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# Oakland Police Department Office of the Inspector General

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## 4<sup>th</sup> Quarterly Progress Report October – December 2019

**Oakland Police Department**  
**Office of Inspector General**

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## Introduction

The Office of Inspector General's (OIG) 2019 *4th Quarterly Progress Report* includes an inspection of use of force reporting and a review of the Oakland Police Department's documentation of its managed confidential informants.

The OIG identified inconsistencies in the reporting of force in early 2018 and published two audits in 2019 that found insufficient reporting. In response to the second audit, [\*An Assessment of the Oakland Police Department's Use of Force Reporting, Usage of Portable Digital Recording Devices, and Supervision of Incidents during Arrests for Offenses Where There Is A Significant Chance that Force would Be Used\*](#), the Department committed to conducting a follow-up inspection. The purpose of the inspection was to evaluate whether the Department has improved its reporting of force. Additionally, the inspection included a review of body worn camera compliance and compliance with the Chief's directive on supervisory review of incidents involving arrests for Penal Code 69, 148 (a)(1) and/or 243 (b)(c).

Department General Order O-4, *Informants*, requires that OIG conduct regular inspections of confidential informant files. Due to competing priorities in OIG and the Department's delay in updating DGO O-4, which was recommended in prior inspections, the OIG has not conducted an inspection since 2017. This inspection focused on informant files created after January 2017.

Respectfully,

A handwritten signature in blue ink, appearing to read 'KB' or similar initials, followed by a flourish.

Kristin Burgess-Medeiros  
Acting Inspector General

## Inspection of Use of Force Reporting

By Lead Auditor Rebecca Johnson and Contributing Auditors Captain Wilson Lau, Lieutenant Alan Yu, Police Officer Alexander Vukasinovic and Acting Inspector General Kristin Burgess-Medeiros

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### Objectives

1. Evaluate the accuracy of the Oakland Police Department's reporting of uses of force by inspecting incidents where there is a significant chance force would be used, but in which no uses of force were reported.
2. Determine whether sergeants, within two days of the incident, annotated their review of police officers' body worn camera footage for incidents in which offenses of Penal Code 69, 148 (a)(1) and/or 243 (b)(c) allegedly occurred.
3. Determine whether police officers properly activated and deactivated their body worn cameras.

### Key Findings

- ✓ No reportable uses of force were identified in 40 of 43 incidents reviewed. In one incident, the Auditors deemed an officer to be pointing his firearm at a suspect, and in two incidents, the Auditors were unable to conclusively determine if officers were pointing their firearms at suspects.
- ✓ In 11 of the 20 incidents in which offenses of Penal Code 69, 148 (a)(1) and/or 243 (b)(c) allegedly occurred, there were no annotations indicating a sergeant had reviewed the respective police officers' body worn camera footage within two days, as required by policy. Five of the 11 incidents had annotations indicating that a supervisor or lieutenant reviewed the video within 5 to 32 days.
- ✓ Department policy requires body worn cameras to be activated prior to initiating a detention or arrest and remain on until involvement in the arrest or detention has concluded. In the 20 incidents reviewed involving 69 officers, eight of the 69 officers' body worn cameras were not activated for the entire time required by policy. Additionally, there were three officers whose body worn

cameras did not fully capture the arrested subject during the transportation of that subject.

### Key Recommendations

- ✗ The OPD should ensure its supervisors are annotating their review of police officers' body worn camera footage in which offenses of Penal Code 69, 148(a)(1) and/or 243(b)(c) allegedly occurred as required via policy.
- ✗ The Department should provide guidance on the placement of BWCs during transport of detainees/arrestees.
- ✗ The Department should also assess the feasibility of outfitting patrol cars with in-car video cameras. In-car video cameras would capture additional angles not captured by BWCs, including the rear seat of the transporting vehicle.

### References

1. Departmental General Order K-4, *Reporting and Investigating the Use of Force*, dated October 16, 2014
2. Departmental General Order K-3, *Use of Force*, dated October 16, 2014
3. Departmental General Order I-15.1, *Portable Video Management System*, effective date July 16, 2015
4. Office of the Chief of Police, Oakland Police Department, Special Order 9191, *Additional Audit of Portable Digital Recording Device Video*, effective date November 27, 2018
5. Training Bulletin III-I.1, *Weaponless Defense*, effective date December 13, 2011

## Executive Summary

The purpose of this inspection was to evaluate whether the Oakland Police Department has improved its reporting of force since two recent audits, conducted by the Office of the Inspector General, concluded that the Department's performance in accurately and consistently reporting some types of force was Insufficient.

The first audit, entitled [\*Audit of the Downward Trend in the Number of Reported Police Officers' Intentional Pointing of a Firearm at Subjects\*](#), published in February 2019, was initiated because, in early 2018, the Office of Inspector General became concerned about the continued downward trend in uses of force, specifically the decline in pointing of a firearm at subjects, which the Department categorizes as a reportable use of force that does not require a full investigation. As a result, the audit identified six significant factors that contributed to a downward trend in the Department's number of reported incidents involving police officers pointing their firearms at subjects:

- An inadequately designed policy fails to provide sufficient guidance to officers regarding when to report the pointing of the firearm at a subject(s).
- In practice, a police officer's "intention" is a dominant factor in determining whether the pointing of the firearm at the subject(s) is reportable, a result of an inadequately designed policy.
- Departmental General Order K-4 does not mandate the documentation of the low ready position, limiting supervisors' ability to monitor its use.
- There is a lack of a universal definition among police officers when determining a reportable pointing of the firearm.
- The sole non-reportable low ready position defined in policy and when to report the pointing of the firearm are not emphasized in police officers' practical firearms training and are not in the practical firearms training curriculum.
- Low Personnel Assessment System/Performance, Reporting, Information and Metrics Environment (PRIME)<sup>1</sup> thresholds that trigger a risk management review for Level 4 (the pointing of the firearm at a person) uses of force may impact the reporting of such force.

The second audit, entitled [\*An Assessment of the Oakland Police Department's Use of Force Reporting, Usage of Portable Digital Recording Devices, and Supervision of Incidents during Arrests for Offenses Where There Is A Significant Chance that Force would Be Used\*](#), published in July 2019, was a follow-up audit to determine if additional types of force were going unreported, and to identify issues associated with the use of body worn cameras and supervision of incidents more likely to involve force. Consequently, one of the findings of the audit determined that uses of force involving weaponless defense techniques and pointing of a firearm at a subject are not always being reported in accordance with Department policy and procedures.

Accordingly, the Office of Inspector General made policy, training, and monitoring of force recommendations to address the issues found in both audits, including a recommendation to revise the Department's policy on reporting and investigating force (Department General Order K-4). As of the time this inspection was initiated, training on the reporting of pointing of a firearm had occurred, but the revisions to policy were still in

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<sup>1</sup> The OPD's former electronic database that captured risk data such as uses of force, complaints, pursuits, and collisions for all personnel,

progress.<sup>2</sup> Nevertheless, this inspection is being conducted at the request of the Chief of Police to evaluate whether the Department has improved its reporting of force.

There were three objectives for conducting this inspection. First, evaluate the accuracy of the Oakland Police Department's reporting of uses of force by inspecting incidents in which there is a significant chance force would be used, but no uses of force were reported. Second, determine whether sergeants, within two days, annotated their review of the police officers' body worn camera footage for incidents in which offenses of Penal Code 69, 148(a)(1) and/or 243(b)(c) allegedly occurred. Third, determine whether police officers properly activated and deactivated their body worn cameras.

At the conclusion of the inspection, it was determined that upon review of the body worn camera footage for 43 incidents in which police officers reported no uses of force, the Auditors did not identify any reportable uses of force in 40 incidents. In one incident, the Auditors observed a reportable pointing of a firearm and in two incidents, the Auditors were unable to conclusively determine if officers pointed their firearms at suspects. In 11 of the 20 incidents in which offenses of Penal Code 69, 148(a)(1) and/or 243(b)(c) allegedly occurred, there were no annotations indicating a sergeant had reviewed the respective police officers' body worn camera footage within the two-days required by policy. Moreover, body worn camera issues were identified for 11 of the 69 officers involved in the 20 incidents reviewed. Four officers had no video footage of the incident, four officers had video footage that began after the officer was engaged with the subject being arrested, and three officers' video footage did not fully capture some part of a transport.

Based on the findings, the OIG made three recommendations. First the Department should ensure its sergeants are annotating their review of police officers' body worn camera footage in which offenses of Penal Code 69, 148(a)(1) and/or 243(b)(c) allegedly occurred in a timely manner. Secondly, the Department should provide guidance on the placement of BWCs during transport of detainees/arrestees, and, third, assess the feasibility of outfitting patrol cars with in-car video cameras.

Finally, because of the seriousness of topics covered in this inspection, unreported uses of force, activation/deactivation of body worn cameras, and supervisors annotating incidents involving Penal Codes 69, 148(a)(1), and 243 (b) and (c), the Department chose to review all noncompliant incidents and responded to the preliminary findings prior to OIG closing the inspection.

## Background

An officer's use of force to physically control a subject is a seizure. The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures by the government. In *Graham v. Connor* 490 U.S. 386 (1986), the United States Supreme Court decided that the reasonableness of a use of force must be judged from the perspective of a reasonable officer on the scene, without regard to the officer's underlying intent or motivation. The determination of reasonableness must be based on the totality of circumstances and must include a consideration that police officers are often forced to make split second

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<sup>2</sup> Special Order 9196, revising Department General Order K-4, was finalized in December 2019, after the time period of this inspection.

decisions in circumstances which are tense, uncertain, and rapidly evolving. The determination of reasonableness is not based on the 20/20 vision of hindsight.

There are four levels of force the Oakland Police Department requires its police officers to report and their respective supervisors to investigate to determine reasonableness. **Level 1** is the most serious and it includes any use of force resulting in death; any force which creates a substantial risk of causing death; serious bodily injury; and any intentional impact weapon strike to the head. **Level 2** includes any strike to the head (except an intentional strike with an impact weapon); a carotid restraint that does not result in the loss of consciousness; use of impact weapons; police canine bites; and any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first aid) or hospital admittance. **Level 3** includes the use of pepper spray or other chemical agent; a Taser; a baton or any impact weapon; and weaponless defense techniques (i.e. hand/palm/elbow strikes, kicks, leg sweeps, and takedowns). Finally, **Level 4** includes the intentional pointing of a firearm; weaponless defense techniques (i.e. hair grab, pressure to mastoid or jaw line; and shoulder muscle grab); a weaponless defense technique control hold<sup>3</sup> (i.e., an elbow escort, twist lock, arm-bar, or bent wrist); and a canine deployment in which a suspect is located by the canine but no bite occurs.<sup>4</sup>

#### **Sergeants' Responsibilities for Arrests/Incidents Involving Penal Codes 69, 148 (a)(1), and 243 (b)(c)**

In Special Order 9191, dated November 27, 2018, the Department's former Chief of Police stated that recent audits conducted by the Office of Inspector General and the Independent Monitor found that use of force was not consistently reported in accordance with Departmental General Order K-4. The former Chief noted that frequently the lack of reporting came from incidents involving Penal Codes 69, 148(a)(1), and 243(b)(c) arrests. To correct the inconsistent reporting of force, the former Chief required all sergeants to audit the body worn camera footage of arrests/incidents involving Penal Codes 69, 148(a)(1), and 243 (b)(c), and to review the footage within two business days of the incident. Sergeants are required to view the footage from beginning of the incident through arrest and annotate their review of the footage in the "Comment" area of the Viewu-Veripatrol<sup>5</sup> software system.

In California, a police officer may charge a suspect with Penal Code 69 if the suspect attempts, by means of any threat or violence, to deter or prevent the police officer from performing any duty imposed upon the officer by law, or if the suspect knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty.

A police officer may charge a suspect with Penal Code 148(a)(1) if the suspect willfully resists, delays or obstructs the police officer's performance of his/her duties.

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<sup>3</sup> Departmental General Order K-4, *Reporting and Investigating the Use of Force*, pg. 7 states that 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.

<sup>4</sup> Ibid, pgs. 4-7 (The four levels of force that must be reported and investigated.)

<sup>5</sup> Viewu Veripatrol is a secure evidence management software system for the storage, retrieval, and management of video files from Viewu cameras.

(<http://storage.viewusolution.com/documents/VERIPATROL%20Admin%20User%20Guide.pdf>)

A police officer may charge a suspect with Penal Code 243(b) if the suspect commits battery against the police officer engaged in the performance of his or her duties and/or charge the suspect with Penal Code 243(c) if the suspect committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties.

**Activation and Deactivation of Body Worn Cameras**

The Department requires a police officer to activate his/her body worn camera 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
- Conducting searches of a person and/or property incident to arrest; and transporting any detained or arrested citizen (excluding prisoner wagon transport)

The police officer’s body worn camera is not to be deactivated until his/her involvement in the citizen contact, arrest or detention has concluded.<sup>6</sup>

**Scope and Population/Sample**

The inspection focused on the Department’s accurate reporting of reportable uses of force; the sergeants’ review of police officers’ body worn cameral footage of Penal Code 69, 148(a)(1) and 243(b)(c) arrests; and police officers’ activation and deactivation of their body worn cameras.

Using LEAP,<sup>7</sup> a Forensic Logic, Inc. database, the OIG queried for arrests made based on California Penal Code offenses in which suspects are more likely to resist arrest, causing police officers to use reportable force, if necessary, in order to apprehend them. The query eliminated all arrests in which there was an associated Use of Force Report. The audit period for the query was June 1, 2019, to September 30, 2019. The query included detentions of mentally disordered persons for evaluation and treatment (Welfare and Institutions Code 5150) and subjects who allegedly committed one or more of the following offenses:

No.	Description	Statute	Groups
1	OBSTRUCTS/RESISTS PUBLIC OFFICER/ETC	PC148 (A)	A
2	OBSTRUCT/RESIST/ETC PUBLIC/PEACE OFFICER/EMERGENCY MED TECH	PC148 (A)(1)	A
3	ATTEMP TO REMOVE/ETC FIREARM FROM, PEACE OFFICER/ETC	PC148 (D)	A
4	ASSAULT ON PEACE OFFICER/EMERGENCY PERSONNEL/ETC	PC241 (B)	A
5	ASSAULT ON PEACE OFF/FF/ETC	PC241 (C)	A
6	BATTERY ON PEACE OFFICER/EMERGENCY PERSONNEL/ETC	PC243 (B)	A

<sup>6</sup> Departmental General Order I-15.1, Portable Video Management System, pgs. 2-4

<sup>7</sup> According to Forensic Logic, Inc.’s LEAP Network™ *Operating Manual and Security Policy: Requirements for User Compliance*, effective October 1, 2014, the LEAP Network is a multi-organization integrated information sharing and data analysis service. It collects data from a variety of automated commercial, local, state and federal law enforcement and justice information systems on a frequent basis; reorganizes the data for easy access and analysis; and distributes the data and accompanying analysis to authorized users, also known as subscribers.



<b>7</b>	BATTERY AGAINST EMERGENCY PERSON/ETC	PC243 (C)(1)	A
<b>8</b>	BATTERY AGAINST PO	PC243 (C)(2)	A
<b>9</b>	OBSTRUCT/RESIST EXECUTIVE OFFICER-FEL	PC69	A
<b>10</b>	FAIL TO OBEY PEACE OFFICER	VC2800	A
<b>11</b>	FAIL OBEY PO: LAWFUL ORDER	VC2800 (A)	A
<b>12</b>	EVADING PEACE OFFICER	VC2800.1 (A)	A
<b>13</b>	EVADE PO: CAUSING INJURY/DEATH (RENUMBERED-SEE 2800.3)	VC2800.2	A
<b>14</b>	EVADE PO: DISREGARD SAFETY	VC2800.2 (A)	A
<b>15</b>	ROBBERY-FIREARM	PC211	B
<b>16</b>	ROBBERY/INHABITED DWELLING – FIREARM	PC212.5 (A)	B
<b>17</b>	CARJACKING WITH FIREARM	PC215(A)	B
<b>18</b>	CARJACKING WITH KNIFE	PC215(A)	B
<b>19</b>	FORCE/ADW-KNIFE: GBI	PC245 (A)(1)	B
<b>20</b>	FORCE/ADW-OTHER DANGEROUS WEAPON: GBI	PC245 (A)(1)	B
<b>21</b>	ASSAULT WITH FIREARM ON PERSON	PC245 (A)(2)	B
<b>22</b>	ASSAULT WITH FIREARM ON PERSON - PISTOL WHIP	PC245 (A)(2)	B
<b>23</b>	ADW WITH FORCE: POSSIBLE GBI	PC245 (A)(4)	B
<b>24</b>	ASSAULT PERSON WITH A SEMIAUTOMATIC FIREARM	PC245 (B)	B
<b>25</b>	ADW NOT F/ARM:PO/FIRE: GBI	PC245 (C)	B
<b>26</b>	CARRY CONCEALED WEAPON IN VEHICLE	PC25400 (A)(1)	B
<b>27</b>	CARRY A LOADED CONCEALED WEAPON ON PERSON	PC25400 (C)(6)	B
<b>28</b>	CARRY LOADED CONCEALED WEAPON ON PERSON	PC25400 (C)(6)(A)	B
<b>29</b>	CARRY LOADED FIREARM WITH INTENT TO COMMIT A FELONY	PC25800 (A)	B
<b>30</b>	CARRY LOADED FIREARM ON/IN PERSON/VEH: PUBLIC PLACE	PC25850 (A)	B
<b>31</b>	CARRY LOADED FIREARM W/PRIOR FELONY CONVICTION	PC25850 (C)(1)	B
<b>32</b>	CARRY STOLEN LOADED FIREARM	PC25850 (C)(2)	B
<b>33</b>	CRIMINAL STREET GANG MEMBER CARRY LOADED FIREARM	PC25850 (C)(3)	B
<b>34</b>	CARRY LOADED FIREARM: UNLAWFUL/PROHIBITED POSSESSION	PC25850 (C)(4)	B
<b>35</b>	CARRY LOADED FIREARM WHILE /PROHIBATED: SPEC PRIOR	PC25850 (C)(5)	B
<b>36</b>	CARRY LOADED HANDGUN: NOT REG OWNER	PC25850 (C)(6)	B
<b>37</b>	MISD-CARRY LOADED HANDGUN: NOT REGISTERED OWNER	PC25850 (C)(6)	B
<b>38</b>	DISTURB THE PEACE	PC415	C
<b>39</b>	CRIMINAL THREATS THREATENED CRIME W/INTENT TO TERRORIZE	PC422	C
<b>40</b>	THREAT CRIME:INT: TERRORIZE	PC422	C
<b>41</b>	ANY PERSON WHO WILLFULLY THREATENS TO COMMIT A CRIME WHICH WILL RESULT IN DEATH OR GREAT BODILY INJURY TO ANOTHER PERSON	PC422 (A)	C
<b>42</b>	VIOLATE CIVIL RIGHTS BY FORCE OR THREAT OF FORCE	PC422 (A)	C
<b>43</b>	VIOLATE CIVIL RIGHTS: CAUSE VIOLENT INJURY/ETC	PC422.7(A)	C
<b>44</b>	DISORDERLY CONDUCT – ALCOHOL	PC647 (F)	C
<b>45</b>	DISORDERLY CONDUCT: INTOX DRUG WITH ALCOHOL	PC647 (F)	C
<b>46</b>	DISORDERLY CONDUCT: TOLUENE	PC647 (F)	C

**Population/Sample**

From June 1, 2019, to September 30, 2019, there were a total of 552 arrests made in 513 incidents in which police officers reported no uses of force:

Group	Type of Offenses	Number of Arrests	Number of Incidents
	Mental Illness	63	63
A	Penal Codes 69, 148(a)(1), and 243(b)(c)	22	22
A	Evade Peace Officer	18	15
B	Robbery, Assault, or Firearm	269	239
C	Other Offenses	180	174
	Total	552	513

The OIG randomly selected a sample of 100 incidents. There were 9 incidents deselected because of duplicate report numbers or the Auditors found a completed *Use of Force Report* corresponding to the incident(s), leaving 91 incidents to review:

- 14 incidents involving arrests of mentally disordered persons detained for evaluation and treatment
- 20 incidents involving arrests of subjects who allegedly violated Penal Codes 69, 148(a)(1), and 243(b)(c)
- 13 incidents involving arrests of subjects who allegedly evaded a peace officer
- 29 incidents involving arrests of subjects who allegedly robbed or assaulted a person(s) or who allegedly were in possession of an illegal firearm(s)
- 15 incidents involving arrests of subjects who allegedly committed other offenses in which police officers are prone to use reportable uses of force

**20 Incidents with Offenses of Penal Codes 69, 148(a)(1), and 243(b)(c)**

The Auditors used these 20 incidents as the sample to determine whether sergeants, within two days, annotated their review of the police officers’ body worn camera footage for incidents in which offenses of Penal Code 69, 148(a)(1) and/or 243(b)(c) allegedly occurred, and to determine whether police officers properly activated and deactivated their body worn cameras.

**Methodology**

**Inspection of Incidents Where There is a Significant Chance of Force Being Used but No Force Was Reported**

The Auditors reviewed the guidelines regarding the various types of reportable uses of force in Departmental General Order K-4, *Reporting and Investigating the Use of Force*, dated October 16, 2014.

To conduct the inspection, the Auditors reviewed the Crime/Supplemental Reports that corresponded to the sampled 91 incidents in which no use of force was reported. The Auditors read the reports seeking wording that indicated police officers used force or should have used force to control/restrain the resisting subject(s). In instances in which the Auditors had questions about whether force was used, the Auditors reviewed the incident captured on the officer’s/officers’ body worn camera to determine what occurred. If, upon reviewing the footage, the Auditors deemed reportable force was used on the subject(s), the Auditor checked the

Department's Vision System<sup>8</sup> for a completed Use of Force Report related to the incident, documenting the reportable force. If there was no Use of Force Report completed for the force the Auditor deemed reportable, the incident was flagged as having an unreported use of force. On the other hand, if, upon reviewing the footage, the Auditors found that it was inconclusive whether force was used, the Auditors allowed the officer's position of not having used any reportable force during the incident to stand. The Auditors' goal was not to cast doubt about whether force was used, but to review the footage to locate obvious uses of reportable force that should have been reported by Department personnel.

### **Sergeants' Responsibilities for Arrests/Incidents Involving Penal Codes 69, 148(a)(1), and 243(b)(c)**

For each incident, the Auditors retrieved each respective police officer's body worn camera footage in the Viewu-Veripatrol software system and checked two areas:

- First, the "Comments" section on the "Details" tab to determine whether a sergeant annotated his/her review of the footage by typing a comment and his/her name and serial number; and
- Second, clicked on the "History" tab to ensure the annotation was documented within 2 days of the date of the incident.

If there was no annotation, or if the annotation was incomplete (i.e., missing the sergeant's name and serial number), the Auditors reviewed the "History" tab to determine whether it showed the date and time of a sergeant's review since the "History" shows the name and serial number of all personnel who download, copy, review or document on the police officer's body worn camera footage. If the history showed that a sergeant did review the officer's body worn camera footage within two days of the incident, the Auditors credited the sergeant's review of the footage as in compliance.

### **Activation and Deactivation of Body Worn Cameras during High Risk Incidents**

For each incident involving Penal Codes 69, 148(a)(1) and 243(b)(c), the Auditors reviewed each respective police officer's body worn camera footage, from the initial contact with the suspect to the transport of the suspect to a police wagon, jail, ambulance, or hospital, to ensure all police officer's contact with the suspect was captured as required by policy.

This inspection was limited in scope to just a review of reportable force, PDRD use, and sergeant's review of incidents involving penal codes 69, 148(a)(1) and 243(b)(c).

## **Findings**

### **Finding #1**

**Of the 43 incidents reviewed, no reportable force was identified in 40 incidents; reportable force could not be definitively confirmed in two incidents; and in one incident, the Auditors identified a reportable pointing of a firearm.**

Reviewing body worn camera footage is a difficult task because the scenes are dynamic. There is constant movement by the police officers and the suspect(s) until the suspect follows the commands of the police officers and the police officers handcuff and place the suspect in the rear of the police vehicle. In addition, the

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<sup>8</sup> A database used by the Oakland Police Department to maintain uses of force, complaint, collision, etc. reports.

officers and the suspect on which force was allegedly used are seldom captured in the same video frame. Thus, the reviewer must rely on the body worn camera footage of other officers on scene to have captured the alleged force. Although many officers may be on scene, the reviewer still may not be able to observe the alleged force in any of the footage because of bad camera angles and/or poor lighting. In this inspection, the Auditors saw instances of police officers pushing and pulling resisting suspects into police vehicles upon arrest, lengthy handcuffing interactions due to the suspect's resistance and unholstered firearms, but most of the force used by police officers was not reportable based on the version of the Oakland Police Department's policy, Departmental General Order K-4, *Reporting and Investigating the Use of Force* in place during the inspection period.

The Auditors reviewed corresponding Crime/Supplemental Reports for 91 incidents in which police officers reported no uses of force. Forty-three incidents were selected for a more comprehensive review of PDRD footage. Of the 43 incidents reviewed, there were nine that had one or multiple officers with their firearms out of their holsters. There were 40 incidents in which no reportable force was observed by the Auditors. In one incident, the Auditors deemed an officer to be pointing his firearm at a subject, which should have been reported. In the remaining two incidents, the Auditors could not definitively confirm if officers were pointing their firearms at suspects. There were no other types of force identified that should have been reported.

#### **Evade a Peace Officer**

Upon review of the 13 incidents' corresponding Crime/Supplemental Reports, the Auditors deemed the police officers' body worn camera footage needed to be reviewed for six incidents to ensure reportable use of force was not used. Upon review of the footage, the Auditors identified one incident where there was a reportable pointing of a firearm and one incident in which officers were observed pointing their firearms in the general direction of the suspect(s), but the Auditors could not confirm if the firearms were pointed at the suspects.

In one incident, a police officer drove onto a street where he had heard gunshots, also consistent with ShotSpotter<sup>9</sup> activations, and located the only vehicle on the street. The driver of the suspect vehicle, upon seeing the police vehicle, made a U-turn and attempted to evade the officer. A pursuit ensued, ending with the suspect driver exiting his vehicle. The suspect slipped and fell, allowing the pursuing officer to take the suspect into custody. A cover officer approached the scene and had his firearm pointed down in the direction of the suspect who was on the ground being handcuffed. In his crime report, the cover officer stated, "I elected to unholster my...service pistol and keep it in the low ready position. Although it was unknown if the [subject] was armed with any weapons, pointing my firearm at him would have presented an immediate crossfire issue with the police officer, who would have been in direct line of fire in the event I needed to use lethal force on the [subject]." Based on the Auditors' review of the video footage, the suspect was lying in between the handcuffing officer and the cover officer and all three were in proximity. Even though the cover officer stated he kept his firearm in a low ready position, the Auditors deemed the firearm to be pointed at the suspect since the firearm was pointed down and the subject was on the ground between the two officers.

In another incident, officers were in search of three suspects who had just fled the scene of an attempted robbery with a firearm. More than 30 officers were involved in the perimeter, apprehension, and follow-up activity related to the incident. Two suspects were ultimately apprehended at separate locations following yard searches. Multiple officers had their firearms out of their holsters during the search, most of which were

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<sup>9</sup> ShotSpotter is software the OPD uses for gunshot detection, location and forensic analysis.

pointed off to the side or toward the ground, but not at the suspects as they emerged from hiding. Based on reviewing video footage from multiple officers, the Auditors identified two officers that were pointing their firearms in the general direction of the suspects. However, there was no footage that definitively confirmed the officers were pointing their firearm at the suspects. There was a third officer in the same incident that appeared to be pointing his firearm at the subject based on his own PDRD footage. But when viewing video footage of other officers on scene, that same officer can be observed with his firearm off to the side of the subject, not pointed at the subject.

### **Mental Illness**

Upon review of the 14 incidents' corresponding Crime/Supplemental Reports, the Auditors deemed the police officers' body worn camera footage needed to be reviewed for six incidents to ensure reportable use of force was not used. The Auditors reviewed the footage and did not see any reportable force used in any of the footage.

### **Penal Codes 69, 148(a)(1), and 243(b)(c)**

Upon review of the 20 incidents' corresponding Crime/Supplemental Reports, the Auditors reviewed all incidents to ensure reportable use of force was not used. The Auditors reviewed the 20 incidents and did not see any reportable force used in any of the footage in 19 of the incidents. There was one incident in which one officer had his firearm pointed in the general direction of the suspect, but based on limitations of video allowing the Auditors to see the angle of the firearm to confirm whether it was pointed at the suspect, the Auditors were unable to definitively conclude a reportable use of force. According to the Crime Report, "Officers were on an operation to arrest a warrant suspect, who was wanted for burglaries and firearms possession stemming from a long-term gang investigation." Upon having the suspect exit his vehicle, there was one police officer who was giving commands and pointing his firearm in the general direction of the suspect. The Auditors reviewed the body worn camera of three police officers: the officer who had his firearm pointed in the general direction of the suspect, and two other officers at the scene. The result of viewing all the footage was inconclusive.

### **Robbery, Assault, and Firearm Offenses**

Upon review of the 29 incidents' corresponding Crime/Supplemental Reports, the Auditors deemed the police officers' body worn camera footage needed to be reviewed for seven incidents to ensure reportable use of force was not used. The Auditors reviewed the footage and did not see any reportable force used in any of the footage.

### **Other Offenses**

Upon review of the 15 incidents' corresponding Crime/Supplemental Reports, the Auditors deemed the police officers' body worn camera footage needed to be reviewed for four incidents to ensure reportable use of force was not used. The Auditors reviewed the footage and did not observe any reportable force used in any of the footage for the four incidents.

### **Department Response**

Prior to finalizing this inspection, the Department reviewed the incident in which reportable force was not reported and took corrective action.

## **Finding #2**

**In 11 of the 20 incidents in which offenses of Penal Code 69, 148(a)(1) and/or 243(b)(c) allegedly occurred, there were no annotations indicating a sergeant had reviewed the respective police officers' body worn camera footage within two days, as required by policy.**

Upon review of the 20 incidents for said arrests, there were seven incidents in which a sergeant annotated, within two days of the date of the incident, his/her review of the respective police officers' body worn camera footage. There were two incidents in which the "History" tab in the Viewu-Veripatrol<sup>10</sup> software system showed that the respective sergeants reviewed police officers' body worn camera footage within two days of the date of the incident, but the sergeants did not annotate their review of the footage on the "Detail" tab in the Viewu-Veripatrol software system. The Auditor still credited the two respective sergeants with having met the policy requirement.

There were 11 incidents in which there were no annotations indicating a sergeant had reviewed the respective police officers' body worn camera footage within two days. The Auditor did note that the "History" tab in the Viewu-Veripatrol software system showed that a sergeant/lieutenant reviewed BWC footage for five of the 11 incidents within 5 to 32 days. Also, in one of the 11 incidents with no sergeant annotation of review, a sergeant was on-scene providing direction during the arrest (confirmed by the sergeant's BWC footage), and therefore observed the contact between the officers and the suspect.

By the Department not ensuring its sergeants are reviewing incidents in which offenses of Penal Code 69, 148(a)(1), and/or 243(b)(c) allegedly occur, the likelihood that reportable uses of force will go unnoticed increases, potentially causing the Department to report inaccurate statistics of their reportable uses of force.

The Auditors noted that there was only one sergeant who, on more than one occasion, failed to annotate an incident within two days and his name and the Penal Code 69, 148(a)(1) and/or 243(b)(c) incidents at issue were forwarded to the Assistant Chief/Deputy Chiefs for further investigation.

## **Department Response**

Prior to finalizing this inspection, the Department reviewed each incident with issues regarding the sergeants' reviews of Penal Code 69, 148(a)(1) and/or 243(b)(c) arrests and took corrective action where appropriate.

## **Finding #3**

**Department policy requires body worn cameras to be activated prior to initiating a detention or arrest and remain on until involvement in the arrest or detention has concluded. In the 20 incidents reviewed involving 69 officers, eight of the 69 officers' body worn cameras were not activated for the entire time required by policy. Additionally, there were three officers whose body worn cameras did not fully capture the arrested subject during the transportation of that subject.**

Upon reviewing the police officers' body worn camera (BWC) for the 20 incidents involving arrests of subjects who allegedly resisted a peace officer, and were therefore charged with violating Penal Code 69, 148(a)(1) and/or 243(b)(c) along with any other offenses, the Lead Auditor found nine incidents in which there was missing footage (all or part of the incident) from one or more police officers involved in the incident. The BWC

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<sup>10</sup> Viewu Veripatrol is a secure evidence management software system for the storage, retrieval, and management of video files from Viewu cameras.

(<http://storage.viewusolution.com/documents/VERIPATROL%20Admin%20User%20Guide.pdf>)

footage of 69 officers was reviewed and eleven officers were found to have issues. The Auditor noted that there were no officers who had more than one BWC issue in this inspection.

The body worn camera issues fell into three categories: 1) no video located, 2) late activations and 3) incomplete video footage related to transporting subjects.

In the first category, there were four officers (three incidents) that had no video footage of the incident. The table below details each issue identified.

<b>Incident Number</b>	<b>No Video Located</b>
1	The Auditor was unable to locate BWC footage for the officer who initially apprehended the suspect. The officer did not document anything about BWC activation in his report. The Auditor was informed by an Area Commander during the inspection that the officer's BWC had been knocked off during the incident and was run over by a car. The auditor also received confirmation that the officer received a new BWC shortly after the incident.
2	The officer documented in the Crime Report that he activated his BWC, but it malfunctioned and did not capture the incident. There was no evidence that the officer turned in their BWC due to the reported malfunction.
3	The Auditor was unable to locate BWC footage for an officer who assisted in apprehending the suspect.
	See Incident #6 below for details about the fourth officer without BWC footage.

In the second category, late activation, there were four officers (four incidents) whose body worn cameras began recording after the officer was engaged with the subject being arrested. The table below details each issue identified.

<b>Incident Number</b>	<b>Late Activations</b>
4	The officer activated his BWC before exiting his vehicle, but the camera shut off for a time and then turned back on as the officer was handcuffing the suspect. While the first deactivation may have been accidental, there was no explanation documented for the gap between the first deactivation and the second activation.
5	In this incident, the suspect fled and there was a foot chase. There were six officers on scene but none of their BWCs captured the initial contact with the suspect. Two officers' BWCs fell off during the chase. A third officer's BWC showed that by the time he entered the BART station, the suspect was already detained. A fourth officer, according to the Crime Report, initially received information from a citizen informant, which may explain why his BWC shows the suspect on the ground when it is activated. A fifth officer, according to the Crime Report, escorted the suspect to the patrol vehicles, which may explain why his BWC's activation starts with the suspect on the ground. Lastly, the sixth officer, according to the Crime Report, approached the suspect with his taser, pointed at him and gave commands to the suspect to get his hands away from his body. This officer's BWC opens with the suspect on the ground, so was deemed a late activation by the Auditor.

6	<p>The footage for one officer opened with the suspect on the ground and one officer pointing a taser at the suspect and another officer grabbing the suspect’s wrist to handcuff him.</p> <p>In addition, the Auditor was unable to locate BWC footage for a third officer who, according to the incident report, arrived on scene to assist with taking the suspect into custody.</p>
7	<p>The officer’s BWC was on the ground when recording starts. The Auditor was unable to locate any footage prior to the BWC falling off the officer’s uniform. However, based on footage from a different officer’s BWC, the officer’s BWC was in the activated position while it was still attached to his uniform. Therefore, it is unknown why there is no footage prior to the BWC falling to the ground, but it could have been a BWC malfunction.</p>

Finally, in the third category, there were three officers (two incidents) in which footage from the officers’ body worn cameras did not fully capture some part of a transport because the BWC was left in the police vehicle or the BWC was activated after the vehicle was in motion. Policy requires that body worn cameras are activated prior to transporting any detained or arrested citizen (excluding prisoner wagon transports) and must remain activated until the conclusion of the transport. Although not required by policy, it appears to be common practice for transporting officers to place their body worn cameras facing the rear seat where the subject is sitting. While filming the subject being transported may be beneficial, if the officer does not put the BWC back on when exiting the car or the BWC falls to the ground, some parts of the interaction between officers and subjects may not be fully captured by the BWC. The table below details each issue identified.

<b>Incident Number</b>	<b>Incomplete Video Footage Related to Transporting Subjects</b>
8	<p>The officer’s BWC was placed in the police vehicle facing the subject being transported. But when the officer removed the subject from the police vehicle to loosen his handcuffs, the officer’s BWC remained in the vehicle and did not fully capture the officer and subject interaction.</p>
9	<p>Two officers transported a juvenile subject to the Police Administration Building (PAB) for an interview and then back to a location where the subject was released to his mother. One officer placed his camera rear-facing toward the backseat of the police vehicle. At some point during the transport, the camera fell and there is no more video of the subject for the rest of the transport to the PAB. The BWC remained on and captured audio, but the video only captured an interior part of the vehicle.</p> <p>The second transporting officer activated his BWC after the vehicle was already en-route to the PAB and did not activate his BWC for the transport from the PAB back to the location where the suspect was handed off to his mother.</p>

**Additional Observation**

There was a decline in the number of BWC issues over the inspection period. More issues occurred during June 2019 incidents compared to July through September 2019 incidents.



Month Inspected	Number of Incidents Reviewed	Number of Incidents with BWC issues	Percentage
June 2019	7	5	71%
July 2019	5	2	40%
August 2019	4	1	25%
September 2019	4	1	25%

The Department implemented a 30-second buffer on August 19, 2019, which records 30 seconds prior to BWC activation. The purpose of the buffer is to ensure more complete recordings if officers have a delayed activation. On December 13, 2019, to assist supervisors with addressing and/or explaining the reason for a delayed activation and take appropriate action, the Department began disseminating training, via Microsoft PowerPoint, requiring officers to document in their Crime/Supplemental Reports either their “body worn camera was activated **without** delay” or their “body worn camera was activated **with** delay.” The OIG will conduct a body worn camera inspection in the future to assess improvement in BWC activations and deactivations.

**Department Response**

Prior to finalizing this inspection, the Department reviewed each incident with issues regarding BWC activations and took corrective action where appropriate.

**Findings and Recommendations**

**OIG Findings**

**OIG Recommendations**

<b>1</b>	<p><b><u>Finding #2</u></b>                      In 11 of the 20 incidents in which offenses of Penal Code 69, 148(a)(1) and/or 243(b)(c) allegedly occurred, there were no annotations indicating a sergeant had reviewed the respective police officers’ body worn camera footage within two days, as required by policy.</p>	<p><b><u>Recommendation #1</u></b>                      The Department should ensure its sergeants are annotating their review of police officers’ body worn camera footage in which offenses of Penal Code 69, 148(a)(1) and/or 243(b)(c) allegedly occurred.</p>
<b>2</b>	<p><b><u>Finding #3</u></b>                      Department policy requires body worn cameras to be activated prior to initiating a detention or arrest and remain on until involvement in the arrest or detention has concluded. In the 20 incidents reviewed involving 69 officers, eight of the 69 officers’ body worn cameras were not activated for the entire time required by policy. Additionally, there were three officers whose body worn cameras did not fully capture the arrested subject during the transportation of that subject.</p>	<p><b><u>Recommendation #2</u></b>                      The Department should provide guidance on the placement of BWCs during transport of detainees/arrestees.</p> <p><b><u>Recommendation #3</u></b>                      The Department should also assess the feasibility of outfitting patrol cars with in-car video cameras. In-car video cameras would capture additional angles not captured by BWCs, including the rear seat of the transporting vehicle.</p>

## Conclusion

Since the Department identified issues with use of force reporting in late 2018 and responded with training and clarified direction on reporting, there has been a dramatic increase in the reported uses of force. There were 633 uses of force in 2018, compared to 1,557 uses of force in 2019 – an increase of 146%. There was a 224% increase in the number of reported pointing of a firearm (383 in 2018 versus 1,240 in 2019). This review identified one incident that had a reportable pointing of a firearm that went unreported. While it is important for the Department to ensure all use of force is properly reported, the Department has made improvement in its reporting practices.

Recent revisions to the Department's force policies will likely result in even higher numbers of reported use of force, as the reporting requirements have been expanded. The OIG will monitor the numbers and conduct another inspection after the new policy has been fully trained and implemented.

# Review of the Oakland Police Department's Documentation of Its Managed Confidential Informants

By: Auditors Charlotte Hines, Rebecca Johnson and Kristin Burgess-Medeiros

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## Objectives

1. For all confidential informants signed up on or after January 1, 2017, determine whether the Managing Officers verified the identity of their informants and evaluated the benefit and value of utilizing them.
2. For all confidential informants with an initial start date on or after January 1, 2017, determine whether the Managing Officers informed the confidential informants of their responsibilities as informants.
3. For all confidential informants with an initial start date on or after January 1, 2017, determine whether the Managing Officers' supervisors prepared a *Prospective Informant Review Record* and documented their approval of the confidential informants.
4. For all confidential informants with an initial start date on or after January 1, 2017, determine whether the Informant Program Coordinator approved the confidential informants prior to the Managing Officers' use of the informants.
5. During the audit period of January 1, 2017 to September 30, 2019, verify the Managing Officers contacted their respective confidential informants at least once every 90 days to update and maintain the informants' active status.
6. During the audit period of January 1, 2017 to September 30, 2019, verify Reviewing Supervisors met with their respective Managing Officers on a quarterly basis to review their confidential informants' criminal history and to discuss their informants' cooperation agreement.
7. During the audit period of January 1, 2017, to September 30, 2019, if a confidential informant was paid for information or assistance, determine whether the respective Managing Officer documented on an *Informant Payment Record* and/or an *Informant Chronological Activity Record* all payments made to the confidential informant and the name(s) of all person(s) present who witnessed the payment.
8. For deactivated confidential informants, determine whether the respective Managing Officers documented their reasons for deactivating the informants.

## Recommendations

The Office of Inspector General made seven recommendations: two related to policy revisions; three related to policy reinforcement; one related to a form revision; and one related to OPD's practice. Pages 33 and 34 include a detailed list of the seven recommendations.

## Reference

- Departmental General Order O-4, *Informants*, effective date June 6, 2014

## Executive Summary

On October 17, 2019, the Office of Inspector General initiated its 2019 confidential informant review, with an emphasis on the Oakland Police Department's documentation of its management of confidential informants. Confidential informants assist law enforcement by providing information and/or assistance concerning criminal activity in exchange for financial compensation or consideration in their pending criminal cases. Upon conclusion of the review, the OIG had ten primary findings, eight additional observations, and seven recommendations.

There has been a significant decrease in the number of confidential informants the Department has signed up over the past five years. Since 2015, the Department has gone from annually signing up 61 confidential informants to annually signing up only three confidential informants (Finding #1).

There were three confidential informants with an initial start date on or after January 1, 2017, and there was evidence to substantiate the respective Managing Officers verified the identity of the informants and evaluated the benefit and value of utilizing them. In addition, the respective Managing Officers documented they informed the three confidential informants of their responsibilities as informants (Findings #2 and #3).

On the other hand, the Managing Officers' Reviewing Supervisors did not document their respective approval of the use of the three confidential informants on the *Prospective Informant Review Records*. In short, the form includes a checklist to remind supervisors to verify/evaluate that the Managing Officer has the necessary skills and experience to manage the prospective informant; the prospective informant is suitable for use; and if there is any undue risk to the public if the prospective informant is released. Boxes on the forms were checked but the supervisors did not document their approval on the forms as required by policy. The Department's Reviewing Supervisors also did not document their verifications or evaluations of the confidential informants or the Managing Officers (Finding #4).

Of the three confidential informants signed up during the audit period of January 1, 2017 to September 30, 2019, the Informant Program Coordinator (IPC) approved two prior to the respective Managing Officers utilizing them. In the remaining instance, the IPC's approval date was after the date the Managing Officer initially utilized the confidential informant. According to the Department's policy, in the event a law enforcement response is necessary prior to the IPC's final review and approval, the confidential informant may be utilized with explicit and documented approval of the immediate supervisor. The Auditor noted a statement on the *Informant Chronological Activity Record* from the Reviewing Supervisor, "...reviewed and approved informant." However, there was no documentation indicating the need to use the informant prior to the IPC's approval (Finding #5).

To maintain an active status, the Department requires a Managing Officer to contact the confidential informant at least once every 90 days. During the audit period of January 1, 2017 to September 30, 2019, there were six active confidential informants, and there was documentation to substantiate that three of the six confidential informants were contacted by their respective Managing Officers at least once every 90 days. Three of the six active confidential informants were not contacted by their respective Managing Officers at

least once every 90 days. Additionally, the type of contact (i.e. face-to-face meetings, phone calls, texts, etc.) the Department's Managing Officers are having with confidential informants is not documented (Findings #6 and #7).

In most instances, the Reviewing Supervisors met with the respective Managing Officers each quarter during the audit period of January 1, 2017 through September 30, 2019 (Finding #8).

As mandated by policy, the respective Managing Officers documented on an *Informant Payment Record* and/or an *Informant Chronological Activity Record* all payments made to the confidential informants during the audit period of January 1, 2017 to September 30, 2019. They also documented the name(s) of all person(s) present who witnessed the payment (Finding #9).

Managing Officers are properly documenting their reasons for deactivating confidential informants on the *Informant Deactivation Form* as mandated (Finding #10).

Based on the review's findings and additional observations, the Office of Inspector General made seven recommendations: two related to policy revisions; three related to policy reinforcement; one related to a form revision; and one related to the Department's practice. Pages 33 and 34 include a detailed list of the six recommendations.

## Background

The Oakland Police Department manages confidential informants who provide information and/or assistance concerning criminal activity to law enforcement in *two or more* investigations. Informants act as agents of the Oakland Police Officers. They assist law enforcement in exchange for financial compensation or consideration in their pending criminal cases.

A Managing Officer is any officer using a managed confidential informant to provide law enforcement with information and/or assistance regarding suspected criminal activity.<sup>11</sup> If the Managing Officer desires to have a confidential informant assist in criminal investigations, the Department requires the Managing Officer to analyze the risks and benefits of using the prospective informant and evaluate the informant's reliability. The Managing Officer satisfies these requirements by obtaining a current photograph of the prospective informant, and verifying and evaluating the informant's criminal history via review of records from the California Consolidated Records Information Management System, the California Department of Justice Wanted Persons System, the Western States Information Network, and the California Criminal Identification and Information System. The Managing Officer must also review and evaluate the prospective informant's Department of Motor Vehicles records. Finally, the Managing Officer completes an *Informant Personal Record*, which is a form that documents the prospective informant's contact information (e.g., telephone numbers and addresses, relatives, etc.), probation/parole status, their motivation for providing information and/or assistance related to criminal activity, and an evaluation of the informant's reliability. This form is signed by the Managing Officer and the Reviewing Supervisor.<sup>12</sup>

The Managing Officer is also responsible for ensuring the prospective informant is aware of his/her responsibilities. The Department requires the following two forms to be completed, and signed by the prospective informant, the Managing Officer, a Witness Officer, and the Reviewing Supervisor:

### *Informant Agreement Record*

This form documents the agreement between the confidential informant and the Managing Officer, which includes the confidential informant's offer to cooperate with Department in a criminal investigation(s).

### *Informant Regulations Record*

This form is attached to the *Informant Agreement Record* and documents the regulations the confidential informant must follow to remain an informant for the Department. For example, the form states the confidential informant agrees not to possess any illegal weapons or firearms, follow the instructions and be truthful with his/her Managing Officer, and not use his/her association with Department for personal gain.

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<sup>11</sup> Departmental General Order O-4, pg. 1

<sup>12</sup> *Ibid.*, pgs. 6-8

Once the Managing Officer completes the printouts and forms, he/she inserts all documents in a file and forwards it to his/her Reviewing Supervisor, who also evaluates the prospective informant. On a *Prospective Informant Review Record*, the supervisor is required to document his/her evaluation of the risks and benefits of using the prospective informant and evaluate the informant's reliability. The supervisor is also required to document that the Managing Officer has the necessary skills and experience to manage the prospective informant, the prospective informant is suitable for use, and evaluate any undue risk to the public if the prospective informant is released from custody.

Whether the Reviewing Supervisor approves or disapproves the prospective confidential informant, the supervisor is required to forward the file to the Department's Intelligence Unit Supervisor, who serves as the Informant Program Coordinator (IPC). Upon approval from the IPC, the IPC provides the Managing Officer with a new or existing informant file number. The IPC is responsible for maintaining and storing all the original paper documents in the informant file as well as scanned copies electronically on a secure server. The IPC is responsible for maintaining all confidential informant files in a secure and locked location.<sup>13</sup>

#### **Most Current Audit**<sup>14</sup>

In the [April 2017 Monthly Progress Report](#), the Office of Inspector General completed its last follow up review of Confidential Informants. One of the significant findings of the review indicated that despite meetings held to address and revise the informant policy, the finalized version had yet to be adopted. The Auditor determined the delay was due to shifting priorities and limited resources allotted to update a massive number of Department policies and procedures. The Auditor also determined that the overhaul of approximately 150 individual policies was assigned to one professional staff -- in addition to his regular duties. Thus, the Auditor made the following recommendations:

1. Allocate the necessary resources (e.g., possibly summer interns or police cadets) to work toward prompt adoption of outstanding draft policies prepared by the Lexipol Policy Working Group, including but not limited to Policy 603.

#### **Status**

On December 5, 2019, the Auditor sent an email to the Sergeant of the Department's Training Division, Policy & Publication Unit, requesting an update of the status of the recommendation in the *April 2017 Monthly Progress Report*. In response to the email sent to the Training Division, Policy & Publication Unit, the Sergeant replied, "Unfortunately, there has been no progress toward moving forward with the policy you referenced. The Research and Planning Unit still has only two employees and has had multiple requests and tasking for high-priority items which have continued to keep us at capacity during the past two years."

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<sup>13</sup> Ibid., pgs. 2-3.

<sup>14</sup> The Office of Inspector General began its next scheduled review of confidential informants in November 2017. However, the review was postponed because the Department continued to struggle to clear its backlog of policy revisions and updates.

2. Policy 603 should be presented to the Chief of Police or her designee no later than July 2017.

Status

Because there has been no progress toward moving forward with the policy, the former Chief of Police, or her designee, has not been presented with a draft policy.

## Scope/Population and Methodology

See **Attachment A** for the scope, population, and methodology.

## Findings

### Finding #1

**There has been a significant decrease in the number of confidential informants signed up by Oakland Police Officers in recent years.**

During the entrance conference held on November 5, 2019, the Auditors met with the Informant Program Coordinator (IPC). When asked how many active confidential informant files there are currently and how many active files there were in the past, the IPC stated there are only six active informant files and that fewer confidential informants are being signed up. The IPC gave the Auditors a breakdown of the number of confidential informants signed up from 2015 to September 30, 2019.

**Table 1: Number of Confidential Informants Signed-Up 2015 to September 30, 2019**

Year	Number of Confidential Informants Signed-up
2015	61
2016	58
2017	50
2018	27
2019	3

The above table indicates the number of confidential informants managed by the Department over the last five years. Two of the six active informants in 2019 were signed up in 2018; one was signed up in 2017. The remaining three active informants signed up prior to 2015, one in 2010 and two in 2014. Informant sign-ups decreased 46% between 2017 and 2018 and decreased by 89% between 2018 and 2019. The current number of active confidential informants (six) managed by the Department reflects a significant decline in the last five years.

The number of Areas/Units participating in signing-up confidential informants decreased 25% between 2017 and 2018 and decreased 67% between 2018 and 2019 (see Table 2 below).



**Table 2: Areas/Units Participating in Informant Sign-Ups as of September 30, 2019**

Area/Unit	Areas/Units that Signed-up Confidential Informants in 2017	Areas/Units that Signed-up Confidential Informants in 2018	Areas/Units that Signed-up Confidential Informants in 2019
Ceasefire	√	√	√
Patrol	√	√	No
CRT 1	√	√	No
CRT 2	√	√	No
CRO 3 / CRT 3	√	√	√
CRO 4 / CRT 4	√	No	No
CRT 5	√	√	No
CRT 6	√	No	No
<b>TOTAL</b>	<b>8</b>	<b>6</b>	<b>2</b>

Five of the six active confidential informants are managed by officers assigned to the Ceasefire Unit. The remaining active confidential informant is managed by an officer in Bureau of Field Operations, Area 3 - Crime Reduction Team.

**Additional Observation**

**The Department provides the proper physical security for all confidential informant files.**

The Department requires that all informant files shall be maintained in a secure location under the control of the Informant Program Coordinator and that the IPC shall maintain a secured drop box outside of the Intelligence Unit where officers may drop their paperwork.<sup>15</sup> The auditor observed that the confidential informant files were secured in a locked file cabinet located in the Intelligence Unit’s secured office only accessible by key. In addition, a secured drop box was provided for paperwork from Managing Officers located near the outside entrance to the Intelligence Unit.

**Finding #2**

**There were three confidential informants with an initial start date on or after January 1, 2017, and evidence substantiated that the respective Managing Officers verified the identity of each of the informants and evaluated the benefit and value of utilizing these informants.**

In 2018, the Office of Inspector General did not conduct an annual audit of confidential informants. Therefore, the Auditor reviewed all active confidential informant files with an initial start date on or after January 1, 2017 to determine whether the Managing Officers verified the identity of the informants and evaluated the benefit and value of utilizing them.

There were three confidential informants with an initial start date on or after January 1, 2017, and each confidential informant file included the documents below, indicating that each respective Managing Officer

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<sup>15</sup> Ibid, pg.13

considered any risk to the public by utilizing the person; the person's criminal history; circumstances of the person's current arrest or charges; and the person's reliability and dependability.

#### Confidential Informant File Documents

- A current photograph of the person
- The person's Department of Motor Vehicles printout
- Printouts of the person's criminal history, including circumstances of the person's most current arrest or charges at the time the person became a prospective confidential informant
- An assessment of the person's reliability documented on the *Informant Personal Record* form

#### **Finding #3**

**The respective Managing Officers documented they informed the three confidential informants of their responsibilities as informants.**

Upon review of the files for the three confidential informants with an initial start date on or after January 1, 2017, the Auditor noted that each file included a completed *Informant Regulations Record* and a completed *Informant Agreement Record*. Both forms were completed and signed and dated by the respective confidential informant, the Managing Officer, a Witness Officer, and a Reviewing Supervisor. See **Appendix B** to view a copy of the confidential informant's responsibilities.

#### **Finding #4**

**The Managing Officers' Reviewing Supervisors prepared *Prospective Informant Review Records* but did not document their respective approval of the use of the three confidential informants on the forms.**

The Department requires Reviewing Supervisors to evaluate the benefit and value of utilizing the prospective informants by considering the risk to the public, the informants' criminal history, circumstances of a current arrest or pending criminal charges and the informants' reliability and dependability. The supervisors are also required to consider the Managing Officers' ability to manage a confidential informant. Finally, the supervisors are required to review the file completed by the Managing Officer to ensure all the prospective informant's information is complete and current, and that the forms are signed as required; and prepare a *Prospective Informant Review Record* (see **Appendix B** for copy of the form), indicating approval or denial.<sup>16</sup>

Upon review of the files for the three confidential informants with an initial start date on or after January 1, 2017, the Auditor noted that each file included a completed *Prospective Informant Review Record*, prepared by the Managing Officer's Reviewing Supervisor. Each form was signed and dated by the respective Reviewing Supervisor. However, in the "Notes" section of the form, none of the Reviewing Supervisors documented his/her approval of the prospective confidential informants.

The form does not have a section to explicitly document approval, nor does it provide instructions on what additional documentation should be included in the notes section. The lack of instructions on the form may have contributed to reviewing supervisors' not documenting approval. Without clear documentation of

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<sup>16</sup> Departmental General Order O-4, pgs. 7 and 8.

approval by the Reviewing Supervisors, the only way to confirm that supervisors approved the informants would be to interview the reviewing supervisors.

### **Additional Observations**

#### **The Department's Reviewing Supervisors do not comment on their verifications or evaluations upon vetting the prospective informant.**

The Auditor noted that the *Prospective Informant Review Record* includes boxes that must be checked by the Reviewing Supervisor to indicate he/she ensured the following steps were completed:

- The prospective informant's identity was properly verified
- The Managing Officer conducted an inquiry on the prospective informant in the Western State Information Network<sup>17</sup>
- Evaluated the prospective informant's criminal history and determined if the informant is suitable for use as an informant
- Evaluated the information provided by the prospective informant against the current criminal case
- Evaluated any undue risk to the public if the prospective informant is released [from custody]
- Evaluated any current information indicating the prospective informant is unreliable

These boxes were checked on all three forms, and in the "Notes" section of the form, there were no comments documented on the forms completed by two respective Reviewing Supervisors. However, the last Reviewing Supervisor made one comment, which reads, in part, "...contacted Western States Information Network<sup>18</sup> and conducted a check on...which came back clear..." Absent documentation that a prospective confidential informant was vetted and assessed, the Reviewing Supervisor must be interviewed to verify that the Managing Officer and/or Reviewing Supervisor conducted the appropriate assessment. The checked boxes provide scant suggestion that officers and supervisors assessed a prospective informant according to protocol.

#### **The Department requires its Reviewing Supervisors to conduct additional evaluations prior to approving an informant. However, the Department's Reviewing Supervisors do not comment on their evaluations.**

The Auditor noted that in addition to verifying/evaluating the same information as the Managing Officer, the *Prospective Informant Review Record* includes boxes that must be checked to indicate the Reviewing Supervisor ensured the following additional steps were completed:

- The prospective informant was properly classified as an informant
- Evaluated any undue risk to the prospective informant by immediately releasing the informant from custody
- Evaluated if the prospective Managing Officer has the necessary skills and experience to manage the informant

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<sup>17</sup> The Western State Information Network is a law enforcement database that maintains a person's criminal record history and any outstanding warrants in the states of Alaska, California, Hawaii, Oregon and Washington.

<sup>18</sup> A regional information sharing system used to share criminal investigation information amongst the states of Alaska, California, Hawaii, Oregon, and Washington.

These boxes were checked on all three forms. However, in the “Notes” section of the form, there were no comments related to the above criteria documented on the forms completed by the three respective Reviewing Supervisors. Absent documentation that the prospective confidential informant and the Managing Officer were vetted and assessed, the Reviewing Supervisor must be interviewed to verify he/she conducted the appropriate assessments. The checked boxes provide scant suggestion that supervisors assessed a prospective informant and the Managing Officer according to protocol.

#### **Error on Prospective Informant Review Record**

The form includes a box that must be checked to indicate the Reviewing Supervisor verified the “prospective informant” is in compliance with California Penal Code Section 142. Upon review of the penal code, the Auditor noted the law refers to the actions of police officers and not the prospective informant.

Penal Code 142 (a), states, in part, “Any **peace officer** who has the authority to receive or arrest a person charged with a criminal offense and willfully refuses to receive or arrest that person shall be punished...”

Because the form as written provides no indication of what the Reviewing Supervisor is verifying relative to the penal code, the Auditor deemed the language vague and the verification request deficient in design.

#### **Finding #5**

**There were three confidential informants approved during the audit period of January 1, 2017 to September 30, 2019. The Informant Program Coordinator approved two of the three confidential informants prior to the respective Managing Officers utilizing them.**

The Department requires a Managing Officer to forward his/her confidential informant documentation to his/her Reviewing Supervisor for approval or denial. The Reviewing Supervisor, upon approval or denial of the confidential informant, is required to forward the documentation to the Informant Program Coordinator (IPC) for approval or denial. If the IPC approves the confidential informant, the IPC provides the Managing Officer with a new or existing Informant File Number.<sup>19</sup>

There were three confidential informants approved during the audit period of January 1, 2017 to September 30, 2019. Upon comparing the date the IPC approved the informant to the date the Managing Officer documented on the *Informant Chronological Activity Record* as his/her initial utilization of the informant, the Auditor noted that in two instances the IPC’s approval date was prior to the date the Managing Officer initially utilized the confidential informant. In the remaining instance, the IPC’s approval date was after the date the Managing Officer initially utilized the confidential informant.

According to Department’s policy, in the event a law enforcement response is necessary, prior to the IPC’s final review and approval, the confidential informant may be utilized with explicit and documented approval of the immediate supervisor. The Auditor noted a statement on the *Informant Chronological Activity Record* from the Reviewing Supervisor, “...reviewed and approved informant.” However, there was no documentation indicating the need to use the informant prior to the IPC’s approval. If the Department’s

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<sup>19</sup>ibid., Pg. 6

Reviewing Supervisor does not include wording that states a need to use the informant prior to the IPC's approval, there is no documented evidence that the Managing Officer received approval from the Reviewing Supervisor to use the informant prior to the IPC's approval.

In addition, the Auditor noted that the Reviewing Supervisor documented approval to use the confidential informant prior to the IPC's final approval on June 4, 2019. Yet, the Reviewing Supervisor did not document approval of the informant on the *Prospective Informant Review Record*, which is dated June 7, 2019. Documenting the approval on the form would have indicated that the Reviewing Supervisor approved the confidential informant after verifying and evaluating the required information specified in Finding #4. Subsequently, the IPC approved the informant on June 22, 2019.

#### **Finding #6**

**During the audit period January 1, 2017 to September 30, 2019, there were six active confidential informants, and there was documentation to substantiate that three confidential informants were contacted by their respective Managing Officers at least once every 90 days. However, the type of contact the Department's Managing Officers had with confidential informants was not documented.**

For a confidential informant's status to remain active, the Department requires the Managing Officer to contact the confidential informant via face to face meetings, telephone calls, email, text messages, and/or written correspondence, at least once every 90 days. The Managing Officer's contact with the informant must be documented on the Informant Chronological Activity Record (ICAR).<sup>20</sup>

There were six active confidential informants during the audit period of January 1, 2017 to September 30, 2019, and upon reviewing the ICARs in their respective files, the Auditor noted that three confidential informants were contacted at least once every 90 days by their respective Managing Officers. However, the Managing Officers seldom documented the type of contact (i.e., face to face meeting, telephone calls, email, etc.) they had with confidential informants. For example, one Managing Officer documented contact with a confidential informant 10 times within two 90-day periods, and in two instances, wrote "Spoke to CI." Another Managing Officer contacted a confidential informant 15 times within four 90-day periods, and in 13 instances wrote, "CI continues to provide info and continues to check in with me." A third Managing Officer contacted a confidential informant 30 times within eight 90-day periods, and in 24 instances, wrote one of four statements: (1) "CI contacted me and provided information"; (2) "Requested info from CI"; (3) "Spoke with CI"; and (4) "CI provided info regarding ...."

The Department's policy explicitly states, "The Managing Officer shall make an ICAR entry within seven calendar days whenever pertinent investigative face-to-face meetings, phone calls, email messages, text messages, and/or written correspondence contacts are made with the confidential informant. In addition, the Department requires a planned in-person meeting in a public place between the Managing Officer and the confidential informant while in the presence of at least one other law enforcement officer or an officer of the court."<sup>21</sup> If the Department's Managing Officers do not document the frequency and type of contact with the confidential informants, it prohibits the Department from monitoring how often and under what

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<sup>20</sup> Ibid, pgs. 9 and 10

<sup>21</sup> Ibid, pgs. 9 and 10.

circumstances Managing Officers meet with confidential informants and, when necessary, adjusting the frequency or circumstances of those meetings if they pose a threat to the Managing Officers' or informants' safety.

#### **Additional Observation**

##### **Unable to determine whether the Department's Managing Officers are making entries on *the Informant Chronological Activity Record* within seven calendar days upon contact with confidential informants.**

Upon review of the Informant Chronological Activity Record, the Auditor noted that the form has three columns, *Date/Time*, *Activity*, and *Serial No.* When the Department's Managing Officers enter the Date/Time, the Auditor is unable to determine whether it is the date and time the Managing Officers made the entry about his/her contact with the confidential informant, or whether it is the Date/Time the Managing Officer met with the informant. There should be two dates for each entry for the Department to determine whether its Managing Officers are adhering to policy. There should be a date/time entered on the ICAR that shows when the Managing Officer made the entry and there should be a date/time in the "Activity" section to show the date/time the Managing Officer made contact (i.e. face to face meeting, phone call, email message, etc.) with the informant.

The Auditor, wanting to know more about the seven-day requirement, asked the Informant Program Coordinator (IPC), via email, "Do you know the reason for the specified time requirement in the policy?" The IPC responded, "I believe the seven days is for several reasons: 1) Better to document it in a timely manner and not forget; 2) Similar to any policy, we place timelines so we can be accountable. Remember, the Informant Chronological Activity Record is for a couple of things. A judge may want to review it one day to see the timing of an event in reference/regards to a criminal case. The confidential informant may file a complaint and it can assist us in the Internal Affairs administration process. A civil lawsuit may occur, and the City Attorneys may ask about certain dates." Based on the IPC's response, the Auditor reiterates that there should be two dates for each entry for the Department to determine whether its Managing Officers are adhering to policy.

#### **Finding #7**

##### **Three of the six active confidential informants were not contacted by their respective Managing Officers at least once every 90 days.**

In one instance, there were nine 90-day periods in which the confidential informant should have been contacted, but the Managing Officer contacted the informant in only six of the nine 90-day periods. The Auditor did note that the Managing Officer contacted the informant 22 times within the six 90-day periods and in 18 instances, he/she wrote one of five statements: (1) "CI contacted me"; (2) "CI advised me"; (3) "CI provided information"; (4) "CI notified" and (5) "CI informed."

In the second instance, there were eleven 90-day periods in which the confidential informant should have been contacted, but the Managing Officer contacted the informant in only nine of the eleven 90-day periods. The Auditor did note that the Managing Officer contacted the informant 27 times within the nine 90-day periods. In one instance, the Managing Officer wrote "CI stated" and in another instance it was documented a face to face meeting occurred, however a witness officer was not documented.

In the third instance, there were also eleven 90-day periods in which the confidential informant should have been contacted, but the Managing Officer contacted the informant in only seven of the eleven 90-day periods. The Auditor did note the Managing Officer contacted the informant 11 times within the seven 90-day periods and in three instances, he/she wrote "CI provided info." As of September 30, 2019, this informant had not been contacted since the first quarter in 2019. There was no documented explanation for any of the delays.

If the Department's Managing Officers do not contact their informants at least once every 90 days, the Department has no way to determine whether the informants are still willing to provide information and/or assistance concerning criminal activity or whether the informant should be deactivated.

### **Additional Observation**

#### **One confidential informant was not deactivated as mandated by policy.**

Departmental General Order 0-4, Informants, Section IX, Subsection C1, states, in part, "The Managing Officer shall deactivate an informant when there has been no contact with the informant within 180 days." As stated above, there was one confidential informant who had not been contacted by the Managing Officer since the first quarter of 2019. Based on the audit period, there had been 263 days since the Managing Officer documented contact with the informant and therefore, according to policy, this informant should have been deactivated. The Auditor noted that this file has not been deactivated and is still maintained in the Department's active informant files, and there was no completed *Informant Deactivation Form* in the file.

### **Finding #8**

#### **In most instances, the Reviewing Supervisors met with the respective Managing Officers each quarter during the audit period of January 1, 2017 through September 30, 2019.**

The Department requires each Managing Officer's Supervisor to meet with the Managing Officer on a quarterly basis to review the confidential informant's criminal history via a current printout of the Wanted Persons System, Department of Motor Vehicles, Consolidated Records Information Management System and the Criminal Identification and Information and discuss the confidential informant cooperation agreement. Further, this meeting is to be documented in the March, June, September, and December *Informant Chronological Activity Records*.<sup>22</sup>

To verify Reviewing Supervisors met with their Managing Officers on a quarterly basis to review confidential informants' criminal histories and to discuss the informants' cooperation agreements, the Auditor sought documentation on the *Informant Chronological Activity Records* in the months of March, June, September, and December during the audit period of January 1, 2017 to September 30, 2019 to substantiate the meetings and the discussions. Specifically, the Auditor sought wording that indicated the Reviewing Supervisors reviewed the following information:

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<sup>22</sup> *ibid*, pgs. 8 and 15.

- An updated Wanted Persons System printout (which ensures the confidential informant is not wanted for a crime);
- An updated Department of Motor Vehicles printout (to ensure the confidential informant has a valid driver’s license if the informant drives a vehicle);
- An updated Consolidated Records Information Management System printout (a county database that maintains records of criminal activity); and
- An updated Criminal Identification and Information printout (a state law enforcement database that maintains records of criminal activity).

Also, the Auditor sought wording on the ICAR that indicated the Reviewing Supervisor discussed with the Managing Officer the confidential informant’s progress in meeting his/her responsibilities in the *Informant Agreement Record*.

In most instances, the Reviewing Supervisors met with the respective Managing Officers each quarter as required by policy. The Managing Officers documented the results of the queries of the four databases and the meeting/discussion between the Managing Officer and Reviewing Supervisor on their respective ICARS. The Auditor noted documentation issues on ICARs in two confidential informant files (see Table 3, CI #3 and CI #6), but they were not significant since there is no pattern showing the Managing Officers and Reviewing Supervisors are not regularly reviewing the confidential informants’ respective criminal history and are not regularly discussing the confidential informants’ progress.

**Table 3: Quarterly Reviews and Discussions for period of January 1, 2017 through September 30, 2019.**

CI#	Number of Applicable Quarters	Wanted Persons System Printout	Dept. Motor Vehicles Printout	Consolidated Records Information Management System Printout	Criminal Identification and Information Printout	Supervisor Meeting / Discussion	Comments
CI #1	3	3 Quarters	3 Quarters	3 Quarters	3 Quarters	3 Quarters	None
CI #2	6	6 Quarters	6 Quarters	6 Quarters	6 Quarters	6 Quarters	None
CI #3	9	8 Quarters	8 Quarters	8 Quarters	8 Quarters	9 Quarters	No documented printouts for quarter ending December 2018.
CI #4	11	11 Quarters	11 Quarters	11 Quarters	11 Quarters	11 Quarters	None
CI #5	11	11 Quarters	11 Quarters	11 Quarters	11 Quarters	11 Quarters	None
CI #6	11	10 Quarters	9 Quarters	10 Quarters	10 quarters	10 quarters	No documented evidence of DMV printout in March 2018. In addition, no documented printouts or meeting/discussion for the quarter ending December 2018.



### **Additional Observation**

#### **One Managing Officer managed two confidential informants.**

There were six active confidential informants, and there were five Managing Officers. One Managing Officer was responsible for two confidential informants. The remaining four Managing Officers were each responsible for ensuring one confidential informant's status remained active.

### **Finding #9**

#### **All confidential payments were documented as mandated by policy.**

The Department mandates that whenever an informant is paid the Managing Officer shall ensure that at least one other law enforcement officer is present to witness the payment. The Managing Officer shall document payments to an informant and document the names of persons present who witness the payment in the *Informant Payment Record*<sup>23</sup> and/or on the *Informant Chronological Activity Record*.<sup>24</sup>

The auditor reviewed the six active confidential informant files and noted three of the files involved monetary compensation. Two payments were documented on the *Informant Chronological Activity Record* and eight payments were documented on the *Informant Payment Record*. All ten payments documented the witness present. In addition, the payments documented on the *Informant Payment Record* also included the signature of the confidential informant acknowledging receipt of the payment as required on the form.

### **Additional Observation**

The *Informant Payment Record* provides for the signature of the confidential informant to acknowledge the receipt of payment, but the *Informant Chronological Activity Record* does not. Requiring the confidential informant to sign the ICAR to document acknowledgement of payment provides the Department documented evidence that the informant received payment.

### **Finding #10**

#### **Managing Officers are properly documenting their reasons for deactivating confidential informants on the *Informant Deactivation Form* as mandated.**

The Department requires its Managing Officers to classify an informant as "inactive" when necessary and notify the Informant Program Coordinator (IPC) of the change in status by preparing an *Informant Deactivation Form*, detailing the circumstances and hand-delivering the form to the Informant Program Coordinator immediately.<sup>25</sup> The form has to be signed and dated by the person recommending the deactivation of the informant and the IPC.

The auditor reviewed 37 deactivated confidential informant forms which consisted of 25 confidential informants deactivated in 2018 and 12 confidential informants deactivated in 2019. The Managing Officers' reasons for deactivation were entered on the forms as mandated per Department policy. The table below shows the reasons given for deactivation.

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<sup>23</sup> ***Informant Payment Record (TF-3361)*** – completed when payment is made to a confidential informant. Form includes an informant payment receipt section which requires the informant name, signature, amount and date.

<sup>24</sup> Ibid, pg.11

<sup>25</sup> Ibid, pg. 11-12

**Table 4: Reasons for Deactivation of Confidential Informants**

Reasons for Deactivation	Number of Occurrences
Contract Completed	3
CI In-Custody	3
Undesirable	3
Unreliable	3
Unsuitable	16
Other (i.e. Managing Officer reassigned, Managing Officer out on impending leave, Managing Officer does not wish to continue, unable to contact, CI does not wish to continue, CI stopped communicating and returning phone calls).	9
<b>Total</b>	<b>37</b>

The Auditor noted on one of the *Informant Deactivation Forms* the Informant Program Coordinator signed the form but did not date it.

## Findings and Recommendations

### OIG Findings

### OIG Recommendations

<p><b><u>Finding #4</u></b>                      The Managing Officers’ Reviewing Supervisors prepared <i>Prospective Informant Review Records</i> but did not document their respective approval of the use of the three confidential informants on the forms.</p> <p><b><u>Finding #4 Additional Observations</u></b>                      The Department also requires the respective Reviewing Supervisor to verify the identity of the informant and evaluate the benefit and value of utilizing the person. However, the Department’s Reviewing Supervisors do not comment on their verifications or evaluations.</p> <p>The Department requires its Reviewing Supervisors to conduct additional evaluations (i.e., Managing Officer’s abilities; risks to the informant, etc.) prior to approving an informant. However, the Department’s Reviewing Supervisors do not comment on their evaluations.</p> <p><b>Error on Prospective Informant Review Record</b></p>	<p><b><u>Recommendation #1</u></b>                      The Department should revise the policy, incorporating language that mandates its Reviewing Supervisors to document the outcome of their verifications, evaluations, and/or assessments.</p> <p><b><u>Recommendation #2</u></b>                      The Department should revise the <i>Prospective Informant Review Record</i> form to include, for example, a box to check, stating that “I approve this CI” and instructions that the Supervisors shall include a narrative in the Notes section documenting their evaluation.</p> <p><b><u>Recommendation #3</u></b></p>
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**OIG Findings**

**OIG Recommendations**

The form includes a box that must be checked to indicate the Reviewing Supervisor verified the “prospective informant” is in compliance with California Penal Code Section 142. Upon review of penal code, the Auditor noted the law refers to the actions of police officers and not the prospective informant.

The Department should revise the policy, incorporating language that clarifies what is expected of the Reviewing Supervisor in relation to Penal Code 142.

**Finding #6**

During the audit period January 1, 2017 to September 30, 2019, there were six active confidential informants, and there was documentation to substantiate that three confidential informants were contacted by their respective Managing Officers at least once every 90 days. However, the type of contact the Department’s Managing Officers are having with confidential informants is not documented.

**Finding #6 Additional Observation**

Unable to determine whether the Department’s Managing Officers are making entries on *the Informant Chronological Activity Record (ICAR)* within seven calendar days upon contact with confidential informants because there is only one date and time entered on the ICAR.

**Recommendation #4**

The Department should ensure its Managing Officers document the type of contact (i.e. face-to-face meeting, email, text, phone call, etc.) they have with confidential informants.

**Recommendation #5**

The Department should ensure there is a date/time entered on the ICAR that shows when the Managing Officer made the entry and there is a date/time in the “Activity” section of the ICAR to show the date/time the Managing Officer made contact (i.e. face to face meeting, phone call, email message, etc.) with the informant.

**Finding #7**

Three of the six active confidential informants were not contacted by their respective Managing Officers at least once every 90 days.

**Finding #7 Additional Observation**

One confidential informant was not deactivated as mandated by policy. There had been 263 days since the Managing Officer documented contact with the informant, and according to policy, the Department requires its Managing officers to deactivate an informant when there has been no contact with the informant within 180 days.

**Recommendation # 6**

The Department should ensure its Managing Officers are contacting confidential informants every 90 days to update the informants’ active status.

**Recommendation #7**

The Department should ensure its Managing Offices deactivate confidential informants when there has been no contact with them within 180 days.

# APPENDIX A

## Scope/Population

The period for this review was January 1, 2017 through September 30, 2019. The review focused on the Oakland Police Department's management of confidential informants.

### **Population/Sample**

The population consisted of all active confidential informant files during the review period. There was a total of six active confidential informant files during the review period.

The auditor reviewed 37 deactivated confidential informant forms which consisted of 25 confidential informants deactivated in 2018 and 12 confidential informants deactivated in 2019.

## Methodology

To conduct the audit, the Auditors took the following steps:

### **Policy Review**

Reviewed the Oakland Police Department's policy and procedures related to the management of confidential informants: Departmental General Order 0-4, effective June 6, 2014.

### **Interview**

Met with Informant Program Coordinator to gain a better understanding of the Department's current practices for managing confidential informants.

### **Access to Confidential Informant Files**

Requested and received from the Informant Program Coordinator access to the Department's active and deactivated confidential informant files.

### **Objective 1**

For all confidential informants with an initial start date on or after January 1, 2017, to determine whether the Managing Officers verified the identity of the informants and evaluated the benefit and value of utilizing them, the Auditor sought documented evidence that the Managing Officers considered the risk(s) to the public by utilizing the person, the person's criminal history, circumstances of the person's current arrest or charges, and the person's reliability and dependability. Specifically, the Auditor sought the following documented evidence in each confidential informant file:

- A current photograph of the person;
- The person's Department of Motor Vehicles printout;
- Printouts of the person's criminal history, including circumstances of the person's most current arrest or charges at the time the person became a prospective confidential informant;

- An assessment of the person's reliability documented on the *Informant Personal Record* form.

### **Objective 2**

For all confidential informants with an initial start date on or after January 1, 2017, to determine whether the Managing Officers informed the confidential informants of their responsibilities as informants, the Auditor sought the following two forms in each confidential informant file:

- A completed *Informant Regulations Record*; and
- A completed *Informant Agreement Record*.

### **Objective 3**

For all confidential informants with an initial start date on or after January 1, 2017, to determine whether the Managing Officers' supervisors prepared a *Prospective Informant Review Record* and documented their approval of the confidential informants, the Auditor sought the completed document in each confidential informant file, with a notation of the respective supervisor's approval in the "Notes" section of the form.

### **Objective 4**

For all confidential informants with an initial start date on or after January 1, 2017, to determine whether the Informant Program Coordinator (IPC) approved each confidential informant prior to the Managing Officer's use of the person, the Auditor received a spreadsheet from the IPC that included the following dates the IPC approved each confidential informant. Therefore, the Auditor compared the date the IPC approved the informant to the date the Managing Officer documented on the *Informant Chronological Activity Record* as his/her first encounter/interaction with the informant. If the IPC's approval date was prior to the date of the Managing Officer's first encounter/interaction with the informant, the Auditor considered the Managing Officer's use of the informant in compliance.

### **Objective 5**

From January 1, 2017 to September 30, 2019, to verify the Managing Officers contacted their respective confidential informants at least once every 90 days to update and maintain the informants' active status, the Auditor reviewed the *Informant Chronological Activity Record* (ICAR) in each confidential informant file, seeking documentation on the ICAR to substantiate that there was some type of contact (i.e., face-to-face meeting, telephone call, email, etc.) between the Managing Officer and the informant at least once every 90 days.

### **Objective 6**

From January 1, 2017 to September 30, 2019, to verify Reviewing Supervisors met with their respective Managing Officers on a quarterly basis to review their confidential informants' criminal history and to discuss the informant's cooperation agreement, the Auditor sought documentation on the *Informant Chronological Activity Record* in the months of March, June, September, and December to substantiate the meeting and the discussion. Specifically, the Auditor sought wording that indicated the Reviewing Supervisor reviewed the following information:

- An updated Wanted Persons System printout;
- An updated Department of Motor Vehicles printout;
- An updated Consolidated Records Information Management System printout; and
- An updated Criminal Identification and Information printout.

Also, the Auditor sought wording on the ICAR that indicated the Reviewing Supervisor discussed with the Managing Officer the confidential informant's progress in meeting his/her responsibilities in the *Informant Agreement Record*.

#### **Objective 7**

From January 1, 2017 to September 30, 2019, if there was documentation on the *Informant Chronological Activity Record* that indicated the Managing Officers paid a confidential informant, the Auditor sought documentation of the amount of money paid to the informant and the name(s) of all persons present who witnessed the payment on an *Informant Payment Record* and/or an *Informant Chronological Activity Record*.

#### **Objective 8**

For deactivated confidential informants, to determine whether the respective Managing Officers documented their reasons for deactivating the confidential informants, the Auditor sought a completed *Informant Deactivation Form* in each sampled deactivated confidential informant file. If the form was present in the deactivated file, the Auditor sought the reason(s) for deactivation in the "Detail Circumstances" section on each of the forms. If the Auditor deemed the Managing Officer's reason for deactivation to be aligned with the reasons for deactivation in the Department's policy, the deactivation was considered appropriate.

# APPENDIX B



**OAKLAND POLICE DEPARTMENT**  
**Informant Regulations Record**  
 TF-3110 (Jun 14)

Informant Number	Managing Officer	Serial #
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**INFORMANT REGULATIONS RECORD**

1	I am not a Police Officer or an employee of the Oakland Police Department, hereinafter referred to as "OPD", and I do not have police powers.
2	I cannot possess any illegal weapons or firearms.
3	I am not to disclose my association with the OPD unless ordered to do so by a court of competent jurisdiction.
4	I am not to participate in any other criminal investigation or provide informant information to other OPD or law enforcement personnel without notifying my managing officer.
5	I must follow the directions of my managing officer while assisting the OPD.
6	I consent to the search of my person as may be required, to include the visual inspection of my underwear, brassier, breasts, buttocks, or genitalia. I may revoke my consent at any time with the understanding that such revocation may result in my failure to uphold this agreement.
7	I agree to allow my conversations and activities with OPD to be recorded.
8	I understand that I must communicate with my managing officer at least every 90 days.
9	My failure to report accurately and truthfully my actions and observations during an investigation will result in cancellation of any benefits promised me, or agreements made with the OPD.
10	I will not engage in any activity that would constitute entrapment or that would persuade a person to commit a crime they would not ordinarily commit.
11	I agree to be truthful at all times with OPD and other law enforcement agencies.
12	I am not to use my association with OPD or any law enforcement agency to resolve a personal matter.
13	I understand that I am subject to all Federal, State, and local statutes except those statutes specifically designated by my managing officer in the performance of this agreement.
14	I understand that no officer has the authority to promise or guarantee me any special treatment, consideration, or favors for any criminal actions outside of this agreement.
15	I hereby release the OPD, its agents, and employees, from any injury or liability that I may suffer as a result of any investigation(s).
16	I am fully aware that I may have to testify in future court proceedings concerning cases in which I participate.

**Informant**

By signing this form, I agree that I have read and fully understand the above regulations. I am willing to assist the OPD and I understand that, if I fail to provide the assistance I have promised any pending or held criminal charges may be filed against me. I have entered into this agreement freely and without duress.

Name (Print)	Signature	Date
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**Officers**

Managing Officer (Print FI, Last, Serial#)	Signature	Date
Witness Officer (Print FI, Last, Serial#)	Signature	Date
Reviewing Supervisor (Print FI, Last, Serial#)	Signature	Date



**OAKLAND POLICE DEPARTMENT**  
**Informant Agreement Record**  
 TF-3276 (June 14)

Informant Number	Managing Officer	Serial #
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**INFORMANT AGREEMENT RECORD**

This is to memorialize the Agreement between \_\_\_\_\_, hereinafter referred to as "Informant," and Officer \_\_\_\_\_ S/N: \_\_\_\_\_, of the Oakland Police Department, hereinafter referred to as "managing officer," with respect to Informant's offer to cooperate with OPD in a criminal investigation(s).

**FACTS**

Informant and managing officer acknowledge one of the following facts:

A. Informant presently has charged and/or uncharged criminal case(s) as described below:

Court:	Case Docket Number:
Agency:	RD Number:
Violation:	

**OR**

B. Informant has offered to cooperate with law enforcement in an investigation(s) of criminal activity for monetary consideration only.

**OR**

C. Other (Explain): \_\_\_\_\_

**COMMITMENTS**

The following commitments are made by the informant and managing officer:

1. Informant agrees to abide by the terms set forth on the Informant Regulations Form (TF-3110) which is attached hereto and incorporated by reference into this Agreement; to be truthful at all times with law enforcement; and to not commit any crimes while the aforementioned case is pending.
2. There are no other promises or agreements, express or implied, between the Oakland Police Department and the Informant.
3. In the event the informant is cooperating for monetary consideration only, the informant and/or managing officer may terminate this agreement at any time.

If Applicable:

1. Informant agrees to assist in \_\_\_\_\_ separate investigations of criminal activity; **OR** the seizure of contraband described as: \_\_\_\_\_.
2. All investigations shall be completed no later than \_\_\_\_\_.
3. The managing officer hereby agrees, upon completion of the investigation(s) or date set above, to review the quantity and quality of the informant's assistance, and, if applicable, make same known to the District Attorney the extent and value of informant's cooperation with law enforcement.

**INFORMANT**

	Print First and Last Name	Signature	Date
Informant			

**OFFICERS**

	Print FI, Last & Serial #	Signature	Date
Managing Officer			
Witness Officer			

**SUPERVISOR REVIEW**

Reviewing Supervisor (Print FI, Last, Serial#)	Signature	Date



