



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

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Section One

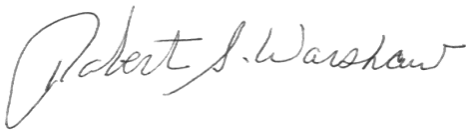
Introduction

This is the seventh 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 2010, 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 seventh quarterly site visit from August 8, through 12, 2011, to evaluate the Department's progress with the NSA during the three-month period of April 1, through June 30, 2011.

In the body of this report, we again 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 the Department in Phase 1, or policy, compliance with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD is in compliance with 12 of the remaining 22 Tasks – one fewer than we reported in our last two reports and a marginal change, at best, from our first report, when we found the Department in full compliance with 10 Tasks. This is highly disappointing, and we are increasingly concerned by this degree of stagnation.

As noted previously, as a result of Court-ordered technical assistance, the Monitoring Team and OPD representatives have continued to meet and confer 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.



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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%, or 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 seventh 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 12, 2011, we conducted our seventh site visit to Oakland. As we do during each site visit, 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.

As noted above, we continue to find OPD in Phase 1 compliance with all 22 of the remaining active Tasks. The Department is in Phase 2 compliance with 12 (55%) of the 22 active Tasks, in partial compliance with eight (36%) Tasks, and not in compliance with one (5%) Task. As in our last two reports, we deferred a compliance determination with one Task (Task 42: Field Training Program).

Task	Phase 1: Policy and Training	Phase 2: Implementation			
	In Compliance	In Compliance	Partial Compliance	Not in Compliance	Deferred
Task 2: Timeliness Standards and Compliance with IAD Investigations	√	√			
Task 3: IAD Integrity Tests	√	√			
Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process	√	√			
Task 5: Complaint Procedures for IAD	√		√		
Task 6: Refusal to Accept or Refer Citizen Complaints	√			√	
Task 7: Methods for Receiving Citizen Complaints	√	√			
Task 16: Supporting IAD Process - Supervisor/ Managerial Accountability	√	√			
Task 18: Approval of Field-Arrest by Supervisor	√	√			
Task 20: Span of Control for Supervisors	√		√		
Task 24: Use of Force Reporting Policy	√		√		
Task 25: Use of Force Investigations and Report Responsibility	√		√		
Task 26: Use of Force Review Board (UFRB)	√	√			
Task 30: Firearms Discharge Board of Review	√		√		
Task 33: Reporting Misconduct	√	√			
Task 34: Vehicle Stops, Field Investigation, and Detentions	√		√		
Task 35: Use of Force Reports - Witness Identification	√	√			
Task 37: Internal Investigations - Retaliation Against Witnesses	√	√			
Task 40: Personnel Assessment System (PAS) - Purpose	√	√			
Task 41: Use of Personnel Assessment System (PAS)	√		√		
Task 42: Field Training Program	√				√
Task 43: Academy and In-Service Training	√	√			
Task 45: Consistency of Discipline Policy	√		√		
<i>Total Tasks</i>	22	12	8	1	1

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:

We found OPD in compliance with Task 2 during all of the previous reporting periods. 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 90% 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, 100% were in compliance with established discipline timelines.

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 sustained) that were approved between April 1, and June 30, 2011, and calculated the number of

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.”

days between the complaint date and the approval date for each case. 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 71 Class I cases we reviewed, 62, or 87%, were in compliance with established timelines – a decrease from the 90% we found during the last reporting period. Of the 68 Class II cases we reviewed, all, or 100%, were in compliance with established timelines – an increase from the last reporting period, when 98% of the Class II cases were timely. Of the 31 sustained findings that we reviewed, 100% were in compliance with established discipline timelines.² This is the fifth consecutive reporting period in which this was the case. OPD is in compliance with Task 2.1.

Task 2.2 requires that IAD and OPD command staff regularly monitor compliance with these timeliness standards (compliance standard: Yes/No). The primary responsibility for monitoring compliance with timeliness standards rests with IAD, which generates weekly reports 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 many 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 335 cases, a slight increase from the 322 cases opened in the previous quarter. In addition, the Chief approved 305 cases, a decrease from the 368 cases approved in the previous quarter. The overall numbers of complaints remain lower than the number of complaints received in 2010. IAD Command attributes the decrease in complaints to overall reduced Department staffing.

During this reporting period, there was not a proliferation of cases that would have triggered a staffing increase pursuant to the NSA. OPD is in compliance with Task 2.3.

OPD is in Phase 2 compliance with Task 2.

² We reviewed 16 cases involving sustained findings – six cases involved more than one sustained finding.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During the next reporting period, we will again confer with IAD command staff regarding workload trends and staffing requirements.

Task 3: IAD Integrity Tests

Requirements:

IAD shall be proactive as well as reactive.

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

(Negotiated Settlement Agreement III. C.)

Comments:

During the last reporting period, we found that OPD had improved its integrity testing, and we found the Department in compliance with this Task.

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 the Department's Phase 2 compliance with these subtasks, we reviewed files – including operations plans, after-action reports, and supporting documents – related to the 13 integrity tests that were conducted from April 1, through June 30, 2011. Our review focused on the scope of the investigations, whether OPD conducted integrity tests on members/employees who were the subject of repeated allegations, and whether the selective integrity tests that OPD conducted complied with the parameters established by IAD.

Of the 13 tests conducted during this reporting period, four were planned tests, in which the Integrity Testing Unit reviewed the records of OPD members and employees to verify that their vital information was current and therefore compliant with Departmental policy.³ All four planned tests focused on individual members and employees of OPD who had a high level of allegations of misconduct over the prior 18 months; all four planned tests passed.

The remaining nine integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies.⁴ All nine tests were conducted on officers who were the subject of repeated allegations, and addressed the sources of the repeated allegations. Three of the tests included the placement of property in a specific area to monitor the officers' responses to discovering the property. The Integrity Testing Unit extended two of these three tests to include performance monitoring. The remaining six tests monitored the performance of officers while on duty – including how they monitored radio traffic, documented stops, responded to calls, drove Department vehicles, and interacted with the public. One of the performance monitoring tests involved reviewing the speed of Department vehicles in different parts of the City to determine if officers were speeding. In two selective tests, the subjects failed and were referred to IAD for policy violations. The types of integrity tests described above support the intended purpose of the Integrity Testing Unit.

During our most recent site visit, we again met with the IAD commander and the sergeant who oversees the Integrity Unit, who informed us of their plans to improve and expand the Department's integrity testing. We also reviewed the integrity tests that OPD recently conducted.

OPD is in Phase 2 compliance with Task 3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

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

³ Planned integrity tests are designed specifically to test the compliance – with Departmental policies or procedures – of specific members or employees who are identified as the subject of the test.

⁴ Pursuant to Internal Affairs Policy & Procedures 07-01, selective integrity tests are targeted enforcement tools aimed at addressing specific issues regarding specific members, employees, or units.

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.*⁵

(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 all of the previous 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.

⁵ 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 these 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 69 Daily Incident Log (DIL) entries and a random sample of 76 IAD case files that were approved during the period of April 1, through June 30, 2011. The Office of Inspector General (OIG) forwards completed DILs to us on a daily basis. We found no evidence of unwarranted delay in the delivery of these complaints, or in the intake process once IAD was made aware of them. OPD 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 (ICR), administrative closure, or summary finding (compliance standard: 90%). This subtask is intended to ensure that OPD provides the proper level of investigation for each complaint and does not resolve meritorious complaints of misconduct without determining – and documenting – whether the OPD member or employee committed misconduct.

During this reporting period, from a sample of IAD cases that were approved between April 1, and June 30, 2011, we reviewed 13 cases in which at least one allegation was resolved via administrative closure, nine cases in which at least one allegation was resolved via informal complaint resolution, and six cases that were resolved via summary finding. In one other case, IAD used both an administrative closure and an ICR for different allegations of the same

complaint. In all but three of the ICRs we reviewed, the complainants agreed to the informal complaint resolution process. Where an agreement was secured in a telephone conversation, that information was contained in the case documentation and in follow-up letters to the complainants. In two of the three cases where the complainant did *not* agree to the process, OPD closed the allegation using a “forced ICR.” This is allowed by policy and Requirement 1 of this Task, which states, “An IAD Commander shall make the final determination whether the ICR process will be utilized to resolve the complaint.” Both involved demeanor allegations, and in one of these cases, the Chief directed that the forced ICR be used after the case was presented to him in the weekly IAD meeting. In the third case, we do not believe that the complainant knowingly agreed to an ICR, primarily because of a language barrier. We – and at our request, IAD commanding officers – listened to the interview during which the process was explained. It is clear that the complainant did not understand what was being offered to him.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. In two cases, the complainants wished to withdraw their complaints. One involved an allegation that officers failed to return a wallet, which the complainant later found. The other involved a rudeness complaint, and the administrative closure was approved only after the IAD commander listened to the complainant’s request. Two others were closed for lack of jurisdiction, as they contained allegations against non-OPD personnel. In three other cases, despite the complainants’ dissatisfaction, no MOR violations were alleged. In yet another, a complaint was lodged nearly three years after the fact, and against an officer that was no longer employed by OPD.

The remaining allegations that were closed administratively complied with policy, in that the complaints either lacked specificity, claimed innocence of charges best left to appropriate adjudication venues to decide, or otherwise did not constitute MOR violations. Where they were accompanied by allegations that warranted a full investigation, these additional allegations were investigated in accordance with policy. We also noted three other cases in which an administrative closure was recommended by the investigator at some point in the investigative process, but not approved by IAD command.

The cases resolved via summary finding were all approved for such designation as required by policy. These cases are further discussed in Task 5. OPD is in compliance with Task 4.10.

OPD is in Phase 2 compliance with Task 4.

Compliance Status:

Phase 1: In compliance

Phase 2: In 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 all of the previous reporting periods, we found OPD in partial compliance with Task 5. Tasks 5.1-5.5 address the information gathered at the time a complaint is lodged and the notifications that are required. During the previous reporting period, we found OPD in compliance with all five subtasks in this group. In addition, we found that 64% of the cases we reviewed were in compliance with all elements of Tasks 5.15 and 5.16. We also found that the verification that all notes were contained in the file, as required by Task 5.17, was present in all of the cases we reviewed. In 20% 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. We also found OPD in compliance with Tasks 5.6 and 5.12 (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 69 entries that appeared on the Daily Incident Logs (DILs) that were completed between April 1, and June 30, 2011. We identified these by randomly selecting 40 dates during this period and reviewing the entries for each of those dates (some dates had no entries and some had multiple entries). As noted in our previous reports, we met with representatives from IAD and Communications during our May and August 2010 site visits to discuss issues with the completion of DILs potentially affecting OPD's compliance with Task 5.4. Following these meetings, OPD committed to change the format of the DIL to ensure that information required by Task 5 is captured. This is the second complete reporting period in which the new form was used.

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 OPD in compliance with this subtask. During the current reporting period, of the 69 DIL entries, four cases were received in IAD, which, in turn, notified Communications. In the remainder of the cases, either a supervisor in the field initially took the complaint and notified Communications, or the complainants called 911 to express their dissatisfaction. In these latter cases, field supervisors were notified, except when the complaints were against Communications personnel (these were handled by a Communications supervisor) or were clearly service complaints (e.g., slow response time with no specific officer complained of). During this review period, OPD has a 100% 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 69 DIL entries we reviewed, there were no obvious instances of a three-hour delay. OPD has added a checkbox to the DIL to record such delays. In addition to reviewing this area of the logs, we also checked the times of complaint receipt and supervisor contact with the complainant (or attempted contact where the complainant was unavailable – see Task 5.3). 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 69 records in our dataset, we identified eight instances in which the complainant “refused” interaction with a supervisor. In five of these cases, the complainants 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 another case, the assigned sergeant contacted the complainant twice, but the complainant indicated that she would not be available until the following day to complete the complaint report. In the two other cases, the complainants wished to remain anonymous and expressly indicated that they did not want to be contacted. We found no cases where a complainant refused to wait for a field supervisor to respond to the scene. 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 order to achieve compliance with this subtask, the DIL should contain the identification of personnel; witnesses or identifying information, if known (the log should state

“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, OPD had a 98% compliance rate with this subtask. This was primarily due to the changes OPD made to the DIL form to ensure that the appropriate information was captured. All but one of the logs we reviewed contained the required information (“unknown” was checked in 23 records). The record missing this information documented an investigation initiated in Communications concerning an allegation of interfering with an IAD investigation. It is clear that the required information was captured. OPD has a 100% compliance rate during this review period, and is in compliance with Task 5.4.

Task 5.5 requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD (compliance standard: 95%). OPD had a compliance rate of 95% with this subtask during the last reporting period. The DILs are administered by the Communications Division and forwarded to IAD each business day. Additionally, the DIL contains a field to record the name of Area Commander notified and the time of notification. This field was properly completed in all of the records we reviewed. OPD is in 100% compliance with Task 5.5 during this reporting period.

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, 2011. We identified two 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.”

Neither of the cases met the criteria for an immediate response by a supervisor. Both involved allegations of Class I misconduct, but they were not lodged at the time of or immediately after arrest. One was received from the City Attorney’s Office, and pertained to a lawsuit filed seven months after the incident occurred. The other involved an arrest on New Year’s Eve; however, the complainant responded personally to IAD on January 3, 2011. Both cases were fully investigated despite the fact neither complainant cooperated, purportedly on the advice of their attorneys.

OPD is in compliance with Task 5.6.

Task 5.12 requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD (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, the Communications Division must record on the DIL complaints that are received and/or handled by on-duty supervisors; the DIL is forwarded daily to IAD. As mentioned in past reports, we deem the DIL system as functionally equivalent to the requirements of Task 5.12, and the Department remains in compliance with this subtask.

To assess **Tasks 5.15 through 5.19**, and **Task 5.21**, we reviewed a random sample of 25 IAD cases that were approved between April 1, and June 30, 2011. This sample included investigations completed by IAD and Division-Level Investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.⁶

As in our previous reviews, we treated **Tasks 5.15 and 5.16** as a single subtask 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 56% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 21, or 84%, in compliance with *all* of these required elements. While demonstrating great improvement, primarily in the area of credibility assessments, OPD is not in compliance with Tasks 5.15 and 5.16.

In all of the cases we reviewed, it appeared that OPD gathered and considered all relevant evidence.⁷ In all but one case, OPD conducted follow-up interviews, where warranted. We note that in five cases, officers and/or civilians were re-interviewed when IAD needed further clarification. In the above referenced case – a demeanor allegation – one of the participants was not asked directly if he heard an inappropriate comment directed at his sister. Rather than asking if the offending remark was made, the investigator assumed that it must not have occurred or it would have been mentioned.

As mentioned in previous reports, OPD has conducted extensive training on what constitutes appropriate credibility assessments. (We observed one such training program during a previous site visit.) The quality of these assessments was noticeably better during this review; we note that they were deficient in only four cases. In one case, OPD deemed a complainant to be not credible because she did not know that her grandson was on probation, and because she lodged a complaint after it was explained to her that he was, in fact, a probationer. Neither of these are reasons to question her credibility. In another, a demeanor complaint, the citizens' credibility was questioned for minor, inconsequential inconsistencies, while the officers' assessments were rote and boilerplate. In still another, an officer's inability to recall details is blamed on the stress of the situation and "diminished situational awareness." The same latitude is rarely, if ever, afforded to citizens.

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

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

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

underlying charge would presumably, by definition, be not sustained. Therefore, in our review of this subtask, we removed from consideration findings that were resolved as not sustained based on materially inconsistent statements. Four cases contained not sustained allegations for this reason. In five cases, follow up interviews were conducted when warranted. In one case, an alleged hit-and-run traffic accident involving an OPD vehicle, a thorough review of the physical evidence led to an appropriate unfounded finding.

OPD is not in compliance with Tasks 5.15 and 5.16.

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 the previous reporting period, we found OPD in 100% compliance with this subtask. During this review, the form was again properly completed in all 25 cases we reviewed. OPD is in compliance with this subtask.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard (compliance standard: 90%). During the previous reporting period, OPD complied with this subtask in 80% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 21 cases, or 84%. One of the noncompliant cases involved an allegation of untruthfulness, based on the fact that a video recording of an officer's use of force did not match his documentation of the incident. While the original act complained of – a knee strike to the face – apparently did not occur, elements of the encounter caught on video, including the pointing of an electronic control weapon, were not documented. At best, the unfounded conclusion should have been not sustained. The investigator went to great lengths trying to surmise the officer's intent – or lack thereof – in failing to document all of his actions.

Another case involved an arrest at a Raiders game, and OPD reached an unfounded finding because one of the complainants did not see an officer struggle with his girlfriend as she was handcuffed. However, he did not see any of the handcuffing, and so he was not in a position to judge whether it occurred without incident. In another, an arrest occurring in the midst of a hostile crowd, the allegation that one of the many officers on the scene told the crowd – or someone in it – to shut up, was unfounded. Given the number of people involved (officers and citizens), the unfounded determination was not supported.

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 Task 5.18 above), each allegation identified in all 25 cases was resolved with one of the acceptable dispositions, or administratively closed per policy. OPD is in compliance with this subtask.

Task 5.20 requires that the IAD Commander review all “filed” cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed (compliance standard: 90%). A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. 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.⁸

During our most recent site visit, we met with an IAD lieutenant, who advised that as of that date, five cases were classified as tolling. One involved civil litigation against the City and/or the Department; two involved criminal cases in which the complainants are not cooperating, most likely on the advice of legal counsel; and two involved the unavailability of the subject officers. All cases appeared to be tolling according to policy. These cases are reviewed with the Chief during his weekly IAD meetings and listed by case number on the printed meeting agendas. OPD is in compliance with this subtask.

Task 5.21 requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken (compliance standard: 90%). However, with the approval of 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. Four of the 25 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. In one non-summary finding case, the investigator indicated that he did not interview all personnel at the scene. We did not locate documented permission for this course of action in the case file. Nonetheless, OPD is in compliance with Task 5.21.

OPD is in partial Phase 2 compliance with Task 5.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

As we have done previously, during our next site visit, we will meet with IAD and OIG personnel regarding specific cases of concern that are referenced herein.

⁸ OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304.

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 previous reporting period, we found the Department not in Phase 2 compliance with Task 6.

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 this policy, we find OPD in continued Phase 1 compliance with this Task.

Task 6 requires that OPD members and 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%).

During the previous reporting period, OPD was not in compliance with this subtask. To assess Phase 2 compliance with this Task, we reviewed a random sample of 69 Daily Incident Log entries from April 1, through June 30, 2011; and a random sample of 25 IAD investigations (conducted by both IAD and via Division-level investigation) that were closed during the same period. We found no cases in which an allegation of failure to accept or refer a complaint went unaddressed.

We also queried the IAD database to identify any allegations of MOR 398.70-1, Interfering with Investigations; MOR 398.76-1, Refusal to Accept or Refer a Complaint; and MOR 398.76-2, Failure to Accept or Refer a Complaint; that were investigated and approved during this same time period. We identified 10 such cases. Of these, four cases resulted in not sustained findings for the applicable charges. In five cases, the allegations were unfounded.

In the remaining case, IAD informally resolved an allegation that an officer violated MOR 398.76-2. IAD maintains that this is allowable under MOR 314.48 (Reporting Violations of Laws, Ordinances, Rules or Orders), which states: "Members and employees who know of actions or of behavior of other members or employees, which are considered a Class II violation

and do not indicate a pattern of misconduct may address the misconduct through non-disciplinary corrective action.” Since MOR 398.76-2 constitutes a Class II violation, IAD maintains that an informal resolution is allowable, even if the violation is discovered by an IAD intake officer who, as a part of IAD, is charged with the responsibility of assessing potential violations of Departmental policy.

While this may be allowable by policy, it appears to be contrary to the requirements of Task 6, which holds that violations of the enumerated rules “shall be grounds for discipline.” We recommend that OPD either amend MOR 314.48 to except the Task 6 violations from consideration, or simply stop the practice of using informal means to resolve them. (The MOR indicates “may” – not “must.”)

OPD is not in Phase 2 compliance with Task 6.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

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.*⁹

(Negotiated Settlement Agreement III. G.)

Comments:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the second, third, fourth and fifth reporting periods, 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, and June 30, 2011. 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.

Based on the above-listed criteria, we identified seven cases as potential anonymous complaints during this reporting period. After review, we determined all seven to be true anonymous complaints, and the complainants were not identified during the course of the investigation. Four of the complaints were received in writing: two via intra-Departmental mail; one via U.S. mail; and one via e-mail. In three cases, the complainants were interviewed – one by IAD intake personnel, one by Communications personnel, and one by a Patrol Desk officer assigned to the PAB. In two of the cases, sufficient details were obtained to process the complaints. In the third, the complainant terminated the call after becoming verbally abusive to the Communications sergeant.

Three complaints appeared to have originated internally, lodged by anonymous current or former OPD employees. These were investigated to the extent possible, and IAD reached appropriate findings.

One complaint, a complaint of rudeness on the part of a dispatcher, was handled via summary finding based on the content of the associated recorded phone conversations. Three other investigations were appropriately administratively closed, as no MOR violations were alleged, and/or they lacked specificity. In one, a complainant alleged that OPD was devoting too many

⁹ The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

resources to traffic enforcement, while drug dealing in his neighborhood was not addressed. In another, a complainant alleged that he was warned against selling without a license in Chinatown, but others were allowed to do so. While administratively closed, this latter complaint was referred to the Chinatown Liaison Officer and the appropriate problem solving officer.

The Department complied with the requirements of this subtask in all seven cases, and remains in Phase 2 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 found the Department out of compliance with Task 16 due to our concerns with the disciplinary hearing process. During subsequent reporting periods, our reviews showed that OPD had improved in this area, and we found 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%).

To assess Task 16, we examined the 69 Daily Incident Log entries from April 1, through June 30, 2011; a random sample of 76 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between April 1, through June 30, 2011; and the 17 sustained Class I investigations that were approved by the Chief between April 1, through June 30, 2011. In the 17 sustained Class I cases, we discovered five cases where a supervisor received a sustained finding for not properly using his/her authority and responsibility.

From this review, we identified a case in which a supervisor was alleged to have failed to adhere to the required standard. In this case, a subject filed a complaint of harassment by officers, after the officers had, allegedly, conducted two searches of his residence for narcotics. IAD conducted an investigation, and determined that the officers' sergeant had not properly reviewed one of his subordinate's police reports. The officer's reports were ambiguous, and missed crucial details including the legal justification for searching and seizing evidence. According to the investigation, this lack of proper documentation appeared to have a negative impact during the criminal charging and judicial process. In addition, OPD determined that the sergeant did not provide proper supervision during the execution of the search warrant – a time where active and ready supervision is required. Based on these conclusions, the Department sustained a finding that the supervisor did not properly use his authority and responsibility.

We also reviewed an investigation where a lieutenant drove an official Department vehicle out of the City for recreational purposes, and allowed a civilian employee to drive the same vehicle out of the City. The civilian employee experienced a major collision in the vehicle. IAD sustained all of the allegations, which included interfering in the IAD investigation of the unlawful operation of the Department vehicle. The Chief of Police recommended the lieutenant's termination.

In another case, IAD sustained a finding against a sergeant who failed to adequately complete and file in a timely manner a complaint memorandum that properly documented all allegations against a subject officer. We also reviewed a sustained finding against a sergeant who failed to supervise the investigation of a city property automobile accident. As a result of the delay and the statutory §3304 deadline, discipline could not be upheld. Finally, an acting captain received a sustained finding that the supervisor did not properly use his authority and responsibility when he failed to ensure proper completion of the Daily Incident Log.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site 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.¹⁰

(Negotiated Settlement Agreement IV. A.)

Comments:

Only one provision of Task 18 (18.2.2) is being actively monitored under the MOU. During all of the previous reporting periods, we found the Department in compliance with this subtask.

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

¹⁰ The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

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, 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 38 arrest reports (34 adult and four juvenile) documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); as well as documentation for 36 arrests resulting in an investigated use of force; that occurred between April 1, and June 30, 2011. We reviewed these 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 34 adult arrest reports, we excluded 28 from our dataset 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 six remaining adult arrests, five were in compliance with Task 18.2.2. The one noncompliant case involved a felony arrest for Grand Theft from the Person, Section 487.2 P.C., and listed no witness information or review/approval by a supervisor. This represents an 83% compliance rate among adult arrests for this subtask. The arrest report did not, as per the requirement, list witnesses, appropriately note “no known witnesses,” or refer to a canvass with no witnesses produced.

We excluded all four juvenile arrest reports in our dataset from our review for the following reasons: two incidents involved runaway children, and no charges were filed; one incident involved a missing child and the related report; and one incident involved a verbal argument between a mother and her child where no arrest was made. Since no applicable juvenile arrests reports were part of this dataset, no assessment for compliance with the NSA requirements involving juvenile arrests can be made during this reporting period.

Of the 28 arrests resulting in an investigated use of force, all but one arrest was in compliance with Task 18.2.2.¹¹ The arrest was not approved by a supervisor. This represents a 96% compliance rate among arrests resulting in an investigated use of force for this subtask.

Our review revealed an overall 94% compliance rate for Task 18.2.2. OPD is in Phase 2 compliance with this requirement during this reporting period.

¹¹ 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.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with OIG to assess the different technologies (CRIMS, AWS, and CORPUS); and the various confirmation numbers OPD uses to confirm the existence of a valid parole or probation clause, or warrant, and any associated provisions such as search clauses.

Task 20: Span of Control for Supervisors

Requirements:

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

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

(Negotiated Settlement Agreement IV. C.)

Comments:

During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with Task 20. During the last reporting period, we found that 98% of the squads we reviewed met the 1:8 span of control. However, only 78% 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 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. During the third reporting period, we were granted access to Telestaff, the Department’s electronic scheduling system. Telestaff functions as a “master detail” that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. During this reporting period, we continued to use Telestaff to conduct our assessments. 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, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%). To assess this subtask, we reviewed a stratified random sample of 14 days (within our selected time period) of Daily Details for the squads listed above. Specifically, we reviewed Daily Details for the following dates: April 1, 12, 18, 20, and 29; May 2, 3, 11, 26, and 28; and June 2, 4, 12, and 26, 2011. 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 to be in compliance if the Department’s weekly Personnel Orders listed the certified acting sergeants’ acting assignments.

Of the 384 applicable squads we reviewed, 317 (83%) were supervised by their primary supervisors. This was an increase from the last reporting period, when we found that 78% of the squads in compliance with this subtask. Of the squads *not* supervised by their primary supervisors, 36 (9% of the total) were supervised by “backfill” sergeants working overtime, 24 (6% of the total) were supervised by certified acting sergeants who were *not* assigned to supervise their particular squads, and seven (2% of the total) were not supervised. During this reporting period, no squads were supervised by an officer who was not certified to act as a sergeant.

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, 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 384 applicable squads we reviewed, 377 (98%) met the 1:8 span of control. During the sixth reporting period, we found the same percentage of squads to be 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 (compliance standard: 90%). 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 36 instances (9% of the total we reviewed) of backfill supervisors in our sample. During the last reporting period, backfill sergeants represented 11% of the total. 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 (compliance standard: 90%). 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 55 total operations conducted between April 1, through June 30, 2011, 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 (compliance standard: 85%). 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, 2011, for the signature of the Chief or his designee, usually the Assistant Chief. 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 the Chief or his designee approves such loans and transfers. 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 committed to improve its documentation of loans and transfers. Based on our recent discussions with the BFO Deputy Chief and other BFO personnel, as well as 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.

OPD is in partial Phase 2 compliance with Task 20.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

As part of Court-ordered technical assistance, we have continued to work closely with OPD to explore the Department's options to improve its consistency of supervision, or Task 20.2, so that it falls within the standards required by the NSA, Departmental policy, and best practices in policing. The Department has advised of its intention to transfer additional sergeants to Patrol, and plans to reorganize the division to implement a team supervision model. Still, we are mindful of agreements between the City and OPD members that may have some impact on this matter. We continue to encourage the Department to undertake the bold steps that may be required in order to meet this requirement.

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:

We found OPD in partial compliance with Task 24 during all of the previous reporting periods. During the last reporting period, OPD was in compliance with all of the Task 24 subtasks except for the requirement that OPD enter data regarding uses of force into its Personnel Assessment System (PAS). We noted that the system contains only limited information about these incidents, and thus, is limited in its utility to supervisors.

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 also incorporates the requirements of Task 24. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. 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, the OPD recorded a total of 1,224 uses of force, 1,159 of which were categorized as Level 4. The sample we requested for review (74 total) included: 11 Level 2; 17 Level 3; and 46 Level 4 reports completed between April 1, and June 30, 2011.¹²

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 dataset. We found that the documentation for all of the incidents we reviewed was in compliance with this requirement.

Level 4 uses of force are self-reporting, and consequently, less documentation is required than for Level 1, 2, and 3 incidents. DGO K-4, Section VI A.1., states that involved personnel shall notify and brief their supervisors immediately or as soon as practicable. In all but one of the 46 Level 4 incidents in our sample, a supervisor was promptly notified regarding the force incident. The one incident involved five officers pointing their firearms at two subjects. The supervisor in this case was not notified until one-hour-and-forty-four minutes following the incident. Overall, one of the incidents in our sample failed to meet the requirements of this subtask, leaving OPD with a 98% compliance rate. 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%). All of the use of force reports, crime reports, and supplemental reports for the incidents in our sample met these requirements. We found that for Level 1 deadly force incidents, this information was contained in the crime and Internal Affairs Division reports; for Level 2 and Level 3 incidents, this information was contained in the use of force reports; and for Level 4 incidents, the information frequently appeared in the actual use of force, crime, or offense reports. Accordingly, we find OPD in compliance with *the reporting requirements only* of Tasks 24.2 and 24.3.

Officers Pointing Firearms: During our assessment of 46 Level 4 use of force reports for this reporting period, we reviewed 40 incidents involving 124 instances of OPD officers drawing and pointing their firearms.¹³ As in our more in-depth assessment of such incidents during the last reporting period, we gave the benefit of the doubt to involved officers whenever there was a question as to whether an officer's action was appropriate. We also assumed that the pointing of firearms was justified in cases where officers were responding to a burglary or criminal trespass

¹² We requested 90 use of force reports, but determined that 16 of the reports covered incidents that occurred outside of the current reporting period.

¹³ The majority of the incidents we reviewed fell into one of the following categories: officers making high-risk vehicle stops; officers searching and entering buildings or premises with or without search warrants; and officers were attempting to detain subjects, either by foot pursuit or by searching areas such as alleys and yards.

involving an actual structure search, or when making a high-risk vehicle stop based on the legitimate belief that the vehicle was stolen.

Overall, we determined officers' pointing of their firearms to be appropriate in 104, or 84%, of the 124 instances we assessed. We were unable to find the pointing of a firearm necessary or justified in 20 instances, or 16%, of the 124 instances we assessed, due to the absence of any indication that the officer(s) or others faced imminent threat of harm. In another three instances, or 2%, we were unable to make a determination based on the limited information available in the use of force report and accompanying documentation.

We also tabulated the racial breakdown of the subjects involved in the events where, in our opinion, the pointing of a firearm was not necessary or appropriate and found two groups represented as follows: Black, 71% and Hispanic, 29%.

Our review of these reports, once again, identified several issues of concern, which we briefly describe below:

- Officers frequently presumed – often, with no basis – that whomever they were contacting was armed. In many situations, the subjects turned out to be unarmed; sometimes, officers pointed their firearms at victims and witnesses.
- Officers tended to escalate immediately to pointing a firearm – regularly bypassing other options, including hands-on techniques and less lethal tactics. In some cases, officers pointed their firearms simply to gain compliance.
- We saw several examples of apparent over-response. While the pointing of firearms may have been justified, the *number* of officers pointing firearms and the *type* of weapons (often a combination of handguns, shotguns, and patrol rifles), in some incidents, appeared to be excessive.
- We were concerned by the regular deployment of patrol rifles in busy, urban environments.
- While we gave officers the benefit of the doubt if they had *legitimate* reason to believe that they were dealing with stolen vehicles, in some cases officers assumed without justification that vehicles were stolen, without further investigation or confirmation.

In each of these cases, the OPD supervisory review found the officers' use of force appropriate, objectively reasonable for a legitimate law enforcement purpose, and in compliance with OPD policy. While officers' actions in particular cases is troubling, the apparent unquestioned supervisory and command approval – of both the documentation of officers' actions and the actions themselves – is illustrative of a need to address supervisory deficiencies.

OPD is not 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%). Supervisors

responded to the scene in all of the 28 applicable Level 1, Level 2, and Level 3 incidents in our sample. This represents a 100% compliance rate. 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.¹⁴ 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%). We reviewed no applicable Level 1 use of force reports during this reporting period. OPD is in compliance with these subtasks.

Task 24.9 requires OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS), now the Personnel Assessment System (PAS) (compliance standard: 95%). We previously noted that PAS contained only limited information about the use of force reports – namely, the report number, corresponding crime report number, the force level and type of force used, the incident date, and some other basic information. During the fourth reporting period, OPD began to enter narratives from the use of force reports into PAS. Our review during this reporting period indicated that use of force data continued to be entered into PAS. OPD is in compliance with Task 24.9.

OPD is in partial Phase 2 compliance with Task 24.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will meet with OPD to assess the Department's steps to address the serious issue of pointing firearms and our concerns – the act of which may not only be unnecessary and inappropriate, but also elevate the risk for unfortunate and unjustified shootings.

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."

¹⁴ Task 24.7 is no longer applicable.

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 sixth reporting period, we found the Department in compliance with Task 25.

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. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. 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 requested and reviewed 74 use of force reports, including: 11 Level 2, and 17 Level 3 use of force reports; and a sample of 46 Level 4 use of force reports; that were completed between April 1, and June 30, 2011.

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 28 Level 2 and Level 3 incidents. In all of the Level 2 and 3 incidents in our sample, a supervisor responded to the scene and completed a use of force investigation. In addition, five Level 3 incidents in our sample were downgraded from a Level 3 to a Level 4 use of force incident by a supervisor who was at the scene; the changes were documented and comported with the governing documents. OPD is in compliance with Task 25.1.

Task 25.2 requires that use of force reports/investigations include NSA-required elements (compliance standard: 90%) and are timely pursuant to DGO K-4 (compliance standard: 95%). All of the reports we reviewed for this subtask included the NSA-required elements. To assess

investigation timeliness, we used a 75-day time limit for Level 1 incidents (including IAD Commander approval) plus one documented extension approved by the Chief of Police in advance of the due date, and a 15-day time limit for Level 2 and Level 3 incidents. For Level 4 incidents, as of November 23, 2010, OPD requires a review of the report by the end of the reviewing supervisor's next scheduled workday. This is a recent change – which we supported – from requiring a supervisor's review by the end of the tour of duty; it became effective by Special Order 9057.

Only one of the reports we reviewed – one Level 3 report – was not submitted in a timely fashion, according to the respective requirements.

It is important for OPD to conduct complete and thorough UOF investigations to effectively manage Departmental risk, enhance officer accountability, and maintain the integrity of the investigation. Use of force investigators must thoroughly analyze all independent and objective evidence that will justify the officer(s) use of force or indicate a need for training or other accountability measures to include formal disciplinary action.

One investigation we reviewed was completed in three days. Despite this, however, the investigation was not complete or thorough; for instance, the investigator did not obtain the suspect's medical results (X-rays), which were critical to substantiate whether the suspect had received a broken nose or sustained an injury from the use of force. In another case, as we have seen in other cases, a subject's claims of excessive force were discredited by the investigator because he was intoxicated. In addition, the subject's allegations were not referred to IAD, as required by Departmental policy.

In another report we reviewed, an OPD officer was directed by citizens to an intoxicated man who lay partially on the street and on an adjacent sidewalk; the man was passed out or asleep on the sidewalk and street. One civilian witness allegedly heard the officer state, "Get up before I hurt you"; and another civilian witness allegedly observed the officer slamming the subject's head on the ground, using profanity in addressing the homeless man, and slapping the subject. Despite these statements, the report documents the investigator and reviewer's assessments that the involved officer's use of force served a legitimate law enforcement purpose and was objectionably reasonable. We have reviewed cases in the past where OPD used intoxication to discredit a citizen's allegations of physical abuse or excessive force by an OPD officer. However, in this case, the intoxicated person refuted allegations made by two independent unimpaired witnesses, and the investigator deemed the intoxicated subject more credible. The investigator's report states that even though the subject was intoxicated, he responded to the investigator's questions with appropriate responses. The allegations were referred to the Internal Affairs Division; however, the investigator gave credibility to the intoxicated man's assertion, and to only a video snippet, provided by one of the witnesses, where no misconduct was observed.

OPD's compliance rate for timeliness is 96%, and its compliance rate for NSA-required elements is 93%. OPD is in compliance with Task 25.2.

Task 25.3 requires that all supervisors are trained on how to conduct use of force investigations and such training is part of a supervisory training course (compliance standard: 95%). OPD is incorporating use of force training into its sergeants' continued professional training that is offered every 18 months to two years. We reviewed a sample of 25 supervisors' training records during this reporting period, and verified that all of the supervisors received the required training. We encourage OPD to continue to provide periodic refresher training to underscore to supervisors the importance of conducting complete, thorough, and impartial use of force investigations that are submitted in a timely fashion. 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.

OPD's compliance rate for this subtask is 96%. 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%). During this reporting period, we found that the supervisors included the required details, and the chain of command conducted critical reviews. In the Level 2 and Level 3 reports we reviewed, the chain of command reviewed and commented on the quality of the investigations, except in the three cases detailed and cited in subtasks 25.2 and 25.4, any corrective action that was identified, and the appropriate documentation required for Supervisory Notes Files.

OPD's compliance rate for this subtask is 89%. OPD is not in compliance with Task 25.5.

Task 25.6 addresses the need to keep officers involved in use of force incidents resulting in serious injury or death, or involved in a shooting, be separated from each other at the scene, and kept apart until they have been interviewed and completed their reports (compliance standard: 95%). We found the applicable Level 2 and 3 reports in compliance with this requirement. OPD is in compliance with Task 25.6.

OPD is in partial Phase 2 compliance with Task 25.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will examine a sample of reports for additional information relating to the NSA-required elements – for example, if the force was used pursuant to a legitimate law enforcement purpose, and if officers attempted to resolve situations verbally without the application of force; as well as force assessments by investigators, supervisors, and commanders.

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 all of the previous reporting periods, we found OPD in compliance with Task 26.

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 these policies, 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 an FRB to review the factual circumstances of all Level 2 cases within 90 days of receipt of the use of force packet from IAD. OPD provided documentation for all 19 incidents that were heard by the board during this reporting period of April 1, through June 30, 2011. We determined that 18 of the 19 reports, or 95%, were in compliance. OPD is in compliance with this subtask.

Task 26.2 requires that for every Level 2 use of force investigation, the FRB make a recommendation as to whether the use of force was in or out of policy (compliance standard: 95%). Of the cases we reviewed, all 19, or 100%, contained a recommendation noting that the use of force was in compliance or not in compliance with policy. All 19 FRB reports noted agreement with the recommendation of the FRB by the Chief or his designee. OPD is in compliance with this subtask.

Task 26.3 requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to IAD for investigation (compliance standard: 95%). There were no cases during this reporting period 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). During the current reporting period, the FRBs identified policy needs, training issues, tactical training, equipment, use of force reporting, and corrective supervisory counseling. OPD is in compliance with this subtask.

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); and **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). The FRB conducted its most recent annual review, which tracked 92 reports, on March 14, 2011. The review identified several patterns and practices, including: officers are continuing to chase suspects who they believed to be armed with handguns into yards; and are striking resisting suspects to the head with either their fists and/or palm-hammer strikes. In addition, the review found that many officers are documenting in their reports that they *had* to use force because of the risk that a suspect may be armed; and that they are not appropriately considering tactics during high-risk situations. The review also noted that canine officers, supervisors, and commanders need to consider modifying the canine announcement to fit the incident in question – for example, circumstances in which the warning announcement would jeopardize officer safety.

According to the annual review, the FRBs have been tasking supervisors to train their officers at the board's direction after the board has identified training issues. The supervisors are required to document this training in the officer's Supervisory Notes File and enter the information into PAS. More involved training is conducted by subject-matter experts, and a training roster is submitted to the Training Division. The involved officer(s) are directed to be present during the presentation to receive training from the board's voting members and subject-matter experts, and/or praise for any outstanding work. Additionally, as a result of the findings of the FRB, the Department revises or develops new information or training bulletins, which are distributed to OPD personnel via the Department's electronic PowerDMS system.

OPD is in compliance with these subtasks.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule FRBs during our quarterly site visits, so that we may attend and observe the proceedings. The Department scheduled two FRBs during our most recent site visit. The two FRBs were in accordance with the requirements of the NSA. We again request that the Department schedule its FRB hearings during our quarterly site visits; it is critical to our assessments that we be able to observe and evaluate the FRB process.

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 sixth reporting period, we found the Department in partial compliance with Task 30.

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 these policies, 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%). During this reporting period, we reviewed documentation for five Level 1 force incidents.

The EFRBs reviewed five incidents during this reporting period:

- In one incident, OPD officers were flagged down by an assault victim who alleged that the suspect attempted to kill her by choking her. The suspect was shot after officers noticed he was reaching for his waistband or pocket area – possibly for a firearm. The EFRB identified that the officers used poor cover tactics, creating an exigency that resulted in the death of an unarmed man. The EFRB report indicated that the same two officers were involved in a previous shooting incident where another EFRB identified the same tactical errors involving cover and concealment. The EFRB sustained findings against both officers regarding poor tactics for a second time. OPD sustained both officers for Performance of Duty (314.39-2); disciplinary action is pending.

OPD did not analyze the training provided to the officers before this incident to assess why the training failed. The Department's subject matter expert described the officers' actions as "textbook." The lack of a more comprehensive review of force options available to the officers (to include the viability of a Taser), and the only MOR violations cited involved the performance of duty for both officers. The EFRB's finding did not reflect the actual conduct of the officer who fired the fatal shot.

The deliverables section of the report did not include any additional information about the poor tactics used in this incident. This shooting incident was found to be in compliance with policy by the EFRB.

The EFRB also noted that the Department's new foot pursuit policy will address foot pursuits involving two officers. OPD is currently developing a new foot pursuit policy under Training Bulletin TB-III-Z, "Chase and Contain." We look forward to reviewing and discussing this policy with OPD.

- The second shooting incident involved OPD officers following up on a residential shooting incident. The officers subsequently began a pursuit of a vehicle operated by the suspect(s). The vehicle crashed and four suspects fled on foot. Two OPD officers pursued one suspect, who reached for his waistband and pointed a handgun at one officer. The officer fired his firearm, eventually killing the suspect. The EFRB found the shooting incident to be in compliance with policy.

- The third shooting incident involved OPD officers responding to an area where gunshots were heard. Officers located a shooting scene and identified a suspect vehicle. OPD began a pursuit of the suspect vehicle. The vehicle was involved in a collision, and the suspect exited the vehicle armed with two firearms. The suspect pointed one firearm at the officer; the officer fired, causing fatal injuries to the suspect. The EFRB found the officers' actions in compliance with policy.
- The fourth shooting incident was an accidental discharge by an officer that resulted in a personal injury. The discharge was found to be not in compliance with Departmental policy, and the officer received a written reprimand.
- The fifth incident heard by the EFRB was a vehicle pursuit-related death that began with a vehicle on the roadway with the driver asleep at the wheel while the engine was still running. The OPD officer woke the driver who, after a short interaction, fled the scene in the car. The OPD officer was injured as the driver was fleeing; he was struck by the car and knocked down. Later during the night, another OPD officer observed the suspect vehicle and began a pursuit. The operator crashed the vehicle into a tree and was pronounced dead later at the hospital. The pursuit was found to be in compliance with policy.

During our August 2011 site visit, one EFRB was scheduled and completed in accordance with the requirements of the NSA. As required by policy, OPD convened five EFRBs during this reporting period, and we verified that the EFRB proceedings fell within 45 days of the completion of the use of force reports covering the incidents.

However, due to our concerns with the first case cited above, OPD is not in compliance with this subtask, with a compliance rate of 80%.

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 documentation we reviewed, recorded statements and/or transcripts were available from all officers on the scene and other personnel needed to testify. OPD is in compliance with this subtask.

Task 30.3 requires that OPD complies with the policies and procedures set forth in DGO K-4.1, *Force Review Boards* (compliance standard: Yes/No). This policy outlines several requirements, including who comprises the board, the material to be made available for the board, the conduct of the board, the information to be memorialized and follow-up actions, if warranted. We reviewed the reports that were prepared for the five incidents that were heard by the board during the current reporting period. The required attendees were present in all five cases. After review and deliberations, the board determined that the subject officer's actions in four cases were in compliance with Departmental policy. The incident involving the accidental discharge by the officer that caused personal injury was determined to be not in compliance with OPD policy. The officer in this case received a written reprimand. The Chief endorsed the EFRB findings. The board identified the adequacy of equipment, tactics, investigative concerns,

and training issues that required the appropriate corrective action. OPD is in compliance with this subtask.

OPD is in partial Phase 2 compliance with Task 30.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule EFRBs during our quarterly site visits, so that we may attend and observe the proceedings. The Department scheduled one EFRB during our most recent site visit. The EFRB related to an OPD fatal shooting of a subject who was armed with a replica assault rifle. We again request that the Department schedule its EFRB hearings during our quarterly site visits; it is critical to our assessments that we be able to observe and evaluate the EFRB process.

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:

Since monitoring under the NSA began, OPD has received confidential reports of misconduct in only three cases. The previous monitor expressed concerns with the handling of one of the first two confidential complaints that were received by the OPD and, accordingly, withheld a finding of compliance. During the fourth reporting period, we found that OPD had received a third case that was reported confidentially to IAD, and determined that it was being handled as required. During the last reporting period, we found OPD in compliance with Task 33.

Discussion:

As we have noted previously, OPD has developed several policies that, in concert, incorporate the requirements of this Task. These include: *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. The Department has trained at least 95% of relevant personnel on these policies, and is 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 is required to take appropriate action (compliance standard: 95%).

To assess OPD's Phase 2 compliance with these subtasks during this reporting period, we met with IAD personnel and queried the IAD database to identify any cases with sustained findings that were approved during April 1, through June 30, 2011, that were applicable to Task 33. In this review, we found one case in which an OPD supervisor initiated an IAD investigation but did not state facts fully or sufficiently to predicate a second case in which serious misconduct by an officer was alleged. A subsequent review of the tape-recorded complaint by IAD in the first investigation revealed the failure to identify and report the second case; the supervisor's failure to state the facts sufficiently became the predication of another case in which IAD appropriately sustained the failure to report allegation. As required by Task 33, OPD recognized the failure to bring the second case to the attention of the Department, and opened an IAD case to assess the supervisor's accountability.

Task 33.3 requires that OPD must maintain a functioning procedure that incorporates the NSA requirements related to establishing and maintaining confidential reporting of misconduct. These requirements include: **Task 33.3.1**: confidential reports of suspected misconduct may be made in person, by telephone, or in writing (compliance standard: Yes/No); **Task 33.3.2**: 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 (compliance standard: Yes/No); **Task 33.3.3:** confidentially reported cases are investigated without disclosure of the complainant's name, unless and until such disclosure is required by law (compliance standard: 95%); and **Task 33.3.4:** OPD informs all new and current employees of OPD's confidential reporting procedures (compliance standard: 95%).

OPD has established procedures as required by Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4. Confidential reports of suspected misconduct may be made by various means to the IAD Commander; cases are investigated without identifying the complainant; and documentation of the report and investigation are kept in a confidential file maintained by the IAD Commander.

As noted above, during the fourth reporting period, we found that one case had been reported confidentially to IAD. Our reviews during the fourth and fifth reporting periods revealed that the IAD Captain personally took the complaint and established a confidential file that he maintained in his safe. He briefed the Chief concerning the complaint but, at the Chief's direction, did not identify the complainant to the Chief. The Captain developed and implemented a plan to investigate the complaint without revealing to anyone else in the OPD that IAD had even received such a complaint.

During our most recent site visit, we determined that the third confidential case had been closed, and we reviewed it in detail. We found that IAD's actions were appropriate, the complainant's confidentiality was protected, and the case was maintained securely.

During this reporting period, OPD hired 12 new employees; all were trained, as required by Task 33, on the Department's confidential reporting procedures. The Department is in compliance with Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4.

OPD is in Phase 2 compliance with Task 33.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

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 not in compliance with Task 34, as officers were not completing the required forms as set forth in the NSA; and we were concerned with the accuracy of data entry. During the third reporting period, we deferred our compliance determination, due to the issuance of a new Departmental policy that set new procedures for the collection and storage of the data concerning all investigative stops of citizens. During the fourth, fifth, and sixth reporting periods, we noted that officers were increasingly entering the required stop data into the Field Based Reporting (FBR) computer system. However, we were concerned that the "reason for the stop" was not being clearly identified to support a Constitutional basis and authority for the stops, and found OPD in partial compliance with Task 34.

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 the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

On June 12, 2010, OPD issued Special Order 9042, *New Procedures Regarding Stop Data Collection*, which updates DGO M-19 and RWM R-2; and used its electronic PowerDMS system to disseminate Special Order 9042 to the Department. As we noted during the fourth reporting period, although we verified via PowerDMS that nearly 96% of relevant personnel received and read the new procedures, this sort of computer-based instruction is insufficient to train officers on this critical new Departmental policy.

During the sixth reporting period, OPD developed and began training on the definition and articulation of a consensual encounter and detention, along with training on how to complete Field Investigation Reports to adequately document investigative encounters. During this reporting period, we verified that OPD trained at least 95% of relevant personnel on these subjects and Special Order 9042.

Task 34.1 requires that Stop Data Forms be filled out for every vehicle stop, field investigation, and detention (compliance standard: 90%). To assess Task 34.1 during this reporting period, we reviewed a random sample of 400 stops to match them with corresponding completed Stop Data

Forms. This sample included 200 Computer Aided Dispatch (CAD) entries, 100 Field Contacts, and 100 traffic citations entered by Alameda County. Using the Department's Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 96% of the stops in our sample. OPD is in compliance with Task 34.1.

Task 34.2 requires that Stop Data Forms be 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%). The entry of stop data into the Field Based Reporting (FBR) system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system does not allow the form to be completed.

Despite OPD's progress in officers' completion of Stop Data Forms, we remain concerned that the reason for the stop is not clearly identified to support the Constitutional standards requirement. More specifically, none of the options available for officers to select under "5) reason for the stop" clearly elicit or help to articulate an identifiable basis and/or authority for the stop. During this reporting period, OPD combined the Stop Data Form with the Field Contact Form in order to provide officers with a section to better articulate the totality of the circumstances supporting the stop. Due to the integration of this merged form in May 2011, we saw only a small number of new forms in this reporting period. We look forward to a complete review of the implementation of the new form with the updated training in future reporting periods.

This review also includes a determination that all stops conducted of citizens are pursuant to proper justification. Based on OPD's failure to justify or adequately document the reasons for the stop in the sample we reviewed during the fourth, fifth and sixth reporting periods, we examined an increased selection of pedestrian stops during this reporting period. We continued to find that a majority of them identified the justification/reason for the stop. Our examination of 100 walking stops during this reporting period found that in 93% of them, officers articulated sufficient factual support and justification for the stop. This is an improvement from previous reporting periods. We will continue to monitor this issue closely. One area upon which we continue to focus is consensual walking stops for probation and parole searches. OPD must ensure that the officers articulate the knowledge or information that supports the reasonable authority for the stop. We are also interested in determining that the traffic stops conducted by OPD are done pursuant to valid allegations of traffic laws. Due to the manner in which stops were documented on the Stop Data Form, and our inability to view the traffic citations, we are unable to verify the basis for the stops. This is especially true when the officer selected "no action" or "warning" issued as the result of the encounter. With the merger of the Stop Data Form and the Field Contact Form, we expect to be better able to analyze this issue in future reporting periods. The Department is not in compliance with Task 34.2.

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). As per

Special Order 9042, officers “complete an electronic FPR [Field Based Reporting] Stop Data Collection Form (SDF) for certain arrests, every detention not resulting in an arrest (vehicle, walking, and bicycle stops), every consent search of a person conducted and any other investigative encounter. A SDF shall also be completed for consensual encounters (contacts) where the member talks with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, although the person is free to leave.” Data from the electronic Field Based Reporting system is automatically sent to the Department’s Forensic Logic Quicksearch program. Quicksearch allows Department personnel to search for and query officers’ stop data. We experimented with the Quicksearch program and found that the stop data is summarized and easy to review. In May 2011, OPD merged the Stop Data Form with the Field Contact Form, intending to provide one document for officers to enter stop data and providing them with a narrative portion for which they can articulate the factual support for the stop.

On March 16, 2011, the Department produced an OPD Stop Data Summary that analyzed the statistics on stops conducted between July 1, and December 31, 2010. More recently, OPD updated the analysis to include stop data collected between January 1, and June 30, 2011. Our review of the stop data collected to date found it sufficient to allow for a comprehensive analysis; however, we are concerned that the focus has been, to date, superficial. We are convinced – based on our review – that the data is sufficient to draw some conclusions regarding disparate treatment, or the absence thereof, and design an appropriate action plan.

As we have noted previously, OPD focuses on issues that do not help determine whether OPD officers are engaging in disparate treatment of minority groups – or, for that matter, any specific sub-population. For example, we note the number of searches of persons within one sub-group is significantly higher than others; interestingly enough, these searches appear to form the basis for an arrest less often than searches conducted in other sub-groups. We acknowledge that this raw data alone does not – and should not – form the basis to conclude that OPD officers are knowingly engaging in racial profiling. It does, however, clearly indicate the need for OPD command staff to conduct further analysis and appropriately address any appearance of disparate treatment with explanation or intervention. During this reporting period, we again met with OPD personnel responsible for this analysis and discussed with them how and why the Department should conduct further analysis. We look forward to learning more about the Department’s plans to move forward with such an analysis.

We have a continued interest in what steps OPD will take to address the outcomes of its analysis to ensure continued compliance with this Task. While the ability to summarize, search, and analyze stop data is an important aspect of this requirement, it is not the purpose; rather, the results, intervention, and other strategies developed from the analyses are critically important to ensuring fair and equal treatment of all people with whom police officers interact. The Department is in compliance with Task 34.3.1, but we will continue to monitor the above-described issues closely.

Task 34.3.2 requires that the data captured on the Stop Data Forms be entered completely and accurately into the database (compliance standard: 85%). As noted above, the entering of stop

data into the Field Based Reporting system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system will not allow the form to be completed. Task 34.3.2 was created to govern the submission of data from the written forms to the computerized system. Since this type of data entry is no longer necessary, the Department is in compliance with Task 34.3.2.

OPD is in partial Phase 2 compliance with Task 34.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will again meet with the sergeant who oversees the Department's stop data systems and other relevant Department personnel to discuss the Department's progress. We will further 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. We will continue to work with OPD on ways to verify the legal basis for stops, searches, and other related activities expeditiously. During the next reporting period, we will also review an expanded sample of walking stops to analyze the legitimacy of stops and/or subsequent activity.

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 all of the previous reporting periods, we found OPD in compliance with Task 35.

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 policies, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for Task 35 for this reporting period, we reviewed 28 use of force reports, including: 11 Level 2 and 17 Level 3 use of reports covering incidents that occurred between April 1, and June 30, 2011. (Per DGO K-4, Level 4 use of force reports do not require witness identification.)

We assessed Task 35.1 in conjunction with Task 35.2. **Task 35.1** requires that use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene (compliance standard: 90%); and **Task 35.2** requires that when there are no known witnesses, UOF reports specifically state this fact (compliance standard: 90%). All 28 use of force reports that we reviewed 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%). Of the 28 applicable UOF reports we reviewed, none fell into this category.

OPD is in compliance with Task 35.3.

Task 35.4 requires that UOF reports include the names of all other OPD members/employees witnessing the incident (compliance standard: 90%). We found no instances when an OPD witness was not documented in any of the 28 reports we reviewed. OPD is in compliance with Task 35.4.

OPD is in Phase 2 compliance with Task 35.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will examine a sample of force reports in addition to our document request to ensure that OPD is moving toward long-term sustainability of this Task.

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 previous reporting periods, we found that all of the cases alleging retaliation against an employee or member of OPD were investigated as required, and that the IAD findings fell within policy. As a result, we found the Department in compliance with Task 37.

Discussion:

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

Task 37.1 requires that officers be held accountable for retaliating against employees or members who report misconduct or serve as witnesses in proceedings against other members/employees (compliance standard: 95%); and **Task 37.2** requires that supervisors, commanders, and managers be held accountable if they knew or reasonably should have known that persons under their supervision engaged in retaliation (compliance standard: 95%).

We reviewed all six cases adjudicated during the quarter under review (April 1, through June 30, 2011) that OPD regards as containing allegations of retaliation. We found that two of the six cases did not meet the definition of retaliation in Task 37 because they involved complaints lodged by citizens that an officer(s) “retaliated” against them. In addition, two cases involved complaints that OPD employees were retaliated against for reasons other than reporting misconduct or serving as a witness. Such cases do not fit the definitions of retaliation as set forth in Task 37, which addresses retaliation against an *employee* or *member* of OPD who has reported misconduct or served as a witness, not retaliation against a citizen, which is, of course, addressed by other areas of the NSA.

Our review determined that the two allegations of retaliation against members of the Department were appropriately investigated and reported. None resulted in a sustained finding of retaliation. As discussed in our last report, the most extensive case in our review during the last reporting period, involving allegations against senior officers of the Department, was investigated by an outside firm. The firm's investigation found two allegations of retaliation against supervisor members of OPD to be unfounded.

In our review of the two cases meeting the definition of Task 37, we found no instance where supervisors, commanders, and managers knew or reasonably should have known that persons under their supervision engaged in retaliation and failed to report it.

OPD is in Phase 2 compliance with Task 37.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

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 last reporting period, we found the Department in Phase 2 compliance with Task 40. Prior to that, we raised concerns regarding the stability of the data collection process.

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

The Personnel Management System (PAS) was developed to address the requirements of Tasks 40 and 41. In previous reports, we have commented on several issues that were related to the overall effectiveness of this system. In particular, we raised concerns about the bifurcation of the system into processes – those that are substantially automated, and those that require extensive manual calculations and personal communications. We also noted that there is limited flexibility for change and growth in the system, and potential problems due to the high degree of dependence upon the work of key individual staff members. We noted that, while none of these precluded achieving and maintaining compliance with NSA requirements, they do represent significant inefficiencies and limitations on the system. This remains true today, although there

are now commitments to staff increases, which, when accomplished, should help to stabilize the system.

During our most recent 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 reviews, we requested and received from OPD material for each of the Tasks and subtasks. Our data request allowed for replication and extension the data analysis reflected in our earlier reports.

With regard to Phase 2 compliance, PAS records for the quarter of April 1, through June 30, 2011 indicate that data were entered for all fields required by Task 40. A total of 59,525 pieces of information were entered for the current reporting period. This included 1,224 uses of force; 266 misconduct complaints; 3,699 notes by supervisors; and 3,394 arrests. The largest categories of information are training history (18,566); sick leave hours (10,552); assignment history (8,896); and rank/class history (2,239). A further breakdown of the types of use of force shows that for the quarter, there were five Level 1 incidents, 21 Level 2 incidents, 39 Level 3 incidents, and 1,159 Level 4 incidents. During the last reporting period, there were 863 Level 4 uses of force. For all other levels, the total number of uses of force is similar to that of the previous reporting period. Two positive case review notices and no negative reviews were reported for this quarter. Once again, no cases were reported dropped due to concerns about search or arrest procedures. Twenty-six civil suits were noted, while no financial claims were documented. The information recorded in PAS for this quarter is generally similar in volume to that which was reported during the last quarter; they once again provide evidence of significant levels of use of the system. See the table below for a summary of key indicators and changes over time.

Task 40 requires that PAS contain information on each of the elements required by the NSA. In earlier reports, we raised concerns about the timely recording of data. OPD addressed these concerns, and our current review again recognizes that data-related requirements are being met.

In response to concerns of the Department's process relating to data collection and storage, OPD engaged a consultant to review its practices. We reviewed the consultant's report, dated May 4, 2011, and met with OPD regarding its content. The consultant closely examined the data processes, and produced recommendations in several areas—including long-standing concerns over how best to collect and store arrest data. The consultant's report also addressed how to obtain information regarding financial claims against officers that were not related to their work. Some issues went beyond requirements of the NSA. An OPD working group is addressing the issues raised in the report, and has promised to keep us apprised of any significant developments.

The Department's interest in the collection and use of the relevant data is also demonstrated in its tracking of data required under the Negotiated Settlement Agreement. The tracking of these data allows OPD to use the system to not only assess individual officers, but also to consider trends at the overall Department level, as well as within Department commands. These analyses are

consistent with the audit provisions of this Task. The material presented here provides outcome indicators based on data from the risk management system.

The table that is located at the end of the report in the Appendix was prepared by OPD and reviewed by the Monitoring Team. It tracks significant outcome measures using the required data, and includes a trend line for the easy assessment of Departmental progress over time.

As the table shows, the Department is now tracking the data on a monthly basis and has looked back to the beginning of 2010. The change in this presentation from quarters to months reflects an appropriate and desirable transition from focusing exclusively on meeting NSA requirements to the incorporation of these requirements into the regular management tasks of the Department.

At the current time, existing policy reflects the requirements of the NSA. As noted earlier, improvements regarding the accuracy and completeness of data were made and have been sustained over three quarters. OPD thus continues in Phase 2 compliance with Task 40.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 41: Use of Personnel Assessment System (PAS)

Requirements:

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

- 1. The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
- 2. The Department shall retain all PAS data for at least five (5) years.*
- 3. The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
- 4. PAS, the PAS data, and reports are confidential and not public information.*
- 5. On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be*

- engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
6. *Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*
 7. *When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).*
 8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel. Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months. Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated*

commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.

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

Code Section 3304.

12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*
15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may*

choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.

(Negotiated Settlement Agreement VII. B.)

Comments:

In our last report, we found OPD in partial Phase 2 compliance with Task 41. We found that OPD was making progress in the areas of supervisory review and managerial oversight. Our analysis of PAS reviews showed that sergeants were increasingly likely to recommend mentoring or intervention, and that fewer reviews were being rejected by the PAS committee or by command staff.

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. The Department trained at least 95% of relevant personnel on the policy. OPD has completed the training of supervisors regarding their role in the PAS process, and has initiated the training of all officers on the topic of risk management and specifically on PAS. The training incorporates the Information Bulletin, *Documenting PAS Activity Reviews and Analysis*. Based on existing policy and the related training, we again find OPD in continued Phase 1 compliance with this Task.

During the current reporting period, we continued our examination of the stages of the PAS process consistent with this Task. We examined the threshold analyses that were performed for the period of April 1, through June 30, 2011. This included a review of the histogram analyses completed by the PAS Administration Unit and the identification of officers meeting the single-event threshold.

During this reporting period, OPD identified 29 officers as meeting PAS thresholds. The PAS Administration Unit staff now selects the top five percent of staff for possible review based on their analysis. The PAS computer program also calculated the ratios of uses of force and complaints to arrests to norm the data by officer activity levels. Along with the analyses noted above, we also reviewed notification memoranda and other PAS activity review and report documents, as well as the use of PAS for reasons other than threshold-initiated reviews. In accordance with this Task requirement, we reviewed PAS processes for the system's use in placement of officers on special assignment, transfer of officers, and commendations. An important function of PAS is to regularly provide supervisors with relevant information on officers. To consider that function, we also verified reports of regular quarterly PAS command reviews of officers by supervisors in OPD divisions.

The PAS process also calls for follow-up reports of officers under supervision or monitoring, as well as reports of officers not discharged from the process by the end of one year. We reviewed reports completed during the current reporting period. Our examination of 32 follow-up reports,

and reports of three officers not discharged from monitoring after one year, found that the documents provide appropriate descriptions of the officer/supervisor interaction and explanations for its current status.

The most critical use of PAS is in the supervisory review of officers who may be experiencing work-related problems. These officers are identified for PAS review through the threshold analyses. An examination of the processes and outcomes of these meetings, and the review of them up the chain of command, have been central in our compliance review process. For this reporting period, we examined the reports of 23 PAS reviews completed and/or signed during the quarter under review. In seven cases (30%), the decision was made for monitoring or supervision. None of the 23 cases involved a change of recommendation or a return for further review as the initial reports were reviewed at three levels up the chain of command.

The examination of PAS reviews revealed them to be generally thorough and complete. The changes in the review write-up format continue to be beneficial. The reviews include analyses of complaints and uses of force in which information is presented with percentage breakdowns regard the circumstances of the event. These appear to provide useful summaries and valuable information for reviewers. The other addition to these reports involves the expansion of the command review to include not only the documentation and recommendations of the PAS review conducted by the first-line supervisors but also a more general evaluation of that supervisor. This also appears to be useful.

In the year ending July 30, 2011, OPD had reviewed a total of 101 staff members or 15-19% through the PAS review process. A total of 77 officers have been reviewed since the first of this year. Tracking those cases provides another means of examining this process. For the three months covered in this report, OPD reviewed a total of 30 employees. OPD now maintains a summary table which tracks cases through the process on a monthly basis. The results of the reviews are included in the table below. While the patten is not entirely consistent, it appears that the percentage of cases in which supervisors recommend that no action be taken has declined. There has also been a similar but not entirely consistent rise in recommendations for monitoring and intervention. The rate of concurrence with those decisions up the chain of command remains high.

These figures indicate that there is a high degree of stability in the review process, and they are suggestive about the standards being established within the Department for the process of risk reduction. The logic of risk reduction would suggest that in a system that does a good job identifying officers whose behavior should be of concern, there would always be a significant number of officers for whom some sort of intervention is appropriate. Likewise, if the goal is to move to less risk, reviewers at all stages up the command review process could be expected to decrease their tolerance for risk by always rejecting some number of recommendations for inaction and by setting higher standards for acceptable patterns of behavior.

For the management system under review here, the large volume of cases which result in recommendations for “no action” suggest that the reviews could be more rigorous or that there may be room for improvement in identifying officers appropriate for intervention. Furthermore, the high level of concurrence with initial decisions by supervisors may be an indication that the stages of the review process are not functioning to continuously reduce the level of risk-related behavior. The value of the data in the chart below will be in tracking them over time, and using them to increase the rigorousness of the review process as it serves the goal of risk reduction.

Summary of PAS Reviews and Recommendations 2011																				
	PAS Reviews Completed		Supervisor Rec- no action		Recognition		Supervisor Rec- Monitoring		Supervisor Rec- Intervention		Commander rec Concurs w Supervisor		Dep. Chief Concurs w Commander		PAS Panel Concurs w DC		Pending		Number of personnel that exceeded a threshold	
			%		%		%		%		%		%		%		%			
January	11	9	82%	0	0%	2	18%	0	0%	10	90%	11	100%	10	90%	0	0%	11		
February	9	8	89%	0	0%	1	11%	0	0%	9	100%	9	100%	8	89%	0	0%	5		
March	17	10	59%	1	5%	4	24%	2	12%	17	100%	17	100%	17	100%	0	0%	11		
April	12	11	92%	0	0%	0	0%	1	8%	12	100%	12	100%	12	100%	0	0%	18		
May	10	6	60%	0	0%	2	20%	2	20%	10	100%	10	100%	10	100%	0	0%	7		
June	8	6	80%	0	0%	1	10%	1	10%	8	100%	8	100%	8	100%	0	0%	7		
July	10	7	70%	0	0%	3	30%	0	0%	9	90%	9	90%	10	100%	0	0%	16		
August																				
September																				
October																				
November																				
December																				
Total	77	57		1		13		6		75		76		75		0		75		
Average	11.0	8.1	76%	0.1	1%	1.9	0	0.9	7%	10.7	97%	10.9	99%	10.7	97%	0.0		10.7		

* Percentages apply to completed cases only

July: One review did not require a commander's recommendation.

As noted above, in assessing compliance with the requirements of Task 41, we have reviewed the documents associated with reviews during this reporting period, and we have followed the path of reviews through PAS processes. As a means of examining the effectiveness of that process on influencing the behavior of those who undergo it, we also reviewed the PAS histories of officers with the highest numbers of uses of force and those with the highest number of IAD complaints against them. A list of 30 in each category is maintained in PAS. We retrieved the list of officers on these lists for each of the seven quarters reflected in our quarterly reports. For complaints, 10 officers appeared on the quarterly list at least three times; one officer appeared on five of the seven lists. For uses of force, 10 officers appeared at least four times. Four officers appeared five or more times, and one officer appeared on the list during each of the seven quarters.

In reviewing the list based on uses of force, it is apparent that the volume of Level 4 uses of force, and pointing the weapon in particular, account for all the officers' placement on that list. For example, the officer who made that list for all quarters had 79 uses of force for the seven quarters. He had 116 uses of force during the system's default time period of 30 months. Of those, 113 (97%) were Level 4s.

We also examined the PAS review process for the officers on this list. Consistent with our review, we learned that Level 4 uses of force were not used to initiate a PAS review until very recently, although a threshold for review at seven in any 60 days was in existence. That means that the officer with the highest number of Level 4s was never reviewed under PAS for that reason. He was, however, reviewed for passing a single-event threshold, and he was ultimately placed on intervention. Despite that, no effort was made to address the Level 4 use of force and concerns over pointing the weapon was never a part of the overwhelmingly positive supervisory notes.

The history of reviews of this officer is similar for the other nine officers who repeatedly show up on the list of 30 most frequent users of force. At the time of this analysis, none of these nine officers was currently or had recently been on monitoring or intervention. These histories clearly show the Department's ambiguous view of the Level 4 uses of force. The uses satisfy criteria for making the list, and a threshold for review is tied to them – yet, they have not regularly prompted review and when they have, they do not prompt action. Finally, they do not seem to be germane to supervision even when officers are on intervention status for other reasons. Ignoring instances in which a police officer acquires a target with his/her weapon is inconsistent with the goals of assessing and managing risk.

Following our last report, the Department is examining its own policies and procedures related to Level 4 uses of force. Those considerations, no doubt, will affect the risk management system and the review process. With that interest in mind, it may be useful for the Department to calculate the ratio of Level 4s as a percentage of arrests, as it does with other uses of force. That ratio may help to more clearly identify officers for whom a PAS review may be most useful. It is clear that the list of frequent users of force is of little utility as a result of the manner in which Level 4 uses of force have been handled in the Department. The frequency of Level 4 incidents determines membership on the list of “Top 30” users of force; however, at the same time, the lack of response regarding Level 4 incidents renders the list meaningless.

More specifically, our review of Level 4 uses of force in our last report demonstrated that these analyses can be quite complicated. Level 4 reviews require consideration of a large number of factors, including how an event was initiated, how many other officers may have been on the scene and pointing their weapons, and the outcomes in terms of arrest. A sergeant's review of a single officer's Level 4 use of force may be inadequate to consider all of those factors.

The examination of the PAS histories of officers appearing on the list for most frequently receiving complaints shows a more meaningful use of the review process. Among the 10 officers who appear most frequently on the “Top 30” list for receiving complaints, eight were in monitoring or intervention at the time of this analysis. Another officer was in the review process, and the last of the 10 had just completed intervention.

The fact that many of the officers who most frequently receive complaints are now or were recently in some PAS-related process suggests the review process itself is functioning well in this area. It does, however, raise another important issue. The goal of the entire risk

management process is to reduce risk by changing undesirable behavior. With officers currently in the review process or under monitoring or intervention, yet still exceeding risk thresholds, it is difficult to conclude that those officers are making adequate progress or that the risk management process is currently accomplishing its goals of risk reduction. Sub-paragraph 15 of Task 41 makes it clear that this problem was anticipated and that some remedy was expected. The review records of those most frequently complained against raises questions as to whether sufficient remedial action is taking place. The current practice of not reviewing people who have recently been reviewed or who are in intervention does not seem to provide a mechanism for establishing accountability in those cases where problematic behavior continues. While OPD has recently supported an external review of its data processes, the Department may wish to consider its own review of the effectiveness of its system in changing behavior.

As noted in previous reports, the risk management review process has improved over the past 18 months. Supervisors are more likely to recommend monitoring or intervention. Their decisions are scrutinized up the chain of command and sometimes reversed or returned for further consideration. These all reflect important steps and indicate that assessment can move on to more fully consider the extent to which the system is used effectively in the management of risk. The examination of the review and intervention processes for officers identified by the Department as frequent subjects of complaints or frequent users of force suggest the need for improvement in the risk management process and, ultimately, in its outcomes.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will continue to work with the Department to closely examine the processes of collecting and storing data and the use of that data in the PAS review process. We are particularly interested in understanding developments in the information technology part of this process, and how any contemplated changes may impact the risk management system. We will also further examine reports of PAS activity reviews, with an interest in the sustained quality of the reviews. Finally, we will also continue to examine outcomes of the risk management process with the expectation that a consistently strong process will influence those outcomes at the individual and Departmental levels.

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). During the past year, OPD recruited and began training 21 new officers and five lateral officers through the FTO program; however, during the second reporting period, due to the City's budget cuts, OPD laid off all new officers, both trainees and laterals, and 80 full-time OPD officers.

In January 2011, OPD returned 10 of the officers who had been laid off to the force. Those officers were required to attend at least 40 hours of in-service training after returning to active duty.

During our most recent site visit, we learned that OPD was rehiring 30 more of the officers who had been laid off in July 2010. The Department presented each of these officers with a PowerPoint-based training presentation that addressed the mandated line-up training that they missed while not employed by OPD. The training lasted about two-and-a-half hours; and included topics such as detention and consensual stops, home entries, field investigative reports, and avoiding boilerplate language in reports. In addition, OPD will place each returning officer in an in-service class (Continued Professional Training) before the end of the year. The OPD Training Division has reviewed the returning officers' training records, and will place those with the longest period since they attended CPT in a class first. At the time of our review, 10 of the returning officers had been placed in a CPT class. None of the returning officers are eligible for the FTO Program.

Discussion:

Due to the termination of the recruitment and training of new officers, this requirement has been placed in a deferred compliance status.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

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 the last reporting period, we reviewed a random sample of the training records for 100 employees in these positions, and found that OPD training records were complete, and that 96% 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 these policies, 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 (compliance standard: Yes/No). To assess this subtask, we interviewed OPD Training Division Commander and other personnel; and, in previous on-site reviews, reviewed training schedules, course outlines, and lesson plans. In addition, we interviewed the Police Evidence Technician Coordinator and the Police Dispatcher Training Coordinator and we again reviewed the files of the nine evidence technicians currently employed by OPD. We also reviewed the training records of a stratified random sample of 111 OPD members and employees – including 71 officers, 16 sergeants, 11 evidence technicians, and 13 dispatchers – to determine if the members and employees received adequate training for their positions.

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. CPT is, according to California state requirements, to be delivered to every officer every two years; OPD uses an 18-month cycle. We found that four of the sworn members of our sample had not received CPT within 18 months; however, all four were on medical leave and were, accordingly, excused. The remaining 83 sworn members of our sample all (100%) had received CPT training within the past 18 months.

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

We found that 12 of the 13 dispatchers had received adequate training for their jobs in the past 18 months. One dispatcher had received only nine hours of classroom training during the past two years; this is inadequate for the employee's position.

Our review of police evidence technicians' (PETs) training records revealed that, due to enhanced training these employees received in 2010, all had received adequate training during the past 18 months. We found, however, a negative trend that, if continued, could remove OPD from compliance with Task 43. According to the Training Division, the Evidence Technician Coordinator is responsible for training the Department's PETs. During our May 2011 on-site review, he advised that he has no budget to fund training or acquire equipment and, consequently, had no plan to train PETs. During our most recent site visit, our review of the training records of all 11 PETs revealed that while all had received adequate training for their jobs in the past two years, training in 2011 has been generally absent.

Our review concluded that 110 (99%) of the 111 training records we examined were compliant with Task 43 requirements. Thus, OPD continues in compliance. We regard the negative trend in training PETs as serious and one that needs to be corrected to ensure that the Department remains in Phase 2 compliance. We will review the PET records when we return to see whether progress has been made in this area.

Training is critically important. Every hour spent in training removes an officer or employee from his/her work and therefore, all training should be focused at the Department's most critical needs. Those needs can hardly be identified through an informal process as exists at OPD. In conjunction with its revision of the CPT, the Department should conduct a needs assessment that is contributed to by a wide range of persons throughout the Department. Such an assessment should ensure that the Department's most critical training needs – including supervisory responsibility and report reviews, among others – are identified and addressed.

OPD is in Phase 2 compliance with Task 43.1.1.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 45: Consistency of Discipline Policy

Requirements:

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

- 1. The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*
- 2. The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the*

Division level.

3. *All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.*
4. *The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*

(Negotiated Settlement Agreement X. B.)

Comments:

Only two provisions of Task 45 (45.1 and 45.4) are being actively monitored under the MOU. During the last three reporting periods, we found the Department in compliance with Task 45.4; but out of compliance with Task 45.1, which requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action.

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), incorporate the requirements of Task 45. 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.

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). To assess Phase 2 compliance with this subtask, we observed a demonstration of the IAD database, discussed it with IAD personnel who operate it and with senior IAD officers, and queried the IAD database to identify all of the cases that were approved with at least one sustained finding between April 1, and June 30, 2011. This query identified 22 cases containing 41 sustained findings. During our most recent site visit, we reviewed the IAD database and found that all 41 (100%) had dates of discipline listed. In addition, all 41 sustained findings had the discipline that were imposed; two of the sustained findings simply referred to a "suspension" and failed to display the number of days. Thus, 39 (95%) of the 41 sustained findings contained the full record of discipline imposed. Finally, we checked the records for the dates of the disciplinary conference and dates of disciplinary letter and found that 33 and 30 of the 41 records contained accurate dates for the disciplinary conference and disciplinary letter, respectively. Our inquiries revealed that since it is the practice of the IAD to enter this data *after* a Skelly Hearing has been completed and three of these records were awaiting a Skelly Hearing at the time of our inquiry, 36 (88%) and 33 (80%) of these records were actually in a compliant status at the time of our review. OPD is not in compliance with Task 45.1.

Task 45.4 requires that discipline be imposed in a manner that is fair and is consistent (compliance standard: 95%). To this end, the Department has developed and revised a Discipline Matrix. The Department most recently updated and revised its Discipline Matrix on September 2, 2010.

We found that in all 41 sustained findings in which discipline was required, the discipline fell within the Discipline Matrix in use or it was a reasonable application of discipline justified by an analysis of the facts of the case. In one case, the discipline exceeded the Matrix but the justification of the greater sanction was appropriate.

We found in one of the cases where the discipline fell within the Matrix but the supervisor appeared to try to justify discipline that was lighter than required. That case involved an off-duty officer who attended a party armed, and engaged in an altercation and disagreement with another person. Findings were sustained for the officer's consumption of alcohol while armed and his general conduct in which he removed his gun during the altercation. (He said he gave it to a family member to hold during the argument.) The officer had another sustained finding during the previous five years for which he was suspended for 15 days for 314.39-2 (Performance of Duty; Failure to Perform a Duty by Law) and 328.07-2 (Prohibited Activity on Duty). The IAD report included the following as factors that the supervisor considered as mitigation: the misconduct was not willful or deliberate; the misconduct was not premeditated; the member/employee was forthright and truthful; and the member/employee reported the harm caused and/or independently initiated steps to mitigate the harm caused in a timely manner.

We found that these "mitigating" factors were not proved or even indicated by a preponderance of the evidence. In fact, the preponderance of the evidence reported in the file shows that the officer likely lied about the incident, and that he failed to accept responsibility for his behavior. While the OPD supervisor's "mitigation" went too far in justifying the conduct in the case discussed here, the outcome of the case fell within the Matrix range.

During the period of April 1, through June 30, 2011, OPD decided and reported six cases following Skelly hearings. Our review revealed that all six cases were decided after Skelly hearings on reasonable grounds; and in all, the original discipline was upheld.

OPD is in partial Phase 2 compliance with Task 45.

Compliance Status:

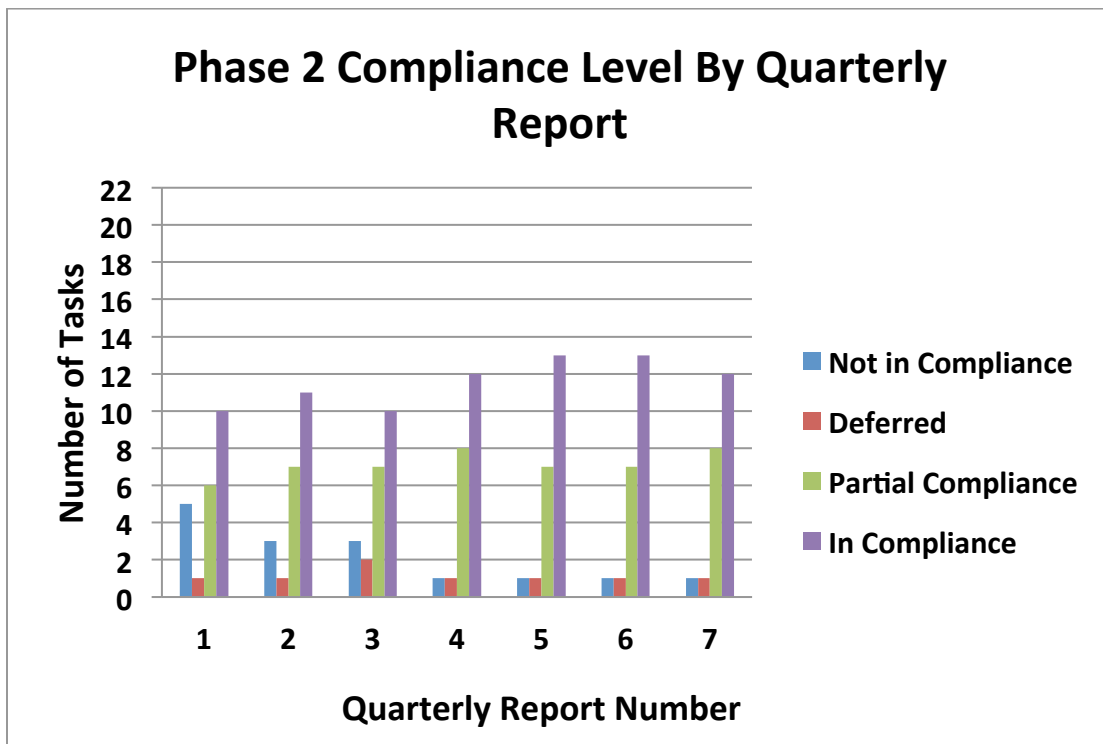
Phase 1: In compliance

Phase 2: Partial compliance

Section Three

Conclusion: Critical Issues

This is our seventh quarterly report. The status of compliance with the 22 active requirements of the Negotiated Settlement Agreement is shown for all of our quarterly reports in the graph below. The graph shows the decline that has occurred during this reporting period and the stagnation of the recent past. Even change prior to that was marginal, at best, with the number of Tasks reported as in compliance growing only to 14 from the 10 that we identified as in compliance during our first quarterly visit nearly two years ago. We are seriously concerned with the Department's stagnation – and now, reversal – in achieving compliance.



In our last report, we discussed the specific Tasks and the underlying issues that thwarted the Department's achievement of compliance. For this report, the decline in compliance is not only a change in the wrong direction, but it continues to reflect all too familiar problems. We remain concerned over OPD investigators' insufficient justifications to merit findings of unfounded in complaints. Likewise, too often, reviews of uses of force – particularly Level 4 uses of force – offer insufficient detail to assure that a sound review has been completed. The Level 4 uses of force are a significant and largely unaddressed issue. Follow-up on identified problems also hampered the firearms review board process. Additionally, the justification for pedestrian stops was incomplete; and the reporting of discipline also fell short, due to inadequate documentation. The examination of the PAS process for officers identified as frequent users of force or targets of complaints also suggests an absence of oversight or critical review and problem-solving.

Our concern over the lack of progress and now compliance findings over the past three reports, and even a decline in this report, is still secondary to our concern with what we see as an unacceptable consistency in the underlying problem. In almost all instances where compliance falls short, it is because responsibilities for supervision and review are not met. That is true whether the issue is the continued failure to fully document the justification for stops, or it is the cavalier rejection of the credibility of some complainants. When it comes to PAS, the system documents continuing problematic behavior by some officers; but rather than prompting action, this signals inaction, for the ironic reason that the problem had been previously recognized. It is an illustration – indeed, almost a caricature – of the key issue seen throughout our reports and across the history of the Negotiated Settlement Agreement: the Department's difficulty in recognizing a problem, engaging in a problem-solving process, and staying focused until the problem is resolved.

Appendix

Acronyms

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

Acronym	Definition
ACSO	Alameda County Sheriff's Office
BART	Bay Area Rapid Transit
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

PAS ADMIN UNIT STATISTICAL COMPARISON																				empty cells=no events
OAKLAND POLICE DEPARTMENT - KEY INDICATOR BY MONTH 2010-11																				
Percent of Arrests Associated with	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Sparkline Percentage of Arrests (decrease = risk reduction)
A Use of Force (levels 1,2,3 - per reporting officer)	2.78	1.13	4.07	2.35	1.23	1.33	7.57	1.93	4.10	2.31	3.78	1.21	2.89	2.24	2.21	1.60	2.35	1.75	2.65	
A Use of Force (levels 1,2,3,4** - per reporting officer)	42.03	42.55	37.45	36.52	41.22	32.27	43.20	36.37	49.03	39.24	52.02	47.44	37.64	37.98	25.91	29.34	42.82	37.48	32.33	
A Police Pursuit (per reporting officer)	3.46	2.26	1.88	3.13	3.20	2.97	5.92	4.36	3.99	5.67	6.30	2.16	4.39	4.73	2.13	3.04	4.04	1.66	2.92	
An IA Complaint (per subject officer sworn only)	5.82	9.43	10.40	9.65	9.03	13.01	13.25	9.93	11.17	7.41	7.93	9.43	9.12	10.71	8.45	6.91	7.14	9.48	10.23	
An In-Custody Injury	4.30	2.08	2.42	4.26	2.38	1.23	2.72	3.14	2.62	1.97	5.29	0.54	2.66	1.37	2.05	1.60	4.04	0.55	1.28	
Each Hour of Sick Leave (excludes civilians)	273.0	271.6	177.4	206.4	193.1	332.5	303.8	330.4	290.4	364.0	323.4	3098.8	216.7	254.2	170.9	180.5	226.4	232.6	210.6	
Number of Arrests per	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Sparkline Number of Arrests per (Increase = risk reduction)
Officer Involved Shooting (includes shootings involving animals which includes force types 1,21, 24, 27 and 26-21)*	197.5		1279	1150			282	987	292	864	397	247	144.33		633	395	533	543	1095	
Vehicle Collisions (excludes civilians)	131.7	176.67	319.75	288	609	325	211	110	146		79	148	433	160.6	316.5	169	178	543	1095	
Civil Suit (excludes civilians)	592.5	62.353	127.9	383	122	244	141	82	110	72	99	67	78.727	47.235	211	198	56	1086	1095	
All Arrest	1185	1060	1279	1150	1218	976	845	987	877	864	794	742	866	803	1266	1186	1065	1086	1095	