

Monthly Progress Report

Of the Office of Inspector General



November 2016

Office of the Inspector General

Oakland Police Department

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INTRODUCTION

This month's Monthly Progress Report focuses on two issues that are essential to law enforcement legitimacy: adherences to body-camera and use of force investigation policy.

Given the importance of body-worn camera footage (referred to in OPD policy as Personal Digital Recording Devices or PDRD) in investigating crime, capturing uses of force and the circumstances leading to force, accurately portraying events linked to complaints of officer misconduct, and assessing overall officer performance, the Office of Inspector General (OIG) initiated a review of body-worn camera policy compliance. While video may not provide answers to all questions and concerns regarding a significant incident, the absence of video in a situation requiring body-camera recording is certain to be problematic. To help ensure PDRDs are used in such situations, Department policy includes specific requirements about when cameras should be activated and deactivated during investigative contacts with citizens. For this report, we reviewed the rate of policy compliance after searching for PDRD footage which should be linked to a sample of known and documented citizen contacts.

Separately, OIG looked at the categories of less serious use of force incidents (referred to in policy as Levels 3 and 4) to ensure the Department has maintained compliance with timelines and requirements to sustain complete and thorough reporting and investigation. Although Level 3 and 4 uses of force incidents are less serious, they represent the majority of all use of force incidents and maintain an obvious impact upon the lives of whom the force is used.

For background information and further reading, the Department has published its [policy regarding the use of body cameras and video management systems](#) as well as its [policy on reporting and investigating use of force incidents](#) to be more open and accountable as part of a commitment to Constitutional and ethical policing.

Respectfully submitted,



Christopher C. Bolton
Lieutenant of Police
Office of Inspector General

AUDITS, REVIEWS, and INSPECTIONS

Audit of Police Officers' Activation of Portable Digital Recording Devices

Auditor: Rebecca Johnson, Office of Inspector General

Objectives:

1. Evaluate whether the Oakland Police Department's (OPD) police officers working in field operations are activating their portable digital recording devices (PDRDs and also commonly referred to as "body cameras") **prior** to conducting a criminal investigation of a citizen's action(s) that results in a warning, a citation, a detention, or an arrest.
2. Evaluate whether OPD's police officers are deactivating their PDRDs at the conclusion of the encounter.

Policies Referenced:

Departmental General Order I-15.1, Portable Video Management System, effective July 16, 2015

Significant Finding(s):

PDRD video footage was located for every incident within the sample. Ninety-four percent of the PDRD footage was captured in a manner that indicated OPD officers activated their PDRDs **prior** to conducting a criminal investigation of a citizen's action(s) that results in a warning, a citation, a detention, or an arrest initiating contact with a citizen. In addition, 98 percent of the PDRD footage for the incidents reviewed indicated that police officers deactivated their PDRDs at the conclusion of the encounter with the respective citizen(s).

Overview:

The Oakland Police Department strives to promote transparent policing that includes adequate supervision of its police force and integrated operational accountability mechanisms. Hence, the OPD equipped its police officers working in field operations with a PDRD. This technology enables the OPD to monitor the delivery of constitutional policing by reviewing its police procedures and tactics captured on the PDRD in conjunction with any respective crime and/or supplemental documentation. To get an accurate account of police procedures and tactics, police officers have to activate their PDRDs prior to any contact with a citizen under certain circumstances. On October 12, 2016, the Office of Inspector General initiated an audit to evaluate whether OPD police officers working in field operations are activating and deactivating their PDRDs as required by policy.

Background:

PDRDs are issued to all OPD field based units. The issued model in use does not have pre-event recording or buffering ability; this means that recording begins after the manual manipulation of the unit and remains recording until manual deactivation.

[Departmental General Order I-15.1, Portable Video Management System](#), Section II, Subsection A and D, states, in part,

“...Members shall activate their PDRD under any of the following circumstances:

- Citizen contacts to confirm or dispel a suspicion that the citizen may be involved as a suspect in criminal activity;
- Detentions and arrests;
- Assessment for evaluation for a psychiatric detention;
- [While] conducting any of the following searches of a person and/or property:
 - a. Incident to arrest;
 - b. Cursory (i.e. pat-down or limited weapons search);
 - c. Probable cause
 - d. Probation/parole
 - e. Consent; or
 - f. Inventory
- Transporting any detained or arrested citizen (excluding prisoner wagon transports)...

Members shall activate their PDRD **prior** to initiating the circumstances...above.

...Members shall not deactivate their PDRD when it was activated as required by this policy until one of the following occurs:

- a. Their involvement in the citizen contact, arrest, or detention has concluded or becomes a hospital guard...
- b. The searches requiring activation...have concluded and the member believes he/she will have no further interaction with the person.”

Methodology:

To conduct the audit, the auditor used a three-pronged process. First, the auditor reviewed *Departmental General Order I-15.1, Portable Video Management System, effective July 16, 2015*, which is the OPD’s policy and procedures regarding police officers’ activation and deactivation of their PDRDs in the above aforementioned situations. Secondly, the auditor reviewed a sample of documented incidents of criminal investigations of citizens’ action(s) that resulted in a warning, a citation, a detention, or an arrest and the accompanying PDRD footage to evaluate when police officers actually activated and deactivated their PDRDs. It should be noted that in cases in which there was more than one police officer on scene during the incident, only the randomly selected officer’s video for the audit was reviewed and not the

footage of all officers on scene. Thirdly, the auditor evaluated whether the Department’s policy and procedures coincided with its police officers’ actual practice.

Population and Random Sample

The population for this audit consisted of documented stop data incidents and the available accompanying PDRD footage for the time period of October 1, 2016 through October 7, 2016. Since the OPD’s field operations consists of five areas, the incidents were sorted by area, and a random sample of 85 incidents¹ was selected, 17 incidents from each area.

Findings:

Video footage was located for all 85 citizen encounters selected for review. Ninety-four percent of the PDRD footage for the incidents reviewed indicated that officers activated their respective PDRDs **prior** to conducting a criminal investigation of a citizen’s action(s) that results in a warning, a citation, a detention, or an arrest. In addition, 98 percent of the PDRD footage for the incidents reviewed indicated that the police officers deactivated their respective PDRDs at the conclusion of the encounter.

Of the 85 incidents reviewed, there were 80 (94%) instances in which the PDRD footage was captured in a manner that clearly indicated the officer activated his/her PDRD prior to conducting a criminal investigation of a citizen’s action(s) that resulted in a warning, a citation, a detention, or an arrest. However, there were five (6%) instances in which the PDRD footage indicated the police officer activated his/her PDRD **after** initiating contact with the respective citizen(s). It should be noted that for these five incidents, a significant amount of citizen contact was still captured on the PDRD footage. The table below provides the incident number, type of encounter, the duration of the video footage, and the opening scene and/or words that indicated the PDRD activation occurred after initiating contact with the respective citizen(s):

No.	Incident No.	Type of Encounter	Duration (hr/min/sec)	First Words/Scene on PDRD Footage
1	611	Vehicle Stop, Detention, Probation Search, and Release	0:17:39	The police officer is in his car running a criminal history check after the initiation of the contact.
2	103	Security Check, Detention, Warning	0:01:18	The police officer is spelling the last name of the citizen and asks for the person’s first name.
3	154	Vehicle Stop,	0:15:29	The citizen is providing an explanation to the

¹ The accompanying PDRD footage belonged to 69 officers because 12 of them were involved in two or more of the 85 randomly selected incidents.

		Detention, Citation And Released		officer after having been contacted by the officer.
4	543	Vehicle Stop, Detention, Probation Search, Arrest, Transport	0:08:55	The footage begins during conversation between the officer and citizen and there is reference to previous conversation or statements at the beginning of the contact.
5	276	Vehicle Stop, Detention, Citation, And Released	0:13:39	A citizen is already outside of her car talking to the police officer who explains she was stopped for running a red light.

In addition to the above findings there were 83 instances (98%) in which the PDRD footage clearly indicated that the respective police officer deactivated his/her PDRD at the conclusion of the encounter with the respective citizen(s). There were only two instances in which the PDRD footage indicated that the respective police officer deactivated his/her PDRD prior to the conclusion of the encounter with the respective citizen(s). In the first incident (LOP161004000445), the PDRD footage ends with the citizen in the back of the police car and not being transferred to the Fremont Police Department as documented in the associated Crime Report. While reviewing the footage, the auditor did hear an opening and closing of a door, but was unable to determine whether the citizen was released from the back seat of the police car due to the position of the PDRD. In the second incident, number 2 in the table above, the PDRD footage ends with the police officer still in conversation with the citizen.

Additional Sampling

Because all five instances in which the PDRD footage indicated that the respective police officers did not activate PDRDs prior to initiating contact with a citizen were in [Area 3](#), the Audit Team used two additional measures to evaluate whether any of these police officers have a pattern of not activating and/or deactivating their respective PDRDs according to policy. First, an additional four PDRD videos were reviewed for each police officer, and the audit found that each police officer activated and deactivated his/her PDRD according to policy. Secondly, documentation that would indicate a pattern of not activating and/or deactivating the PDRD was sought in each police officer's Personnel Assessment System² profile. The audit indicated that there was not any documentation to support that any of the police officers have a pattern of not activating or deactivating their respective PDRDs.

Due to a finding of significant compliance, and the lack of any pattern or trend, no recommendations were made to the Department as the result of this audit.

² Departmental General Order, D-17, Personnel Assessment System, effective November 20, 2013, page 1, states "The PAS is a proactive, non-disciplinary, early identification and intervention program designed to identify and positively influence conduct, correct performance-related problems and recognize exemplary performance."

Review of Level 3 and 4 Uses of Force

Auditor: Charlotte Hines, Office of Inspector General

Objective:

- 1) Are uses of force timelines being met?
- 2) Are uses of force investigations complete and assessed for compliance?
- 3) Are all training recommendations properly documented?
- 4) Are all allegations of misconduct identified in use of force incidents forwarded to Internal Affairs Division as required?
- 5) Are Personal Digital Recording Devices (PDRD's) being activated on-scene as required?

Policy Referenced:

DGO K-3 "Use of Force" and DGO K-4 "Reporting and Investigating the Use of Force" DGO B-22 "Supervisory Note File"

Significant Finding(s):

Seemingly, the time provided in policy to complete a thorough use of force investigation is insufficient. Also, the current policy does not mandate a limit to the number of extensions allowed for each case. There were as many as seven extensions approved for one case reviewed which, in this auditor's opinion, is excessive.

Recommendation(s):

1. The Department should reevaluate the policy; specifically, consider increasing the allotted time for submission of completed Use of Force reports to the Bureau of Field Operations (BFO) Administration Unit and also set a maximum number of extensions allowed for an investigation.

Overview/Background:

The proper reporting and investigation of use of force is critical to law enforcement accountability and public trust. Because of recent numerous unfortunate events across this country, at this particular time in our society, use of force by law enforcement is a topic that is being scrutinized by many nationwide.

Definition: *Use of Force – any physical or mechanical intervention used by a member or employee to defend, control, overpowers, restrain or overcome the resistance of an individual.*³

The Oakland Police Departments' Office of Inspector General therefore initiated a review of the reporting and investigation of Level 3 and Level 4 Use of Force incidents (*See appendix A for Use of Force Levels*).

³ DGO K-3, II B.c.

The Department currently has four levels of force differentiated by the seriousness, with Level 3 and Level 4 being less serious, but most common. The Department has set forth in its policies the required steps to be followed when reporting and investigating use of force incidents. According to DGO K-4. I, F, *“Supervisors and Commanders shall be held accountable for the timely, accurate and thorough documentation of all uses of force incidents”*.

A Level 3 use of force incident is investigated by a supervisor, reviewed by a Commander and then forwarded to the BFO Administration Unit. A Level 4 use of force incident is “self-reported”, the involved personnel must notify and brief their supervisor immediately or as soon as practical and complete a Use of Force Report. The Level 4 Use of force Report is reviewed by the first level commander who forwards to BFO Administration Unit after his/her approval.

Methodology:

The OIG auditor reviewed the Departments’ documented use of force policies and procedures and requested a list of all use of force reports for Level 3 and Level 4 uses of force for June through August 2016 from the Bureau of Field Operations. For this period, there were 12 Level 3 and 96 Level 4 cases. All Level 3 cases and 15 Level 4 cases were randomly selected for review. However, only ten Level 3 cases were reviewed, as two Level 3 cases were not yet complete.

To evaluate the quality of each use of force investigation report based on the Departments’ policies, each case was reviewed for the following:

- Timeliness of reporting
 - Supervisor notification of a use of force incident
 - Use of force reports completed and submitted to BFO Administration (including the number of and reasons for extensions)
- Investigation is complete, adequate and properly assessed for compliance
- Training recommendations are properly documented
- Allegations of misconduct are forwarded to Internal Affairs Division as required
- PDRDs are activated

The auditor reviewed the use of force reports, crime reports and supplemental reports of all involved officers and those officers that witnessed a use of force incident.

Finding 1

Are uses of force timelines being met?

- *Supervisor notification of a use of force incident*
- *Use of force reports completed and submitted to BFO Administration*

Supervisor Notification

OPD policy states that *“personnel shall notify his/her **supervisor** immediately or as soon as practical, of any use of force, allegation of a use of force, or an allegation of unreasonable force.”*⁴

For the 25 use of force incidents reviewed, supervisor notifications ranged from one minute (Supervisor already on scene) up to 52 minutes. The average notification time was 12 minutes for Level 3 force incidents and 17 minutes for Level 4 incidents. Notification in nine of the ten Level 3 cases was made within 30 minutes; notification in the remaining Level 3 case took 45 minutes. There were no obvious or extraordinary reasons for the longer time taken to make the necessary notification. Notification in twelve of the Level 4 cases was made within 20 minutes; the remaining three cases took between 41 and 52 minutes. In only one of these cases was there any indication of a specific reason for the time it took to make the notification. In this case the use of force was committed by a FTO who failed to notify his trainer of the use of force. The officer received remedial training in regards to the proper notification requirements for uses of force incidents.

Submission Timelines

For Level 4 investigations, OPD policy states the reviewing supervisor shall *“forward the **original Use of Force report packet to the first level commander for review by the end of the next scheduled shift not to exceed five (5) calendar days from the date of the incident”***⁵, and the first-level commander shall *“forward approved Use of Force packet to the BFO Administration Unit **within four (4) calendar days of approval”***⁶ for a total of 10 days.

Of the 15 Level 4 investigations reviewed, only one case exceeded the five calendar day requirement for forwarding to the first level commander, and there was no documented approval for an extension included in the use of force packet. The 10 day requirement for forwarding the use of force packet to BFO Administration was met in nine cases. Two cases exceeded the 10 days, but had documented extension requests, resulting in a total of 14 and 17 days. In two cases, the reviewer was unable to determine if the requirement was met since there was no visible stamp or notation when the packet was received in the BFO Administration Unit. Additionally, two cases appeared to have an error in recording; the date noted as received in the BFO Administration Unit was prior to the date approved by the first-level commander.

For Level 3 investigations, OPD policy states that the BFO Administration Unit shall *“notify the appropriate commander if the Use of Force Report packet has not been received **within 16 calendar days of the incident”***⁷.

⁴ DGO K-4 I.B

⁵ DGO K-4 VIII.D.1.h

⁶ DGO K-4 VIII.D.2.c

⁷ DGO K-4VIII.C.2.a

In one of the ten Level 3 cases reviewed, the auditor was unable to determine if the requirement was met because there was no date stamp or indication of when the BFO Administration Unit received the force packet. Only one of the remaining nine cases was received by the BFO Administration Unit within 16 days. Eight cases required deadline extensions. The number of approved extensions ranged from one to seven.

OPD's policy initially allows for 16 days from the date of incident to complete and submit a Level 3 investigation to the BFO Administration Unit, however, per this review the number of days taken ranged from 22 days to 69 days, averaging approximately 49 days. It should be noted that the use of force incident dates of the two cases included in the audit population that were not yet completed as of the date requested and could not be reviewed were June 26, 2016 and August 26, 2016, in excess of 112 and 60 days respectively.

Some of the reasons stated for the need for extensions included: heavy workload, regularly assigned Patrol supervisory duties, scheduled vacation, regular days off, special assignments, additional time needed to review PDRD footage and other higher priority investigations to be completed.

Finding 2

Are uses of force investigations complete and assessed for compliance?

With the exception of one missing supplemental report, all use of force reports were complete and included the required compliance assessments by investigators. The Department's use of force policy and forms were reviewed to determine the criteria for assessing completeness and adequacy. Not all criteria are applicable to Level 4 uses of force, which are self-reported and do not require an investigation. The reviewer checked for the inclusion of all required reports (crime and/or supplemental reports for all involved and witness personnel) and documentation of:

- Reason for police presence
- Circumstance resulting in Use of Force
- Description of force used
- Articulation of reasonableness of force
- Physical evidence
- Photos taken
- Consideration of Discrepancy concerns addressed

The reviewer also checked reports to determine if use of force investigators addressed compliance issues, including:

- Was the detention or arrest lawful?
- Was the force reasonable and proportional to resistance encountered?
- Was the type and amount force related to a legitimate law enforcement objective?

- Was force reasonably de-escalated?
- Was verbal persuasion used to attempt to resolve without force?
- Was the use of force in or out of compliance?

There was one Level 3 case that was missing a supplemental report from a witness officer. Crime or supplemental reports were completed by four other officers on scene, and the missing supplemental report did not appear to impact the finding.

Additionally, there were five Level 3 uses of force that were lowered to a Level 4. In all five incidents, a sergeant responded to the scene and signed the appropriate signature box allowing the reduction of a Level 3 use of force.

Finding 3

Are all training recommendations included in Use of Force investigation reports properly documented?

There are multiple policies that address the handling of training issues within OPD. DGO K-4 states *“Supervisors and commanders shall identify Department or individual training and tactical issues and make recommendations for corrective action, when appropriate and document the recommendations in the Use of force Report”*⁸, and DGO B-22 states *“Corrective action shall be documented in the member/employee’s SNF in IPAS when corrective action is completedas a result of a use of force investigation that is not reviewed by a Force Review Board”*⁹

Nine of the 25 cases reviewed included documented training points. Three investigations documented that supervisory note files (SNF) entries were entered in the officer’ record and one investigation documented that training concerns (i.e. did not report UOF timely, failed to turn on PDRD) were documented in the Daily Observation report for two involved field trainees. The remaining five investigations, while noting training points in the use of force report, did not record a SNF entry in the officers’ files. Although some training points may not be considered corrective action, and therefore are not required to be entered in IPAS as an SNF, OIG believes that it would be a good practice to document training points in use of force reports as an SNF.

Finding 4

Are all allegations of misconduct forwarded to Internal Affairs Division as required?

There were no allegations of misconduct documented in the 25 use of force reports reviewed.

Finding 5

Are PDRD’s being activated on-scene as required?

⁸ DGO K-4I.K

⁹ DGO B-22 III.A.5.b

In the 25 cases reviewed, there were 63 instances in which involved personnel and or Department witnesses should have activated their PDRDs. OIG did not review any PDRD footage, rather findings were based on the involved officer or witness officers' statements in their crime or supplemental reports about PDRD activation.

In three instances, the involved officer/witness had not been issued a PDRD, and in two instances the auditor was unable to determine if the PDRD had been activated. In one incident, due to a rapid evolving situation, the PDRD was not activated. In the remaining 57 instances, the involved or witness officers documented that their PDRD was activated, however, in seven instances there was also documentation that the use of force was not captured by the PDRD for various reasons including displacement during pursuits or struggles, damage to the PDRD unit, or the absence of beneficial footage that captured the incident due to angle, motion, or placement.

NEXT MONTH'S PLANNED REVIEWS

The reviews scheduled for December 2016 are:

1. Span of Control
2. Supervisor Review of PDRD Footage

Appendix A: Description of Level 3 and 4 Use of Force

Level 3 Use of Force

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 or more probes impacts or penetrates the subject's clothing or skin;
 - b. When the push stun arc touches the subject's clothing or skin; or
 - 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 or
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; and
 - d. Takedowns
6. An on-duty firearm discharge at an animal other than to dispatch animal.

Level 4 Use of Force

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 as specified in Part VI, A, 4.)
2. A Weaponless Defense Technique is applied to a Vulnerable Area, excluding strikes (e.g., Hair grab, pressure to mastoid or jaw line; and shoulder muscle grab).
3. An on duty firearm discharge to dispatch an injured animal; or
4. A Weaponless Defense Technique Control Hold is applied:

- a. Escort (elbow);
- b. Twist lock;
- c. Arm-bar; or
- d. Bent wrist

A Weaponless Defense Technique Control Hold applied for the purpose of handcuffing or escorts that do not result in injury or a complaint of injury are NOT reportable uses of force.

- 5. A canine deployment in which a suspect is located 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.