



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

Robert S. Warshaw
Independent Monitor

Office of the Independent Monitor
Police Performance Solutions, LLC
P.O. Box 396, Dover, NH 03821-0396

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Section One

Introduction

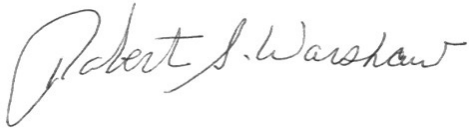
This is the twelfth quarterly report of the Monitor of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California. In January 2010, under the direction of Judge Thelton E. 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 twelfth quarterly site visit from November 12, through 16, 2012, to evaluate the Department's progress with the NSA during the three-month period of July 1, through September 30, 2012.

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 11 of the 22 remaining Tasks; in "partial compliance" with eight Tasks; and "not in compliance" with three Tasks. This reflects a change from in compliance to not in compliance with two Tasks (Task 16, Supporting IAD Process - Supervisor/Managerial Accountability; and Task 33, Reporting Misconduct). During the last reporting period, we deferred assessments of two Tasks (Task 2, Timeliness Standards and Compliance with IAD Investigations; and Task 42, Field Training Program); during this reporting period, we found Task 2 to be not in compliance, and Task 42 in compliance. In addition, one Task (Task 41, Use of PAS) moved from not in compliance to partial compliance.

This reports marks the second consecutive quarter of overall decline in the Department's compliance with the agreed-upon Tasks of the Negotiated Settlement Agreement. The shift from stagnation to decline should be as unacceptable to all Parties, as it is to us. My hope would be that marking this backwards turn would become an opportunity for the Department to more fully assess its status regarding the NSA and to renew its original commitment, now a decade old, to effective and constitutional policing. One thing should be clear from the long history of this Agreement: stagnation – and, now, decline – will not diminish the Court's expectation, or the

Monitor's resolve, that the Department live up to the terms of the Agreement. That is where the interests of the Department and the citizens of Oakland lie. It is our hope that the appointment of the new Compliance Director will serve as an impetus to rejuvenate efforts and hold to great account those who have had the responsibility to institute reforms in the Department.



Chief (Ret.) Robert S. Warshaw
Monitor

Monitoring Team:

Chief (ret.) Charles D. Reynolds
Deputy Monitor

Deputy Chief (ret.) Donald K. Anders

Lt. Colonel (ret.) J. Rick Brown

Robin Busch-Wheaton

Eric P. Daigle, Esq.

Commander (ret.) John M. Girvin

John M. Klofas, Ph.D.

Assistant Director (ret.) Joseph R. Wolfinger

Compliance Assessment Methodology

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

The 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 toward 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 twelfth 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 November 12, through 16, 2012, we conducted our twelfth 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 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 Section, and Communications Section; OPD officers, managers, supervisors, and commanders – including sergeants, lieutenants, and captains. We also conferred with the Plaintiffs’ attorneys, City Administrator, and 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.

For the current reporting period, we find that there has been a decline in compliance levels from those noted in our last report. This follows a decline noted in our last report. For the quarter under review, we once again found OPD in Phase 1 compliance with all 22 of the remaining active Tasks. The Department is in Phase 2 compliance with 11 (50%) of the 22 active Tasks; in “partial compliance” with eight (36%) Tasks; and “not in compliance” with three (14%) Tasks. In this reporting period, for the first time since the beginning of our tenure, we did not defer any assessments.

A common thread that again runs through many of the Tasks that have not yet achieved compliance deals with critical supervisory and investigative tasks. The nature of police work gives the first-line supervisor the critical responsibility for managing officers as they confront sometimes difficult and always complex situations. The review process up the chain of command also carries a heavy burden for assuring compliance with Departmental regulations and for correcting problems when viewed from a step away from the immediate situation. It is in these areas where compliance with the NSA Tasks has been most problematic. In this report, the concern is well illustrated with two of the Tasks that have fallen out of compliance. Tasks 16 and 33 both address professional responsibilities – including those of officers to report misconduct by other officers (Task 33), and with the ability of supervisors to critically evaluate the use of force by the officers they supervise (Task 16). These Tasks, which are now not in compliance – as well as those where compliance has not yet been achieved – address issues at the very core of Constitutional policing.

We are disappointed, but not deterred, by the setback reflected in this report in the reduction in overall compliance with the Tasks of the NSA. Each passing quarter makes clearer the areas where significant work must be done.

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: Force Review Board (FRB)	√	√			
Task 30: Executive Force Review Board (EFRB)	√		√		
Task 33: Reporting Misconduct	√			√	
Task 34: Vehicle Stops, Field Investigation, and Detentions	√		√		
Task 35: Use of Force Reports – Witness Identification	√	√			
Task 37: Internal Investigations - Retaliation Against Witnesses	√	√			
Task 40: Personnel Assessment System (PAS) – Purpose	√		√		
Task 41: Use of Personnel Assessment System (PAS)	√		√		
Task 42: Field Training Program	√	√			
Task 43: Academy and In-Service Training	√	√			
Task 45: Consistency of Discipline Policy	√	√			
<i>Total Tasks</i>	22	11	8	3	0

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:

During the last reporting period, we deferred our assessment of Task 2, due to the Department's acknowledged limited capacity to address its Occupy Oakland-related complaints. Prior to that time, we had 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

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 July 1, and September 30, 2012, and calculated the number of days between the complaint date and the approval date for each case. We excluded

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."

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.

As noted above, Departmental policy requires that investigations be completed within 180 days. Of the 154 Class I cases we reviewed, 124, or 81%, were in compliance with established timelines – a notable decrease from the 88% we found during the last reporting period. In addition, 24 of the Class I cases were completed in exactly 180 days, and 80 cases were completed in between 170 and 179 days. Of the 131 Class II cases we reviewed, 124, or 95%, were in compliance with established timelines – a decrease from the 98% we found during the last reporting period. Fifteen of the Class I cases were completed in exactly 180 days, and 63 cases were completed in between 170 and 179 days. Of the 99 sustained findings that we reviewed, 97 (98%) were in compliance with established discipline timelines.² During the last reporting period, 95% of sustained findings were in compliance with these timelines.

For the first time in over three years, the Department is not 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 several 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). For the third consecutive reporting period since the beginning of our tenure, there was such a proliferation of cases – resulting primarily from the high number of complaints received by the Department following Occupy Oakland-related events. During the last reporting period, IAD opened 737 cases, an increase from the 655 cases opened during the previous reporting period. OPD hired three retired officers, or annuitants, to assist with case intake. In addition, during this

² We reviewed 62 cases involving sustained findings; several cases involved more than one sustained finding.

reporting period, the Chief approved 465 cases, an increase from the 451 cases approved during the previous reporting period.

OPD is in compliance with Task 2.3.

Due to our placement of the Department as not in compliance with Task 2.1 – the essence of this Task – we find OPD to be not in Phase 2 compliance with Task 2.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

During the next reporting period, we will again confer with IAD command staff regarding workload trends and staffing requirements, including how the Department continues to handle the proliferation of cases related to Occupy Oakland events. We will also examine closely the Department's continued delays in processing the investigations of such complaints.

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:

OPD has been in compliance with this Task since the sixth reporting period.

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, supporting documents and evidence – related to the 21 integrity tests that were conducted from July 1, through September 30, 2012. Our review focused on the scope of the investigations, whether OPD conducted integrity tests on members and 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 21 tests conducted during this reporting period, eight were planned tests, in which the Integrity Testing Unit reviewed the records of OPD members and employees to verify that their vital information and records were current and therefore compliant with Departmental policy.³ We found that all eight focused on individual members and employees of OPD who were the subjects of high numbers of allegations of misconduct over the 18 months prior; all eight planned tests passed.

The remaining 13 integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies.⁴ Seven of these tests were conducted on officers who were the subjects of repeated allegations, and addressed the sources of the repeated allegations. Of the 13 selective tests, seven passed. Of the six failed tests, and two were referred to IAD for further investigation. In addition, two subject officers received Supervisory Notes Files, and two were assigned to additional training.

One of the 13 tests found that one of the selective integrity tests reviewed the use of Portable Digital Recording Devices (PDRDs) to determine if OPD members were activating and uploading the PDRD as required by policy. The test was initiated after it was discovered that two members of OPD had not activated their PDRD for several months. The unit examined 40 randomly selected members' PDRDs; all passed.

Another selective test followed up on a previous test to determine if OPD members' response to subpoenas had improved. The test failed, finding that 78% of the OPD members subpoenaed attended. The Integrity Testing Unit determined that there is a problem with the manner in which members are notified to appear.

Another selective integrity test was set up to verify that OPD personnel had, as required, distributed informational cards that directed fans to a short Internet survey regarding OPD's performance at a Raiders game; and another audited the OPD Medical Unit regarding the status of personnel who were on medical leave. Six of the selectivity integrity tests involved monitoring the performance of officers – including how they monitored radio traffic, documented stops, responded to calls, drove Department vehicles, and interacted with the public. Following the tests, three officers were assigned to retraining for specific job tasks, including tactics and officer safety.

OPD is in Phase 2 compliance with Task 3.

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.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will again meet with ITU and the IAD Commander to discuss the Integrity Unit and its testing.

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.)

⁵ The underlined requirements are the only provisions of Task 4 that are being actively monitored under the MOU.

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.

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 95 Daily Incident Log (DIL) entries and a random sample of 84 IAD case files that were approved during the period of July 1, through September 30, 2012. 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%).⁶ 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 July 1, and September 30, 2012, we reviewed 12 cases in which at least one allegation was resolved via administrative closure, 10 cases in which at least one allegation was resolved via informal complaint resolution (ICR), and two cases in which at least one allegation was resolved via summary finding.

In all 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. Five of the cases stemmed from the complainants' dissatisfaction with the quality of OPD's investigation into their reported crimes or complaints. For example, one complainant alleged that the Department did not aggressively pursue an arrest of her husband for domestic violence. In another case, the complainant believed that an on-scene arrest was warranted for those she alleged had assaulted her, but officers failed to take the suspects into custody at the time of the call. In still another, the complainant asserted that a juvenile suspect should have been physically arrested rather than issued a citation, and she also believed the crime was misclassified.

Two ICRs involved demeanor allegations. In one, the complainant indicated that an officer talked "aggressively" and frequently interrupted the complainant. In the other, the complainant alleged that an officer asked, "Are you back and bothering them again?" The complainant took offense at the inquiry. The remaining ICR cases concerned service-related issues and were appropriate for this type of case resolution.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. Two of the cases were administratively closed because it was determined that they were duplicate cases of those already under investigation. One was related to an Occupy Oakland protest, and a supervisor generated the complaint of possible excessive force while reviewing video footage of the event.

Six cases were administratively closed because they did not involve MOR violations. For example, a complainant alleged that a sergeant was wasting resources because several officers responded to back him up on a field stop. In other case, a father was upset because he was not allowed to speak with his son, who barricaded himself in a room with a firearm and ultimately

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.

committed suicide. While his grief is understandable, the tactical decisions by the negotiators on the scene did not violate any rules. In another case, a complainant who was illegally squatting in a house was arrested at the request of the property owner, a mortgage company; the company disposed of the furniture in the house, and the complainant lodged a complaint against OPD for failing to secure his property. In still another case, a complainant filed a complaint because the suspect vehicle in a police pursuit struck the complainant's vehicle. The pursuit comported with policy.

The remaining allegations that were administratively closed comported 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.

The cases resolved via summary finding were approved for such designation as required by policy. In one, an officer was involved in an off-duty incident that resulted in a police response from another jurisdiction. A potential witness was not interviewed since the officer's version of events, the complainant's statement, and the police report did not conflict. In the other, a case involving allegations of improper force and demeanor, one of several involved officers was not interviewed. His limited interactions with the complainant were captured on PDRD video.

We noted one case in which a summary finding was requested, but not approved by IAD command. The investigator requested permission to forego an interview because some of the incident was captured on PDRD video. The request was denied because the entire interaction was not recorded. Summary findings 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 5.⁷ 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 88% 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 12% 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.

⁷ Pursuant to an agreement among the Parties, Tasks 5.7- 5.11, and 5.13-5.14 are not subject to active monitoring.

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 95 entries that appeared on the Daily Incident Logs (DILs) that were completed between July 1, and September 30, 2012. We identified these by randomly selecting 15 dates during this reporting period and reviewing the entries for each of those dates. (Some selected dates had no entries, but most had multiple entries.)

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 95 DIL entries, eight cases were received by IAD, which, in turn, notified the Communications Division. Thirty-five complaints were taken by supervisors in the field, and in the remainder of the cases complainants called 911 to express their dissatisfaction. In these latter cases, IAD or 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). We noted 31 such service complaints. During this reporting 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%). OPD has added a checkbox to the DIL to record such delays. In addition to reviewing this section 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). Of the 95 DIL entries we reviewed, we did not identify any cases in which there appeared to be greater than a three-hour delay in contacting the complainant. OPD remains 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 95 records in our dataset, we identified 19 instances in which the complainant “refused” interaction with a supervisor. Two complaints were received by email, and the complainants did not answer the numbers provided in their written communications. Two complainants left the scene prior to the arrival of a supervisor. One of these complainants refused to provide an address or a phone number. The other provided an address, but did not have a working telephone. A supervisor responded to his stated address but received no answer. One anonymous complainant called from a telephone line without automatic number information (ANI), and therefore could not be re-contacted. In two instances, complainants simply hung up the phone when contacted by a supervisor. One complainant could

not be contacted because he was placed on a psychiatric hold. The remaining complainants simply did not answer the callback numbers provided. 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 100% compliance rate with this subtask. During this reporting period, all of the logs we reviewed contained the required information (“unknown” was checked in 25 records). OPD has a 100% compliance rate during this reporting 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 100% with this subtask during the last reporting period. The DILs are administered by the Communications Section 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.

Task 5.6 requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. 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 July 1, and September 30, 2012. We identified five such complaints using the IAD database. We reviewed these complaints 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.”

Three of the complaints were lodged contemporaneous to the arrest of the complainant and contained at least one allegation of Class I misconduct. In one, a complaint of racial profiling, a supervisor responded to the scene of the arrest and filled out a complaint memorandum even though the complainant indicated that he did not want to file a complaint. In another, a complaint of force during an Occupy Oakland demonstration, a lieutenant responded to the North County Jail and took the complaint. In the last, as a complainant was being taken to jail, she yelled out of the patrol car windows that she was being raped. Officers immediately notified their sergeant, who responded to the North County Jail and filled out a complaint memorandum despite the fact that the complainant refused to cooperate.

The remaining two cases either did not contain Class I misconduct allegations, or were not lodged contemporaneously with the arrest. In one, while a complainant was being interviewed in the Santa Rita Jail on an unrelated matter, he made various allegations of misconduct purportedly occurring between 2003 and 2005. In the other case, an arrest of credentialed journalists during an Occupy Oakland demonstration, the complaint was lodged to the Department's public information officer. He sent a sergeant to the Santa Rita Jail to address the situation.

OPD is in compliance with Task 5.6.

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 July 1, and September 30, 2012. 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.

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 88% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 18, or 72%, in compliance with *all* of these required elements.

In nine cases, investigators conducted follow-up interviews with officers or civilians to seek clarification. However, in three cases, we believe that additional interviews should have been conducted. In one, a union steward alleged that a supervisor interfered with an internal investigation. The investigator noted that the complainant, who is also an OPD employee, "...refused multiple requests to be interviewed by IAD or answer follow up questions." We noted a similar case during our last review process. IAD can – and *should* – compel employees to cooperate with an investigation, particularly employees who initiate the complaint process. In another case, a use of force allegation stemming from an Occupy Oakland protest, discrepancies between a sergeant's and an officer's statements regarding the actions of a complainant and the level of force used should have been explored in subsequent interviews. In the third case – a complaint of demeanor during a motor vehicle accident investigation – the complainant provided the names of two potential witnesses. These witnesses were not contacted before IAD reached a determination regarding the allegation. Consequently, we also determined that, in these latter two cases, inconsistent statements went unresolved.

In three cases, credibility assessments were problematic. In one, an Occupy Oakland case that was investigated by an outside contractor, credibility assessments simply were not completed.⁸ In another investigation involving an allegation of excessive force stemming from an Occupy

⁸ When we inquired regarding the lack of credibility assessments in this case, IAD advised that it also noted that the assessments were missing, and provided an updated investigation. IAD sent a two-page memo containing credibility assessments to the Chief on November 8, 2012.

Oakland protest, the Chief appropriately changed a not sustained finding to sustained, based on the officer's history and the fact that he appeared to intentionally turn his PDRD off several times during the incident. While the Department ultimately came to the correct conclusion, the officer's credibility should have also been questioned based on the evidence at hand. In another case, an investigator concluded that an officer became "obviously upset and appeared to take on a defeatist attitude; he was admitting to things that did not happen." We have repeatedly cautioned IAD about including such speculative comments in investigative summaries. However, if IAD elects to include statements like this, investigators cannot later deem the officer credible without any notation of this previous conclusion.

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 reporting period, 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 88% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 20 cases, or 80%. One of the noncompliant cases involved uses of force and their subsequent investigation, stemming from an Occupy Oakland protest. Two of the allegations were appropriately sustained. We believe another allegation – that a supervisor intentionally omitted certain details in his reports – could have also been sustained. The investigator wrote such phrases as, "there are circumstances to suggest that [] did so intentionally" and "may have intentionally omitted." He arrives at his not sustained finding, however, because he believes there is no "clear evidence." This standard is higher than the preponderance of evidence standard, which we believe was met as it pertains to this allegation.

In another case, an allegation was inappropriately administratively closed rather than adjudicated according to the preponderance of the evidence standard. It involved an allegation of inappropriate pointing of a firearm during the execution of a search warrant. A third-party complainant alleged that officers pointed an "infrared" dot at an infant while clearing the house. IAD administratively closed the case because OPD firearms are not equipped with laser sights, and since ATF agents were also on the scene, their firearms must have been involved. However, just prior to the case being closed, an IAD officer called ATF and learned that they also do not have any weapons equipped with laser sights. Despite having this information, IAD administratively closed the case as having no jurisdiction.

We noted six cases in which the recommended findings of the investigator were overturned during the review process. In five cases, this was appropriate and resulted in compliant cases as it pertains to this task. However, in one, a case involving an allegation of a dispatcher failing to report to work after being medically cleared for duty, the investigator also laid out a convincing case for sustained truthfulness charges. The Chief changed the finding “after consulting with the OCA (Office of the City Attorney).”

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%). Our sample of 25 cases contained 88 allegations that received dispositions as follows: 18 exonerated; 22 not sustained; 36 unfounded; nine sustained; and three administratively closed. As noted in Task 5.18, we disagree with some of these findings. Specifically, we believe that two of the not sustained dispositions should have been sustained; one of the exonerated allegations should have been sustained; and one allegation was inappropriately administratively closed. With a 95% compliance rate, OPD remains in Phase 2 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.⁹

During our most recent site visit, we met with the Deputy Chief of the Bureau of Risk Management and the commanding officer of IAD, who advised that as of that date, nine cases were classified as tolling. Five involved civil litigation against the City and/or the Department; and in three, the subject or witness officers were unavailable. One was awaiting the results of an ongoing criminal investigation, and relates to an Occupy Oakland incident. All cases appeared to be tolling according to policy. These cases are reviewed with the Chief during his weekly IAD meetings and are 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

⁹ 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.

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. One of the 25 cases we reviewed was resolved via summary finding, and was appropriately approved for such closure. (These do not include the cases referenced in Task 4, for which summary findings were also appropriate.) In this Occupy Oakland-related case, an officer’s limited interaction with the complainant was caught on video, which negated the need for an interview.

In one case, also mentioned above, an employee who was the complainant in a case alleging interference with an internal investigation was not interviewed. The investigator wrote that the complainant “...refused multiple requests to be interviewed by IAD or answer follow up questions.” Inexplicably, IAD did not order the employee to report to IAD and provide a recorded statement.

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.

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 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%).

To assess Phase 2 compliance with this Task, we reviewed a random sample of 95 Daily Incident Log entries from July 1, through September 30, 2012; 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 20 such cases. Eight of these cases resulted in sustained findings for one or more of the applicable MOR violations.

Two of the sustained cases stemmed from Occupy Oakland protests. In one, a sergeant was suspended for five days for failing to initiate the complaint process when arrestees he was interviewing complained of excessive force. In the other, a protestor told an officer that he "was beaten for no reason." The investigation determined that the officer should have recognized this as a complaint and initiated the complaint process, which he failed to do. The officer subsequently resigned from the Department, but was sent a letter advising him that if he returned to employment with OPD, he would face discipline.

One of the sustained cases involved a civilian employee complaining about her coworkers. It was determined that, based on the emails she submitted, a supervisor should have initiated the complaint process. Another involved a dispatcher, who failed to refer a complaint from an out-of-state caller. She received a five-day suspension, in part based on her history of similar sustained complaints.

Portable Digital Recording Devices (PDRDs) and other video recordings again proved instrumental in many of the investigations reviewed for this Task. Video evidence was considered to reach conclusions in two of the sustained cases and in six of the cases that did not result in sustained findings for applicable MOR violations.

Discipline was administered in all cases resulting in sustained findings for the pertinent MORs, except for the case mentioned above in which the involved officer resigned. Penalties ranged from written reprimands to five-day suspensions.

OPD remains in Phase 2 compliance with Task 6.

Compliance Status:

Phase 1: In compliance

Phase 2: 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.¹⁰*
- (Negotiated Settlement Agreement III. G.)

¹⁰ The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

Comments:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the past several 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 July 1, and September 30, 2012. 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 24 cases as potential anonymous complaints during this reporting period. After review, we determined that 20 were true anonymous complaints. Of these 20, the complainant was identified during the course of the investigations in three cases. All three cases stemmed from a January protest incident. OPD initiated at least nine separate investigations in our sample on behalf of anonymous complainants after viewing various videos of this event. The IAD reviewers heard potential allegations made by citizens in the videos, and then opened cases, whether the complainants were known or not. Seven of these cases involved potential excessive force, and in the remaining two, illegal detention or improper arrest was alleged.

Eight of the remaining 11 complaints were received via telephone calls to the Communications Division. Additionally, two were reported to officers in the field and one was reported to an officer working the front desk at the PAB. In each of these cases, the complainant left the scene prior to the arrival of a supervisor.

Where possible, complainants were asked to provide corroborating evidence. In nearly all cases, the complainants terminated the contact before OPD could secure additional details of the complaint. However, the complaints were investigated to the extent reasonably possible as required by this subtask. IAD or field supervisors attempted to re-contact complainants if a call-back number was available, even if the complainants expressly stated they wished to remain anonymous.

Eleven of the 20 cases were closed via administrative closure. Each met the criteria for such closure, and most lacked the details to identify the specific alleged misconduct and/or OPD personnel involved in the incidents. In one, a call originating from Alameda County Hospital, it

was determined that ACSO deputies were most likely the subjects of the anonymous complaint. In another, the name provided as a possible OPD subject officer did not match anyone on the Department's roster. In still another, an anonymous caller complained that officers never responded to her call for service, but disconnected the call without providing any more information to narrow down the incident.

Five cases did not, in our opinion, rise to the level of a complaint. The fact that OPD classified them as complaints is not a compliance concern; we merely make the observation that the complaint process could have been avoided. Three originated in Communications. In one, a caller simply observed that Police Communications Dispatchers (PCDs) ask too many questions of callers. In another, an anonymous caller asked a PCD for the number to IAD, in order to file a complaint. When the PCD advised that she could take the complaint, the caller hung up without providing any more information. In the third, a caller complained of slow response time. He was very polite and did not want to leave his name, file a complaint, or be transferred to a supervisor. Two cases originated in the field. In the first, an officer asked a citizen to step away from the officer's car door so he could exit his vehicle. The citizen said, "You're mean," and walked away. A complaint was generated. In the other, a citizen opined that OPD officers should be arresting murderers rather than wasting their time enforcing curfew violations. This unsolicited resource management advice resulted in a complaint.

The Department 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:

The Department has been in Phase 2 compliance with Task 16 since the second reporting period.

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 during this reporting period, we examined 95 Daily Incident Log entries from July 1, through September 30, 2012; a random sample of 84 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between July 1, through September 30, 2012; and the 20 sustained Class I investigations that were approved by the Chief between July 1, through September 30, 2012.

During this reporting period, there was an increase in the number of sustained Class I investigations, compared to previous reporting periods. However, only nine (45%) of the 20 investigations sufficiently addressed the role of the subjects' supervisors or managers in the sustained misconduct. Task 16 requires, in part, that a 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.

Of the remaining 11 cases in our review, seven involved Occupy Oakland and related protests. In each of these, officers were sustained for their improper use of force. However, despite the requirement that investigations include a member/employee accountability section, the investigations contained limited or incomplete analyses of the actions of the supervisors who should have supervised the officers, intervened in the use of force, and reported the actions. During protests, OPD assigns squads of officers to interact with the crowd, and each squad is supervised by a sergeant. However, none of the seven Occupy Oakland-related cases included an analysis of the accountability of any supervisor above the rank of sergeant, leading us to question where the other officers, supervisor, or commanders were while the sustained misconduct occurred. In one case, a lieutenant was found to have made improper command decisions during a protest; however, the investigation did not include any review of the

demonstration response planning by OPD command. In more than one case, high-ranking supervisors – including captains – were involved in the situations that lead to the sustained use of force. In these situations, if citizens had not made complaints, the misconduct would not have been reported or investigated; and officers would not have been disciplined for their misconduct.

The remaining four investigations that did not sufficiently or completely analyze the role of the supervisor involved: the improper detention of a subject and (sustained) allegation of racial profiling; a vehicle pursuit where the officer intentionally struck the subject; the use of a canine where improper commands were given; and the use of a force in striking a mental patient. In each of these cases, OPD did not sufficiently analyze the role of the supervisor in the misconduct. It was not until each of the four cases made it to the Force Review Board that the Chief of Police identified the supervisors' misconduct.

Based on our review, OPD is not in Phase 2 compliance with this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

During our next site visit, we will, as in the past, meet with the IAD Commander to discuss any Task 16-applicable cases for the next reporting period.

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.*¹¹

(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 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.

We reported in our tenth quarterly report that OPD provided us with a copy of Training Bulletin I-O.4, *Legal Aspects Of Searching Persons On Parole And Probation*, effective November 23, 2011. The purpose of the Training Bulletin is to guide OPD members on documenting the means of confirming the status of the parolee or, if a probationer, their status and whether an appropriate search clause exists. The Training Bulletin also provides guidance in situations where inconsistent information is discovered in AWS, CORPUS, or CRIMS regarding a probationer's status.¹²

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 85 adult and two juvenile arrest reports documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); as well as documentation for 25 arrests resulting in an investigated use of force; that occurred between July 1, and September 30, 2012. We reviewed these to determine if supervisors reviewed the reports that 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.

¹¹ The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

¹² Automated Warrant System, Criminal Oriented Records Production Unified System, or Consolidated Records Information Management System.

Of the 85 adult arrest reports, we excluded 59 from our dataset; and of the two juvenile arrest reports, we excluded one from our dataset; for one or more of the following reasons: the arrest involved a warrant or probation or parole warrant detention; the arrest occurred outside of our selected time period; the incident was, in fact, a psychiatric detention that did not involve an arrest; or the arrest involved a misdemeanor offense that was not one of the arrests applicable to Task 18.2.2. Of the remaining 26 adult arrests and one juvenile arrest, there were no reports that did not document the presence of witnesses or no known witnesses; and all arrests were approved by a supervisor. This represents a 100% compliance rate relating to adult arrests for this subtask. In addition, of the 25 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.¹³ This represents a 100% compliance rate among arrests resulting in an investigated use of force for this subtask.

Our review revealed an overall 100% compliance rate for Task 18.2.2. OPD is in Phase 2 compliance with this requirement during this reporting period.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with OIG to discuss the Department's protocols for conducting audits of this Task to ensure sustainability.

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*

¹³ 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.

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. We have not yet assessed Tasks 20.2, 20.3, and 20.4 because OPD recently (February 2012) implemented a new, tiered system of supervision in BFO, using relief sergeants. As a result, for two reporting periods, we deferred our assessments for these subtasks. During the last reporting period, we were prepared to examine the available data for these subtasks, but the Department did not provide materials we requested that were required to conduct our assessment. Thus, we continued to withhold our compliance findings for these subtasks.

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.

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 Department's 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 continues to function as a "master detail" that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. OPD remains 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%); **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%); and **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%).

In February 2012, OPD implemented a new, tiered system of supervision in the Bureau of Field Operations (BFO), using relief sergeants; this change will affect significantly the way in which we assess Tasks 20.2, 20.3, and 20.4. For this reason, we did not assess these subtasks in the ninth and tenth reporting periods.

During the last reporting period, we were prepared to examine the available data, but the Department did not provide materials we requested that were required to conduct our assessment. Thus, we continued to withhold our compliance findings for these subtasks.

During this reporting period, we are again deferring our assessment for these subtasks because of the Department's plans to restructure BFO (in February). As a result, OPD again maintains our compliance findings from the eighth reporting period. Therefore, OPD is not in compliance with Task 20.2; and is in compliance with Tasks 20.3 and 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 85 total operations conducted between July 1, through September 30, 2012, 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%). 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 July 1, through September 30, 2012, for the signature of the Chief or his designee. We found that all of the Personnel Orders during this time period contained such a signature, indicating the Chief's approval.

The NSA does not require written documentation of loans and transfers for long-term backfills – merely that 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

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 the last reporting period, as the Department was not in compliance with the requirements that OPD personnel on the scene of the incident report all uses of force on the appropriate form, and document every use of force and/or the drawing and intentional pointing of a firearm.

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 our August 2012 site visit, we again met with OPD command personnel and OIG to discuss ongoing problem areas in use of force reports and their supervisory reviews, and the Force Review Boards (FRB)/Executive Force Review Boards. We also reminded the Department of our continued concern with the lack of adequate justification in citizen encounters that lead to an investigated use of force. We continue to encourage OPD command personnel to pay close attention to these issues.

OPD is currently revising its confidential informant policy and process to address our concerns about how its members use confidential informants that lead to citizen encounters and the pointing of firearms. We are troubled that OPD officers are initiating stops and pointing their firearms at subjects based on information that has not been determined to be reliable. Most informants have issues with their own conduct and credibility. In our review of use of force reports, we have noted occasions where no further investigation was conducted to support the information provided by an OPD "confidential informant."

OPD recently hired an external auditor to evaluate OPD's search warrants and confidential informant files. The audit revealed seven areas for improvement involving search warrants, and 14 areas of concern involving the OPD's use of confidential informants. The audit noted, among other points, that OPD does not mandate any experience or training requirements for managing confidential informants. It also recommended that no informant should be used before proper vetting, and that the Department should deactivate any informant who is deemed unreliable.

During this reporting period, the sample we requested for review (83 total) included: six Level 2; 19 Level 3; and 58 Level 4 reports completed between July 1, and September 30, 2012.¹⁴

¹⁴ We requested 90 use of force reports, but determined that seven of the reports were completed outside of the

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. 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 83 incidents in our sample, a supervisor was promptly notified regarding the force incident. OPD has a 100% compliance rate with this subtask. 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 this reporting period, we reviewed a total of 83 use of force incidents, and 61 of those incidents involved officers pointing firearms. The 61 events included one Level 2, eight Level 3, and 52 Level 4 uses of force. The 61 incidents involved 158 instances of OPD officers drawing and pointing their firearms.¹⁵

Overall, we determined officers' pointing of their firearms to be appropriate in 129, or 82%, of the 158 instances we assessed.¹⁶ We were unable to find the pointing of a firearm necessary or justified in 29 instances of the 158 instances we assessed, due to the absence of any indication that the officer(s) or others faced imminent threat of harm. In addition, several events lacked justification for the initial detention that led to the pointing of the firearms.

current reporting period.

¹⁵ 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.

¹⁶ As in our more in-depth assessment of such incidents during the sixth 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 involving an actual structure search, or when making a high-risk vehicle stop based on the legitimate belief that the vehicle was stolen.

The total racial breakdown for the 61 use of force events reviewed is as follows: Black, 70%; Hispanic, 22%; White, 3%; Asian, 2%; and Other, 3%. 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 the following: Black, 87%; and Hispanic, 13%.

In all cases, the 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 are troubling, the continued 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. This is the seventh consecutive reporting period we have found OPD out of compliance with officers pointing firearms. The numbers of unjustified gun pointing events and the statistical racial breakdowns have remained consistent for each quarter.

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 25 applicable Level 2 and 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.¹⁷ 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%). During this reporting period, there were no Level 1 use of force reports in our dataset. 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.

¹⁷ Task 24.7 is no longer applicable.

OPD is in partial Phase 2 compliance with Task 24.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will continue to meet with OPD to provide feedback on specific use of force reports and to assess how the Department is addressing the serious issue of pointing firearms – the act of which may not only be unnecessary and inappropriate, but which also elevates the risk for unfortunate and unjustified firearm discharges.

Task 25: Use of Force Investigations and Report Responsibility

Requirements:

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

1. *OPD shall develop and implement a policy for conducting and documenting use of force investigations that include, at a minimum:*
 - a. *Documentation of the incident in either an Offense or Supplemental Report from the member(s)/employee(s) using force; and/or, when necessary, a statement taken from the member(s)/employee(s) using force;*
 - b. *Separating and separately interviewing all officers who were at the scene at the time of the incident;*
 - c. *A Supplemental Report from other members/employees on the scene or a statement taken, if deemed necessary by the investigating supervisor;*
 - d. *Identification and interviews of non-Departmental witnesses;*
 - e. *Consideration of discrepancies in information obtained from members, employees and witnesses, and statements in the reports filed;*
 - f. *Whether arrest reports or use of force reports contain “boilerplate” or “pat language” (e.g., “fighting stance”, “minimal force necessary to control the situation”);*
 - g. *Documentation of physical evidence and/or photographs and a summary and analysis of all relevant evidence gathered during the investigation; and*
 - h. *Consideration of training/tactical issues involving the availability and practicality of other force options.*
 - i. *Supervisor’s justification as to why any element of the policy was not documented; and*
2. *All supervisors shall be trained in conducting use of force investigations and such training shall be part of a supervisory training course.*

3. *Use of force investigations shall include a recommendation whether the use of force was objectively reasonable and within Department policy and training. The recommendation shall be based on the totality of the circumstances and shall consider, but is not limited to, the following factors:*
 - a. *Whether the force used was pursuant to a legitimate law-enforcement objective;*
 - b. *Whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the members/employees were attempting to achieve;*
 - c. *Whether the member/employee used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts;*
 - d. *Whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped;*
 4. *use of force reports shall be reviewed by the appropriate chain-of-review as defined by policy.*

The type of force used, the identity of the involved members, and the report preparer shall be the determining criteria for utilizing the appropriate chain-of-review. Reviewers may include, when appropriate, the chain-of-command of the involved personnel, the appropriate Area Commander on duty at the time the incident occurred, other designated Bureau of Field Operations commanders, and as necessary, the chain-of-command of the involved personnel up to the Division Commander or Deputy Chief/Director, and the Internal Affairs Division. Reviewers for Level 1-3 use of force investigations shall:

 - a. *Make a recommendation as to whether the use of force was in or out of policy,*
 - b. *Order additional investigation and investigative resources when necessary, and*
 - c. *Comment on any training issue(s) when appropriate.*
 5. *Any recommendation that the use of force did not comply with Department policy shall result in the incident being referred to the Internal Affairs Division to conduct additional investigation/analysis, if necessary.*
 6. *Members/employees involved in a use of force incident resulting in serious injury or death and/or an officer-involved shooting, shall be separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed.*
- (Negotiated Settlement Agreement V. B.)

Comments:

During the last four reporting periods, we found the Department in partial 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 83 use of force reports, including: six Level 2; 19 Level 3; and a sample of 58 Level 4 use of force reports; that were completed between July 1, and September 30, 2012.

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 during this reporting period, we reviewed documentation for 25 Level 2 and 3 incidents. In all of the incidents, a supervisor responded to the scene and completed a use of force investigation. In addition, two Level 3 incidents in our sample were downgraded 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 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.

During this reporting period, two reports – one Level 2 and one Level 3 – were not submitted in a timely fashion. The remaining 81 completed use of force incidents were submitted within the time limits established by this subtask. As noted above, Level 2 and Level 3 force investigations are considered timely if they are completed (including Division Commander approval) within 15 calendar days of the incident, with one documented approved extension by the Division Commander allowed. We only consider extensions if they were approved by the appropriate personnel *prior* to the pre-extension due date. The chronological logs that we assessed for this reporting period continue to lack adequate – or legible – documentation to show that the extensions were both properly requested and authorized by command personnel. Once an extension is authorized, new due dates must be established and the timelines must be met.

During this reporting period, we noted that, in some cases, supervisors addressed discrepancies in the reports, and the use of “boilerplate” or “pat” language by investigators. In addition, we noted slight improvement in the documentation of physical evidence, the inclusion of photographs, analyses of relevant evidence gathered, and consideration of tactical and training issues. However, we noted an incident where the use of force investigator inappropriately provided justification for the officers’ actions. This incident involved an unjustified pointing of firearms at subjects believed by officers – based upon no articulable facts that criminal activity was afoot – to be involved in prostitution activity. The officer who initiated the encounter documented in his report from his training and experience that prostitution activity was occurring. Yet in response to our inquiry, OPD advised that these officers had not received any relevant training during their time on the force.

Although we noted some instances in which supervisors addressed officers who did not use their Portable Digital Recording Devices (PDRDs), we are again troubled by the large number of officers opting not to activate their recording devices when required. During this reporting period, OPD commanders took supervisory action by admonishing officers for not using their PDRDs as required in nine of the Level 2 and Level 3 cases we assessed. In one case, an OPD officer turned on his PDRD to record the event; and command personnel who reviewed the footage initiated formal disciplinary action against the officer for using profanity. Although OPD mandates, by policy, the activation of PDRDs by officers in certain circumstances, the officers who did not turn on their PDRDs in this case received no formal discipline. We are further troubled that many supervisory personnel routinely address these violations of policy merely as training matters requiring counseling and an entry into officers’ Supervisory Notes Files.

OPD’s overall compliance rate for timeliness is 97%, and for NSA-required elements is 99%. 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. As we have noted previously, 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. During this reporting period, according to the Department, OPD provided use of force training for 41 new or acting sergeants, 75 sergeants, and 30 commanders. 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.

During this reporting period, we reviewed one Level 3 and eight Level 4 use of force incidents that involved the unjustified pointing of firearms. These nine reports did not comport with NSA-required elements; each of the incidents involved an unnecessary escalation to potentially using lethal force in situations where other less lethal force options were available to the officers or should have been considered.

In one case, during a search warrant, two officers pointed their firearms at a sleeping 19-month-old child who, of course, posed no immediate threat to the officers or others. The crime being investigated, according to the reports, involved a misdemeanor offense.

In five separate cases, officers pointed their firearms at subjects when no additional investigation was conducted to support allegations made by persons contacting the OPD dispatch/911 center. In one of the incidents, the call amounted to an anonymous tip unsupported by independent investigation. In all five cases, citizens were subjected to facing OPD firearms when no crime had been committed.

In another case, an OPD officer received information that a wanted subject was driving a certain vehicle. The officer observed the vehicle, and noted that the wanted person was not the driver. The officer decided to conduct a felony car stop and subject the driver to a lethal seizure even though the “information” he received was unreliable. The officer detained the driver and searched his car – but released him after he did not find any evidence.

The remainder of the cases, however, contained information showing that the force was used for a legitimate law enforcement purpose, was reasonable to the resistance encountered, and was de-escalated when resistance decrease or stopped; and that verbal means were used to attempt to resolve the situation without force.

OPD’s compliance rate for this subtask is 89%. OPD is not 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 all but nine of the Level 2, 3, and 4 reports we reviewed, the chain of command reviewed and commented on the quality of the investigations, 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 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 continue to discuss with OPD the use of force command review process, investigator impartiality, and lack of use of the Portable Digital Recording Devices (PDRDs) by officers in violation of OPD policy.

Task 26: Force Review Board (FRB)

Requirements:

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

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

9. *Minimally, that one member of the FRB shall be replaced at least annually.*
(Negotiated Settlement Agreement V. C.)

Comments:

During the last two reporting periods, we found OPD in partial 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 nine incidents that were heard by the board during this reporting period of July 1, through September 30, 2012. We determined that all of the FRB reports were timely. 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%). All nine FRB reports we reviewed contained recommendations noting that the use of force was in or not in compliance with policy. All nine 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 the Discipline Officer (compliance standard: 95%). Of the nine incidents that were heard by the board during this reporting period, all were in compliance with this subtask. One case – which involved the use of the Department’s canine – highlights the importance of providing timely information to the Monitor to facilitate the compliance review process. This is a significant case in which there were delays in providing complete information for review. After full consideration, we found the case to be in compliance. In this case, the FRB voted via a 2-1 majority vote for compliance with policy. The Assistant Chief was the lone dissenter, and found the force out of compliance for the following reasons: the officers were not in immediate danger to order the canine to immediately bite the suspect if found; an announcement should have been given before deploying the canine giving the suspect an opportunity to surrender; by not providing an announcement it exposed innocent persons to being bitten by the canine. The Chief of Police reviewed the findings of the FRB, and agreed with the Assistant Chief, finding that the force used was out of compliance. The deliverables

recommended by the FRB included revising OPD's existing canine policy; publishing an Information Bulletin regarding canine announcements; conducting an assessment of the involved dog; and placing the unit under the control of a sergeant, as opposed to an officer. 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 training issues; and discussed improper tactics, use of force reporting, activation of the PDRD, and the need for 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 emphasized the need for canine officers, supervisors, and commanders to consider modifying the canine announcement to fit the incident in question – for example, circumstances in which a warning announcement could jeopardize officer safety.

According to the annual review, the FRBs have been tasking supervisors to train their officers after the board has identified training issues. The supervisors are required to document this training in the officers' 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 Section. 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.

OPD is in Phase 2 compliance with Task 26.

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 four FRBs during our most recent site visit; we will discuss these in our next report. 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: Executive Force Review Board (EFRB)

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 eleventh 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 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.

To assess the Department's compliance with this Task, in addition to reviewing EFRB documentation, we observed one EFRB during our August site visit. The EFRB determined that the officers' use of lethal force, resulting in no injuries, was in compliance with OPD policy. This critical firearm discharge incident is summarized below. (See the third incident in Task 30.1.)

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%). The EFRB reviewed four incidents during this reporting period:

- In the first incident, two OPD officers observed two vehicles being operated recklessly. After the vehicles were stopped and parked, the officers decided to make a walking stop. The subjects fled on foot. During the apprehension, to prevent one subject from acquiring a firearm that was thrown down on the ground, near the subject, the officer struck the suspect in the head with his Taser, constituting lethal force. A firearm was recovered at the scene.
- In the second incident, an armed subject was reported attempting to break into a residence. The suspect was located and was armed with two semi-automatic pistols. The subject discharged several rounds from his firearms. The subject raised one of the firearms toward the officer and the officer fired two rounds from his duty weapon missing the subject. OPD SWAT responded and assisted. The suspect surrendered without incident. OPD recovered the two pistols the subject was carrying.
- In the third incident, two OPD officers made a pedestrian encounter with a subject that was exhibiting behaviors of possessing a concealed weapon. The subject fled on foot. During the foot pursuit, the subject was trying to either discard a concealed weapon or engage the officers. One officer fired five rounds, and the assisting officer fired two rounds, with one round striking the suspect in the right rear shoulder. The suspect was apprehended and taken to the hospital. The shotgun the subject had concealed was recovered.
- In the fourth incident, an OPD commander was in charge of the Department's response to a male with a history of mental illness that was in possession of a firearm that was threatening suicide. The officers heard a gunshot. OPD SWAT responded and made entry, finding the subject deceased with a gunshot wound to the head. The subject was never in OPD custody even though the incident was classified as an in-custody death.

We verified that the EFRBs held during this reporting period fell within 45 days of the completion of the use of force reports covering the incidents.

OPD is in compliance with this subtask.

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

the board during the current reporting period. The required attendees were present in both cases. After review and deliberations, the board determined that the subject officers' actions in all four cases were in compliance with Departmental policy. The Chief endorsed the EFRB findings within 60 days of the board's decision. The board identified the adequacy of equipment, tactics, an analysis of each application of force, investigative concerns, and training issues that required the appropriate corrective action.

In the third incident described in Task 30.1, the EFRB determined that both the IAD and Homicide investigators could not determine which round(s) from the officers' firearms struck the suspect. The EFRB only noted this fact in its findings – and did not require supplemental investigative by IAD or Homicide that might have resolved the discrepancies between the subject's and officers' version of events. The subject alleged that he was discarding the weapon, not pointing it at the officers, and that being shot by the police was excessive. The lack of a thorough analysis of all available evidence or information, including but not limited to, identifying the officers positioning, their distance from the subject, and an incomplete forensic examination formed the basis for a deficient EFRB analysis. Additionally, another officer documented in his report that he and two other OPD officers intentionally pointed their firearms at an uninvolved subject who was exiting his residence to see what was occurring. These three pointing events were not analyzed and included in the EFRB findings. The incident from the beginning involved one subject that was being handcuffed at the time the uninvolved person was subjected to lethal seizure.

OPD is not 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. 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. During the last five reporting periods, 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 the Deputy Chief of the Bureau of Risk Management; and queried the IAD database to identify any cases with sustained findings that were approved between July 1, and September 30, 2012, that were applicable to Task 33. We identified and reviewed 62 cases with 99 sustained findings that were approved during this reporting period. Included in this count were 26 cases with 48 sustained findings that were generated during the Occupy Oakland events. The Occupy Oakland matters included 12 cases and 18 allegations that were designated as Class I violations.

Many of the Occupy Oakland actions were conducted in view of other officers and the public. In fact, videos taken by the public were the source of many sustained findings. A common thread running through these investigations is that officers consistently refused to say that they saw, knew, discussed, or observed the actions of fellow officers who were often close by. One non-OPD investigator assigned to an Occupy Oakland case, commented, "...another theme that resounded throughout the interviews was the reluctance to view, ponder, assess, scrutinize or evaluate another OPD member's use of force." We agree.

In any one case, it would be difficult to prove that an officer dealing with a provocative crowd that included people who were pelting officers with rocks, bottles, and worse, did not observe an action that occurred next to him/her. Taken as a whole, however, OPD officers consistently avoided commenting about the misbehavior – and sometimes, felonious actions – of their fellow officers. They apparently remembered seeing participants in the demonstrations and riots clearly, but often could not say which officers were next to them even when they viewed videos of the incidents. Particularly troubling were the failures of supervisors to lead their subordinates or to comment on their actions. We found instances where supervisors, even when viewing videos of clearly improper behavior, were evasive and reluctant to comment.

Undoubtedly, it is difficult after standing in a line with fellow officers while confronted by a large hostile and threatening crowd yelling the vilest sort of insults and hurling all manner of dangerous missiles and projectiles, to later be called upon to offer evidence of your fellow officers' misconduct. That is, nevertheless, exactly what we expect of our police. It is, at times, an extraordinarily difficult job. While we are sympathetic to the difficulty of the position these officers were in, their failures to assess, report, or hold OPD members accountable in these circumstances were so systemic – and their widespread disregard for the conduct of police personnel and unwillingness to be forthright regarding it – clearly demonstrates non-compliance with Tasks 33.1 and 33.2.

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%).

As we have reported previously, 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. Since monitoring began under the NSA, OPD has received only three such confidential reports. No new confidential reports were received during the current reporting period.

During this reporting period, OPD hired 65 new employees, including 56 police officer trainees and nine civilian employees. All were trained in confidential reporting procedures as required by Task 33.

Based on our review, OPD is not in Phase 2 compliance with Task 33.

Compliance Status:

Phase 1: In compliance

Phase 2: Not 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 last eight reporting periods, we found the Department in partial compliance with Task 34. We noted that officers entered the required stop data into the Field Based Reporting (FBR) computer system; however, we expressed concerns that the “reason for the stop” was not being clearly identified to support a Constitutional basis and authority for the stops. We also noted that in cases where a stop involved multiple subjects, officers were not collecting and entering stop data on each subject involved.

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. 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 the eighth 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 Contact Cards, and 100 traffic citations. Using the Department’s Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 94% 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.

As we have discussed for several reporting periods, 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 the seventh reporting period, OPD combined the Stop Data Form with the Field Contact Card in order to provide officers with a section upon which they could better articulate the totality of the circumstances focused on the officers’ articulation of the reasonable suspicion that existed *prior* to the detention that justifies the detention. Based on OPD’s continued failure to justify or adequately document the reasons for the stops in the samples we reviewed during the last six reporting periods, we again examined an expanded selection of pedestrian stops during this reporting period, and found that 92% identified the justification/reason for the stop. We will continue to monitor this issue closely.

Since the implementation of the combined Stop Data Form and Field Contact Card during the seventh reporting period, we have been concerned about two ongoing issues that significantly inhibit OPD’s data analysis. First, we found that OPD does not require officers to complete a Stop Data Form for each individual when a group is stopped on the street, which results in a significant distortion in basic stop data. In addition, officers often enter the result or final disposition of the stop as the *reason* for the stop. For example, a *consensual stop*, or a stop based on *reasonable suspicion* that *results* in the discovery of narcotics, is often entered as a stop based on a criminal felony or misdemeanor, which of course, was discovered *after* the stop.

OPD continues to revise a Special Order that is intended to update DGO M-19, *Racial Profiling*. OPD has been working for a least four reporting periods on a simple revision to the policy to correct these identified deficiencies. During the current reporting period and our most recent site visit, we reviewed version 26 of the four-page Special Order, and again provided feedback on the policy’s substance and language. We have also discussed with OPD command staff for at least three reporting periods the need to conduct training on the revised policy to ensure that the data that is collected is accurate and useful for purposes of analysis.

During the current reporting period, OPD began conducting internal audits of stop data forms, which we reviewed and noted were consistent with our findings. We look forward to continuing these reviews in future reporting periods. We again urge OPD to focus its attention on making and implementing applicable policy revisions, and developing necessary training, to ensure that the justification exists prior to the temporary detention of persons; that data is entered on each person who is detained; and that the reason for the encounter is properly identified. OPD represents that the implementation of the revised Special Order will sufficiently address and clarify the collection of data issues; however, OPD 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. During this reporting period, we continued to experiment with the Quicksearch program and found that the stop data is summarized and easy to review. As noted above, in May 2011, OPD merged the Stop Data Form with the Field Contact Card, 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.

During our most recent site visit, we again met with OPD personnel responsible for this analysis, and discussed with them how and why the Department should conduct further analysis of its stop data. During the current reporting period, OPD did not produce any summary of data collection or analysis of data, noting a continuing issue with data collection (forms), specifically regarding the selections options for the reason for the stop. This problem significantly affects the value of the data, which we optimistically believed would be the basis for OPD compliance with this and related Tasks. We have discussed this issue in detail with Department personnel, and are hopeful that OPD will expeditiously implement corrective measures. While the Department continues to contend in recent Court filings that the NSA does not require analysis of the data, we disagree. In fact, the NSA requires the development of a policy that was approved by the previous monitor that governs the collection of stop data. The policy dated November 15, 2004 requires that the Racial Profiling Manager shall produce a written report to the Chief of Police at least twice per year that includes an analysis of the data collected, and appropriate policy recommendations. Based on our knowledge, OPD has not prepared such a report in the last 12 quarters; however, OPD has advised of its intent to analyze the collected data once the data is accurate.

We have a significant interest in OPD resolving the above issue so that it can conduct appropriate analyses and, where necessary, address the outcomes of its analysis to ensure 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 not in compliance with Task 34.3.1.

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 and upcoming technical assistance visits, we will again meet with relevant Department personnel to discuss the Department's progress in this area. We will further discuss the Department's 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. 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 25 use of force reports, including: six Level 2; and 19 Level 3 use of reports covering incidents that occurred between July 1, and September 30, 2012. (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, the use of force reports specifically state this fact (compliance standard: 90%). All 25 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%). During this reporting period, no incidents fell into this category. OPD is in compliance with Task 35.3.

Task 35.4 requires that use of force 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 the 25 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 continue to examine any related audits completed by OIG to ensure that OPD is moving toward the 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. 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 five cases that OPD considered as containing allegations of retaliation during the period of July 1, through September 30, 2012. We found that three of the cases involved citizens who made allegations that an officer(s) “retaliated” against them. 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.

In the two remaining cases, allegations of retaliation were made by members or employees of OPD. Both cases were adequately investigated, and the retaliation allegations were determined to be unfounded.

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 two reporting periods, we found OPD to be in partial Phase 2 compliance – following two reporting periods of non-compliance – as a result of persistent problems in accurately recording the number of arrests made by individual officers. Although the specific problems were identified, the Department “resolved” this issue through a process of entering data by hand. As noted in our previous reports, this temporary fix is significant, but it does not stabilize the system to assure ongoing quality in data collection and storage. The Department is moving toward implementing a new computer system that will address these problems. The new system should support achieving compliance with this requirement.

Discussion:

General Order D-17, Personnel Assessment Program, which incorporates the requirements of Tasks 40 and 41, was recently revised (July 11, 2012), supporting continuation of a finding of Phase 1 compliance with this Task.

As noted in our last report, major data problems were addressed by reverting to entering arrest data manually rather than automatically from the Alameda County data feed. Plans exist to automatically enter data into the County system from electronic reports completed by officers but have not yet been implemented, although that had been expected. When they are, Oakland will join most other police departments in the County that have reliable systems for automatically uploading arrest data. The issue of continuing instability of the system, therefore, remains. OPD again reports that the problem is expected to be resolved soon. We will continue to review the status of change in data collection and storage processes.

Tasks 40 and 41 are divided into 33 practice-related subtasks that include 12 additional lower-level provisions. As with all previous reviews, we requested and received material for each of the Tasks and subtasks. Our data request allowed for the replication and extension of the data analysis reflected in our earlier reports.

PAS records for the quarter of July 1, through September 30, 2012 indicate that data were entered for all of the fields required by Task 40 – including the arrest data. The required data for the quarter included reports of 776 uses of force. This is a decrease of 23% from the last reporting period. The data for the current reporting period indicate that there were 3,516 arrests – down slightly from 3,639 the previous reporting period.

A further breakdown of the types of use of force shows that, for this reporting period, there was one Level 1 (down from three in the last reporting period); five Level 2; and 29 Level 3 uses of force. The table also shows a decrease of 23% in Level 4 uses of force, to a total of 741. This is on top of a 9% reduction in the prior quarter and represents the lowest level since this our tenure began. The data count for the current reporting period and the five prior reporting periods is presented in the table below.

OPD Performance Activity Comparison by Quarter						
Performance Activity	April 1 to June 30 2011	July 1 to September 30 2011	October 1 to December 31 2011	Jan 1 to March 31, 2012	April 1 to June 30, 2012	July 1 to September 30, 2012
Level 1 Uses of Force	4	6	3	4	3	1
Level 2 Uses of Force	21	19	48	28	14	5
Level 3 Uses of Force	37	38	108	50	31	29
Level 4 Uses of Force	1154	1066	797	1034	962	741
Unintentional Firearms Discharge	0	0	0	0	0	0
Sick Leave Hours	9378.39	10406.31	12084.56	12734.56	11229.36	9634.3
Line of Duty Injuries	40	52	43	47	50	46
Narcotics Related Possessory Offenses Arrests	426	482	445	641	452	508
Vehicle Collisions	15	11	7	13	15	15
All Vehicle Pursuits	82	117	89	77	99	83
All Arrest	3374	3470	3402	3656	3649	3516
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	63	61	61	58	72	58
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	17	16	24	38	24	8
Awards	160	70	65	66	99	121
Assignment History	9498	9498	9498	9414	9588	9720
Case Evaluation Reports	629	321	193	209	191	453
Report Review Notices--Positive	2	0	1	6	7	12
Report Review Notices--Negative	0	0	0	1	0	0
Canine Deployments	92	112	71	96	93	63
Financial Claims	0	0	3	0	0	0
Internal Affairs Complaints	286	386	316	404	375	465
In-Custody Injuries	70	56	97	75	39	24
Civil Suits (Tort Claims)	32	7	22	11	7	11
Criminal Cases Dropped	0	0	0	20	87	300
O.C. Checkouts	42	41	34	55	29	15
Officer Involved Shootings	7	4	2	4	3	2
Rank / Class History	2336	2336	2336	2286	2272	2338
Training History	14159	21017	21084	26100	11255	5182
Supervisory Notes	3589	3338	3281	3568	3139	3072
Arrest Made Against OPD	0	0	0	0	2	1

The PAS Administration Unit continues to audit the database to assure its accuracy on a nearly daily basis. That has allowed the Department to identify and rectify data problems on a regular basis. Undoubtedly, those functions will increase in number and complexity as system use expands. The audit function is important since risk management data comes from several sources. The function will be especially important as the Department moves forward with new technology. With that, we will focus attention on assuring that audits take into account the original recording of data in the field and not simply on summary reports moving forward into the database.

OPD continues to pursue significant upgrades, including new software, to its early warning system database. We look forward to this long-awaited progress. We noted in our previous reports that, along with the Department, we recognize that the current approach to data management is not a permanent fix, as it leaves the system fragile and unstable. Additional work needs to be done. OPD is in partial Phase 2 compliance with this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial 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:

The review process remains current after scheduling problems were resolved following problems with the accuracy of recording arrest data. Consideration of supervisor reviews up the chain of command appears to be progressing well. Department command review is moving forward to strengthen the risk management process.

Discussion:

As noted above, OPD revised and issued Departmental General Order D-17, Personnel Assessment Program. The risk management process is operating under the revised policy. Based on the policy and the related training that is ongoing, we again find OPD in continued Phase 1 compliance with this Task.

For this 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 July 1, through September 30, 2012. This included a review of peer-based threshold analyses completed by the PAS Administration Unit and the identification of officers meeting the single-event threshold.

During this reporting period, 64 officers were initially identified as meeting a total of 89 PAS thresholds. In all, 44 of the thresholds exceeded dealt with complaints, and 29 involved use of force. Twenty-seven of those involved Level 4 uses of force. Consistent with established practice, some were not selected for review based on recent review history. That left 49 officers for notification for review. We 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 select OPD units, including IAD and the Training Section.

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 the reports that were completed during the current reporting period. Our examination included reviews of dispositions or follow-up reports on 42 officers. These meetings all document supervisory reviews of officers who have been selected for some form of action as a result of PAS reviews.

Our reviews of the risk management process focus on the selection of officers for review and the process of review by supervisors, and then the consideration of those reviews up the chain of command. For this reporting period, we examined the reports of 71 officers completed and/or signed during the quarter under review. In all, 22, or 31%, of those reviewed resulted in monitoring or intervention. Of those, 10 involved recommendations by the first line supervisor for “no action” were overturned in subsequent reviews up the chain of command.

As we have noted in the past, the important issue here is the degree of tolerance of risk by management in the Department. The reviews up the chain of command and the resulting changes in outcome, and returns for further consideration, suggest a significant effort is being made to reduce risk and hold supervisors, and the officers they review, to high standards. During and after the current site visit we held productive discussions with OPD regarding continuance assessment and reassessment of risk using PAS. The review outcomes discussed here are consistent with those discussions and should also come to be reflected in the first level reviews by supervisors. The work on a new database provides another opportunity for the Department to examine these issues.

For the reporting period ending September 30, 2012, OPD concluded a total of 113 PAS reviews. Reviews are included in the table below only after they are signed off through the level of the PAS Review Panel. The table below tracks the review process and shows that supervisors recommended that no action be taken in 100, or 88%, of the 113 reviews for the current reporting period. The table also shows that commanders disagreed with lower-level recommendations and prompted additional monitoring and supervision in 5% of cases. Deputy Chiefs also disagreed with the commanders’ decisions in almost 10% of their decisions, and the PAS Review Panel suggested revisions in 6% of the findings of the Deputy Chiefs. These figures suggest increased scrutiny of reviews across the levels and show adjustments in level of tolerance over time. This is desirable direction for movement in the risk management process, and is consistent with discussions with OPD. The value of the data in the chart below is in tracking data over time, and using it to increase the rigors of the review process as it serves the goal of risk reduction.

	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
2011																	
January	11	9	82%	0	0%	2	18%	0	0%	10	90%	11	100%	10	90%	0	11
February	9	8	89%	0	0%	1	11%	0	0%	9	100%	9	100%	8	89%	0	5
March	17	10	59%	1	5%	4	24%	2	12%	17	100%	17	100%	17	100%	0	11
April	12	11	92%	0	0%	0	0%	1	8%	12	100%	12	100%	12	100%	0	18
May	10	6	60%	0	0%	2	20%	2	20%	10	100%	10	100%	10	100%	0	7
June	8	6	80%	0	0%	1	10%	1	10%	8	100%	8	100%	8	100%	0	7
July	11	7	63%	0	0%	4	36%	0	0%	9	90%	10	90%	10	100%	0	16
August	2	2	100%	0	0%	0	0%	0	0%	2	100%	2	100%	2	100%	0	23
September	19	13	68%	0	0%	5	26%	1	5%	18	94%	18	94%	19	100%	9	16
October	12	10	83%	0	0%	2	17%	0	0%	11	92%	11	92%	12	100%	0	26
November	16	11	69%	1	1%	2	13%	3	19%	15	94%	10	63%	12	75%	0	47
December	22	16	73%	0	0%	6	27%	0	0%	21	95%	19	86%	22	100%	0	14
Total	149	109		2		29		10		142		137		142		9	201
Average	12.4	9.1	77%	0.2	1%	2.4	0	0.8	6%	11.8	96%	11.4	94%	11.8	96%	0.8	16.8
2012																	
January	7	5	71%	0	0%	2	29%	0	0%	7	100%	7	100%	7	100%	7	14
February	5	4	80%	0	0%	1	20%	0	0%	2	40%	2	40%	2	40%	0	59
March	19	12	63%	0	0%	4	21%	3	16%	18	95%	17	89%	18	95%	33	7
April	25	17	68%	0	0%	5	20%	3	12%	25	100%	25	100%	25	100%	22	41
May	27	17	63%	0	0%	2	7%	0	0%	26	96%	25	92%	27	100%	14	58
June	43	41	95%	0	0%	2	5%	0	0%	41	95%	42	98%	43	100%	15	17
July	66	61	92%	1	5%	3	5%	2	30%	65	98%	65	98%	64	97%	0	18
August	32	29	90%	1	0%	2	6%	0	0%	27	84%	26	81%	27	84%	8	35
September	15	10	67%	1	0.1	3	20%	1	7%	15	100%	11	73%	13	87%	1	16
Total	239	196		3		24		9		226		220		226		100	265
Average	53.1	43.6	80%	0.7	0%	5.3	10%	2.0	10%	50.2	90%	48.9	90%	50.2	90%	22.2	58.9

In the last reporting period, we began reviewing the PAS histories of officers who had either a Level 1 use of force or been arrested for a criminal offense in the past year. For the period under review, only one officer met these criteria for examination by virtue of participation in an officer-involved shooting. The officer exceeded a threshold for complaints, but was not selected for review because most of the relevant activity had been considered at the review prompted by the OIS.

Our most recent report focused on three issues relevant to the functioning of the risk management system: the limited information used in reviews by supervisors; the extent to which reviewed cases resulted in monitoring or intervention; and the effectiveness of risk reduction efforts when officers continued to exceed thresholds. Regarding the first issue, we are aware of the efforts to make the complete use of force reports – rather than just summaries – available to supervisors, and we will continue to review the effectiveness of that process. With regard to the frequency of monitoring or intervention resulting from reviews, this reporting period appears to reflect a positive direction that we will continue to monitor. Finally, we will also return to examining PAS histories of officers identified with major events such as Level 1 uses of force as cases become available.

The direction of the outcome of risk management reviews is encouraging – even though we recognize the need for strengthening the contributions of supervisors to this process. The clarity brought to the process as reviews move up the chain of command is also consistent with the Department’s efforts to improve its use of risk management as part of the routine function of organizational management. Sustaining these efforts and their results will continue to support movement toward compliance with this Task.

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 examine the processes of collecting and storing data, and the use of that data in the PAS review process. We will examine issues relating to the reliability of data with special attention to the audit function. In that area, we will focus on audit capability as it relates to the original data entered rather than simply on summaries sent forward to the PAS database. We also continue to be interested in the Department’s efforts to adopt and implement new technology that may help to stabilize the system. We will continue to focus on our chief concern, the effective use of the risk management system. We will focus attention on: 1) the availability and use of the necessary information in the review process; 2) whether outcomes of the review process, and management oversight of it, are consistent with the goals of risk reduction; and 3) whether the review and intervention processes are effective in identified cases.

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:

The previous monitor found that the Department was in compliance with all of Task 42 except for two areas – namely, the Field Training Officer (FTO) selection process, and ensuring consistency of training in the Academy and Field Training Program (FTP) for trainee officers.

In 2009, the Parties agreed that there would be no active monitoring of this Task, since hiring had ceased and no Academy was planned for the near future. OPD decertified all then-current Field Training Officers. During 2010, OPD recruited and began training 21 new officers and five lateral officers. However, due to the City's budget cuts, OPD laid off all new officers, both trainees and laterals, and 80 full-time OPD officers. At present, the program was reinstated when OPD was able to hire new trainees; we have deferred our compliance finding for Task 42 since the beginning of our tenure.

Discussion:

During the last reporting period, we found that OPD had followed the FTO selection procedures required by the NSA. We deferred our compliance assessment, however, as the first cycle of the Field Training Program was not yet complete; the final focus group required by Task 42 was set for six months after completion of the training program and had not yet been held.

During our most recent site visit, we met with and interviewed the Chief of Police, the Deputy Chief of the Bureau of Field Operations, the Training Section Commander, and the officer who serves as Field Training Coordinator. We also reviewed related memoranda, evaluation forms, and other documentation.

Task 42.1 requires that the Field Training Program Coordinator is a full-time position (compliance standard: Yes/No). A full-time officer is currently assigned to supervise the program. OPD is in compliance with this subtask.

Task 42.2.1 requires that trainee officers rotate to a new Field Training Officer (FTO) and a new geographic area of the City at predetermined intervals (compliance standard: 90%). Trainees are rotated every four weeks to a new assignment and new FTO. OPD is in compliance with this subtask.

Task 42.3.1 requires that incentives for participation as an FTO are increased (compliance standard: Yes/No). Officers who serve as FTOs are paid incentive pay for their service. In addition, the program includes several incentives (e.g., chevrons, administrative days, and priority for selection as training) as incentives for participation. OPD is in compliance with this subtask.

Task 42.4.1 requires that field supervisors and commanders nominate FTO candidates (compliance standard: 90%), and the Chief of Police determines FTO assignments and retention (compliance standard: Yes/No); **Task 42.4.2** requires that FTO candidates complete three years of service before selection, unless authorized by the Chief (compliance standard: Yes/No); **Task 42.4.3** requires that FTO candidates are required to demonstrate commitment to community policing and problem solving and leadership abilities (compliance standard: 95%); **Task 42.4.4**

requires that ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy are primary criteria in the selection of FTOs (compliance standard: 95%); and **Task 42.4.5** requires that candidates with excessive numbers of citizen complaints, sustained investigations or excessive numbers of use of force incidents are barred from selection as an FTO for no less than two years (compliance standard: 95%). Candidates are recommended by their supervisors and commanders; and must have work and performance records as required by this section. FTOs are screened for commitment to community policing and candidates with excessive numbers of complaints and/or sustained instances of uses of force are not selected. The selection of all FTOs to be certified (newly selected FTOs) and those to be recertified (FTO previously selected and decertified when new officers were not being hired) followed the requirements outlined in the NSA. OPD is in compliance with these subtasks.

Task 42.5 requires that FTOs be decertified following sustained disciplinary action for serious misconduct specified (compliance standard: Yes/No). Since the recent selection of FTOs, one officer was decertified when he had a sustained Class I finding. However, after the allegation was determined to be a Class II violation, the officer was recertified as an FTO. We reviewed the case, and found that the recertification of this officer was appropriate. OPD is in compliance with this subtask.

Task 42.6 requires that assignment to a FTO position is contingent upon successful completion of a training course for the position (compliance standard: Yes/No). FTOs are not assigned until they have successfully completed program training. Twenty-three FTOs were trained in November 2012. After successfully completing the training, these officers were nominated and approved by their supervisors and field commanders; however, their complete review, analysis, and recommendation and final approval to serve as FTOs had not been completed at the time of this review. OPD is in compliance with this subtask.

Task 42.7.1 requires that at the end of a complete FTO cycle, trainee officers anonymously evaluate each of their FTOs (compliance standard: 95%); **Task 42.7.2** requires that FTO evaluation forms are reviewed by the Program Coordinator and the FTO's commander and supervisor (compliance standard: 95%); **Task 42.7.3** requires that the Field Training Program Coordinator provides evaluation information to the FTOs as a group, concerning program effectiveness (compliance standard: Yes/No); **Task 42.7.4** requires that each FTO is provided with evaluation information regarding his/her individual performance (compliance standard: Yes/No); and **Task 42.7.5** requires that individual evaluation forms are not made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms (compliance standard: Yes/No). Trainees are evaluated by their FTOs on a daily basis beginning with their second week of field assignment. The patrol sergeant prepares a weekly progress report; and at the end of each four-week cycle, the FTO prepares an end-of-phase report. Trainee officers anonymously evaluate their FTOs at the end of each phase. Trainees are

provided evaluations of their performance throughout the program. FTOs do not receive individual evaluation forms but do receive feedback regarding their performance. The evaluation forms are reviewed by the FTP Coordinator, Commander and Supervisor and filed in the FTO Coordinator's office. OPD is in compliance with these subtasks.

Task 42.8 requires that the Field Training Program Coordinator, or his/her designee, conducts random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers (compliance standard: Yes/No). FTOs complete a daily evaluation of the trainees; and the program coordinator receives, reviews, audits, and files all evaluation forms. OPD is in compliance with this subtask.

Task 42.9 requires that when a trainee officer's FTO is absent, the trainee officer is not assigned to field duties with an "acting" FTO, but is placed with another certified FTO, or assigned to non-field duties, pending the availability of a certified FTO (compliance standard: 95%). If a trainee's FTO is unavailable, the trainee is assigned to another FTO. If no FTO is available, the trainee is assigned to a sergeant or non-patrol assignment. OPD is in compliance with this subtask.

Task 42.10 requires that Field Commanders and FTO Supervisors are provided training (compliance standard: 95%). All sergeants and commanders to whom FTOs would be assigned were trained by the program in both group and individual sessions before they were assigned FTO duties. OPD is in compliance with this subtask.

Task 42.11 requires that focus groups are conducted by the Field Training Program Coordinator and Academy staff with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six months after completion of the field training program (compliance standard: Yes/No). The coordinator conducts focus groups with randomly selected trainees, as required by the NSA. The focus group is designed to elicit issues encountered in the program and ensure that inconsistencies in training are identified and rectified. The results of the focus group are recorded in a memorandum and reviewed by the Chief, the Assistant Chief, the Deputy Chief overseeing the Bureau of Field Operations, the Training Section Commander, and the captain and sergeant who oversee the program. During our August 2012 review, we found that the first two focus groups had been held and documented as required. The final focus group that was set for six months after completion of the FTO training program was held on November 19, 2012. During that focus group session, the trainees found no issues between Academy training and their FTO training. Trainees suggested that the program include more use of force options scenarios; as well as a new scenario where the trainee completes the entire call – including detention, report, stop data, and use of force report. OPD is in compliance with this subtask.

Task 42.12 requires that the results of the focus group sessions be reviewed at a meeting to include the Training Section Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief (compliance standard: Yes/No). The coordinator explores the consistency of field training with that of the Academy at several points during the program. He

interviews every trainee every four weeks before they are rotated to new assignments and new FTOs. He also participates in a monthly staff meeting that discusses the FTO training and trainees and as noted above conducts the focus groups. At the end of the FTO training cycle, a final evaluation report of the trainee's performance is prepared; and trainees rate the FTOs and the program.

Results of the focus group sessions are reviewed at a meeting that included the Training Section Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief. OPD is in compliance with this subtask.

The first cycle of the Field Training Program is complete. OPD has fulfilled the requirements of Task 42, and is in Phase 2 compliance with Task 42.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

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.¹⁸

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

Comments:

Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. This subtask requires OPD to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions. During the last two reporting periods, we found that 97% and 100% of the members and employees in our samples received the required in-service training.

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, OPD is 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). For this reporting period, we reviewed the training records of a stratified random sample of 100 OPD members and employees – including 72 officers, 16 sergeants, four lieutenants, seven dispatchers, and one police evidence technician (PET) – to determine if the

¹⁸ The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

members and employees received adequate training for their positions. Seven of the 100 individuals in our review were excused from training attendance due to medical leaves. Accordingly, our review examined the records of a total of 93 members and employees.

The Department produced a record for each member and employee in our sample. For each, 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 five officers and two sergeants did not receive all the CPT required training, but all seven were excused for medical reasons. All (100%) of the 93 members and employees in our sample who were available to train received appropriate training to their jobs. The following chart reflects the results of our survey.

	Records Reviewed	Medically Excused	Available to Train	Training Received	%
Officers	72	5	67	67	100%
Sergeants	16	2	14	14	100%
Lieutenants	4	0	4	4	100%
Dispatchers	7	0	7	7	100%
Police Evidence Technicians	1	0	9	1	100%
Total	100	7	93	93	100%

During this reporting period, OPD completed and documented in a 24-page memorandum the training needs assessment that we discussed in our last report. The assessment consulted many sources inside and outside the Department, and included: a Department-wide survey; reviews of personnel evaluations, PAS reports, IAD reports and records, use of force review boards (specifically the training points elicited), the Monitor’s quarterly status reports, the Civilian Police Review Board annual report, and the independent Frazier Group report; focus groups of Department personnel; and discussions with community-based organizations.

Specific Departmental weaknesses and needs were highlighted and training designed to address them proposed. A tentative training calendar for 2013 and 2014 was developed, and budget costs for each area of training was proposed.

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:

During the last two reporting periods, we found OPD in compliance with Task 45.

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. 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 queried the IAD database to identify all of the cases with at least one sustained finding that were approved between July 1, through September 30, 2012. This query yielded 62 cases, containing 99 sustained findings. Included in the totals were 26 cases, with 48 sustained findings, related to the events of Occupy Oakland. Our review revealed that one record on the list of sustained findings was duplicative of another record. Thus, the IAD records were accurate and complete for 98 (99%) of the 99 sustained findings on the list for the quarter under review.

OPD is in compliance with Task 45.1.

Task 45.4 requires that discipline be imposed in a manner that is fair and 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 96 (98%) of the 98 sustained findings in which discipline was decided during the reporting period, the discipline fell within the Discipline Matrix in use, or was a reasonable application of discipline justified by an analysis of the facts of the case.

We found several cases in which we believe inconsistency in enforcing OPD rules and policies undermined discipline. In one case, an officer gave a detailed account of a baton strike she delivered to a demonstrator during an Occupy Oakland activity. The investigator noted that in her first interview she had no difficulty remembering the use of force or recounting details of the incident. In her follow-up interview, however, when she was presented with video footage from other officers' PDRDs that showed her striking a citizen walking a bicycle, the officer denied having any memory of that incident, and claimed it was not the same incident she had described in her first interview. Even though the officer claimed she could not remember the incident on the video and investigator commented that the officer was not credible, the finding for truthfulness, for which the sanction is termination, was not sustained.

In another case, the Department interviewed an officer who shared an apartment with an officer under investigation for false reporting of illness or injury. The witness officer was interviewed and ordered not to disclose the fact that he had been interviewed. He violated the direct order and discussed his interview and the inquiry with the officer under investigation. The officer was sustained for Interfering with Investigations for which the Discipline Matrix has only one penalty, termination. Instead, he was given a 30-day suspension with the notations that "the misconduct was not premeditated," that he was "forthright and truthful," "accepts responsibility" for his actions, and was "remorseful." The officer was truthful, and remorseful, and accepted responsibility for his actions, *after* he was caught. He made a conscious decision to violate a direct order and OPD did not have the fortitude to apply the penalty it had decided in the abstract would be appropriate for such a violation. Such a decision conveys the message that the violation was not important and undermines discipline.

A third case involved an OPD officer who was involved in an automobile accident while off duty in a nearby municipality. The officer had a blood alcohol level of .14 (the legal limit is .08); lied to the investigating officers telling them he had just worked a "double back" when he had not; failed to respond to a traffic citation claiming he did not receive it; and had a gun in his car at the time he was intoxicated. The finding for being under the influence while operating a motor vehicle was sustained, but the other violations were not sustained. His lie that he had worked a "double back" was not sustained because he was intoxicated, and he claimed he could not remember it. His carrying a gun while consuming alcohol was not sustained because he had the gun under the passenger seat in spite of the fact that the penal code definition of "carrying a firearm" includes possessing it in a car. His failure to respond to the citation was not sustained because he claimed he had moved to his mother's house and had not received it. A penalty of a 10-day suspension was recommended. Perhaps not surprisingly, the same officer was terminated for a later case in which he beat a handcuffed prisoner.

During the period of July 1, through September 30, 2012, there were six IAD cases in which discipline of a one-day suspension or greater was recommended. In two of the six cases, the employee waived the right to a hearing and accepted the punishment as it had been imposed. Four cases were afforded Skelly hearings as requested by employees. In all four, the discipline was upheld and it fell within the Discipline Matrix. OPD is in Phase 2 compliance with Task 45.

Compliance Status:

Phase 1: In compliance

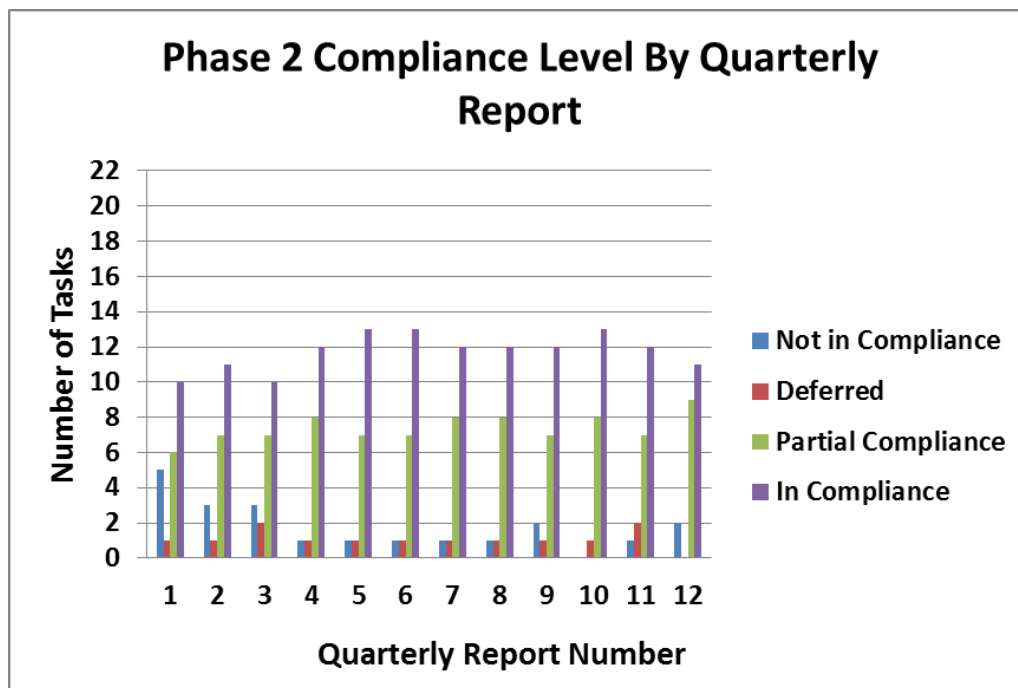
Phase 2: In compliance

Section Three

Conclusion: Critical Issues

This is our twelfth 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. It shows that overall compliance has decreased from its highest level which was reestablished two quarters prior to this reporting period, after falling from that same level a year before. In all, 50%, or 11, of the Tasks are in Phase 2 compliance – two Tasks below the previously achieved zenith when 13, or nearly 60%, were in compliance.

The overall compliance changes include two Tasks that have moved from “in compliance” to “not in compliance” (Tasks 16 and 33); and one Task (Task 2) that was deferred during the last reporting period, and is now “not in compliance.” Task 42, which addresses field training, had been deferred, and is now “in compliance.” Task 41, which addresses PAS, fell out of compliance in recent reporting periods but is now in partial compliance. As noted above, these changes still leave overall compliance lower by one Task than in our last report.

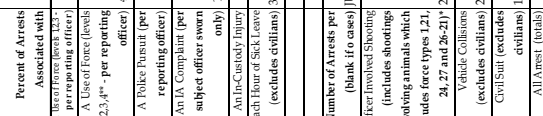
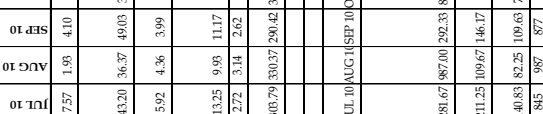
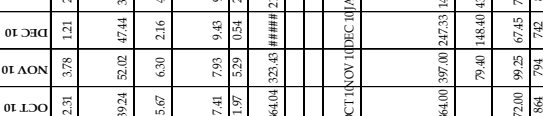
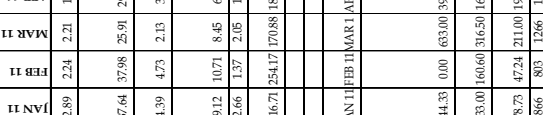
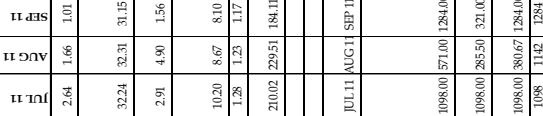
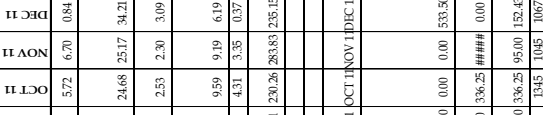
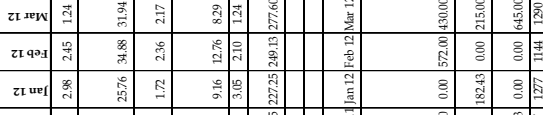
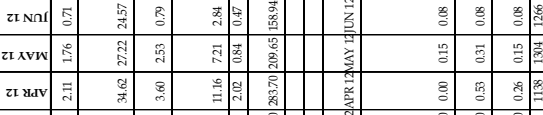
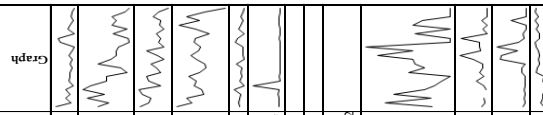


The decline of compliance by one Task – and the increase in Tasks now not in compliance – represents a significant and troubling decline. With regard to Task 16, the problem stems from a concern over supervisory accountability in use of forces cases and, in particular, with OPD’s failure to critically analyze that issue as it reviews cases. This issue has not been a concern since our early quarterly reports, and the Department should work to assure a return to compliance. The situation is similar with regard to the decline in compliance level for Task 33. That too had been in compliance for a significant period of time. Also, like Task 16, it addresses professional responsibility – in this case, the responsibility of officers to report the misconduct of their peers. That responsibility is, of course, a significant but important burden in the profession, and one critical to establishing and maintaining the proper culture within any police department. Even though these compliance reversals are recent, the issues underlying them have been one of great importance since the inception of the NSA.

Appendix A

Cumulative Key Indicator Data

		PAS ADMIN UNIT STATISTICAL COMPARISON																								
		Oakland Police Department						Key Indicator By Month																		
		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	AUG 11	SEP 11	OCT 11	NOV 11	DEC 11	JAN 12	FEB 12	MAR 12	APR 12	MAY 12	JUN 12	
Percent of Arrests Associated with 1,2,3,4** - per reporting officer	757	1.95	4.10	2.31	3.78	1.21	2.89	2.24	2.21	1.60	2.35	1.66	2.64	1.66	2.64	1.66	1.01	5.72	6.70	0.84	2.98	2.45	1.24	2.11	1.76	0.71
A Use of Force (levels 1,2,3,4** - per reporting officer)	43,320	36,37	49,03	39,24	52,02	47,44	37,64	37,98	25,91	29,34	42,82	35,61	32,24	32,31	31,15	24,68	25,17	34,21	25,76	34,08	31,94	34,62	27,22	24,57		
A Police Pursuit (per reporting officer)	592	4.36	3.99	5.67	6.30	2.16	4.39	4.73	2.13	3.04	4.04	1.57	2.91	4.90	1.56	2.53	2.30	3.09	1.72	2.36	2.17	3.60	2.53			
An IA Complaint (per subject officer sworn only)	13,25	9.93	11.17	7.41	7.93	9.43	9.12	10.71	8.45	6.91	7.14	9.01	10.20	8.67	8.10	9.59	9.19	6.19	9.16	12.76	8.29	11.16	7.21	2.84		
An In-Custody Injury	272	3.14	2.62	1.97	5.29	0.54	2.66	1.37	2.05	1.60	4.04	0.32	1.28	1.23	1.17	4.31	3.35	0.37	3.05	2.10	1.24	2.02	0.84	0.47		
Each Hour of Sick Leave (excludes civilians)	303,79	330,37	290,42	364,04	323,43	###	216,71	170,88	180,53	226,38	221,01	210,02	229,51	184,11	230,26	283,83	235,15	227,25	249,13	277,60	283,70	209,65	158,94			
Number of Arrests per (blank, if no cases)																										
Officer Involved Shootings (includes shootings involving animals which includes force types 1,2, 4, 27 and 28-21)	281,67	987,00	292,33	864,00	397,00	247,33	144,33	0.00	633,00	395,33	532,50	571,50	1098,00	571,00	1284,00	0.00	0.00	535,50	0.00	572,00	430,00	0.00	0.15	0.08		
Vehicle Collisions (excludes civilians)	211,25	109,67	146,17	79,40	148,40	433,00	160,60	316,50	169,43	177,50	371,50	1098,00	285,50	321,00	336,25	###	0.00	182,43	0.00	215,00	0.33	0.31				
Civil Suit (excludes civilians)	140,83	82,25	109,63	72,00	99,25	67,45	78,73	47,24	211,00	197,67	56,05	1143,00	1098,00	300,67	1284,00	336,25	95,00	152,43	0.00	645,00	0.26	0.15	0.08			
All Arrest (totals)	845	987	877	864	794	742	866	803	1266	1186	1065	1143	1098	1142	1284	1045	1067	1277	1144	1280	1138	1304	1266			



Appendix B

Acronyms

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

Acronym	Definition
ACSO	Alameda County Sheriff's Office
AWS	Automated Warrant System
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
CORPUS	Criminal Oriented Records Production Unified System
CPRB	Citizens' Police Review Board
CPT	Continued Professional Training
CRIMS	Consolidated Records Information Management System
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
LEWI	Law Enforcement Warrants Inquiry 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
PDRD	Portable Digital Recording Device
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