures*, which updates DGO M-19, *Racial Profiling*; and used its electronic PowerDMS

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system to disseminate Special Order 9101 to the Department. During the current reporting period, OPD developed and began training on the definitions of racial profiling to include the definition of a consensual encounter, what a detention is, and the scope of the policy. During our most recent site visit, we verified from records provided by OPD that the Department trained at least 95% of relevant personnel on these subjects and Special Order 9101.

**Task 34.1** requires that Stop Data Forms be filled out for every vehicle stop, field investigation, and detention (compliance standard: 90%). To assess Task 34.1 during this reporting period, we reviewed a random sample of 400 stops to match them with corresponding completed Stop Data Forms. This sample included 200 Computer Aided Dispatch (CAD) entries, 100 Field Contact Cards, and 100 traffic citations. Using the Department's Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 95% of the stops in our sample. OPD is in compliance with Task 34.1.

**Task 34.2** requires that Stop Data Forms be filled out with the following information: 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop (arrest or no arrest); 9) whether a search was conducted; 10) outcome of any search; and 11) offense category (felony, misdemeanor, or infraction) (compliance standard: 85%). The entry of stop data into the Field Based Reporting (FBR) system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system does not allow the form to be completed.

As we have discussed for several reporting periods, we remain concerned that the reason for the stop is not clearly identified to support the Constitutional standards requirement. More specifically, none of the options available for officers to select under "5) reason for the stop" clearly elicit or help to articulate an identifiable basis and/or authority for the stop. During the seventh reporting period, OPD combined the Stop Data Form with the Field Contact Card in order to provide officers with a section upon which they could better articulate the totality of the circumstances focused on the officers' articulation of the reasonable suspicion that existed *prior* to the detention that justifies the detention. Based on OPD's continued failure to justify or adequately document the reasons for the stops in the samples we reviewed during the last six reporting periods, we again examined an expanded selection of pedestrian stops during this reporting period, and found that 95% identified the justification/reason for the stop. We will continue to monitor this issue closely.

OPD continues to revise a Special Order that is intended to update DGO M-19, *Racial Profiling*. OPD has been working for at least four reporting periods on a simple revision to the policy identifying when the completion of a Stop Data Form is required and requiring the articulation of the reason for the stop. During the current reporting period and our most recent site visit, we reviewed version 41 of the three-page Special Order, and again provided feedback on the policy's substance and language. We have also discussed with OPD command staff for at least four reporting periods the need to conduct training on the revised policy to ensure that the data that is collected is accurate and useful for purposes of analysis.

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During this reporting period, OPD conducted one internal audit of stop data forms, which we reviewed and noted were consistent with our findings. We look forward to continuing these reviews in future reporting periods. We again urge OPD to focus its attention on making and implementing applicable policy revisions, and developing necessary training, to ensure that the justification exists prior to the temporary detention of persons; that data is entered on each person who is detained; and that the reason for the encounter is properly identified. OPD represents that the implementation of the revised Special Order will sufficient address and clarify the collection of data issues; however, OPD is not in compliance with Task 34.2.

**Task 34.3.1** requires that OPD have a stop data database that can be summarized, searched, queried, and reported by personnel authorized by OPD (compliance standard: Yes/No). As per Special Order 9042, officers “complete an electronic FBR [Field Based Reporting] Stop Data Collection Form (SDF) for certain arrests, every detention not resulting in an arrest (vehicle, walking, and bicycle stops), every consent search of a person conducted and any other investigative encounter. A SDF shall also be completed for consensual encounters (contacts) where the member talks with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, although the person is free to leave.” Data from the electronic Field Based Reporting system is automatically sent to the Department’s Forensic Logic Quicksearch program. Quicksearch allows Department personnel to search for and query officers’ stop data. During this reporting period, we continued to experiment with the Quicksearch program and found that the stop data is summarized and easy to review. As noted above, in May 2011, OPD merged the Stop Data Form with the Field Contact Card, intending to provide one document for officers to enter stop data and providing them with a narrative portion for which they can articulate the factual support for the stop.

During our most recent site visit, we again met with OPD personnel responsible for this analysis, and discussed with them how and why the Department should conduct further analysis of its stop data. During the current reporting period, OPD did not produce any summary of data collection or analysis of data, noting a continuing issue with data collection (forms), specifically regarding the selections options for the reason for the stop. This problem significantly affects the value of the data, which we optimistically believed would be the basis for OPD compliance with this and related Tasks. We have discussed this issue in detail with Department personnel, and are hopeful that OPD will expeditiously implement corrective measures. The policy dated November 15, 2004 requires that the Racial Profiling Manager shall produce a written report to the Chief of Police at least twice per year that includes an analysis of the data collected, and appropriate policy recommendations. Based on our knowledge, OPD has not prepared such a report in the last 12 quarters; however, OPD has advised of its intent to analyze the collected data once the data is accurate.

On January 15, 2013, the Chief issued a letter to the community asserting the Department’s stance against racial profiling. He quoted the United States Supreme Court stating, “An investigative stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” He continued, “[E]nsuring Constitutional policing is a priority for me and this department...” Resolving this important issue will allow OPD to

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conduct appropriate analyses and, where necessary, address the outcomes of its analysis to ensure compliance with this Task. While the ability to summarize, search, and analyze stop data is an important aspect of this requirement, it is not the purpose; rather, the results, intervention, and other strategies developed from the analyses are critically important to ensuring fair and equal treatment of all people with whom police officers interact. The Department is not in compliance with Task 34.3.1.

**Task 34.3.2** requires that the data captured on the Stop Data Forms be entered completely and accurately into the database (compliance standard: 85%). As noted above, the entering of stop data into the Field Based Reporting system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system will not allow the form to be completed. Task 34.3.2 was created to govern the submission of data from the written forms to the computerized system. Since this type of data entry is no longer necessary, the Department is in compliance with Task 34.3.2.

OPD is in partial Phase 2 compliance with Task 34.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit and upcoming technical assistance visits, we will again meet with relevant Department personnel to discuss the Department's progress in this area. We will further discuss the Department's various Task 34-related data systems to assess their operability, accuracy, and utility in storage, and ease of access to stop data. We will continue to work with OPD on ways to verify the legal basis for stops, searches, and other related activities expeditiously.

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## Task 35: Use of Force Reports - Witness Identification

### Requirements:

1. *OPD shall require, by policy, that every use of force report, whether felonies were involved or not, include the names, telephone numbers, and addresses of witnesses to the incident, when such information is reasonably available to the members/employees on the scene.*
2. *In situations in which there are no known witnesses, the report shall specifically state this fact. Policy shall further require that in situations in which witnesses were present but circumstances prevented the author of the report from determining the identification or phone number or address of those witnesses, the report shall state the reasons why the member/employee was unable to obtain that information. Reports shall also include the names of all other members/employees of OPD witnessing the use of force incident.*

(Negotiated Settlement Agreement VI. C.)

### Comments:

During all of the previous reporting periods, we found OPD in compliance with Task 35.

### Discussion:

As previously reported, OPD published Special Order 8066, *Use of Force—Witness Identification* (April 12, 2004), which incorporates the requirements of Task 35. Additionally, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which also incorporates the requirements of Task 35. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 35. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for Task 35 for this reporting period, we reviewed 23 use of force reports, including: two Level 1, six Level 2; and 15 Level 3 use of reports covering incidents that occurred between October 1, and December 31, 2012. (Per DGO K-4, Level 4 use of force reports do not require witness identification.)

We assessed Task 35.1 in conjunction with Task 35.2. **Task 35.1** requires that use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene (compliance standard: 90%); and **Task 35.2** requires that when there are no known witnesses, the use of force reports specifically state this fact (compliance standard: 90%). All 23 reports that we reviewed comported with these requirements. OPD is in compliance with these subtasks.

**Task 35.3** requires reports to document instances where witnesses are present but circumstances prevent the author of the report from gathering the data (compliance standard: 90%). During this reporting period, three incidents related to various Occupy Oakland demonstration events fell into this category. OPD is in compliance with Task 35.3.

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**Task 35.4** requires that use of force reports include the names of all other OPD members/employees witnessing the incident (compliance standard: 90%). We found no instances when an OPD witness was not documented in the 23 reports we reviewed. OPD is in compliance with Task 35.4.

OPD is in Phase 2 compliance with Task 35.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will continue to examine any related audits completed by OIG to ensure that OPD is moving toward the long-term sustainability of this Task.

## Task 37: Internal Investigations-Retaliation Against Witnesses

Requirements:

*OPD shall prohibit retaliation against any member or employee of the Department who:*

- 1. Reports misconduct by any other member or employee, or*
- 2. Serves as a witness in any proceeding against a member or employee.*

*The policy prohibiting retaliation shall acknowledge that retaliation may be informal and subtle, as well as blatant, and shall define retaliation as a violation for which dismissal is the presumptive disciplinary penalty. Supervisors, commanders and managers shall be held accountable for the conduct of their subordinates in this regard. If supervisors, commanders or managers of persons engaging in retaliation knew or reasonably should have known that the behavior was occurring, they shall be subject to the investigative, and if appropriate, the disciplinary process.*

(Negotiated Settlement Agreement VI. E.)

Comments:

During previous reporting periods, we found that all of the cases alleging retaliation against an employee or member of OPD were investigated as required, and that the IAD findings fell within policy. We found the Department in compliance with Task 37.

Discussion:

As previously reported, we found OPD in continued Phase 1 compliance with this Task. OPD published Special Order 8092 on November 23, 2003, which incorporated the requirements of Task 37. This policy consists of two Manual of Rules (MOR) Sections: 398.73, *Retaliation Against Witnesses*; and 398.74, *Retaliation Against Witnesses, Accountability*. These MOR provisions (revised in lieu of a City policy on retaliation) incorporate the requirements of Task

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37. OPD has trained at least 95% of relevant personnel on these policies.

**Task 37.1** requires that officers be held accountable for retaliating against employees or members who report misconduct or serve as witnesses in proceedings against other members/employees (compliance standard: 95%); and **Task 37.2** requires that supervisors, commanders, and managers be held accountable if they knew or reasonably should have known that persons under their supervision engaged in retaliation (compliance standard: 95%).

We reviewed five cases that OPD considered as containing allegations of retaliation during the period of October 1, through December 31, 2012. We found that one of the cases involved citizens who made allegations that an officer(s) “retaliated” against them. Such cases do not fit the definitions of retaliation as set forth in Task 37, which addresses retaliation against an *employee* or *member* of OPD who has reported misconduct or served as a witness.

In the four remaining cases, members or employees of OPD made allegations of retaliation. All four cases were adequately investigated, and the retaliation allegations were determined to be unfounded and not sustained.

OPD is in Phase 2 compliance with Task 37.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 40: Personnel Assessment System (PAS) – Purpose

Requirements:

*Within 635 days from the effective date of this Agreement, OPD shall enhance its existing complaint-tracking and select indicator systems so that it has a fully implemented, computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of OPD and its personnel. This data shall be used by OPD: to promote professional police practices; to manage the risk of police misconduct; and to evaluate and audit the performance of OPD members of all ranks, employees, and OPD units, subunits and shifts. PAS shall contain information on the following:*

1. *All uses of force required to be reported by OPD;*
2. *OC spray canister check-out log (see Section V, paragraph D)*
3. *All police-canine deployments; where the canine is deployed in a search for or to apprehend a suspect(s). It does not include, deployments for the purpose of locating bombs, narcotics, missing persons, etc., where the canine is not involved in an investigated use of force (i.e., deliberately or inadvertently bites or injures a person) If such force occurs, a Use of Force report is required.*
4. *All officer-involved shootings and firearms discharges, both on duty and off duty,*

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*excluding an intentional discharge while at a range facility; a discharge while engaged in a lawful recreational activity, such as hunting or target practice; a discharge by Criminalistics Division personnel for the purpose of scientific examination; and a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury;*

5. *All on-duty vehicle pursuits and on-duty vehicle collisions;*
6. *All complaints, whether made to OPD or CPRB;*
7. *All civil suits and/or tort claims related to members' and employees' employment at OPD, or which contain allegations which rise to the level of a Manual of Rules violation;*
8. *Reports of a financial claim as described in Section VI, paragraph G (3).*
9. *All in-custody deaths and injuries;*
10. *The results of adjudications of all investigations related to items (1) through (9), above, and a record of investigative findings, including actual discipline imposed or non-disciplinary action administered;*
11. *Commendations and awards;*
12. *All criminal arrests of and charges against OPD members and employees;*
13. *All charges of resisting or obstructing a police officer (Penal Code §§69 and 148), assault on a police officer (Penal Code §243(b)(c), or assault-with-a-deadly-weapon on a police officer [Penal Code §245(c)(d)];*
14. *Assignment history and rank history for each member/employee;*
15. *Training history for each member/employee;*
16. *Line-of-duty injuries;*
17. *Sick leave usage, particularly one-day sick leaves;*
18. *Report Review Notices or Case Evaluation Reports for the reporting member/employee and the issuing investigator;*
19. *Criminal cases dropped due to concerns with member veracity, improper searches, false arrests, etc.; and*
20. *Other supervisory observations or concerns.*

(Negotiated Settlement Agreement VII. A.)

Comments:

In the last four reporting periods, we found OPD to be in partial Phase 2 compliance – following two reporting periods of non-compliance due to serious data problems. Although the Department identified the specific problems, it “resolved” this issue through a process of entering data by hand. As noted in our previous reports, this temporary fix did not stabilize the system to assure ongoing quality in data collection and storage. The Department continues to move toward implementing a new computer system that will address these problems and is increasing its audit of data to identify and repair problems as they arise.

Discussion:

General Order D-17, Personnel Assessment Program, which incorporates the requirements of Tasks 40 and 41, was revised in July 2012. A new revision is expected shortly. According to the

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Department, that revision will bifurcate the policy into separate policies: one addressing general risk management issues; and the other dealing with the technical aspects of managing the database. The status of the policy supports continuation of a finding of Phase 1 compliance with this Task.

As noted in our last two reports, problems with arrest data reported in PAS were addressed and continue to be addressed by entering arrest data manually – rather than automatically – from the Alameda County data feed. Plans exist to automatically enter data into the County system from electronic reports completed by officers, but have not yet been fully implemented. These issues are now part of the overall technical review and revision of the risk management system. With regard to that, the Department is, apparently, in the late stages of the process of contracting with a vendor to manage the proposal process for new software and to oversee implementation. The Risk Management Unit is also initiating a more comprehensive audit process that will involve auditing not only the data process as the available information populates the PAS database but also the quality of the original data reports involved.

The Department is taking sufficient measures to support quality control regarding the risk management data. The issues of stability remain a concern at this time – although we recognize that efforts are being made to address them in the longer term with new technology and improved data processes.

Tasks 40 and 41 are divided into 33 practice-related subtasks that include 12 additional lower-level provisions. As with all previous reviews, we requested and received material for each of the Tasks and subtasks. Our data request allowed for the replication and extension of the data analysis reflected in our earlier reports.

PAS records for the quarter of October 1, through December 31, 2012 indicate that data were entered for all of the fields required by Task 40 – including the arrest data. The required data for the quarter included reports of 634 uses of force. This is a decrease of 18% from the last reporting period that also showed a significant decline from the previous period. The data for the current reporting period indicate that there were 2,943 arrests, a decline of 16% from 3,516 the previous quarter. The commensurate declines in use of force and overall arrests suggest that the declines in force are not the results of any changes in reporting practices.

A further breakdown of the types of use of force shows that, for this reporting period, there were no Level 1 uses of force. The one officer involved shooting in the chart below involved a dog. There were 75 Level 2 and 15 Level 3 uses of force. The table also shows a decrease of 18% in Level 4 uses of force, to a total of 612. This is the third consecutive reporting period with significant reductions in that number. The data count for the current reporting period and the six prior reporting periods is presented in the table below.

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<b>OPD Performance Activity Comparison by Quarter</b>							
<b>Performance Activity</b>	<b>April 1 to June 30 2011</b>	<b>July 1 to September 30 2011</b>	<b>October 1 to December 31 2011</b>	<b>Jan 1 to March 31, 2012</b>	<b>April 1 to June 30, 2012</b>	<b>July 1 to September 30, 2012</b>	<b>October 1 to December 31, 2012</b>
Level 1 Uses of Force	4	6	3	4	3	1	0
Level 2 Uses of Force	21	19	48	28	14	5	7
Level 3 Uses of Force	37	38	108	50	31	29	15
Level 4 Uses of Force	1154	1066	797	1034	962	741	612
Unintentional Firearms Discharge	0	0	0	0	0	0	0
Sick Leave Hours	9378.39	10406.31	12084.56	12734.56	11229.36	9634.3	9857.65
Line of Duty Injuries	40	52	43	47	50	46	30
Narcotics Related Possessory Offenses Arrests	426	482	445	641	452	508	280
Vehicle Collisions	15	11	7	13	15	15	7
All Vehicle Pursuits	82	117	89	77	99	83	57
All Arrest	3374	3470	3402	3656	3649	3516	2943
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	63	61	61	58	72	58	31
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	17	16	24	38	24	8	7
Awards	160	70	65	66	99	121	
Assignment History	9498	9498	9498	9414	9588	9720	9791
Case Evaluation Reports	629	321	193	209	191	453	203
Report Review Notices--Positive	2	0	1	6	7	12	12
Report Review Notices--Negative	0	0	0	1	0	0	0
Canine Deployments	92	112	71	96	93	63	43
Financial Claims	0	0	3	0	0	0	0
Internal Affairs Complaints	286	386	316	404	375	465	277
In-Custody Injuries	70	56	97	75	39	24	13
Civil Suits (Tort Claims)	32	7	22	11	7	11	3
Criminal Cases Dropped	0	0	0	20	87	300	91
O.C. Checkouts	42	41	34	55	29	15	11
Officer Involved Shootings	7	4	2	4	3	2	1
Rank / Class History	2336	2336	2336	2286	2272	2338	2326
Training History	14159	21017	21084	26100	11255	5182	2096
Supervisory Notes	3589	3338	3281	3568	3139	3072	3117
Arrest Made Against OPD	0	0	0	0	2	1	0

The PAS Administration Unit continues to audit the database to assure its accuracy on a nearly daily basis. As noted above, those audits will now extend to reviews of the original reports – not simply the summaries of data forwarded to the risk management database. This will provide a valuable enhancement to the process of assessing the validity and reliability of the data.

We appreciate the complexity of the data collection process; and we recognize that a plan is in place to resolve lingering problems and that an audit system is being implemented to monitor and address problems in the short term. We look forward to monitoring the Department's efforts toward a permanent solution that stabilizes the database.

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Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

## Task 41: Use of Personnel Assessment System (PAS)

Requirements:

*Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole. The policy shall include the following elements:*

1. *The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
2. *The Department shall retain all PAS data for at least five (5) years.*
3. *The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
4. *PAS, the PAS data, and reports are confidential and not public information.*
5. *On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
6. *Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*
7. *When review and analysis of the PAS threshold report data indicate that a*

*member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).*

8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

*Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.*

*Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less*

- frequently than every three (3) months.*
9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
  10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
  11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
  12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
  13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
  14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*

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15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Comments:

The review process remains current. Consideration of supervisor reviews up the chain of command appears to be progressing well. However, the reviews continue to result in large numbers of recommendations for "no action" and, at the same time, significant numbers of officers are on monitoring or supervision. Over the first three quarters of the past years, there was a significant increase in the number of officers selected for risk related reviews. That rate has been reduced in the last quarter. Time will tell whether that reduction is reflected in declines in officers in monitoring or supervision.

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Discussion:

As noted above, OPD revised and issued Departmental General Order D-17, Personnel Assessment Program in July. It is currently undergoing revision to spate general operational issues from technical processes in the PAS Admin Unit. The risk management process is operating under the revised policy. Training of supervisors in the operation of the system is continuing. Based on the policy and the related training that is ongoing, we again find OPD in continued Phase 1 compliance with this Task.

For this reporting period, we continued our examination of the stages of the PAS process consistent with this Task. We examined the threshold analyses that were performed for the period of October 1, through December 31, 2012. This included a review of peer-based threshold analyses completed by the PAS Administration Unit and the identification of officers meeting the single-event threshold.

During this reporting period, 49 officers were initially identified as meeting a total of 52 PAS thresholds. In all 23 of the thresholds exceeded dealt with complaints and 10 involved use of force. Seven of those involved Level 4 uses of force. This is substantially below the level in previous reports. Consistent with established practice, some were not selected for review based on recent review history. That left 57 officers for notification for review. We reviewed notification memoranda and other PAS activity review and report documents, as well as the use of PAS for reasons other than threshold-initiated reviews. In accordance with this Task requirement, we reviewed PAS processes for the system's use in placement of officers on special assignment, transfer of officers, and commendations. An important function of PAS is to regularly provide supervisors with relevant information on officers. To consider that function, we also verified reports of regular quarterly PAS command reviews of officers by supervisors in select OPD units, including IAD and the Training Section.

The PAS process also calls for follow-up reports of officers under supervision or monitoring, as well as reports of officers not discharged from the process by the end of one year. We reviewed the reports that were completed during the current reporting period. Our examination included reviews of dispositions or follow-up reports on 78 officers, six of which were completed last quarter but not filed until this quarter. These meetings all document supervisory reviews of officers who have been selected for some form of action as a result of PAS reviews.

For the reporting period ending December 31, 2012, OPD concluded a total of 50 PAS reviews, for a total of 289 for the year. This is a 94% increase over the previous year. Reviews are included in the table below only after they are signed off through the level of the PAS Review Panel. The table below tracks the review process and shows that supervisors recommended that no action be taken in 37, or 74%, of the 50 reviews for the current reporting period. The table also shows that commanders disagreed with lower-level recommendations and prompted additional monitoring and supervision in 6% of cases. Deputy Chiefs also disagreed with the commanders' decisions in almost 20% of their decisions, and the PAS Review Panel suggested revisions in 8% of the findings of the Deputy Chiefs. These figures are again consistent with suggest increased scrutiny of reviews across the levels. This is desirable direction for movement

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in the risk management process and remains consistent with discussions with OPD. The value of the data in the chart below is in tracking data over time, and using it to increase the rigors of the review process as it serves the goal of risk reduction.

<b>Summary of PAS Reviews and Recommendations 2011-12</b>																	
	PAS Reviews Completed	Supervisor Rec- no		Recognition		Supervisor Rec - Monitoring		Supervisor Rec- Intervention		Commander rec Concurs w Supervisor		Dep. Chief Concurs w Commander		PAS Panel Concurs w DC		Pending	Number of personnel that exceeded a threshold
<b>2011</b>																	
January	11	9	82%	0	0%	2	18%	0	0%	10	90%	11	100%	10	90%	0	11
February	9	8	89%	0	0%	1	11%	0	0%	9	100%	9	100%	8	89%	0	5
March	17	10	59%	1	5%	4	24%	2	12%	17	100%	17	100%	17	100%	0	11
April	12	11	92%	0	0%	0	0%	1	8%	12	100%	12	100%	12	100%	0	18
May	10	6	60%	0	0%	2	20%	2	20%	10	100%	10	100%	10	100%	0	7
June	8	6	80%	0	0%	1	10%	1	10%	8	100%	8	100%	8	100%	0	7
July	11	7	63%	0	0%	4	36%	0	0%	9	90%	10	90%	10	100%	0	16
August	2	2	100%	0	0%	0	0%	0	0%	2	100%	2	100%	2	100%	0	23
September	19	13	68%	0	0%	5	26%	1	5%	18	94%	18	94%	19	100%	9	16
October	12	10	83%	0	0%	2	17%	0	0%	11	92%	11	92%	12	100%	0	26
November	16	11	69%	1	1%	2	13%	3	19%	15	94%	10	63%	12	75%	0	47
December	22	16	73%	0	0%	6	27%	0	0%	21	95%	19	86%	22	100%	0	14
<b>Total</b>	149	109		2		29		10		142		137		142		9	201
<b>Average</b>	12.4	9.1	77%	0.2	1%	2.4	0	0.8	6%	11.8	96%	11.4	94%	11.8	96%	0.8	16.8
<b>2012</b>																	
January	7	5	71%	0	0%	2	29%	0	0%	7	100%	7	100%	7	100%	7	14
February	5	4	80%	0	0%	1	20%	0	0%	2	40%	2	40%	2	40%	0	59
March	19	12	63%	0	0%	4	21%	3	16%	18	95%	17	89%	18	95%	33	7
April	25	17	68%	0	0%	5	20%	3	12%	25	100%	25	100%	25	100%	22	41
May	27	17	63%	0	0%	2	7%	0	0%	26	96%	25	92%	27	100%	14	58
June	43	41	95%	0	0%	2	5%	0	0%	41	95%	42	98%	43	100%	15	17
July	66	61	92%	1	5%	3	5%	2	30%	65	98%	65	98%	64	97%	0	18
August	32	29	90%	1	0%	2	6%	0	0%	27	84%	26	81%	27	84%	8	35
September	15	10	67%	1	0.1	3	20%	1	7%	15	100%	11	73%	13	87%	1	16
October	12	10	83%	0	0%	2	17%	0	0%	11	92%	11	92%	12	100%	0	26
November	16	11	69%	1	1%	2	13%	3	19%	15	94%	10	63%	12	75%	0	47
December	22	16	73%	0	0%	6	27%	0	0%	21	95%	19	86%	22	100%	0	14
<b>Total</b>	289	233		4		34		12		273		260		272		100	352
<b>Average</b>	24.1	19.4	76%	0.3	1%	2.8	0	1.0	7%	22.8	91%	21.7	84%	22.7	90%	8.3	29.3

In our last report, we began reviewing the PAS histories of officers who had either a Level 1 use of force or been arrested for a criminal offense in the past year. For the period under review, no officers met these criteria for examination.

Aside from the issues noted above, in recent reports we focused on two other issues relevant to the functioning of the risk management system; the extent of review of information for the supervisor's reports, and the extent to which reviewed cases resulted in monitoring or

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intervention. Regarding the first issue we are aware that the resolution is not complete but progress is being made toward making complete use of force reports available to supervisors rather than just summaries. With regard to the frequency of monitoring or intervention resulting from reviews, this quarter again appears to reflect a positive direction that we will continue to watch. In this quarter 19 officers were recommended for monitoring and six for intervention.

During the site visit we met with the Deputy Chief overseeing risk management and with key staff from the PAS unit. Several critically important issues were discussed including the progress on new software for the system, and OPD's examination of risk management practices in other departments. Two other issues were also discussed in the process of broad examination of system and its use. Concern was raised by the Police Chief about the apparent overlap of monitoring and intervention strategies. There is some concern that this distinction is becoming less significant over time. This is something that merits further consideration in the Department.

We also reviewed with the Department, the number officers who fell in each of these categories on the last day of the quarter. At that time, there were 71 officers in monitoring by supervisors, and 30 were listed as falling under intervention by the Department. These figures suggest that 20-25% of officers in assignments where the potential for uses of force and/or complaints is significant are now under some special status based on risk assessment. This was a surprising finding in light of the seemingly contradictory concern that many past reviews were resulting in recommendation of no action.

The Department now receives regular reports on those officers in monitoring or supervision. It is clear that the aggregate figures should also be part of the management review of PAS. Considering them involves balancing several vital risk management functions including the identification of officers needing attention based on risk criteria, the length of time involved in assessing and addressing needs, and having the resources needed by supervisors to provide the necessary attention for addressing risk issues with selected officers. Recognizing risk related behavior is critically important as also is having the needed time and resources to respond effectively.

The Department is now making serious efforts to address the complexities of the risk management process. Along with supporting advancements in technology it is also actively examining sound practices in other departments and considering the complexities of risk identification and intervention to reduce risk. We look forward to the aggressive management of this process and will watch closely how it moves the Department forward.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will continue to work with the Department to examine the processes of collecting and storing data, and the use of that data in the PAS review process. We

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will examine issues relating to the reliability of data with special attention to the audit function and its focus on the quality of original reports. We also continue to be interested in the Department's efforts to adopt and implement new technology that may help to stabilize the system. We will continue to focus on our chief concern, the effective use of the risk management system. We will focus attention on: 1) the availability and use of the necessary information in the review process; 2) whether outcomes of the review process, and management oversight of it, are consistent with the goals of risk reduction; and 3) whether the review and intervention processes are effective in identified cases. We will support the Department's review of the overall process and its consideration of the appropriateness and effectiveness of its response to identified risk.

## Task 42: Field Training Program

### Requirements:

*Within 323 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Field Training Program. This plan shall address the criteria and method for selecting FTOs, the training provided to FTOs to perform their duty, supervision and evaluation of FTOs, the length of time that trainee officers spend in the program, and the methods by which FTOs assess and evaluate trainee officers in field training. The plan must ensure proper reporting, review and approval of probationary officers' reports.*

### Field Training Program Coordinator

*The Chief of Police shall assign a full-time sergeant for the first year who shall develop and implement the new policies and procedures described in this section. The Chief of Police shall determine, upon successful completion of the development and implementation of these policies, if it is necessary to continue the position at the rank of sergeant, but in any event, the position shall continue as a full-time position.*

### Trainee Rotation

*During their field training, trainee officers shall rotate to a new FTO and a new geographic area of the City at predetermined intervals. Prior to rotation, trainee officers shall be interviewed by the Field Training Program Coordinator or his/her designee and given an opportunity to raise any questions or concerns they may have about the quality of training provided to them.*

### FTO Participation Incentives

*OPD shall increase the incentives for participation in the FTO program so that the Department will have a larger pool of qualified, experienced candidates from which to choose.*

### FTO Candidate Nomination and Requirements

*FTO candidates shall be nominated by field supervisors and commanders, but shall be approved for assignments to this duty, and for retention in it, by the Chief of Police. All FTO candidates must have completed three (3) years of Departmental service before selection, unless specifically*

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*authorized by the Chief of Police. FTO candidates shall be required to demonstrate their commitment to community policing, and their problem-solving and leadership abilities. Ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy shall be primary criteria in the selection of FTOs. Excessive numbers of sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304, or excessive numbers of use of force incidents shall bar a candidate from selection as an FTO for no less than two (2) years.*

#### Decertification

*The presumptive result of sustained disciplinary action, completed within the time limits imposed by Government Code Section 3304, against an FTO or the FTO Program Coordinator for excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation or gender-based discrimination or slurs, or other serious examples of police misconduct, shall be removal from the FTO program. The Deputy Chief of the member's chain of command may recommend to the Chief of Police to grant an exception to this presumption after conducting a hearing on the facts of the matter. The Chief of Police shall document the approval/disapproval in writing.*

#### FTO Assignment

*Assignment to an FTO position shall be contingent upon successful completion of a training course designed for this position and shall be approved by OPD and the State of California Peace Officers' Standards and Training.*

#### FTO Evaluation

*At the end of a complete FTO cycle, trainee officers leaving the FTO program shall anonymously evaluate each of their FTOs. OPD shall develop a form for such evaluations which emphasize effectiveness at training and effectiveness at supervision. The evaluation form shall also assess the degree to which the FTO program reflected policies, procedures, values and other information taught in the recruit academy. The FTO evaluation forms shall be reviewed by the Field Training Program Coordinator and the individual FTO's commander and supervisor. The Field Training Program Coordinator shall provide evaluation information to the FTOs as a group, concerning program effectiveness. Each FTO shall also be provided with evaluation information regarding their individual performance. The individual evaluation forms shall not be made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms.*

#### Daily Evaluation Audit

*The Field Training Program Coordinator, or his/her designee, shall conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers and that the selection standards for FTOs are maintained.*

#### Trainee Officer Assignment

*When a trainee officer's FTO is absent, the trainee officer shall not be assigned to field duties with an "acting" FTO. They shall be placed with another certified FTO, or shall be assigned to non-field duties, pending the availability of a certified FTO.*

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Field Commander and FTO Supervisor Training

*OPD shall provide field commanders and supervisors with training on the FTO program, including the field-training curriculum, the role of the FTO, supervision of FTOs and probationary employees, the evaluation process and the individual duties and responsibilities within the FTO program.*

Focus Groups

*The Field Training Program Coordinator and Academy staff shall conduct focus groups with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six (6) months after completion of the field training program, to determine the extent to which the Academy instructors and curriculum prepared the new officers for their duties.*

Consistency of Training

*The results of these focus group sessions shall be reviewed at a meeting to include the Training Division Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief. If it is determined that there is a substantial discrepancy between what is taught in the Academy and what is taught in the FTO program, there shall be a determination as to which is correct, and either the training Academy or the FTO program shall make the necessary changes so that the desired training information is consistent. In the event that the discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program as a whole, the review group shall determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The results of the meeting of this review group shall be documented and this information shall be provided to the Monitor. (Negotiated Settlement Agreement VIII. A.-L.)*

Comments:

In 2009, the Parties agreed that there would be no active monitoring of this Task, since hiring had ceased and no Academy was planned for the near future. OPD decertified all then-current Field Training Officers. During 2010, OPD recruited and began training 21 new officers and five lateral officers. However, due to the City's budget cuts, OPD laid off all new officers, both trainees and laterals, and 80 full-time OPD officers. The program was reinstated when OPD was able to hire new trainees; we have deferred our compliance finding for Task 42 since the beginning of our tenure.

During the last reporting period, we found that OPD had followed the FTO selection procedures required by the NSA. For the first time we found OPD in compliance with Task 42.

Discussion:

During our most recent site visit, we met with and interviewed the officer who serves as Field Training Coordinator, his supervising captain, the Deputy Chief of the Bureau of Field Operations, and the Training Section Commander. We also reviewed related memoranda, evaluation forms, and other documentation.

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At the time of our February site visit, there were currently 30 FTOs; however, seven were unavailable due to their current assignments or medical leave. The Department was working to add additional FTOs. One group of 22 officers would be available after they completed a 10-hour one-day training course. Further, another 24 candidates were being considered for the program and the initial stages of vetting and recommending had been initiated. During our on-site review in February 2013, we again verified each of the requirements for compliance with Task 42.

**Task 42.1** requires that the Field Training Program Coordinator is a full-time position (compliance standard: Yes/No). A full-time officer is currently assigned to supervise the program. OPD is in compliance with this subtask.

**Task 42.2.1** requires that trainee officers rotate to a new Field Training Officer (FTO) and a new geographic area of the City at predetermined intervals (compliance standard: 90%). Trainees are rotated every four weeks to a new assignment and new FTO. OPD is in compliance with this subtask.

**Task 42.3.1** requires that incentives for participation as an FTO are increased (compliance standard: Yes/No). Officers who serve as FTOs are paid incentive pay for their service. In addition, the program includes several incentives (e.g., chevrons, administrative days, and priority for selection as training) as incentives for participation. OPD is in compliance with this subtask.

**Task 42.4.1** requires that field supervisors and commanders nominate FTO candidates (compliance standard: 90%), and the Chief of Police determines FTO assignments and retention (compliance standard: Yes/No); **Task 42.4.2** requires that FTO candidates complete three years of service before selection, unless authorized by the Chief (compliance standard: Yes/No); **Task 42.4.3** requires that FTO candidates are required to demonstrate commitment to community policing and problem solving and leadership abilities (compliance standard: 95%); **Task 42.4.4** requires that ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy are primary criteria in the selection of FTOs (compliance standard: 95%); and **Task 42.4.5** requires that candidates with excessive numbers of citizen complaints, sustained investigations or excessive numbers of use of force incidents are barred from selection as an FTO for no less than two years (compliance standard: 95%). Candidates are recommended by their supervisors and commanders; and must have work and performance records as required by this section. FTOs are screened for commitment to community policing and candidates with excessive numbers of complaints and/or sustained instances of uses of force are not selected. The selection of all FTOs to be certified (newly selected FTOs) and those to be recertified (FTO previously selected and decertified when new officers were not being hired) followed the requirements outlined in the NSA. The screening of the new candidates to be added to the FTO Program had not been completed at the time of our February 2013 review. OPD is in compliance with these subtasks.

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**Task 42.5** requires that FTOs be decertified following sustained disciplinary action for serious misconduct specified (compliance standard: Yes/No). One FTO who had received a sustained finding for a Level 1 use of force was decertified. Four others were decertified as a result of their promotion or transfer to a job inconsistent with service as an FTO. OPD is in compliance with this subtask.

**Task 42.6** requires that assignment to a FTO position is contingent upon successful completion of a training course for the position (compliance standard: Yes/No). FTOs are not assigned until they have successfully completed program training. As noted above, we found 22 additional officers would be available after they completed a 10-hour one-day training course and an additional 24 candidates were being considered for the program and initial stages of vetting and recommending had been initiated. Forty-one trainees in the new officer training class that began with 55 officers were scheduled to graduate from the Basic Academy on March 22, 2013. OPD is in compliance with this subtask.

**Task 42.7.1** requires that at the end of a complete FTO cycle, trainee officers anonymously evaluate each of their FTOs (compliance standard: 95%); **Task 42.7.2** requires that FTO evaluation forms are reviewed by the Program Coordinator and the FTO's commander and supervisor (compliance standard: 95%); **Task 42.7.3** requires that the Field Training Program Coordinator provides evaluation information to the FTOs as a group, concerning program effectiveness (compliance standard: Yes/No); **Task 42.7.4** requires that each FTO is provided with evaluation information regarding his/her individual performance (compliance standard: Yes/No); and **Task 42.7.5** requires that individual evaluation forms are not made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms (compliance standard: Yes/No). Trainees are evaluated by their FTOs on a daily basis beginning with their second week of field assignment. The patrol sergeant prepares a weekly progress report; and at the end of each four-week cycle, the FTO prepares an end-of-phase report. Trainee officers anonymously evaluate their FTOs at the end of each phase. Trainees are provided evaluations of their performance throughout the program. FTOs do not receive individual evaluation forms but do receive feedback regarding their performance. The evaluation forms are reviewed by the FTP Coordinator, Commander and Supervisor and filed in the FTO Coordinator's office. OPD is in compliance with these subtasks.

**Task 42.8** requires that the Field Training Program Coordinator, or his/her designee, conducts random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers (compliance standard: Yes/No). FTOs complete a daily evaluation of the trainees; and the program coordinator receives, reviews, audits, and files all evaluation forms. OPD is in compliance with this subtask.

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**Task 42.9** requires that when a trainee officer's FTO is absent, the trainee officer is not assigned to field duties with an "acting" FTO, but is placed with another certified FTO, or assigned to non-field duties, pending the availability of a certified FTO (compliance standard: 95%). If a trainee's FTO is unavailable, the trainee is assigned to another FTO. If no FTO is available, the trainee is assigned to a sergeant or non-patrol assignment. OPD is in compliance with this subtask.

**Task 42.10** requires that Field Commanders and FTO Supervisors are provided training (compliance standard: 95%). All sergeants and commanders to whom FTOs would be assigned were trained by the program in both group and individual sessions before they were assigned FTO duties. OPD is in compliance with this subtask.

**Task 42.11** requires that focus groups are conducted by the Field Training Program Coordinator and Academy staff with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six months after completion of the field training program (compliance standard: Yes/No). The coordinator conducts focus groups with randomly selected trainees, as required by the NSA. The focus group is designed to elicit issues encountered in the program and ensure that inconsistencies in training are identified and rectified. The results of the focus group are recorded in a memorandum and reviewed by the Chief, the Assistant Chief, the Deputy Chief overseeing the Bureau of Field Operations, the Training Section Commander, and the captain and sergeant who oversee the program. During this and our previous reviews, we found that the required focus groups have been held and documented. OPD is in compliance with this subtask.

**Task 42.12** requires that the results of the focus group sessions be reviewed at a meeting to include the Training Section Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief (compliance standard: Yes/No). The coordinator explores the consistency of field training with that of the Academy at several points during the program. He interviews every trainee every four weeks before they are rotated to new assignments and new FTOs. He also participates in a monthly staff meeting that discusses the FTO training and trainees and as noted above conducts the focus groups. At the end of the FTO training cycle, a final evaluation report of the trainee's performance is prepared; and trainees rate the FTOs and the program.

Results of the focus group sessions are reviewed at a meeting that included the Training Section Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief. OPD is in compliance with this subtask.

An annual assessment of the performance of the FTU and all FTOs was conducted on February 19, 2013. The assessment panel was composed of the two BFO Deputy Chiefs, the Deputy Chief of the Bureau of Risk Management, a use of force subject matter expert (SME), the FTO coordinator and captains who command the IAD, three BFO units, and the FTU.

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As we observed in our last report, the first cycle of the Field Training Program has been completed. OPD has fulfilled the requirements of Task 42. It is now expanding the number of FTOs to address a larger number of trainees in the class that is graduating from basic training.

OPD is in Phase 2 compliance with Task 42.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 43: Academy and In-Service Training

Requirements:

- A. Academy Training Plan  
*Within 540 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Academy and in-service training to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions, and aware of and able to implement the most contemporary developments in police training. This plan shall include a review of OPD's training curriculum, with additional emphasis on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community. The plan shall also address the criteria and method for selecting OPD training instructors, the training provided to instructors, procedures for evaluating the content and quality of training provided to OPD personnel and procedures for maintaining training records for OPD personnel. In arriving at the plan regarding staffing, training content and methodology, OPD shall consult with at least four (4) other, large law-enforcement agencies within the United States which have excellent reputations for professionalism. In particular, OPD shall consult with these agencies about qualifications and other criteria to be used in selecting staff for training positions. OPD shall also review the approach of these other law enforcement agencies in training both new staff and experienced staff on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community.*
- B. Professionalism and Ethics  
*OPD shall expand professionalism and ethics as a training topic within the recruit academy, in-service training, and field training. Wherever possible, OPD shall include and address issues of professionalism and ethics using curricula that employ realistic scenario-based training exercises.*
- C. Supervisory and Command Training  
*OPD shall provide all sergeants and commanders with mandatory 40-hour in-service supervisory and leadership training. Officers shall attend training prior to promotion to the rank of sergeant. Lieutenants shall attend training within six (6) months of promotion. Such training shall include supervisory and command accountability, and ethics and professionalism, with emphasis on supervisory and management functions and*

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*situations, and shall include both scenario-based training and case studies.*

**D. In-Service Training**

*OPD shall provide all members with forty (40) hours of in-service training every eighteen (18) months.*

1. *Sergeants shall receive at least 20 hours of training designed for supervisors every 18 months.*
2. *Members at the rank of lieutenant and above shall receive at least 20 hours of training designed for commanders every 18 months.*

**E. Training Staff Record Review**

*Appointment to the Academy staff or other staff training position shall also require a review of the record of the individual being considered, to ensure that the individual does not have a record of any Class I offense, as defined in Section III, paragraph H (1), within the prior two (2) years, and that the individual is supportive of the philosophy and values of OPD.<sup>13</sup>*

(Negotiated Settlement Agreement IX. A.-E.)

**Comments:**

Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. This subtask requires OPD to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions. During the last two reporting periods, we found that 100% of the members and employees in our samples received the required in-service training.

**Discussion:**

As previously reported, OPD published General Order B-20, *Departmental Training Program* (April 6, 2005), which incorporates the requirements of Task 43. As the Department has trained at least 95% of relevant personnel on these policies, OPD is in continued Phase 1 compliance with this Task.

**Task 43.1.1** requires that OPD's training plan ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions (compliance standard: Yes/No). For this reporting period, we reviewed the training records of a stratified random sample of 70 OPD members and employees – including 50 officers, 10 sergeants, four lieutenants, and six dispatchers– to determine if the members and employees received adequate training for their positions.

The Department produced a record for each member and employee in our sample. For each, we reviewed the training s/he received during previous years, and calculated the number of hours recorded in his/her record. For the sworn officers in our sample, we credited the California Peace Officer Standards and Training (POST)-certified Continued Professional Training (CPT) as counting toward the requirement. CPT is, according to California state requirements, to be delivered to every officer every two years; OPD uses an 18-month cycle.

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<sup>13</sup> The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

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Four officers and two sergeants did not receive all the required training, but one officer and both sergeants were excused for medical reasons. Sixty-four (96%) of the 67 members and employees in our sample who were available to train received appropriate training to their jobs. The following chart reflects the results of our survey.

	Records Reviewed	Medically Excused	Available to Train	Training Received	%
<b>Officers</b>	50	1	49	46	94%
<b>Sergeants</b>	10	2	8	8	100%
<b>Lieutenants</b>	4	0	4	4	100%
<b>Dispatchers</b>	6	0	6	6	100%
<b>Total</b>	70	3	67	64	96%

OPD is in Phase 2 compliance with Task 43.1.1.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 45: Consistency of Discipline Policy

Requirements:

*On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.*

1. *The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*
2. *The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*
3. *All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.*
4. *The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*

(Negotiated Settlement Agreement X. B.)

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Comments:

During the last two reporting periods, we found OPD in compliance with Task 45.

Discussion:

As previously reported, on December 5, 2006, OPD published General Order M-03, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy and Procedure Manual; and the Departmental Discipline Policy (Training Bulletin Index Number V-T), incorporate the requirements of Task 45. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 45.1** requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level (compliance standard: Yes/No). To assess Phase 2 compliance with this subtask, we queried the IAD database to identify all of the cases with at least one sustained finding that were approved between October 1, through December 31, 2012. This query yielded 57 cases, containing 80 sustained findings. Our review revealed that one record on the list of cases that did not contain dates for the disciplinary conference or disciplinary letter. Thus, the IAD records were accurate and complete for 56 (97%) of the 58 cases and 79 (99%) of the 80 sustained findings on the list for the quarter under review.

OPD is in compliance with Task 45.1.

**Task 45.4** requires that discipline be imposed in a manner that is fair and consistent (compliance standard: 95%). To this end, the Department has developed and revised a Discipline Matrix. The Department most recently updated and revised its Discipline Matrix on September 2, 2010.

We reviewed all the cases with sustained findings that were decided during the period October 1, through December 31, 2012. We found that in 79 (99%) of the 80 sustained findings in which discipline was decided during the reporting period, the discipline fell within the Discipline Matrix in use, or was a reasonable application of discipline justified by an analysis of the facts of the case. Included in this review were 12 cases with 31 sustained findings that were generated during the Occupy Oakland events. The Occupy Oakland matters included 13 allegations that were designated as Class I violations.

We found several cases in which we believe inconsistency in enforcing OPD rules and policies has potential to undermine discipline. Activation of PDRDs – particularly in a police department with a culture that prevents officers and supervisors from seeing evidence of fellow officers' wrongdoing – can be the key to resolving allegations of improper use of force that arise from their citizen contacts. Accordingly, we think it is a serious violation for an officer to fail to activate his/her PDRD. Six of the 31 Occupy Oakland sustained findings involved officers who failed to activate their PDRDs or failed to bring them to work. In all six, the officers were investigated for use of force allegations. In two of these findings, the use of force allegations were exonerated; in four, the allegations involving use of force were considered to be not

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sustained. In five findings, the failures to activate PDRDs were addressed with a written reprimands. In the sixth instance, the notification of the sustained finding was delayed beyond the required deadline and the charge dropped as a result. We think failures to record the events on a PDRD during major police actions like dealing with Occupy Oakland demonstrations were significant particularly when coupled with the reluctance of officers to discuss fellow officers' malfeasance and although the written reprimand for failure to activate the PDRD was within the Discipline Matrix, in such circumstances, it was too lenient.

During the period of October 1, through December 31, 2012, Skelly hearings were held for 14 IAD cases involving 18 sustained findings in which discipline of a one-day suspension or greater was recommended. In two findings, the recommended discipline was reduced with only minimal justification. In one case, involving an officer's delayed response to a call for service, a one-day suspension was reduced to a written reprimand. In another case, an officer who failed to report an allegation that someone inside the OPD was providing confidential police information to criminals was reduced from a five-day suspension to a five-day suspension with four days held in abeyance. In the remaining 16 sustained findings, the recommended discipline was reduced with appropriate justification (two findings) or maintained at the same level as recommended (14 findings).

OPD is in Phase 2 compliance with Task 45.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

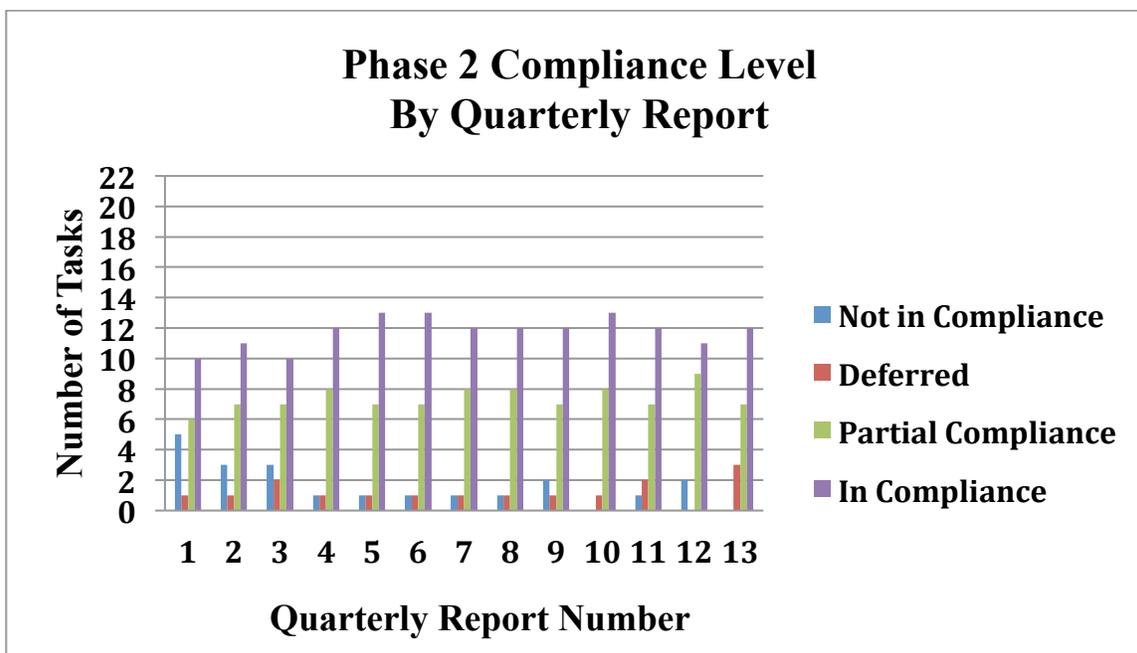
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## Section Three

### *Conclusion: Critical Issues*

This is our thirteenth quarterly report. The status of compliance with the 22 active requirements of the Negotiated Settlement Agreement is shown for all of our quarterly reports in the graph below. It shows that overall compliance has slightly increased from the last reporting period, but decreased from its highest level that was reestablished three quarters prior to this reporting period. In all, 55%, or 12, of the Tasks are in Phase 2 compliance – one Task below the previously achieved zenith when 13, or nearly 60%, were in compliance.

The overall compliance changes include two Tasks that have moved from not in compliance to partial compliance (Tasks 16 and 33); and one Task (Task 2) that moved from not in compliance to in compliance. We also deferred our compliance assessments for three force-related Tasks (Tasks 24, 25, and 30). As noted above, these changes leave overall compliance lower by one Task than the highest level (13 Tasks in full compliance) achieved to date.



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## Appendix A

### Cumulative Key Indicator Data

		PAS ADMIN UNIT STATISTICAL COMPARISON OAKLAND POLICE DEPARTMENT - KEY INDICATOR BY MONTH 2011 & 2012																								
		JAN 11	FEB 11	MAR 11	APR 11	MAY 11	JUN 11	JUL 11	AUG 11	SEP 11	OCT 11	NOV 11	DEC 11	JAN 12	FEB 12	MAR 12	APR 12	MAY 12	JUN 12	12-Jul	12-Aug	12-Sep	12-Oct	12-Nov	12-Dec	Graph
Percent of Arrests Associated with A Use of Force (Levels 1, 2, 3, 4)* - per reporting officer	2011	289	224	221	160	235	166	264	166	101	572	670	084	301	242	124	211	176	071	080	126	099	088	079	053	
	2012	3764	3798	2591	2934	4282	3561	3224	3231	3115	2468	2517	3421	2605	3435	3186	3462	2722	2457	2466	2313	1833	2644	1700	2075	
A Police Pursuit (per reporting officer)	2011	439	473	213	304	404	157	291	490	156	253	230	309	174	234	217	360	253	079	983	210	090	341	167	053	
	2012	3764	3798	2591	2934	4282	3561	3224	3231	3115	2468	2517	3421	2605	3435	3186	3462	2722	2457	2466	2313	1833	2644	1700	2075	
An IA Complaint (per subject officer sworn only)	2011	912	1071	845	691	714	901	1020	867	810	959	919	619	926	1264	828	1116	721	284	1293	1085	889	1161	521	749	
	2012	266	137	205	160	404	052	128	123	117	431	335	037	309	268	124	202	084	047	086	059	045	039	079	011	
An In-Custody Injury Each Hour of Sick Leave (excludes civilians)	2011	21671	25417	17088	18053	22638	22101	21002	22951	18411	22026	28383	23515	22977	24675	27695	28370	20965	15894	16879	17780	19272	2449	2266	1881	
	2012	21671	25417	17088	18053	22638	22101	21002	22951	18411	22026	28383	23515	22977	24675	27695	28370	20965	15894	16879	17780	19272	2449	2266	1881	
Number of Arrests per (Rank (no cases))	2011																									
	2012																									
Officer Involved Shootings (includes shootings involving animals which includes race types 1, 2, 24, 27 and 28-21)	2011	14433	000	63300	39533	53250	57150	109800	57100	128400	000	000	53350	57750	43100	65200	126600	125300								
	2012	43300	16060	31650	16943	17750	57150	109800	28550	32100	38625	104500	18043	000	21550	18967	32600	126600	31325	19817	000	205	509	1017	985	
Vehicle Collisions Civil Suit (excludes civilians)	2011	79	47	211	198	56	1143	1098	381	1284	336	95	152	421	96	323	379	652	1266	627	170	1113	513	1017	985	
	2012	79	47	211	198	56	1143	1098	381	1284	336	95	152	421	96	323	379	652	1266	627	170	1113	513	1017	985	
All Arrest (totals) (includes events to count)	2011	866	803	1266	1186	1065	1143	1098	1142	1284	1345	1045	1067	1265	1155	1293	1138	1304	1266	1253						
	2012	866	803	1266	1186	1065	1143	1098	1142	1284	1345	1045	1067	1265	1155	1293	1138	1304	1266	1253						

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## Appendix B

### *Updates on the Recommendations Outlined in the Independent Frazier Group Report on Occupy Oakland*

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On June 14, 2012, the City of Oakland released “The Independent Investigation into the Occupy Oakland Response of October 25, 2011,” a report it commissioned from the Frazier Group, a team of independent and experienced law enforcement professionals lead by Thomas C. Frazier, retired Police Commissioner of the Baltimore Police Department. The Frazier Group was tasked by the City with conducting an investigation into the City’s response to the Occupy Oakland movement, and in particular, its handling of events on October 25, 2011. The report consisted of 68 findings and corresponding recommendations. Many of the findings were critical of the City’s and OPD’s decisions and actions, as well those of other law enforcement agencies responding in a mutual aid capacity.

We are particularly concerned, of course, with the decisions and actions that relate to provisions of the NSA. As we have noted previously, there is a direct linkage to the report’s findings on command and control, tactics, arrests, use of force, and investigations; and nearly all of the report’s findings correlate to one or more provisions of the NSA.

We have had subsequent communications with the Department’s administration, and received an update of progress towards implementing the recommendations as of our most recent site visit, in early February. We intend to have ongoing dialogue with Compliance Director Frazier on this issue. The chart below documents the Department’s progress.

NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
<b>1 – Staffing and Resources</b> [inactive NSA Task]	46 – Review policy and training re: communication of information CID [Criminal Investigation Division] receives from IAD.	Pending	OPD has drafted modifications to DGO M-4.1 (Criminal Investigations Involving: Active Law Enforcement, or Member or Employee of the Department) to address the concerns raised. OPD has also changed the processes for the Force Review Boards, the Executive Force Review Boards, and the IAD/Chief of Police meetings to ensure separation of the internal and criminal investigations.
	57 – Establish policy and accountability with safeguards against broadcast of confidential IAD information outside of IAD purview.	Pending	OPD has drafted modifications to DGO K-4.1 (Force Review Boards) to prevent the sharing of IAD information in Executive Force Review Boards. Criminal investigators are not allowed to be present when IAD presents its

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NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	65 – Training program for all CID and IAD investigators and supervisors to raise skill level, organized rotation of members through units involved in crowd management and control activities (i.e., SWAT, HNT, etc.)	Pending	findings. OPD indicated that it has already made some personnel changes in IAD. Training Section staff are working on curriculum development for interview training for IAD and CID personnel, in addition to exploring what training may be available from POST and other outside sources. Some members have been sent to Interview and Interrogation training; more are scheduled to attend.
<b>Task 2 – Time Limits, Standards, and Compliance with IAD Investigations</b>	51 – Delay of initiating Level 1 use of force investigation must be reviewed.	Completed	Investigation was completed.
<b>Task 5 – Complaint Procedures for IAD</b>	44 – Recommend reviews and audits by Office of Inspector General for CID and IAD investigation quality.	Pending	The OIG function is scheduled to move to the Office of the City Administrator in 2013, which may impact audit schedules. An audit of CID, planned for 2012, was not scheduled. OIG hired an outside auditor to review the Department’s investigations of officer-involved shootings and other Level 1 uses of force. A draft report from the auditor was delivered to OPD.
	46 – Review policy and training re: communication of information CID receives from IAD.	Pending	OPD has drafted modifications to DGO M-4.1 (Criminal Investigations Involving: Active Law Enforcement, or Member or Employee of the Department) to address the concerns raised. OPD has also changed the processes for the Force Review Boards, the Executive Force Review Boards, and the IAD/Chief of Police meetings to ensure separation of the internal and criminal investigations.
	52 – OPD must complete a robust review re: the shortfalls of IAD process, policy, supervisory and command accountability.	Pending	The investigation into this Level 1 use of force has been outsourced to an external contract investigator. After a Skelly hearing, it was returned to the contract investigator for additional work.

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NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	53 – Quality of IAD investigations: assignment of best available personnel, establish audit process, identify investigative deficiencies and train to improve, cap, etc.	Pending	OPD indicated that several personnel changes have already taken place in CID. Current policy limits assignments in IAD to a maximum of six years, and the Department has no plans to change this limit. IAD assigned five annuitants to the Intake Section to address the backlog of cases in that unit, which was caused by the high influx of complaints related to Occupy Oakland events. OPD has hired an outside contractor to conduct an analysis of the entire IAD process, and has received a draft report. The Training Section staff is working on curriculum development for interview training for IAD personnel, in addition to exploring what training may be available from POST and other outside sources.
	55 – Policy developed to ensure IAD investigation of ranking dept. personnel is investigated by investigator of equal rank or higher.	Pending	While OPD does not plan on changing policy to prevent IAD investigators from investigating higher ranking personnel, TB V-T.1 (Internal Investigation Procedure Manual) was revised to require that a higher ranking person be present for the interviews of subject supervisors and commanding officers. Additional review processes were added for these cases as well.
	60 – Conduct a needs assessment of the IAD.	Pending	OPD has retained an outside consultant to conduct a comprehensive review of the IA process. A draft report has been provided to the Department.
<b>Task 12 – Disclosure of Possible Investigator Biases</b> [inactive NSA Task]	7 – Internal Affairs (IAD) commander should not be utilized as Operations Chief.	Completed	OPD advised that it is not normally Departmental practice to deploy the IAD Commanding Officer in this manner, and this event was an exception. The crowd control policy has been modified to prohibit such assignments in the future.
	49 – OPD should develop a policy where certain CID and IAD personnel are not assigned to uniform field assignments where alleged misconduct or officer-	Completed	OPD advised that it is not normally Departmental practice to deploy IAD and CID personnel in this manner, and this event was an exception. The crowd control policy has been modified to prohibit such assignments in the future.

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NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	involved criminal complaints may occur.		
	57 – Establish policy and accountability with safeguards against broadcast of confidential IAD information outside of IAD purview.	Pending	OPD has drafted modifications to DGO K-4.1 (Force Review Boards) to prevent the sharing of IAD information in Executive Force Review Boards. Criminal investigators are not allowed to be present when IAD presents its findings.
<b>Task 16 – Supporting IAD Process-Supervisor/Managerial Accountability</b>	22 – Level One Use of Force: mandatory reporting requirements and providing medical aid were ignored.	Pending	OPD is conducting training on these subjects with supervisors and during continued professional training (CPT).
	39 – Current OPD criminal investigations from OO [Occupy Oakland] require a more in-depth and aggressive review. Includes assessment of delay and preventing future reoccurrence.	Completed	Command staff investigated and addressed Criminal Investigation Division delay and depth of review.
	41 – Review policy and practice for officer-involved criminal activity. CID investigations re. officer-involved criminal activity must be more robust, diligent, and objective.	Completed	DGO M-4.1 Section VI was updated to address this recommendation.
	42 – Review and update current policies and practices when allegations of criminal misconduct are made. COP [Chief of Police] must be notified without delay and make a decision whether to refer the investigation to CID.	Completed	DGO M-4.1 Section VI was updated to address this recommendation.
<b>Task 19 – Unity of Command</b>	6 – Civilian support staff should not be tasked to fill tactical decision-making	Completed	OPD incorporated this into practice during the May Day (2012) crowd control event.

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NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
[inactive NSA Task]	roles beyond their training and experience. Future plans must have sufficient sworn staff of command rank.		
	23 – Develop policies to ensure post-event follow up to criminal or investigative investigations regarding mutual aid resources. Demobilization to include mutual aid responders to use ICS-214 or supplemental reports detailing force applications, locations, officers injured, and supervisor approval. Assign OPD member to oversee and ensure collection.	Completed	This has been added to the crowd control policy and to the mutual aid policy.
	24 – OPD should not be comingled with Mutual Aid resources.	Completed	This has been added to the crowd control policy and to the mutual aid policy.
	25 – Mutual Aid Policy to include OPD and Responding Agencies responsibilities.	Completed	This has been added to the crowd control policy and to the mutual aid policy.
<b>Task 20 – Span of Control</b>	24 – OPD should not be comingled with Mutual Aid resources.	Completed	See above. This has been added to the crowd control policy and to the mutual aid policy.
<b>Tasks 24 and 25 – Use of Force Reporting; Use of Force Investigation and Report Responsibilities</b>	2 – Revise Use of Force policy.	Pending	As of January 31, 2013, the Office of the City Attorney is revising DGO K.3, <i>Use of Force</i> .
	16 – Concerned with criminal investigation quality regarding serious uses of force.	Pending	The Criminal Investigation Division has completed officer interviews and is working on appropriate follow-up.
	20 – Deployment of Specialty Impact less lethal Weapons on 25 Oct may not have been reasonable. Criminal Investigations Division (CID) and IAD to investigate; Chief of Police	Pending	All IAD cases have been completed; the exceptions are cases initiated as a result of lawsuits. The Criminal Investigation Division has 12 open cases.

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NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	to assess and resolve.		
	21 – Accountability system needed for issuance, recovery, and re-supply of any and all munitions to any “Tango Team” officer or supervisor.	Pending	A Munitions Inventory Policy (including Tango Team Equipment Deployment Inventory Sheets) has been drafted and is in the approval process.
	29 – Enhance use of force reporting policy at departmental and individual levels.	Pending	Same as above. As of January 31, 2013, the Office of the City Attorney is revising DGO K.3, <i>Use of Force</i> .
	32 – Mass use of force reporting & collection, review, and approval by supervisor must be revised.	Pending	As of January 31, 2013, OPD’s draft crowd control policy is in the approval process. Additionally; (1) multiple investigators will be utilized during large-scale events; (2) an IAD Force Investigation Team was developed to respond to all OPD OIS events; (3) the IAD policy and organizational chart needs revisions to include these changes.
	35 – Strategic deployment of Quick Response Teams and/or simultaneous dynamic movement of squad-sized crowd control elements. Develop POST-certified crowd management training curriculum, utilize modern equipment, modify policy to represent current standards and preferred practices when managing crowds, and appoint Incident Management Team and Crowd Control Coordinator.	Pending	As of January 31, 2013, OPD’s draft crowd control policy is in the approval process. New less lethal munitions have been ordered (sponge rounds and not bean bags). Refer to Task 32.
	36 – OPD and Mutual Aid agencies must complete appropriate forms (ICS-214 or supplemental reports) detailing arrests, injuries, force, and location where applied. Supervisors to	Pending	This is addressed in the draft of the crowd control policy. Refer to Task 32.

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NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	review and approve, and reports submitted to Planning Section Chief prior to demobilization.		
<b>Task 26 – Force Review Board (FRB)</b>	26 – Number and types of uses of force from Oct. 25 have not been heard by appropriate force review boards. All uses of force should be reviewed for criminal misconduct before such hearings.	Completed	All FRBs for Level 2 UOF incidents from October 25, 2011 are complete.
<b>Task 27 – Oleoresin Capsicum Log and Check Out Procedures</b> [inactive NSA Task]	2 – Revise Use of Force policy.	Pending	Same as above; the Office of the City Attorney is completely revising the draft of DGO K.3.
	21 – Accountability system needed for issuance, recovery, and re-supply of any and all munitions to any “Tango Team” officer or supervisor.	Pending	A munitions inventory policy has been drafted and is currently in the approval process.
<b>Task 30 – Executive Force Review Board (EFRB)</b>	26 – Number and types of uses of force from Oct. 25 have not been heard by appropriate force review boards. All uses of force should be reviewed for criminal misconduct before such hearings.	Completed	All EFRBs for Level 1 UOF incidents from October 25, 2011 are complete.
	27 – Develop policy and practices which facilitate evaluation of force (Force Review Board) circumstances contemporaneous to the date of the event.	Pending	A Force Investigation Team was developed through IAD to respond to all OPD officer-involved shooting (OIS) events.

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NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
<b>Task 32 – Use of Camcorders</b>	31- Revise personal recording device policy and enhance reliability of use.	Pending	OPD has revised the PDRD policy; however, the policy was not approved or implemented as of our most recent site visit. OPD reports that the Department is ordering additional PDRD units and has begun training recruits by using “dummy” PDRDs to make activation part of normal response.
<b>Task 33 – Supporting the IAD Process – Supervisory/ Managerial Accountability</b>	22 – Mandatory reporting and medical aid requirements were ignored.	Pending	OPD had been held in compliance with this Task until our November 2012 review in which many Occupy Oakland IAD cases were reviewed and the failure of officers and supervisors to report misconduct was clearly documented.
	39 – Current OPD criminal investigations require a more in-depth and aggressive review. Includes assessment of delay and preventing future reoccurrence.	Pending	During the past two reviews, we found that again there were a number of serious cases involving Class I violations of the MOR that occurred during Occupy Oakland demonstrations in which there were many officers present. There were instances where officers and supervisors serving on a police line said that they had not observed actions other officers’ who were near them.
<b>Task 43 – Academy and In-Service Training</b>	14 – Designate a Crowd Management Coordinator with responsibility for policy updates, department training, etc.	Completed	The IAD Commander has been designated this responsibility.
	17 – Implement immediate training in use of new munitions and strategy and deployment of surveillance and arrest teams in addition to dynamic squad movement to disperse and arrest.	Completed	Tango Teams have been expanded, all sworn personnel trained in small unit tactics, three hours added to both sergeants’ and officers’ Continued Professional Training (CPT).
	65 – Training program for all CID and IAD investigators and supervisors to raise skill	Pending	Personnel changes in IAD. Training Section staff is working on curriculum for interview training for IAD personnel. Brought in Los Angeles Police

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NSA Task	Frazier Group Report Recommendation (abbreviated)	Status	Notes
	level, organized rotation of members through units involved in crowd management and control activities (i.e., SWAT, HNT, etc.)		Department (LAPD) level 1 investigator for one-day training. Has arranged for the FBI to provide interview training.
	66 – Formal training for senior leaders, and formalize a career development program of rotational assignments and temporary detail assignments.	Pending	OPD Assistant Chief (AC) and Deputy Chief attended IACP conference in 2012; AC attended Major Cities Chiefs/Major County Sheriffs joint conference in January 2013; Assistant Chief visited Philadelphia Chief; and new FBI National Academy Associates (NAA) slot planned.
	67 – Provide critical incident and leadership training for all lieutenants.	Pending	In June 2012, training for commanders on the subject of quick response teams and small unit tactics. In September 2013, training for all commanders took place for pre-planning for crowd control events. Four commanders are scheduled to attend Senior Management Institute for Police (SMIP) in 2013. Some commanders are scheduled to attend upcoming Incident Command System (ICS) training with Urban Areas Security Initiative (UASI) funding.

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## Appendix C

### *Selected Inactive Task Assessments*

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During this reporting period, as in several past reporting periods, we assessed two inactive NSA Tasks: two provisions of Task 7 (Tasks 7.2 and 7.4) and Task 46.

**Task 7.2** requires that guidelines for filing a citizen's complaint are prominently posted and informational brochures are made available in key Departmental and municipal locations. During our most recent site visit, Team members visited the police facilities housing Bureau of Field Operations #1 (BFO1) and Bureau of Field Operations # 2 (BFO2). BFO1 is located in the Police Administration Building (PAB), and BFO2 is located in the Eastmont Plaza. We observed a placard outlining the process for filing a complaint prominently displayed in the lobby of the Eastmont facility. We were unable to locate a similar placard in any of the public areas of the PAB. Each Bureau had an abundant supply of "Your Guide to Filing a Complaint Against the Police" brochures in the English, Spanish, Vietnamese and Chinese languages. Additionally, the officer working the front desk at the PAB provided us with a brochure upon request. The front desk of BFO2 was not staffed at the time of our visit.

We will again assess the Department's compliance with this subtask during a future reporting period.

**Task 7.4** requires that OPD personnel have available complaint forms and informational brochures on the complaint process in their vehicles at all times while on duty. As noted above, each Bureau we visited had an abundant supply of complaint brochures in multiple languages. The officers we encountered in the field were handling calls for service, and so we did not interrupt them to verify that they were in possession of complaint brochures. However, the supervisor we rode with had brochures in his vehicle and on his person. He also indicated that verifying that officers have brochures is part of the regular inspections process. We reviewed the most recently published (January 2012) Field Vehicle Inspection Checklist and confirmed that it includes a checkbox for "Complaint Packets Are in Vehicle."

We will again assess the Department's compliance with this subtask during a future reporting period.

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**Task 46** addresses the way in which the Department promotes personnel. More specifically, it requires that: (1) promotions of candidates with sustained misconduct cases within three years preceding the promotion include consideration of misconduct history as an important factor; (2) candidates with sustained Class I offenses within 12 months preceding the promotion are presumptively ineligible for promotion; and (3) promotional decisions include the consideration of several elements, including the candidate's 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.

During this reporting period, we identified sworn personnel who were promoted by the Chief of Police within the last 15 months (October 2011, through February 2013). During this time period, promotions included three chief officers, two captains, nine lieutenants, and 17 sergeants. Via PAS, we reviewed information relevant to each, including Supervisory Notes Files, IAD complaints, assignment and rank history, uses of force (all levels), their involvement in any civil suits, and any awards.

We are concerned with the histories of some of these recently promoted personnel, and we intend to communicate our specific concerns directly to the Compliance Director.

We will again assess the Department's compliance with this subtask during a future reporting period.

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## Appendix D

### *Acronyms*

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The following is a listing of acronyms frequently used in our quarterly reports.

<b>Acronym</b>	<b>Definition</b>
ACSO	Alameda County Sheriff's Office
AWS	Automated Warrant System
BART	Bay Area Rapid Transit
BFO	Bureau of Field Operations
BOI	Bureau of Investigation
BOS	Bureau of Services
CAD	Computer Assisted Dispatch
CHP	California Highway Patrol
CID	Criminal Investigation Division
CORPUS	Criminal Oriented Records Production Unified System
CPRB	Citizens' Police Review Board
CPT	Continued Professional Training
CRIMS	Consolidated Records Information Management System
DGO	Departmental General Order
DIL	Daily Incident Log
DLI	Division-level investigation
EFRB	Executive Force Review Board
FRB	Force Review Board
FTO	Field Training Officer
FTP	Field Training Program
FTU	Field Training Unit
IAD	Internal Affairs Division
IB	Information Bulletin
ICR	Informal Complaint Resolution
IPAS	Input for Personnel Assessment System
LEWI	Law Enforcement Warrants Inquiry System
MOR	Manual of Rules
NSA	Negotiated Settlement Agreement
OCA	Office of the City Attorney
OIG	Office of Inspector General
OPD	Oakland Police Department
PAS	Personnel Assessment System
PDRD	Portable Digital Recording Device
POST	Peace Officer Standards and Training
RMM	Risk Management Memorandum
RWM	Report Writing Manual
SDF	Stop Data Form
SME	Subject matter expert
SO	Special Order
TB	Training Bulletin
UOF	Use of force