



**OAKLAND POLICE DEPARTMENT
MONTHLY PROGRESS REPORT
AUGUST 1, 2013**

**OFFICE OF THE COMPLIANCE DIRECTOR
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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Office of the Compliance Director
U.S. District Court, Northern District of California

August 1, 2013

This is the second Compliance Director's monthly report, as required by Judge Thelton Henderson's Court Order of December 12, 2012 (as amended).

This report differs somewhat from the June report format, reflecting the continuing evolution and refinement of our working relationship with OPD, the steps we will follow before signing off benchmark completions, and the manner in which we organize and present the monthly results.

July was a month in which the Oakland Police Department continued its commendable efforts towards completion of benchmark items. The relationship between OPD and the Compliance Director's Office remained open and cooperative, and much progress was achieved across a broad range of projects.

Last month's report made specific mention of the difficulties encountered by my office in dealing with City Hall on several issues. Those comments seem to have improved the relationship, since no new occurrences of friction occurred in July.

This noteworthy progress was somewhat offset by OPD's disappointing performance in preventing the vandalism that occurred in downtown Oakland following the Trayvon Martin verdict. Steps necessary to prevent future recurrences of this will be addressed in this report.

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INTRODUCTION

The Compliance Director Court order dated December 12, 2012, addresses the reporting duties of the Compliance Director and delineates, among other requirements, the following:

1. "Within 30 days of his or her appointment, the Compliance Director will file a remedial action plan ('Plan') that both addresses deficiencies that led to noncompliance and explains how the Plan will facilitate sustainable compliance with all outstanding tasks by December 2013 or as soon thereafter as possible."
2. "Within 60 days of his or her appointment, the Compliance Director will file a list of benchmarks for the OPD to address, resolve, and reduce: (1) incidents involving the unjustified use of force, including those involving the drawing and pointing of a firearm at a person or an officer-involved shooting; (2) incidents of racial profiling and bias-based policing; (3) citizen complaints; and (4) high-speed pursuits. In developing these benchmarks, the Compliance Director will consult with the Monitor, Plaintiffs, the Mayor, the City Administrator, the Chief of Police, the OPOA, and, as necessary, subject-matter experts to ensure that the benchmarks are consistent with generally accepted police practices and national law enforcement standards."
3. "Beginning on May 15, 2013, and by the 15th of each month thereafter, the Compliance Director will file a monthly status report that will include any substantive changes to the Plan, including changes to persons responsible for specific tasks or action items, and the reasons for those changes. The monthly status reports will also discuss progress toward achieving the benchmarks, reasons for any delayed progress, any corrective action taken by the Compliance Director to address inadequate progress, and any other matters deemed relevant by the Compliance Director."

On April 3, 2013, the Court issued an order extending these deadlines as follows:

1. The Compliance Director will file a remedial action plan on or before May 1, 2013.
2. The Compliance Director will file a list of benchmarks on or before May 31, 2013.
3. The Compliance Director will begin filing monthly reports on July 1, 2013, and reports will be due on the 1st of each month thereafter."

MAJOR EVENTS – JULY 2013

1. In spite of warnings, and requests for planning information prior to the demonstrations that occurred immediately after the Trayvon Martin verdict was announced, the Oakland Police Department was unprepared for the protests and vandalism that occurred. The City of Oakland suffered damage and negative publicity that could have been managed in a more professional manner.
2. During the month of July the following positive events occurred:
 - The Compliance Director approved the concept and a contractor for video forensics in the Criminal Investigations Division (CID).
 - The Compliance Director approved a Request for Proposal for a Department Performance Auditor, as required by the Negotiated Settlement Agreement.¹ The selection of the contractor by OPD and the contract terms and conditions are pending review by the Compliance Director.
 - The Compliance Director reviewed and approved a revised Internal Affairs Division policy. The policy was the aggregate work of the OPD, the Independent Monitor, the Compliance Director, and other parties to the NSA. A substantial part of the revision addresses the necessity for first-line supervisors to assume a more proactive and affirmative role and more responsibility during the initial stages of internal affairs complaints.
 - The Compliance Director reviewed and approved a double-blind sequential photo line-up policy. Following several high-profile incidents where innocent persons were imprisoned, the Compliance Director and the Independent Monitor both desired more contemporary policy and practice for investigative photo line-ups. The approved policy virtually mirrors policies in place throughout Alameda and Santa Clara Counties.
 - The Compliance Director reviewed and approved a segment of the Training Bulletin detailing appropriate deployment and use of 40mm less lethal launchers and munitions.

¹ The Negotiated Settlement Agreement requires specific audits of segments within the OPD, which are to be performed by an individual/firm independent of the police department.

- The Compliance Director approved a proposal to be presented to the City Council in late July 2013 for RCC Consultants, Inc. to conduct a side-by-side comparison between Oakland's existing 800 MHz system and the East Bay Regional Communications System Authority (EBRCSA) radio communications system. The Office of the Compliance Director will shepherd the process and committee meetings. The results of the study are due to the Council no later than November 1, 2013.
- The Compliance Director's Office convened and co-hosted with the Oakland Police Officers' Association (OPOA) a public safety radio communications meeting. The results of this meeting served as the initial kick-off for a 90-day side-by-side test between Oakland's existing 800 MHz system and the EBRCSA system.
- The Compliance Director approved the following documents key to the completion of the project designed to clear Oakland's existing backlog of unprocessed DNA samples:
 - a) A contract between the City of Oakland and Bode Technologies, a private DNA testing lab, to clear Oakland's backlog of unprocessed samples.
 - b) A Scope of Services Agreement (technical requirements of OPD Criminalistics Division) between the City and Bode.
 - c) An MOU between the City, the Alameda County District Attorney, Bode, and Natasha's Justice Project (NJP, a private foundation that provides funds to process backlogged DNA rape kits) clarifying the role of each party.

The Compliance Director is also consulting with OPD to establish policy and procedures which facilitate the exchange and analysis of DNA evidence with outside contract laboratories.²

- The Compliance Director convened a meeting to address OPD's recruiting, background investigation, and hiring processes for police officer candidates. The intent of this initiative is to pinpoint policies and practices which could enhance the volume of qualified police recruit candidates, improve the background investigation process, and reduce the dropout rate at the police academy. Assignments were made, and additional meetings will follow.

² See Alameda County Civil Grand Jury report 2011-2012 and Compliance Director's Remedial Action Plan.

- The Compliance Director has expressed misgivings about the Oakland Police Department's capacity to conduct high-quality background investigations of police recruit candidates. The current process is negatively impacted by limited available human and monetary resources, policy, and long-standing practice. In collaboration with the City and the OPOA, the Office of the Compliance Director participated in meet-and-confer negotiations surrounding the issue of using police annuitants (retirees) to conduct background investigations. The parties have agreed to terms and conditions which will accommodate the use of annuitants for a limited time period.
- The Compliance Director has directed that every reasonable effort be made to expedite the promotion of qualified police sergeants (first-line supervisors) into vacant positions in order to meet the supervisor ratio requirements of the NSA. To this end, his office facilitated and subsequently participated in meet-and-confer negotiations with the City and the OPOA. The parties have agreed to terms and conditions which will permit the early closeout of the existing Sergeants list and the immediate start of procedures to produce a new one.
- The Compliance Director has retained an organizational psychologist to work with OPD's executive staff as they transition into their new roles. A one-day executive retreat addressing the need for executive coaching, role identification, and leadership characteristics served as an excellent starting point, with additional sessions to follow.

JUNE 2013 BENCHMARKS MISSED

AND

JULY 2013 BENCHMARKS

Following are the agreed-upon June intermediate due dates (Benchmarks Missed), and the July Benchmarks extracted from the Benchmarks Plan. Each benchmark contains a short summary of progress achieved towards completion.

NOTE 1: The number in parentheses before each of the following intermediate due dates refers to the number of the “top twenty” priorities identified in the Benchmark Plan.

NOTE 2: Items identified as “Tasks” refer to specific non-compliant or partially compliant items from the Independent Monitor’s quarterly reports of OPD compliance with the Negotiated Settlement Agreement.

NOTE 3: Items NOT identified as “Tasks” are items identified and inserted in the benchmark process by the Compliance Director.

NOTE 4: For purposes of this report, the Compliance Director considers policy modifications to be a three-part process. Part one of this process is the OPD drafting/modification and Compliance Director/Monitor review/approval of the policy document. Part two is the development and approval of OPD training bulletins and training syllabi supporting the newly revised/approved policy. Part three is documentation of completion of required training and policy implementation.

NOTE 5: Beginning this month the Compliance Director will articulate the steps necessary to gain compliance with each item. Only when OPD demonstrates that all steps listed have been satisfactorily achieved will the item be considered “completed”.

NOTE 6: “Progress” entries for each benchmark are now color-coded. **Blue** highlights indicate Benchmark completion. **Red** highlights indicate that the benchmark remains pending, with a revised due date set.

JUNE 2013 BENCHMARKS MISSED

6.3.13 (15) **OPD to meet with representatives from the District Attorney's Office to discuss CODIS outsourcing protocols.**

OPD RESPONSIBLE PARTY: Deputy Chief D. Outlaw.

JUNE PROGRESS: Pending. OPD crime lab, CID, and OIG representatives met with District Attorney personnel on 21 June to discuss the discrepancy in numbers of backlogged cases between the two organizations. A consolidated list should be completed in the near future. OPD also is exploring using the DA's prioritization protocols to ensure seamless communication/activities between both offices.

WHY THE DEADLINE WAS MISSED: It was not possible to arrange this multiparty meeting until late in the month. Also, preparing a consolidated list of hundreds of samples will take about a month to complete.

REVISED BENCHMARK DATE: 31 July.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide Compliance Director with a copy of OPD meeting notes.

JULY PROGRESS:

Meeting notes and other documentation have been reviewed. The benchmark has been COMPLETED.

6.15.13 (6) **Task 20 – Span of Control for Supervisors – Meet and confer with OPOA to determine if OPD can extinguish the current Sergeants list once all viable candidates are promoted.**

OPD RESPONSIBLE PARTY: Deputy Chief D. Downing.

JUNE PROGRESS: Pending. A meet and confer meeting is scheduled for 10 July involving the City, OPOA, OPD, and the Compliance Director's staff.

WHY THE DEADLINE WAS MISSED: Due to conflicting schedules and key parties being on vacation, it was not possible to schedule this multiparty meeting until 10 July.

REVISED BENCHMARK DATE: 10 July.

JULY PROGRESS:

A member of the Compliance Director's staff participated in the meeting. The benchmark has been COMPLETED.

ASAP

(6) Task 20 – Span of Control for Supervisors – **OPD to work with the City's Human Resources Department to rapidly establish a new Sergeants list once the current list is extinguished. OPD will promote to fill existing vacancies as they occur. (This action is contingent upon the successful negotiation necessary to close the current list.)**

OPD RESPONSIBLE PARTY: Deputy Chief D. Downing.

JUNE PROGRESS: Pending. The meet and confer meeting will be scheduled after the City, OPOA, OPD and Compliance Director's staff meeting scheduled for 10 July.

WHY THE DEADLINE WAS MISSED: This meeting can't be held until after the scheduled 10 July meet and confer with OPOA. If OPOA and others cannot agree on a procedure to end the current list, then this issue fails and OPD must wait for the scheduled expiration of the current list.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Dependent upon the outcome of the 10 July meeting.

JULY PROGRESS:

A member of the Compliance Director's staff participated in the meeting. Agreement was reached between OPOA, the City, and OPD permitting the current list to expire early. The benchmark has been COMPLETED.

6.30.13 (20) Implement sequential double-blind photo lineup procedures –
Implement policy and commence investigator training.

OPD RESPONSIBLE PARTY: Assistant Chief P. Figueroa.

JUNE PROGRESS: Pending. A draft lesson plan has been completed. Training will commence in early July.

WHY THE DEADLINE WAS MISSED: Policy review/approval occurred towards the end of June – too late for training to commence. The project will be completed in July.

REVISED BENCHMARK DATE: 15 July.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with a copy of the Training Bulletin for this topic.
- Provide the Compliance Director with a copy of the training syllabus.
- Provide the Compliance Director with start/end dates for training.
- Provide the Compliance Director with a list of those trained, and copies of five randomly selected entries on trained personnel training records.

JULY PROGRESS:

The required documentation has been reviewed. The benchmark has been COMPLETED.

JULY 2013 BENCHMARKS

- 7.1.13 (19) Develop needed training programs – **Commence quarterly MILO (shoot-don't-shoot simulator) training.**

OPD RESPONSIBLE PARTY: Deputy Chief D. Outlaw.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with the training start date and a copy of the appropriate training plan.
- Provide the Compliance Director with copies of five randomly selected entries on trained personnel training records.

JULY PROGRESS:

Required documentation has been reviewed. The benchmark has been COMPLETED.

- 7.1.13 (19) Develop needed training programs – **Increase Patrol level use of force training for Officers by 20 hours per year.³**

OPD RESPONSIBLE PARTY: Deputy Chief D. Outlaw.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with the training start date and a copy of the appropriate training plan.
- Provide the Compliance Director with copies of five randomly selected entries on trained personnel training records.

JULY PROGRESS:

PENDING. Conversations between OPD and the Compliance Director's staff have led to the realization that a blend of training is more realistic than simply depending on increased simulator (MILO) training to achieve the desired goal of providing patrol officers with increased capabilities to

³ The original benchmark was to increase training to 20 hours per year. In consultation with the OPD, the Compliance Director has determined that a more appropriate benchmark would be to increase training by 20 hours per year, so that officers receive an additional 20 hours per year of training in this critical area. The OPD has agreed to this change.

deal with potential violence under stress short of using deadly force. OPD's Training Division will craft a proposal to blend increased simulator time and reality-based training. Upon the Compliance Director's review/approval of this revised training plan, a revised benchmark timeline for development and implementation of this training will be crafted and inserted in the updated Benchmark Plan.

The first step is the development/presentation of the OPD blended training proposal. A benchmark for this to be completed has been set as 30 August 2013.

- 7.1.13 (12) Task 40 – Personnel Assessment System (PAS) – Purpose – **Complete revisions to IPAS (global command review and access to use of force reports). This should permit compliance with the NSA task for the short-term solution.**

OPD RESPONSIBLE PARTY: Deputy Chief E. Breshears.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with an updated briefing memo detailing steps taken, and appropriate supporting documentation.

JULY PROGRESS:

The required documentation has been reviewed. The benchmark has been COMPLETED.

- 7.1.13 (12) Task 40 – Personnel Assessment System (PAS) – Purpose – **Completion of electronic consolidated arrest report (ECAR) policy.**

OPD RESPONSIBLE PARTY: Deputy Chief E. Breshears.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with an updated briefing memo detailing steps taken, and appropriate supporting documentation.

JULY PROGRESS:

The required documentation has been reviewed. The benchmark has been COMPLETED.

- 7.1.13 (15) Submit backlogged DNA samples to the National DNA database (CODIS) – **Complete implementing the procedures and protocols necessary to permit outsourcing of all backlogged unprocessed DNA kits.**

OPD RESPONSIBLE PARTY: Deputy Chief D. Outlaw.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with an updated briefing memo detailing steps taken, and appropriate supporting documentation.

JULY PROGRESS:

PENDING. OPD draft procedures and protocols have been submitted to the Compliance Director for review. This review will be completed in August.

The completion date for this benchmark has been reset to 30 August 2013.

- 7.1.13 (4) High Speed Pursuits – **Hire SME.**

PENDING. This is a Compliance Director Action Item.

- 7.1.13 (5) Task 5 – Complaint procedures for IAD – **Complete revision of DGO M-3.**

OPD RESPONSIBLE PARTY: Deputy Chief D. Outlaw.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with a copy of the draft of the revised DGO for review.

JULY PROGRESS:

The Compliance Director has reviewed and approved the DGO. This benchmark has been COMPLETED.

- 7.1.13 (16) Enhance capabilities to follow up on confirmed fingerprint identifications in solving robberies/burglaries – **Complete a review of current practices/policies/requirements relating to AFIS-quality prints.**

OPD RESPONSIBLE PARTY: Deputy Chief D. Outlaw.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with an updated briefing memo detailing steps taken, and appropriate supporting documentation

JULY PROGRESS:

The required documentation has been reviewed. The benchmark has been COMPLETED.

- 7.1.13 (18) Purchase and deploy modern crowd control weapons/munitions, TASERs, and additional PDRDs - **Complete TASER purchases.**

OPD RESPONSIBLE PARTY: Deputy Chief D. Outlaw.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with a copy of the completed and processed purchase order, including the estimated date of receipt of the TASERs.

JULY PROGRESS:

The required documentation has been reviewed. The benchmark has been COMPLETED.

- 7.1.13 (18) Purchase and deploy modern crowd control weapons/munitions, TASERs, and additional PDRDs – **Complete PDRD purchases.**

OPD RESPONSIBLE PARTY: Deputy Chief D. Outlaw.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with a copy of the completed and processed purchase order, including the estimated date of receipt of the PDRDs.

JULY PROGRESS:

The required documentation has been reviewed. The benchmark has been COMPLETED.

- 7.15.13 (18) Purchase and deploy modern crowd control weapons/munitions, TASERs, and additional PDRDs – **Complete update of less lethal weapons/munitions use policy.**

OPD RESPONSIBLE PARTY: Deputy Chief D. Outlaw.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with a copy of the draft of the revised DGO for review.

JULY PROGRESS:

PENDING. Completion of this policy revision is dependent upon completion of the current initiative to revise OPD's Crowd Control Policy. This policy revision is being developed in cooperation with the plaintiffs' attorneys and is at about the 90% completion point. Upon completion of the Crowd Control Policy redraft and its review/approval by the Compliance Director, the final revisions to the less lethal weapons/munitions use policy can be completed and sent to the Compliance Director for review.

The benchmark for completion of this item has been reset for 30 August 2013.

- 7.31.13 (11) Task 34 – Vehicle Stops, Field Investigation, and Detentions – **Revise the Report Writing Manual (RWM) insert to include the Field Based Reporting (FBR) change.**

OPD RESPONSIBLE PARTY: Assistant Chief P. Figueroa.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with a copy of the draft changes to the RWM for review.

JULY PROGRESS:

The required documentation has been reviewed. The benchmark has been COMPLETED.

- 7.31.13 (11) Task 34 – Vehicle Stops, Field Investigation, and Detentions – **Complete a “global” analysis report covering one month of stop data. Prepare subsequent reports as required.**

OPD RESPONSIBLE PARTY: Assistant Chief P. Figueroa.

STEPS NECESSARY TO ACHIEVE COMPLIANCE:

- Provide the Compliance Director with a copy of the report for review.

JULY PROGRESS:

The required documentation has been reviewed. The benchmark has been COMPLETED.

SUMMARY OF JULY PROGRESS

16 benchmarks (OPD responsibility)

13 benchmarks completed (81%)

3 pending completion (19%) – Benchmark dates reset for August.

CONCLUDING THOUGHTS

In spite of warnings and requests for planning information prior to the demonstrations that occurred immediately after the Trayvon Martin verdict was announced, the Oakland Police Department was unprepared for the protests and vandalism that occurred.

OPD's performance in this instance was primarily the result of a weak internal intelligence support mechanism that should have provided better warnings in advance of the easily anticipated events that occurred.

Given the broad range of events that OPD must deal with, this intelligence system weakness must be addressed as a priority issue. Building a more effective intelligence component will become a priority for this office in the immediate future, with corresponding revisions to the Benchmark Plan crafted to support the necessary changes.