

**Use of Force Audit
Project No.: E2015OPDUOF**

**Conducted by
ELITE PERFORMANCE ASSESSMENT CONSULTANTS, LLC
FOR
OAKLAND POLICE DEPARTMENT**

Date: December 2, 2015

PURPOSE

This audit is being conducted in order to assess compliance of the Oakland Police Department (OPD) adherence to established policies and procedures for Use of Force (UOF) investigations, as set forth in the Department General Order (DGO) K-4, dated October 16, 2014.

BACKGROUND

On February 17, 2006, OPD Published Departmental General Order K-4, Reporting and Investigating the Use of Force. Oakland Police Department revised DGO K-4 on August 1, 2007. On April 15, 2009 OPD issued Special Order 8977, amending DGO K-4. On November 23, 2010, OPD issued Special Order 9057, emending DGO K-4 to extend Level 1 and Level 4 reporting timelines. On December 2012, OPD issued a revision to Special Order 8977, Use of Force Reporting – Pointing of Firearm/Restrained Subject/Use of Vehicle to Intentionally Strike a Subject. On October 16, 2014, OPD made the last revision to DGO K-4.

PRIOR AUDITS

This was the first use of force investigations audit (DGO K-4) conducted by Elite Performance Assessment Consultants, LLC (EPAC), a contracted external consulting firm.

REFERENCE MATERIAL

The reference material utilized during this audit includes:

- Department General Order K-4, dated October 16, 2014.

AUDIT PERIOD AND POPULATION

The audit focused on the Department's policies, procedures, and practices in conducting use of force investigations. The audit scope was all Level 2, Level 3 and Level 4 Use of Force investigations completed from January 2015 to June 2015. There were 278 use of force investigations completed for this time period. Using a one-tailed test we selected five Level 2

cases, 23 Level 3 cases and 68 Level 4 cases in order to achieve a 95% confidence Level with an error rate of +/- 4%.

Level 2 Use of Force incidents include:

1. Any Strike to the head expect for an intentional strike with an impact weapon.
2. Carotid restraint is applied that does not result in the loss of consciousness.
3. Use of impact weapon, including specialty impact munitions or any other object, to strike a subject and contact is made, regardless of injury.
4. Any unintentional firearms discharge that does not result in injury.
5. A police canine bites the clothing or the skin of a subject requiring emergency medical treatment (beyond first aid) or hospital admittance.
6. Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first aid) or hospital admittance.
7. Any Level 3 use of force used on or applied to a restrained subject.
 - a. A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP or Rip hobble.
 - b. A subject with only one handcuff on is not a restrained person

Level 3 Use of Force incidents include:

1. Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent is applied to an unrestrained person.
2. The use of an Electronic Control Weapon (ECW), except on a restrained subject, involving any of the following circumstances.
 - a. When one of more probes impacts or penetrates the subject's clothing or skin.
 - b. When the push stun are touches the subject's clothing or skin.
 - c. An ECW is fired at a person, but misses.
3. Any impact weapon, including specialty impact munitions, or any other instrument is used in an attempt to strike another person but no contact is made.
4. The baton is used for a non-striking purpose. (e.g., prying limbs, moving or controlling a person.)
5. A weaponless Defense Technique other than control holds, excluding strikes to the head. Examples include:
 - a. Hand/palm/elbow strikes
 - b. Kicks
 - c. Leg sweeps
 - d. Takedowns
6. An on-duty firearm discharge at an animal other than to dispatch an injured animal.

Level 4 Use of Force incidents include:

1. The intentional pointing of a firearm at a person.
 - a. This includes intentional pointing a firearm loaded with less-lethal ammunition at a person, except during Crowd Control Operation.
 - b. This does not include the low ready/retention position.

2. A Weaponless Defense Technique is applied to a vulnerable area, excluding strikes (e.g., Hair grab, pressure to mastoid or jawline; and shoulder muscle grab).
3. An on-duty firearm discharge to dispatch an injured animal.
4. A Weaponless Defense Technique Control Hold is applied.
 - a. Escort (elbow)
 - b. Twist lock
 - c. Arm-bar
 - d. Bent Wrist
5. A canine deployment in which a suspect is locate by the canine but no bite occurs.
 - a. This includes alert or detaining behavior such as barking, growling circling or making non-biting physical contact with the subject which does not result in injury requiring emergency medical treatment (beyond first-aid) or hospital admittance.
 - b. This does not include a canine deployment in which the suspect is located by means other than the canine or where no suspect is located.

AUDIT STEPS

The EPAC staff used U. S. Government Auditing Standards as guidance when conducting this audit engagement.

TABLE 1 – SUMMARY OF FINDINGS

OBJECTIVES	OBJECTIVE TITLE	PERCENTAGE
1	Supervisory Oversight	99%
2	Completeness	100%
3	Tactics	100%
4	Adequacy of the Investigation	100%
5	Medical Treatment was provided (if applicable)	100%
6	Reporting Allegations of Misconduct	100%
7	Timeliness	100%

DETAILED FINDINGS

Objective No. 1 – Supervisor Oversight

Criteria

Department General Order K-4 published on February 17, 2006 and most recently revised on October 16, 2014 requires the following:

- Supervisors ensure involved personnel and witnesses have been separated and advised that communication regarding the incident is prohibited;

- Ensure the subject is transported to a medical facility for medical evaluation when applicable;
- Ensure photos are taken;
- Ensure the appropriate offense of the supplemental report contains the minimum information regarding the use of force incident;
- If notified of an allegation of unreasonable force, the supervisor shall conduct a preliminary investigation;
- Upon approval, sign the appropriate Level 4 reviewer box on the use of force report; and
- Conduct a thorough review of all documents to ensure completeness, accuracy, and quality.

Audit Procedures

The Department met the standard for this objective if the supervisor(s) met the criteria mentioned above. The EPAC auditors reviewed 96 UOF investigations.

Findings

Ninety-five of the 96 (99%) of the UOF investigations reviewed contained the required supervisory oversight as required by Department General Order K-4.

Detailed Findings

Level #2 #15-0005

The UOF report summary of the investigation did not reflect that the involved officer gave a verbal warning prior to deploying his Taser; however, the involved officer crime report reflects he gave a verbal warning prior to deploying his Taser. This should have been noted in the investigative summary.

Other Related Matters:

Department General Order K-4 reflects the responding on-scene supervisor or commander may authorize a Level 3 use of force incident to be reported as a Level 4 when there is no injury to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance, allegation of misconduct, and no indication the use of force was out of policy. Affirmative approval shall be made by signing the approval box on the Use of Force Report- Part 3. There were three Level 3 incidents in our Level 4 population that were downgraded to a Level 4 by the on-scene supervisor. Although the supervisor signed the approval box as required, the supervisor(s) did not articulate and/or document the justification for the downgrade.

Recommendation:

It is recommended that OPD establish a requirement whereby supervisors who downgrade a Level 3 incident to a Level 4 incident, must sign the approval box and document the justification when downgrading in the summary of the investigation.

Objective No. 2 - Completeness

Criteria

Department General Order K-4 published on February 17, 2006 and most recently revised on October 16, 2014 requires that in every reportable use of force incident, every member/employee on the scene of the incident at the time the force was used, reports all uses of force on the appropriate form, unless otherwise directed by the investigating supervisors. In addition, Department General Order K-4 requires OPD personnel document, the appropriate form, every use of force and/or the drawing and intentional pointing of a firearm at another person.

Audit Procedures

The Department met the standard for this objective if the proper forms were completed for each use of force incident. The EPAC auditors reviewed 96 UOF investigations.

Findings

All 96 (100%) UOF investigations included the appropriate forms as required by Department General Order K-4.

Objective No. 3 – Tactics

Criteria

In conformance with good investigatory practices, EPAC assessed the officer(s) tactics during the use of force incident. Any tactical issues should be addressed in the use of force investigation by the investigating supervisor.

Audit Procedures

The Department met the standard for this objective if the supervisor addressed all tactical issues/concerns in the UOF investigation. The EPAC auditors reviewed all 96 UOF investigations for tactical issues/concerns.

Findings

All (100%) tactical issues/concerns were addressed by the supervisor in the UOF investigations.

Objective No. 4 – Adequacy of the Investigation

Criteria

Department General Order K-4 published on February 17, 2006 and most recently revised on October 16, 2014 requires the following:

- Canvassing the scene to locate witnesses;
- Proper classification of the use of force;
- Identification of non-department witnesses;
- Reports shall not contain boilerplate language;
- Documentation and analysis of evidence; and
- Consideration of training and tactical issues documented.

Audit Procedure

The Department met the standard for this objective if the use of force investigations were adequate as required by DGO K-4. The EAPC auditors reviewed 96 UOF investigations.

Findings

All 96 (100%) UOF investigations included the proper investigative protocols as set forth by DGO K-4.

Other Related Matters

Although not required by policy (DGO K-4), the majority of the Level 3 UOF investigations reviewed reflected the on-scene supervisors canvassed for witnesses. In these instances, the supervisor documented, “This is a Level 3 incident and no canvass is required to be conducted. However, I did make an attempt to locate witness”.

Recommendation

Department General Order K-4 does not required supervisors investigating a Level 3 use or force to canvass for witnesses, however, it is recommended that OPD revise the policy requiring that supervisors conduct a reasonable canvas in an effort to identify and obtain statements from witnesses in the proximity of the use of force incident. Canvassing for witnesses is a best practice and an excellent investigative tool.

Objective No. 5- Medical Treatment

Criteria

Department General Order K-4 published on February 17, 2006 and most recently revised on October 16, 2014 requires that medical treatment be provided if applicable for Level 2, 3 and 4 uses of force incidents.

Audit Procedures

The Department met the standard for this objective if medical treatment was provided when applicable as required by DGO K-4. The EPAC auditors reviewed 96 UOF investigations.

Findings

Of the 96 UOF investigations reviewed, 16 required medical treatment. Medical treatment was provided as required by DGO K-4 in all 16 (100%) UOF investigations.

Objective No. 6- Reporting Allegations of Misconduct

Criteria

Department General Order K-4 published on February 17, 2006 and most recently revised on October 16, 2014 requires that supervisors report all allegations of misconduct while conducting a use of force investigation.

Audit Procedures

The Department met the standard for this objective if all allegations of misconduct were reported by the supervisor while conducting a use of force investigation required by DGO K-4. The EPAC auditors reviewed 96 UOF investigations.

Findings

Of the 96 use of force cases reviewed, four reflected allegations of misconduct. In all four cases (100%) an internal investigation was initiated and an Internal Affairs Division (IAD) number was assigned as required by Department General Order K-4.

Objective No. 7- Timeliness

Criteria

Department General Order K-4 published on February 17, 2006 and most recently revised on October 16, 2014 requires the Division Commander approve the use of force investigation within a 15-day time limit for Level 2 and Level 3s. Level 4 use of force investigations require a review of the report by the end of the reviewing supervisor's next scheduled workday.

Audit Procedures

The Department met the standard for this objective if the reviewing supervisor/Division Commander approved the use of force investigation within the required time period as required by DGO K-4. The EPAC auditors reviewed five Level 2s and 23 Level 3s for Division Commander approval within 15 days of the incident. All 68 Level 4 UOF investigations were reviewed for supervisory approval of the investigation by the end of the next scheduled workday.

Findings

All of the 5 Level 2s and all of the 23 Level 3s were approved by the Division Commander within 15 days of the incident. In addition, all 68 Level 4 use of force investigations were approved by the end of the reviewing supervisor's next scheduled workday.

Other Related Matters

All five Level 2 UOF investigations reviewed had extensions approved. In addition, of the 23 Level 3 use of force cases reviewed 19 had extensions approved.

Recommendation

The current policy (DGO K-4) requires a Divisional Commander approved Level 2 and Level 3 use of force reports with 15 days of the incident. It is recommended that OPD consider changing the policy to 30 to 45 days of the incident.