

Monthly Progress Report

Of the Office of Inspector General



April 2017

Office of the Inspector General

Oakland Police Department

455 7th Street, 9th Floor | Oakland, CA 94607 | Phone: (510) 238-3868

CONTENTS

Table of Contents

CONTENTS	2
INTRODUCTION.....	3
AUDITS, REVIEWS, and INSPECTIONS	4
Discipline Recommendations Audit	4
Confidential Informants Follow- Up	10
NEXT MONTH’S PLANNED REVIEWS.....	12

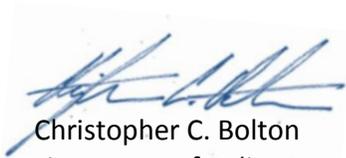
INTRODUCTION

The Office of Inspector General (OIG) is committed to continued assessment of the performance of the department at various points in the process of police misconduct investigation and resulting discipline. Within the first quarter of this year, OIG has evaluated the department's handling of criminal complaints against its officers and how well the department regulates and ensures reporting and follow-up when personnel are arrested, sued or served with administrative processes. This month's report evaluates core components of misconduct investigations: resulting discipline and accountability.

Above and beyond the formal reviews contained in this report, the OIG attended and observed discipline process training in April for all OPD commanders. This training was developed and instructed collaboratively by OPD and the Office of City Attorney with the goal of strengthening reviews of investigative findings and imposed discipline that justly and successfully withstand an arbitration process.

This month's review also recommends that the process of general policy review and revision be prioritized. The issue of needed resources within the Research and Planning Unit had proactively been discussed and reviewed by the Chief of Police prior to this report's finalization. And although policy revision progress was absent within our review of confidential informant files, many other recommendations in this report to revise, edit, or redact conflicting Internal Affairs Division training resources and policies were acted upon before this report was completed.

Respectfully submitted,



Christopher C. Bolton
Lieutenant of Police
Office of Inspector General

AUDITS, REVIEWS, and INSPECTIONS

Discipline Recommendations Audit

Auditor: Charlotte Hines

Contributor: Lieutenant Christopher Bolton

Overview

In August 2014, a court order by the United States District Court for the Northern District of California (Court) prompted an independent investigation of police discipline practices by the Court-Appointed Investigator (Edward Swanson, Swanson & McNamara, LLP). In April 2015, the Court-Appointed Investigator filed an audit report detailing findings and recommendations for the Oakland Police Department (OPD), the Office of the City Attorney (OCA) and City Officials that if implemented, would improve police discipline and sustain the City's progress toward several court-ordered directives. In January 2016, the Court expressed concern regarding the lack of steps taken to satisfy the recommendation that the City establish sustainable accountability procedures that will outlive the litigation. As a result, the same Court-Appointed Investigator assessed the OPD's progress against the recommendations from the April 2015 report and submitted a final report¹ detailing the need for additional improvement regarding:

- Supervisor accountability;
- Policy and training feedback loop; and
- Training records and testimony.

Training records and testimony was not included in OIG's review, however, in addition to the two remaining areas, OIG looked at the consistency of discipline imposed on personnel based on the Discipline Matrix as well as the consistency between ranks (i.e., officer vs sergeants) and classifications (i.e., sworn vs professional staff).

Departmental Discipline Policy, TB V-T states:

“OPD has set forth departmental policy and procedures to determine and implement a discipline process which ensures fair and consistent discipline. The policy is value driven and positively reinforces organizational rules, regulations, policies and procedures. The departmental policy is consistent and lawful in its application to all members and employees. The disciplinary process values progressive discipline and incorporates a series of checks and balances to ensure fair, timely and defensible outcomes.”

The OIG conducted an audit of the Department's discipline recommendations process to ensure discipline is imposed in a manner that is fair and consistent as outlined within the Departmental

¹ Swanson, Edward. Swanson & McNamara, LLP. *Second Report of the Court Appointed Investigator in Delphine Allen v. City of Oakland*. 21 Mar 2016

Discipline Matrix and that justification for discipline imposed is submitted. Additionally, OIG assessed whether the investigator addressed the role of supervision within cases of sustained misconduct and whether supervisors and commander accountability is being properly assessed. And finally, OIG evaluated the tracking and follow-up of training and policy recommendations resulting from completed investigations.

For internal investigations resulting in a sustained finding, the following steps outline the final stages of the discipline process:

1. The Chief of Police reviews the Pre-Discipline Report (TF-3340) and determines the appropriate discipline. (The Assistant Chief of Police reviews the Pre-Discipline Report (TF-3340) for all minor and preventable vehicle collisions and determines the appropriate discipline).
2. The IAD commander initiates the Skelly process upon provisional approval of the discipline recommendation of a suspension or higher.
3. A *Skelly*² Officer may recommend revised discipline or alternative finding to the Chief of Police. The Chief of Police reviews the *Skelly* officer's recommendation and either accepts or rejects the recommendation. The City Administrator must approve any suspension longer than five (5) days and in instances of demotion or termination.
4. The IAD commander shall prepare a letter advising the employee of the conditions of the approved discipline with a copy provided to the subject (i.e., civilian involved in the incident). Service shall be documented on a copy of the letter and retained in the IAD investigative case file.

Objectives

1. Ensure discipline is imposed in a manner that is fair and consistent with the Departmental Discipline Matrix and justification for discipline is documented.
2. Assess how commander and supervisor accountability was evaluated by the assigned investigator.
3. Evaluate the tracking and follow-up of training and policy recommendations identified in investigations of misconduct.

Policies Referenced

- Training Bulletin V-T - *Departmental Discipline Policy*
- Training Bulletin V-T Discipline Policy Appendix - *Discipline Matrix*
- Training Bulletin V-T.1 - *Internal Investigation Procedure Manual*
- Departmental General Order (DGO) B-6 - *Performance Appraisal*

² Skelly v. State Personnel Bd., 15 Cal. 3d 194.

Recommendations

1. The Department should enhance its current tracking process for training recommendations and include a follow-up process to ensure improvement by personnel is documented. This would ideally require IAD to maintain and utilize a system of tracking when issues requiring further action beyond discipline arise from completed investigations.
2. The Department should improve the current level of instruction, direction, and resource assistance provided to assigned investigators by:
 - Reviewing and editing the Reports of Investigations (ROI) Investigative Template (dated 27 Feb 17) for clarity.
 - Disseminating the 2017 ROI Investigative Template to all professional staff supervisors, as well as sworn acting supervisors and sergeants placed in temporary supervisory positions as they may be tasked with the completion of an ROI.
 - Updating Training Bulletin V-T.1 to include an accountability section that addresses the following required components:
 - a. Investigate and address whether instances of misconduct or complaint were known to any employee or member who then failed to properly report or address the incident; and,
 - b. Investigate and address whether an act or omission of sustained misconduct was committed at the direction of, with the knowledge of, or with the approval of a supervisor, commander or manager.
 - c. Based on the above two assessments, document whether or not the review of accountability an additional or new Manual of Rules violation or allegation against a supervisor or commander.
 - Ensure that all ROIs being approved for closure contain and address the above three components.

Methodology

Fair and Consistent Discipline

The Internal Affairs Division provided OIG with a total of 12 sustained cases closed between October 2016 and February 2017. The 12 cases contained 14 sustained findings applied to a total of 14 personnel. Subject employees included seven sworn officers and seven members of professional staff. All case files were analyzed based on the following information:

- Date of incident
- Discipline Matrix standard
- Date sustained
- Discipline imposed
- Rank
- Discipline history
- Manual of Rules /Class violations

In each case, the auditor reviewed the Pre-Discipline Report, Report of Internal Investigation, Letter of Intent to Discipline, and other documents. To ensure discipline is being consistently and fairly imposed, the auditor:

- Reviewed the classification and the rank of the employee with the sustained finding, the violation and the number of times the employee committed the same violation in the past.
- Reviewed the actual discipline imposed by the Chief of Police and/or *Skelly* Officer.
- Compared the imposed discipline to the Discipline Matrix to determine whether the imposed discipline fell within the recommended range of discipline.
- If the imposed discipline was the same as stated in the Discipline Matrix, the discipline was considered as compliant to the Department's policy. If the imposed discipline varied from the Discipline Matrix, the auditor sought justification for the variance.

Commander, Supervisor and Employee Accountability

In order to assess how supervisory accountability was evaluated by the assigned Investigator, the auditor reviewed approved Reports of Investigation and evaluated set policy standards and expectations communicated to investigators.

Training and/or Policy Recommendations

The auditor reviewed sustained ROIs to determine what training or policy changes were recommended and secondly, reviewed the employees Internal Personnel Assessment System (IPAS) profile to determine if the training recommendation(s) was completed. If policy changes were recommended, the auditor contacted the Department's Research and Planning Unit to verify completion.

Finding 1

Imposed discipline fell within the Department's Discipline Matrix and sufficient written justification was present to justify the discipline.

The Department is complying with policy. The auditor reviewed the 14 sustained findings and concluded that all imposed discipline was the same as recommended by the Department's Discipline Matrix. In addition, the auditor reviewed the Pre-Discipline Report, Report of Internal Investigation, Letter of Intent to Discipline and any other applicable documents found in the case files and determined there was sufficient justification for the imposed discipline. Moreover, it appears rank and classifications were not factors used in the determination of any discipline as no patterns or trends regarding leniency were detected. In sum, the review concluded that discipline was imposed in a manner that is fair and consistent with the Departmental Discipline Matrix and aggravating or mitigating factors were appropriately documented and assessed.

Finding 2

Of the ten applicable sustained cases reviewed, seven did not contain a clearly articulated and well-reasoned assessment of supervisory accountability.

The Department's investigators are not consistently assessing supervisorial accountability in the Report of Investigation. This lack of consistency may be due to conflicting guidance and training provided to investigators (see Finding 3).

OIG reviewed each sustained case closed from October 2016 through February 2017 and assessed whether the investigator evaluated supervisor, commander and manager accountability in the spirit of the recent recommendations to do so. A total of 10 relevant cases were identified (two IAD cases regarded pursuit or vehicle collision violations and were not associated with a Report of Investigation).

Only three of ten cases contained a clearly articulated and well-reasoned assessment of supervisorial accountability. The reviewer inspected all available aspects of the remaining seven investigations and determined that there was no reasons to believe that the sustained misconduct was directed or condoned by a higher ranking supervisor or commander, but the ROI did not specifically state this conclusion. In the reviewer's opinion, one case deserved additional questioning and investigation in order to determine the role supervision (or the lack of supervision) played given multiple allegations and violations over a period of time within a single functional unit of the Department.

The most relevant policy³ provided to investigators on how to complete a Report of Investigation does not reference a required accountability assessment. This omission stands counter to the recommendation that, in order to strengthen and improve the quality and scope of misconduct investigations, the Department should consider, as part of all investigations resulting in the finding of misconduct, the culpability and involvement of supervisors and commanders who may have contributed to or facilitated the misconduct.⁴

Finding 3

The Department is not consistently following up on its training and policy recommendations.

The 14 sustained findings resulted in six training recommendations and one policy recommendation.⁵ The policy recommendation sought the creation of a new policy regarding the Communications Sections' scheduling for supervisors and sergeants assignments. To date, the new policy has not been established. In addition, the Auditor reviewed each employee's IPAS for documentation that the training had been completed from among the six instances in which training recommendations were imposed. Only two instances were documented in which training recommendations were completed.⁶ The remaining four instances held no documentation in the employee's IPAS profile that the training had been completed.⁷ In two separate cases, two employees were not sustained for any rules violation, but were required to receive training as the result of the investigation.⁸ Again, the auditor reviewed each

³ Training Bulletin (TB) V-T.1

⁴ Report of the Court-Appointed Investigator in *Delphine Allen v. City of Oakland*, Edward Swanson - Swanson & McNamara, LLP, April 16, 2015

⁵ The policy recommendation stemmed for RD# 16-0204

⁶ RD# 16-0739, and RD# 16-0510

⁷ RD#16-0948, RD#16-0598, RD#16-0719 and RD#16-0510. This last case included two employees that had sustained findings only one was documented as completing the recommended training and the other was not.

⁸ RD#16-0815 and RD#16-1065

employee's IPAS profile and looked under the Supervisory Note File and/or Training History sections for documentation that the training had been completed and found no record.

Other Reportable Matters

There are multiple versions of two policies stored in the Department's PowerDMS⁹ system, creating confusion for those seeking the most current and accurate policy information.

There were two versions of Training Bulletin V-T and the Pre-Discipline Report (TF-3340). One version was published in 2011 and the other in 2015. The Auditor contacted the Research and Planning Unit, which is responsible for maintaining the Department's policies. The 2011 version was immediately removed from PowerDMS.

At the time of review, there were three separate versions of a training resource document called Report of Investigation Template: a version dated 2011, a revised 2016 version, and a more recent 2017 version. Each version of the training material was available to any one investigator who completed an ROI during the review period. Each version of resource material mandates that a ROI contain a "Member/Employee Accountability" section, but the instruction and defined requirements vary among the versions. The 2011 version solely focuses on whether any officer or employee – including supervisors and commanders – failed to report or address known misconduct or complaints of misconduct to the Internal Affairs Division. The training material does not direct investigators to examine supervisorial or command culpability in directing or condoning any occurrence of misconduct until February 2017 (Version 3). This latest version adds a specific requirement to report whether a sustained act or omission occurred, "at the direction of a supervisor or higher ranking member." This updated version of the "Report of Investigation Training Template - Updated" was emailed by the Internal Affairs Division on February 27, 2017 to all Sergeants of Police and all commanders and managers but not to professional staff supervisors or acting supervisors who are also often assigned investigations to complete. The 2017 version also adds further and commendable explanation: *"If the action was at the direction of someone else, you need to discuss why or why not it was okay and whether or not it necessitated a notification of an additional or new MOR allegation against that supervisor..."*

The Department should remove all outdated policies and/or forms once policy updates and/or revisions have been published. Specifically, at this time, remove all older versions of the Report of Investigation Template from the Department's publication library and replace them with a revised 2017 version containing additional, approved instruction on how to complete the required accountability section. The availability of outdated and multiple versions of policies and/or forms increases the possibility of invalidating important and required documents included in investigations.

⁹ PowerDMS is an online system that all OPD personnel accesses to find policy and procedures information.

Confidential Informants Follow- Up

Auditor: Rose Sutton, MPP, CGAP

Objectives

1. Review changes made towards the management of confidential informants since OIG's last compliance review.
2. Review the file management and physical security of confidential informant files.

Policies Referenced

- Department General Order (DGO) 0-4, *Informant*
- Policy 603, *Informants* (revised draft policy, not yet implemented)

Significant Findings

Overall, the management and physical security of confidential informant files are being appropriately managed. But despite meetings held last year by the Lexipol Policy Working Group¹⁰ to address and revise the informant policy, the finalized version has yet to be adopted. Consequently, OIG has strengthened its recommendations to cover the *general* issue of delayed policy adoption.

Recommendations

1. Allocate the necessary resources towards the prompt adoption of outstanding draft policies prepared by the Lexipol Policy Working Group and Research and Planning Unit, including but not limited to Policy 603.
2. Policy 603 should be presented to the Chief of Police or her designee no later than July 2017.

Methodology

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

- Interviewing the Intelligence Unit Sergeant, who serves as the Informant Program Coordinator (IPC) to discuss OIG's review and gain a better understanding of possible risk areas and known control deficiencies.
- Interviewing the Research and Planning Division Manager, who is responsible for updating Department policies and procedures to gain a better understanding of the policy update process.
- Reviewing the file management and physical security of confidential informant files to determine whether files were complete, well organized and secure.

¹⁰ The Lexipol Policy Working Group is responsible for updating all department policies and corresponding procedures. It consists of the Department's Research and Planning Division Manager, subject matter experts in the policy area being revised and a consultant from Lexipol, a provider of public safety policies.

Finding 1

The revision of Policy 603 – and additional policies - has been delayed

The Research and Planning Unit Manager acknowledges the delay in finalizing the Department's revised policies, which is largely due to ensuring that all major stipulations from the old policies are appropriately reflected in the new Lexipol policies. Each policy revision requires a careful review of existing and proposed policies. Since July 2016, the Department has published 12 of approximately 150 policies slated for revision, three of which were published in 2017. The Research and Planning Unit has one position assigned to the unit's manager. The Unit's responsibilities include operational planning, strategic plan development, special projects, Executive and Force Review Board reporting and other research and reporting tasks in addition to policy development. At this rate, OIG fears that it will take many years for all Department policies to be appropriately updated.

The OIG recommends the allocation of necessary resources towards the prompt adoption of outstanding draft policies, including, but not limited to, Policy 603.

Finding 2

Details regarding the information gathered through the use of confidential informants remains sparse.

In 2016, OIG found insufficient detail regarding communication between Managed Confidential Informants and their Managing Officer. According to the IPC, failing to document gathered intelligence from the use of an informant adds little value towards law enforcement operations and jeopardizes the pursuit of justice during court proceedings. Not documenting the details gathered by a Managing Officer from a MCI, no matter how seemingly mundane now, may prove consequential in the future as new information regarding criminal activity is collected. The ability to trace back a specific documented detail and synthesize it with other pieces of criminal intelligence is likely effective in reducing crime. Also, the consequences to criminal proceedings may be significant if evidentiary documentation appears negligible. Moreover, recording specific details proves extremely valuable when Managing Officers or the IPC prepare for court testimony regarding information used to direct law enforcement operations.

Finding 3

The management and physical security of confidential informants are being appropriately managed

OIG found one missing supervisor signature among twenty files reviewed, in contrast to four of twenty-nine missing signatures in 2016. All required 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) were present. The files remain secured in a locked cabinet behind a locked door at all time with access granted to those approved by the Intelligence Unit Sergeant or other Intelligence Unit staff.

NEXT MONTH'S PLANNED REVIEWS

The reviews scheduled for the May 2017 Report are:

1. Search Warrants
2. Required Training
3. Review of Probation and Parole Search Circumstances