



Second Quarterly Report
of the Independent Monitor
for the Oakland Police Department

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Independent Monitor

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Section One

Introduction

This is the Second Quarterly Report of the Monitor of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* in the United States District Court for the Northern District of California. In January of this year, under the direction of Judge Thelton E. Henderson, the Parties agreed to my appointment as Monitor of the Oakland Police Department (OPD). In this capacity, I oversee the monitoring process that began in 2003 under the previous monitor and produced 14 status reports. The current Monitoring Team conducted its second quarterly site visit from May 23, through May 28, 2010, to evaluate the Department's progress during the three-month period of January 1, through March 31, 2009.

As the months have passed since I was named as Monitor in this case, budget and financial problems in Oakland, the State of California, and across the nation as a whole have grown increasingly problematic. While our Team conducted its site visit in Oakland, the implications of these problems for policing in Oakland were becoming clear. After our site visit, the layoff of police officers in Oakland became a reality as 80 officers were subjected to layoffs.

Despite such problems, the important work of the police must go on. We also know that it is important not to compromise our standards or lower our expectations regarding the Oakland Police Department's achievement of compliance with the requirements of the negotiated settlement agreement. Our expectation and methods of assessment must remain as they have been.

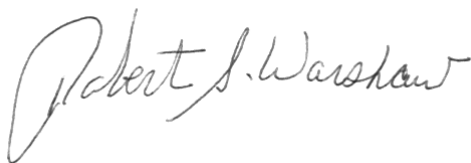
Consistent with that, we continue to appreciate the efforts put forth by the Office of the Inspector General (OIG) of OPD and by the many officers, civilians, supervisors, and command personnel who have contributed to our process of compliance assessment for this report. We acknowledge the efforts of Police Chief, Anthony Batts, who has had the task of managing the changing fiscal resources of the Department while continuing to support efforts to achieve compliance with the negotiated agreement.

In the body of this report we will report the compliance status with the remaining active tasks of the agreement. By the end of the seven-year tenure of the previous monitor, the Department was in full compliance with 32 of the 51 required Tasks, and in partial compliance with 16 additional Tasks. As a result, the Parties agreed to reduce the number of Tasks under "active" monitoring to the current list of 22.

In this quarter we continue to find that the Department is in Phase 1 compliance on all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, OPD has maintained that status on 11 requirements. Thus overall compliance levels are unchanged from our first quarterly report. The status of some Tasks, however, has shifted across compliance categories.

These changes will be described below.

The delivery of police services to the community remains the most fundamental responsibility of local government. Accordingly, we are confident that the men and women of the Oakland Police Department will recognize the need to continue to strive to be the best they can be. I want to thank City Administrator Dan Lindheim, Chief Batts, and his executive team; and Plaintiffs' attorneys John Burris and James Chanin for their sustained commitment to the common good.

A handwritten signature in cursive script that reads "Robert S. Warshaw". The signature is written in dark ink on a white background.

Chief (Ret.) Robert S. Warshaw
Monitor

Monitoring Team:

Chief (ret.) Charles D. Reynolds, *Deputy Monitor*
Lt. Colonel (ret.) J. Rick Brown
Robin Busch-Wheaton
Commander (ret.) John Girvin
Chief (ret.) Melvin C. High
John M. Klofas, Ph.D.
Assistant Director (ret.) Joseph R. Wolfinger

Compliance Assessment Methodology

The body of this report is comprised of our assessments of compliance with the individual requirements of the 22 active Tasks of the NSA. Each requirement is followed by information about the compliance status of the requirement during our previous reporting period, a discussion regarding our assessments and the current status of compliance, a summary notation of Phase 1 and Phase 2 compliance (see below), and our planned next steps in each area.

The primary responsibility of the Monitor is to determine the status of the Oakland Police Department's compliance with the requirements of the 22 active Tasks. To accomplish this, the Monitoring Team makes quarterly visits to Oakland to meet with OPD's Office of Inspector General (OIG) and other Department personnel – at the Police Department, in the streets, or at the office that we occupy when onsite in the City. We also observe Departmental practices; review Department policies and procedures; collect and analyze data using appropriate sampling and analytic procedures; and inform the Parties and, on a quarterly basis, the Court, with information about the status of OPD's compliance.

Our Team determines compliance through an examination of policies and implementation of practices that are relevant to each of the active Tasks. First we determine if the Department has established an appropriate policy or set of procedures to support each requirement. Following this, we determine if the Department has effectively implemented that policy.

Based on this process, we report the degree of compliance with requirements on two levels. First, we report if the Department has met policy compliance. Compliance with policy requirements is known as **Phase 1 compliance**, and the Department achieves it when it has promulgated appropriate policies and trained relevant Department members or employees in their content. Second, we report on the extent to which the Department has implemented the required policies. Implementation-level compliance is reported as **Phase 2 compliance**. In general, to achieve full compliance, the Department must achieve both Phase 1 and Phase 2 compliance; that is, an appropriate policy must be adopted, trained to, and operationally implemented.

Our conclusions with regard to Phase 1 or Phase 2 compliance will fall into the following categories:

- **In compliance:** This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).
- **Partial compliance:** This is reported when at least one, but not all, requirements of a Task have achieved compliance, showing progress towards full compliance. Tasks will remain in partial compliance as long as we determine there is continued progress toward reaching substantial, or full, compliance.

- **Not in compliance:** This is reserved for instances where partial compliance has not been achieved and no progress has been made.

Many sub-requirements of the 22 active Tasks require the analysis of multiple instances of activity, cases, or observations. In these circumstances, our analysis is based on a review of all cases or data, or, when appropriate, on statistically valid samples of the population. To reach our conclusions based on analyses of cases, the Department must meet a minimal standard. The Parties have agreed upon these compliance standards, which range from 85% to 95% to a Yes/No standard.

This methodology supports a sound and rigorous review of the Department's compliance with the requirements of the 22 active Tasks. We recognize, however, that the high demands of this methodology may not be fully realized in all elements of all reviews. There will be circumstances in which we will be unable to determine fully the compliance status of a particular requirement due to a lack of data, incomplete data, or other reasons that do not support the completion of our work in a manner consistent with timely reporting. Under such circumstances, we will opt not to compromise our methodology by forcing a conclusion regarding compliance levels. Instead, we will report a finding as **"Deferred."** This finding is not intended to reflect negatively on the Department or to otherwise imply insufficient progress. In such circumstances, we expect that a more complete assessment of compliance in the area in question will be determined in our next report.

Our compliance assessment methodology directs the Monitoring Team in our work and underlies the findings presented in this report. We fully expect that this methodology will govern our work throughout our tenure in this project. Any consideration of revision or change of this methodology will be presented to the Parties and the Court.

Executive Summary

This is the second report of the Monitoring Team in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* This Executive Summary is not intended to replicate the body of the entire report. Instead, it highlights the more significant findings, trends, patterns, or concerns that materialized as a result of our evaluation.

From May 24, through May 28, 2010, we conducted our second site visit to Oakland. At that time, we met with several Department officials, including the Chief and Assistant Chief of Police and the Deputy Chiefs; as well as personnel from the Office of Inspector General (OIG), Bureau of Field Operations (BFO), Bureau of Investigations (BOI), Bureau of Services (BOS), Internal Affairs Division (IAD), Training Division, and Communications Division; OPD officers, managers, supervisors, and commanders, including sergeants, lieutenants, and captains. We also conferred with the Plaintiffs' Attorneys, City Administrator, and the Office of the City Attorney (OCA). During and since the time of our site visit, we attended Department meetings and technical demonstrations; reviewed Departmental policies; conducted interviews and made

observations in the field; and analyzed OPD documents and files, including misconduct investigations, Use of Force Reports, Crime and Arrest reports, Stop Data Forms, and other documentation.

Based on our review, we found the Department in Phase 1 compliance with all 22 (100%) of the active Tasks. We found the Department in Phase 1 and Phase 2 compliance (full compliance) with 11 (50%) of the 22 active Tasks. We found the Department in partial compliance with seven (32%) Tasks, and we deferred judgment on one Task. We found the Department not in compliance with three (14%) Tasks.

Although the total number of tasks found to be in compliance increased by one from the last quarter to this one, some tasks have shifted in compliance levels. Tasks 6 and 7 dealing with citizen complaints went from not in compliance to in compliance. Our finding on Task 30, Firearm Discharge Board of Review, changed from in compliance to partial compliance. Our finding on Task 41, which addresses the use of the Personnel Assessment System (PAS), changed from in compliance to not in compliance.

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Task	Phase 1: Policy and Training	Phase 2: Implementation			
	In Compliance	In Compliance	Partial Compliance	Not in Compliance	Deferred
Task 2: Timeliness Standards and Compliance with IAD Investigations	√	√			
Task 3: IAD Integrity Tests	√		√		
Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process	√	√			
Task 5: Complaint Procedures for IAD	√		√		
Task 6: Refusal to Accept or Refer Citizen Complaints	√	√			
Task 7: Methods for Receiving Citizen Complaints	√	√			
Task 16: Supporting IAD Process-Supervisor/Managerial Accountability	√	√			
Task 18: Approval of Field-Arrest by Supervisor	√	√			
Task 20: Span of Control for Supervisors	√		√		
Task 24: Use of Force Reporting Policy	√		√		
Task 25: Use of Force Investigations and Report Responsibility	√		√		
Task 26: Use of Force Review Board (UFRB)	√		√		
Task 30: Firearms Discharge Board of Review	√		√		
Task 33: Reporting Misconduct	√			√	
Task 34: Vehicle Stops, Field Investigation and Detentions	√			√	
Task 35: Use of Force Reports-Witness Identification	√	√			
Task 37: Internal Investigations-Retaliation Against Witnesses	√	√			
Task 40: Personnel Assessment System (PAS)-Purpose	√	√			
Task 41: Use of Personnel Assessment System (PAS)	√			√	
Task 42: Field Training Program	√				√
Task 43: Academy and In-Service Training	√	√			
Task 45: Consistency of Discipline Policy	√	√			
<i>Total Tasks</i>	22	11	7	3	1

In the process of preparing this report, the Monitoring Team identified a number of important issues that we regard as critical to the progress of the Oakland Police Department. The issues are described more thoroughly at the end of the report but are summarized below:

First, we recognize the importance of the current budgetary concerns for the Department, but we are also concerned that these problems do not limit efforts to move forward on compliance with this longstanding agreement. We are also concerned that across our two reports the evidence of progress is limited. The Department needs to formulate responses to issues raised in our quarterly report that specifically address those issues and thus facilitated movement forward. In several areas including those dealing with complaints and use of force investigations there continues to be lack of attention to necessary details such as the inclusion of required information or needed and timely supervisory sign off. In some ways these issues come to a head in the review of the use of the Personnel Awareness System. Reports of PAS reviews do not provide adequate information to support conclusions where no intervention is recommended although there is a substantial record of potentially significant issues. The lack of adequate information raises questions as to whether these processes receive the serious attention that the goals of risk management should suggest.

Section Two

Compliance Assessments

Task 2: Timeliness Standards and Compliance with IAD Investigations

Requirements:

Fairness to complainants, members/employees and the public requires that internal investigations be completed in a timely fashion.

1. *On or before December 1, 2003, OPD shall develop policies regarding timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.*
2. *Compliance with these timeliness standards shall be regularly monitored by IAD command and the Department's command staff. If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.*

(Negotiated Settlement Agreement III. B.)

Comments:

Per Departmental policy, in order to be considered timely, at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days.¹ During our last quarterly review, we found that 93% of Class I cases and 97% of Class II cases were in compliance with established timelines. Additionally, for those cases that involved at least one Sustained finding, 94% were in compliance with established discipline timelines. We also found the Department in compliance with Task 2.2 (monitoring of timeliness standards) and Task 2.3 (staffing adjustments in relation to workload).

Discussion:

As previously reported, OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 2, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 2. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

Task 2.1 requires that internal investigations (IAD and Division-level) – including review,

¹ OPD classifies misconduct as either “Class I” or “Class II.” Per DGO M-03, Class I offenses “are the most serious allegations of misconduct and, if sustained, shall result in disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution.” Class II offenses include “all minor misconduct offenses.”

approval, findings, and discipline – be completed in accordance with the timeliness standards developed by OPD (compliance standard: 85%). To assess this subtask, we reviewed a list of all internal investigations resulting in formal findings (Unfounded, Sustained, Exonerated, or Not Sustained) that were approved between January 1, and March 31, 2010, and calculated the number of days between the complaint date and the approval date for each case.² We excluded from the dataset cases that were Administratively Closed, those that involved on-duty traffic accidents or service complaints, and those that did not involve Manual of Rules (MOR) violations. We segregated the remaining cases into Class I or Class II categories. If a case had at least one alleged Class I violation, it was classified as Class I.

Of the 78 Class I cases we reviewed, 73, or 94%, were in compliance with established timelines. Of the 83 Class II cases we reviewed, 81, or 98%, were in compliance with established timelines. Of the eight cases that involved at least one Sustained finding, seven, or 88%, were in compliance with established discipline timelines. OPD is in compliance with Task 2.1.

Task 2.2 requires that IAD and OPD command staff regularly monitor compliance with these timeliness standards (compliance standard: Yes/No). The primary responsibility for monitoring compliance with timeliness standards rests with IAD, which generates weekly reports that list the Department's open investigations and critical deadlines for investigations retained in IAD and those handled at the Division level. The reports are distributed to IAD command staff and the respective Bureau Deputy Chiefs. In addition to the reports, the IAD Commander discusses pending deadlines for key open investigations during IAD's weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. IAD also occasionally, as needed, emails individual reminders on cases approaching due dates to investigators and their supervisors. During this reporting period, we received and reviewed copies of individual Bureau and Department-wide Open Investigation Reports, Cases Not Closed Reports, 180-Day Timeline Reports, and agendas for the weekly meetings between the Chief and IAD staff. The content of these documents demonstrates active monitoring of case timeliness. The Department is in compliance with Task 2.2.

Task 2.3 requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards (compliance standard: Yes/No). It appears that, at least as it pertains to cases that were approved, that IAD actually experienced a significant decrease in workload during the current reporting period. Thirty-four percent fewer cases were approved during this time period. We inquired with the IAD Commander as to the decrease, and learned that approximately 21% fewer cases were opened in the fourth quarter of 2009, when compared to the previous quarter (the third quarter of 2009). We may see the decrease in input in the fourth quarter reflected in a decreased output in the first quarter of 2010. We will continue to monitor this trend, but in any event, there was not a proliferation of cases during the reporting period that would have triggered a staffing increase pursuant to the NSA.

² It is possible that extensions were granted in some of those cases that, based on these comparisons, appear to be out of compliance. Because of the high compliance rate, we did not review investigation extensions.

OPD is in compliance with Task 2.3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will again meet with IAD command staff to discuss workload trends and staffing requirements.

Task 3: IAD Integrity Tests

Requirements:

IAD shall be proactive as well as reactive.

- 1. IAD shall conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct.*
- 2. IAD shall have frequency standards, among other parameters, for such integrity tests.*

(Negotiated Settlement Agreement III. C.)

Comments:

During the first reporting period, we found OPD in partial Phase 2 compliance with this Task. While we found that OPD followed its policies and procedures as it conducted these tests, the tests consisted, for the most part, of reviews of public records and brief interviews. We noted that, without a more discerning and rigorous investigative effort to identify possible misconduct and the specific training needs of members, it is unlikely that the discipline and skill of the few officers who generate repeated complaints will improve.

Discussion:

As previously reported, OPD published Internal Affairs Policy & Procedures 07-01, *Integrity Testing*, which incorporates the requirements of this Task, on January 25, 2007. The Department updated this policy in January 2009. The revised policy also incorporates the requirements of Task 3. As was previously verified the Department trained at least 95% of relevant personnel on the revised policy, we therefore find OPD in continued Phase 1 compliance with this Task.

Task 3.1 requires that IAD conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct (compliance standard: Yes/No), and **Task 3.2** requires that IAD's integrity tests be conducted in accordance with the frequency standards and other parameters IAD has established (compliance standard: 90%).

To assess Phase 2 compliance for these subtasks, we reviewed threshold reports to determine

whether OPD identified members or employees who are the subject of repeated allegations. We also reviewed files for all integrity tests that were conducted – including operations plans, after-action reports, and supporting documents – from January 1, through March 31, 2010 to determine whether OPD conducted integrity tests where members/employees were the subject of repeated allegations, and whether the selective integrity tests conducted comply with the parameters IAD has established. We also verified if the Department conducted any planned integrity tests pursuant to established requirements. In addition, during our site visit, we interviewed the IAD Commander, the sergeant who oversees the Integrity Testing Unit, and other IAD personnel.

During the current reporting period, the Department conducted one select integrity test of two members based on a review of the IAD database and Departmental concerns regarding the handling of property coming into the Department's custody. The documentation shows that the Department failed to conduct a successful integrity test of the targeted members, primarily because of resource challenges: The Department was not equipped to conduct the continuous surveillance necessary for the test. During this reporting period, the Department also conducted four planned integrity tests, in which it checked the records of four members to verify that their vital information was current. All four planned tests passed.

The OPD has made progress in integrity testing. Nevertheless, the Department's methods need to be more effective if the Department is to achieve consistent, reliable testing that helps the Department perform at a high level absent a high level of complaints.

The Department is in partial Phase 2 compliance with Task 3.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will meet with the sergeant who oversees the ITU and the IAD Commander to discuss the Department's efforts to strengthen integrity testing, particularly given its limited resources. We will also verify compliance with established frequency standards for testing and compliance with procedures.

Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process

Requirements:

1. *Within 90 days, OPD shall develop a policy regarding an informal complaint resolution process which may be used by supervisors and IAD to resolve service complaints and Class II violations that do not indicate a pattern of misconduct as described in Section III, paragraph H (2). This process shall document the receipt of the complaint, date, time, location, name or the person making the complaint, the name of the person receiving the complaint, how the matter was resolved and that the person making the complaint was advised of the formal complaint process with the CPRB. The documentation shall be forwarded to an IAD Commander for review. If the informal complaint resolution process fails to resolve the complaint or if the person making the complaint still wishes to make a formal complaint, the person receiving the complaint shall initiate the formal complaint process pursuant to Section III, paragraph E. An IAD Commander shall make the final determination whether the ICR process will be utilized to resolve the complaint. OPD personnel shall not unduly influence persons making a complaint to consent to the informal complaint resolution process.*
2. *IAD shall establish a central control system for complaints and Departmental requests to open investigations. Every complaint received by any supervisor or commander shall be reported to IAD on the day of receipt. If IAD is not available, IAD shall be contacted at the start of the next business day. Each complaint shall be assigned an Internal Affairs case number and be entered into a complaint database with identifying information about the complaint. OPD personnel shall notify IAD and the Chief of Police, or designee, as soon as practicable, in cases likely to generate unusual public interest.*
3. *Criteria shall be established which must be met prior to moving, from “open” to “closed,” any investigation in the complaint database.³*

(Negotiated Settlement Agreement III. D.)

Comments:

Only two provisions of Task 4 (4.7 and 4.10) are being actively monitored under the MOU. During the last reporting period, we found OPD in compliance with both of these requirements. Overall, we found that complaints received by any supervisor or commander were reported to IAD on the day of receipt or at the start of the next business day. We also found that, with the exception of two cases, OPD complied with criteria it has established when resolving complaints via Informal Complaint Resolution, Administrative Closure, or Summary Finding.

³ The underlined requirements are the only provisions of Task 4 that are being actively monitored under the MOU.

Discussion:

There are four Departmental policies that incorporate the requirements of Tasks 4.7 and 4.10:

- **Departmental General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of these subtasks.
- **Departmental General Order M-3.1:** As previously reported, OPD published Department General Order M-3.1, *Informal Complaint Resolution Process*, which incorporates the requirements of these subtasks, on December 6, 2005. General Order M-3.1 was revised in February 2008, and August 2008. The revised policy also incorporates the requirements of these subtasks.
- **Special Order 8552:** As previously reported, OPD published Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual*, on February 1, 2007. This policy incorporates the requirements of these subtasks.
- **Communications Division Policy & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007. This policy incorporates the requirements of these subtasks.

As was previously verified the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with Tasks 4.7 and 4.10.

Task 4.7 requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt (compliance standard: Yes/No). If IAD is not available, the supervisor or commander shall contact IAD at the start of the next business day.

To assess Phase 2 compliance for Task 4.7, we reviewed a random sample of Daily Incident Log (DIL) entries, and a random sample of IAD case files for the period of January 1, through March 31, 2010.⁴ We also reviewed Use of Force (UOF) Reports for incidents during this same time period to determine if IAD identified an allegation of delayed reporting. Specifically, we examined 71 DIL entries, 40 IAD and Division-level investigations, and 25 UOF Reports; and found, with only two exceptions, no evidence that OPD supervisors delayed reports to IAD in violation of this requirement. The two exceptions noted both involved supervisors who conducted the initial investigations did not initiate the complaint process in response to a citizen's claims of improper force and submit a complaint package on the matter to IAD in addition to the UOF Report.

Overall, we found that OPD has implemented an effective system for timely reporting, investigating, and resolving citizens' complaints. The Department is in compliance with Task 4.7.

⁴ IAD did not receive any Risk Management Memoranda (RMM) during this selected time period.

Task 4.10 requires that OPD comply with criteria it has established when resolving complaints through ICR, Administrative Closure, or Summary Finding (compliance standard: 90%). This subtask is intended to ensure that OPD provide the proper level of investigation for each complaint and not resolve meritorious complaints of misconduct without determining – and documenting – whether the OPD member or employee committed misconduct. In our previous review, we found that the OPD had made significant progress in this area and found the Department in Phase 2 compliance with this subtask.

During this reporting period, we reviewed 15 cases resolved via Administrative Closure, and 25 cases resolved via Informal Compliant Resolution, that were approved between January 1, through March 31, 2010. Each case we reviewed documented the IAD case number; how and where the case was received; the time of receipt; the location, date, and time of the incident; the date of notice to IAD; the name of the complainant and pertinent contact information; and case resolution. Each case was properly resolved. In each case where IAD directed that the member or employee receive counseling or training, the case file indicated that the counseling or training was completed; or IAD directed that it be completed and documented in a supplemental report. The Department is in compliance with Task 4.10. The practice of addressing members' actions in relatively minor complaints should result in improved police/community relations.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with the IAD Commander to discuss new developments within the ICR process with regard to continued compliance.

Task 5: Complaint Procedures for IAD

Requirements:

1. *On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the person receiving the complaint. In the event that such a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant and any witnesses. This information, as well as a description of the complaint, shall immediately, or as soon as circumstances permit, be documented on a Complaint Form and submitted to the immediate*

- supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a complaint. The supervisor or appropriate Area Commander notified of the complaint shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.*
2. *An on-duty supervisor shall respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest. The supervisor shall ensure the Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints, by a jail inmate shall be handled in the same manner as other civilian complaints.*
 3. *In each complaint investigation, OPD shall consider all relevant evidence, including circumstantial, direct and physical evidence, and make credibility determinations, if feasible. OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.*
 4. *OPD shall develop provisions for the permanent retention of all notes, generated and/or received by OPD personnel in the case file.*
 5. *OPD shall resolve each allegation in a complaint investigation using the "preponderance of the evidence" standard. Each allegation shall be resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure. The Department shall use the following criteria for determining the appropriate disposition:*
 - a. *Unfounded: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.*
 - b. *Sustained: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.*
 - c. *Exonerated: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accord with law and with all Oakland Police Department rules, regulations, or policies.*
 - d. *Not Sustained: The investigation did not disclose sufficient evidence to determine whether or not the alleged conduct occurred.*
 - e. *Administrative Closure: The investigation indicates a service complaint, not involving an MOR violation, was resolved without conducting an internal investigation; OR*
 - f. *To conclude an internal investigation when it has been determined that the investigation cannot proceed to a normal investigative conclusion due to circumstances to include but not limited to the following:*
 - 1) *Complainant wishes to withdraw the complaint and the IAD Commander has determined there is no further reason to continue the investigation and to ensure Departmental policy and procedure has been followed;*

- 2) *Complaint lacks specificity and complainant refuses or is unable to provide further clarification necessary to investigate the complaint;*
- 3) *Subject not employed by OPD at the time of the incident; or*
- 4) *If the subject is no longer employed by OPD, the IAD Commander shall determine whether an internal investigation shall be conducted.*
- 5) *Complainant fails to articulate an act or failure to act, that, if true, would be an MOR violation; or*
- 6) *Complaints limited to California Vehicle Code citations and resulting tows, where there is no allegation of misconduct, shall be referred to the appropriate competent authorities (i.e. Traffic Court and Tow Hearing Officer).*
- g. *Administrative Closures shall be approved by the IAD Commander and entered in the IAD Complaint Database.*
6. *The disposition category of "Filed" is hereby redefined and shall be included under Administrative Dispositions as follows:*
 - a. *An investigation that cannot be presently completed. A filed investigation is not a final disposition, but an indication that a case is pending further developments that will allow completion of the investigation.*
 - b. *The IAD Commander shall review all filed cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed and may direct the closure or continuation of the investigation.*
7. *Any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions.*

(Negotiated Settlement Agreement III. E.)

Comments:

During the last reporting period, we found OPD out of compliance with some of these requirements. Specifically, we found that only 48% of the cases we reviewed were in compliance with all elements of Tasks 5.15 and 5.16. We also found that the verification of all notes being contained in the file, as required by Task 5.17, was missing in 32% of the cases we reviewed. In 16% of the cases we reviewed, the preponderance of evidence standard was not applied to some or all of the allegations, as required by Task 5.18. However, we found OPD in compliance with Tasks 5.1-5.5 (information gathered at time of complaint and notifications),

Task 5.6 (jail complaints), Task 5.19 (proper dispositions), Task 5.20 (tolling and filed cases), and Task 5.21 (employee interviews).

Discussion:

There are several Departmental policies that incorporate the various requirements of Task 5:

- **Departmental General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 5.)
- **Communications Division Operations & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007.
- **Training Bulletin V-T.1:** As previously reported, OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006.
- **Special Order 8270:** As previously reported, OPD published Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility*, on June 24, 2005.
- **Special Order 8565:** As previously reported, OPD published Special Order 8565, *Complaints Against Department Personnel*, on May 11, 2007.
- **IAD Policy & Procedures 05-02:** As previously reported, OPD published IAD Policy & Procedures 05-02, *IAD Investigation Process*, on December 6, 2005.

In addition, NSA stipulations issued on December 12, 2005, and March 13, 2007, incorporate the requirements of this Task.

As was previously verified, the Department trained at least 95% of relevant personnel on the revised policy, we therefore find OPD in continued Phase 1 compliance with this Task.

To verify Phase 2 compliance with Tasks 5.1 through 5.5, we reviewed 71 records on the Daily Incident Logs (DILs) for 22 randomly selected dates during the period of January 1, through March 31, 2010.

Task 5.1 requires that when a citizen wishes to file a complaint, the citizen is brought to a supervisor or IAD, or a supervisor is summoned to the scene (compliance standard: 95%). In two of the 71 DIL records we reviewed during our selected time period, there was no reference to a supervisor having contact with the complainant (that is, the Log's "Complainant Contact" field was blank). In the first case, an IAD intake officer was already in contact with the complainant; therefore, this case is in compliance. In the other case, a sergeant reported that a complaint had been left as a message on his voicemail and he "attempted contact with negative results." No other details were given. However, OPD has a 99% compliance rate with Task 5.1.

Task 5.2 requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay be documented (compliance standard: 85%). Out of the 71 DILs we reviewed, there appeared to be one instance of at least a three-hour delay. A complaint received at 08:32 hours was assigned to a supervisor at 11:30 hours, and the supervisor made contact with the complainant at 11:55 hours. According to the DIL, “At the time of the Complaint a Major Incident was working in area 2 causing a delay in contacting the Comp.” As a reason was documented, this record is in compliance. OPD is in compliance with Task 5.2.

Task 5.3 requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint (compliance standard: 90%). Of the 71 records in our dataset, we identified eight instances in which the complainant “refused” interaction with a supervisor. However, this group included seven instances where a complainant did not answer a contact or callback number provided, and since OPD personnel had no advance notice of the refusal prior to the attempted callback, we removed these incidents from consideration. Where possible, OPD personnel left messages for the complainants. In one case, a sergeant responded to the complainant’s home, and then to her place of business after her refusal to answer the callback. The supervisor was not able to locate the complainant, but the effort was laudable. In the remaining case of these eight cases – a complaint of erratic driving – the complainant refused to provide his name, but provided a vehicle number. OPD identified the officer and, per the DIL, a “memorandum [was] completed.” OPD is in compliance with Task 5.3.

Task 5.4 requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander (compliance standard: 85%). In its February 2009 audit of these subtasks, the previous monitor accepted the “DIL system as functionally equivalent to this requirement. This system places the responsibility that the Area Commander previously held on the Communications Division. It still requires that the Area Commander be notified of the complaint.” In order to be in compliance with this Task, the DIL should contain the identification of personnel; witnesses or identifying information, if known (log should say “unknown” if not known); the date, time, and location of the incident; and the time of contact or attempt to contact the complainant by a supervisor.

During our last reporting period, we found 72% of the records we reviewed to be lacking some or all of the required information. During this quarterly review, we found 48 of the 71 records, or 68%, to be lacking at least some of the required information – a slight improvement. As noted in our last report, in its January 2010 audit of this Task, the previous monitor held that if the DIL did not contain all of the required information, but listed an “incident number,” it deemed the entry in compliance. In every instance in this review, including the 48 records referenced above, an incident number was provided. As in our last review, we find OPD in compliance with Task 5.4. However, we continue to be concerned that the presence of an identification number could negate the need to record information required by the Task.

During our May site visit, we met with command personnel from IAD and Communications to discuss these concerns. They clarified their numbering system, and explained that the different versions of the incident numbers noted in our last report were, in fact, abbreviations of a multi-digit number assigned to every case. Many operators “drop” the prefix portion of this number which identifies the date, as well as the zeroes that precede the last two or three digits in the number. We advised the Department that for DILs completed after our meeting date (May 26, 2010), we will continue to look for the required information outlined above (personnel involved, date, time, etc.) to be recorded on the DIL as required by the Task. Since every DIL has an incident number, despite the previous monitor’s interpretation, we can no longer deem the DILs in compliance if the required information is missing. Since our meeting occurred more than halfway through the next reporting period, we will confine our review to DILs completed after our meeting date for Tasks 5.1 – 5.5.

Task 5.5 requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD (compliance standard: 95%). As noted above, the DILs are administered by Communications and forwarded to IAD every business day. Additionally, the DIL contains a field to record “Name of Area Commander notified.” This field was blank in only four of the 71 records we reviewed. Sixty-seven records, or 94% of the total, contained this information. OPD is in compliance with Task 5.5.

Task 5.6 requires that an on-duty supervisor respond to take a complaint received from a jail inmate, taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with his/her arrest (compliance standard: 90%). The supervisor shall ensure that the Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints by a jail inmate shall be handled in the same manner as other civilian complaints. During our last evaluation, we found OPD in compliance with Task 5.6.

To assess Task 5.6, we reviewed all complaints that appeared to have originated from North County Jail, Santa Rita Jail, or Juvenile Hall; and that were approved between January 1, and March 31, 2010. We identified eight such complaints using the IAD database, and reviewed each complaint for two triggering events: an allegation of Class I misconduct; and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was “handled in the same manner as other civilian complaints.”

Of the eight cases we reviewed, three met the criteria for an immediate response by a supervisor; and in these three cases, an on-duty supervisor did, in fact, respond, make the proper notifications, and forward the appropriate information. In two other cases, while the allegations were not of Class I misconduct, it is worth noting that a supervisor nonetheless responded and handled the case as required by this subtask. In the other three cases, the complaints were not contemporaneous to the arrest (two complaints were mailed from the jail, and one was gleaned from a review of routinely recorded phone calls between an inmate and a third party), and were

handled as other civilian complaints would be handled.⁵ Therefore, all cases we reviewed for this subtask are in compliance. OPD is in compliance with Task 5.6.

In our last report, we committed to working with the Department to clarify the roles of OPD and jail (non-OPD) staff. The previous monitor was reluctant to find OPD in compliance with this subtask because it was not confident that the Department was necessarily made aware of every complaint that fit the criteria, particularly in cases where the arresting officer(s) left the jail, and an arrestee lodged his/her complaint with jail staff. During our May site visit, IAD scheduled a meeting for Team members, IAD personnel, and representatives from the Alameda County Sheriff's Office to discuss this issue. However, due to a scheduling conflict and a misunderstanding as to the starting time, the meeting did not take place. The meeting will be rescheduled for our next visit, and, if necessary, we will travel to Alameda County facilities to ensure that it takes place.

Task 5.12 requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD. Since by definition these complaints must be made contemporaneous with the arrest, an on-duty supervisor must respond to the jail. Under current policy, complaints that are received and/or handled by on-duty supervisors must be recorded by the Communications Division onto the Daily Incident Log (DIL), which are forwarded daily to IAD. Just as with the notifications and duties of the Watch Commander outlined in Tasks 5.1-5.5, we deem the DIL system as functionally equivalent to the requirements of Task 5.12, and the Department is thus in compliance with this subtask.

To assess Tasks 5.15 through 5.19, and Task 5.21, we reviewed a random sample of 25 IAD cases that were approved between January 1, and March 31, 2010. This sample included investigations completed by IAD and Division Level Investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via Summary Finding.⁶

In previous reviews **Tasks 5.15 and 5.16** have been seen as a single Task with several elements, specifically that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements (compliance standard: 85%). We have continued this practice here. During the previous assessment period, we deemed the Department in compliance with *all* of these required elements only 48% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 18, or 72%, in compliance with *all* of these

⁵ Since this subtask targets a very specific type of complaint related to complainants at the time of an arrest, unless the investigation was also part of the sample selected to assess Tasks 5.15 – 5.21, we did not assess the quality of the investigation in its entirety, but rather looked at the general handling of the complaint as it related to jail situations.

⁶ Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

required elements. While this is a notable improvement over the previous quarter, OPD is not in compliance with Tasks 5.15 and 5.16.

In all of the cases we reviewed, it appeared that OPD gathered and considered all relevant evidence.⁷ In four cases, follow-up interviews were warranted but not conducted. Three cases were resolved via Summary Finding. Of these three, one involved an allegation of excessive force – that is, a knee to the complainant’s face. The investigator did not specifically question the officer about this accusation, but rather relied on a notation in the Reports that no reportable force was used. In another Summary Finding case, a complainant alleged that a purse was missing from a towed vehicle. The investigator did not interview the involved officer regarding the missing purse, but instead, noted that a purse was not inventoried with other property, and therefore it must not have been there when the car was towed. In the last Summary Finding case, a complainant alleged that an officer divulged that he was a confidential informant. The complainant clearly has mental issues, and in addition to this claim, he made other unrelated, outlandish claims. However, the investigator never interviewed the subject officer, despite the fact that OPD invested significant resources in investigating this case. Regardless of the investigator’s perceptions of the complainant’s mental status, a few questions to the officer would have been warranted. In the final, non-Summary Finding case, force was allegedly used on a third-party relative. While the relative was interviewed at some point, she was not questioned about the alleged force used on her. Rather than ask her directly about the allegation, the investigators concluded that her lack of a complaint (her mother-in-law lodged the complaint) is evidence that it did not occur.

In three of the 25 cases we reviewed, credibility assessments were missing. During our last assessment, we noted a tendency to attack complainants’ credibility and bolster officers’ credibility. That pattern continued in this reporting period’s sample. We also noted at least two cases where a complainant’s credibility was questioned simply because s/he was on medication. This is not justification, in and of itself, to question credibility.

We were pleased, however, to note that in two cases, the investigators appropriately deemed the complainants credible even though one was involved in narcotics activity and the other was “uncooperative and visibly hostile.”

On March 24, 2010, OPD issued an Information Bulletin outlining the proper use and documentation of credibility assessments. If it is heeded, we should see improvement in this area, although we recognize that for the foreseeable future we will be reviewing cases approved before the issuance of this Information Bulletin.

In two cases, it did not appear that inconsistent statements were resolved, primarily because follow-up interviews were not conducted. These are the use of force case and the missing purse case mentioned above.

⁷ For purposes of our review, we consider evidence to be physical evidence and/or photographs of same. We distinguish evidence from interviews, as does the Task.

Task 5.17 requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file (compliance standard: 85%). OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). During our previous quarterly review, we found this form missing or blank in 32% of the cases we reviewed. During this reporting period, the form was missing in 12 of the 25 cases we reviewed, or 48%. This is an easy deficiency to correct, by simply consistently using the form created for this purpose, and checking for it prior to final case approval. OPD is not in compliance with this subtask.

We note that there are two pre-printed versions of the Internal Affairs Division Intake Checklist – one that indicates that the investigative file does contain investigative notes, and one that indicates that no investigative notes are contained therein. We did not rely on these disclaimers, since in many cases we found handwritten notes in the files that apparently did not contain them, and vice versa. Therefore, we relied upon the Investigative Notes Declaration, which is signed by the investigator, to assess compliance.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard (compliance standard: 90%). During our prior review, OPD complied with this subtask in 84% of the cases we reviewed. During this quarterly review, we determined that this standard was not met in two cases, primarily because the investigations were insufficient to apply this standard. These are the use of force case and the missing purse case mentioned above. However, in 92% of the cases, this standard was applied, and since the compliance standard for this subtask is 90%, OPD is in compliance with this Task 5.18.

Task 5.19 requires that each allegation of a complaint is identified and resolved with one of the following dispositions: Unfounded; Sustained; Exonerated; Not Sustained; or Administrative Closure (compliance standard: 95%). While we do not agree with all of the findings for the cases we reviewed (see above), each allegation identified in all cases was resolved with one of the acceptable dispositions, and OPD is in compliance with this subtask.

Task 5.20 requires that the IAD Commander review all “filed” cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed (compliance standard: 90%). A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. OPD currently does not have any cases classified as filed. Cases categorized as “tolling” appear to fit this definition. As of the end of the review period, (March 31, 2010), OPD had four cases classified as tolling. These cases are reviewed with the Chief during his weekly IAD meetings and listed by case number on the printed meeting agendas. OPD is in compliance with this subtask.

Task 5.21 requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken (compliance

standard: 90%). However, with the approval of an IAD Commander, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions. In 12 of the 25 cases we reviewed, not all subject members or employees were interviewed. All of these were approved to be resolved via Summary Finding, however, and so interviews were not required. While we may disagree with the appropriateness of using the Summary Finding process in some of these cases, as noted above, OPD is in compliance with Task 5.21 based on the approval in each case to use the process.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

In the assessment of compliance with this task requirement the Monitoring team also examined compliance with two additional related tasks that had been classified as no long among the active monitoring task. This examination was undertaken as part of our commitment to seeing the original agreement as a comprehensive whole. This view requires regular status checks of tasks where compliance had previously been established. Current data showed DPD to continue to be in compliance on the inactive tasks that we reviewed.

Next Steps:

Prior to our next site visit, we will review a sample of Daily Incident Log entries made since our meeting with IAD May, and discuss them with representatives of IAD and Communications, if necessary. We will also meet with IAD command personnel regarding the use of Summary Findings. Additionally, we will review the case files for all cases listed as tolling as of our visit. Finally, we will meet with IAD personnel and representatives from the Alameda County Sheriff's Office to clarify the roles of OPD and jail (non-OPD) staff related to complaints from jail inmates.

Task 6: Refusal to Accept or Refer Citizen Complaints

Requirements:

Refusal to accept a citizen complaint, failure to refer a citizen to IAD (when that citizen can be reasonably understood to want to make a citizen's complaint), discouraging a person from filing a complaint, and/or knowingly providing false, inaccurate or incomplete information about IAD shall be grounds for discipline for any OPD member or employee.

(Negotiated Settlement Agreement III. F.)

Comments:

During our first reporting period, we found the Department in Phase 2 compliance with Task 6. Our review found, with the possible exception of one case, that the Department conducted acceptable investigations of any circumstance that suggested a member refused to accept a complaint or properly refer a complainant to the appropriate authority, and took the appropriate action.

Discussion:

As previously reported, OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 6, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 6. The requirements of this Task are also incorporated into Manual of Rules sections 314.07, 398.70, and 398.76. As was previously verified, the Department trained at least 95% of relevant personnel on the revised policy, we therefore find OPD in continued Phase 1 compliance with this Task.

Task 6 requires that OPD members/employees who refuse to accept a citizen complaint, fail to refer a citizen to IAD (when the citizen can be reasonably understood to want to make a citizen's complaint), discourage a person from filing a complaint, and/or knowingly provide false, inaccurate, or incomplete information about IAD, are disciplined (compliance standard: 95%).

To assess Phase 2 compliance for this Task, we reviewed a random sample of 71 Daily Incident Log entries, a random sample of 40 IAD case files, and a random sample of 25 Use of Force Reports for the period of January 1, through March 31, 2010. We also queried the IAD database to identify any allegations of MOR 398.70-1, Interfering with Investigations, MOR 398.76-1, Refusal to Accept or Refer a Complaint, and MOR 398.76-2, Failure to Accept or Refer a Complaint, that were investigated and approved during this same time period.

Our review revealed 12 cases where members were alleged to have failed to adhere to the required standard. IAD did not Sustain a violation in any of these cases. One case was Not Sustained, two cases were Administratively Closed, and all other cases were Unfounded. One UOF Report causes some concern as to whether the complainant was improperly influenced to not make a complaint; after some discussion with the sergeant, the complainant allegedly changed her mind about filing a complaint. We recommend that IAD give further review to this case. Otherwise, we concur with the Department's resolution in these cases and find the Department in Phase 2 compliance with Task 6.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with the IAD Commander to discuss IAD's methods for detecting violations of this requirement to include integrity tests in squads that show marked declines in reports. We will review a sample of IAD case files that originated in the field to assess whether they were accepted and/or referred in a timely basis. We will also discuss with IAD the Use of Force Report described above.

Task 7: Methods for Receiving Citizen Complaints

Requirements:

On or before December 1, 2003, OPD shall develop a policy to strengthen procedures for receiving citizen complaints:

- 1. IAD or Communication Division personnel shall staff a recordable toll-free complaint phone line, 24-hours a day, and receive and process complaints in accordance with the provisions of Departmental General Order M-3. The complainant shall be advised that the call is being recorded when a complaint is taken by IAD.*
- 2. Guidelines for filing a citizen's complaint shall be prominently posted and informational brochures shall be made available in key Departmental and municipal locations.*
- 3. OPD shall accept anonymous complaints. To the extent possible, OPD shall ask anonymous complainants for corroborating evidence. OPD shall investigate anonymous complaints to the extent reasonably possible to determine whether the allegation can be resolved.*
- 4. OPD personnel shall have available complaint forms and informational brochures on the complaint process in their vehicles at all times while on duty. Members/employees shall distribute these complaint forms and informational brochures when a citizen wishes to make a complaint, or upon request.*
- 5. IAD shall be located in a dedicated facility removed from the Police Administration Building.*
- 6. Complaint forms and informational brochures shall be translated consistent with City policy.*
- 7. Complaint forms shall be processed in accordance with controlling state law.⁸*

(Negotiated Settlement Agreement III. G.)

Comments:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the last reporting period, we found OPD out of compliance with this Task. We also noted, as did the previous monitor, that IAD does not uniformly mark these cases in its database to make it easy to identify and track the handling of these complaints.

⁸ The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

Discussion:

OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 7, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 7. As was previously verified the Department trained at least 95% of relevant personnel on the revised policy, we therefore find OPD in continued Phase 1 compliance with this Task.

Task 7.3 requires that OPD accept anonymous complaints and investigate them to the extent reasonably possible to determine whether the allegation can be resolved (compliance standard: 95%). To assess Phase 1 compliance with this subtask, we reviewed all cases with complainants listed in the Internal Affairs Division database as originating from complainants who were “anonymous,” “unknown,” “refused,” or any forms of those terms (such as “unk”); and that were approved between January 1, through March 31, 2010. We also reviewed all complaints during this time period that were tagged in the IAD database as originating from an anonymous complainant, and complaints in which the “Complainant” field in the database was blank, to determine whether any were made anonymously.

Based on the above criteria, we identified 13 cases as potential anonymous complaints. From these, we excluded eight cases that did not constitute anonymous complaints of misconduct – that is, either because the complainant was identified at the onset of the investigation, or the investigations were initiated by OPD.

We reviewed the remaining five cases to determine whether OPD investigated the anonymous complaints to the extent reasonably possible. During the course of one of the investigations, IAD ascertained the first name and address of the complainant, rendering the classification of anonymous questionable. In any event, the investigations for these five cases comply with the Task requirements.

The Department, therefore, complied with Task 7.3 in five out of five cases, or 100%. Since the compliance standard of this Task is 95%, OPD is in compliance with Task 7.3 during this reporting period.

During our May site visit, we met with IAD personnel regarding identifying anonymous cases in the IAD database. Following our meeting, the IAD Intake Lieutenant instructed intake personnel to enter “Anonymous” in the “Last Name” field, and “Anonymous Complainant” in the “OPD Where” field, of the database, for all complaints originating from anonymous sources. The IAD Intake Lieutenant also instructed intake personnel to discontinue using the terms “unknown” and “refused” (or any forms of those terms) in these fields. While these changes will not take effect until midway through the next reporting period, we are hopeful that these cases will be easier to identify moving forward.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will follow up with the IAD Intake Lieutenant and other IAD personnel regarding our discussions in May and IAD's new procedures for tracking anonymous complaints.

Task 16: Supporting IAD Process-Supervisor/Managerial Accountability

Requirements:

On or before December 1, 2003, OPD shall develop a policy to ensure that supervisors and commanders, as well as other managers in the chain of command, shall be held accountable for supporting the IAD process. If an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, then that supervisor or manager shall be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene.

(Negotiated Settlement Agreement III. O.)

Comments:

During the first reporting period, we noted that while IAD conducted quality investigations in the vast majority of cases we reviewed and generally made appropriate findings, we expressed some concerns with the disciplinary hearing process. Given our ongoing concerns, we found the Department out of compliance with Task 16.

Discussion:

As previously reported, two Department policies, Departmental General Order M-03 and Training Bulletin V-T.1, incorporate the requirements of Task 16. OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 16.) OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006. As the previous monitor verified that the Department trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 16.1 requires that supervisors and commanders, as well as other managers in the chain of command, are held accountable for supporting the IAD process (compliance standard: Yes/No); and **Task 16.2** requires that if an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense,

the supervisor or manager is held accountable, through OPD's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene (compliance standard: 90%).

Our review of 71 DIL entries, 25 Informally Resolved IAD cases, and 40 IAD and DLI investigations revealed one case where a member was alleged to have failed to adhere to the required standard. In this case, IAD Sustained a violation where a supervisor unintentionally failed to report a violation of MOR 314.28-1. We concur with the Department's resolution of this matter.

The IAD investigations and their review of the DLI cases are generally done well and their conclusions are consistent with their policy directives. As noted in our Task 6 assessment, above, we do have concerns about one case, in which a complainant chose not to make a complaint after discussions with the supervisor on the scene. IAD should resolve that this was not attributable to undue influence. We do not make such a determination at this point based on available information, but we will discuss this case with IAD during our next site visit. Nonetheless, we find the Department to be in compliance with this provision.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with the IAD Commander to determine any Task 16-applicable cases for the next reporting period and assess the propriety of the IAD findings and actions. We will also discuss with IAD the status of the case described above, and report on it in our next report.

Task 18: Approval of Field-Arrest by Supervisor

Requirements:

Within 260 days from the effective date of this Agreement, the Chief of Police shall, based on contemporary police standards and best practices, develop and implement policies to address the following standards and provisions:

Approval of Field-Arrest by Supervisor

1. *OPD shall develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates on calls for service. The policies developed in this Section shall require supervisors to respond to the scene of (at least) the following categories of arrest, unless community unrest or other conditions at the scene make this impractical:*
 - a. *All Felonies;*
 - b. *All drug offenses (including narcotics, controlled substances and marijuana arrests if the subject is taken to jail).*

- c. *Where there is an investigated use of force;*
- d. *Penal Code §§69, 148 and 243(b)(c).*

*The responding supervisor shall review the arrest documentation to determine whether probable cause for the arrest, or reasonable suspicion for the stop, is articulated, to ensure that available witnesses are identified, to approve or disapprove the arrest in the field, and to log the time of the contact.*⁹

(Negotiated Settlement Agreement IV. A.)

Comments:

Only one provision of Task 18 (18.2.2) is being actively monitored under the MOU. During the first reporting period, we found the Department in compliance with this subtask. At that time, we reviewed a stratified random sample of 100 use of force reports for Level 2, 3, and 4 incidents, and found that 95% of the reports listed witnesses, appropriately noted “no known witnesses,” or referred to a canvass with no witnesses produced.

Discussion:

As previously reported, OPD published an arrest approval and report review policy, DGO M-18, *Arrest Approval and Review in the Field* (May 13, 2004; and updated October 1, 2005), which incorporates the requirements of Task 18. In December 2006, OPD published Special Order 8536, *Probable Cause Arrest Authorization and Report Review*. As was previously verified the Department trained at least 95% of relevant personnel on the revised policy, we therefore find OPD in continued Phase 1 compliance with this Task.

Task 18.2.2 requires that supervisors review arrest documentation to verify that available witnesses are identified (compliance standard: 90%). As noted above, we found the Department in compliance with this subtask during the first reporting period. At that time, however, we only reviewed documentation for arrests resulting in investigated uses of force; we did not review arrest documentation for the other arrest categories that are applicable to this requirement. These additional arrest categories include: all felonies; all drug offenses (a marijuana arrest requires supervisory approval only where the subject is taken into custody for that offense); and Penal Code §§ 69, 148, 243 (b)(c).

To assess Phase 2 compliance with this subtask during this reporting period, we reviewed arrest documentation for all of the applicable arrest categories, as well as documentation for arrests resulting in investigated uses of force. Specifically, we reviewed a random sample of 52 adult Arrest Reports, 17 juvenile Arrest Reports, and documentation for 49 arrests resulting in investigated uses of force, that occurred between January 1, and March 31, 2010; to determine if the reports listed witnesses, appropriately noted “no known witnesses,” or referred to a canvass with no witnesses produced. In keeping with previous practice, if there was no mention of any witnesses in the Crime Report narrative, we accepted a “0” in the “witness” box on the cover sheet as sufficient documentation.

⁹ The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

Of the 52 adult Arrest Reports, we excluded 19 from our assessment for one or more of the following reasons: the arrest involved a warrant; the arrest occurred outside of our selected time period; the incident was, in fact, a psychiatric detention that did not involve an arrest; or the arrest involved a misdemeanor offense that was not one of the arrests applicable to Task 18.2.2. Of the 33 remaining adult arrests, 27 were in compliance with Task 18.2.2. This represents an 82% compliance rate among adult arrests for this subtask. The six other Reports did not, as per the requirement, list witnesses, appropriately note “no known witnesses,” or refer to a canvass with no witnesses produced.

Of the 17 juvenile Arrest Reports, we excluded six from our assessment for one or more of the following reasons: the arrest involved a warrant; the arrest occurred outside of our selected time period; the incident was, in fact, a psychiatric detention that did not involve an arrest; or the arrest involved a misdemeanor offense that was not one of the arrests applicable to Task 18.2.2. Of the remaining 11 juvenile arrests, nine were in compliance with Task 18.2.2. This represents an 82% compliance rate among juvenile arrests for this subtask. The other two did not, as per the requirement, list witnesses, appropriately note “no known witnesses,” or refer to a canvass with no witnesses produced.

Of the 49 arrests resulting in investigated uses of force, 48 were in compliance with Task 18.2.2.¹⁰ This represents a 98% compliance rate among arrests resulting in investigated uses of force for this subtask.

Our review reveals an overall 90% compliance rate for this requirement. OPD is in compliance with Task 18.2.2.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

OPD has done a commendable job in meeting the requirements of Task 18.2.2 as it relates to arrests resulting in an investigated use of force. However, we will discuss with OPD the importance of more closely auditing the Department’s adult and juvenile arrest reports to ensure supervisors are reviewing the relevant arrest documentation to verify available witnesses were identified. We will continue to monitor closely the adult and juvenile Arrest Reports associated with felony arrests, drug arrests, and arrests for PC 69, 148, and 243(b)(c).

¹⁰ This number includes only Level 1, 2, and 3 uses of force because per DGO K-4, the documentation of witnesses of Level 4 uses of force is not required.

Task 20: Span of Control for Supervisors

Requirements:

On or before August 14, 2003, OPD shall develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The policy shall provide that:

1. *Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
2. *During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and operational needs, whether or not to backfill for the absence of the sergeant on leave.*
3. *If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
4. *If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Comments:

During the last reporting period, we found OPD in partial Phase 2 compliance with Task 20. We found that 96% of the squads we reviewed met the 1:8 span of control – a significant improvement from the previous monitor's final assessment, when it found that 86% of squads met the required ratio. However, we found that only 70% of the squads we reviewed were supervised by their primary, or assigned, supervisors; most of the remainder were supervised by certified acting sergeants.

Discussion:

As previously reported, directives relevant to this Task include: Departmental General Order A-19, *Supervisory Span of Control*, issued on July 26, 2006; Departmental General Order D-13, *Assignment to Acting Higher Rank or Classification*, issued on June 17, 1999; and Special Order 8435, *Acting Sergeant Selection Process*, issued on July 26, 2006.¹¹ Since the Department has trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

¹¹ As noted by the previous monitor and our previous report, DGO D-13 was published on June 17, 1999, although Special Order 8435 updates the Department's policy on acting supervisors. The previous monitor encouraged OPD to update DGO D-13 so that it incorporates the updated information; we concur with this perspective and will follow up with OPD regarding this change.

Task 20.1 requires that sufficient primary sergeants be assigned at the draw board/master detail level to permit one primary sergeant for every eight officers under normal conditions (compliance standard: Yes/No).

During the previous reporting period, we did not assess this subtask during the previous reporting period due to the lack of reliable documentation. At that time, we reported that there is no official OPD “master detail” that both lists sergeants’ assignments as of the time of the “draw” at the beginning of the year and is also updated throughout the year as loans, transfers, and other personnel changes alter supervisory assignments.

In May, we met with OIG, the BFO Deputy Chief, and other Department officials to discuss how the Department tracks, and maintains records of, its supervisory assignments over time. At that meeting, we learned that Telestaff, the Department’s electronic scheduling system, serves this purpose. Due to technical problems, we were not granted access to Telestaff during this reporting period. However, we will review this system and assess OPD’s compliance with Task 20.1 in the next reporting period.

Task 20.2 requires that relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Targeted Enforcement Task Force I and II, Special Duty Unit I - Parole and Corrections Team, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%).

To assess this subtask, we reviewed a stratified random sample of 14 days (within our selected time period) of Daily Details for the squads listed above. Specifically, we reviewed Daily Details for the following dates: Tuesday, January 5; Saturday, January 16; Wednesday, January 20; Friday, January 22; Tuesday, February 2; Monday, February 8; Saturday, February 20; Thursday, February 25; Friday, February 26; Monday, March 8; Wednesday, March 10; Sunday, March 14; Sunday, March 21; and Thursday, March 25, 2010. For the purposes of this requirement, we considered certified acting sergeants to be primary supervisors if they were assigned to their particular squads.

Of the 427 applicable squads we reviewed, we found that 299 (71%) were supervised by their primary supervisors. Of the squads *not* supervised by their primary supervisors, 32 (7% of the total) were supervised by “backfill” sergeants working overtime, 85 (19% of the total) were supervised by certified acting sergeants, two were supervised by officers who were not certified to act as sergeants, and nine (2% of the total) were not supervised.

OPD is not in compliance with Task 20.2.

Task 20.3 requires that a supervisor’s span of control for the Department’s relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Targeted Enforcement Task Force I and II, Special Duty Unit I - Parole and

Corrections Team, and Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed 1:8 on a day-to-day basis (compliance standard: 90%).

To assess Task 20.3, we reviewed the above-referenced Daily Details and counted the number of officers being supervised and the supervisors for each relevant squad. For the purposes of this requirement, canine officers, field trainees, desk personnel, and police technicians do not count toward the eight. In addition, we considered certified acting sergeants to be supervisors, but any instance of a squad supervised by an “acting” supervisor who was not certified by the Department’s program was considered out of compliance. Of the 427 applicable squads we reviewed, 417 (98%) met the 1:8 span of control. OPD is in compliance with Task 20.3.

Task 20.4 requires that the Department’s Area Commanders make backfill decisions and that these decisions are consistent with policy and operational needs. An Area Commander “backfills” a sergeant slot when the assigned, or primary, sergeant is unable to supervise his/her squad on a short-term basis (“due to sickness, vacation, compensatory time off, schools, and other leaves”).

To assess this subtask, we reviewed the above-referenced Daily Details and noted the squads that were supervised by backfill sergeants on short-term bases. We found 32 instances (7% of the total we reviewed) of backfill supervisors in our sample. This is the same percentage of backfill supervision that we found during the last reporting period.

OPD is in compliance with Task 20.4.

Task 20.5 requires that the span of control for special operations is determined by an Area Commander and is reasonable. In addition, the Department requires that sergeants or certified acting sergeants supervise all special operations.

To assess this subtask, we reviewed a random sample of 25 special operations plans of the 165 total operations conducted between January 1, through March 31, 2010, to determine whether the span of control for these operations was determined by the relevant commander and was reasonable. Specifically, we looked at the nature of the operations; the number of officers involved in the operations; and, if any acting supervisors were certified acting sergeants. Our review found that all 25 of the special operations in our sample met these requirements. OPD is in compliance with Task 20.5.

Task 20.6 requires that the Chief or his designee make decisions regarding any loans or transfers for long-term backfill. As noted above in our discussion of Task 20.4, an Area Commander “backfills” a sergeant’s slot when the primary, or assigned, sergeant is unable to supervise his/her squad on a short-term basis. However, the Chief or his designee (generally, the Assistant Chief or Deputy Chief) is required to determine any loans or transfers for *long-term* backfill.

We reviewed the Department's weekly Personnel Orders issued between January 1, through March 31, 2010, for the signature of the Chief or his designee. We found that all of the Personnel Orders during this time period contained such a signature, indicating the Chief's approval.

The NSA does not require written documentation of loans and transfers for long-term backfills – merely that such loans and transfers are approved by the Chief or his designee. However, OPD policy requires such documentation. Specifically, Departmental General Order B-4, *Personnel Assignments, Selection Process, and Transfers*, states, "A unit commander/manager who needs a loan of personnel shall submit a justifying loan request to his/her Deputy Chief/Director requesting the loan." As we noted in our last report, 35% of loans and transfers reviewed by the Office of Inspector General (OIG) in a recent assessment were not included on the weekly Personnel Orders nor otherwise documented. Following these findings, Bureau of Field Operations (BFO) staff promised to improve its documentation of loans and transfers. We will interview the BFO Deputy Chief during the next reporting period, and continue to monitor the Department's loans and transfers to determine if OPD's practice comports with the NSA and Departmental policy.

OPD is in compliance with Task 20.6.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will discuss with OIG, the BFO Deputy Chief, and other BFO personnel how the Department's recent restructuring affects Task 20-applicable units and squads. We will also discuss with OIG the prospect of updating DGO D-13 to incorporate the provisions from Special Order 8435.

Task 24: Use of Force Reporting Policy

Requirements:

The policy shall require that:

1. *Members/employees notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force.*
2. *In every investigated use of force incident, every member/employee using force, and every member/employee on the scene of the incident at the time the force was used, shall report all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor.*
3. *OPD personnel document, on the appropriate form, any use of force and/or the drawing and intentional pointing of a firearm at another person.*
4. *A supervisor respond to the scene upon notification of an investigated use of force*

or an allegation of excessive use of force, unless community unrest or other conditions makes this impracticable.

5. *OPD notify:*
 - a. *The Alameda County District Attorney's Office immediately or as soon as circumstances permit, following a use of lethal force resulting in death or injury likely to result in death.*
 - b. *The City Attorney's Office as soon as circumstances permit following the use of lethal force resulting in death or serious injury. At the discretion of the City Attorney's Office, a Deputy City Attorney shall respond to the scene. The Deputy City Attorney shall serve only in an advisory capacity and shall communicate only with the incident commander or his/her designee.*
 - c. *Departmental investigators regarding officer-involved shootings, in accordance with the provisions of Section V, paragraph H, of this Agreement.*
6. *OPD enter data regarding use of force into OPD's Personnel Assessment System (PAS).*

(Negotiated Settlement Agreement V. A.)

Comments:

During the last reporting period, we found OPD out of compliance with Task 24, mainly because following many Level 4 incidents, a supervisor was not notified regarding the use of force. We recommended that OPD require an affirmative statement on either the UOF Report or in the principal offense Crime Report noting the name and unit number of the supervisor who was notified, and in instances where a supervisor responds to a scene, the time that the supervisor arrived.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 24. OPD revised DGO K-4 on August 1, 2007. On April 15, 2009, OPD issued Special Order 8977, amending DGO K-4. The revised policy and Special Order also incorporate the requirements of Task 24. As was previously verified the Department trained at least 95% of relevant personnel on the revised policy, we therefore find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for Task 24 for this reporting period, we reviewed documentation for a stratified random sample of 98 Use of Force Reports, including one Level 1, 26 Level 2, 32 Level 3, and 39 Level 4 Reports.¹²

¹² We excluded one UOF Report for a Level 1 incident that occurred during our selected time period because it was finalized too late for inclusion. We will review it during the next reporting period. We also excluded one Level 3 Report because it was a duplicate of another Report in our sample.

Task 24.1 requires that members/employees notify their supervisor as soon as practicable following any reportable use of force or allegation of excessive use of force (compliance standard: 95%). To assess this subtask, we reviewed the UOF Reports, Crime Reports (when applicable), and Computer Assisted Dispatch (CAD) purges for all of the force incidents in our sample. We found that the one Level 1 incident and all 26 of the Level 2 incidents in our sample were in compliance with this requirement. Of the 32 Level 3 incidents in our sample, we found two investigations in which we were unable to determine a notification time or response time. These two UOF Reports indicated that the supervisors arrived on scene shortly after the incident, and they were obviously on the scene because UOF Reports were ultimately generated; however, there was no notation of the time of the supervisors' arrival. Level 4 uses of force are self-reporting, and consequently, less documentation is required than for Levels 1, 2, and 3 incidents. DGO K-4, Section VI A.1., states that involved personnel are to notify and brief their supervisors immediately or as soon as practicable. We found that in all of the 39 Level 4 incidents in our sample, a supervisor was notified regarding the force incident. OPD took extra steps to ensure the required information was noted in the Report, and is in the process of changing its UOF Report forms to require an affirmative statement noting the name and unit number of the supervisor who was notified, and in instances where a supervisor responds to a scene, the time that the supervisor arrived. The overall compliance rate for Task 24.1 is 98%, and OPD is in compliance with Task 24.1.

Task 24.2 requires that in every reportable use of force incident, every member/employee on the scene of the incident at the time the force was used, reports all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor (compliance standard: 95%); and **Task 24.3** requires that OPD personnel document, on the appropriate form, every use of force and/or the drawing and intentional pointing of a firearm at another person (compliance standard: 95%). Our review of the UOF Reports, Crime Reports, and supplemental reports for the incidents in our sample found that 100% met these requirements. We found that for Level 2 and 3 incidents in our sample, this information was primarily contained in the UOF Reports; for Level 4 incidents in our sample, the information frequently appeared in the actual offense reports.

It is difficult to determine when force is used and not reported, absent corresponding reviews of citizen complaints to IAD or the Citizens' Police Review Board (CPRB); or an intensive review of cases involving assaults on police officers, resisting arrest, disorderly conduct, and other similar situations resulting in confrontations between officers and the community. These cases can serve as a good barometer of how well the officers are complying with OPD policy. During the last reporting period, we recommended that OIG audit these types of cases and compare them with the instances of reported UOFs to determine a level of compliance by the Department. We will follow up with OIG regarding this recommendation. However, based on the currently available data, we find OPD in compliance with Tasks 24.2 and 24.3.

Task 24.4 requires that a supervisor respond to the scene upon notification of a Level 1, 2, or 3 use of force or an allegation of excessive use of force, unless community unrest or other

conditions makes such response impracticable (compliance standard: 95%). We found that supervisors responded to the scene in all 59 Level 1, 2, and 3 incidents in our sample. OPD is in compliance with Task 24.4.

Tasks 24.5, 24.6, and 24.8 require certain notifications in uses of force relative to officer-involved shootings and the use of lethal force.¹³ Specifically, **Task 24.5** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the Alameda County District Attorney's Office immediately or as soon as circumstances permit (compliance standard: 95%). **Task 24.6** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the City Attorney's Office as soon as circumstances permit (compliance standard: 95%). **Task 24.8** requires that following every officer-involved shooting, OPD notify Homicide and Internal Affairs investigators (compliance standard: 95%). The Level 1 use of force incident that we reviewed during this reporting period involved an officer-involved shooting. OPD notified the Alameda County District Attorney's Office, City Attorney's Office, OPD Homicide, and IAD as required by the NSA. OPD is in compliance with Tasks 24.5, 24.6, and 24.8.

Task 24.9 requires OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS), now the Personnel Assessment System (PAS) (compliance standard: 95%). We were unable to review IPAS to assess this requirement, as our access was temporarily suspended due to technical problems. However, only one of the UOF Reports we reviewed included a notation from the investigating supervisor that supervisory training was going to be included in the officer's supervisory notes files and IPAS. OPD is not in compliance with Task 24.9.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will follow up with OIG regarding auditing cases involving assault on police officers, disorderly conduct, resisting arrest, and other similar activity that we believe could result in UOFs to determine if, in fact, members are generating the required UOF Reports. We also plan to meet with OPD personnel to determine if, in fact, periodic refresher training regarding use of force reporting requirements has been or is going to be provided to all officers and supervisors; and to review the lesson plans on this subject that we recently received from the Training Division.

¹³ Task 24.7 is no longer applicable.

Task 25: Use of Force Investigations and Report Responsibility

Requirements:

An on-scene supervisor is responsible for completing an investigated Use of Force Report in accordance with the provisions of Departmental General Order K-4, "Reporting and Investigating the Use of Force."

1. *OPD shall develop and implement a policy for conducting and documenting use of force investigations that include, at a minimum:*
 - a. *Documentation of the incident in either an Offense or Supplemental Report from the member(s)/employee(s) using force; and/or, when necessary, a statement taken from the member(s)/employee(s) using force;*
 - b. *Separating and separately interviewing all officers who were at the scene at the time of the incident;*
 - c. *A Supplemental Report from other members/employees on the scene or a statement taken, if deemed necessary by the investigating supervisor;*
 - d. *Identification and interviews of non-Departmental witnesses;*
 - e. *Consideration of discrepancies in information obtained from members, employees and witnesses, and statements in the reports filed;*
 - f. *Whether arrest reports or use of force reports contain "boilerplate" or "pat language" (e.g., "fighting stance", "minimal force necessary to control the situation");*
 - g. *Documentation of physical evidence and/or photographs and a summary and analysis of all relevant evidence gathered during the investigation; and*
 - h. *Consideration of training/tactical issues involving the availability and practicality of other force options.*
 - i. *Supervisor's justification as to why any element of the policy was not documented; and*
2. *All supervisors shall be trained in conducting use of force investigations and such training shall be part of a supervisory training course.*
3. *Use of force investigations shall include a recommendation whether the use of force was objectively reasonable and within Department policy and training. The recommendation shall be based on the totality of the circumstances and shall consider, but is not limited to, the following factors:*
 - a. *Whether the force used was pursuant to a legitimate law-enforcement objective;*
 - b. *Whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the members/employees were attempting to achieve;*
 - c. *Whether the member/employee used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts;*
 - d. *Whether the force used was de-escalated or stopped reasonably when*

- resistance decreased or stopped;*
4. *Use of Force Reports shall be reviewed by the appropriate chain-of-review as defined by policy.
The type of force used, the identity of the involved members, and the report preparer shall be the determining criteria for utilizing the appropriate chain-of-review. Reviewers may include, when appropriate, the chain-of-command of the involved personnel, the appropriate Area Commander on duty at the time the incident occurred, other designated Bureau of Field Operations commanders, and as necessary, the chain-of-command of the involved personnel up to the Division Commander or Deputy Chief/Director, and the Internal Affairs Division. Reviewers for Level 1-3 use of force investigations shall:*
 - a. *Make a recommendation as to whether the use of force was in or out of policy,*
 - b. *Order additional investigation and investigative resources when necessary, and*
 - c. *Comment on any training issue(s) when appropriate.*
 5. *Any recommendation that the use of force did not comply with Department policy shall result in the incident being referred to the Internal Affairs Division to conduct additional investigation/analysis, if necessary.*
 6. *Members/employees involved in a use of force incident resulting in serious injury or death and/or an officer-involved shooting, shall be separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed.*

(Negotiated Settlement Agreement V. B.)

Comments:

During the previous reporting period, we found OPD in partial Phase 2 compliance with Task 25. Specifically, we noted that OPD encountered difficulty meeting the required deadlines in Level 2 and 3 UOF investigations, which are required to be completed in 15 days. We also found the Department out of compliance with the chain of command review requirement; and with the requirement that officers who are involved in force incidents resulting in serious injury or death, or in a shooting, be separated from each other at the scene and kept apart until they have been interviewed and completed their Use of Force Reports. In our first report, we encouraged OPD to continue to provide periodic refresher training to reinforce areas in which the supervisors are performing well and to improve in those areas that need improvement.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 25. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 25. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

Our Task 25 review covers the period from January 1, through March 31, 2010. We reviewed documentation for a stratified random sample, which included one Level 1, 26 Level 2, 32 Level 3, and 39 Level 4 Use of Force Reports, for a total of 98 Reports.

Task 25.1 requires IAD to complete a Use of Force Report for every Level 1 use of force, and an on-scene supervisor to complete a Use of Force Report for every Level 2 and 3 use of force (compliance standard: 95%). To assess this requirement, we reviewed documentation for 60 Level 1, Level 2, and Level 3 incidents. In the Level 1 incident, IAD completed a UOF Report; in all of the Level 2 and 3 incidents in our sample, a supervisor responded to the scene and completed a UOF investigation. However, in two Level 2 cases and two Level 3 cases, we were troubled to note that the assigned investigators were involved in the incident and justified their own actions in the Report. We will discuss these issues with OPD, and report on our discussions in our next quarterly report. In addition, three Level 4 incidents in our sample were downgraded from Level 3 to Level 4 force incidents by supervisors who were on the scene; in each instance, the change was properly documented and comported with the governing documents. Despite our concerns noted above, OPD is in compliance with Task 25.1.

Task 25.2 requires that Use of Force Reports/investigations include NSA-required elements (compliance standard: 90%) and are timely pursuant to DGO K-4 (compliance standard: 95%). All of the Reports we reviewed included the NSA-required elements. We assessed timeliness using a 75-day time limit for the Level 1 UOF Report, a 15-day time limit for the Level 2 and 3 incidents, and a review of the Report by the end of the tour of duty for Level 4 incidents. Only 76 (78%) of the Reports were submitted in a timely fashion, according to their respective requirements. We also reviewed extension requests for these Reports, and the Reports were completed within the time constraints or met the new timeline. OPD is not in compliance with Task 25.2.

Task 25.3 requires that all supervisors are trained how to conduct use of force investigations, and such training is part of a supervisory training course (compliance standard: 95%). We did not assess this subtask during this reporting period, due to a recent change in Monitoring Team personnel. During the next reporting period, we will review a sample of supervisors' training records, and lesson plans for the supervisory training course recently provided to us by the Training Division. We also plan to meet with OPD to determine if periodic refresher training regarding use of force reporting requirements has been or is going to be provided to all officers and supervisors. Such training is especially important prior to special events or overtime assignments staffed by members who do not usually work field assignments.

Task 25.4 requires that the investigations include required recommendations (compliance standard: 90%). Areas of recommendation include: whether the force used was pursuant to a legitimate law enforcement objective; whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the officers were attempting to achieve; whether the officers used reasonable verbal means to attempt to resolve the situation without force, if time and circumstance permitted such attempts; and

whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped. Our review found all of the Level 1, Level 2, and Level 3 incidents in our sample in compliance with this requirement – an overall compliance rate of 100%. (This subtask does not apply to Level 4 UOFs.) OPD is in compliance with Task 25.4.

Task 25.5 speaks to the review process, which includes chain of command review, making assessments as required by the NSA and policy, and ensuring that any violation of policy results in the incident being referred to Internal Affairs to conduct additional investigations or analysis (compliance standard: 95%). Our evaluation reflected that the supervisors included the required details and that the chain of command conducted critical reviews. In the Level 2 and 3 Reports, we found that the chain of command generally did a decent job reviewing and commenting on the quality of the investigations. In several instances, Reports were returned for additional investigation or clarification. There were, however, two Level 2 and two Level 3 cases in which the review missed items that should have been identified for discussion with the investigating supervisor to ensure that the errors would not be repeated in future investigations. In these four instances, the investigating supervisor was on the scene and involved in the force incident to some degree; these supervisors should not have conducted the relevant UOF investigation. In another case, a witness alleged that the force used had been excessive, but there was no evidence that an IAD complaint packet was provided to that individual. There was also a Level 3 investigation in our sample where the supplemental reports for the captain and reviewing officer were not included with the UOF Report. The Chronological Activity Log for this case indicated that the Report was submitted for command review. Nonetheless, command signed off on the Reports. The compliance rate for Level 2 and 3 Reports combined is 81%. The Department is not in compliance with Task 25.5.

Task 25.6 addresses the need to keep officers involved in use of force incidents resulting in serious injury or death, or involved in a shooting, be separated from each other at the scene, and kept apart until they have been interviewed and completed their Reports (compliance standard: 95%). To assess this subtask, we reviewed documentation for the Level 1 incident that occurred during this reporting period; this incident involved the shooting of an armed subject by an OPD officer. Two OPD officers actually fired upon the subject. In this incident, the involved officers were sequestered, and other witness officers were contained in an outer perimeter and interviewed by OPD Homicide before being released. This was a large scene with many officers and supervisors on the scene that involved an OPD facility. OPD is in compliance with Task 25.6.

OPD continues to encounter difficulty meeting the deadlines in Level 1 UOF investigations, which are required to be completed in 75 days; and with Level 2 and 3 UOF investigations, which are required to be completed in 15 days. Compared to the previous reporting period, OPD did slightly poorer with Level 4 UOF investigations, which are required to be approved before the end of the tour of duty. OPD does a good job of identifying tactical issues and documenting corrective conversations between supervisors and subordinates. Chain of command reviewers frequently comment on the appropriateness of the UOFs as well as the tactics utilized. We encourage OPD to continue to provide periodic refresher training to reinforce areas in which the

supervisors are performing well, and to improve in those areas that need improvement to ensure that UOF investigations are complete, impartial, and thorough.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

As noted above, we believe that refresher training needs to be provided to supervisors and managers to address UOF investigation timeliness and the importance of conducting complete, thorough, and impartial UOF investigations.

Task 26: Use of Force Review Board (UFRB)

Requirements:

OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:

- 1. Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
- 2. Require the FRB to review all use of force investigations;*
- 3. Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
- 4. Require the FRB to forward sustained policy violations to the Discipline Officer.*
- 5. Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
- 6. Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
- 7. Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
- 8. Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
- 9. Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Comments:

During our first reporting period, we found OPD out of compliance with Task 26. We noted that OPD had particular difficulty meeting Force Review Board (FRB) deadlines, and found it out of compliance with the provision that FRBs be commenced in a timely basis.

Discussion:

As previously reported, our review of Departmental General Order K-4.1, *Force Review Boards* (01Aug07), determined that this policy comports with the requirements of Task 26. As was previously verified the Department trained at least 95% of relevant personnel on the revised policy, we therefore find OPD in continued Phase 1 compliance with this Task.

Task 26.1 requires that the Force Review Board (FRB) review all Level 2 use of force investigations following the completion of the internal investigation (compliance standard: 95%). DGO K-4.1 requires that the FRB chair convene a FRB to review the factual circumstances of all Level 2 cases within 90 days of receipt of the UOF packet from IAD. OPD provided documentation for 26 incidents that were heard by the Board during this reporting period, January 1, through March 31, 2010. We determined that 19 of the 26 Reports, or 73%, were in compliance. Two of the Reports were not in compliance because they did not include a FRB cover sheet indicating the date of receipt from IAD. Five of the Reports exceeded the 90-day time limit for commencement of the FRB. In one of these instances, the FRB was not held until 128 days after the completion of the investigation; in another, the FRB was not held until 158 days after the completion of the investigation. In an additional FRB review, the process was delayed in excess of the 90-day requirement, but the summary contained an appropriate explanation justifying the rescheduling of the FRB. This specific FRB was not counted against OPD's compliance percentage. OPD is not in compliance with this subtask.

Task 26.2 requires that for every Level 2 use of force investigation, the FRB make a recommendation as to whether the use of force was in or out of policy (compliance standard: 95%). Of the cases we reviewed, 25 out of 26, or 96%, contained a recommendation noting the use of force was in policy. One of the cover sheets also noted agreement with the recommendation of the FRB by the Chief's designee. OPD is in compliance with this subtask.

Task 26.3 requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to IAD for investigation (compliance standard: 95%). There was one case in our dataset in which that determination was made. In that case, the IAD representative attending the FRB advised the Board that the incident/conduct may have violated a specific OPD MoR section involving the unintentional discharge of the officer's Department-issued firearm. However, the FRB did not refer the incident to IAD for further investigation, nor did it articulate in the summary that the violation was or could be handled without further investigation as required by the provisions of DGO K-4.1. We reviewed the relevant UOF Report, and noted that the reviewing commanders found that the use of force was in compliance with Departmental policy. Neither of the review and signature pages mentions the firearms discharge. OPD is not in compliance with this subtask.

Task 26.4 requires that the FRB make recommendations to the Chief of Police regarding additional use of force training, changes in policies or tactics, additional standards, investigatory policies, or training for use of force investigations (compliance standard: Yes/No). **Task 26.5** requires that the FRB conduct an annual review of use of force cases examined to identify any

patterns of use of force practices (including K-3) that may have policy or training implications (compliance standard: Yes/No). **Task 26.6** requires that the FRB issue an annual report to the Chief of Police reporting on its annual review (compliance standard: Yes/No). These three subtasks are addressed in a memorandum submitted to the Chief dated March 11, 2010, that reviews the FRB activities for calendar 2009. The memorandum also identifies patterns and makes training recommendations. The patterns identified in the memorandum relate to officers conducting foot pursuits of subjects who they believed to be armed, in yards; officers tackling subjects; and the use of Tasers on handcuffed subjects. The training recommendations relate to the Board's tasking of supervisors with conducting training on issues identified by the Board, and the submission of the training conducted to the Board. The memorandum states that the FRB now orders that involved officers attend hearings so that, if necessary, command personnel can also provide training during the actual hearings. OPD is in compliance with these subtasks.

During our May site visit, we observed FRB hearings and had some concerns, which we shared with the Chief. In particular, the proceedings appeared to be very informal, and at times, of questionable value. For instance, the involved officers did not provide testimony, and so the Board received no additional information than what was in the officers' original UOF Report.

We will continue to attend FRB hearings and share our observations with OPD.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We request that OPD again schedule its FRB hearings during our next quarterly visit, to permit us to continue to observe and evaluate the process firsthand. We plan to discuss with OPD the possibility of implementing a process to ensure that the Chief has either agreed or disagreed with the FRB's recommendations. In 25 out of 26 cases in our review, there was no documentation to indicate whether the Chief agreed or disagreed with the FRB's recommendations.

Task 30: Firearms Discharge Board of Review

Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
2. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Comments:

During our first reporting period, we found the Department in compliance with Task 30. At that time, we reviewed documentation for one incident. We found that the EFRB was convened within the timeframe required; recorded statements were available from all officers on the scene and the subject on whom the force was used; and, according to the Review Board Report, the Report complied with the policies and procedures set forth in DGO K-4.1.

Discussion:

As previously reported, OPD published Departmental General Order K-4.1, *Force Review Boards* (February 17, 2006), which incorporates the requirements of Task 30. OPD revised DGO K-4.1 on August 1, 2007. The revised policy also incorporates the requirements of Task 30. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

Task 30.1 requires that OPD convene an EFRB within 45 days of the completion of the Use of Force (UOF) Report by IAD (compliance standard: 95%). We reviewed documentation for four Level 1 force incidents involving three officer-involved firearm discharges – one of which resulted in death to an armed suspect; and one vehicle pursuit initiated by OPD where the subject tried to exit or was ejected from a moving vehicle and suffered near-fatal injuries. In two (50%) of these four incidents, OPD convened an EFRB within 45 days of the completion of the UOF Report. For the other two incidents, OPD did not convene EFRBs until 59 and 64 days after the completion of the UOF Reports.¹⁴ OPD is not compliance with this subtask.

Task 30.2 requires that the EFRB has access to recordings and/or transcripts of interviews of all personnel on scene, including civilian witnesses, and is empowered to call in any OPD personnel

¹⁴ In the first case, IAD completed the UOF Report on November 30, 2009, and the EFRB was held on January 28, 2010. In the second case, IAD completed the UOF Report on January 4, 2010, and the EFRB was held on March 9, 2010.

it believes should testify (compliance standard: Yes/No). In the four incidents we reviewed, recorded statements and/or transcripts were available from all officers on the scene, including civilian witnesses, and any other personnel needed to testify. OPD is in compliance with this subtask.

Task 30.3 requires that OPD complies with the policies and procedures set forth in DGO K-4.1, *Force Review Boards* (compliance standard: Yes/No). This policy outlines several requirements, including who comprises the Board, the material to be made available for the Board, the conduct of the Board, the information to be memorialized and follow-up actions, if warranted. We reviewed the Review Board Reports that were prepared for the four incidents we reviewed. Except in one case in which the Deputy City Attorney was absent, the required attendees were present; and after review and deliberations, the Board determined that the subject officer's actions were in compliance with Department policy. The Board discussed training recommendations, and the subject officer was trained after the Board concluded its duties. The Department is in compliance with this subtask.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will discuss with OPD what steps are being taken to ensure the EFRBs are commenced in a timely fashion consistently during our next visit. Additionally, we will remind OPD the importance of having all required attendees present in accordance with the requirements of this task.

Task 33: Reporting Misconduct

Requirements:

Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

Misconduct

OPD personnel shall report misconduct by any other member or employee of the Department to their supervisor and/or IAD. The policy shall state that corrective action and or discipline shall be assessed for failure to report misconduct. OPD shall require every member and employee encountering a use of force that appears inappropriate, or an arrest that appears improper, to report the incident to his/her supervisor and/or IAD. OPD shall establish and maintain a procedure for a member/employee to report police misconduct on a confidential basis.

- 1. Any member/employee of OPD may report a suspected case of police misconduct confidentially to the commander of IAD.*
- 2. The member/employee reporting this conduct shall indicate clearly to the commander of IAD that the report is being made under these confidential*

provisions.

3. *The report may be made in person, by telephone, or in writing. The IAD Commander shall document the report in a confidential file that shall remain accessible only to the IAD Commander.*
4. *The case shall be investigated without disclosure of the complainant's name, unless and until such disclosure is required by law.*
5. *This confidential reporting procedure shall be made known to every member/employee of OPD and to all new members/employees of OPD within two (2) weeks of hiring.*

(Negotiated Settlement Agreement VI. A.)

Comments:

During our last reporting period, our query of the IAD database showed only one closed case in which a member failed to report the misconduct of another member. IAD conducted an investigation and Sustained the misconduct, and the Department implemented the appropriate sanctions. However, in consideration of the Department's previous non-compliant status and in the face of there being no new data, we found there was no affirmative justification for altering the previous findings.

Discussion:

As previously reported, OPD has developed several policies that, in concert, incorporate the requirements of this task: *Manual of Rules* (MOR) Section 314.48, Reporting Violations of Laws, Ordinances, Rules or Orders; MOR Section 314.49, Confidential Reporting of Police Misconduct; Departmental General Order D-16, Check-In and Orientation; MOR Section 370.18, Arrests; and MOR Section 370.27, Use of Physical Force. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

Task 33.1 requires that in all sustained internal investigations, OPD conduct an assessment to determine whether members/employees/supervisors knew or should have known that misconduct occurred (compliance standard: 95%). **Task 33.2** requires that where OPD determines that members/employees/supervisors knew or should have known that misconduct occurred but did not report it as required, OPD takes appropriate action (compliance standard: 95%). **Task 33.3** requires that OPD maintain a functioning procedure that incorporates the NSA requirements related to establishing and maintaining confidential reporting of misconduct. These requirements include: confidential reports of suspected misconduct may be made in person, by telephone, or in writing (33.3.1, compliance standard: Yes/No); any OPD member/employee may report suspected misconduct confidentially to the IAD Commander, who shall document the report in a confidential file that shall remain accessible only to this IAD Commander (33.3.2, compliance standard: Yes/No); confidentially reported cases are investigated without disclosure of the complainant's name, unless and until such disclosure is required by law (33.3.3, compliance standard: 95%); and OPD informs all new and current employees of OPD's confidential reporting procedures (33.3.4, compliance standard: 95%).

To assess OPD's Phase 2 compliance with this Task, we met with IAD personnel and queried the IAD database to identify any cases that were approved during January 1, through March 31, 2010, that were applicable to Task 33. We found only one case where a member failed to report the misconduct of another member. In this case, IAD conducted an investigation and Sustained the misconduct, and the Department implemented the appropriate sanctions. There were no reports of anonymous or confidential cases filed during this quarter.

During this reporting period, OPD hired and properly trained its 22 new employees on the Department's confidential reporting procedures. The Department is in compliance with Task 33.3.4.

In view of OPD's failure to maintain requested confidentiality in a previously investigated case, and none thereafter in which to review and consider the Department's actions, we will find the Department out of Phase 2 compliance with Task 33 for another review period.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

We will meet with the IAD Commander to discuss any Task 33-applicable cases that have been approved during the next reporting period and assess the actions taken by IAD. We will review categories of cases that indicate that misconduct is being reported. We will also assess the Department's adherence to the confidentiality reporting process. Finally, we will discuss with OIG and IAD how in the absence of reported confidentiality cases, OPD can achieve compliance with this Task.

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

1. *OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:*
 - a. *Time, date and location;*
 - b. *Identification of the initiating member or employee commencing after the first year of data collection;*
 - c. *Reason for stop;*
 - d. *Apparent race or ethnicity, and gender of individual(s) stopped;*
 - e. *Outcome of stop (arrest, no arrest);*
 - f. *Whether a search was conducted, and outcome of search;*
 - g. *Offense categories (felony, misdemeanor or infraction).*
2. *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*

3. *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to “Promoting Cooperative Strategies to Prevent Racial Profiling.”*

(Negotiated Settlement Agreement VI. B.)

Comments:

Our first review found the Department out of compliance with Task 34, as officers were not completing the required forms as the standard required in the NSA. Furthermore, we were concerned with the accuracy of data entry. In its latest report to the Chief, dated October 19, 2009, OIG found that the Department did not comply with these requirements, as well.

Discussion:

As previously reported, General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*; and Report Writing Manual Inserts R-2, N-1, and N-2 incorporate the requirements of Task 34. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

OPD has made substantial progress in the management of its efforts to fully capture and report police officer stops and encounters with citizens. Our review of OPD records for January 1, through March 31, 2010, to examine OPD’s practices, found the technical data systems much improved and providing greater access to “stop data” information than we had during our previous site visit. The database in use during our May site visit shows that OPD issued nearly 7,000 Traffic Citations, and completed over 4,500 Field Contact Cards and almost 20,000 Stop Data Forms (SDF) for the period under review. Additionally, Computer Assisted Dispatch (CAD) records indicate that the radio system captured data for over 14,500 vehicular, bicycle, and walking stops. When the number of SDFs exceeds the aggregate number of stop data records for all stop types, the Department will have made progress toward full and complete reporting.

Task 34.1 requires that stop data forms be filled out for every vehicle stop, field investigation and detention (compliance standard: 90%). Our examination of this data shows that the Department is still experiencing difficulty in fully capturing vital information on issued Traffic Citations; for instance, race was missing from more than 300 Citations entries. While we were able to navigate the system with relative ease, entering and reconciling data from the various forms is a continuing challenge, as well. From a pool of 50 randomly selected traffic citations, only six (12%) SDFs were identified in the database. Of 25 randomly selected Field Cards, 18 (72%) SDFs were identified in the database. Therefore, the available information does not substantiate that OPD completes an SDF at the percentage required by Task 34.1.

Task 34.2 requires that stop data forms are filled out with the following information: 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop

(arrest or no arrest); 9) whether a search was conducted; 10) outcome of any search; and 11) offense category (felony, misdemeanor, or infraction) (compliance standard: 85%). To assess this subtask, we reviewed a random sample of 100 SDFs. All fully captured the criteria required by the Settlement Agreement. The system in place during this review period allows the Department to scan stop data documents into the system, therefore facilitating enhanced storage and retrieval. Yet the scanned documents are difficult to read and therefore, present a challenge for easy analysis. Although we were unable to reconcile a high percentage of documents and the legibility was poor, the forms that have been entered into the system are being completed accurately.

Task 34.3.1 requires that OPD have a stop data database that can be summarized, searched, queried, and reported by personnel authorized by OPD (compliance standard: Yes/No); and **Task 34.3.2** requires that the data captured on the stop data forms is entered completely and accurately into the database (compliance standard: 85%). OPD created a database, as reported above, that is capable of performing the functions required by the Settlement Agreement. Accordingly, OPD is in compliance with Task 34.3.1 and Task 34.3.2.

Clearly the Department continues to struggle with some aspects of this Task. The Department has directed that beginning June 11, 2010, stop data be captured directly onto a computerized SDF (though the Department's Field-Based Reporting system) that should overcome current data entry problems and the readability of the information. The Department's capacity for analysis of stop data should be aided by this development, as well. It is critical to the Department's progress in managing its relations with citizens that it has timely and effective access to this information to do its own reviews and perform critical analysis. The examination of this data to determine compliance by its members with its policies, and to assess the quality and effectiveness of its policing strategy and compliance with Constitutional sanctions, must continue to be a Departmental priority.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

During our next site visit, we will meet with OIG to discuss the status of this critical Task, and review the database to assess its continued operability and accuracy in storage and ease of access to data. We will also identify the population of stop data and all of its attendant forms, and determine the appropriate random sample of forms for off-site review.

Task 35: Use of Force Reports-Witness Identification

Requirements:

1. *OPD shall require, by policy, that every Use of Force Report, whether felonies were involved or not, include the names, telephone numbers, and addresses of witnesses to the incident, when such information is reasonably available to the members/employees on the scene.*
2. *In situations in which there are no known witnesses, the report shall specifically state this fact. Policy shall further require that in situations in which witnesses were present but circumstances prevented the author of the report from determining the identification or phone number or address of those witnesses, the report shall state the reasons why the member/employee was unable to obtain that information. Reports shall also include the names of all other members/employees of OPD witnessing the use of force incident.*

(Negotiated Settlement Agreement VI. C.)

Comments:

During the last reporting period, we found OPD in compliance with Task 35. We found that 98% of the applicable UOF Reports we reviewed included the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene; and, when there were no known witnesses, the Reports specifically stated this fact.

Discussion:

As previously reported, OPD published Special Order 8066, *Use of Force—Witness Identification* (April 12, 2004), which incorporates the requirements of Task 35. Additionally, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which also incorporates the requirements of Task 35. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 35. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

To assess Task 35, we reviewed 26 Level 2 UOF Reports and 39 Level 3 UOF Reports. DGO K-4 states that Level 4 uses of force do not require witness identification. In the aggregate, these cases reflected close attention on the part of officers and supervisors in the gathering of witness information. In addition to specifically documenting instances where there were no known witnesses, the reporters explained the reasons when canvasses were not conducted.

We evaluated Task 35.1 in conjunction with Task 35.2. **Task 35.1** requires that UOF Reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene (compliance standard: 90%); and **Task 35.2** requires that when there are no known witnesses, UOF Reports specifically state this fact (compliance standard: 90%). All of the 26 Level 2 Reports, and all

but one of the 32 Level 3 Reports, in our sample comported with these requirements. This is an overall 98% compliance rate. OPD is in compliance with these subtasks.

Task 35.3 requires reports to document instances where witnesses are present but circumstances prevent the author of the report from gathering the data (compliance standard: 90%). Of the cases we reviewed, only one case fell into this category. The Level 2 Report indicated that no known witnesses were interviewed or identified due to the location of the incident on the freeway. In another Level 2 Report, the investigator conducted a canvass, identified witnesses, but did not record some of the interviews. OPD addressed this issue by providing supervisory training on the importance of recording interviews. Of the 32 Level 3 Reports we reviewed, only one omitted the required witness documentation indicating no canvass was required because the case was a Level 3 use of force. DGO K-4 specifically states that investigators are required to interview available witnesses at the scene in Level 3 UOF. One additional Report listed “no known witnesses” in the Report when, in fact, a civilian witness was identified, interviewed, and documented in the narrative of the Report. OPD is in compliance with Task 35.3.

Task 35.4 requires that UOF Reports include the names of all other OPD members/employees witnessing the incident (compliance standard: 90%). Our review of the 58 applicable UOF Reports and accompanying Crime Reports indicates that OPD is in compliance with this requirement. We found no instances when an OPD witness was not documented on the Report.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will discuss with OPD the measures the Department is taking to bring adult and juvenile arrests into compliance with Task 18.2.2 during our next site visit.

Task 37: Internal Investigations-Retaliation Against Witnesses

Requirements:

OPD shall prohibit retaliation against any member or employee of the Department who:

1. *Reports misconduct by any other member or employee, or*
2. *Serves as a witness in any proceeding against a member or employee.*

The policy prohibiting retaliation shall acknowledge that retaliation may be informal and subtle, as well as blatant, and shall define retaliation as a violation for which dismissal is the presumptive disciplinary penalty. Supervisors, commanders and managers shall be held accountable for the conduct of their subordinates in this regard. If supervisors, commanders or managers of persons engaging in retaliation knew or reasonably should have known that the behavior was occurring, they shall be subject to the investigative, and if appropriate, the disciplinary process.

(Negotiated Settlement Agreement VI. E.)

Comments:

During our previous reporting period, we found that there were only two cases that involved allegations of retaliation. In one of these cases, the complainant alleged retaliation, but our review revealed that that allegation did not involve acts of retaliation against an OPD member or employee. The second case involved allegations that were properly investigated and determined to be Unfounded. Since the previous monitor did not review retaliation cases that were approved in 2009, we reviewed the five additional cases alleging retaliation that were resolved during the first three quarters of the year. Our review found that all five cases were investigated appropriately and the IAD findings were reasonable. As a result, we found the Department in compliance with Task 37.

Discussion:

As previously reported, OPD published Special Order 8092 on November 23, 2003. This policy consists of two Manual of Rules (MOR) sections: 398.73, *Retaliation Against Witnesses*; and 398.74, *Retaliation Against Witnesses, Accountability*. These MOR provisions (revised in lieu of a City policy on retaliation) incorporate the requirements of Task 37. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, we reviewed the two cases that were completed during the first quarter of 2010 in which allegations of retaliation were raised. In neither case was retaliation an appropriate issue. In the first case, an OPD employee was unhappy with her boss' direction. She filed a complaint with IAD alleging that her boss had discriminated and retaliated against her. She could not provide an example of any violation by her boss of OPD policies or rules. IAD closed the case and determined the retaliation allegation to be Unfounded.

The second case involved a supervisor, who during a disagreement with an officer he supervised about working on a holiday, thought he was being accused of retaliation. The supervisor self-reported the allegation to IAD, and IAD opened a case. The officer later claimed that he had no intention to raise a claim of retaliation against his supervisor, and IAD appropriately determined the retaliation allegation to be Unfounded.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will review cases that were approved between April 1, through July 31, 2010, in which retaliation was alleged, to determine if the cases were adequately investigated and appropriately resolved.

Task 40: Personnel Assessment System (PAS)-Purpose

Requirements:

Within 635 days from the effective date of this Agreement, OPD shall enhance its existing complaint-tracking and select indicator systems so that it has a fully implemented, computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of OPD and its personnel. This data shall be used by OPD: to promote professional police practices; to manage the risk of police misconduct; and to evaluate and audit the performance of OPD members of all ranks, employees, and OPD units, subunits and shifts. PAS shall contain information on the following:

- 1. All uses of force required to be reported by OPD;*
- 2. OC spray canister check-out log (see Section V, paragraph D)*
- 3. All police-canine deployments; where the canine is deployed in a search for or to apprehend a suspect(s). It does not include, deployments for the purpose of locating bombs, narcotics, missing persons, etc., where the canine is not involved in an investigated use of force (i.e., deliberately or inadvertently bites or injures a person) If such force occurs, a Use of Force report is required.*
- 4. All officer-involved shootings and firearms discharges, both on duty and off duty, excluding an intentional discharge while at a range facility; a discharge while engaged in a lawful recreational activity, such as hunting or target practice; a discharge by Criminalistics Division personnel for the purpose of scientific examination; and a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury;*
- 5. All on-duty vehicle pursuits and on-duty vehicle collisions;*
- 6. All complaints, whether made to OPD or CPRB;*
- 7. All civil suits and/or tort claims related to members' and employees' employment at OPD, or which contain allegations which rise to the level of a Manual of Rules violation;*
- 8. Reports of a financial claim as described in Section VI, paragraph G (3).*
- 9. All in-custody deaths and injuries;*
- 10. The results of adjudications of all investigations related to items (1) through (9), above, and a record of investigative findings, including actual discipline imposed or non-disciplinary action administered;*

11. *Commendations and awards;*
12. *All criminal arrests of and charges against OPD members and employees;*
13. *All charges of resisting or obstructing a police officer (Penal Code §§69 and 148), assault on a police officer (Penal Code §243(b)(c), or assault-with-a-deadly-weapon on a police officer [Penal Code §245(c)(d)];*
14. *Assignment history and rank history for each member/employee;*
15. *Training history for each member/employee;*
16. *Line-of-duty injuries;*
17. *Sick leave usage, particularly one-day sick leaves;*
18. *Report Review Notices or Case Evaluation Reports for the reporting member/employee and the issuing investigator;*
19. *Criminal cases dropped due to concerns with member veracity, improper searches, false arrests, etc.; and*
20. *Other supervisory observations or concerns.*

(Negotiated Settlement Agreement VII. A.)

Comments:

During the last reporting period, we reported that the previous monitor noted in its final report on these Tasks that in several critical areas required by the NSA, the data in IPAS was incomplete, inaccurate, and/or poorly organized; in the end, only quite minor issues led the previous monitor to withhold findings of compliance. We noted those specific issues and their correction in our previous report, and found OPD in full compliance with Task 40.

Discussion:

As previously reported, OPD published Departmental General Order D-17, Personnel Assessment Program (February 24, 2007) which incorporates the requirements of Task 40 and Task 41. OPD published a revised version of D-17 on August 20, 2008. The revised version also incorporates the requirements of Task 40 and Task 41. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

Tasks 40 and 41 require that OPD develop and implement a computerized relational database to manage risk; promote professional practices; and evaluate and audit the performance of all OPD employees, units, subunits, and shifts. By all indications, these two Tasks are critical to the overall Agreement in that they provide a system for assessing the conduct of OPD personnel, identifying those who need early intervention to prevent more substantial problems, and carrying out and managing that intervention. Together, Tasks 40 and 41 define a complex system involving the collection and analysis of numerous pieces of information, and clear action on that analysis, when appropriate.

The system that has emerged from the development process is known as the Personnel Assessment System (PAS). More specifically, the system for inputting and storing the required data is known as IPAS, and the system for outputting the required report and for use in

evaluation is known as PAS. That bifurcation reflects more than nomenclature. The front end (IPAS) and back end (PAS) of the system operate as two quasi-independent systems, in that many approved sources, including supervisors, input data into IPAS. On the other hand, the two OPD employees who comprise the PAS Administration Unit produce reports, determine the appropriate cutting points or thresholds, manage and monitor the review of officers who meet thresholds, and manage the Department's general personnel reviews. Until recently, when the second employee was assigned, the PAS Administration Unit operated with only one critical employee.

During our May site visit, we reviewed a variety of data relevant to these Tasks, including a wide range of documents covering all aspects of PAS. We also reviewed the Tasks 40 and 41 audit protocol, and paid particular attention to the requirements for which the previous monitor was unable to assess or found OPD not in compliance.

Tasks 40 and 41 are divided into 33 practice-related subtasks that include 12 additional lower-level provisions. As with our previous review, we requested and received from OPD material for each of the Tasks and subtasks, and our data analysis replicated the data request of the previous monitor in its last review of these Tasks.

With regard to Phase 2 compliance, IPAS records for the quarter of January 1, through March 31, 2010 show that data were entered for all 20 fields required by Task 40. In all, 14,620 pieces of information were entered during this time period. This included 1,744 uses of force; 336 misconduct complaints; 1,595 instances of use of sick time (totaling 13,979 hours); 1,607 notes by supervisors; and 6,350 arrests.

A further breakdown of the types of use of force shows that for the quarter, there were six Level 1 incidents, 31 Level 2 incidents, 80 Level 3 incidents (one of which involved the discharge of a firearm at an animal), and 1,627 Level 4 incidents. Eighty-seven percent, or 1,415, of the Level 4 incidents are coded as number 22 for intentionally pointing a firearm at a person. The highest number of Level 4 uses of force by officers was 120; 37 officers reported over 50 Level 4 uses of force each.

Task 40.2 requires that PAS contain information on each of the elements required by the NSA (compliance standard: Yes/No). The previous monitor's assessment found the Department out of compliance with this subtask. In its January 2010 report, the previous monitor indicated that the problems it identified in its earlier audit completed in November 2008 had been corrected. The previous monitor noted the lack of information on financial claims made against OPD and on reporting the results of investigations in some areas. The previous monitor found that data on such elements as the incidence of use of force, complaints, and officer-involved shootings were accurate.

For this review, our interviews, examinations of reports, and queries of the system all indicate that the data collection previously noted as meeting requirements continues at that level. The

problems noted by the previous monitor in its last review have been rectified. OPD is in compliance with Task 40.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 41: Use of Personnel Assessment System (PAS)

Requirements:

Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole. The policy shall include the following elements:

- 1. The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
- 2. The Department shall retain all PAS data for at least five (5) years.*
- 3. The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
- 4. PAS, the PAS data, and reports are confidential and not public information.*
- 5. On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
- 6. Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with*

- an arrest for Penal Code §§69, 148 or 243(b)(c).*
7. *When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).*
 8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*
Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.
Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the

minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*

14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*
15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Comments:

During the last reporting period, we reported that while the previous monitor found OPD in compliance with the majority of Task 41 provisions, it found the Department out of compliance

with several sub-requirements. These include: Task 41.4, which requires the retention of records for five years; Task 41.21, which requires that all Division/Watch (now Area) Commanders and managers conduct quarterly meetings with their supervisory staff; and Task 41.12.2, which requires that after discussing the issues, the member/employee is dismissed from the meeting, and the designated Commander/manager and the member/employee's immediate supervisor remain and discuss the situation and the member/employee's response. Our first review, which focused primarily on the above-listed requirements, revealed that OPD rectified all of these issues; we found OPD in compliance with Task 41.

Discussion:

As previously reported and noted above, OPD published Departmental General Order D-17, *Personnel Assessment Program*, which incorporates the requirements of Task 40 and Task 41. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

During the current reporting period, we examined the threshold analyses that were performed for the period of January 1, through March 30, 2010. These analyses use the indicators required in PAS, and must be performed for each major unit, shift, and assignment category. The analysis involves graphing data and selecting the appropriate cutting points manually. The steps include identifying the officers who exceed allowable levels and later contacting supervisors to schedule a PAS meeting. The meetings are later reviewed up the supervision chain.

For our assessment, along with our interviews and observations, we reviewed a variety of relevant reports and documents, including a summary of all data entered into PAS during this reporting period. Based on that review, we examined reports of officers identified as meeting or exceeding thresholds for review and intervention, reports of the subsequent meetings and reports of disposition, and follow-up from those meetings. We also examined reports of PAS Command reviews, and materials related to follow-up meetings.

Among the reports we examined for this reporting period, we found no individuals were transferred as a result of PAS review, while three were recommended for intervention and two for supervisory mentoring. PAS intervention reports were completed for six officers. Follow-up meetings were reported for 14 officers. Although our quarterly monitoring review period and the PAS review period overlap substantially they are not the same. We did find that 11 officers exceeded PAS thresholds for the quarter under review. PAS reviews were available for eight officers who passed a single event threshold and six who exceeded thresholds for combinations of events.

Finally, we also examined usage levels among supervisors in the Department. While there was some significant variation across Divisions, there were also indications of substantial use. For the relevant quarter, for example, 91 supervisors in the Bureau of Field Operations recorded a total of 1,531 successful log-ins into the system.

When the review of compliance with Tasks 40 and 41 is limited to the division and subdivision of requirements described in the review protocol, OPD has made substantial progress, as we recognized in our last report. However, our analysis also identified several significant issues that suggest the system is not as far along as described earlier.

First, the process of analysis is at the very heart of the PAS system – second in importance only to the quality of data entered into the system. The processes involved, however, contrast sharply with the highly automated processes that define the front half, or IPAS portion, of this system. These analyses are all conducted manually and depend on skill, artistry, and plain hard work. They should, however, all be automated as part of the complete system. The failure to automate them introduces a substantial vulnerability based on availability of personnel, and the possibility of human error. Incomplete or inaccurate work in this area could seriously damage the dependability of the system. As noted in our last report, the need to improve this must be discussed as part of the process of determining overall compliance with these requirements.

The danger in reviewing this system according to the individual micro-steps outlined in the protocol is that we can all lose sight “of the forest for the trees.” Although the measurement of the particulars suggests a well-functioning system, PAS is clumsy and under-resourced in its current condition. It is vulnerable, due to its lack of independent functioning and its dependence on two OPD employees. To stabilize this system and ensure its usefulness into the future, the Department must do considerable work to complete the system and establish an organizational structure for its continued use and management.

Our second concern relates to the usability of the system by supervisors. Although the system collects and records the necessary data points, it often does not make the details easily available to supervisors. For example the use of force reports in PAS provide only brief summaries of Level 1, 2, and 3 incidents; and no detail at all on Level 4 incidents. Misconduct complaints are also briefly described, with the assumption that more complete information would be obtained from other sources such as IAD. This system is not as reliable as it could be, given the state of current technology. It should not be necessary for supervisors to consult multiple sources of data when reviewing cases. More complete data input into IPAS, and even an electronic submission of reports, would address this problem.

Finally, and perhaps most significantly, our analysis of the PAS process raises concerns that supervisory decisions may not be sufficiently well documented to fully explain outcomes. The question raised here is whether the goals and the processes of identifying risky behavior, and responding to it in corrective ways, are fully embraced by OPD personnel. This point is reminiscent of one raised by the previous monitor, who reported “significant questions about the veracity” of a small number of the reports. The summaries of IPAS reviews may illustrate the concern:

In one IPAS review, an officer was selected for review based on passing the complaint threshold with 12 complaints in the reporting period. The officer also had 53 uses of force, including 43

Level 4 incidents and nine Level 3 incidents, during the same time period. He also had two disciplinary actions lodged against him, a motor vehicle accident, and an in-custody injury – again, all within the same time period. The officer’s sergeant reported that he found no problematic behavior patterns, and that the officer was not appropriate for supervisory mentoring or monitoring. Supervisory review concurred with the recommendation for “no action.”

In another case, an officer passed the single event threshold as a result of a fatal shooting. He also had 20 additional uses of force in the same time period, including five for use of an electronic weapon, and 13 for intentionally pointing his weapon at a person. He was also involved in five vehicle pursuits and had three IAD complaints. In review of this, the officer’s sergeant found no at-risk behavior, and recommended against mentoring or monitoring or other intervention.

In another PAS review, an officer passed the single event threshold with an officer-involved shooting. In 18 months, he also had 51 Level 4 uses of force, including 49 for pointing his weapon at a person and one for firing a Taser but missing. He also had 19 Level 3 uses of force, including use of Taser, weaponless defense techniques; four Level 2 uses of force (three strikes to the head and one injury); and one Level 1 (lethal firearm discharge). He was also involved in four vehicle pursuits in 18 months; and in one year, was the subject of 10 complaints, and had one financial claim lodged against him. Supervisory sign-offs supported findings of no at-risk behavior and no action required.

These cases should not be seen as isolated and unrepresentative. Reviews that involve large numbers of problems, particularly Level 4 uses of force, are common and often result in findings of “no action.” Clearly, Level 4 uses of force, for which documentation is required by the NSA, have little or no consequences in these reviews. There appears to be an obvious inconsistency in the value assigned to Level 4 uses of force in the NSA, and the value reflected in the operation of the review process. But the larger point is that on their face, these cases at least beg for additional explanation and may suggest incompleteness or inadequacy in the review process.

Our Phase 2 compliance assessments involve judging the implementation of relevant policies. This involves not simply checking off the steps defined in the assessment protocol but also assessing the effectiveness of implementation. In this case, the three problem areas described above raise concerns about the effectiveness of implementation. In particular, the problems suggested in the analysis of IPAS reviews raise concerns that the very purpose of this complex system may not be fairly served by some reviews. These problems are significant enough to preclude a finding of Phase 2 compliance without additional explanation or revision.

Compliance Status:

Phase 1: In compliance

Phase 2: Not In compliance

Next Steps:

The centrality of risk assessment to the original NSA and its extension through the designated live Tasks cannot be understated. As is true in many if not all such agreements, the development and implementation of a risk assessment system was seen as a critical aspect of the NSA. Tasks 40 and 41 spell out the detailed requirements of this system, and the assessment protocol further subdivides the Tasks into component parts that are to be examined separately for compliance. The risk in limiting our approach to compliance to this perspective is that we could ignore the forest for the trees. That is, attention only to the individual steps in developing this system could ignore the larger question of whether the system serves its intended purpose. Risk management systems are intended to manage risk by allowing it to be measured, assessed, and reduced. Thus, a functioning risk management system should operate to reduce risk as measured by the component data required by the agreement of the Parties involved.

With this argument in mind, we recognize the need to go beyond assessment of the construction of the IPAS system to also examine its functionality. These concerns are supported by the results of the IPAS reviews discussed above. To facilitate consideration of the substance of risk reduction, we will initiate the regular review of relevant data. The table below presents outcome measures of risk-related activity normed by arrest levels in the Department. The data are presented in two categories so that they can be easily understood.

These key indicators will be examined quarterly as part of our assessment of compliance with the risk management requirements of the continuing agreement among the Parties. They will be used to track changes over time. Here we present data going back to a point at which we have some confidence in its reliability. The data do not suggest progress in reducing risk.

These key measures are presented here solely for the purpose of facilitating comparisons within OPD across periods of time.

OPD Key Indicators								
Percent of Arrests Associated with	2007	2008	2009		1st Q 07	1st Q 08	1st Q 09	1st Q 10
A Use of Force (level 1,2,3)	2.38	1.61	1.54		3.83	1.32	2.31	1.84
A Use of Force (level 1,2,3, 4)	17.34	19.18	19.66		20.61	22.79	17.33	27.34
A Police pursuit	1.01	1.01	1.55		1.46	0.97	1.74	1.59
An IA Complaint	4.77	5.38	5.35		3.96	6.86	5.77	5.29
An In-Custody Injury	1.05	0.16	1.52		2.17	0.30	0.95	1.86
Each Hour of Sick Leave	68.58	74.02	68.77		58.89	64.71	65.51	45.69
Number of Arrests per	2007	2008	2009		1st Q 07	1st Q 08	1st Q 09	1st Q 10
Officer involved shooting	601	747	1077		650	823	715	577
Vehicle Collision	209	254	223		153	180	149	276
Civil Suit	94	220	1257		157	86	3573	2117

Task 42: Field Training Program

Requirements:

Within 323 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Field Training Program. This plan shall address the criteria and method for selecting FTOs, the training provided to FTOs to perform their duty, supervision and evaluation of FTOs, the length of time that trainee officers spend in the program, and the methods by which FTOs assess and evaluate trainee officers in field training. The plan must ensure proper reporting, review and approval of probationary officers' reports.

Field Training Program Coordinator

The Chief of Police shall assign a full-time sergeant for the first year who shall develop and implement the new policies and procedures described in this section. The Chief of Police shall determine, upon successful completion of the development and implementation of these policies, if it is necessary to continue the position at the rank of sergeant, but in any event, the position shall continue as a full-time position.

Trainee Rotation

During their field training, trainee officers shall rotate to a new FTO and a new geographic area of the City at predetermined intervals. Prior to rotation, trainee officers shall be interviewed by the Field Training Program Coordinator or his/her designee and given an opportunity to raise any questions or concerns they may have about the quality of training provided to them.

FTO Participation Incentives

OPD shall increase the incentives for participation in the FTO program so that the Department will have a larger pool of qualified, experienced candidates from which to choose.

FTO Candidate Nomination and Requirements

FTO candidates shall be nominated by field supervisors and commanders, but shall be approved for assignments to this duty, and for retention in it, by the Chief of Police. All FTO candidates must have completed three (3) years of Departmental service before selection, unless specifically authorized by the Chief of Police. FTO candidates shall be required to demonstrate their commitment to community policing, and their problem-solving and leadership abilities. Ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy shall be primary criteria in the selection of FTOs. Excessive numbers of sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304, or excessive numbers of use of force incidents shall bar a candidate from selection as an FTO for no less than two (2) years.

Decertification

The presumptive result of sustained disciplinary action, completed within the time limits imposed by Government Code Section 3304, against an FTO or the FTO Program Coordinator for excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation or gender-

based discrimination or slurs, or other serious examples of police misconduct, shall be removal from the FTO program. The Deputy Chief of the member's chain of command may recommend to the Chief of Police to grant an exception to this presumption after conducting a hearing on the facts of the matter. The Chief of Police shall document the approval/disapproval in writing.

FTO Assignment

Assignment to an FTO position shall be contingent upon successful completion of a training course designed for this position and shall be approved by OPD and the State of California Peace Officers' Standards and Training.

FTO Evaluation

At the end of a complete FTO cycle, trainee officers leaving the FTO program shall anonymously evaluate each of their FTOs. OPD shall develop a form for such evaluations which emphasize effectiveness at training and effectiveness at supervision. The evaluation form shall also assess the degree to which the FTO program reflected policies, procedures, values and other information taught in the recruit academy. The FTO evaluation forms shall be reviewed by the Field Training Program Coordinator and the individual FTO's commander and supervisor. The Field Training Program Coordinator shall provide evaluation information to the FTOs as a group, concerning program effectiveness. Each FTO shall also be provided with evaluation information regarding their individual performance. The individual evaluation forms shall not be made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms.

Daily Evaluation Audit

The Field Training Program Coordinator, or his/her designee, shall conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers and that the selection standards for FTOs are maintained.

Trainee Officer Assignment

When a trainee officer's FTO is absent, the trainee officer shall not be assigned to field duties with an "acting" FTO. They shall be placed with another certified FTO, or shall be assigned to non-field duties, pending the availability of a certified FTO.

Field Commander and FTO Supervisor Training

OPD shall provide field commanders and supervisors with training on the FTO program, including the field-training curriculum, the role of the FTO, supervision of FTOs and probationary employees, the evaluation process and the individual duties and responsibilities within the FTO program.

Focus Groups

The Field Training Program Coordinator and Academy staff shall conduct focus groups with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six (6) months after completion of the field training program, to determine the

extent to which the Academy instructors and curriculum prepared the new officers for their duties.

Consistency of Training

The results of these focus group sessions shall be reviewed at a meeting to include the Training Division Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief. If it is determined that there is a substantial discrepancy between what is taught in the Academy and what is taught in the FTO program, there shall be a determination as to which is correct, and either the training Academy or the FTO program shall make the necessary changes so that the desired training information is consistent. In the event that the discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program as a whole, the review group shall determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The results of the meeting of this review group shall be documented and this information shall be provided to the Monitor. (Negotiated Settlement Agreement VIII. A.-L.)

Comments:

In August 2009, since no Academy was planned for the near future, the Parties agreed that there would be no active monitoring of this Task. In addition, since there were no new officers being trained, OPD decertified all current Field Training Officers (FTOs). As a result, during our first reporting period, we deferred judgment on Task 42.

Discussion:

As previously reported, Departmental General Order B-8, *Field Training Program*, issued on May 27, 2005, incorporates the requirements of this Task. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

During our May site visit, we met with Field Training Unit and Training Division personnel to discuss Task 42 and the Department's Field Training Program. After completing the basic training course, new police officers complete 16 weeks of field training, separated into four field training rotations consisting of four weeks each. Officers rotate to a different FTO during each of the first three rotations, and then, when possible, return to their first FTO to complete their training.

Prior to recent layoffs for financial exigency, OPD had recruited a basic training class of 21 officers who enrolled at the Alameda County Sheriff's Office (ACSO) Academy. These officers were to complete their training at ACSO in October and begin a six- or seven-week OPD-specific basic training course. (The precise course has not yet been approved.) In addition, five "laterals" recently completed the Lateral Officers Transition Course and entered field training.¹⁵

¹⁵ Lateral officers are officers who come to OPD after employment at another law enforcement agency.

OPD had estimated that it would need 60 FTOs to train the new recruits. To reach this number, the Department had begun recertifying FTOs who were recently decertified following the rule of “last out, first back.”

The impact of the City’s budget cuts was unknown at the time of this review. We will discuss these developments further in our next status report.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

Next Steps:

In August, during our next site visit, we will continue to examine the impact of layoffs and related personnel decisions on the basic training and field training programs. Should circumstances change and personnel are recalled we will also review the reports generated by the FTO Program, including the Daily Observation Report, Weekly Progress Report, Trainee Officer Log, End of Phase Report, Personal Interview Questionnaire, Trainee Final Evaluation Report, FTO Evaluation Report, and the Field Training Program Evaluation Report. If appropriate, we will review the reestablishment of basic and field retraining to determine consistency with the requirements of the consent agreement.

Task 43: Academy and In-Service Training

Requirements:

A. **Academy Training Plan**

Within 540 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Academy and in-service training to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions, and aware of and able to implement the most contemporary developments in police training. This plan shall include a review of OPD’s training curriculum, with additional emphasis on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community. The plan shall also address the criteria and method for selecting OPD training instructors, the training provided to instructors, procedures for evaluating the content and quality of training provided to OPD personnel and procedures for maintaining training records for OPD personnel. In arriving at the plan regarding staffing, training content and methodology, OPD shall consult with at least four (4) other, large law-enforcement agencies within the United States which have excellent reputations for professionalism. In particular, OPD shall consult with these agencies about qualifications and other criteria to be used in selecting staff for training positions. OPD shall also review the approach of these other law enforcement agencies in training both new staff and experienced staff on ethics and professionalism, critical thinking and problem solving, conflict resolution, and

relationships with the community.

B. Professionalism and Ethics

OPD shall expand professionalism and ethics as a training topic within the recruit academy, in-service training, and field training. Wherever possible, OPD shall include and address issues of professionalism and ethics using curricula that employ realistic scenario-based training exercises.

C. Supervisory and Command Training

OPD shall provide all sergeants and commanders with mandatory 40-hour in-service supervisory and leadership training. Officers shall attend training prior to promotion to the rank of sergeant. Lieutenants shall attend training within six (6) months of promotion. Such training shall include supervisory and command accountability, and ethics and professionalism, with emphasis on supervisory and management functions and situations, and shall include both scenario-based training and case studies.

D. In-Service Training

OPD shall provide all members with forty (40) hours of in-service training every eighteen (18) months.

- 1. Sergeants shall receive at least 20 hours of training designed for supervisors every 18 months.*
- 2. Members at the rank of lieutenant and above shall receive at least 20 hours of training designed for commanders every 18 months.*

E. Training Staff Record Review

Appointment to the Academy staff or other staff training position shall also require a review of the record of the individual being considered, to ensure that the individual does not have a record of any Class I offense, as defined in Section III, paragraph H (1), within the prior two (2) years, and that the individual is supportive of the philosophy and values of OPD.¹⁶

(Negotiated Settlement Agreement IX. A.-E.)

Comments:

Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. During our last reporting period, we found that OPD training records were complete and that 99% of the members and employees in our sample received the required in-service training within the prescribed 24 months.

Discussion:

As previously reported, OPD published General Order B-20, *Departmental Training Program* (April 6, 2005), which incorporates the requirements of Task 43. As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

¹⁶ The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

Task 43.1.1 requires that OPD's training plan ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions, and trains OPD personnel to implement the most contemporary developments in policing (compliance standard: Yes/No). To assess Phase 2 compliance for this subtask, we reviewed the training records of a stratified random sample of 100 OPD members and employees, including 13 sergeants, 77 officers, two civilian evidence technicians, and eight dispatchers to determine if the members and employees received adequate training for their positions.

We found the training records provided by OPD to be complete, legible, and responsive to our review requirements. The Department produced a record for each member and employee in our sample. For each member or employee, we reviewed the training s/he received during previous years and calculated the number of hours recorded in his/her record. For the sworn members in our sample, we credited the California Peace Officer Standards and Training (POST)-certified Continued Professional Training (CPT) as counting toward the requirement. The NSA refers to the timeframe as requiring the delivery of training every 18 months. The Parties agreed to consider as in compliance training that was delivered every 24 months. Such training is consistent with the California POST requirement for in-service training.

We found that 98, or 98%, of the 100 members and employees in our sample received adequate training for their positions. All 13 sergeants in our sample received the required in-service training. Seventy-six of the 77 applicable officers in our sample received adequate training.¹⁷ One of the two police evidence technicians in our sample showed no training received since 2007; the other's record revealed adequate training. All eight dispatchers in our sample received adequate training.

OPD is in compliance with Task 43.1.1.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will review the training records of a stratified random sample of another 100 OPD members and employees, including officers, civilian evidence technicians, sergeants and dispatchers to determine if the members and employees received adequate training for their positions.

¹⁷ Four of the officers in our sample entered the Department in 2008 and, therefore, are not required to attend CPT until 2010.

Task 45: Consistency of Discipline Policy

Requirements:

On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.

- 1. The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*
- 2. The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*
- 3. All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.*
- 4. The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*

(Negotiated Settlement Agreement X. B.)

Comments:

Our previous review found the Department in partial Phase 2 compliance with Task 45. We found that the Department was not in compliance with Task 45.1, which requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action. While the OPD system could be used to identify cases in which findings were Sustained during the last quarter of 2009, there were gaps in the data. Thirty-seven percent of the records in which findings were Sustained did not contain data for either or both the discipline conference date or discipline letter date. In addition, while we found general compliance with Task 45.4, which requires that discipline is imposed in a manner that is fair and is consistent with the Discipline Matrix, we noted one case in which an officer escaped discipline entirely after a Skelly hearing, despite the fact that he was found by both an OPD contract investigator and California DOJ investigators to have deliberately conducted an inadequate murder investigation.

Discussion:

As previously reported, on December 5, 2006, OPD published General Order M-03, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy and Procedure Manual; and the Departmental Discipline Policy (Training Bulletin Index Number V-T), incorporating the requirements of this task. OPD published revised versions of the Training Bulletins on May 30, 2007, and is in the process of finalizing a new series of revisions to the policy.

As the previous monitor verified that the Department trained at least 95% of relevant personnel on the revised policy, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for this Task, we queried the IAD database to identify all of the IAD cases that were approved with at least one Sustained findings during the first quarter of this year, January 1, through March 31, 2010. This query revealed 26 cases.

Task 45.1 requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level (compliance standard: Yes/No). OPD has developed an automated system, the IAD database, which tracks discipline and corrective action. Our review determined that the system could be used to identify cases in which findings were sustained during our selected time period. We also found that the key data pertaining to the cases in our review for this time period was recorded in IPAS. OPD is in compliance with this subtask.

Task 45.2 requires that all internal investigations that result in a Sustained finding are submitted to the Discipline Officer for a disciplinary recommendation (compliance standard: 95%). We found that all 26 cases (100%) in our dataset were submitted to the Discipline Officer for a disciplinary recommendation. OPD is in compliance with this subtask.

Task 45.3 requires that before recommending discipline, unless directed by the Chief of Police, the Discipline Officer convenes a meeting with the Deputy Chief or designee in the affected chain of command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance (compliance standard: 95%). We found that all 26 cases (100%) in our dataset met this requirement. OPD is in compliance with this subtask.

Task 45.4 requires that discipline be imposed in a manner that is fair and is consistent with the Discipline Matrix (compliance standard: 95%). We found that in all 26 cases (100%) in our dataset, the discipline imposed fell within the Discipline Matrix currently in use. Of the 19 cases that involved accidents or flawed driving of vehicles, 18 were decided using the lower end of the Disciplinary Matrix, with one falling in the middle of the sanctions available. Of the seven cases remaining, alleging more serious violations (e.g., rudeness, medical neglect of an animal, repeated tardiness, negative and inaccurate comments about OPD, issuing incorrect supervisory instruction not to complete UOF forms, and pat down without cause), six of the sanctions imposed fell in the mid- and upper range on the Matrix. Only one was at the lower end. During the period January 1, 2010 – March 31, 2010, two cases were decided and reported after Skelly Hearings.¹⁸ In both of the cases the discipline recommended was upheld.

¹⁸ In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, the California Supreme Court ruled that as a part of due process, public employees are entitled to certain procedural safeguards before discipline is imposed against them. These include: (1) notice of the disciplinary action proposed to be taken; (2) a statement of the reasons therefor; (3) a copy of the charges and materials upon which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing the discipline. The ruling applies to dismissals, demotions and suspensions, but not to so-called "informal discipline," such as reprimands, warning letters or oral warnings (It also does not apply to probationary employees).

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will review the IAD cases in which Sustained findings were made during the next quarter (April 1, through June 30, 2010), to determine if the discipline for these cases fell within the guidelines of the Discipline Matrix or, if it departed, if it was adequately documented. We will also review any IAD cases in which Skelly hearing results were finalized.

Section Three

Conclusion: Critical Issues

In the course of our work, we review extensive materials, observe Department practices, and interview a wide range of personnel as we assess compliance with the remaining active Tasks. In the process, Team members often identify issues that are central to progress toward compliance but may not be fully recognized as the Department seeks to meet the explicit criteria described in the active Tasks or subtasks. Below is a discussion of issues that we believe are important to the Department's progress but may not be immediately evident in the reviews above. We look forward to discussing these issues with the Parties to the Agreement in this case.

- a. One key issue is the City's fiscal condition. That said, the mandate for achieving compliance with the negotiated agreement remains unchanged. We will continue to monitor progress on the 22 remaining active tasks and expect to be consulted on any organizational changes that may impact progress in this area.
- b. We are also concerned that there has not been clearer evidence of progress since our first report. Demonstrable progress is critical to movement toward satisfying the agreed upon requirements of the negotiated settlement and, ultimately, to the completion of the role of the Monitor. There is a need to establish processes that include the formulation of specific plans to address concerns raised in our quarterly reports. That will facilitate movement forward and the tracking of progress made in each quarter.
- c. One problem that impedes progress in several areas relates to a lack of attention to detail sufficient to meet the requirements of the agreement. Specifically information requirements that are clearly identified in the agreement are often not met in completion of forms dealing with citizen complaints. A similar lack of attention to detail is evident when supervisory sign-offs of investigation do not reflect thorough reviews or do not occur in a timely fashion.
- d. A disturbing illustration of these problems can be found in the documentation of PAS intervention meetings. In several cases in which extensive numbers of risk related behaviors are documented a finding is reported that no pattern of problems exists and/or that no intervention is needed. This finding with little other explanation is accompanied by supervisory and command sign-offs. At the minimum such cases require explanations to help in understanding the otherwise apparent contradiction. Failure to provide such explanation raises the concern that the tasks of assessment and review are not undertaken with appropriate levels of seriousness. Alternately it may mean that the goals of risk management, in terms of early detection, and preventing officers from having serious problems, are not understood or fully accepted.

- e. Several issues noted in our previous quarterly report also continue to raise concerns. The development, maintenance, and use of some databases such as those involving uses of force, or internal affairs, or the PAS are critical to compliance with the terms of the agreement but have also become critical to management of any major police organization. We are concerned that the management of these databases may be under resourced and/or entrusted to key personnel without sufficient back-up staffing. This makes critical functions of OPD vulnerable. This concern is heightened given current budgetary problems.
- f. We continue to have a related concern with the organization of technology in the Department. With critical databases, such as those in IAD, managed by independent units that do not house technological expertise we are concerned that database quality cannot always be assured. The Department needs to review its database procedures across these units, with particular attention to quality assurance procedures when the management of these systems is decentralized.

The issues noted above range widely from operational concerns to more basic questions about the appropriate attitudes and support for moving forward. Although some of these issues linger from our last report it is also noteworthy that progress has been made on some issues identified as critical in our first report. In particular, progress is being made with regard to the collection of “stop data.” The analysis of the problems of collecting “stop data” and the development of alternative methods, including using the CAD system are promising. In light of examples of some forward movement we are hopeful that the Department can continue to make further progress in achieving compliance with all requirements of the Negotiated Settlement.

Appendix

Acronyms

The following is a listing of acronyms frequently used in our quarterly reports.

Acronym	Definition
BFO	Bureau of Field Operations
BOI	Bureau of Investigation
BOS	Bureau of Services
CAD	Computer Assisted Dispatch
CID	Criminal Investigation Division
CPRB	Citizens' Police Review Board
CPT	Continued Professional Training
DGO	Departmental General Order
DIL	Daily Incident Log
DLI	Division-level investigation
EFRB	Executive Force Review Board
FRB	Force Review Board
FTO	Field Training Officer
FTP	Field Training Program
FTU	Field Training Unit
IAD	Internal Affairs Division
IB	Information Bulletin
ICR	Informal Complaint Resolution
IPAS	Input for Personnel Assessment System
MOR	Manual of Rules
NSA	Negotiated Settlement Agreement
OCA	Office of the City Attorney
OIG	Office of Inspector General
OPD	Oakland Police Department
PAS	Personnel Assessment System
POST	Peace Officer Standards and Training
RMM	Risk Management Memorandum
SDF	Stop Data Form
SO	Special Order
TB	Training Bulletin
UOF	Use of force