



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

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Section One

Introduction

This is the third 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 our third quarterly site visit from August 9, through August 13, 2010, to evaluate the Department's progress during the three-month period of April 1, through June 30, 2010.

In the body of this report, we 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.

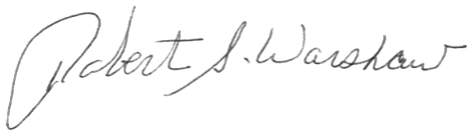
During this reporting period, we continue to find that the Department is in Phase 1 compliance with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD has dropped to full compliance with only 10 of the 22 active Tasks meeting the requisite criteria. This is a decline in full compliance by one Task. The status of some other Tasks, however, has shifted across compliance categories. These changes will be described below.

The methodology of this project does allow for the review of data and documents in "real time." Accordingly, there is a time gap between the reporting period – in this instance, April, May, and June, 2010; the time of our site visit, August, 2010; and the issuance of the Monitor's report, in October, 2010.

It is important that we acknowledge both the possibility and perhaps the likelihood that the Department has, in fact, advanced in its road towards compliance. As a result of Court-ordered technical assistance, the Monitoring Team and representatives of the Department have met and conferred on several occasions to explore ways to enhance the Department's policies and procedures so that they better comport with the trends and innovations in contemporary American policing. The Department in general, and Chief Anthony Batts in particular, have been receptive to these dialogues, and we credit the Chief with a new rigor and infusion of commitment to organizational change. The Monitor has spoken with representatives of the Oakland Police Officers' Association, who have enthusiastically expressed their willingness to assist in this undertaking.

Further, the Plaintiffs' attorneys, James Chanin and John Burris, have continued to be supportive of organizational change and reform, and we thank them for their robust and continuing commitment to this process.

The public business is serious business, and the interests of the community must be at the forefront of our thinking. I urge the Oakland Police Department to go beyond simple compliance, and to embrace wholeheartedly the practices that represent the best in American policing. In doing so, we shall all bear witness to how the byproducts of that process shall be the very compliance requirements for which the Department is striving.

A handwritten signature in cursive script that reads "Robert S. Warshaw". The signature is written in dark ink and is positioned above the printed name and title.

Chief (Ret.) Robert S. Warshaw
Monitor

Monitoring Team:

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Robin Busch-Wheaton
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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 Monitor's primary responsibility 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 third 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 August 8, through August 13, 2010, we conducted our third 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 to be in Phase 1 and Phase 2 compliance (full compliance) with only 10 (46%) of the 22 active Tasks. We found the Department in partial compliance with seven (32%) Tasks, and we deferred judgment on two (9%) Tasks. We found the Department not in compliance with three (14%) Tasks.

We note that in the instance of Task 34, and in consideration of what we know the Department's efforts have been since our site visit, our previous finding of "not in compliance" has been changed to "deferred." This is not necessarily a step forward, but an opportunity we shall afford the Department to determine if its policy change of June 12, 2010, which fell toward the very end of this reporting period, will culminate in more positive outcomes. This conclusion cannot be reached until our November audit of the July, August, and September, 2010 data and document review.

The total number of Tasks found to be in compliance has declined by one since the last quarter. Some Tasks have shifted in compliance levels to achieve this cumulative result. Task 25, which addresses use of force-related issues, went from partial compliance to in compliance. Task 45, which addresses consistency of discipline policy, went from not in compliance to partial 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	√		√		
Total Tasks	22	10	7	3	2

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 94% of Class I cases and 98% of Class II cases were in compliance with established timelines. Additionally, for those cases that involved at least one sustained finding, 88% 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 Department 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 Department has trained at least 95% of relevant personnel on this 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, 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

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.”

sustained) that were approved between April 1, and June 30, 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 involved at least one alleged Class I violation, we classified it as Class I.

Of the 75 Class I cases we reviewed, 67, or 89%, were in compliance with established timelines. Of the 62 Class II cases we reviewed, 58, or 94%, were in compliance with established timelines. Of the 17 cases that involved at least one sustained finding, 100% were in compliance with established discipline timelines. OPD is in compliance with Task 2.1, although we note that the percentages of both Class I and Class II cases in compliance dropped slightly during this review period. We also note that compliance for cases with sustained findings increased to 100%, even though there were more such cases during this current reporting period.

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 listing 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. A Monitoring Team representative also attended some of these weekly meetings. 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). During this reporting period, IAD opened 504 cases, a slight decrease (5%) from the previous quarter. In addition, the Chief approved 406 cases – an 18% drop from the previous quarter. IAD Command believes that the decrease in closed cases may be attributed to its alleviating the backlog in intake, which resulted in more cases being assigned to both IAD and the divisions in the last month of this reporting period. We note that the vast majority of cases that were approved in a particular quarterly review period were opened prior to the beginning of the review period, and that there is not necessarily a direct correlation between cases opened and cases

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.

approved in any given quarter. 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. 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. In addition we will meet with IAD personnel to review cases and processes.

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 and second reporting periods, we found OPD in partial Phase 2 compliance with this Task. During the second reporting period, OPD failed to conduct a successful integrity test of two targeted members, primarily because it lacked the equipment necessary for continuous surveillance.

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 the Department has trained at least 95% of relevant personnel on this revised policy, we 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 April 1, through June 30, 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 two select integrity tests of two members based on a review of the IAD database. The documentation shows that the Department successfully conducted both tests: in the first, the individual passed; and in the second, the individual failed. In the failed test, IAD found the member under review and two of his supervisors to be negligent in their performance. This discovery led IAD to open an investigation, which is currently ongoing. During this reporting period, the Department also conducted nine planned integrity tests, in which it checked the records of nine members to verify that their vital information was current. All nine planned tests passed.

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.

However, based on the progress that we observed this quarter, we find the Department in partial compliance with this Task. Compliance is dependent on sustained performance over the next reporting period.

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 first and second reporting periods, 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 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:

- **Department 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.
- **Department 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 the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

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 April 1, through June 30, 2010.⁴ We also reviewed use of force (UOF) reports for incidents occurring during this same time period to determine if IAD identified an allegation of delayed reporting. Specifically, we examined 98 DIL entries, 60 IAD and Division-level investigations, and 14 UOF reports; and found one case where members failed to report a use of force to IAD as required. OPD learned of the use of force through a citizen's complaint. The Department initiated an investigation and took corrective action. We concur with the resolution.

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

Task 4.10 requires that OPD comply with criteria it has established when resolving complaints through informal complaint resolution, administrative closure, or summary finding (compliance standard: 90%). This subtask is intended to ensure that OPD provide the proper level of

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

investigation for each complaint and not resolve meritorious complaints of misconduct without determining – and documenting – whether the OPD member or employee committed misconduct.

During this reporting period, we reviewed 15 cases resolved via administrative closure, and 15 cases resolved via informal complaint resolution, that were approved between April 1 and June 30, 2010. Each case we reviewed was properly resolved and 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. 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 the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

To verify Phase 2 compliance with Tasks 5.1 through 5.5, we reviewed 97 records from the Daily Incident Logs (DILs) that were completed during June 2010. As mentioned in our last report, we met with representatives from IAD and Communications on May 26, 2010 to discuss issues with the completion of DILs potentially affecting OPD's compliance with Task 5.4. (See details in Task 5.4 section below.) Given that any corrective action could not take place until after this meeting, we advised OPD that we would only review DILs completed after this date.

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%). During the last reporting period, we found that OPD had a 99% compliance rate with this Task. During the current reporting period, in two of the 97 DIL records we reviewed, there was no reference to a supervisor having contact with the complainant (that is, the log's "Time Complainant Contacted" field was blank). In the first case, there is a notation that the case was referred directly to an IAD intake officer. In the other case, it was noted that the complainant "refused to participate in the complaint process." He was advised that the complaint would be sent to "to IAD via the log." We note that all Daily Incident Logs are sent to IAD, and thus, this does not negate the need to notify a supervisor to attempt contact with the complainant. However, OPD has a 98% 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%). Of the 97 DILs we reviewed, there appeared to be three instances of at least a three-hour delay. In the first case, a complainant indicated that due to the time, she did not wish to be further contacted on the evening she called. The reason for the delay was documented, and this incident is in compliance with this subtask. In the second entry, an incident which occurred on April 27, 2010 was brought to the attention of a sergeant on June 3, 2010. The complainant was not contacted until June 4, 2010, and the incident was not added to the DIL until June 7, 2010. Based on the documentation in the DIL, we deemed this incident out of compliance. In the third incident, OPD did not contact the complainant until three hours and 18 minutes after she lodged her complaint. We note, however, that OPD left messages for the complainant within the three-hour timeframe, and therefore, we found this incident 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 97 records in our dataset, we identified 19 instances in which the complainant “refused” interaction with a supervisor. However, this group included 12 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. In one of these instances, a supervisor also drove to the complainant’s address, albeit with negative results. In the remaining seven instances, enough information was gleaned either from the officers in the field or Communications personnel to generate a complaint and forward the relevant information to IAD. 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 the last reporting period, we found that 68% of the records we reviewed lacked some or all of the required information. During this reporting period, we found that 71, or 73%, of the 97 records lacked at least some of the required information. As noted in previous reports, 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 during this review, including the 71 records referenced above, the entries included an incident number.

As documented in our last report, we met with IAD and Communications personnel during our May site visit and advised them that we will continue to look for the 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 current reporting period, we confined our review to DILs completed after our meeting date. Nonetheless, OPD's compliance with Task 5.4 is 27%, and the Department is not in compliance with Task 5.4.

During our August site visit, we again met with IAD and Communications personnel and showed them examples of DILs from June 2010, many of which were missing the required information. They suggested that the Department change the Daily Incident Log form so that the required information is captured in "forced response" boxes. We concur that this change shall greatly assist the Department in capturing the required information, provided the fields are consistently completed, or "unknown" is entered, as required by the Task. In the next reporting period, we will again limit our document review to those DILs completed after our meeting of August 12, 2010; and we will meet with IAD and Communications personnel during our next site visit to determine if the modifications have addressed the deficiencies.

Task 5.5 requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD (compliance standard: 95%). The DILs are administered by the Communications Division 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 two of the 97 records we reviewed. The remainder, or 98% of the total, contained this information. OPD is in compliance with Task 5.5.

Task 5.6 requires that 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 (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 during this reporting period, we reviewed all complaints that appeared to have originated from North County Jail, Santa Rita Jail, or Juvenile Hall, and were approved between April 1, and June 30, 2010. We identified eight such complaints using the IAD database. We 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 an on-duty supervisor did, in fact, respond, make the proper notifications, and forward the appropriate information. All three cases involved allegations of excessive force, and two cases also involved allegations of theft of property.

In the five cases that did not meet the criteria, the complaints were not lodged contemporaneous with the arrest. Three were received by letter or walk-in to IAD well after the arrests, one was learned of by listening to legally recorded calls made from jail, and one resulted from a call to Communications. Additionally, this latter case did not involve an allegation of Class I misconduct; the complainant alleged that the psychiatric hold placed on her at John George Psychiatric Pavilion was inappropriate (in actuality, a complaint against the Crisis Intervention Team).

During this reporting period, OPD is in compliance with Task 5.6.

In our last report, we documented our failed attempt to meet with representatives from the Alameda County Sheriff's Office (ACSO) to clarify the roles of OPD and jail (non-OPD) staff. The previous monitor was reluctant to find OPD in compliance with Task 5.6 because it was not confident that the Department was necessarily made aware of every complaint that fits the criteria, particularly in cases where the arresting officer(s) has left the jail, and an arrestee lodges his/her complaint with jail staff.

During our August site visit, we met with IAD staff and an ACSO representative who provided us with a copy of ACSO's policy, *OPD Arrestee Complaint Procedure*, issued in September 2009. This policy was the subject of muster (roll call) training, and was reinforced prior to our May and August site visits. The policy, in sum and substance, directs ACSO personnel to refer arrestees making a complaint to the arresting or transporting officer, if s/he is still present. If not, the complainant shall be provided with OPD supplied information on how to file a complaint. If the circumstances of the complaint are serious, ACSO can call OPD's 24-hour special complaint line. The ACSO representative correctly pointed out that his agency is not bound by the NSA; nor does it have the responsibility to monitor OPD's compliance with the Agreement. We will continue our practice of holding OPD accountable for cases that the Department is made aware of – or should have been made aware of via its own personnel – which can include cases that meet Task 5.6 criteria referred to the Department by ACSO.

Task 5.12 requires that the Watch Commander ensures that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD (compliance standard: 90%). 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 Task.

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 April 1, and June 30, 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.⁵

As in our previous reviews and those of our predecessors, we treated **Tasks 5.15 and 5.16** 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%). During the previous assessment period, we deemed the Department in compliance with *all* of these required elements 72% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 18, or 72%, in compliance with *all* of these required elements. 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.⁶ In one case, follow-up interviews were warranted, but not conducted. This case involved an allegation of theft of money. The complainant's girlfriend was in the apartment during the encounter with officers. Rather than ask her directly about the missing money, the investigator relied on the fact that she never mentioned it as evidence that it did not occur.

Credibility assessments continue to challenge OPD. As mentioned previously, the Department, for the most part, appears to start from the premise that complainants are not credible, and officers are. We continue to find rote credibility assessments for officers (in one case, nine officer credibility assessments read exactly the same). In two of the cases we reviewed, credibility assessments were missing. One was an investigation involving obstruction of the Internal Affairs process, and the other involved a use of force during a traffic stop that was handled via summary finding. In four cases, the credibility assessments were completed but appeared so flawed that we deemed them out of compliance. In the first, a complaint of force during a drug buy-bust operation, all officers were deemed credible in rote assessments, despite the fact that none recall hearing something shouted ("Shut up!") that was caught on videotape.

In the second, a use of force complaint involving an arrest team after a narcotics "buy," four officers' assessments read exactly the same and there was an obvious effort to discredit the complainant. He was questioned for reviewing the crime report prior to giving his statement, despite the fact that officers routinely review and refer to prepared reports before and during their interviews. In the third, an accusation of a racial epithet uttered at a Raiders football game, OPD inappropriately attacked the credibility of the complainants, but appeared not to clearly assess the credibility of the officer's statement. In the fourth case, a use of force investigation

⁵ 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.

⁶ 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.

resulting from a call for assistance from the California Highway Patrol (CHP), nine OPD officer credibility assessments read exactly the same. More telling, the credibility of a CHP sergeant and officer were questioned, presumably because they substantiated a use of force. And finally, the complainant was deemed credible despite the fact that he was believed to be under the influence of PCP or a similar substance, and his recollection of events did not match any other officer's description – OPD or CHP. The apparent reason was that he indicated that he was not struck by OPD officers. During our August site visit, we discussed with IAD and OIG staff the Department's ongoing problems with credibility assessments.

The NSA requires that "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." Where OPD makes such efforts and is unable to resolve inconsistent statements, the underlying charge would presumably, by definition, be not sustained. Therefore, in our review for this Task, we removed from consideration not sustained findings based on inconsistent statements. In two cases, inconsistent statements were not resolved. These were the missing money case and the CHP case mentioned above.

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 48% of the cases we reviewed. During this reporting period, the form was missing or blank in six, or 24%, of the 25 cases we reviewed. While this represents an improvement, OPD is still not in compliance with this Task.

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 previous review, OPD complied with this Task in 92% of the cases we reviewed. During this reporting period, we determined that OPD did not meet this standard in four cases. In the missing money case described above, the investigation was insufficient to apply this standard. In three other cases, we believe the preponderance of the evidence supported different findings. These are the cases mentioned above involving the narcotics "buy," the racial epithet, and the CHP. With a compliance rate of 84%, OPD is not in compliance with 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 Task.

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. According to our review of the IAD database, 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, (June 30, 2010), OPD had three cases classified as tolling. We discussed these cases with the IAD Commander during our August site visit. The first involves a complaint of illegal search and detention. The complainants filed a civil suit and will not cooperate with the IAD investigation. To date, no subject officers have been identified, and IAD is monitoring the civil case. In the second, a rudeness complaint, the subject officer is out on extended stress leave, with no estimated return date. The third involves a potential criminal investigation. The Department of Housing and Urban Development (HUD) initiated the complaint, but has not been forthcoming with information. All cases appear to be properly 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 Task.

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 the 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 seven 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. 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

Next Steps:

Prior to our November site visit, we will review a sample of Daily Incident Log entries made since our meeting with IAD in August, and discuss them with representatives of IAD and Communications, if necessary. Additionally, we will review the case files for all cases listed as tolling as of our visit. We will also meet with IAD and OIG personnel regarding specific cases of concern, as we did during our last site visit.

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 the first and second reporting periods, we found the Department in Phase 2 compliance with Task 6. Our reviews have found that the Department has continued to make progress relative to this Task. The Department's investigations of any circumstance that suggested a member refused to accept a complaint or properly refer a complainant to the appropriate authority have been acceptable.

Discussion:

As previously reported, OPD published Department 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 the Department has trained at least 95% of relevant personnel on the above-listed policy and Manual of Rules sections, we 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 with this Task, we reviewed a random sample of 98 Daily Incident Log entries and a random sample of 60 IAD investigations (conducted by both IAD and via Division-level investigation) for the period of April 1, through June 30, 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 closed during this same time period.

Our review revealed 11 cases where members were alleged to have failed to adhere to the required standard. IAD sustained a violation in one of these cases. Two cases were administratively closed, and all other cases were unfounded. We concur with the Department's resolution in these cases and find the Department in Phase 2 compliance with Task 6.

One use of force report from the second reporting period caused some concern as to whether the complainant was improperly influenced to not make a complaint. Following some discussion

with the sergeant, the complainant allegedly changed her mind about filing a complaint. During our most recent site visit, we discussed this case further with IAD, and are satisfied that the matter was handled appropriately.

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.

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.⁷*

(Negotiated Settlement Agreement III. G.)

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

Comments:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the last assessment period, we found OPD in compliance with this Task.

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

To assess Phase 2 compliance with this Task, we reviewed all cases 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 April 1, through June 30, 2010. We also reviewed all complaints during this selected time period that were tagged by IAD 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. During our May site visit, we met with IAD staff to encourage personnel to standardize the manner in which these cases are recorded in the database, to make them easier to identify. We may not, however, see the results of the agreed-upon changes until the next reporting period or two.

Based on the above-listed criteria, we identified six cases as potential anonymous complaints. From these, we excluded one case that did not constitute an anonymous complaint of misconduct because OPD identified the complainant from the outset, although she indicated during her initial call that she wanted to remain anonymous to the people she was calling the police about.

We reviewed the remaining five cases to determine whether OPD investigated the anonymous complaints to the extent reasonably possible. During the course of one investigation, the complainant was identified based on the type of call that he alleged was not responded to. He thereafter cooperated with the investigation. Of the remaining four complaints, three were received by letter, and one via a call to Communications. While the complainants were never identified, all four complaints were investigated to the extent possible; and in each case, the subject officers received at least counseling as part of the case resolutions. The Department, therefore, complied with Task 7.3 in all five cases, or 100%. OPD is in compliance with Task 7.3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

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, due to our concerns with the disciplinary hearing process, we found the Department out of compliance with Task 16. During the second reporting period, our review showed significant improvement in this area, and we found that the Department in compliance with this Task.

Discussion:

As previously reported, two Department policies, Department 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 Department has 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 98 DIL entries, 31 informally resolved IAD cases, and 60 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) revealed three cases where the same member, a supervisor, was alleged to have failed to adhere to the required standard. In these cases, IAD sustained several violations of the supervisor intentionally obstructing the IAD investigative process. We concur with the Department's resolution of this matter, and find the Department in compliance with Task 16.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

On our next visit we will again meet with the IAD Commander to discuss any Task 16-applicable cases for the next reporting period, and we will assess the propriety of IAD's findings and actions.

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.*⁸

(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 and second reporting periods, we found the Department in compliance with this subtask. In our first review, we reviewed a stratified random sample of 100 use of force reports for Level 2, 3, and 4 incidents; and found 95% in compliance. We expanded our second review to also include juvenile and adult arrest reports, and found an overall 90% compliance rate.

⁸ The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

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 the Department has trained at least 95% of relevant personnel on these policies, we 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%). 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 an investigated use of force.

Specifically, we reviewed a random sample of 36 adult arrest reports, 25 juvenile arrest reports, and documentation for 33 arrests resulting in an investigated use of force that occurred between April 1, and June 30, 2010; to determine if the reports listed witnesses or 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.

Of the 36 adult arrest reports, we excluded 25 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 11 remaining adult arrests, nine (eight felony drug arrests and one PC 148 arrest) were in compliance with Task 18.2.2. The two other felony drug arrest reports did not, as per the requirement, list witnesses, appropriately note “no known witnesses,” or refer to a canvass with no witnesses produced. This represents an 82% compliance rate among adult arrests for this subtask.

Of the 25 juvenile arrest reports, we excluded 22 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 three remaining juvenile arrests, two were in compliance with Task 18.2.2. The one other arrest did not, as per the requirement, list witnesses, appropriately note “no known witnesses,” or refer to a canvass with no witnesses produced. This represents a 67% compliance rate among juvenile arrests for this subtask.

Of the 33 arrests resulting in an investigated use of force, 33 were in compliance with Task 18.2.2.⁹ This represents a 100% compliance rate among arrests resulting in investigated uses of force for this subtask.

Our review reveals an overall 94% 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:

We will discuss with OIG what steps the Department is taking to address the lack of supervisory attention to the adult and juvenile arrest documentation that is yielding lower rates of compliance with Task 18.2.2.

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.)

⁹ 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.

Comments:

During the last two reporting periods, we found OPD in partial Phase 2 compliance with Task 20. We found that 98% of the squads we reviewed met the 1:8 span of control. However, we found that only 71% of the squads we reviewed were supervised by their primary, or assigned, supervisors; most of the remainder were supervised by certified acting sergeants who were not actually assigned to supervise their squads.

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. Although Special Order 8435 updates the Department's policy on acting supervisors, we have previously encouraged OPD to update DGO D-13 (issued in 1999) so that it incorporates the updated information. We learned recently from the Bureau of Field Operations (BFO) Deputy Chief that these revisions are currently underway.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

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 first two reporting periods, we did not assess this subtask due to the lack of reliable documentation. At that time, we reported that there was no official OPD "master detail" that both listed sergeants' assignments as of the time of the "draw" at the beginning of the year and was 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. After several technical delays, we were granted access to Telestaff during this reporting period. We reviewed the system, and found that it functions as a "master detail" that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. OPD is in compliance with Task 20.1.

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, Parole and Corrections Team, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%).¹⁰

¹⁰ During the current reporting period, the Department discontinued the Targeted Enforcement Task Force II.

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: April 14, 18, 20, and 21; May 11, 17, and 22; and June 3, 4, 5, 14, 16, 18, and 20, 2010. For the purposes of this requirement, we considered certified acting sergeants to be primary supervisors if they were assigned to supervise their particular squads; we considered them in compliance if the Department's weekly Personnel Orders listed the certified acting sergeants' acting assignments.

Of the 441 applicable squads we reviewed, we found that 333 (76%) were supervised by their primary supervisors. This represents only a slight improvement from the second reporting period, when we found only 71% of the squads in compliance with this subtask. Of the squads *not* supervised by their primary supervisors, 31 (7% of the total) were supervised by "backfill" sergeants working overtime, 58 (13% of the total) were supervised by certified acting sergeants, three (1% of the total) were supervised by officers who were not certified to act as sergeants, and 17 (4% 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, Parole and Corrections Team, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio 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 441 applicable squads we reviewed, 413 (94%) met the 1:8 span of control. This is a slight drop from the second reporting period, when we found 98% of squads we reviewed in compliance with this requirement. 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 31 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 93 total operations conducted between April 1, through June 30, 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 April 1, through June 30, 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 noted previously, 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. Based on our recent discussions with the BFO Deputy Chief and other BFO personnel and our review of Personnel Orders for other purposes (see above), it appears that OPD’s practice comports with Departmental policy.

OPD is in compliance with Task 20.6.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

Following up on recent conversations, we will continue to discuss with OIG, the BFO Deputy Chief, and other BFO personnel how any additional rounds of Departmental restructuring affect Task 20-applicable units and squads. We will also follow closely the Department's updating of 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 in partial compliance with Task 24, primarily due to the requirement that OPD enter data regarding use of force into its Personnel Assessment System (PAS). We were unable to review IPAS to assess this requirement, as our access was temporarily suspended due to technical problems.

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 the Department has trained at least 95% of relevant personnel on these policies, we 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 90 use of force reports, including 18 Level 2, 15 Level 3, and 57 Level 4 reports.

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 all (100%) of the incidents in our sample were in compliance with this requirement.

Level 4 uses of force are self-reported, and consequently, less documentation is required than for Level 1, 2, and 3 incidents. Departmental General Order 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, as noted above, in all of the Level 4 incidents in our sample, a supervisor was notified regarding the force incident. In addition, OPD took extra steps to ensure that the required information was noted in the report. The Department changed 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. 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 in the Level 2 and 3

incidents in our sample, this information was primarily contained in the UOF reports; in the Level 4 incidents in our sample, the information frequently appeared in the actual offense reports.

As we have noted previously, 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.

As such, we previously recommended that OIG compare these cases with reported uses of force to determine a level of compliance by the Department. During this reporting period, we followed up with OIG regarding this recommendation. OIG audited a total of 121 crime reports, covering reports from January 1, through March 31, 2010, and associated 92 of them with an investigated UOF report. According to OIG, 28 of the crime reports did not require a UOF report, and one crime report was listed as ambiguous in the description of the force used by the officers affecting the arrest of the suspect. We reviewed the 28 crime reports and the one crime report identified as ambiguous (29 in total) by OIG, and agreed that no use of force was involved that met the requirements of this Task in these cases. Even though OIG examined crime reports from the first reporting period, our review of these reports substantiates OIG's audit. As we have discussed with OIG, this type of "mini-review" can serve as a vital tool to help the Department sustain compliance with the requirements of the NSA.

OPD is 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 of the Level 2 and Level 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.¹¹ 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 IMT did not review any Level 1 use of force incidents during this reporting period. OPD remains in compliance with Tasks 24.5, 24.6, and 24.8.

¹¹ Task 24.7 is no longer applicable.

Task 24.9 requires OPD to enter data regarding use of force into OPD's Personnel Assessment System (PAS) (compliance standard: 95%). To assess Task 24.9, we reviewed IPAS, and found that while the system included information on the force reports in our sample, we are very concerned that IPAS includes only limited information about these reports. Because the system does not include detailed information about the incident, we are discomforted about its utility to supervisors when they are reviewing IPAS. This is a matter about which we have already had extensive discussions with the Department. OPD remains in partial compliance with Task 24.9.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will meet with OIG, IAD, and the Training Division to assess what measures the Department is implementing to avoid conflicts with investigators or reviewers being involved in the incident conducting the investigation or review. We will discuss with OPD the feasibility of implementing a technological solution, such as database tracking, to prevent investigator and reviewer conflicts from occurring.

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 – only 78% of the reports we reviewed were submitted in a timely fashion. We also found OPD out of compliance with the requirement regarding the chain of command review of use of force reports; we found only 81% of reports in compliance with this subtask. In addition, we expressed our concerns that in four of the use of force reports we reviewed, the assigned investigators were involved in the incidents and justified their own actions in the reports.

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 Department has trained at least 95% of relevant personnel on this policy, we find OPD in continued Phase 1 compliance with this Task.

Our Task 25 review covers the period from April 1, through June 30, 2010. We reviewed documentation for a stratified random sample of use of force reports, including 18 Level 2, 15 Level 3, and 57 Level 4 use of force reports, for a total of 90 reports. No Level 1 cases were submitted for review during this reporting period.

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 33 Level 2 and 3 incidents. As noted above, no Level 1 UOF cases were submitted for review during this reporting period. In all of the Level 2 and 3 incidents in our sample, a supervisor responded to the scene and completed a UOF investigation, as required. OPD is in compliance with Task 25.1.

Previously, we were troubled to note that some of the assigned investigators were involved in the incidents, and justified their own actions in their reports. We discussed these issues with OPD during our August site visit, and the Department informed us that it will explore ways, via technology, of addressing these conflicts when UOF cases are assigned or inputted. OPD also promised to continue to train investigators on the policy requirements, and hold supervisors accountable for not addressing these errors in the report review process. (Refer to Task 24.)

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 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 five (5%) of the reports (two Level 2s, two Level 3s, and one Level 4) were not 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 with the exception of one Level 3 UOF report. OPD is in compliance with Task 25.2.

Task 25.3 requires that all supervisors are trained on conducting use of force investigations, and that such training is part of a supervisory training course (compliance standard: 95%). This requirement does not apply to Level 4 cases. We verified that all of the supervisors who investigated the 33 Level 2 and 3 incidents in our sample attended the required 80-hour Continued Professional Training, which includes several segments that relate to conducting use of force investigations.

During this reporting period, we also reviewed the lesson plans for the supervisory training course recently provided to us by the Training Division. The training curriculum is comprehensive and detailed. We recommend that the curriculum emphasize that investigators involved in the use of force should not conduct the investigation, an issue that surfaced during the second reporting period; and address the discrepancies in the evidence areas of the reports. Use of force investigators should understand the importance of *investigating* – not just reporting – an incident. It is critical to OPD and the public that conflicts in evidence, or statements by personnel or witnesses, be identified and thoroughly addressed. Such training is especially important prior to special events, overtime assignments staffed by members who do not usually work field assignments, or supervisors who have not investigated a UOF for a long period of time.

During our August site visit, we met 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. OPD readily acknowledged that the Department has not scheduled any refresher training for a while; however, OPD indicated that UOF refresher training for supervisors will be conducted in the fall of 2010. We encourage OPD to eventually make periodic UOF refresher training a regular part of the Department's training calendar to reinforce areas in which the supervisors are performing well; and to address areas that need improvement to ensure that UOF investigations are complete, impartial, and thorough. We will follow up on the refresher training during our next site visit.

OPD is in compliance with Task 25.3.

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 2 and 3 incidents in our sample were in compliance with this requirement. (This subtask does not apply to Level 4 uses of force.) 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 satisfactory job reviewing and commenting on the quality of the investigations. The compliance rate for Level 2 and 3 reports combined is 100%.

We found 96% of the Level 4 cases we reviewed in compliance with this requirement. In two Level 4 cases, the supervisor did not review the report. OPD continues to do a satisfactory job of identifying tactical issues, and documenting corrective action between supervisors and subordinates, to include formal discipline for untimely UOF investigations in two cases. Chain of command reviewers frequently comment on the appropriateness of the uses of force as well as the tactics utilized. OPD is 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%). No Level 1 UOF cases were submitted for review during this reporting period. OPD is in compliance with Task 25.6.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with OPD personnel to determine if, in fact, periodic refresher training regarding use of force reporting requirements was provided to all officers and supervisors in the fall of 2010; and to further discuss the lesson plans on this subject that we received from the Training Division. Additionally, we will discuss with OPD what plans it has to make UOF refresher training a more regular part of the Department's training calendar.

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 the second 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 the Department out of compliance with the provision that FRBs be commenced in a timely basis.

Discussion:

As previously reported, our review of Department General Order K-4.1, *Force Review Boards* (August 1, 2007), determined that this policy comports with the requirements of Task 26. As the Department has trained at least 95% of relevant personnel on this policy, we 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 15 incidents that were heard by the Board during this reporting period, April 1, through June 30, 2010. We determined that 14, or 88%, of the 16 reports were in compliance with Task 26.1. Two 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 183 days after the completion of the investigation; in another, the FRB was not held until 107 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%). All of the cases we reviewed contained a recommendation noting the use of force was in policy. Only one of the 16 cover sheets noted agreement with the recommendation of the FRB by the Chief or his designee. We discussed this issue with OIG during our August site visit.

OIG indicated that it will work with the Chief to obtain the required endorsement for review. 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 were no cases in our dataset in which that determination was made. OPD is 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 August site visit, we observed two FRB hearings and the proceedings appeared to be very informal, and still at times, of questionable value. For instance, the involved officers continue not to provide testimony, and so the Board received no additional information than what was in the officers' original UOF report.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will continue to attend FRB hearings and share our observations with OPD. We request that OPD schedule its FRB hearings during our next site visit, to permit us to continue to observe and evaluate the process firsthand. We will follow up with OPD and review the process that OIG put in place to ensure that the Chief has either 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 the second reporting period, we found the Department remained only in partial compliance with Task 30, primarily due to the EFRBs not being commenced in a timely manner.

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 Department has 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 five Level 1 force incidents involving three officer-involved firearm discharges, all of which resulted in death to three armed suspects; and two vehicle pursuits initiated by OPD, where the drivers of the fleeing vehicles ended up in collisions with other vehicles killing two non-involved persons. In four (80%) of these five incidents, OPD convened an EFRB within 45 days of the completion of the UOF report. For the other incident, OPD did not convene the EFRB until 87 days after the completion of the UOF report.¹² In all five cases, the EFRB's report was completed within the 60-day requirement. OPD is not in compliance with this subtask.

During this reporting period, we discussed with OPD what steps were being taken to ensure the EFRBs are commenced in a timely fashion on a more consistent basis. OPD assigned an officer in late February 2010 to handle the scheduling and coordinating of schedules for all EFRBs and FRBs; we hope that this leads to improvement in this area in future reporting periods.

¹² In the one case, IAD completed the UOF report on March 8, 2010, and the EFRB was held on June 3, 2010.

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 it believes should testify (compliance standard: Yes/No). In the incidents we reviewed, recorded statements and/or transcripts were available from all officers on the scene and any other personnel needed to testify. OPD remains 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 five incidents we reviewed. Except in one case in which the Deputy City Attorney was absent, the required attendees were present.¹³ After review and deliberations, the Board determined that the subject officer's actions were in compliance with Department policy. All five EFRB findings were endorsed by the Chief. The Board discussed training recommendations, and the subject officers were trained after the Board concluded its duties. The EFRB-recommended Information Bulletin was also disseminated promptly, as the Board directed. The Department is in compliance with this subtask.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

OPD recently provided a draft revision to DGO K-4.1, *Force Review Boards*, for us to review. The proposed language is OPD's initiative to improve the policy to close procedural loopholes, and further clarify the EFRB use of force review and referral process. We will obtain a copy of the new policy once implemented, and assess its impact on the EFRB process. The revision mandates a referral to IAD when the force is determined by the Board to be out of compliance and there are sustained findings. During our next site visit, we will meet with the EFRB scheduler, and try to identify what scheduling issues are keeping OPD out of total compliance with this requirement in the area of EFRBs being commenced timely.

¹³ During this reporting period, we reminded OPD of the importance of having all required attendees present in accordance with the requirements of this Task. OPD drafted a revision to DGO K-4.1, *Force Review Boards*, to address instances where the DCA cannot appear at an EFRB. The revision states, "In the event the DCA is unable to attend, the EFRB Chairperson shall brief the assigned DCA of the EFRB proceedings, findings, and recommendations." We strongly suggest that these incidents are documented, timely, and available for review in future assessments once the policy is implemented throughout the Department.

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 the first and second reporting periods, our query of the IAD database revealed no cases in which a member failed to report the misconduct of another member. 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 Department has trained at least 95% of relevant personnel on these policies, 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%); and **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%).

To assess OPD's Phase 2 compliance with these subtasks, we met with IAD personnel and queried the IAD database to identify any cases that were approved during the period of April 1, through June 30, 2010, that were applicable to Task 33. We found no identifiable cases where a member failed to report the misconduct of another member. There were no reports of confidential cases filed during this reporting period.

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%).

As noted above, we found no Task 33-applicable cases during this reporting period, so we did not assess all of these subtasks. However, during this reporting period, OPD hired and properly trained its 29 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 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:

During the first two reporting periods, we found the Department out of compliance with Task 34, as officers were not completing the required forms as the standard required in the NSA, and we were concerned with the accuracy of data entry.

Discussion:

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

During this reporting period, on June 12, 2010, the Department issued Special Order 9042, *New Procedures Regarding Stop Data Collection*, which updates DGO M-19 and RWM R-2. During the next reporting period, we will verify that the Department has trained at least 95% of relevant personnel on this new policy.

Task 34.1 requires that stop data forms be filled out for every vehicle stop, field investigation, and detention (compliance standard: 90%). As noted above, during this reporting period, the Department issued Special Order 9042, which outlines new procedures regarding stop data collection. We are hopeful that these new procedures will result in significant improvement in the way that OPD captures and stores data on all investigative stops of citizens. However, due to the June 12, 2010 issuance date of the new policy, we are deferring our review and analysis of the Department's efforts in this area until the next reporting period.

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%). As noted above, due to the June 12, 2010 issuance date of the new stop data policy, we are deferring our review and analysis of the Department's efforts in this area until the next reporting period.

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%). As noted above, due to the June 12, 2010 issuance date of the new stop data policy, and the Department's adoption of new relevant data systems, we are deferring our review and analysis of the Department's efforts in this area until the next reporting period.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

Next Steps:

During our next site visit, we will meet with OIG to discuss the Department's progress in this critical area since the June 12, 2010 policy amendment. We will discuss with the Department its various Task 34-related data systems to assess their operability, accuracy, and utility in storage and ease of access to stop data.

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. Specifically, 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 Department has trained at least 95% of relevant personnel on these revised policies, we find OPD in continued Phase 1 compliance with this Task.

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%). To assess these subtasks, we reviewed a stratified random sample of 18 Level 2 UOF reports and 15 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. All of the reports in our sample comported with these requirements. 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%). None of the Level 2 and 3 cases in our sample fell into this category.

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 33 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 request that OIG conduct its own Task 35 assessment and have the results available for review and discussion during the next site visit to ensure continued compliance with the provisions of this Task. We will also discuss with OIG its strategy to inform OPD personnel of these audits and any corrective action the Department needs to initiate to maintain continued continuity of the provisions of the NSA related to witness identification in use of force incidents.

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 assessments, we reviewed the seven cases alleging retaliation that were resolved during the first three quarters of 2009. Our review found that all seven cases were investigated appropriately and that 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*. Since these MOR provisions (revised in lieu of a City policy on retaliation) incorporate the requirements of Task 37, we found OPD in Phase 1 compliance with Task 37. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, we reviewed the four cases that were completed during the period of April 1, through June 30, 2010, in which allegations of retaliation were raised. We found that all cases were appropriately resolved; however, three of the four cases did not involve an OPD member who was alleged to be the victim of retaliation. Inasmuch as the alleged victims were not members of OPD, and Task 37 specifies retaliation against a *member of the Department*, these cases did not fit the definition of Task 37. In the first such case, a citizen complained that

two officers had arrested her son in retaliation for an earlier complaint that he had made against an OPD officer. A second case involved a citizen's complaint that officers had illegally searched him and his residence in retaliation for a lawsuit he filed against another officer. A third case involved a citizen who complained that he was subjected to retaliation because he had filed a complaint with IAD. All three cases were appropriately resolved when the allegations were found after reasonable investigations to be unfounded, not sustained, or exonerated.

A single case involving a Task 37-applicable allegation was investigated based upon an anonymous letter sent to an Internal Affairs investigator threatening him with "retaliation" for his work on a major internal affairs case that the writer alleged had "ruined the careers" of several members of the Department. The Department conducted logical forensic tests, but failed to identify the writer. The case was appropriately closed when all reasonable leads were conducted and no subject was identified.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will review cases that were approved between July 1, through September 30, 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:

In the previous reporting periods, we found OPD in both Phase 1 and Phase 2 compliance with Task 40. Prior to our appointment, the Department had resolved several minor issues that had prevented a finding of full compliance.

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 Department has trained at least 95% of relevant personnel on this 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. Task 40 governs the data requirements of the system, and Task 41 governs the way the system is to operate as a risk management tool. 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 overall system for managing the process and outputting the required reports 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 the second reporting period, when the second employee was assigned, the PAS Administration Unit operated with only one critical employee.

During our August site visit, we once again reviewed a variety of data relevant to these Tasks, including a wide range of documents covering all aspects of PAS. 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 subtasks. We evaluated all subtasks and focus below on areas that raised concerns.

With regard to Phase 2 compliance, IPAS records for the quarter of April 1, through June 30, 2010 show that data were entered for all 20 fields required by Task 40. In all, 56,879 pieces of information were entered during this time period. This included 1,209 uses of force; 273 misconduct complaints; 1,824 notes by supervisors; and 961 arrests. The largest categories of information are training history (28,514), sick leave hours (12,635), assignment history (8,156) and rank/class history (2,386). A further breakdown of the types of use of force shows that for the quarter, there was 1 Level 1 incident, 18 Level 2 incidents, 36 Level 3 incidents and 1,154 Level 4 incidents.

Task 40.2 requires that PAS contain information on each of the elements required by the NSA (compliance standard: Yes/No). Minor issues with the data collection and retention processes were resolved prior to our May visit. As noted, below, however, a new set of concerns has been identified in the review of available IPAS data.

For this review, our interviews, examinations of reports, and queries of the system all indicate that the data collection methods previously noted as meeting requirements continues. It is also

worth noting that OPD now conducts its own quarterly assessment of the state of IPAS data. The Department's reports include compliance assessments using the NSA criteria. In the Department's April 12, 2010 report, the assessment found some inconsistencies in data and also identified brief periods of time when the system was not available for data input. The report also put forth a plan to rectify these problems. This process of quarterly assessment, examination and remedial planning, is a critical part of any complex data collection and storage program. It is an important quality control step developed by OIG, and thus OPD should be recognized for its self-corrective processes, and not for the minor data errors that are detected and resolved.

While the quality control measures noted above are significant, our review of data has also suggested that other problems exist in the current version of IPAS. When we compared the quarterly totals for data inputted into the system from the second reporting period with those entered during the current reporting period, we found some very large differences. The data are presented below. An "x" denotes unexpectedly large differences for the counts across the two quarters.

OPD Event Count	1st Q 2010, Second Reporting Period	2nd Q 2010, Second Reporting Period	unexpected Difference*
Level 1 Uses of Force	6	1	x
Level 2 Uses of Force	31	18	x
Level 3 Uses of Force	80	36	x
Level 4 Uses of Force	1619	1154	x
Sick Leave Hours	13898.95	12635.21	
Line of Duty Injuries	39	38	
Narcotics Related Possory Offenses Arrests	1013	89	x
Vehicle Collisions	23	1	x
All Vehicle Pursuits	101	13	x
All Arrest	6350	961	x
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	83	20	x
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	20	3	x
Awards	283	112	x
Assignment History	8116	8156	
Case Evaluations and Report Review Notices--Positive	608	341	x
Case Eval & Report Review Notices--Negative	1	0	
Canine Deployments	106	115	
Financial Claims	6	2	
Internal Affairs Complaints	336	273	x
In-Custody Injuries	118	72	x
Civil Suits (Tort Claims)	3	2	
Criminal Cases Dropped	0	0	
O.C. Checkouts	30	110	x
Officer Involved Shootings	11	3	x
Rank / Class History	2391	2386	
Training History	3702	28514	x
Supervisory Notes	1552	1824	

These differences are unexpected based on the data from the previous quarter only. This is not intended as a commentary on the appropriateness or inappropriateness of the number of any type of event listed, such as the number of uses of force.

As the table makes clear, some of the differences are quite large. In fact, they are so large as to raise concerns about the quality and accuracy of the data. For example, the total number of arrests went from 6,350 during the second reporting period to 961 in the current reporting period. During the same period, vehicle pursuits went from 101 to 13, and collisions fell from 23 to one.

We sought explanations for these differences from IPAS staff and OIG, and learned that these differences may be the result of a variety of factors, including the fact that the records of the 80 recently laid-off employees may have been removed from the system. Additionally, apparently there can be a difference when the summary report is run. We made our query for statistics from the quarter ending June 30, 2010, on August 9, 2010. As of August 25, 2010, the number of arrests reported for the quarter had risen from 961 to over 1,200.

After examining the differences in the data, OPD responded to our inquiry, and provided explanations for the differences that we found. It is apparent that much of the data was entered quite late, as it was available by the end of August for the quarter ending June 30, 2010. We also learned from OPD that the Department experienced changes in reporting practices, from manual entry of arrest data to receiving data directly from the records management system.

Even at a point in time more than five weeks after the close of the quarter, it was clear that not all relevant data were available. In fact, at no point could one have confidence that all of the data – regarding such major categories as arrests, uses of force, and complaints – had been entered into IPAS. This significantly impacts the value and potential use of IPAS. The lack of current data, and the accompanying inability to judge the currency of data – that there is no standard for when data must be entered – mean that the system cannot reliably provide data in the desired near real-time basis. Thus, many of the uses of the system, as identified in the NSA and reflected in DGO D-17, cannot be accommodated, including reviews for promotion, transfer, special assignment, and twice monthly performance reviews. Even IPAS reviews are conducted without confidence that data is complete.

This problem reflects a critical flaw in a system intended to assist in making important and timely decisions. While discovered only now, this is clearly a problem that has existed well before the quarter under review and, in all likelihood, has existed since the inception of the database. As a result it is impossible to assume that the available data reflect reality at any given point in time. The finding that the system does not reliably record and store the information required in this Task makes a Phase 2 finding of not in compliance appropriate at this time.

While devastating to the system in its current state, this problem can be addressed and corrected. The Department should ensure that all data are entered into the system in a predictable and timely fashion. That would require setting short timeframes for when each individual data type would need to be entered into the system, and posting those timeframes in the system so that users could understand the currency of all data. These would all need to be reflected in written Departmental policy. In all, this would involve quality control mechanisms not unlike those OPD has already implemented, as discussed above.

Compliance Status:

Phase 1: In compliance

Phase 2: Not 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 first reporting period, our review, which focused primarily on the listed requirements of the NSA, revealed that OPD rectified earlier procedural concerns raised by the previous monitor. As a result, we found OPD in compliance with Task 41. However, in the last reporting period, we focused on the functionality of PAS, and expressed our deep concerns that some complicated histories involving many uses of force or citizen complaints were either not adequately probed, or were not adequately explained in the PAS review process. In several such cases, findings of “no pattern” of risky behavior were accompanied by little explanation. Of equal concern was that this problem was not identified by the individuals’ chain of command – multiple layers of supervisors who signed off without objection. This combination of concerns led to our non-compliance finding.

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 Department has trained at least 95% of relevant personnel on this 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 April 1, through June 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 outlier cutting points manually. The steps include identifying the officers who exceed allowable levels, and later contacting supervisors to schedule PAS meetings. During this reporting period, only two officers were identified based on these normative threshold analyses as meeting requirements for PAS meetings. That is approximately one quarter of one percent of all officers in the Department. Nine other officers met the single event threshold for review (for example, participation in an officer-involved shooting or automobile accident).

We are concerned that the normative review process identifies so few officers for review. A system designed to identify and intervene with outliers would be expected to identify a large number of subjects. Broadening the cutting points would yield a more reasonable number. (Even two standard deviations from the mean on a normal distribution would select approximately 5% of the group.)

Based on our review of data, we also examined reports of officers identified as meeting or exceeding thresholds for review and intervention, reports of the subsequent meetings and reports of disposition, and documentation of 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 two were recommended for intervention and one for supervisory mentoring.

As noted above, we found that nine officers exceeded PAS thresholds for the quarter under review. During this time period, a total of 17 PAS reviews were held for officers who had exceeded thresholds at some time.

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. During the current reporting period, for example, 91 Bureau of Field Operations (BFO) supervisors recorded a total of 1,531 successful system log-ins.

The data provide many positive indicators of use of this system despite the problems noted under Task 40 with regard to data entry. The basic process of entry, storage, and analysis of data are taking place. The Department is identifying outlying officers, albeit in small numbers. The Department is holding PAS meetings and placing officers in intervention and supervisory monitoring.

During our last review, despite those signs of progress, we were concerned that the IPAS reviews did not, in all cases, rise to the standard expected of a risk management system. We are pleased that OPD has taken several important steps to rectify these problems. OPD now holds biweekly IPAS inspection meetings in which the Chief, all Deputy Chiefs, commanders, and OIG staff review all aspects of the risk management process. The Department has even expanded its reviews to include officers with the highest and lowest arrest numbers, and all uses of force in the past 90 days. The reviews also focus on understanding the details of Level 4 uses of force, many of which involve pointing a gun at someone. We described the high volume of those incidents in our last report.

OPD's attention to this process already appears to be bearing fruit. In our review of PAS meetings, we found that much greater attention was devoted to review of the data – particularly in the supervisory and command-level sign-offs. Notes were longer and more detailed, and informal corrective measures were common. In five of the cases, OPD took intermediate steps involving requiring officers to tape-record interactions with the public and then critically examine those interactions. In other cases, supervisors made special notes of their intention to closely review all IPAS data on some officers as an informal stage in the process.

We acknowledge OPD's efforts to improve PAS, and we will be keen to see continued progress during our next site visit. The issues raised in the PAS review cases that garnered our attention in the last review and ultimately led us to find OPD out of compliance, were significant enough that we are hesitant to leap to a conclusion that the underlying problems are resolved. Although we are optimistic, we will seek to confirm the improvements in subsequent visits before adopting an in compliance finding.

We also have other concerns that we hope to discuss with OPD during our next site visit. First, the PAS system is sharply bifurcated with regard to its level of computerization, a condition that leaves it vulnerable. Not only are thresholds in the comparative analyses set by hand and therefore yielding few cases, but the entire review system is not computerized. Notifications to officers and supervisors are not automatic; communication regarding PAS reviews is likewise done via email, and is not automatically recorded in the system. The value of this system depends on its accumulation of accurate information over time. The failure to automate 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.

Our second concern, repeated from our last report, 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, neither the IAD nor use of force data in PAS includes any narrative as to the circumstances involved. Instead, supervisors must request copies of original reports to consider these events carefully. 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.

Third, and perhaps most significant, we continue to be concerned that PAS review meetings do not adequately address the totality of concerns raised by IPAS data. Although we recognize that there have already been some improvements in the review and oversight of this process, we continue to be concerned based on the issues raised in some of the reviews this quarter.

During the current reporting period, an officer under review had received 19 complaints, almost all of which dealt with search-related issues. The officer also had 46 uses of force, of which 44 were Level 4 uses involving acquiring a target with a handgun. While this officer also had a large number of arrests, the finding that no pattern is present, or that the supervisor has no concerns, at the least, begs for more documentation. The requirement that this officer carry a recorder to make audio recordings of citizen interactions does not seem to flow directly from, nor be responsive to, the record.

In a second case, no pattern of potential problems was found where there were 11 complaints against an officer, all noting demeanor issues. Two were sustained.

Another officer was sustained on two complaints, and had received 17 others in the review window of 910 days. Although most of these related to use of force, no patterns or problem was found.

Finally, another officer had 25 complaints lodged against him and had used force on 72 occasions, including 10 Level 2 and 3 instances. Although no pattern of problems was found, the officer was asked to wear a recorder and informally record citizen contacts.

Reviewing cases of the sort noted above raises critical and fundamental questions for us about whether there is a shared understanding about the purpose and goals of the risk management process. The process is intended to assist managers in identifying potential problems early, and helping officers avoid still more serious, possibly career-ending difficulties. It is not intended to be a legalistic process that deals only with cases involving formal negative findings. The search for undesirable processes and patterns of potentially problematic behavior is intended as a means of assisting officers. That assistance cannot be given if reviews are not diligent in their search and identification of officers who can benefit from the process.

Finally, as noted in our Task 40 discussion above, we cannot overemphasize the need to address the problem of timely submission and recording of data in IPAS. The process of review cannot function reliably if the data is itself unreliable. As it stands, supervisory or command staff can never be certain that the material they seek will be available or that the file they review is complete. The decisions made in connection with the review of IPAS data are far too important for the Department to tolerate such ambiguities.

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, we remain deeply concerned, but we are also optimistic based on the IPAS inspection process that began after our second site visit. That process could allow OPD to identify, analyze, and perhaps, correct potentially problematic cases after initial and supervisory review. We will again look for evidence of that in our next quarterly examination.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

In our compliance review process we continue to have the highest regard for the dedicated staff working on the risk management system and for those in OIG who oversee the compliance process. In fact, PAS, which had received strong reviews prior to our first visit, has continued to improve over time. It is these broad improvements that have allowed us to go beyond simply determining whether the steps in the compliance protocol have been met to examining how the system actually functions. This is what has led to the current concerns. For example, we will continue to develop the dashboard of IPAS data indicators that was first assembled as a table in our last report. However, our effort to replicate that table with the data from a new reporting period is what revealed the data to be incomplete and/or unreliable.

During our next site visit, we will continue to examine closely the process of collection and storage of data, and the use of that data in the IPAS review process. We are very interested in tracking changes that result from the IPAS inspection process, and will review the minutes of these meetings. We also plan to meet with PAS staff and OIG regarding the specific issues noted above. Finally, as noted above, we will continue to assemble the data dashboard, which seeks to quantify risk measures as begun in our last report. This provides one means of tracking the implementation of PAS. Unfortunately, reliability problems preclude reporting updated data here. However, in future reports, we look forward to tracking the data/key indicators – including the percent of arrests associated with a use of force (Levels 1-3); a use of force (Levels 1-4); a police pursuit; an IAD complaint; an in-custody injury; and each hour of sick leave; as well as the number of arrests per officer-involved shooting; vehicle collision; and civil suit.

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 then current Field Training Officers (FTOs). As a result, during the first reporting period, we deferred judgment on Task 42. In our second site visit, we found that OPD had recruited a class of 21 new officers who were enrolled at the Alameda County Sheriff's Office (ACSO) Academy where they were receiving basic training. 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 had not yet been approved.) In addition, five "laterals" recently completed the Lateral Officers Transition Course and entered field training.¹⁴

Discussion:

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

During this reporting period, OPD realized the full impact of the City's recent budget cuts. In addition to the OPD officers who were laid off, all recruits in basic training with the ACSO, and the five laterals were terminated as a result of budget cuts.

Due to these changes, we are placing this requirement in a deferred compliance status.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

Next Steps:

If OPD is able to recruit new officers and reinstate its Field Training Program, we will assess this Task. Until then, the Task remains in deferred compliance status.

¹⁴ Lateral officers are officers who come to OPD after employment at another law enforcement agency.

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.*¹⁵

(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 98% 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 Department has trained at least 95% of relevant personnel on this policy, we find OPD in continued Phase 1 compliance with this Task.

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. To assess this subtask, we interviewed OPD Training Division personnel and reviewed training schedules, course outlines, and the Department's 2009 training plan. We also reviewed the training records of a stratified random sample of 98 OPD members and employees, including 64 officers, 26 sergeants 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 officers in our sample, we credited the California Peace Officer Standards and Training (POST)-certified Continued Professional Training (CPT) as counting toward the requirement.

We found that all of the 98 employees in our random sample received adequate training for their positions. All of the dispatchers in our random sample received training. Sixty-two of the 64 officers, and all 26 sergeants in our sample received appropriate in-service training within the past 24 months. Two officers received less than the full course of CPT (40 hours) in the past two years. According to OPD training records, one of the two officers last received CPT in December, 2007. The other officer attended a 40-hour CPT domestic violence training course, but attended only 26 hours of CPT. This officer received the required 14 hours of POST-

¹⁵ The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

certified perishable skills training in the following areas: tactical firearms (four hours); arrest and control (four hours); driver training (four hours); and tactical communications (two hours).

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 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.

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.*¹⁶

(Negotiated Settlement Agreement X. B.)

Comments:

Only two provisions of Task 45 (45.1 and 45.4) are being actively monitored under the MOU. In our previous reviews, while we found the Department in compliance with Task 45.4, we found the Department out of compliance with Task 45.1, which requires that OPD maintain a

¹⁶ The underlined requirements are the only provisions of Task 45 that are being actively monitored under the MOU.

centralized system for documenting and tracking all forms of discipline and corrective action. While the system could be used to identify cases in which findings were sustained during the last quarter of 2009, there were gaps in the data. We found that the records in which findings were sustained did not contain complete data particularly for the dates of the discipline conference.

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 Department has trained at least 95% of relevant personnel on these policies, 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 cases that were approved with at least one sustained finding during the second quarter of this year, April 1, through June 30, 2010. This query revealed 25 cases. Sixteen of the 25 cases involved minor preventable traffic accidents.

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). Our review determined that the IAD database can be used effectively to identify cases in which findings were sustained during our selected time period. The 25 cases we reviewed resulted in 29 sustained findings. On July 27, 2010, we checked the IAD database and found that only 26 (90%) of the sustained findings during the period of April 1, through June 30, 2010, had dates of discipline listed. OPD is not in compliance with 45.1.

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 29 sustained findings in the 25 cases in our dataset, the discipline imposed fell within the Discipline Matrix currently in use.

During the period of April 1, through June 30, 2010, OPD decided and reported three cases following Skelly hearings.¹⁷ In one case, involving the inappropriate entry into a residence, the discipline recommended was reduced from a two-day suspension to a written reprimand. The

¹⁷ 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).

Skelly officer noted that the officer had no disciplinary incidents in the previous five years, and had entered the residence out of concern for the safety of the occupants, the occupant who met him at the door consented to his presence, and when he was asked to leave by another occupant, he did.

A second Skelly hearing involved an employee who was tardy five times. In this case, the Skelly officer upheld the one-day suspension that had been imposed.

A third case involved the recommendation that a lieutenant be reduced to the rank of police officer following a gross dereliction of duty. The Skelly officer upheld the reduction.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will review the IAD cases in which sustained findings were made during the next quarter (July 1, through September 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.

We continue to be concerned with the pace of progress in achieving compliance with the remaining active Tasks. In this report, an overall decline in compliance by one Task, and the movement of one requirement from in compliance to partial compliance, is deeply troubling. We acknowledge that the Department has been confronted with varied fiscal, personnel, and management challenges. These issues, however, must not be allowed to hamper the process of coming into compliance with an Agreement that is now over seven years old. Our goal is to work closely with all Parties to assure continued progress.

We are also concerned with the organization of technology within the Department. Excellent work has been done through the City of Oakland's Information Technology Department and by some key members of OPD. That work, however, stands side-by-side with an uncoordinated system of databases that are sometimes maintained by untrained staff located across the Department. Stronger attention to information technology issues within the Department will be crucial to its continued success.

In our last report, we noted our general concerns with attention to detail within the Department. At that time, we identified problems of inadequate reporting in some areas, failure to conduct required reviews, and occasional lack of signatures where they were required. In this review, we note progress in this area, but remain concerned that these issues have not been fully addressed in the area of Departmental discipline or in the IPAS review process.

Task 40 and Task 41, which address the Department's risk management system, remain problematic. Although OPD has taken many of the steps necessary for the development of the risk management system, analysis of the system continues to reveal significant operational weaknesses that render the system largely ineffective. In our last review, we identified critical IPAS review issues in which supervisors were largely unresponsive to extensive records involving uses of force and complaints. Too often supervisors failed to explain or justify their decisions to take no action in the face of troublesome data. The problem of supervisors' inattention was compounded by command sign-off that failed to question review results. Although OPD responded to these concerns by building in additional oversight processes, the benefits of those have not yet been clearly established. During this reporting period, we identified additional IPAS reviews that renewed concerns over the ability of the system for

identifying and addressing patterns of problematic behavior. We will continue to seek evidence that the changes to the system have addressed the underlying concerns.

We identified a second significant problem with IPAS during this past site visit, as noted earlier. We are greatly concerned that the data needed by the system are not being accurately recorded and stored by the system. The problem of non-standard time periods and procedures for the collection of data has a dramatic impact on the reliability and validity of the information in IPAS at any given time. Making improvements in this area would not be complicated but are of critical importance. We recommend that a regular review of IPAS issues jointly by OPD and the Monitoring Team be incorporated into the compliance assessment process.

Overall, the issues surrounding IPAS raise a concern which is larger and more important than the “nuts and bolts” of the system. The underlying issues relate to the degree to which the underlying concept of risk management is embraced throughout the Department. The reduction of risk through the identification and remediation of high-risk behavior in individuals, and also across the Department and its various units, should serve as a guiding principle. Clearer subscription to that broad principle can help avoid or resolve the volume of operational and technical problems that we identify in our quarterly reports.

Appendix

Acronyms

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

Acronym	Definition
ACSO	Alameda County Sheriff's Office
BFO	Bureau of Field Operations
BOI	Bureau of Investigation
BOS	Bureau of Services
CAD	Computer Assisted Dispatch
CHP	California Highway Patrol
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
RWM	Report Writing Manual
SDF	Stop Data Form
SO	Special Order
TB	Training Bulletin
UOF	Use of force