

Monthly Progress Report

Of the Office of Inspector General



Office of the Inspector General
Oakland Police Department

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INTRODUCTION

The Monthly Progress Report model requires each month to usher in a new report with new findings and recommendations for improvement, but we should not lose sight of the need to monitor and evaluate past recommendations to ensure progress is ultimately achieved and sustained.

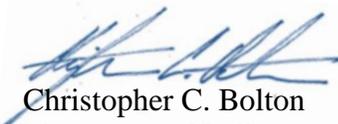
No single topic garners more of our time than Stop Data and the related responsibility of using Stop Data to evaluate the results of police stops and searches. The September and October 2015 Monthly Progress Reports made numerous recommendations for improvement within this realm, and results and developments have been constant.

In September, the Department secured a three-year contract extension with Stanford University to maintain a partnership for better understanding and evaluating racial bias within policing. All of OIG's most relevant findings and recommendations have been shared with the Stanford team.

Additionally, the Department accepted past OIG recommendations pertaining to Stop Data collection definitions and consistency. Pending final approval, training may soon mandate that only evidence, contraband, and narcotics that are retained and appropriately processed by officers at the conclusion of citizen contacts will be included as search recoveries. Lawfully possessed and seized weapons which are returned to detainees at the conclusion of contacts will be assessed apart from aggregate search recovery results. This training will also require firearms, other weapons, evidence, and narcotics to be more precisely tracked to the person(s) who most probably possessed or controlled the item prior to the search.

OIG's past recommendations for improvement have routinely referred to needed policy revisions. Relevant policies have since been referred to the Department's Research and Planning Unit which is currently engaged in updating and improving all standing policies with a comprehensive policy management tool. The OIG will continue to monitor and assist with this policy development process to ensure that all policies continue to serve the letter, spirit, and intent of reforms and progressive police practices.

It is important that the recommendations made within OIG reports translate to sustainable progress. We hope that our constant monitoring and reporting within the pages of these Monthly Reports helps to sustain the progress the men and women of our police department work so hard to achieve.



Christopher C. Bolton
Lieutenant of Police
Office of Inspector General

AUDITS, REVIEWS, and/or INSPECTIONS

Review of Administrative Investigations

Auditors: Lieutenant Chris Bolton, Sergeant John Haney, and Kristin Burgess-Medeiros, Office of Inspector General

Objective(s):

1. Determine if summary findings are appropriate and approved properly.
2. Determine whether all relevant evidence is considered and analyzed.
3. Determine whether the preponderance of evidence standard is used for each finding.

Policy Referenced: Department General Order (DGO) M-03, *Complaints Against Department Personnel or Procedures* and Training Bulletin (TB) V-T.1, *Internal Affairs Division Manual*.

Significant Finding(s): Overall, the Department is properly investigating complaints of misconduct and making appropriate findings. In one of the fifteen cases reviewed, the IAD Commander overruled an investigator's finding of *unfounded* for a rudeness complaint. The IAD Commander changed the Manual of Rules violation and sustained the misconduct based on the circumstances of the complaint. As of the completion of the review, no documentation addresses this supplemental report and finding with the assigned investigator.

Recommendation(s):

1. For cases in which the investigator's findings are overruled, IAD or the investigator's chain of command should minimally document the reason for the overruling and discuss the decision with the investigator so that reasons are known, understood, and addressed.

Overview

Quality of administrative investigations is critical to police accountability. Regular reviews of internal affairs cases ensure continued compliance with policy and quality investigations. This review focused on proper approvals for summary findings, proper analysis of evidence, and preponderance of evidence in determining findings.

METHODOLOGY

The OIG reviewed 15 cases closed during the months of April – August 2015. Cases were reviewed for completeness, compliance with policy (DGO M-03 and TB V-T.1), and adequacy of findings. Cases with summary findings were reviewed to ensure the summary finding was appropriate and that approval for the summary finding had been documented prior to the investigator submitting his/her report. Per DGO M-03, *a summary finding is an abbreviated internal investigation in which a finding can be reached without conducting a full formal internal investigation because the correct finding can be determined with no or minimal follow-up and based on the existing documentation, evidence, statements, and crime information data (e.g., Offense Report, Use of Force Report, video or digital recordings, complainant's statement, radio purge, LRMS records).*

TB V-T.1 states that, *investigators shall conduct a thorough, impartial, fact-finding investigation; take recorded statements from all relevant persons; gather, preserve, and examine physical evidence; and collect other information pertinent to the investigation.*

It also requires that the Report of Investigation include the following:

When making the final discussion and conclusions, consider any and all relevant evidence, including, but not limited to:

(a) Circumstantial, direct and physical evidence, and

(b) Credibility determinations for witnesses, subjects and/or complainants shall be based on objective indicators (e.g., inconsistent or contradictory statement) rather than subjective ones (e.g., affinity for or dislike of a particular officer or complainant, a hunch, or suspicion).

When reaching conclusions, a “preponderance of the evidence” standard shall be used.

FINDING #1

Twelve of the fifteen cases were summary findings, and all twelve cases were appropriate for a summary finding. Eight of the twelve summary findings relied on video footage. In these cases, the incident was captured by the officer(s) body-worn cameras and findings were determined by an investigator’s review of the video. The remaining four summary findings relied on the recorded conversations between complainants and OPD Dispatchers. Singularly, in one case, there was no documented approval for the summary finding by the next level commander/manager or the IAD Commander. The finding was ultimately approved and the summary finding was found appropriate by IAD after their receipt of the case. The lack of pre-approval for summary findings could impact timeliness and thoroughness of preliminary investigations conducted in the field.

FINDING #2

In the twelve cases with summary findings, video footage or audio recordings was the only evidence needed to come to the correct finding. However, in one summary finding case, additional investigative steps and/or documentation may have been necessary. This case concerned an allegation of excessive force from third party witnesses. Video footage was the primary evidence used by the investigator in determining the case’s finding. While the investigator sufficiently explains how he arrived at his finding within the report, during the investigation he does not sufficiently question the subject of the use of force. The investigator discussed surrounding details with the subject but failed to question him about the actual use of force. Even though the subject was not the one making the complaint, and the circumstances of force were captured on video, a subject interview is a required step in the investigation of alleged excessive force.

In addition, this incident took place inside a small grocery store. Stores of this type often have surveillance camera systems. Surveillance footage of the incident may have provided the investigator with additional evidence and a more complete picture of the incident. There was no documentation in the investigation as to whether OPD personnel inquired with store employees regarding surveillance footage.

The remaining three of the fifteen cases were full investigations. In two of these investigations, all relevant evidence was considered and analyzed. In one case, the complainant and potential witnesses were not interviewed, which is required in the absence of a summary finding. The case was based on a legal claim for an incident that had happened years prior and the incident had been previously investigated as part of an unrelated complaint. The most recent complaint claimed an unlawful arrest occurred – an allegation which had not been investigated in the original complaint. Although the finding to exonerate the arrest was sound, the case review determined that all investigative steps were not completed as required: additional interviews regarding the lawfulness of arrest were not conducted with all possible witnesses or involved parties. The auditor determined that the case may have been better investigated as a Summary Finding thereby negating the need for additional interviews.

FINDING #3

All 15 cases met the preponderance of evidence standard. However, in one case, the investigator came to a finding of *unfounded* for a rudeness allegation. In an addendum to the case, the IAD Commander changed the MOR violation from *General Conduct* to *Conduct Towards Others – Demeanor* and appropriately overturned the investigator's finding by *sustaining* the violation. The Chief of Police concurred with the new violation and the sustained finding. The subject officer received a written reprimand as a result of the sustained finding. No documentation was found in the case file or investigator's supervisory notes file regarding the overruling of the investigator's findings.

CONCLUSION

Overall, the Department's summary findings are appropriate and properly approved. All relevant evidence is considered and analyzed. In addition, the preponderance of evidence standard is used for each finding.

Investigator Bias

Lead Auditor: Ms. Sylvia DeWitt, Internal Affairs Division

Objective(s):

1. Determine if Investigators disclose, in writing to their supervisors, relationships which might lead to a bias or perception of bias regarding the subject(s) of any investigation, including relationships such as family relationships, outside business relationships, romantic relationships, and close work personal friendships.

2. Determine, where an investigator believes that s/he cannot conduct a fair and impartial investigation, or that his/her involvement will compromise the investigative process, or where the investigator was directly involved in the incident being investigated, the investigator is removed from the investigation.
3. Determine if an investigator indicates that s/he has a relationship with the involved parties that might lead to a perception of bias s/he provide details to the supervisor and the supervisor makes a recommendation regarding whether to replace the investigator, and where appropriate, replaces the individual.
4. Determine, in the case of a Class 1 investigation, whether the supervisor being informed in writing makes a recommendation to IAD, or, in the case of a division-level investigation, the unit commander. The IAD, unit commander, or as appropriate, his/her superior, replaces the investigator.

Policy Referenced: Department General Order (DGO) M-03, *Complaints Against Department Personnel or Procedures* and IAD's Training Bulletin V-T.1, *Internal Investigation Procedure Manual*.

Significant Finding(s): Investigators are complying with policy and properly completing recusal forms for full investigations of misconduct. Yet, in some summary finding cases, there is a delay in the completion of the recusal form by the sergeant conducting the preliminary investigation. Rather than completing the form before beginning the preliminary investigation, the recusal form was completed weeks later. Completing the form at the beginning of the preliminary investigation should be required because the preliminary investigation eventually becomes a major portion of the summary finding or the summary finding itself.

Recommendation(s): To ensure recusal forms are completed in a timely manner, the Division Level investigator should complete the recusal form upon assignment of the IAD case, and IAD should consider updating its policies and procedures to coincide with DGO M-03, which states, "*The investigator shall complete and forward a Recusal form immediately upon authorization of a Summary Finding Memorandum.*"

Methodology

A total of 60 internal affairs cases closed during the time period of January 1, 2015 and August 31, 2015 were selected and reviewed. Administrative closures, informally resolved complaints, and vehicle collisions were excluded from the population. Recusal forms and chronological log notes were reviewed to determine who conducted the investigation, whether disclosures were made of relationships that would lead to bias or the perception of bias, supervisory approval, and timing of completion of the form.

FINDING #1

Fifty-nine of the 60 cases reviewed contained a recusal form. Of the 59 recusal forms reviewed, the auditor noted a few errors. In two cases, the form was not signed by the investigator's supervisor. In one case, the supervisor signed the recusal form, but did not write the date of their

approval. In one case, the form was completed and signed, but the box regarding whether recusal was needed was not checked. Overall, 55 of the 60 cases ninety-two percent (92%) had properly completed recusal forms.

FINDING #2

Investigators are required to disclose their relationships prior to the start of an investigation. Training Bulletin V-T.1 states,

Prior to the start of an internal investigation:

The investigator shall disclose any relationship where it is clear that the nature of the relationship could be perceived to compromise the investigative process.

If yes, the assigned investigator shall recuse him/herself from the investigation and document the circumstances on the Recusal Form (IAD Form - 13).

If no, the assigned investigator(s) shall document this fact on the Recusal Form.

Upon completion of the Recusal Form, the appropriate first-level superior shall meet with the investigator to jointly review the Recusal Form.

DGO M-03 states, *the investigator shall complete and forward a Recusal form immediately upon authorization of a Summary Finding Memorandum.*

Of the 60 cases reviewed, the recusal form was completed and signed prior to the investigation in 55 cases. One case had no recusal form. One case was a full investigation and the recusal form was completed after the start of the investigation. The remaining three cases were summary findings. All three cases were assigned to the sergeant who accepted the complaint and who conducted the preliminary investigation. Completing a recusal form after the start of an investigation is problematic. Therefore, a new process of summary finding approval and recusal form completion has been directed by IAD. This new process is significant in that it allows the investigator to recuse him/herself at the start of the preliminary investigation, which, as stated above, often becomes the complete investigation upon approval of a summary finding.

FINDING #3

Of the 59 recusal forms reviewed, there was only one instance in which an investigator disclosed on the Recusal Form that he was directly involved in the incident, but indicated in the narrative section that he was not the subject's commander the night of the incident. In this instance, the reviewing supervisor signed the Recusal Form indicating that it was determined that the investigator's involvement did not compromise the investigative process and therefore would not be re-assigned.

Although the IAD, the unit commander, or the assigned investigator's superior/supervisor has the flexibility of making a recommendation to replace the investigator, the audit did not find any investigation where the investigator indicated on his/her Recusal Form that he/she could not conduct a fair and impartial investigation.

CONCLUSION

OPD is in compliance with its policy and procedures in reference to Investigator Bias and the completion of the Recusal Form. There are some minor areas, as noted in the findings and recommendations, where controls can be strengthened to ensure continued compliance. Once controls have been strengthened OPD should be able to continue to maintain its compliance with this policy.

NEXT MONTH'S PLANNED REVIEWS

The review scheduled for December is:

December 2015

1. Use of Force Reporting and Investigation