

Oakland Police Department



Negotiated Settlement Agreement

15th Semi-Annual Report

February 1 – July 31, 2010



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A handwritten signature in black ink, appearing to be "A. W. Batts".

for

Anthony W. Batts
Chief of Police

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INTRODUCTION

Since January 22, 2003, the City of Oakland and the Oakland Police Department have been implementing the reforms outlined in Negotiated Settlement Agreement¹ (“the Agreement”) with the goal of transforming the Department into a model agency with superior police practices. The Department has worked hard to implement such practices in the areas of supervision, accountability, police intervention programs, use of force, and misconduct investigations.

Soon after the Agreement was made, U.S. District Court Judge Thelton Henderson (Northern District of California) approved appointment of an Independent Monitoring Team to monitor compliance with the Negotiated Settlement Agreement. The original team served for seven years, completing its tenure in January 2010, when the Agreement expired.

A two-year Memorandum of Understanding has now replaced the Agreement. This MOU requires continued, but more narrowly focused, oversight. The original Agreement reform provisions were separated into 52 tasks for implementation, delegation, and tracking purposes (only 51 were assessed for actual practice compliance – the fifty-second task dealt with contractual housekeeping provisions). The MOU includes 22 of the 51 tasks that were not yet in full compliance and/or considered to be the most critical tasks when the Agreement expired. However, to assure that it maintains its hard-won success, the Department continues to review all 51 tasks.

As of late January 2010, the Department has been paired with a new monitor (Police Performance Solutions, LLC), led by Chief Robert Warshaw. The new monitoring team, PPS-IMT, consists of experts in law enforcement, police monitoring, auditing and evaluation, intergovernmental relations, civil rights compliance, constitutional considerations, and best practices in contemporary policing. It assesses compliance with each of the 22 MOU tasks and provides quarterly summaries of its findings.

In this fifteenth semi-annual report, the Office of the Inspector General (OIG) summarizes the Department’s compliance status and efforts to implement provisions of the MOU for the period from February 1 through July 31, 2010. During this time period, PPS-IMT released its first and second quarterly reports based on site visits made February 8 – 12 and May 24 – 28, 2010, respectively.

Over the last seven years, the Department has changed the way it does business, resulting in much improved training, supervision, self-monitoring, and accountability. It has put into practice or revised policies and procedures to reflect current industry standards. There continue to be

¹ An agreement entered into between the City and Plaintiffs in the Delphine Allen, et al. v. City of Oakland, et al., consolidated case number C00-4599 TEH (JL) otherwise known as the “Riders” cases, Section XIII. A. 1. The mutually agreed-upon court-approved Negotiated Settlement Agreement resulted from a City of Oakland decision to resolve litigation brought by multiple plaintiffs seeking both monetary compensation and reforms within the Department as a result of this case.

areas in need of improvement and the Department will work closely with the new monitor to ensure meaningful and lasting change.

COMPLIANCE PROGRESS OVERVIEW

For implementation, delegation, and tracking purposes, Agreement reform provisions were separated into 52 separate tasks. The MOU is now focused on the 22 tasks that were not yet in full compliance and/or were considered to be the most critical tasks at the completion of the Agreement in January 2010.

Only PPS-IMT can deem the Department in compliance, and only after conducting an audit of each task. In order to achieve full compliance, three stages of compliance must be satisfied: policy, training, and actual practice (“implementation”). Policy and training compliance were achieved for all NSA tasks prior to the MOU.

Implementation progress has been made. In its first quarterly report, the PPS-IMT found 10 tasks in compliance, 6 tasks in partial compliance, and 5 tasks not in compliance. It deferred assessment of one task (Task 42). Its second quarterly report found 11 tasks in compliance, 7 tasks in partial compliance, and 3 tasks not in compliance (assessment of Task 42 was still deferred). Over the course of two quarters, four tasks came into compliance, sixteen tasks remained unchanged, and two tasks dropped out of compliance.

Implementation progress as of August 5, 2010 (date of publication of the *Second Quarterly Report of the Independent Monitor for the Oakland Police Department*) is summarized in Table 1 below. Table 2 (following page) lists the 22 tasks by number and title and summarizes their state of compliance.

Table 1. Task Compliance Status.

Task Status	Tasks as of August 5, 2010
Tasks in Policy Compliance	22 of 22
Tasks in Training Compliance	22 of 22
Tasks in Compliance, Implementation	11 of 22
Tasks in Partial Compliance, Implementation	7 of 22
Tasks Not in Compliance, Implementation	3 of 22
Deferred Tasks*	1 of 22

*Note: The “Deferred” category is used in circumstances where PPS-IMT is unable to fully determine the compliance status of a task due to lack of data or incomplete data.

Table 2. State of Compliance (as of August 5, 2010).

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 (4.7 and 4.10 only)					
Task 5:	Complaint Procedures for IAD					
Task 6:	Refusal to Accept or Refer Citizen Complaints					
Task 7:	Methods for Receiving Citizen Complaints (7.3 only)					
Task 16:	Supporting IAD Process – Supervisor/Managerial Accountability					
Task 18:	Approval of Field – Arrest by Supervisor (18.2.2 only)					
Task 20:	Span of Control for Supervisors					
Task 24:	Use of Force Reporting Policy					
Task 25:	Use of Force Investigations and Report Responsibility					
Task 26:	Use of Force Review Board (UFRB)					
Task 30:	Firearms Discharge Board of Review					
Task 33:	Reporting Misconduct					
Task 34:	Vehicle Stops, Field Investigation and Detentions					
Task 35:	Use of Force Reports – Witness Identification					
Task 37:	Internal Investigations – Retaliation Against Witnesses					
Task 40:	Personnel Assessment System (PAS) – Purpose					
Task 41:	Use of Personnel Assessment System (PAS)					
Task 42:	Field Training Program					
Task 43:	Academy and In-Service Training (43.1.1 only)					
Task 45:	Consistency of Discipline Policy (45.1 and 45.4 only)					
Total Tasks		22	11	7	3	1

OFFICE OF INSPECTOR GENERAL AUDITS AND REVIEWS

During this reporting period, the Audit Unit completed six audits/reviews. The audits/reviews conducted were of:

1. Class I Investigations by IAD – Task 8.4
2. Contact of Citizen Complainant – Task 9
3. Disclosure of Possible Investigator Bias – Task 12
4. OPD/DA Liaison Commander – Task 22
5. Transporting Detainees and Citizens – Task 36
6. Consistency of Discipline – Task 45.4

These audits/reviews were conducted to identify deficiencies that could impact compliance with the Agreement and Departmental policy, as well as inefficiencies in practice.

CLASS I INVESTIGATIONS BY IAD – TASK 8.4

On February 1, 2010, OIG initiated a review of Task 8.4, which requires that, unless otherwise directed by the Chief of Police, Class I investigations shall be investigated by Internal Affairs Division investigators.

The audit team reviewed 112 Class I investigations completed between November 1, 2009, and January 31, 2010, to determine if the investigations were assigned to IAD investigators or, if assigned to Division-level investigators, were done so at the direction of the Chief of Police or his designee. The team found that the Department properly assigned 107 (95%) of these investigations, exceeding the compliance standard of 90%.

Of the 112 Class I investigations:

- Seventy-seven were investigated by IAD investigators.
- Thirty-five were assigned as Division-level investigations.

Thirty of the Division-level investigations contained documentation showing that the Chief of Police or his designee directed the investigation be assigned at that level. Documentation for these investigations was very clear, consisting of either an entry in the Chronological Activity Log or an e-mail containing a summary of the case sent to the Chief of Police or his designee. The approval response and a copy of the e-mail was placed in the file.

In the past three reviews of Task 8.4 by OIG and the prior monitor, 154 (93%) of the 164 Class I investigations examined met the standard for this task. These reviews document that the Department has continued to improve, meeting and maintaining Task 8.4 compliance standards for more than a year.

CONTACT OF CITIZEN COMPLAINANT – TASK 9

Task 9 requires that citizen complainants be contacted as soon as possible by IAD or the investigator assigned to the investigation to determine the nature, scope, and severity of the complaint, as well as to identify potential witnesses and/or evidence as quickly as possible.

On February 1, 2010, OIG initiated a review of Task 9, examining internal investigations of personnel (including investigator reports, notes, Chronological Activity Logs, audio recordings, and other supporting documents). A random sample was chosen from the 226 investigations with formal findings completed between November 1, 2009, and January 31, 2010. The review found that the Department met the required compliance standard of 90%. In 61 of the 68 investigations reviewed, an assigned investigator contacted the complainant as soon as possible.

OIG considered the totality of circumstances to determine whether the contact was “as soon as possible.” It was anticipated that in some instances the information obtained during the initial contact by a Field Supervisor or Intake Officer was sufficient to comply with this task, while in others it was necessary for IAD to conduct an interview to obtain the information required “as soon as possible.”

In the past four reviews of Task 9 by OIG and the prior monitor², 165 (89%) of the 185 investigations examined met the standard for this task. These reviews, combined with current findings, demonstrate the Department has continued to improve, meeting and maintaining the compliance standards of Task 9 for more than a year.

DISCLOSURE OF POSSIBLE INVESTIGATOR BIAS – TASK 12

Task 12 requires that investigators disclose relationships that might lead to a perception of bias regarding the subject of any investigation, including family relationships, outside business relationships, romantic relationships, and close work or personal friendships.

On February 1, 2010, OIG initiated an audit of Task 12. From a total of 226 investigations completed between November 1, 2009, and January 31, 2010, OIG selected an audit sample of 68 internal investigations in which citizens complained about personnel. For this review, only completed investigations resulting in formal findings (i.e., exonerated, unfounded, not sustained, or sustained) were used. The Department was found in compliance with Departmental policy.

Task 12.1 requires that investigators disclose relationships that might lead to perception of bias. Auditors looked for any indication that investigators completed and signed a recusal form as required by policy (DGO M-3) and that the recusal forms were reviewed and endorsed by their supervisors prior to initiation of the investigation. For purposes of this review, the audit team did not consider recusal forms completed and signed by IAD intake officers unless the officer took steps beyond obtaining an intake statement and the gathering of information for the creation of

² OIG reviews published September 2007 (36 of 40 – 90%), December 2008 (40 of 45 – 89%), and March 2010 (61 of 68 – 90%). IMT review published February 2009 (28 of 32 – 88%).

the control file. (This is in contrast with the prior monitor's January 2010 review, in which all recusal forms were considered for review.) The decision not to include recusal forms was based on Departmental policy. Sixty-three (93%) of the 68 IAD investigations audited met the standard for this task.

Task 12.2 requires involved investigators to recuse themselves from an investigation where it is clear that the nature of the relationship could be perceived to compromise the investigative process. The auditor identified one applicable case in which the investigator made a written declaration of friendship with the complainant. In this case, the investigator's request to be recused was denied. The investigator's action was in accordance with policy and determined to be in compliance with Agreement standards for this task.

Task 12.3 requires that in more ambiguous situations, investigators involved make full disclosure, in writing, to their supervisors. Two applicable cases were found; in both cases, disclosure was made in writing. The investigators' written disclosures of relationship and involvement on the respective recusal forms satisfied Department policy and were determined to be in compliance with Agreement standards for this task.

OPD/DA LIAISON COMMANDER – TASK 22

Task 22 requires the Department to develop and implement a management-level liaison (MLL) to the courts, the District Attorney's Office, and the Public Defender's Office. The Commander of the Criminal Investigation Division serves as the Department's MLL, ensuring that criminal cases which are lost, dropped, or dismissed are tracked and reported to the IAD Commander and the subject officer's unit commander. The MLL also ensures that any misconduct that comes to his attention is reported to IAD, in accordance with the provisions of DGO M-3, *Complaints Against Department Personnel or Procedures*.

On June 7, 2010, OIG initiated an audit of the daily District Attorney's *No Complaint List*³ to ensure that the Department is adhering to DGO A-18, *Management-Level Liaison*. The audit specifically examined the DA's *No Complaint Lists* to ensure the MLL is identifying any potential misconduct by officers.

For each listed case on the *No Complaint List*, a disposition code (documenting the reason why a criminal case was not filed) is provided. The MLL checked each list for *T3, Inadmissible Search and Seizure*, which indicates that an officer may have improperly performed his/her duties.

For purposes of this audit, the auditor examined all daily *No Complaint Lists* from January 2, 2009 to May 28, 2010, to identify any cases related to an inadmissible search and seizure. Only one complaint was denied as a result of an inadmissible search and seizure. A review of the corresponding report and e-mails between the MLL, IAD, and the DA indicate that the search and seizure was the result of an unlawful detention.

³ The DA generates a daily list of cases in which a criminal complaint was not filed, referred to in this memo as the *No Complaint List*, and forwards it to the MLL for review.

Review of the documentation found that the officer had reason to contact the suspects, but did not have grounds to detain them. Evidence was recovered from the detention and the suspect was subsequently arrested. Documentation showed that recovery of the evidence was technically unlawful. However, the MLL's review and discussions with IAD and the DA's office regarding the report found the officer's actions to be unintentional, not rising to a level of misconduct requiring an Internal Affairs investigation.

TRANSPORTING DETAINEES AND CITIZENS – TASK 36

On January 29, 2010, OIG initiated an audit of Task 36, which requires members and employees to log in and out of the radio during transports and to report six required elements (time, mileage, location, purpose, gender, and member identification) when they do so. The audit, published April 30, 2010, found that the Department is complying with policy and has met and maintained the compliance standards of Task 36 for a year.

The audit team reviewed Computer Aided Dispatch (CAD) purges for incidents involving Departmental transports during the period of December 15 – 31, 2009. To determine compliance with Task 36.1, the audit team reviewed the radio purge for each arrest. Overall rate of compliance for Task 36.2 was determined by averaging reporting rates for each required element (time, mileage, location, purpose, gender, and member identification).

The Criminal Records Information Management System (CRIMS) and the Youth and Family Services Division's 24-hour Intake Log identified a total of 759 adult and 38 juvenile arrests during the audit period. Since the juvenile arrest population was relatively low, the entire population was selected for review, less patrol wagon transports and instances in which the juvenile was cited and released (leaving a total number of juvenile arrests at 30).

A random sample of 85 arrests was chosen from the 759 adult arrests. In total, 115 arrests were reviewed and 112 (97%) recorded transporting members properly logging in and out. Overall compliance rate at which required elements were included on CAD purges was 98%. This rate was determined by taking the average compliance rate of all required elements.

CONSISTENCY OF DISCIPLINE – TASK 45.4

On October 8, 2009, OIG initiated a review of Task 45.4, which requires that discipline be applied fairly and consistently. The audit, published March 18, 2010, found the Department, at 92% compliance, not yet meeting the 95% compliance standard for this task.

The audit team reviewed all sustained investigations completed between January 1, 2008, and September 30, 2009. The review did not include disciplinary decisions regarding preventable vehicle accidents because the prior monitor's last audit (published in July 2009) found a 99% rate of compliance in these cases.

The audit covered 85 investigations, resulting in 114 disciplinary decisions. Each case was reviewed to ensure that the facts of the alleged misconduct were consistent with the selected MOR violation. The case review included, but was not limited to, a review of the Report of Investigation, Discipline Recommendation Letter, subject officer's compliant history, Skelly

hearing memo, Executive Force Review Board report (when applicable), Use of Force Board report (when applicable), Accident Hearing Board report (when applicable), other supporting documentation, and in some cases audio recordings.

Of the 114 disciplinary decisions reviewed, 105 (92%) met the standard for this task. The nine disciplinary decisions found out of compliance involved discipline penalties that fell below the presumptive range in the discipline matrix with insufficient or no documented explanation. In each of the nine decisions that did not meet the standard for this task, discipline was reduced from the original recommendation made by the Discipline Officer and approved by the Chief of Police.