

# Monthly Progress Report

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Of the Office of Inspector General



**March, 2016**

**Office of the Inspector General**

**Oakland Police Department**

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## INTRODUCTION

*“Of all the ideas in policing, one stands out as the most powerful force for change: police practices should be based on scientific evidence about what works best.”*

– Lawrence W. Sherman

This Monthly Progress Report is the Office of Inspector General’s seventh Report since accepting new responsibilities of tracking, reporting, and evaluating sustainable progress and accountability within key issues of policy and policing. It contains an audit of training requirements as applied to newly promoted sergeants and lieutenants, a review of misconduct complaint investigation requirements, and an evaluation of the Department’s confidential informant program. This Report also contains a review of data resulting from discretionary field officer contacts, detentions, and arrests (i.e., “stop data”) that discusses how crime data, policing strategy, and department communications may influence field officer activity.

Although the topics of racial profiling and bias-based policing are well discussed, very little of the problem appears to be well understood. The most repeated set of facts used to illustrate the problem of racial profiling are the use of a city’s demographics compared to the jurisdictional law enforcement agency’s number of stops by race or ethnicity. A simplistic conclusion is then either implicitly or expressly stated: where there is evidence of disproportion, there is evidence of racial profiling and racist decision making by law enforcement. But what this argument neglects to include is a number of factors which may play a role in understanding the nature or magnitude of the problem more fully. This report analyzed what I believe to be significant factors of potential influence upon stop activity: the quality and quantity of Department information and command direction provided to officers tasked with implementing crime reduction strategies and tactics.

In addition to the support given by OIG staff, I encountered formative knowledge and guidance on the topics of policing which helped guide this review: excerpts and notes from David M. Kennedy’s book, [“Don’t Shoot”](#) were inspiring and stimulating; the above excerpted quote and writing from Lawrence W. Sherman’s on [evidence-based policing](#) provided a logical foundation; discussions with Department police commanders and supervisors from all ranks and assignments provided clarity, resolve and shared cause; Professor Tracey Meares’ paper, [“The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing— And Why it Matters”](#) became a moral compass; and exposure to Professor Jennifer Eberhardt and her team at Stanford University gave me the tools and challenge to think more critically and deeply.

It is my hope that this Report may add some amount of value to the overall conversation that we must all address for – and with - our community.

Respectfully submitted,



Christopher C. Bolton  
Lieutenant of Police  
Office of Inspector General

## AUDITS, REVIEWS, and/or INSPECTIONS

### Audit of Training Provided to Members Promoted to Sergeant/Lieutenant

**Lead Auditor:** Rebecca Johnson, Office of Inspector General

**Contributors:** Lieutenant Chris Bolton  
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#### Objective(s)

1. Determine whether the Oakland Police Department (OPD) provides training, as stipulated by its policy, to its members promoted to sergeants and lieutenants.
2. Determine whether the Oakland Police Department's newly promoted sergeants and lieutenants attend training mandated by the Commission on Peace Officer Standards and Training (POST).

#### Policies Referenced

1. Departmental General Order B-20, *Departmental Training Program*
2. POST Administrative Manual, Section D-3, *Supervisory Course*
3. POST Administrative Manual, Section D-4, *Management Course*

#### Significant Finding(s)

OPD is meeting POST's training mandates, but the Department is not adhering to its own policy.

#### Recommendation(s)

1. To minimize risk, the Department should follow its own policy by (1) ensuring promoted lieutenants receive the required training within six months of being promoted and by (2) ensuring officers, prior to being promoted to sergeant, receive 40 hours of training. In cases where the training cannot be completed prior to the respective due dates, the Department's Training Section should ensure there is documentation to substantiate why the Department was unable to meet its training requirements and the impact, if any, on the Department.
2. Adopt a *Sergeant Transition Program* to ensure all officers promoted to sergeant are evaluated on whether they have competencies required for the position.

#### Overview

Sergeants' and lieutenants' respective realms of responsibility directly impact the police officers who patrol the diverse Oakland community. A sergeant is a first line supervisor, who "shall closely supervise the activities of subordinates, making corrections where necessary and commending where appropriate." In essence, a sergeant is responsible for providing supervision; leadership; direction; enforcement of rules; inspection of activities, personnel, and equipment; assistance to subordinates; prevention of harassment, discrimination, and

retaliation; and the resolution of personnel grievances.<sup>1</sup> A lieutenant is a commanding officer, a middle manager, “who has direct control over all members and employees within his/her command.” In essence, a lieutenant is responsible for the inspection, direction, and control of personnel; discipline and morale; harmony and cooperation with other units of the Department; the resolution of personnel grievances; the organization and assignment of duties; and the preparation and/or review of required correspondence, reports, and maintenance of records relating to the activities of his/her command.<sup>2</sup> From January 1, 2013 to December 31, 2015, the OPD promoted 66 sergeants and 16 lieutenants. On January 25, 2016, an audit was initiated to determine whether OPD was, at minimum, providing the newly promoted sergeants and lieutenants with training stipulated in its own policy and training mandated by POST.

### **Methodology**

To conduct the audit, the auditor examined the training records of the 65<sup>3</sup> sergeants and 16 lieutenants who were promoted January 1, 2013 to December 31, 2015 to determine whether the respective sergeants and lieutenants received the required training. In addition, the audit team met with the Training Section’s Commander and Coordinator to advise them of the audit plan and to request the training records of promoted sergeants and lieutenants. Moreover, the audit team conferred with said commander and coordinator and other supervisors/commanders, when necessary, to aid in clarifying information documented in respective sergeants’ and lieutenants’ training records and any other questions regarding the Department’s practices or procedure. Lastly, the audit team conferred with POST personnel to clarify information relating to POST training standards, practices, or procedures.

### **Finding #1**

The Department is not ensuring all officers, prior to being promoted to sergeant, receive the 40 hour training as stipulated by policy. In addition, the Department is not ensuring all lieutenants receive their respective training within six months of promotion as stipulated by policy.

#### Sergeants

According to DGO B-20.X.D, “...Prior to promotion to a new position, supervisors shall attend a minimum 40-hour training course to include instruction on the following topics: (1) supervisory accountability; and (2) management functions.”

To meet this standard, OPD offers an in-house 40 hour *Sergeant Transition Course* (STC). The curriculum includes instruction on the following topics: leadership and ethics; supervising vehicle pursuits; performance appraisals; crowd management; report review and arrest approvals; use of force case law, reporting, and supervision; stop data; on-duty injuries;

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<sup>1</sup> *Oakland Police Department Manual of Rules*, 30 Sep 2010, pg. 17-18.

<sup>2</sup> *Ibid*, pg. 16

<sup>3</sup> There were 66 sergeants promoted, but one sergeant experienced an on-the-job injury and subsequently retired. Therefore, his training records were not reviewed.

counseling; monitoring employee high risk behaviors; grievance procedures; and other relevant contemporary topics.

An audit of the training records of the newly promoted 65 sergeants indicated that 42 (64.5%) sergeants received the aforementioned training less than one year prior to their promotion from officer to sergeant. There were seven (11%) sergeants who also received the training prior to promotion from officer to sergeant, but they received 37 hours instead of the required 40 hours. There was one (1.5%) sergeant who received the training 16 months prior to being promoted from officer to sergeant. There were 13 (20%) sergeants who received the training within two months or less after promotion. Lastly, there were two (3%) sergeants who have not yet received the required training.

The audit team investigated the cause of the 13 sergeants receiving the in-house *Sergeant Transition Course* after promotion, and it was determined that it is not always feasible for the OPD to provide the training to officers prior to being promoted to sergeants. First, the audit team met with Training Section personnel. During the meeting, the former Coordinator advised that by the time he was aware of the promotions, it was too late to administer the STC. To determine whether this issue could be resolved by the Department, the audit team met with the Chief of Police about the possibility of coordinating the promotions with the timing of the Training Section's in-house 40 hour STC to ensure every officer is provided the required training prior to his/her promotion to sergeant. The Chief indicated that there's not a good resolution for the timing of the STC. The last Sergeants' List came out on July 28, 2015, and promotions were immediately needed to ensure proper span of control and supervision due to vacancies. He further stated that once the list comes out, there's not always time to get a class organized and to provide notice to everyone being promoted before he, himself, needs to promote and fill slots. Lastly, he stated that he is aware of this issue.

### Lieutenants

According to DGO B-20.X.E, "...Within six months of promotion, commanders shall attend a minimum 40-hour training course to include instruction on the following topics: (1) supervisory accountability; and (2) management functions."

To meet this standard, OPD does not offer an in-house 40 hour training course. Instead, its newly promoted lieutenants are expected to attend a POST 104 hour mandated *Management Course* within six months of promotion. The curriculum includes instruction on the following topics: transition to lieutenant; leadership; community-oriented policing and problem solving; strategic planning; fiscal management; personnel issues; legal issues; critical incident management; ethics; risk management; media relations; personal and professional growth; and project presentations and reports.<sup>4</sup>

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<sup>4</sup> "Management Course." Commission on POST. Web. 3 Feb. 2016. <https://www.post.ca.gov/management-course.aspx>.

An audit of the training records of the newly promoted 16 lieutenants indicated that 10 (62.5%) lieutenants received the aforementioned training within six months of their promotion from sergeant to lieutenant. There were four (25%) lieutenants who attended the training more than six months after being promoted from sergeant to lieutenant. Lastly, there are two (12.5%) lieutenants who were recently promoted in October 2015 and are scheduled to attend the training by April 2016.

## **Finding #2**

The Department is ensuring all sergeants meet POST's requirement of completing a POST mandated 80-hour *Supervisory Course* within 12 months of promotion to their first level supervisory position. In addition, the Department is ensuring all lieutenants meet POST's requirement of completing a POST mandated 104-hour *Management Course* within 12 months of promoting to a middle management position.

### Sergeants

According to POST, peace officers promoted to a first level supervisory position, must complete a mandated 80-hour *Supervisory Course* within 12 months of promotion. The course includes instruction on accountability; communications in a diverse workforce; conflict management; counseling; critical incident management; decision-making models; employee relationships; ethical decision-making; evaluating employees; feedback: giving and receiving; Internal Affairs investigations; leadership styles and behaviors; power and authority; recognizing and documenting employee performance; role identification and transition; stress management; team building; training employees; and values.<sup>5</sup>

An audit of the training records of the newly promoted 65 sergeants indicated that 53 (81.5%) sergeants received the aforementioned training within 12 months of being promoted, and 12 (18.5%) of them have not taken the course but still have an opportunity to take the course within the mandated time limit.

### Lieutenants

According to POST, peace officers promoted to middle management positions must complete a mandated 104-hour *Management Course* within 12 months of being promoted. Although the OPD did not ensure its lieutenants attended this course within six months according to OPD policy, the OPD does ensure its lieutenants attend the course within the time limits set by POST. An audit of the training records of the newly promoted 16 lieutenants indicated that 14 (87.5%) lieutenants received the aforementioned training within 12 months of their promotion from sergeant to lieutenant. Lastly, there are two (12.5%) lieutenants who were recently promoted in October 2015 and are scheduled to attend the training by April 2016.

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<sup>5</sup> "Supervisory Course." Commission on POST. Web. 4 Feb. 2016. <https://www.post.ca.gov/supervisory-course.aspx>.

### **Additional Observations**

With the implementation of the Department's Departmental General Order D-13.1, *Assignment to Acting Sergeant of Police*, effective May 14, 2014, acting sergeants rarely, if ever, are allowed to work in field operations, specifically patrol. Therefore, the audit indicated that there are fewer opportunities for field officers to learn and practice sergeant functions prior to being promoted. Sergeants are provided classroom training, but this classroom training is not an evaluation of the sergeants' competencies to apply the information when working in field operations. During an interview with the Training Section, it was determined that there was a proposal for a *Sergeant Transition Program* developed in 2012, but it was not adopted by the Department. The audit team reviewed the documents detailing the suggested teachings of the *Sergeant Transition Program*, and it is recommended that the Department adopt this program or a similar program to ensure all officers promoted to sergeant are evaluated on whether they have competencies required for the position.

### **Conclusion**

The Department should ensure it adheres to its own policy by ensuring its newly promoted sergeants and lieutenants receive the required training, as stipulated in DGO B-20, within the specified time limits.

### **Review of Complaint Investigations Forms and Notifications**

**Auditor:** Charlotte Hines, Office of Inspector General

### **Objective(s)**

1. To determine that all required complaint investigation notifications are properly sent to the appropriate person(s).
2. To determine that all required complaint investigation forms are properly completed, signed, dated and submitted.

### **Policy Referenced**

Department General Order (DGO) *M-3 Complaints Against Departmental Personnel and Procedures*

### **Significant Finding(s)**

1. There were three Recusal Forms that were not signed by the First-Level Supervisor. The Recusal Form is where investigators disclose any relationships that could be perceived to compromise the investigative process and document whether or not they should be recused from investigating the case. The first-level supervisor reviews the form to determine the nature of the relationship and either approves the assignment or the reassignment of the case. In order to preserve the integrity of the investigation it is imperative that there is no perception of bias. Without the signature of the First-Level

Supervisor, it leaves to question whether or not every precaution is being taken to conduct a fair and impartial investigation.

2. In two cases, there was no documentation that the investigator notified the subject member/employee of the complaint. This documentation is important as it provides proof of notification and evidence of timeliness.

### **Recommendations**

1. In an effort to prevent the perception of bias and to ensure a fair and impartial investigation, all recusal forms should be reviewed and signed by the assigned investigator's first-level supervisor.
2. While it is not stated in policy that copies of emails notifying personnel of a complaint against them must be maintained in the case file, policy (*TB V-T.1 D*) does require that all case notes are included in the file. Due to the mere nature of these documents these notifications should be considered case notes and included in all investigations investigative files.

### **Overview**

The Department has established procedures for investigating complaints of employee/member misconduct. These investigations are crucial to demonstrate and protect the integrity and accountability of the Department.

The Department shall accept and investigate fairly and impartially all complaints of alleged employee/member misconduct in order to determine not only the validity of said allegations, but when necessary, to also impose the appropriate disciplinary actions that are justified in a timely and consistent manner.

Included in the procedures for investigating complaints are the requirement for specific forms and notifications to be completed. These forms and notifications provide documentation that required procedures were followed.

- **Notification to Complainant**
  - Complainants shall be contacted as soon as possible, by the Internal Affairs Division (IAD) or the investigator to determine the nature, scope and severity of the complaint, as well as to identify potential witnesses and/or evidence as quickly as possible
- **Notification to Personnel with Summary of Complaint**
  - Investigator shall provide the employee/member with a brief synopsis of any complaint alleged against them, but shall not allow the employee/member to read the complaint itself or to review citizen or witness statements prior to his/her interview

- An employee/members' immediate Supervisor and Commander shall also be notified.
- **Disclosure of Possible Investigator Bias (Recusal Form)**
  - Investigators are required to disclose relationships which might lead to a perception of bias regarding the subject(s) of any investigation, including such as family relationships, outside business relationships, romantic relationships. Close work or personal friendships. In cases where it is clear that the nature of the relationship could be perceived to compromise the investigative process, the involved investigator(s) shall recuse him/herself from the investigation.
  - In more ambiguous situations, the investigator(s) involved shall make full disclosure, in writing to his/her supervisor. In the case of a Class I investigation, that supervisor shall then make a recommendation to the IAD or, in the case of a Division-level investigation, the Unit Commander. The IAD Unit Commander or as appropriate, his/her superior, shall replace the investigator in question with another investigator.
- **Investigative Notes Declaration Form**
  - Investigators of IAD or Division-level investigators shall complete and sign this declaration at the conclusion of the investigation and include in the investigative file.

Each of these requirements was reviewed for completeness by the assigned investigator and timely submission to the appropriate person(s).

### **Methodology**

Twenty-three complaint investigations resulting in formal findings (unfounded, sustained, exonerated and not sustained) were reviewed. Cases that were Informally Resolved and Administratively Closed were excluded from the dataset.

A spreadsheet indicating the assigned investigator, the presence of the required forms and notifications, and the dates sent, signed and/or submitted was completed. The OIG reviewer verified that each required form and notification was not only included in the file but also completed properly and in a timely manner by actually reviewing specific contents of each investigation file. When necessary the Investigator's and/or IAD Unit's Chronological Log was used to verify the accurateness of relative documents. Any unusual occurrences were noted in the spreadsheet.

The scope of this review was limited to the presence and completeness of the required forms and notifications, and a review of the Investigator's and/or IAD Units' chronological logs when

necessary. The other components of the complaint investigation (i.e. Report of Investigation, evidence, statements etc.) were not considered or included in this review.

### **Finding #1**

*Notifications to Complainant:* It is IADs' practice to as soon as practical notify the complainant by letter of the initial receipt of their complaint and the beginning of the investigation. Of the 23 complaint investigations reviewed, 17 included a copy of the letter sent to the complainant and all were sent in a timely manner. The letter was not applicable to the remaining six investigations either because the Department (OPD) was the complainant (four cases) or the complainant was a transient and had no address (two cases).

### **Finding #2**

*Notifications to Personnel with Summary of Complaint:* It is IADs' practice to notify the employee/member and the employee/members' chain of command of an alleged complaint via email including a summary of the citizens' complaint. Policy (*DGO M-3 III.B.2.c.10*) requires IAD to prepare a CIR (including a summary of the complaint) and forward a copy to the subject member/employee, his/her immediate supervisor, and first-level commander.

Of the 23 complaint investigations reviewed, 21 investigations included the required notifications and attachments. Three investigations included notification emails, however, the emails were not dated. Without the date on the email notification, there is no way to determine if notification was made in a timely manner. The remaining two investigations had no record of the employee/member being notified of the complaint alleged against him/her by the investigator. In one case; however, the complaint was made in the field when the officer was present. Delays in notification can result in various missed opportunities to make corrections to behavior issues and a lack of awareness of problematic practices for Supervisors and Commanders. In addition, timely notification ensures members/employees are made aware of complaints fairly and timely.

In 20 investigations, it was confirmed that a summary of the citizens' complaint was provided to the employee/member. In one investigation, copies of other documentation (i.e. civil lawsuit papers, suspension agreement etc.) were included that summarized the alleged complaint, and the remaining two investigations had no record of the employee/member being provided the summary.

### **Finding #3**

*Recusal Form signed and submitted by Assigned Investigator:* All 23 complaint investigations included Recusal forms. 20 of the recusal forms were properly completed signed and submitted either prior to the beginning of the investigation or simultaneously in instances of Summary Findings. The remaining three forms were completed by the investigator, but were not signed by their First-Level Supervisor.

#### **Finding #4**

*Investigative Notes Declaration:* All 23 complaint investigations included signed Investigative Notes Declarations. Twenty-two Investigative Notes Declarations were submitted for review after all investigative measures had been concluded by the assigned investigator. In one case, the Notes Declaration included in the investigative file was signed at the beginning of the investigation rather than at the conclusion of the investigation as stated in policy (*TB V-T.1.E.2*). There was no copy or record of an updated or revised form being completed and included in the investigative file.

#### **Conclusion**

The Department in most cases is processing complaint investigations in a manner that preserves the integrity of the Department, however, it is important to ensure that all required forms are completed in their entirety on a consistent basis.

#### **Confidential Informants Review**

**Auditor:** Rose Sutton, Office of Inspector General

#### **Objectives**

1. Review the file management and physical security of confidential informant files
2. Where possible, provide recommendations to bolster the Department's revision of DGO-04

#### **Policy Referenced**

Department General Order (DGO) 0-4, *Informant*

#### **Significant Findings**

While the Department's current policy covers most areas related to the handling of confidential informants, there are additional aspects that should be considered and possibly included in the new revised policy. Furthermore, greater emphasis on the quality of supervision over completed forms would benefit the credibility of the information collected.

#### **Recommendation(s)**

1. The Department should reemphasize the importance of quality supervision of informant forms completed by Managing Officers and reviewed by their Supervisors.
2. The Department should consider including language in the revised informant policy that provides guidance regarding the release of informants charged with violent crimes and greater procedural direction related to handling informants of the opposite sex.
3. The Department should consider the advantages of documenting the content of intelligence gathered via confidential informants.

## Overview

The use of confidential informants (for the purposes of obtaining criminal information or actively participating in investigations) carries an inherent risk to the individual involved and the law enforcement agency that solicits their assistance. Indeed, according to the Alameda County District Attorney's Office, "Because confidential informants play a vital role in the investigation of many crimes, and because they might be killed if their identities were revealed, officers have a legal right – a 'privilege' – to refuse to disclose his [or her] identity..."<sup>6</sup> Naturally then, the handling of confidential informants poses unique managerial challenges; chiefly among them is maintaining informant anonymity. To the extent possible, the Department should continue to minimize any unnecessary risk by securing confidential informant files in a manner that provides beyond a reasonable assurance that identities are not compromised.

Moreover, better quality review by Supervisors of documented encounters is needed. Supervisors should review and confirm that the Managing Officer obtained all necessary signatures and has sufficiently noted the content of their discussions with informants. Without such review, the credibility of the informant and/or officer can be more easily challenged.

## Methodology

The OIG auditor sought to provide reasonable assurance that the management of confidential informants complies with current policy by:

- Interviewing the Informant Program Coordinator and other experienced experts to gain a better understanding of possible risk areas and known control deficiencies.
- Assessing the method used by the Informant Program Coordinator to track policy compliance.
- Reviewing the file management and physical security of confidential informant files to determine whether files were complete, well organized and secure.
- Attending a training presented by the Informant Program Coordinator on informant management and policy compliance.

In addition, since DGO 0-4 is currently under extensive revision (as part of a Department-wide initiative to review and update all policies and procedures) the OIG auditor also consulted with the Lexipol Policy Working Group in reviewing newly proposed policies related to the general handling of confidential informants.<sup>7</sup> The OIG auditor, in this report, compared current Department policy against two other California law enforcement agencies to see whether additional policy areas, as they relate to confidential informants in general, merit further discussion and consideration in the new revised policy.

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<sup>6</sup> *California Criminal Investigation*. (2016). Oakland, CA: Alameda County District Attorney's Office.

<sup>7</sup> The Lexipol Policy Working Group is responsible for updating all department policies and corresponding procedures. It consists of members from the Department's Research and Planning Unit and subject matter experts in the policy area being revised and a Lexipol consultant.

### **Finding # 1**

All files were properly secured and all necessary forms were present and current in each of the 29 informants files reviewed (since the OIG's last review in March 2015, 29 new informants have enrolled; these new informant files made up the review sample). The OIG auditor did notice however, four forms which had at least one missing signature and three additional forms that did not indicate who the Managing Officer was. Although these deficiencies represent less than three percent of all the forms reviewed, missing signatures nonetheless call into question the quality of supervisory review performed.

The Managing Officer, their Supervisor and the Informant Program Coordinator share responsibility in ensuring forms are complete, however, errors truly should not extend beyond that of the Managing Officer, let alone pass supervisory review and approval. Furthermore, the Informant Program Coordinator should be viewed as the *last* safeguard within the quality review process, not the first. According to the Confidential Informant Coordinator, he will work promptly to secure the missing signatures and clearly indicate the designated Managing Officer. Each file was checked for the following forms:

- Informant Payment Record
- Informant Personnel Record
- Informant Agreement Record
- Informant Regulations Record
- Prospective Informant Review Record
- Informant Chronological Record (ICAR)
- Temporary Confidential Informant Record
- Informant Accomplishment Record Unreliable/Undesirable Informant Notification Record

### **Finding # 2**

While most files maintained detailed and relevant information regarding the information shared by a confidential informant, three files held very sparse details regarding the content of the information gathered. In one instance, during a two-month period, a Managing Officer made contact with his or her confidential informant a total of 17 times, but did not document what was shared or said during any of the encounters. Instead, the OIG auditor noticed many phrases like, "contacted confidential informant" or "confidential informant checked in, intelligence developed." Furthermore, the method of contact, (i.e., in-person, e-mail, phone call or text) was also scarcely mentioned.

According to the Confidential Informant Coordinator, not documenting conversational details, no matter how seemingly mundane at the moment, may prove consequential in the future as new information regarding criminal activity is collected by the Department. The ability to trace back a specific documented detail and synthesize it with other intelligence is effective in advancing crime reduction. Additionally, recording specific details also proves extremely

valuable when officers prepare for court and are asked to narrate information they gathered from a conversation held with a confidential informant. Also, information is subject to likely memory loss if not recorded.

**Finding # 3**

Due to the limited availability of publically accessible law enforcement manuals, the OIG auditor was unable to extensively compare policies and procedures. However, a limited comparison was performed using law enforcement agencies from two California cities; San Jose and Fullerton. Having compared policies, the Oakland Police Department’s current DGO 0-4 policy lacks guidance regarding the release of informants charged with violent or other crimes.

According to the City of San Jose Police Department’s Duty Manual, “Except upon the approval of the Deputy Chief of the Bureau of Investigations, or his designee, an officer will not seek the release of an informant from custody nor a reduction of a sentence, when the informant is charged with a crime of serious violence or sexual misconduct...” The manual further mentions the handling of arrestee-informants charged with other crimes, “Officers seeking the release of an arrestee-informant will, prior to the booking process, obtain approval from higher authority before release...” At present, the Department lacks written policy regarding this particular aspect of handling confidential informants, yet it merits discussion and consideration by the Lexipol Policy Working Group as it continues to revise the confidential informant policy.

**Table 1 Policy comparison of major topical areas**

<i>Topic Area</i>	<i>Law Enforcement Agency</i>		
	San Jose PD	Fullerton PD	Oakland PD
Informant of the Opposite Sex/fraternization	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Release of Informants Charged w/ Violent or Other Crime	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Use of Juvenile Informants	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Recruitment, Selection & Classification Process	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
De-activation/Re-activation of Informants	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Paying Informants	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Informant File Documentation & Management	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Handling of ‘Privileged’ or Media-related persons (i.e., doctors, lawyers, clergy or media personnel)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

All three policies mention and prohibit informant/officer fraternization, yet procedures to control the likelihood of this occurrence are limited. The current Department policy requires all Managing Officers to be accompanied by another officer when contacting a confidential informant, however, a signature by the accompanying officer indicating witness of the encounter is not required on the Informant Chronological Activity Record. Moreover, the OIG auditor observed instances during the file review in which no accompanying officer was mentioned in a Managing Officer’s documented account. It is important the Department

consider this particular aspect of handling confidential informants as it is a recognized area of risk.

Other notable areas that should be considered include:

- Protocol for handling a confidential informant when a Managing Officer is no longer able to maintain responsibility.
- Including a clause on the Informant Agreement Record noting that the prospective informant has not signed the agreement under duress or undue influence.

### **Conclusion**

Greater quality supervision would help to minimize the chance of signatures going undetected and intelligence not being documented. Additionally, all aspects of handling confidential informants should be considered by the Department as it revises policy.

## **Assessment of Stop Data Compared to Field-Based Communication, Strategy, or Direction**

### **Overview:**

The Oakland Police Department is committed to providing service and enforcing laws in a fair and equitable manner, and to establishing relationships with our community which are based on trust and respect.<sup>8</sup> Past [reviews](#) and [reports](#) regarding Oakland stop data have “recognized the complexities, challenges, and responsibilities associated with the analysis and presentation of stop data statistics” and have established that “stop activity can be influenced by variables such as beat demographics, crime trends, deployment patterns, Department staffing, traffic levels, and transit patterns in the City.” This Office of Inspector General review was designed to better understand how information related to crime trends and officer deployment strategies may potentially influence resulting stop decisions, locations, and activity.

This review is accompanied by large doses of disclaimers and caution. By no means are its results conclusive, nor is its intent to justify any or all results of stop data when viewed by race or ethnicity. Just as simple comparisons between demographic data and stop data do not yield clear evidence of racial profiling instances, the simple use of aggregate suspect descriptions and stop data does not provide excuse or explanation for disproportion.

### **Objectives:**

1. Determine whether offense, suspect, criminal intelligence, or enforcement direction provided to field officers within a specified period of time correlates to discretionary field officer contact, detention, and arrest data (“stop data”) of the same time period.
  - a. Assess, categorize and determine the quantity of offense data (data providing the known or stated locations of offenses and the descriptions of associated

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<sup>8</sup> [Department General Order M-19](#)

suspects, wanted persons, or persons of interest to field officers) communicated to field officers over a defined period of time.

- b. Assess the quantity, consistency, and accuracy of Departmental communications regarding offense data.
- c. Evaluate stop data results by content, location and race/ethnicity of persons discretionarily stopped by officers exposed to Departmental communications, directives and data during the same period of time.

## **Review**

### Quantity of Offense and Suspect Data

Field officers are routinely exposed to large amounts of Departmental communications regarding recently committed serious offenses and associated suspect descriptions.<sup>9</sup> This suspect and offense data is communicated in a variety of ways:

- Daily Bulletins (DB) - The DB is published daily and is distributed at and within each briefing to all field officers prior to the beginning of their shifts. Its purpose is to circulate information regarding suspects, wanted vehicles, criminal cases, wanted persons, persons of interest, etc., within the Department on a short-term basis (3-7 days) at the request of an investigator or other personnel. A DB is typically created after a known, reported and serious offense has occurred and during the active investigation of a criminal case or suspect.
- Daily Notification Report (DNR) - The DNR is prepared by the Patrol Division Desk Officer and provides a daily brief of information regarding serious or unusual incidents that occur during a 24-hour time period. It contains suspect descriptions if known and provided by reporting officers or supervisors. The Report is provided directly to members of the Department's executive command staff and commanders for use in personnel briefings on a routine, daily basis. Field officers typically receive this information prior to the beginnings of their shifts in conjunction with DB item information.
- Communication Orders – Communication Orders are disseminated across police radio channels at the request of field officers, supervisors, commanders or assigned investigators. As applied to criminal offenses and available suspect descriptions, Communication Orders typically regard recent, serious criminal offenses and associated suspect and vehicle involvement and descriptions. Broadcasts may be shared on all radio channels and with all officers working on one or more shifts.

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<sup>9</sup> For the purposes of this report, the use of "suspect" additionally includes associated wanted persons or persons of interest.

- Offense Reports and Crime Broadcasts– Details of serious offenses are broadcast by the Communications Section as offenses are reported and/or as officers are dispatched to them, and officers responding to serious offenses routinely and quickly broadcast descriptions of suspects who have fled the scene. These Crime Broadcasts contain any and all identifying information regarding suspects if known and reported. While radio transmissions undoubtedly provide an immense amount of exposure to suspect descriptions and locations of serious criminal activity they are not easily extracted from calls for service and quantified as data for evaluation. Rather than attempt assessment of these radio transmissions, relevant crime reports for serious offenses were examined. Offense report data was also used as an objective baseline with which to compare the frequency of offense and suspect descriptions as found in other Departmental communique.
- Weekly Priorities – Weekly Priorities are written memoranda from each of the Department’s five Police Areas and are either issued weekly or on a similar routine basis through Area chains of command to field commanders, supervisors, and officers. Although format and content vary, Weekly Priorities advise units of the overall desired “Areas of Enforcement,” “Hot Spots,” and “Directed Patrol” locations and expectations for the geographic area. Weekly Priorities may echo serious offenses, suspect descriptions, and locations of criminal offenses as found in previous Daily Bulletins, Notification Reports, and Communication Orders, or they may contain previously undisclosed information. Weekly Priorities also typically address, discuss, and provide a number of names and photos of individuals wanted in connection to serious criminal offenses or gang investigations within the Police Area.

Department Communications and records of investigations, intelligence information, or documentation which may endanger the successful completion of an investigation or endanger the safety of witnesses or involved parties are treated as confidential and law enforcement sensitive.

#### Evaluation of Department Communications Pertaining to Race or Ethnicity

In order to determine whether offense, suspect, criminal intelligence, or enforcement direction provided to field officers correlate to synchronous stop data, this review first gathered the above types of communications provided to field officers on or between December 1, 2015 and December 15, 2015. This 15 day period was arbitrarily selected.

As opposed to the inclusion of every known instance and classification of reported crime, all evaluated Departmental communications consistently focused on serious offenses: murder, shootings, robberies, aggravated assaults, burglary, and criminal gang activity. This proclivity appears to be in line with the Department’s [Strategic Plan](#) which prioritizes actions to reduce serious and violent crime.

Ninety-five percent of evaluated Daily Bulletins, Daily Notification Reports, and Communication Orders included relevant and associated suspect descriptions in which the described race or ethnicity of the suspect was provided. In all, 232 unique pieces of offense and suspect communication were identified within the 15 day period.

It should be noted that one single criminal offense or suspect description may be communicated to field officers multiple times and in multiple formats. In other words, one instance of known offense with suspect description provides multiple and repeated exposures to a single officer.

The OIG review determined the rate at which individual races and ethnicities were listed within these Department communications. Daily Bulletins, Notification Reports, and Communication Orders were evaluated separately from Weekly Priorities:

Suspect Race in DBs, DNRs, and Comm. Orders		
Race	#	%
Asian	1	< 1%
African-American	187	81%
Hispanic	28	12%
White	16	7%
	232	

Weekly Priority memoranda issued to officers for use during the fifteen day period contained 90 instances of described suspects, wanted persons, or persons of interest in connection to serious offenses prioritized by the Police Area commanders.

Instances of Suspect Race within Police Area Weekly Priorities		
Race or Ethnicity	Number of Described Individuals	Percent of Whole
Asian	0	0
African-American	67	74%
Hispanic	18	20%
Unkown	1	1%
White	4	4%
Total	90	

Weekly Priority communication was unique in that suspect descriptions were often accompanied by names, addresses, photographs or video evidence which more accurately identified suspects.

### Quantity, Consistency, and Accuracy of Departmental Communications

Daily Bulletins, Daily Notification Reports, Communication Orders, and Weekly Priorities share an important trait when it comes to their creation and delivery in that each requires an affirmed law enforcement decision, action, or intent to share the communication with Department personnel. In order to gauge whether potential bias or undue influence was present within the Departmental data or direction provided to field officers, the frequency of race or ethnicity as found within these Departmental communications was assessed against raw crime report data for similarly prioritized and serious offenses containing suspect descriptions by race or ethnicity. The review questioned whether the *quantity* of data and communication regarding suspect involvement by race could be objectively evaluated as being accurate or consistent with general crime trends.

A total of 508 relevant offense reports were located having occurred on or within the evaluated 15 day period. Of that total, 167 crime reports contained suspect descriptions listing the race of at least one suspect. A total of 180 suspects were described by race within these 167 reports.

Offense Report - Described Suspects including Race/Ethnicity			
% of Suspect Race listed as African-American	131	180	73%
% of Suspect Race listed as Hispanic	28	180	16%
% of Suspect Race listed as White	13	180	7%
% of Suspect Race listed as Other	7	180	4%
% of Suspect Race listed as Asian	1	180	1%
Totals	180	N/A	100%

After considering the effects of duplicative Department communications as described above, the OIG review determined that Department communications were reasonably and factually based on verified citizen reports of crime<sup>10</sup> as opposed to a theoretical Department bias or inappropriate tendency to prioritize communications based on factors of race or ethnicity.

### Quality of Department Communications

The OIG review questioned whether the *quality* of suspect descriptions by race may be evaluated. The usefulness of a description reasonably varies in relationship to its ability to uniquely identify an individual person. Description quality may therefor act as a variable within either Department communications or officer decision making in the field, especially within the context of pretextual contacts.<sup>11</sup> This review assessed and quantified descriptive features

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<sup>10</sup> This review did not examine potential bias or influence that may be exhibited by or upon reporting parties of these serious offenses.

<sup>11</sup> "Denoting or relating to arrests or minor offenses that enable authorities to detain suspects for investigation of other matters." Oxford Dictionary

provided to officers in addition to described races or ethnicities (e.g., clothing, height, weight, vehicle info, etc.). Each description was deconstructed so that individual factors of description could be quantified and compared. Communication data which did not contain a mention of race but was accompanied with a photo from which race could be inferred was also included.

Although slight differences are observed by Race or Ethnicity, the review determined that the amount of descriptive detail provided to officers was similar regardless of the provided race or ethnicity of the person sought. The below charts illustrate descriptors for males by race as documented within assessed communications.

Daily Notification Descriptors			
Subject's Described Race/Ethnicity	# of Subjects	Descriptor Sum	Descriptors per subject
Asian	0	0	N/A
African-American	106	609	5.7
Hispanic	16	98	6.1
Unknown	7	20	N/A
White	6	33	5.5
		Mean	5.8

Communication Order Descriptors			
Subject's Described Race/Ethnicity	# of Subjects	Descriptor Sum	Descriptors per subject
Asian	0	0	N/A
African-American	46	335	7.3
Hispanic	7	55	7.9
Unknown	5	36	7.2
White	3	17	5.7
		Mean	7.0

Daily Bulletin Descriptors			
Subject's Described Race/Ethnicity	# of Subjects	Descriptor Sum	Descriptors per subject
Asian	1	6	6
African-American	24	185	7.7
Hispanic	3	28	9.3
Unknown	2	12	6
White	4	27	6.8
		Mean	7.2

### Weekly Priorities as Direction

All Weekly Priorities were documented as being based on [Department goals](#) although the format, content, and direction provided to officers varied across the Department's five geographic Police Areas. The overall shared theme of Weekly Priorities was to actively seek named or described suspects and to be present within areas of elevated crime as much as possible in order to prevent occurrences.

Each Area's memorandum directed officers to related "Areas of Enforcement," "Hot Spots," or "Directed Patrol" locations based on their association with serious or violent crime and/or the location of potentially involved suspects. Direction included activities such as security checks, high visibility patrols, on-view enforcement, neighborhood walking, positive community engagement, vehicle tows, quality of life enforcement, and other problem solving efforts related to the Area's on-going or open Community Resource Officer and Neighborhood Crime

Prevention Council projects. Besides potentially related stop data, the additional activities directed by Weekly Priority communications was not evaluated or measured within this review.

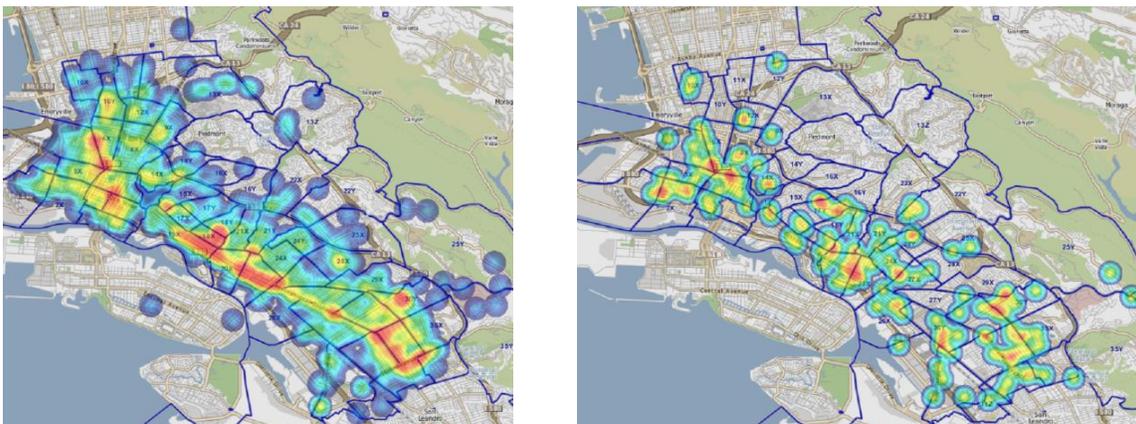
Stop Data – Evaluated by Race and Location

Field officer stop data was collected for all discretionary stops having occurred on and between December 1 and December 15, 2015. The data extraction conducted on December 27<sup>th</sup>, 2015 produced 1,792 discretionary contacts, detentions, or arrests (hereafter referred to as “stops”). Stops for each categorized race or ethnicity was calculated:

Stops by Race and % of Whole		
African-American	1039	58.0%
Hispanic	357	19.9%
White	209	11.7%
Other	61	3.4%
Asian	126	7.0%
Total	1792	100.0%

This review also examined comparisons and ratios between stops by race and the number of reported offenses and/or the number of Department communications created with mentions of race. Ratios by race were calculated for each Police Beat in which a stop occurred, but it became apparent that a sample of two weeks of data was too small for this review to prove useful.

Locations of stops generally aligned with the expectations and direction for officers to prioritize presence within certain Beats or locations during an assigned shift. Within the evaluated time period, area commanders defined locations within 23 of the City’s 35 police beats as requiring field officer awareness, knowledge, response, and/or proactive patrol. Again, the amount of data contained within the two week sample was found to be limiting. An example of this heat mapped citywide comparison is below:



12/1/15 – 12/15/15 Calculated hotspots for the top 786 geocodable stop data results on left; Calculated hotspots for the top 146 geocodable offense report data results on right; Source: Forensic Logic, queried and extracted 4 Mar 16.

The reviewer also intuitively noticed linkage between Police Beats prioritized for crime reduction or response strategies and those Police Beats which have been categorized as “high-stress neighborhoods” as described in a past [Oakland Fund for Children and Youth Demographic Profile Report](#). Fourteen of the twenty-three (or 60%) Weekly Priority Police Beats are comprised by Community Policing Beats with the highest twenty ranked stressors. These high-stress neighborhoods were determined using factors of “arrests, crime reports, food stamp recipients, youth incarceration and probation, violent suspensions and chronic absence for OUSD students.”

This review noted interest in sharing our methodologies and data with Stanford University or others to better analyze the effects of crime reduction strategies and stops within high crime areas.

#### Stop Data Narrative Review

Although field officers were exposed to a large amount of Departmental communication and direction within the reviewed time period, a sample review of discretionary stop report narratives was unable to determine a pattern or trend of stated relationships (other than proximity to prioritized locations) between stops and Department communications.

A sample of 300 stop data report narratives was analyzed for the presence of documented relationships between officers’ discretionary stop activity and the communicated Departmental information regarding suspects, wanted persons, or persons of interest; Department communications were not documented as the cause or intent for any of the evaluated stops within the sample except for one instance. All stops were determined to be lawful.

The Office of Inspector General reviewers read each selected stop data narrative and addressed whether or not there was any mention of the stopped individual’s connection to Departmental communications (i.e., the individual matched a provided description or may be involved in a past communicated offense). Reviewers also attempted to determine the underlying and articulated intent or cause for the stop.

Many limitations were acknowledged in this review: named suspects, wanted persons, and persons of interest listed in communications and then knowingly detained or arrested are typically not documented within stop data narratives;<sup>12</sup> there is no requirement for officers to articulate whether or not a stop was pretextual or based on prior knowledge; undocumented intent, context, or cause for stops beyond the listed primary violation are unknown to reviewers.

The OIG review determined that one reviewed stop was linked to Departmental communications, 45 of the stops (15%) were connected to some level of observed criminal

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<sup>12</sup> Department General Order M-19.

offense activity above and beyond a traffic or equipment violation, 112 stops (37%) were motivated by observed “moving” vehicle code violations, and 142 stops (47%) were initiated for observed “equipment” violations. The sample review of 300 stop data narratives also included an assessment of rates, causes of stops, and results of stops although the sample size was determined to be too small to be of value.

**Findings:**

1) Field officers are provided and exposed to a tremendous amount of data regarding offenses, offense locations, and suspect involvement. Department communications provided to field officers do not appear to be unduly influenced and are reasonably and factually based on verified citizen reports of crime.

2) The level of documented direction or expectations provided to field officers in Weekly Priority memoranda necessarily varies by geographical command due to different levels, types, and locations of crime. The overall shared theme of all Weekly Priorities was to actively seek named or described suspects and to be present within areas of elevated crime as much as possible in order to prevent occurrences. Direction or expectations provided to field officers were generalized and allowed for a wide degree of discretion within these locations.

With the exception of stop locations being generally in line with Weekly Priority direction, the sample of stop data narrative reviews did not provide linkage between field officer stop activity and overall Department communications. The outcomes of crime reduction plan strategies - in terms of legitimacy, efficiency and effectiveness – should be evaluated as well as possible along with other relevant performance measures, objectives and approaches in line with the Department’s [Strategic Plan](#).

3) The review determined that descriptions of suspects contained in DBs, Communication Orders, and DNRs were similarly descriptive, but largely vague, regardless of described race and ethnicity. With the exception of Weekly Priorities and Daily Bulletins which contained photographs or video still frames of suspects, most noted descriptions were unlikely to provide direct nexus to a stop unless able to be utilized by officers in the immediate area shortly after offenses were reported. The value of unnamed and somewhat vague suspect descriptions in the field diminishes with factors of time and distance while time spent on quality investigations, gathering photographic evidence, and seeking video surveillance during preliminary investigations increases the likelihood of eventual apprehension. This review took note of the Weekly Priority communications which urged greater time, detail, and effort during preliminary investigations to gain more suspect description and intelligence-based leads in the field.

4) A conclusion regarding how Department communication and direction may correlate to stop activity, stop locations, and post-stop activity (searches, recoveries, arrests, charges, intelligence gained, etc.) requires further research and more data. It is difficult to assess how additional factors of Department strategy, tactics, the law, and unique stressors that may be

present within high crime communities may influence rates of stops above and beyond the decision making exhibited by individual officers.

### **Conclusion**

Where this review attempted to identify possible correlation or causation between stop data and potentially influencing data received by field officers, the exercise of review itself was most successful in causing additional and essential questions to be posed and discussed: How may the quantity and quality of such data and direction potentially influence officer decision making and results? What are the effects of focusing field officer resources on prioritized beats and locations? How may the resulting discretionary stops potentially impact the separate but related value of police legitimacy? And how may police strategies of all types be crafted, communicated, and measured for effectiveness?

As a profession and in general, field activity may be at risk of being driven by the most often repeated or most prevalent exposures and influences. The massive amounts of criminal offenses, crime locations, and suspect data that bombard the collective eyes and ears of field officers should be concerning. If this information risks becoming a primary source of field officer influence – rather than clearly communicated operational strategy and expectations – the potential for, or perception of, field officer bias and unconscious bias may increase. Conversely, field officer effectiveness and efficiency may rise along with community trust if intelligence led crime reduction strategies legitimately increase the rate of stop with a smaller number of people while increasing positive contacts with others. The Department’s continuing progress to expand and improve the quality of preliminary investigations, gain more specific descriptions of unnamed suspects, and its implementation of “hot people”<sup>13</sup> based strategies rather than “hot spot” strategies is in line with this vision.

In addition to the Department’s active partnership with Stanford University, the Office of Inspector General has reached out to initiate active collaborations with community members supportive of open data and its use to further our collective work and understanding.

### **NEXT MONTH’S PLANNED REVIEWS**

The reviews scheduled for March 2016 are:

1. Pitchess Discovery Motions
2. Investigation of Criminal Misconduct

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<sup>13</sup> Kennedy, D.M. (2011). *Don’t shoot: One man, a street fellowship, and the end of violence in inner-city America*. New York: Bloomsbury USA.