



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

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Section One

Introduction

This is the first quarterly report of the newly appointed Monitor of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* in the United States District Court for the Northern District of California.

In January of this year, under the direction of Judge Thelton E. Henderson, the Parties agreed to my appointment as Monitor of the Oakland Police Department (OPD). In this capacity, I oversee the monitoring process that began in 2003 and produced 14 status reports by the first Independent Monitoring Team (IMT). To complete this work, I have assembled a team with exceptional law enforcement, research, evaluation, and consulting experience. The full Monitoring Team conducted its first quarterly site visit from February 8, through February 12, 2010, to evaluate the Department's progress during the three-month period of October 1, through December 31, 2009.

As we moved forward with our analysis, we developed a deep appreciation for the work of the prior monitoring team. Our work benefitted substantially from the high quality of work the team performed. We are particularly grateful to Robin Busch-Wheaton, who has joined our effort after extensive service with the previous monitor. We are also appreciative of the efforts put forth by the Office of the Inspector General (OIG) of OPD and by the many officers, civilians, supervisors, and command personnel who have contributed to our understanding of the Department as we completed the work associated with this report. The City's new Police Chief, Anthony Batts, has demonstrated the willingness and resolve to lead the Department in the right direction. His regular updates to me have been a useful exchange. His role will clearly determine the outcome of this process and should lay the foundation for the future of policing in the City of Oakland.

Under the previous monitoring team, OPD made significant progress toward compliance with the 51 Tasks of the NSA. By the end of its seven-year tenure, the previous monitor concluded that the Department was in full compliance with 32 of the 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.

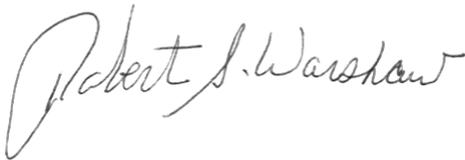
The approach taken by our team differs somewhat from that of the previous monitor. The IMT reviewed only a subset of Tasks in each of its reports. Our goal in this report, and those that follow, will be to assess compliance on the 22 remaining Tasks. Although in later reports we may focus special attention on particular areas of the Agreement, we anticipate regularly reviewing compliance with each remaining Task every quarter.

The change in monitorship is not a simple substitution of personnel. It offers more than just a chance to “check off” the completion of additional steps or subtasks. It presents an opportunity to consider these reforms more broadly, as part of the Oakland Police Department’s commitment to effective, just, and high-quality policing.

I would also like to recognize the role of the Plaintiffs’ Attorneys in this matter: Mr. James Chanin and Mr. John Burris. While this is considered to be an adversarial process, I am confident that they are committed to appropriate and meaningful reform, and are equally committed to the best interests of the Oakland community and the men and women of the Oakland Police Department.

Our role as a monitoring team is not simply to wade through the particulars of the NSA. As we build on the work of the previous monitor, we will engage OPD in a critical self-examination of its policies, procedures, and operations, to consider how the NSA-required reforms can be institutionalized. We will work with the Department to examine the resiliency of data management systems and not just their current utility. We will work with the Department to strengthen its policy development, training, and staff development to preserve the progress the Department makes under the NSA. We will challenge OPD’s leadership to think broadly and creatively. None of this suggests that we will wander beyond the prescriptions agreed to by the Parties, but rather, that we look forward to helping OPD to understand the value of these prescriptions beyond the boundaries of the compliance process. The Department is in its eighth year of being monitored and its aggregate progress to date is a blemish that it must quickly and professionally overcome.

The independent monitorship of this NSA is a complex process involving complex issues. The delivery of police services to a community, and the simultaneous retention of the public trust, are perhaps the most fundamental and sacred roles of government. In the course of our responsibilities, we shall endeavor at all times to fulfill our mandate in a manner consistent with these principles.

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

Monitor

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 status of the requirement under the previous monitor, a discussion regarding our assessments and the current status of compliance, a summary notation of Phase 1 and Phase 2 compliance (see below), and our planned next steps in each area.

The primary responsibility of the Monitor is to determine regularly the status of the Oakland Police Department's compliance with the requirements of the 22 active Tasks. Our experience in previous monitorships reflects our commitment to the collection and analyses of data and to the reasonable interpretation of the requirements specified in the underlying agreement, or NSA. To accomplish this, the Monitoring Team makes quarterly visits to Oakland to work with OIG and other Department personnel – at the Police Department, in the streets, or at the office that we occupy when on site in the City. The Team also uses these visits to collect and evaluate materials, prepare for work to be conducted between visits, and inform the Parties and the Court with status information when meetings or hearings for that purpose are convened. Monitoring Team members also interview key participants in the compliance process and observe Departmental practices. Throughout the process, we review Department policies and procedures, and collect and analyze data using appropriate sampling and analytic procedures. The results of the compliance examination shall be reported quarterly to the Court and the Parties.

Our Team will determine compliance through an examination of policies and implementation of practices that are relevant to each of the active Tasks. Compliance is measured by first determining if a Departmental policy or set of procedures has been established to support each requirement. Having determined that an appropriate policy has been established, we then determine if that policy has been effectively implemented.

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

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

- **In Compliance:** This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).
- **Partial Compliance:** This is reported when at least one, but not all, requirements of a Task have achieved compliance, showing progress towards full compliance. Tasks will

remain in partial compliance as long as the Monitor determines 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 those 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 conclusions based on analyses of cases, a minimal standard must be met. These compliance standards have been agreed to by the Parties, and range from 85% to 95% to a Yes/No standard.

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

Our compliance assessment methodology directs the Monitoring Team in its 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.

It should also be noted that the differences in methodologies between our Team and the previous monitor have important implications for the results of the analyses; they make it imprudent to immediately draw direct comparisons regarding overall compliance levels. As we have made no comparisons between the two outcome summaries, we suggest that readers of this report assess our findings independently of previous evaluations. The differences in overall findings thus can represent not only differences in our independent judgments, but also important differences in our assessment methodologies.

Executive Summary

This is the first report of the newly appointed 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 February 8, through February 12, 2010, the Monitoring Team conducted its first site visit. At that time, we met with several Department officials, including the Chief and Assistant Chief of Police and each of the three Deputy Chiefs; as well as officials from the Office of Inspector General (OIG), Bureau of Field Operations (BFO), Bureau of Investigations (BOI), Bureau of Services (BOS), Internal Affairs Division (IAD), and Training Division; OPD officers, managers, supervisors, and commanders, including sergeants, lieutenants, and captains. We also conferred with the Plaintiffs' Attorneys, City Administrator, and the Office of the City Attorney (OCA). During and since the time of our site visit, we attended Department meetings and technical demonstrations; reviewed Departmental policies; conducted interviews and made observations in the field; and analyzed OPD documents and files, including misconduct investigations, use of force reports, police reports, stop data forms, and other documentation.

As noted in the Introduction, we report the degree of compliance with the NSA Task requirements on two levels. Compliance with policy and training requirements is known as "Phase 1 Compliance." The previous monitor found the Department to have met its Phase 1 requirements. We concur. We will, however, revisit Phase 1 issues if circumstances are such that the Department changes or significantly revises policies relevant to the issues addressed by the Agreement.

Implementation-level, or practice, compliance is reported as "Phase 2 Compliance." To achieve full compliance requires both Phase 1 and Phase 2 compliance. Finally, when there is insufficient data or other reasonable exigencies, we may defer a determination through a finding of "Deferred." Based on our review, we found the Department in Phase 1 compliance with all 22 (100%) of the active Tasks. We found the Department in Phase 1 and Phase 2 compliance (full compliance) with ten (45%) of the 22 active Tasks. We found the Department in partial compliance with six (27%) Tasks, and we deferred judgment on one (5%) Task. We found the Department not in compliance with five (23%) Tasks.

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Task	Phase 1: Policy and Training	Phase 2: Implementation			
	In Compliance	In Compliance	Partial Compliance	Not in Compliance	Deferred
Task 2: Timeliness Standards and Compliance with IAD Investigations	√	√			
Task 3: IAD Integrity Tests	√		√		
Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process	√	√			
Task 5: Complaint Procedures for IAD	√		√		
Task 6: Refusal to Accept or Refer Citizen Complaints	√	√			
Task 7: Methods for Receiving Citizen Complaints	√			√	
Task 16: Supporting IAD Process-Supervisor/Managerial Accountability	√			√	
Task 18: Approval of Field-Arrest by Supervisor	√	√			
Task 20: Span of Control for Supervisors	√		√		
Task 24: Use of Force Reporting Policy	√		√		
Task 25: Use of Force Investigations and Report Responsibility	√		√		
Task 26: Use of Force Review Board (UFRB)	√		√		
Task 30: Firearms Discharge Board of Review	√	√			
Task 33: Reporting Misconduct	√			√	
Task 34: Vehicle Stops, Field Investigation and Detentions	√			√	
Task 35: Use of Force Reports-Witness Identification	√	√			
Task 37: Internal Investigations-Retaliation Against Witnesses	√	√			
Task 40: Personnel Assessment System (PAS)-Purpose	√	√			
Task 41: Use of Personnel Assessment System (PAS)	√	√			
Task 42: Field Training Program	√				√
Task 43: Academy and In-Service Training	√	√			
Task 45: Consistency of Discipline Policy	√			√	
<i>Total Tasks</i>	22	10	6	5	1

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

- a. The Department needs to move away from doing what is needed for the sake of meeting NSA compliance requirements toward incorporating what is needed for the Department's own investment in quality policing.
- b. There are critical data management issues throughout the Department. Databases that are fundamental to the Department's management and record-keeping are, in several cases, maintained by one or two dedicated and knowledgeable individuals. There are few or no contingencies for addressing data issues should those individuals not be available. The Department needs to institutionalize the management of these systems.
- c. The Department's approach to data management also means, in some cases, that data is not regularly cleaned, reviewed, or tested for errors, and thus may be unreliable.
- d. Requirements regarding the Department's collection of "stop" data are a critical component of the NSA. Yet there is no adequate protocol for their collection and evaluation, which nearly nullifies their value to the Department and the City of Oakland at large.
- e. Although California Police Officer Standards and Training (POST) requirements may be met, the Department relies heavily on roll-call and on-line training, which is not evaluated and may provide inadequate exposure to complex issues and insufficient preparation for increasing contributions or advancement in the Department.
- f. Our reviews of misconduct complaints and use of force investigations suggest that the NSA compliance process may have resulted in heightened concerns over relatively minor matters, which are then extensively documented. At the same time, investigations of incidents that justify more extensive investigations sometimes lack sufficient detail. The Department needs to reconsider these priorities in light of sound policing principles and not simply compliance-driven reporting practices.

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:

The previous monitor found OPD in compliance with these requirements. 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. The previous monitor's most recent assessment of this Task found that 90% of Class I and 96% of Class II investigations met this standard, and that the Department completed the disciplinary process within the required 30-day time period 98% of the time. The previous monitor also noted that IAD and OPD command staff regularly monitored compliance with timeliness standards, and that Internal Affairs Division (IAD) staffing was adjusted to maintain timeliness standards when IAD experiences an unusual proliferation of cases and/or workload.

Discussion:

Task 2.1 requires that internal investigations (IAD and Division-level), including review, approval, findings and discipline, are completed in compliance with the timeliness standards developed by OPD. 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 October 1 and December 31, 2009, and calculated the number of days between the complaint date and the approval date for each case.¹ We excluded from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or service

¹ It is possible that extensions were granted in some of those cases that, based on these comparisons, appear to be out of compliance. Because of the high compliance rate, we did not review investigation extensions.

complaints, and those that did not involve Manual of Rules (MOR) violations. We segregated the remaining cases into Class I or Class II categories. If a case had at least one alleged Class I violation, it was classified as Class I.

Of the 121 Class I cases reviewed, 112, or 93%, were in compliance with established timelines. Of the 145 Class II cases reviewed, 141, or 97%, were in compliance with established timelines. Of the 16 cases that involved at least one sustained finding, 15, or 94%, were in compliance with established discipline timelines.² OPD is in compliance with Task 2.1.

Task 2.2 requires that IAD and OPD Command staff regularly monitor compliance with these timeliness standards. The primary responsibility for monitoring compliance with timeliness standards rests with IAD, which generates weekly reports that list the Department's open investigations and critical deadlines for investigations retained in IAD and those handled at the Division-level. The reports are distributed to IAD Command staff and the respective bureau Deputy Chiefs. In addition to the reports, the IAD Commander discusses pending deadlines for key open investigations during IAD's weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. IAD also occasionally, as needed, sends individual reminders on cases approaching due dates to investigators and their supervisors. The Department is in compliance with Task 2.2.

Task 2.3 requires if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing is increased to maintain timeliness standards. While in the future this Task will be assessed on a quarterly basis, for purposes of this initial review, we looked at IAD's workload and its effect on staffing for all of 2009. We learned from IAD that the number of complaints increased by 29% from 2008 to 2009. In January 2009, 37 personnel were assigned to IAD, whereas in January 2010, 42 total personnel were assigned – an increase of 14% over the year. As workload increased, so did personnel assigned to IAD. OPD is in compliance with Task 2.3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

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

² We excluded the March 21, 2009 incident from this dataset.

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:

The previous monitor found OPD out of compliance with these requirements. It noted that while OPD has developed standards and criteria for identifying individuals who are the subjects of repeated allegations of misconduct, the Department has not focused any of its integrity tests on such individuals. In addition, although OPD has developed appropriate procedures for conducting both planned and select/pattern integrity tests, the previous monitor reported that the Department conducted only planned tests during the previous monitor's most recent evaluation period.

Discussion:

During our February site visit, we met with the sergeant who oversees the Integrity Testing Unit (ITU), the Training Division Commander, and other IAD and Training personnel, to learn about the Department's integrity testing. Following our site visit, we reviewed policies, procedures, and other documents – such as case files and statistical reports – relative to this Task. Based on our review of DGO M-3, *Complaints Against Department Personnel*, and Internal Affairs Policy & Procedures 07-01, *Integrity Testing*, we concur with the previous monitor's assessment that OPD is in compliance with the policy provisions of the NSA for this Task.

Our review of OPD's efforts to actually implement the provisions of the NSA pursuant to its policies and procedures as identified above met with mixed results. **Task 3.1** requires that IAD conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct, and **Task 3.2** requires that IAD's integrity tests are conducted in accordance with the frequency standards and other parameters IAD has established. To assess these subtasks, we reviewed threshold reports to determine whether OPD is identifying members/employees who are the subject of repeated allegations. We also reviewed files for all integrity tests that were conducted – including operations plans, after-action reports, and supporting documents – from October 1, through December 31, 2009, to determine whether OPD conducts integrity tests where members/employees are the subject of repeated allegations and whether the selective integrity tests conducted comply with the parameters IAD has established.

During the current reporting period, the Department conducted ten select integrity tests: nine assessing the conduct of 12 members; and another covering the activities of 27 members as a group. These members were identified through a review of the IAD complaint database as having high numbers of repeat complaints. While we find that OPD followed its policies and

procedures in the conduct of these tests, the tests consisted, for the most part, of reviews of public records and brief interviews. Without a more discerning and rigorous investigative effort to identify possible misconduct and the specific training needs of members, it is unlikely that the discipline and skill of the few officers who generate repeated complaints will improve.

Clearly OPD has made progress in integrity testing and understands the concepts. Nevertheless, as expressed above, the Department's methods have not effectively addressed the officers' abilities to perform absent a high level of complaints. Thus, we find the Department in partial compliance with Task 3.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will meet with the sergeant who oversees the ITU and the IAD Commander to discuss IAD's efforts to strengthen integrity testing with the goal of reducing repeat complaints. We will also verify the Department's compliance with established frequency standards for testing, and review any recently conducted integrity tests to assess compliance.

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

Requirements:

1. *Within 90 days, OPD shall develop a policy regarding an informal complaint resolution process which may be used by supervisors and IAD to resolve service complaints and Class II violations that do not indicate a pattern of misconduct as described in Section III, paragraph H (2). This process shall document the receipt of the complaint, date, time, location, name or the person making the complaint, the name of the person receiving the complaint, how the matter was resolved and that the person making the complaint was advised of the formal complaint process with the CPRB. The documentation shall be forwarded to an IAD Commander for review. If the informal complaint resolution process fails to resolve the complaint or if the person making the complaint still wishes to make a formal complaint, the person receiving the complaint shall initiate the formal complaint process pursuant to Section III, paragraph E. An IAD Commander shall make the final determination whether the ICR process will be utilized to resolve the complaint. OPD personnel shall not unduly influence persons making a complaint to consent to the informal complaint resolution process.*

2. *IAD shall establish a central control system for complaints and Departmental requests to open investigations. Every complaint received by any supervisor or commander shall be reported to IAD on the day of receipt. If IAD is not available, IAD shall be contacted at the start of the next business day. Each complaint shall be assigned an Internal Affairs case number and be entered into a complaint database with identifying information about the complaint. OPD personnel shall notify IAD and the Chief of Police, or designee, as soon as practicable, in cases likely to generate unusual public interest.*
3. *Criteria shall be established which must be met prior to moving, from “open” to “closed,” any investigation in the complaint database.*³

(Negotiated Settlement Agreement III. D.)

Comments:

Only two provisions of Task 4 (4.7 and 4.10) are being actively monitored under the MOU. The previous monitor found OPD in compliance with both of these requirements. Specifically, the previous monitor found that 87% of 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. The previous monitor also found that in 92% of cases, OPD complied with criteria it has established when resolving complaints via informal complaint resolution, administrative closure, or summary finding.

Discussion:

Based on our review of DGO M-3, *Complaints Against Department Personnel*; DGO M-3.1, *Informal Complaint Resolution Process*; Internal Affairs Division Policy & Procedures; and Communications Division C-02, *Receiving and Logging Complaints Against Personnel/Use of Force Incidents*, we concur with the previous monitor’s assessment that OPD is in compliance with the policy provisions of the NSA for this Task.

Task 4.7 requires that every complaint received by any supervisor or commander is reported to IAD on the day of receipt. If IAD is not available, IAD is contacted at the start of the next business day. To assess this subtask, we reviewed the Daily Incident Log (DIL) entries, and Risk Management Memoranda (RMM), as well as a random sample of IAD case files for the period of October 1, through December 31, 2009.⁴ We also looked at use of force (UOF) reports for this same time period to determine if IAD identified an allegation of delayed reporting. We found that OPD has implemented an effective system for timely reporting, investigating, and resolving citizens’ complaints. Specifically, we examined 105 DIL-reported incidents, 80 IAD and Division-level investigations (DLI), and two RMMs and found with few exceptions, no evidence that OPD supervisors delayed reports to IAD in violation of this requirement. There was one case in our dataset in which a supervisor apparently willfully refused to take a complaint and did not report the matter to IAD; nor did the officer who was first approached by the citizen

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

⁴ We reviewed the DIL entries from November 16 through December 31, 2009, because the previous monitor reviewed the DILs through November 15, 2009 as part of its final Task 5 audit.

and had made the initial request for the supervisor. Following an investigation, the supervisor's identity could not be determined. In our view, IAD took appropriate action regarding the officer who failed to report the sergeant's willful misconduct. In a second case, a supervisor took a complaint but did not get the complainant's name and contact information so the investigation could be effectively pursued. We will follow up on this matter during our next site visit to assess the outcome of this case.

Assessing the intake process for complaints requires consideration of the filing process as well as examination of the quality of subsequent investigations. When IAD is not available, a process that involves contact with the Communications Division by citizens and/or officers and includes assignment of a tracking number closes any potential gaps in the reporting process. Including assessing victim and witness perspectives on the process can further improve the quality of the complaint handling process.

The Department is in compliance with Task 4.7.

Task 4.10 requires that OPD comply with criteria it has established when resolving complaints through ICR, Administrative Closure, or Summary Finding. To assess this subtask, we reviewed a stratified random sample of 80 administratively closed and informally resolved cases that were approved between October 1 and December 31, 2009. Two of the ICR-resolved complaints – one alleging a demeanor violation and another alleging a performance of duty violation in relation to an officer's uniform – were resolved by the IAD Commander absent the consent of the complainant. When carefully applied, this practice is useful, and we concur with the value of this manner of resolution. A third ICR case, alleging a demeanor violation, is concerning. The required complaint form was not included in the file forwarded to IAD and the complainant's statement lacked clarity. The case investigator was admonished regarding these issues. Furthermore, while we believe the nature of the complaint lends itself to closure via the ICR process, given the accused member's history, we believe ICR was an inappropriate resolution. In a fourth case, because there are unanswered questions about the legitimacy of an officer's entry into private property, ICR was inappropriate unless the officer's conduct was understood and deemed appropriate. These questions were not satisfactorily resolved.

Despite these concerns, we find the OPD in compliance with Task 4.10.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will meet with the IAD Commander to discuss the ICR process with regard to members who have high numbers of complaints and discuss obstacles to timely referrals of complaints and incident reports by supervisors.

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:

The previous monitor found OPD out of compliance with some of these requirements. Specifically, the previous monitor found OPD out of compliance with the Task 5 provisions related to the gathering and consideration of relevant evidence, the resolution of allegations using the preponderance of the evidence standard, and the resolution of complaints with the required dispositions. However, the previous monitor found OPD in compliance with the Task 5 requirements related to the receipt and tracking of field complaints, the retention of IAD case file notes, the interviewing and recording of subjects of internal investigations, and the review of “filed” cases. The previous monitor was unable to determine compliance with the Task 5 requirement related to complaint procedures for jail inmates.

Discussion:

To verify compliance with Tasks 5.1 through 5.5, we reviewed the 105 records on the Daily Incident Logs (DILs) for the period of November 16 through December 31, 2009.⁵

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. In 15 of the 105 DIL records during our selected time period, there was no reference to a supervisor having contact with the complainant. However, in 13 of these 15 records, there was documentation of interaction between IAD and the complainant, usually by an IAD intake officer; therefore, we deemed these in compliance. Of the two remaining records, in one instance, the complainant was anonymous, which would not allow for in-person supervisory follow-up. In the other case, there was simply no documentation of supervisory notification. This case was deemed out of compliance. However, based on our DIL review, the Department is in compliance 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 is documented. Out of the 105 DILs we reviewed, there appeared to be two instances of at least a three-hour delay. In the first, a complaint received at 1753 hours was assigned to a supervisor at 2115 hours. According to the DIL, “Incident outside of time constraints because supervisor in meeting.” In the other, a complaint received at 0447 hours was assigned to a supervisor at 0747 hours; contact was made with the complainant at 0810 hours. According to the DIL, “Per Lt. G[] at 0500 hours, he advised to hold for 2nd platoon watch to handle.” As a reason was documented, these two records are in compliance. OPD is in compliance with Task 5.2.

⁵ As noted previously, the previous monitor, during its last review of these requirements, reviewed the DILs for the period from October 15, through November 15, 2009.

Task 5.3 requires that where a complainant refuses to travel to a supervisor, or wait for one, all reasonable attempts are made to obtain specific information to assist in investigating the complaint. Of the 105 records, we identified 12 instances in which the complainant “refused” interaction with a supervisor. However, this group included ten instances where a complainant refused to answer a contact or callback number provided, and since OPD personnel had no advance notice of the refusal prior to the attempted callback, we removed these incidents from consideration. In the remaining two matters, the complainant left the officers in the field prior to supervisory arrival. In the first case, the officers who were on scene obtained sufficient information for the responding supervisor to complete a complaint form. In the second, the complainant’s initial contact was with a supervisor. During the early stages of their conversation, the supervisor provided a complaint packet to the complainant, and the complainant left the area without identifying herself. These cases were deemed in compliance. 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. In its February 2009 audit of these subtasks, the previous monitor accepted the “DIL system as functionally equivalent to this requirement. This system places the responsibility that the Area Commander previously held on the Communications Division. It still requires that the Area Commander be notified of the complaint.” In order to be in compliance with this Task, the DIL should contain the identification of personnel; witnesses or identifying information, if known (log should say “unknown” if not known); the date, time, and location of incident; and the time of contact or attempt to contact by a supervisor.

Our review found that there is very little consistency in the manner in which DILs are completed. Additionally, they are used to document complaints originating from different sources, including complaints made directly to Communications, complaints handled in the field and subsequently called into Communications, and even complaints taken by IAD and called into Communications. While, in theory, a DIL documenting a complaint already in the hands of IAD need not contain much specificity, without a definitive way to distinguish among these entries on the DIL, they all must be held to the same standard.

Seventy-six of the 105 records we reviewed, or 72%, were found to be lacking at least some of the required information. In its January 2010 audit of this Task, the previous monitor held that if the DIL did not contain all of the required information, but listed an “incident number,” a case was deemed in compliance. The DIL contains fields for “IAD Incident # (complaint)” and “Incident # (related incident).” In every instance, including the 76 records lacking at least some of the required information, the first field – IAD Incident Number – had an entry, but there does not appear to be any consistency in the format of these numbers or how the field is used. Nonetheless, as it appears the practice endorsed by the previous monitor has not changed (in fact, the previous monitor’s findings were based on a sample taken during this evaluation period), we find OPD in compliance with Task 5.4; however, we will discuss our concerns with the Department during our next site visit.

Task 5.5 requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD. As noted above, the DILs are administered by Communications and forwarded to IAD every business day. Additionally, the DIL contains a field to record “Name of Area Commander notified.” This field was blank in only five of the 105 records we reviewed, and in one of these instances, IAD had received the investigation independently and notified Communications, so we removed it from consideration. One-hundred-and-one records, or 96% of the total, contained this information. OPD is in compliance with Task 5.5.

Task 5.6 requires that an on-duty supervisor shall respond to take a complaint received from a jail inmate, taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest. The supervisor shall ensure that the Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints by a jail inmate shall be handled in the same manner as other civilian complaints.

To assess Task 5.6, we reviewed all complaints that appeared to have originated from North County Jail, Santa Rita Jail, or Juvenile Hall, and were approved between October 1 and December 31, 2009. We identified 11 such complaints using the IAD database. We reviewed each complaint for two triggering events: an allegation of Class I misconduct and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was “handled in the same manner as other civilian complaints.”

Of the 11 cases we reviewed, three met the criteria for an immediate response by a supervisor. In two of these cases, a supervisor responded, made the proper notifications, and forwarded the appropriate information. In another case, while the allegation was not of Class I misconduct, it is worth noting that a supervisor nonetheless responded and handled the case as required by this Task. In the other eight cases, the complaints were not contemporaneous to the arrest, and were handled as other civilian complaints would be handled.⁶ Therefore, all cases we reviewed for this subtask are in compliance.

The previous monitor was reluctant to find OPD in compliance with this subtask because it was not confident that the Department was necessarily made aware of every complaint that fits the criteria, particularly in cases where the arresting officer(s) has left the jail, and an arrestee lodges his/her complaint with jail (non-OPD) staff. We understand this concern, and will further explore the roles and responsibilities of OPD and jail staff during our next site visit. However, during this reporting period, we hold OPD accountable for complaints it was made aware of and we do not, at this juncture, speculate about complaints that may or may not have occurred that were not brought to its attention. OPD is in compliance with Task 5.6.

⁶ Since this subtask targets a very specific type of complaint related to complainants at the time of an arrest, unless the investigation was also part of the sample selected to assess Tasks 5.15 – 5.21, we did not assess the quality of the investigation in its entirety, but rather looked at the general handling of the complaint as it related to jail situations.

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 October 1, and December 31, 2009. 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.⁷

Tasks 5.15 and 5.16 were reviewed by the previous monitor as a single Task with several elements, specifically that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements. Of the 25 investigations we reviewed, only 12, or 48%, were deemed in compliance with *all* of these required elements.⁸ OPD is not in compliance with Tasks 5.15 and 5.16.

In all but one case, it appeared that OPD gathered relevant evidence. The exceptional case is the subject of a lawsuit, and the complainants did not cooperate with the investigation. Therefore, the investigation lacked key interviews, and should have been carried as “tolling” rather than be closed without the complainants’ cooperation.

In two cases, OPD did not adequately consider the relevant evidence. In one of these cases, a DLI, the investigating supervisor indicated that he was trying to resolve the case as a summary finding in his e-mail implying that a conclusion had already been reached. The final allegations and findings did not match the investigative summary completed by the supervisor. In the other case, also a DLI, the investigating supervisor found that an officer conducted an adequate investigation of a traffic accident despite the fact that he failed to record a witness’ statement in the report, and three people (including the witness) contradicted the officer’s conclusion of fault. At a minimum, the investigation appeared to support a not sustained finding, particularly given the fact that the officer was counseled on the importance of including witness observations.

In four cases, follow-up interviews were warranted but not conducted. All were cases resolved via summary finding and all involved force complaints. In these cases, investigators relied on the content of use of force reports rather than interview the involved officers. While that may be appropriate in some cases, in these four cases, follow-up interviews were warranted. One of these cases was the lawsuit mentioned above. In the second case, a complainant offered to make her son (the subject of the use of force) available for an interview, but the investigator did not follow up. In the third case, only the reporting officer describes a specific type of resistance he encountered, and this should have been explored based on witness accounts, but it was not. In the fourth case, subject officers were not interviewed in a force incident that was circulated on the Internet and garnered a great deal of public attention.

⁷ 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.

⁸ Five of these 12 cases were resolved by summary finding, negating the need for some interviews; we deemed these cases in compliance.

In nine of the 25 cases we reviewed, credibility assessments were either missing or deficient. As a general observation, rather than simply stating factual conclusions regarding credibility, efforts appear to be inappropriately focused on attacking complainants' credibility and bolstering officers' credibility.

Task 5.17 requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file. OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form-11 (Investigative Notes Declaration). In eight, or 32%, of the 25 cases we reviewed, this form was missing or blank. OPD is not in compliance with this subtask.

IAD supervisors regularly utilize the "track changes" function of Microsoft Word to comment on draft investigative reports submitted by IAD and Division-level investigators. Notwithstanding the dialogue between the previous monitor and Parties regarding the retention of notes and the impact they might have in personnel or litigation matters, we are concerned that this practice (of accepting or rejecting "tracked changes") deletes the sometimes critical exchanges between investigators and supervisors as such might pertain to the course and conduct of investigations.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard. In four, or 16%, of the 25 cases we reviewed, this standard did not appear to be applied. In two of these cases, we disagree with the findings reached by the investigators. In the other two cases, the recommended findings in the investigative summary do not correlate directly to the original allegations. OPD is not in compliance with this subtask.

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. While we are not in agreement with all of the findings for the cases we reviewed (see above), each allegation identified in all cases was resolved with one of the acceptable dispositions, and OPD is in compliance with this subtask.

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

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

the approval of an IAD Commander, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions. In nine of the 25 cases we reviewed, not all subject members or employees were interviewed. All of these were approved to be resolved via summary finding, however, and so interviews were not required. OPD is in compliance with this subtask.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During the next site visit, we will meet with officials from IAD, the Communications Division, and OIG to discuss our concerns with the quality and consistency of the Daily Incident Logs. We will also meet with OIG and, if possible, Alameda County jail officials, to address the concern that not all applicable complaints are being brought to OPD's attention. We also intend to meet with IAD command staff and other appropriate representatives to discuss and finalize our position on the "track changes" issue as it pertains to IAD investigations.

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:

The previous monitor found OPD out of compliance with this requirement. Its assessment found that only 70% of the cases that involved an alleged or apparent Task 6 violation were in compliance. The previous monitor noted that in some instances, officers did not call a supervisor or otherwise properly initiate the complaint process; in others, supervisors did not initiate the complaint process properly when they are called to the scene.

Discussion:

Based on our review of DGO M-3, *Complaints Against Department Personnel*, and MOR section 398.76, we find OPD in policy compliance with this Task.

Task 6 requires that OPD members/employees who refuse to accept a citizen complaint, fail to refer a citizen to IAD (when the citizen can be reasonably understood to want to make a citizen's complaint), discourage a person from filing a complaint, and/or knowingly provide false, inaccurate, or incomplete information about IAD, are disciplined. To identify potential Task 6 cases, we reviewed 105 DIL records, a random sample of 214 IAD cases, and a random sample of 154 use of force reports for the period of October 1, through December 31, 2009.⁹ 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; lodged during this same time period.

This process revealed 18 cases where members were alleged to have refused to accept a citizen complaint, failed to refer a citizen to IAD, discouraged a person from filing a complaint, and/or knowingly provided false, inaccurate, or incomplete information about IAD. In one of these cases, IAD sustained a Task 6 violation. In this case, as cited previously in this report, an unidentified sergeant apparently willfully refused to respond to take a report of a citizen's complaint. The officer who made the request for the assistance of a supervisor could not recall which sergeant had called him in response to his request and then refused to assist. The investigation was unable to determine otherwise or that the requesting officer was untruthful. The Sustained finding was for the officer's misconduct and not for the sergeant's negligence. In two cases, a Task 6 violation was Not Sustained. In 14 cases, a Task 6 violation was determined to be Unfounded. Finally, in an event listed on a DIL, a sergeant took a complaint but apparently failed to obtain the name and contact information of the complainant, which was necessary to facilitate an effective investigation. We will determine the outcome of this case in our next quarterly review.

It appears that the Department has made a good effort since 2007 to achieve compliance with this Task. Of the hundreds of cases we reviewed, we found with the possible exception of one case, the Department conducted acceptable investigations into any circumstance that suggested a member had refused to accept a complaint or properly refer a complainant to the appropriate authority and took the appropriate action. OPD is in compliance with Task 6.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will meet with the IAD Commander to discuss how IAD identifies cases which may involve violations of this requirement, including its use of integrity tests and analysis of shifts that show marked declines in reports. We will also review all case reports that would indicate receipt of complaints to assess whether they were timely accepted and/or referred.

⁹ The previous monitor reviewed the DILs through November 15, 2009 therefore our review included only reports from November 16, through December 31, 2009.

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.)

Comments:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. The previous monitor found OPD out of compliance with this provision; only 72% of the anonymous complaints the previous monitor reviewed were investigated to the extent reasonably possible. In addition, the previous monitor noted that IAD does not uniformly mark these cases in its database to make it easier for it to identify and track the handling of these complaints.

Discussion:

To assess compliance with this Task, we reviewed all cases with complainants listed in the Internal Affairs Division database as originating from complainants who were "anonymous," "unknown," "refused," or any forms of those terms (such as "unk") and that were approved between October 1 through December 31, 2009. We also reviewed all complaints during this selected time period that were tagged by IAD as originating from an anonymous complainant,

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

and complaints in which the complainant field in the database was blank, to determine whether any were made anonymously.

Based on the above criteria, we identified 30 cases as potential anonymous complaints. From these, we excluded 20 matters that did not constitute anonymous complaints of misconduct – that is, either because the complainant was identified at the onset of the investigation or at some point during the investigation, or the investigations were initiated by OPD.

We reviewed the ten remaining cases to determine whether OPD investigated the anonymous complaints to the extent reasonably possible. We requested additional information from IAD for three cases. For two, we inquired about the availability of caller ID on the lines the complaints were received on. Since this capability was not available, we deemed these cases to be in compliance. In the third case, in which it was alleged that a sergeant and lieutenant leaked confidential information to the media, we inquired with IAD about whether or not the Department- issued cell phones of these individuals were checked for calls indicative of this activity. IAD advised that this investigative step was considered, but discounted because these two individuals would have routine contact with media because of their positions. With this clarification, we deemed this case in compliance.

One case was deemed out of compliance. In this case, an anonymous third party alleged that officers did not adequately investigate a case of domestic violence, and the alleged victim was dissatisfied with the handling of her investigation. While the complainant admitted that she did not witness the incident and eventually refused to cooperate, the nature of the complaint was clear and could have been substantiated or refuted by contacting the alleged victim as part of the internal investigation. This was not done.

The Department, therefore, complied with the Task in 9 out of 10 cases, or 90%. Since the compliance standard of this Task is 95%, OPD is not in compliance during this evaluation period.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

We will meet with IAD to discuss standardization of how anonymous complaints are entered into its database to make them more readily identifiable.

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 previous monitor found OPD out of compliance with these requirements. While the previous monitor observed that OPD has made progress in holding leadership accountable for supporting the IAD process, it noted that the Department needs to improve in this area. In addition, the previous monitor identified cases in which OPD did not properly identify and investigate Task 16 supervisory failures.

Discussion:

Based on our review of DGO M-3 and the other policies relevant to Task 16, the Department is in policy 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, 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. Our review of DIL records, IAD investigations, and UOF reports for other IAD-related Task assessments revealed five cases that were applicable to Task 16. IAD sustained a violation in one case, resolved another case with a finding of Not Sustained, and resolved a third case with a finding of Unfounded. In a fourth case, cited previously in this report, an unidentified sergeant apparently willfully refused to respond to take a report of a citizen's complaint. The officer who made a request for a supervisor could not recall which sergeant had called in response to his request and then refused to assist. The investigation was unable to determine otherwise or that the requesting officer was untruthful. In another incident listed on a DIL report, a sergeant took a complaint but apparently failed to obtain the name and contact information of the complainant, which was necessary to facilitate an effective investigation. We will determine the outcome of this case in our next quarterly review. Additionally, in a case which alleges retaliation, IAD and an outside investigator determined that supervisory level officials had retaliated against a member for making a complaint, but the finding was overturned during a Skelly hearing. We disagree with that determination.

The Department has made a substantial effort to ensure accountability of its supervisors and managers. IAD conducted quality investigations in the vast majority of cases we reviewed and generally made appropriate findings. As discussed more thoroughly in our Task 45 discussion below, we have some concerns with the disciplinary hearing process, and given our ongoing concerns, we find the Department not in compliance with Task 16.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

We will meet with the IAD Commander and query the IAD database to identify any cases in this category and assess the propriety of the IAD findings and action.

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.)

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

Comments:

Only one provision of Task 18 (18.2.2) is being actively monitored under the MOU. The previous monitor found OPD out of compliance with this requirement. The previous monitor's most recent assessment found that the average rate of witness identification for the required arrest categories was 77%. The previous monitor noted that in some cases, officers failed to document when there were no witnesses; in others, officers failed to identify readily available witnesses; and in others, officers reported that there were "no known witnesses," when, in fact, there were witnesses who simply were not identified. In addition, in regular audits of Task 18, OIG has found the Department in compliance with all of this Task's requirements with the exception of the witness identification provision.

Discussion:

To assess this subtask, we reviewed a stratified random sample of 100 use of force reports for Level 2, 3, and 4 incidents occurring between October 1, and December 31, 2009, to determine if available witnesses were identified in the arrest documentation. We found that of the 22 Level 2 investigations in our sample, 20 listed witnesses, appropriately noted "no known witnesses," or referred to a canvass with no witnesses produced. Of the 43 Level 3 cases we reviewed, only one case omitted the required witness documentation. Of the 35 additional Level 4 investigations in our sample, we found only two that failed to document available witnesses. Thus, our review reveals a 95% compliance rate for this requirement. OPD is in compliance with Task 18.2.2.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 20: Span of Control for Supervisors

Requirements:

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

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

4. *If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Comments:

The previous monitor found OPD out of compliance with Task 20. It noted that overall, OPD has improved the practice of assigning sergeants no more than eight officers, and that the Department's backfill, loan, and transfer decisions are more thoughtful and better documented than found in earlier assessments. The previous monitor also noted the need for the Department to improve its consistency of supervision; of the squads the previous monitor reviewed, 75% were supervised by their primary supervisors, and 25% were supervised by either uncertified acting supervisors or backfill supervisors.

Discussion:

The following policies are relevant to Task 20: Department General Order A-19, *Supervisory Span of Control*; Department General Order B-4, *Personnel Assignments, Selection Process, and Transfers*; Department General Order D-13, *Assignment to Acting Higher Rank or Classification*; and Special Order 8435, *Acting Sergeant Selection Process*. Based on our review of these policies, OPD is in policy compliance with Task 20.¹²

Task 20.1 requires that sufficient primary sergeants are assigned at the draw board/master detail level to permit one primary sergeant for every eight officers under normal conditions.

We did not assess this subtask during this reporting period due to the lack of reliable documentation. Currently, there is no official OPD "master detail" that both lists sergeants' assignments as of the time of the "draw" at the beginning of the year and is also updated throughout the year as loans, transfers, and other personnel changes alter supervisory assignments.

The previous monitor found OPD out of compliance with this subtask, based on its review of patrol assignment sheets maintained by a Bureau of Field Operations administrative officer. Although we understand that these sheets can provide useful "snapshots" of supervisory assignments over time, because they are not official Departmental records, we did not review them.

We will assess OPD's compliance with Task 20.1 in future reporting periods. In the meantime, we will meet with the Office of Inspector General and other Department officials to discuss how the Department tracks, and maintains records of, its supervisory assignments over time.

¹² As noted by the previous monitor, DGO D-13 was published on June 17, 1999, although Special Order 8435 updates the Department's policy on acting supervisors. The previous monitor encouraged OPD to update DGO D-13 so that it incorporates the updated information; we concur with this perspective.

Task 20.2 requires that 85% of relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Targeted Enforcement Task Force I and II, Special Duty Unit I - Parole and Corrections Team, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors. To assess this subtask, we reviewed a stratified random sample of 21 days (within our selected time period) of Daily Details for the squads listed above. For the purposes of this requirement, we considered certified acting sergeants to be primary supervisors if they were assigned to their particular squads.

Of the 655 applicable squads we reviewed, we found that 461 (70%) were supervised by their primary supervisors. The breakdown among the relevant squads is as follows:

Area or Unit	Number of Applicable Squads Reviewed	Applicable Squads in Compliance
Area 1	136	93
Area 2	147	99
Area 3	137	91
Problem Solving Officer units	98	76
Crime Reduction Teams	67	45
Neighborhood Enforcement Team	10	7
Targeted Enforcement Task Force I and II	21	18
Special Duty Unit I – Parole and Corrections Team	8	8
Gang/Guns Investigation Task Force	10	6
Foot Patrol	21	18
<i>Total</i>	655	461

Of the squads *not* supervised by their primary supervisors, 45 (7% of the total) were supervised by “backfill” sergeants working overtime, 128 (20% of the total) were supervised by certified acting sergeants, six (1% of the total) were supervised by officers who were not certified to act as sergeants, and 15 (2% of the total) were not supervised.

OPD is not in compliance with Task 20.2.

Task 20.3 requires that a supervisor’s span of control for the Department’s relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Targeted Enforcement Task Force I and II, Special Duty Unit I - Parole and Corrections Team, and Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed 1:8 on a day-to-day basis. Ninety percent of relevant squads must meet this requirement for the Department to be in compliance with this subtask.

To assess Task 20.3, we reviewed the above-referenced Daily Details and counted the number of officers being supervised and the supervisors for each relevant squad. For the purposes of this requirement, canine officers, field trainees, desk personnel, and police technicians do not count toward the eight. In addition, we considered certified acting sergeants to be supervisors, but any instance of a squad supervised by an “acting” supervisor who is not certified by the Department’s program was considered out of compliance. Of the 659 applicable squads we reviewed, 633 (96%) met the 1:8 span of control. This is a significant improvement from the previous monitor’s December 2009 assessment of this subtask, which found that 86% of squads met the 1:8 span of control. OPD is in compliance with Task 20.3.

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

To assess this subtask, we reviewed the above-referenced Daily Details and noted the squads that were supervised by backfill sergeants on short-term bases. We found 45 instances (about 7% of the total we reviewed) of backfill supervisors, overseeing 22 discreet squads, in our sample. The breakdown among squads is as follows:

Area	Squad	Number of Instances of Backfill Supervision
1	05:00 A	2
	05:00 B	1
	08:00 B	3
	11:00 B	4
	18:00 Late Tac	1
	20:00 A	2
2	08:00 B	1
	13:00 B	1
	17:00 A	2
	17:00 B1	1
	17:00 B2	3
	18:00 Late Tac	4
	20:00 A	1
	20:00 B	3
	PSO 4	1
3	05:00 B	3
	08:00 A	1
	08:00 B	3
	11:00 B	2

Area	Squad	Number of Instances of Backfill Supervision
	17:00 B1	2
	17:00 B2	2
	20:00 A	2
<i>Total</i>		45

As noted in the table above, two of these 22 squads had four instances of backfill supervision each, and five of these squads had three instances of backfill supervision each during this reporting period.

OPD is in compliance with Task 20.4.

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

To assess this subtask, we reviewed a random sample of 25 special operations plans of the 176 total operations conducted between October 1 – December 31, 2009, to determine whether the span of control for these operations was determined by the relevant commander and was reasonable. Specifically, we looked at the nature of the operations; the number of officers involved in the operations; and, if any acting supervisors were certified acting sergeants. Our review found that all 25 of the special operations in our sample met these requirements. OPD is in compliance with Task 20.5.

Task 20.6 requires that the Chief or his designee make decisions regarding any loans or transfers for long-term backfill. As noted above in our discussion of Task 20.4, an Area Commander “backfills” a sergeant 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 October 1 – December 31, 2009, for the signature of the Chief or his designee. We found that all of the Personnel Orders during this time period contained such a signature, indicating the Chief’s approval.

The NSA does not require written documentation of loans and transfers for long-term backfills – merely that such loans and transfers are approved by the Chief or his designee. However, OPD policy requires such documentation. Specifically, Department 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.” Thirty-five percent of loans and transfers reviewed by the Office of Inspector General (OIG) in a recent assessment were not included on the weekly Personnel Orders nor otherwise documented. Following these findings, Bureau of Field Operations (BFO)

staff promised to improve its documentation of loans and transfers. We will interview the BFO Deputy Chief during our next reporting period and continue to monitor the Department's loans and transfers to determine if OPD's practice comports with the NSA and Departmental policy.

OPD is in compliance with Task 20.6.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will meet with OIG, BFO, and other Department officials to discuss how OPD tracks, and maintains records of, its supervisory assignments over time. We will also interview the BFO Deputy Chief and continue to monitor the Department's loans and transfers to determine if OPD's practice comports with the NSA and Departmental policy.

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:

The previous monitor found OPD out of compliance with Task 24. The previous monitor found that while the Department was in compliance with most of these requirements, it was not in compliance with the provision that officers notify their supervisors as soon as practicable following any reportable use of force or allegation of excessive use of force.

Discussion:

Based on our review of DGO K-3, *Use of Force*; DGO K-4, *Reporting and Investigating the Use of Force*; and DGO K-4.1, *Force Review Boards*, we find OPD in policy compliance with Task 24. OPD has also issued a series of supplemental force-related policies, including Training Bulletin (TB) V-K, *Excited Delirium*; TB III-S, *In-Custody Ingestion of Narcotics*; TB III-B.1, *Wrap Restraint Device*; TB III-X, *Lethal Force and Vehicles*; DGO C-4, *Safety Equipment*; TB III-N, *Recognizing and Handling Mentally Disturbed People*; TB III-H, *Specialty Impact Munitions*; TB V-G, *Use of Police Canine*; TB III-H-1, *Use of Taser*; TB III-H-2, *Handheld Impact Weapons*; TB V-F-2, *Chemical Agents*; TB III B-4, *Handcuffing Techniques*; DGO K-9, *Use of Canines*; and TB V-G, *Use of Police Canines*.

For this reporting period we reviewed documentation for a stratified random sample of 22 Level 2 uses of force (UOF), 43 Level 3 UOFs, and 35 Level 4 UOFs, for a total of 100 incidents.¹³

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. To assess this subtask, we reviewed the UOF reports, crime reports (when applicable), and Computer Assisted Dispatch (CAD) purges for all of the force incidents in our sample. We found that all 22 of the Level 2 incidents in our sample were in compliance, although there was one case in which the notification was timely, but the response to the scene took 94 minutes. Of the 43 Level 3 incidents, we found three in which we were unable to determine a notification time or response time either because the CAD purge did not reflect the information, there was no CAD purge in the package, nor was there any notification/response time in the reviewable documents to which we previously alluded. The supervisors were obviously on the scene because reports were generated, but we were unable to establish a notification/on-scene time. Level 4 UOFs are self-reporting, and consequently, less documentation is required than for Levels 1, 2, and 3 UOFs. DGO K-4, Section VI A.1., states that involved personnel are to notify and brief their supervisors

¹³ There was one also Level 1 report during our time period that was not included as it was finalized too late for inclusion. It will be reviewed during the next reporting period.

immediately or as soon as practicable. We found that in 22 of the 35 Level 4 incidents a supervisor was notified regarding the UOF. The overall compliance rate for Task 24.1 is 89%, and OPD is not in compliance with Task 24.1. We encourage OPD to require an affirmative statement on either the UOF report or in the principal offense crime report noting the name and unit number of the supervisor who was notified, and in instances where a supervisor responds to a scene, the time that the supervisor arrived.

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, 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. Our review of the UOF reports, crime reports, and supplemental reports for the incidents in our sample found that 100% met these requirements. We found that for Level 2 and 3 UOFs, this information was primarily contained in the UOF reports; for Level 4 UOFs, the information was frequently in the actual offense reports. It is difficult to determine when force is used and not reported, absent corresponding reviews of citizen complaints to IAD or some other office where complaints may be lodged, or to conduct an intensive review of cases involving assaults on police officers, resisting arrest, disorderly conduct, and other similar situations resulting in confrontations between officers and the community. These cases can serve as a good barometer of how well the officers are complying with OPD policy. We recommend that OIG audit of these types of cases and compare them with the instances of reported UOFs to determine a level of compliance by the Department. However, based on the currently available data, we find OPD 100% compliant with Task 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. We found that supervisors responded to the scene in 64 (99%) of the 65 applicable (Level 2 and 3) incidents in our sample. OPD is in compliance with Task 24.4.

Task 24.5 requires certain notifications in uses of force relative to officer-involved shootings and the use of lethal force. There were no such instances during this reporting period.

Task 24.6 requires OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS), now the Personnel Assessment System (PAS). We were unable to determine compliance with this requirement, as we do not yet have access to IPAS.

OPD is still not compliant with all of Task 24, but is making progress. Focusing attention on the issues identified with Level 4 reporting will help the OPD come into compliance with this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will discuss with OPD auditing cases involving assault on police officer, disorderly conduct, resisting arrest, and other similar activity that we believe could result in UOFs to determine if, in fact, members are generating the required reports. We also plan to meet with OPD personnel to determine if in fact periodic refresher training regarding use of force reporting requirements has been or is going to be provided to all officers and supervisors. We assert that such training is especially important prior to special events or overtime assignments staffed by officers who do not usually work field assignments.

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:

The previous monitor found OPD out of compliance with Task 25. While the previous monitor found the Department in compliance with most of the Task 25 requirements, it found it out of compliance with the provision that use of force investigations be timely. The previous monitor noted that OPD has particular difficulty meeting deadlines with its Level 1 uses of force investigations; only one of the 15 Level 1 investigations the previous monitor reviewed was completed within the required 75-day timeframe.

Discussion:

Based on our review of DGO K-3, *Use of Force*; DGO K-4, *Reporting and Investigating the Use of Force*; and DGO K-4.1, *Force Review Boards*, OPD is in policy compliance with Task 25.

Our Task 25 review covers the period from October 1, through December 31, 2009. We reviewed documentation for a stratified random sample of 22 Level 2 uses of force (UOF), 43 Level 3 UOFs, and 35 Level 4 UOFs, for a total of 100 incidents.

Task 25.1 requires that for every Level 1 use of force, IAD completes a use of force report and that for every Level 2 and 3 use of force, an on-scene supervisor completes an investigated UOF report.¹⁴ To assess this requirement, we reviewed documentation for 65 Level 2 and 3 incidents; in all cases except one a supervisor responded to the scene and completed a use of force investigation. In addition, there were also six Level 4 incidents in our sample that were downgraded from Level 3 to Level 4 incidents by supervisors who were on the scene; in each instance, the change was properly 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 and are timely pursuant to DGO K-4. All of the reports we reviewed included the NSA-required elements. We assessed timeliness using a 15-day time limit for the Level 2 and 3 incidents and a review of the report by the end of the tour of duty for Level 4 incidents. Only 30 (46%) of the 65 Level 2 and 3 reports were submitted in a timely fashion. We also reviewed five extension requests for these reports, but only one was completed within the time constraints or met the new timeline. Only 25 (71%) of the 35 Level 4 incidents were reviewed by the end of the tour of duty, as required. The overall compliance level for the timeliness component of this subtask is 55%. OPD is not in compliance with Task 25.2.

There is some speculation among OPD personnel that the Department's work schedule has a negative impact on its ability to achieve compliance with the timeliness requirements of Task 25. We are unable to comment upon this directly at this time, but we know from our experience in the field that longer periods of time off affect continuity in a variety of departmental programs. It should be obvious to everyone that scheduling changes have implications that should be

¹⁴ As noted above, there was only one Level 1 incident during our selected time period; it became available too late for inclusion in this report and will be reviewed during the next cycle.

carefully considered before enactment. However, given present circumstances, OPD may need to develop a program that permits the “hand-off” of cases by supervisors who are beginning their three days off, or, alternately, implement a more workable schedule to meet the 15-day requirement.

The previous monitor found OPD in compliance with **Task 25.3**, which requires that all supervisors are trained how to conduct use of force investigations and such training is part of a supervisory training course. Our review found that the training that the supervisors have received is reflected in their documentation of information, especially their attention to tactics utilized by the officers, throughout the UOF reports. Thus, we deem OPD in compliance with Task 25.3, but as our tenure increases and there is turnover in supervisory personnel, we will closely review training records, particularly for new supervisors.

Task 25.4 requires that the investigations include required recommendations. Areas of recommendation include: whether the force used was pursuant to a legitimate law enforcement objective; whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the officers were attempting to achieve; whether the officers used reasonable verbal means to attempt to resolve the situation without force, if time and circumstance permitted such attempts; and whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped. Our review found all but one of the Level 2 incidents, and all of the Level 3 incidents, in compliance with this requirement – an overall compliance rate of 98%. (This subtask does not apply to Level 4 UOFs.) In some instances, we located information that was not clear in the force report in the corresponding crime report. OPD is in compliance with Task 25.4.

Task 25.5 speaks to the review process, which includes chain of command review, making assessments as required by the NSA and policy, and ensuring that any violation of policy results in the incident being referred to IA to conduct additional investigations/analysis. Our evaluation of the forms and packets reflected that the supervisors included the required details and that the chain of command conducted critical reviews. In the Level 2 evaluations, we found that the chain of command generally did a credible job of reviewing and commenting on the quality of the investigations. In several instances, reports were returned for additional investigation or clarification. There were, however, two cases in which the review missed items that should have been identified for discussions with the investigating supervisor to ensure that the errors would not be repeated in future investigations. In one case, the investigating supervisor was on the scene and gave the order to Tase the subject; this supervisor should not have conducted the investigation. In the other case, a witness alleged that the force used had been excessive; there was no evidence that a complaint packet was provided to that individual. Our evaluation of Level 3 UOF reports also

reflected that there were two which went through the review process but were not corrected, nor was there any recognition of an issue with the cases.¹⁵ The compliance rate for Level 2 and 3 combined is 94%. The Department is not in compliance with Task 25.5.

Task 25.6 addresses the need to keep officers involved in use of force incidents resulting in serious injury or death, or involved in a shooting, be separated from each other at the scene and kept apart until they have been interviewed and completed their reports. To assess this subtask, we reviewed the only Level 2 incident for the period, it involved the shooting of a subject with bean bags. In this incident, the shooter was sequestered; however, other witness officers were not. This was a large scene with many officers and supervisors on the scene, and there was room for improvement in scene management. OPD is not in compliance with Task 25.6.

OPD still encounters difficulty meeting the deadlines in Levels 2 and 3 UOF investigations, which are required to be completed in 15 days. The Department does slightly better with Level 4 UOF investigations, which are required to be approved before the end of the tour of duty. OPD does a good job of identifying tactical issues and documenting corrective conversations between supervisors and subordinates. Chain of command reviewers frequently comment on the appropriateness of the UOFs as well as the tactics utilized. We encourage OPD to continue to provide periodic refresher training to reinforce areas in which the supervisors are performing well and to improve in those areas that need improvement.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

As noted in our discussion of Task 24, we believe that refresher training needs to be provided to supervisors and managers that addresses, among other issues, UOF investigation timeliness. In our discussions with OPD, officials have noted that this is hindered by the Department's current work schedules, which give members more time away from the job. OPD needs to develop a strategy to manage this issue and communicate it to the responsible employees. We plan to discuss this issue in more detail with OPD officials during our next site visit.

¹⁵ In one case the block for Verbal Persuasion was marked "no," which requires comment in the narrative portion and none was there; the other case involved complaints of excess force with no indication that a complaint packet was provided.

Task 26: Use of Force Review Board (UFRB)

Requirements:

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

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

(Negotiated Settlement Agreement V. C.)

Comments:

The previous monitor found OPD out of compliance with these requirements. During its final reporting period, the previous monitor attempted to assess the Department's compliance with Task 26 but found that too few of the cases in its selected time period had completed the Board process.

Discussion:

Our review of DGO K-4.1, *Force Review Boards*, August 1, 2007, determined that the policy comports with the requirements of Task 26. OPD is in policy compliance with this Task.

Task 26.1 requires that the Force Review Board (FRB) review all Level 2 use of force (UOF) investigations following the completion of the internal investigation. DGO K-4.1 requires that the FRB chair convene a FRB within 90 days of receipt of the UOF packet from IAD. OPD provided 13 cases for our review during this cycle. We were able to determine that eight of the reports, or 62%, were in compliance. The remaining five cases had a variety of issues associated with them precluding their compliance with the 90-day time limit.

Two of the reports are not in compliance as there is no date indicating receipt from IAD on the face sheet. One of the reports has a conflict with dates; the report was returned for corrections in

May 2009; the incident date on the cover sheet states September 2009, as does the UOF report, four months after the report was supposedly reviewed. In another, the cover sheet states the incident occurred in August 2009 while the use of force report states April 2009. In another, neither the cover sheet nor the follow-up sheet contained in the package is related to the UOF being reviewed. OPD is not in compliance with this subtask.

Task 26.2 requires that for every Level 2 use of force investigation, the FRB make a recommendation as to whether the use of force was in policy or out of policy. Of the cases we reviewed, 12 out of 13, or 92%, contained a recommendation noting the use of force was in policy. Two of the cover sheets also noted agreement with the recommendation by the Chief. OPD is not in compliance with this subtask.

Task 26.3 requires that all FRB determinations that a UOF is out of compliance with OPD policy are forwarded to the Internal Affairs Division for investigation. There were no cases in which that determination was made. OPD is in compliance with this subtask.

Task 26.4, 26.5, and 26.6 are addressed in a memorandum submitted to the Chief dated March 11, 2010, that reviews the Force Review Board activities for calendar 2009. The memorandum also identifies patterns and makes training recommendations. The patterns identified were related to officers conducting foot pursuits of subjects they believed to be armed into yards, the officers tackling subjects, and the use of Tasers on handcuffed subjects. The training recommendations were related to the Board's tasking of supervisors with conducting training on issues identified by the Board and the submission of the training conducted to the Board. The memorandum states that the FRB now orders that involved officers attend hearings so that the FRB command staff can also supply training on the spot. OPD is in compliance with these subtasks.

During the last site visit, we observed FRB hearings and were favorably impressed with the conduct of the hearings. Board members appeared to understand that corrective actions they take regarding tactics and training issues are significant, as they will help increase officers' safety and reduce violent confrontations between the officers and the community they serve.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We request that OPD to schedule FRB hearings during our next quarterly visit, permitting us to observe and evaluate the process first-hand. We also would like to discuss with OPD a process that can be implemented to ensure that the Chief has either agreed or disagreed with the FRB recommendations.

Task 30: Firearms Discharge Board of Review

Requirements:

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

(Negotiated Settlement Agreement V. G.)

Comments:

The previous monitor found OPD out of compliance with Task 30. Its most recent assessment found that the Department is not timely in convening Executive Force Review Boards (EFRB), that required participants do not attend each EFRB, and that training or information bulletins regarding each case that goes before the board are not always prepared. However, the previous monitor noted that the Department has improved in making disciplinary recommendations for serious policy, training, or tactical violations associated with officer-involved shootings.

Discussion:

During the period of October 1, through December 31, 2009, OPD convened EFRBs for two incidents involving Level 1 use of force. We reviewed documentation for one of these incidents to assess the Department's compliance with Task 30.¹⁶

The case involved a head strike with a firearm. The firearm was not discharged, but the manner in which it was used elevated this incident to a Level 1 use of force.

Task 30.1 requires that OPD convene an EFRB within 30 days of the completion of the Use of Force Report by IAD. The IAD Investigative Report for this case was completed on November 4, 2009. The Board was convened on December 3, 2009, just within the 30-day timeframe required. The Department 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. In the case reviewed, recorded statements were available from all officers on the scene and the subject on whom the force was used. There were no civilian witnesses to the incident. In addition, a transcript of the subject officer's statement was made

¹⁶ For the purposes of our review, we removed the March 21, 2009 incident from consideration.

available to the Board. 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*. This policy outlines several requirements, including who comprises the Board, the material to be made available for the Board, the conduct of the Board, the information to be memorialized, and follow-up actions, if warranted. We reviewed the Review Board Report prepared for this case.¹⁷ The required attendees were present, and after review and deliberations, the Board determined that the subject officer's actions were in compliance with Department policy. The Board discussed training recommendations, and the subject officer was trained after the Board concluded its duties. The Department is in compliance with this subtask.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

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/*

¹⁷ The Review Board Report was submitted on February 8, 2010, outside of the assessment period. A notation in the report indicated that "an extension for this report was granted by..." The case was nonetheless reviewed during this reporting period since the Board was convened during this time and pertinent information was available.

employee of OPD and to all new members/employees of OPD within two (2) weeks of hiring.

(Negotiated Settlement Agreement VI. A.)

Comments:

The previous monitor found OPD out of compliance with Task 33. In 83% of the cases the previous monitor reviewed, misconduct was reported appropriately or the Department conducted an adequate assessment of whether misconduct was reported. The previous monitor found OPD in compliance with the provisions requiring the Department to maintain a functioning procedure that incorporates the NSA requirements related to establishing and maintaining confidential reporting of misconduct, except for the provision that requires that confidentially reported cases be investigated without disclosure of the complainant's name.

Discussion:

Our review of the Manual of Rules (MOR) Sections 314.48, Reporting Violations of Laws, Ordinances, Rules or Orders; 314.49, Confidential Reporting of Police Misconduct; 370.18, Arrests; and 370.27, Use of Physical Force; and DGO D-16, *Check-In and Orientation* shows that the Department is in policy 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.

Task 33.2 requires that where OPD determines that members/employees/supervisors knew or should have known that misconduct occurred but did not report it as required, OPD takes appropriate action.

Task 33.3 requires that OPD maintain a functioning procedure that incorporates the NSA requirements related to establishing and maintaining confidential reporting of misconduct. These requirements include: confidential reports of suspected misconduct may be made in person, by telephone, or in writing (33.3.1); any OPD member/employee may report suspected misconduct confidentially to the commander of IAD, who shall document the report in a confidential file that shall remain accessible only to this IAD commander (33.3.2); confidentially reported cases are investigated without disclosure of the complainant's name, unless and until such disclosure is required by law (33.3.3); and OPD informs all new and current employees of OPD's confidential reporting procedures (33.3.4).

The approved policies were not altered during this period and the Department properly trained 15 new employees on these requirements. To assess OPD's practice compliance with this Task, we met with IAD officials and queried the IAD database to identify any cases approved during the last quarter of 2009 for compliance with this provision's requirements and the action taken in any identified cases. Our query of the IAD database showed only one closed case in which a member failed to report the misconduct of another member. IAD conducted an investigation and

sustained the misconduct, and the Department implemented the appropriate sanctions. There were also two anonymous complaints and no confidential complaints lodged this quarter. We observed no irregularities in the anonymous complaint investigations. However, in consideration of the Department's previous non-compliant status and in the face of there being no new data, we find there is no affirmative justification for altering the previous finding. We will reconsider this matter during the next reporting period if there are no new relevant cases.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

We will meet with the IAD Commander to identify any cases in this category that have been approved during the reporting period and assess any actions taken by IAD. We will also check the relevant policy documents to ensure that the required procedures remain in compliance, review categories of cases that would indicate that misconduct is being reported to determine actual compliance, and assess the Department's adherence to the confidentiality reporting process.

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

1. *OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:*
 - a. *Time, date and location;*
 - b. *Identification of the initiating member or employee commencing after the first year of data collection;*
 - c. *Reason for stop;*
 - d. *Apparent race or ethnicity, and gender of individual(s) stopped;*
 - e. *Outcome of stop (arrest, no arrest);*
 - f. *Whether a search was conducted, and outcome of search;*
 - g. *Offense categories (felony, misdemeanor or infraction).*
2. *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*
3. *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to "Promoting Cooperative Strategies to Prevent Racial Profiling."*

(Negotiated Settlement Agreement VI. B.)

Comments:

The previous monitor found OPD out of compliance with Task 34. Specifically, the previous monitor found that the Department is not in compliance with the requirement that officers complete a stop data form for at least 95% of field stops, field investigations, and detentions. In addition, while the previous monitor found that the Department was in compliance with the requirements that stop data forms be filled out completely and accurately, and that OPD maintain a searchable stop data database, it found that only 49% of the stop data forms reviewed were completely and accurately entered into the database. In addition, OIG's October 2009 assessment of Task 34 found the Department out of compliance with this Task.

Discussion:

Based on our review of the Department policies relevant to this Task, we find the Department in policy compliance for Task 34.

Task 34 is comprised of four sub-requirements. **Task 34.1** requires that stop data forms are filled out for every vehicle stop, field investigation and detention. **Task 34.2** requires that stop data forms are filled out with the following information: 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop (arrest or no arrest); 9) whether a search was conducted; 10) outcome of any search; and 11) offense category (felony, misdemeanor, or infraction). **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, and **Task 34.3.2** requires that the data captured on the stop data forms is entered completely and accurately into the database.

To assess Task 34, we interviewed OIG personnel, and reviewed reports, citizen stop data records, and statistical information. In our efforts to review records for October 1, through December 31, 2009, we were hindered by the Department's technical difficulties and were unable to access "stop data form" (SDF) reports except for those completed for vehicular traffic stops for this period. We reviewed the Department's stop data database that shows that OPD issued over 15,000 traffic citations with accompanying stop data forms during our selected time period. However, 1,200 of these SDFs are missing vital data, such as race. Furthermore, given the technical challenges, we are not certain that even this data is reliable. Finally, we reviewed a database that contains over 4,200 Field Contact Cards for this period, but absent our ability to review and compare SDFs to this information, we are unable to assess the accuracy of this data and measure the OPD's compliance. As of the publication of this report, non-traffic SDFs for the period under review have not been available and this report is submitted absent their consideration.

Clearly the Department continues to struggle with this Task. It is critical to the Department's progress in managing its relations with citizens that it has timely access to this information to conduct its own reviews and perform critical analysis. The examination of this data to determine

compliance by its members with its policies and assess the quality and effectiveness of its policing strategy and compliance with Constitutional sanctions must be a Department priority.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

During our next site visit, we will meet with OIG to discuss Departmental status of this critical Task, and review the database to assess its operability and accuracy in storage and ease of access to data. We will also identify the population of stop data and all of its attendant forms, determine the appropriate random sample of forms for off-site review, and review the most recent OIG audit of Task 34.

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:

The previous monitor found OPD in compliance with these requirements. It noted that the Department has improved significantly in its identification of, and obtainment of contact information for, known witnesses in use of force (UOF) reports, and attributed this improvement to substantially better documentation in use of force investigations when there are no known witnesses to an incident. In addition, the previous monitor commended the Department for stressing to personnel the importance of including complete and accurate information about witnesses in use of force reports, and assigning a Bureau of Field Operations (BFO) administrative sergeant to review UOF reports for completeness.

Our review of DGO K-4, *Reporting and Investigating the Use of Force*, determined that it comports with the Task 35 requirements. OPD is in policy compliance with Task 35.

To make our practice assessments, we reviewed 22 Level 2 UOF reports and 43 Level 3 UOF reports. DGO K-4 states that Level 4 uses of force do not require witness identification. In the aggregate, these cases reflect close attention on the part of officers and supervisors in the gathering of witness information. In addition to specifically documenting instances where there are no known witnesses, the reporters explained the reasons when canvasses were not conducted. We evaluated Tasks 35.1 and 35.2 simultaneously. **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, and **Task 35.2** requires that when there are no known witnesses, use of force reports specifically state this fact. Twenty of the 22 (or 90%) Level 2 reports comported with the requirements. Forty-two of the 43 (or 98%) of the Level 3 reports comported with this requirement. This is an overall 98% compliance rate. OPD is in compliance with these subtasks.

Task 35.3 requires reports to document instances where witnesses are present but circumstances prevent the author of the report from gathering the data. There were no cases in our sample that fell into that category.

Task 35.4 requires that UOF reports include the names of all other OPD members/employees witnessing the incident. Our review of the 65 UOF reports and accompanying crime reports indicates that OPD personnel are in compliance with this requirement. There were no instances when an OPD witness was not documented on the report.

OPD is in compliance with Task 35.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

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:

The previous monitor found OPD out of compliance with Task 37. In its most recent assessment of this Task, the previous monitor found that OPD had improved its handling of retaliation cases; while short of the compliance standard, it found that the Department adequately investigated 71% of the applicable cases reviewed. However, the previous monitor noted that several cases involved critical allegations that were never addressed, and some cases were closed without sufficient investigation.

Discussion:

We found that during the quarter under review (October 1, through December 31, 2009), there were two approved cases that involved allegations of retaliation. In one of these cases, the complainant alleged retaliation, but our review revealed that that allegation did not involve acts of retaliation against an OPD member or employee. The second case involved allegations that were properly investigated and determined to be Unfounded.

Since the previous monitor did not review retaliation cases that were approved in 2009, we reviewed the five additional cases alleging retaliation that were resolved during the first three quarters of the year. Our review found that all five cases were investigated appropriately and the findings were reasonable. One case involved a manager who was found to have retaliated against an employee who cooperated with an IAD investigation. In this case, the retaliation allegation was sustained and the manager was terminated as a result of the findings. Three cases either alleged facts that failed to provide reasonable grounds for determining that retaliation had occurred or a reasonable investigation could not sustain the allegations. The fifth case involved a senior commander who was suspended as a result of the investigation and demoted as a result of another unrelated IAD investigation. Three of the five investigations were handled by contract investigators hired by OPD due to the position of the subjects of the investigation or the nature of the allegations. One investigation was conducted both by the California Department of Justice (DOJ), (at the request of the Mayor) and a contract investigator (hired by IAD). Of the case's 18 allegations, the OPD investigator recommended Sustained for 11 while California DOJ recommended Sustained for only one.

In the most serious case closed during 2009, a senior OPD officer was suspended and a mid-level supervisor reprimanded. In the same case, a supervisor for whom IAD had recommended Sustained findings for charges of retaliation, compromising criminal cases, insubordination, and performance of duty was initially sustained for compromising criminal cases and insubordination. After a Skelly hearing, however, the two findings against a sergeant, who was found by both the OPD contract investigator and California DOJ investigators to have deliberately conducted an inadequate murder investigation, were reversed and no discipline was applied to him. The IAD recommendation had merit, and reversal was inappropriate in light of the facts developed by the investigations.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

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

Task 40: Personnel Assessment System (PAS)-Purpose

Requirements:

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

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

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

(Negotiated Settlement Agreement VII. A.)

Comments:

The previous monitor found OPD out of compliance with Task 40. While the Department has created an early identification and intervention system that is available to all supervisors and commanders to assist in managing personnel, the previous monitor noted that in several critical areas required by the NSA, the data in IPAS is incomplete, inaccurate, and/or poorly organized.

Discussion:

Tasks 40 and 41 require the development and implementation of computerized relational database to manage risk; promote professional practices; and evaluate and audit the performance of all OPD employees, units, subunits, and shifts. The system that has emerged from this development process is known as the Personnel Assessment System (PAS). More specifically, the system for inputting and storing the required data is known as IPAS, and the system for outputting the required report and for use in evaluation is known as PAS. That bifurcation reflects more than nomenclature. The front end (IPAS) and back end (PAS) of the system operate as two quasi-independent systems, in that input of data into IPAS is completed by many approved sources including supervisors; however, the output of reports, determination of appropriate cutting points or thresholds, management, and monitoring of the review of officers meeting thresholds, as well as management of general personnel reviews is handled by two OPD employees comprising the PAS Administration Unit. Until recently, when the second employee was assigned, the unit operated with one critical employee.

With regard to Phase 1 compliance, Departmental General Order D-17, *Personnel Assessment Program*, incorporates the requirements of Tasks 40 and 41. This satisfies Phase 1 requirements.

OPD reports that during the previous monitor's tenth reporting period, a consultant retained by the previous monitor reported being favorably impressed after seeing the system in operation. PAS also received recognition in a 2006-2007 national technology competition held by the Public Technology Institute.

The previous monitor completed its first audit of Task 40 and 41 in August 2008 and reexamined compliance with the Tasks in January 2010. At those times, the previous monitor found that OPD had not gained full compliance with the related Task requirements.

During the site visit relevant to this report, we reviewed a variety of data relevant to these Tasks. We observed a demonstration of the IPAS system, met with Oakland Information Technology staff, and conducted extensive interviews with key PAS staff in the Department. We reviewed a wide range of documents covering all aspects of PAS. We also reviewed the protocol for assessing compliance with these requirements that was established under the previous monitor. With regard to that, we paid particular attention to those requirements for which the previous monitor was unable to assess or found OPD not in compliance.

In establishing the review protocol, Tasks 40 and 41 have been divided into a policy component, training component, and 33 practice-related subtasks that include 12 additional lower level provisions. For this review, analysis of data replicated the data request of the previous monitor in its last review of these Tasks. OPD provided material for each of the Tasks and subtasks. All of the Tasks in which OPD was found not in compliance are considered separately below.

Task 40.2 requires that PAS contain information on each of the elements required by the NSA. The previous team's assessment found the Department not in compliance with this subtask.

In its January 2010 report, the previous monitor indicated that the problems it identified in its earlier audit completed in November 2008 had been corrected. The previous monitor reported that OPD had made excellent progress, but that there remained several additional problems with the collection of data as required by the NSA. The report also noted that upon being informed of those problems, OPD immediately began developing and implementing systematic solutions. The previous monitor noted that OPD should have been able to attain full compliance with these requirements by the next review.

The specific problems identified by the previous monitor related to the lack of information on financial claims made against OPD and on reporting the results of investigations in some areas. Data on such elements as the incidence of use of force, complaints, and officer-involved shootings were found to be accurate.

As noted above, during our site visit, we attended a demonstration of the IPAS system, and we queried the system in search of several examples of data required by the MOU. We also interviewed key PAS unit staff regarding the status of the system and the issues raised in the earlier reviews. The interview also included a review of data in the system with a particular

focus on areas of concern noted in the previous monitor's reports. In one query, we asked for the totals for data entry in all of the necessary categories for the preceding three-month period. That request found a total of 8,301 entries, including 1,551 reports on uses of force, one report of financial claims, and the results of 126 investigations in the relevant categories. There were also significant numbers of training-related entries, uses of sick leave, canine deployments, and other categories of data.

In future reviews, we will expand upon this analysis through the review of samples of reports to continue to monitor the areas noted above, and particularly the results of investigations. For this review, our interviews, examinations of reports, and queries of the system all indicate that the data collection previously noted as meeting requirements continues at that level. The problems noted by the previous monitor in its last review have been rectified, and therefore, OPD is in compliance with these requirements.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Task 41: Use of Personnel Assessment System (PAS)

Requirements:

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

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

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

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

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only*

- disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
 13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
 14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*
 15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
 16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
 17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as*

- possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Comments:

The previous monitor found OPD out of compliance with Task 41. While the previous monitor found OPD in compliance with the majority of Task 41 provisions, it found the Department out of compliance with the requirements that all Division/Watch commanders and managers conduct quarterly meetings with their supervisory staff, and that members/employees are dismissed from the non-disciplinary intervention meetings when their commander/manager and supervisor discuss recommended intervention strategies.

Discussion:

As noted above regarding Task 40, with regard to Phase 1 compliance, OPD published Departmental General Order D-17, *Personnel Assessment Program*, which incorporates the requirements of Task 40 and Task 41. This satisfies Phase 1 requirements.

Task 41 prescribes the operations of the operation of the PAS (Personnel Assessment System) for which the data requirements were set out in Task 40. As with Task 40, the previous monitor assessed compliance with this Task in November 2008 and January 2010. As with Task 40, our review involved a request for data that mirrored the request of the previous monitor in its last review. The previous monitor found that OPD had made excellent progress since its earlier review and indicated that OPD should be able to attain compliance at its next review. It did, however, identify three problem areas it regarded as problematic.

Task 41.4 requires that the Department retain all PAS data for at least five years. The previous monitor was unable to assess this requirement. DGO D-17 states that PAS data will remain in the system for a minimum of five years unless law or policy mandates a different time period. The effective date of the policy is August 30, 2008, and it is scheduled for review and revision by August 30, 2010 (automatically after two years). There is no evidence of premature removal or deletions of data. The protocol calls for interviews with PAS unit staff to determine if data are being retained. Key PAS unit staff indicated that data were currently being retained and there was no plan to remove or purge data. Under the current compliance assessment methodology, current policy, and current practice, a clear plan to review policy on a regular basis and the absence of any plan which runs contrary to the MOU together are taken as evidence that OPD is in compliance and should remain at that level until there is evidence that no longer supports the finding. OPD is in compliance with this subtask.

Task 41.12.2 requires that after discussing the issues, the member/employee is dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor remain and discuss the situation and the member/employee's response. The previous monitor found OPD not in compliance with this subtask. This requirement deals with the processes through which IPAS meetings are conducted. The particular point in question establishes a process by which commander/managers and supervisors are encouraged to consider issues and discuss them in the absence of the employee involved prior to determining and delivering a decision. Our interviews with IPAS staff revealed that after concerns in this area were noted by the previous monitor, a checkbox was placed on the form reporting the meeting which indicates that proper procedure in this area has been followed. Our review of forms provided evidence of the appropriate documentation thus allowing a finding of in compliance.

Task 41.21 requires that all Division/Watch commanders and managers 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 are scheduled to follow up on supervisors' assessments of their subordinates for PAS intervention. The previous monitor found OPD not in compliance with this subtask. We requested information pertaining to quarterly meetings held by Division/Watch commanders and managers with their supervisory staff. We reviewed reports of 18 such meetings, and all contained information on attendees and on the IPAS-related issues that were discussed.

In its last report, the previous monitor found that all appropriate units had submitted the needed reports and noted that was in sharp contrast to its earlier review. The previous monitor also noted, however, that it had "significant questions about the veracity" of a small number of the reports. Our review did not raise those concerns, but we will, however, continue to monitor this situation. OPD is in compliance with this subtask.

During its last review, the previous monitor noted that the subtasks discussed above influenced its finding with regard to compliance, and also noted that sufficient improvement in these areas was expected to bring OPD into compliance on the next review. This improvement has occurred. Our goal at this point is to continue to monitor compliance with the portions of the MOU designated for continued monitoring including all of Task 40 and all of Task 41. At each site visit, we will request and review data relevant to other portions of these requirements to assured continued compliance.

For this report, along with our interviews and observations, we reviewed a variety of relevant reports and documents, including a summary of all data entered into PAS during the quarter. Based on that, we examined reports of officers identified as meeting or exceeding thresholds for review and intervention, reports of the subsequent meetings and reports of disposition, and follow-up from those meetings. We also examined reports of PAS Command reviews, and materials related to follow-up meetings. In subsequent reviews, we expect to follow the documentation of incidents, such as uses of force, through their representation in IPAS and through their influence on the selection of, and response to, officers exceeding set thresholds.

Our review also included an examination of the threshold analyses that have been performed for the period of October 1, through December 31, 2009. These analyses use the indicators required in PAS and must be performed for each major unit, shift, and assignment category. The analysis involves graphing data and selecting the appropriate cutting points manually. The steps include identifying the officers who exceed allowable levels and later contacting supervisors to schedule a PAS meeting. Still later, IPAS employees must accumulate the results of multiple meeting with multiple subjects.

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

Tasks 40 and 41 are critically important parts of the original NSA and continue in that position in the revised agreement. The Department has clearly worked hard to develop a system that is, and can continue to be, an important management tool supporting an effective police organization. Our review of PAS with its data entry, storage, and retrieval capabilities provided a clear demonstration of the strong capabilities of the system. It is no wonder that the system was well-received by one subject matter expert and also received recognition as a innovation in local government.

The broad use of this system by OPD supervisors and managers and its continued development and refinement now set the direction and goals for this system. In fact, during our site visit, we found the system widely used among OPD commanders, supervisors, and managers with frequent use by key staff up to and including the Chief's Office.

The protocol that has been developed to assist in assessing compliance with these requirements provides important direction for examining the system. It requires careful review and documentation of many events, processes, meetings, records, and responses. To proceed through its many components is to be led on a thorough dissection of PAS. As sound as this approach is, it is not without limitations. In particular, one can miss broad but important issues. One such issue that is easily neglected is the state of the PAS component of the overall system. IPAS is used as the title for the system's input and storage capabilities. The system functions remarkably smoothly. With only brief training, supervisors can input data and retrieve useful information about their subordinates.

Despite this high degree of functionality, however, the back half of the system – the generation of reports, the establishment of norms and reasonable limits for categories of behavior, and the

identification of officers who should receive special attention – still requires the decision-making of one key Department employee who must manage the entire system virtually manually. This is a considerable limitation on the utility and dependability of this system.

The current awkward condition of the PAS portion of this comprehensive system is, no doubt, due to what seems to be extended unsatisfactory progress with a private vendor that has been tied to this process from its inception. The danger in reviewing this system according to the individual micro-steps outlined in the protocol is that we can all lose sight of the forest for the trees. Although the measurement of the particulars suggests a well-functioning system, PAS is clumsy in its current condition. It is vulnerable due to its lack of independent functioning and its dependence on a single OPD employee. To stabilize this system and assure its usefulness into the future, the Department must do considerable work to complete the system and establish an organizational structure to assure its continued use and management.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

In future reviews of compliance with these requirements, we will not simply accept the measures outlined in the assessment protocol, but will also require evidence of continued progress toward meeting the general goals of the overall system.

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

Discussion:

In August 2009, since no Academy was planned for the near future, the previous monitor and the Parties agreed that there would be no active monitoring of this Task. In addition, since there were no new officers being trained, OPD decertified all current Field Training Officers (FTOs).

Recently, OPD has moved to bring a new class of recruits to the Department. This class will be trained by the Alameda County Sheriffs' Office at its academy and will report to OPD for an additional six to eight weeks of training in October 2010. In December 2010, this class will enter the 16-week Field Training Program (FTP). Moreover, in April 2010, a group of lateral officers will begin OPD training and orientation.¹⁸ When they complete training, these officers will enter the full 16-week FTP.

OPD reports that it plans to recall and recertify its FTOs to meet the program's needs. During the next reporting period, we will examine OPD's plans for reimplementation of the FTP, including its selection process and consistency of both basic training and FTO training.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

Next Steps:

In May, during the next quarterly review, we will examine OPD's plans for reimplementation of the FTP, including its selection process and consistency of training of basic training and FTO training. We will also interview the OPD Training Commander and Training Division staff, and examine training curricula, lesson plans, and training records.

¹⁸ Lateral officers are officers who come to OPD after employment with another law enforcement agency.

Task 43: Academy and In-Service Training

Requirements:

A. Academy Training Plan

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

B. Professionalism and Ethics

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

C. Supervisory and Command Training

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

D. In-Service Training

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

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

E. Training Staff Record Review

Appointment to the Academy staff or other staff training position shall also require a

review of the record of the individual being considered, to ensure that the individual does not have a record of any Class I offense, as defined in Section III, paragraph H (1), within the prior two (2) years, and that the individual is supportive of the philosophy and values of OPD.¹⁹

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

Comments:

Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. The previous monitor found OPD in conditional compliance with this provision because the Department provided perishable skills training to all of the officers and sergeants whose training records were reviewed, but the training was not provided within 24 months or less from the members' previous perishable skills training.

Specifically, the Department was found out of compliance with the requirement that every 24 months, every officer and sergeant who routinely effects the physical arrest of criminal suspects, completed a minimum of 14 hours of POST-certified perishable skills training in the following areas: tactical firearms (four hours); arrest and control (four hours); driver training (four hours); and tactical communications (two hours). The previous monitor found that only 58% of the officers and sergeants received the required training within the two-year cycle. The Department's dispatchers and civilian evidence technicians were found to have received the required number of hours of training for their positions.

Discussion:

During this reporting period, we interviewed OPD Training Division personnel and reviewed training schedules, course outlines, and the Department's 2009 training plan.

Task 43.1.1 requires that OPD's training plan ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions, and trains OPD personnel to implement the most contemporary developments in policing. To assess this subtask, we reviewed the training records of a stratified random sample of 100 OPD members and employees, including 82 officers, 12 civilian evidence technicians, and six dispatchers to determine if the members and employees received adequate training for their positions. We found the training records provided by OPD to be complete, legible, and responsive to our review requirements. The Department produced a record for each member or employee in our sample. For each member or employee, we reviewed the training s/he received during 2009 and calculated the number of hours recorded in his/her record. For the officers in our sample, we credited the California Peace Officer Standards and Training (POST)-certified Continued Professional Training (CPT) as counting toward the requirement.

In addition to more traditional methods of training delivery, OPD utilizes the computer-based PowerDMS system to train its personnel. In 2009, the 82 officers in our sample received 6,288

¹⁹ The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

hours, or an average of over 76 hours of training for each officer. That said, the Monitoring Team is concerned that the Department employs traditional “classroom” training at a level consistent with only the minimum POST requirements. As instructor-student interaction is essential to a robust training program, we hope that the Department determines that it is in its best interest to introduce more interpersonal training as part of its personnel development strategy.

The OPD Training Plan calls for providing each officer receives 40 hours of CPT every 24 months. In order to ensure that this training is received within a two-year period, the Department reports that it schedules officers to attend CPT after 18 months has passed following their last training. Our review of the training records of the 82 officers in our sample found that nine had entered the Department in 2008 but were not required to attend CPT until 2010. Of the remaining 73 officers, 72 (99%) attended CPT in 2008-2009. Six of these officers received less than the specified 40 hours, but received the required 14 hours of POST-certified perishable skills training in the following areas: tactical firearms (four hours); arrest and control (four hours); driver training (four hours); and tactical communications (two hours).

OPD is in compliance with Task 43.1.1.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will interview the managers responsible for the OPD Training program and we will review schedules, course outlines, the 2010 training plan, and records pertaining to the training for OPD employees. We will select a new random sample of 100 OPD employees including officers, civilian evidence technicians and dispatchers and we will review training records to ensure that they have attended CPT and/or in-service training, as required.

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:

The previous monitor found OPD out of compliance with these requirements. In its most recent assessment of Task 45, the previous monitor noted that while it found improvement in this area, it continued to observe instances of inconsistent treatment and instances in which Skelly officers reduced discipline automatically without regard to the facts and circumstances of the case.

Discussion:

Based on our review of the relevant policies, OPD is in policy compliance with Task 45.

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. OPD has developed an automated system, the IAD database, which tracks discipline and corrective action. Our review determined that while the system could be used to identify cases in which findings were Sustained during the last quarter of 2009, there were gaps in the data that appeared. Nine (37%) of 24 records in which findings were sustained did not contain data for either or both Discipline Conference Date or Discipline Letter Date.

Task 45.2 requires that all internal investigations that result in a Sustained finding are submitted to the Discipline Officer for a disciplinary recommendation. **Task 45.3** requires that before recommending discipline, unless directed by the Chief of Police, the Discipline Officer convenes a meeting with the Deputy Chief or designee in the affected chain of command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance. **Task 45.4** requires that discipline is imposed in a manner that is fair and is consistent with the Discipline Matrix.

To assess the Department's practice compliance with these requirements, we reviewed all 28 investigations that were approved between October 1, and December 31, 2009, with at least one Sustained finding.²⁰ We found that in three of these cases, the member or employee resigned before discipline could be imposed or because of the discipline that would be imposed. The discipline in 24 (96%) of the remaining 25 cases for the past quarter fell within the guidelines of the Discipline Matrix. Only one case fell outside the guidelines of the Discipline Matrix.

²⁰ We did not review the March 21, 2009 incident inasmuch as the case involves an exceptional tragedy and it is not reflective of routine or typical situations. Further, the event was still under consideration by the Department at the time of our review.

In two of the cases we reviewed, Skelly hearing results had been finalized. The results of both cases negatively impacted fair and consistent discipline. In addition to these two cases, four other cases were appealed in Skelly hearings, but the results were not available during our site visit in February.

In the one case in which the discipline was outside the Discipline Matrix, an employee was found to have viewed inappropriate material on an office computer. The discipline recommended following the IAD investigation, a 15-day suspension, was rescinded at a Skelly hearing and reduced to a five-day suspension with four days held in abeyance, resulting in a one-day suspension actually being imposed. The four days held in abeyance were to be imposed in the event that the employee has another Class 1 Sustained finding in the next year. The case was complicated by the fact that the Discipline Matrix was changed between the time of the infraction, and the adjudication from a range of S10-S20-T (at the time of the offense) to WR-T (at the time of the adjudication). The newer Discipline Matrix, however, contained a refined and more appropriate definition of the misconduct in another section that carried a penalty of S15-T. The Skelly hearing findings were documented and the employee's acknowledgement of wrongdoing, "excellent" work record, and lack of previous Sustained findings were noted. In light of the fact that the policy of IAD is to utilize the Matrix in place at the time of the offense, and the fact that if the new Matrix was to be used, the discipline imposed was substantially less than that required for the more fitting section of the Matrix, we found the Skelly deviation unjustified.

Finally, during our review of the cases involving alleged retaliation (Task 37), we found a second case that occurred before the last quarter and adversely impacted fair and consistent discipline as a result of a Skelly hearing. The case, which was investigated by both the California Department of Justice (DOJ) and IAD, involved a senior OPD officer who was suspended and a mid-level supervisor who was reprimanded. Charges against a lower-level supervisor for whom IAD had recommended Sustained findings for charges of retaliation, compromising criminal cases, insubordination, and performance of duty were initially Sustained for compromising criminal cases and insubordination. After a Skelly hearing, however, the two findings against the member, who was found by both the OPD contract investigator and California DOJ investigators to have deliberately conducted an inadequate murder investigation, were reversed and no discipline at all was applied to him. While we agree that the facts pertaining to the alleged retaliation were debatable, IAD's recommendations as to insubordination and performance of duty had merit, and reversal was inappropriate in light of the facts discovered by the two investigations.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

We will review the IAD cases in which sustained findings were made during the past quarter (January 1, through March 31, 2010), and determine if the discipline fell within the guidelines of the OPD Discipline Matrix or, if it departed, if it was adequately documented. We will also review cases in which Skelly hearing results were finalized.

Section Three

Conclusion: Critical Issues

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

- A. The first issue is one that we will repeat from the opening paragraphs of this report because it is central to the working of the Monitoring Team and it represents a change from the earlier review processes. The renewal of the monitorship should not be viewed as a personnel change. The years of experience that OPD has had in moving forward and the nature of the experience of the Monitoring Team should all be counted as assets at the current time. As such, we should all recognize the value in transitioning from a position that was regarded as driven from outside the Department to one in which the Department's own interest in quality policing is reflected in its movement forward. This can no longer be a "monitor-driven" process. It must become an OPD-driven process. The goal in moving forward should not be simply meeting the technical requirements of compliance, but reflecting the Department's own commitment to quality service. This Monitoring Team, with its years of experience and expertise in addressing the issues found in the Agreement, is uniquely qualified to assist with this transition.
- B. A second issue relates more directly to administrative practice in the Department. Management of the Department will continue to grow increasingly dependent on the collection, storage, and use of information. Even apart from the more general data collection for personnel issues, critical Department databases contain information on investigations, Internal Affairs, and the Personnel Assessment System (PAS). While these databases may have come into prominence under the NSA, they, no doubt, have enormous benefit for the Department even outside of that context. The databases are well-functioning and have benefitted from a strong Information Technology Department. Although the individuals who manage these systems appear to be doing an excellent job, the systems remain vulnerable because they are so dependent on those individuals. What is true of the PAS system is also true of other systems. Should the one person intimately familiar with the system be unavailable, the system itself would be in danger of falling out of usability because the needed expertise is not shared. The Department needs to address this issue at the policy, staffing, and training levels.
- C. Related to the above material, we are concerned that the management of databases may also have other, less easily detected problems. Since the databases, such as the IAD

database, are maintained by the relevant Departmental units, it is difficult to ensure the quality of the available data. It is possible that that databases are not adequately “cleaned” or appropriately updated. The Department needs to review its database procedures across these units, with particular attention to quality assurance procedures when the management of these systems is decentralized.

- D. Another area requiring attention is the collection of “stop” data. The requirements to maintain stop data were a major part of the original concerns that led up to the NSA. At this point, OPD’s biggest obstacle involves the ability to identify the number of stop data forms that have been completed. Without an expected base rate, it is impossible to determine if stops are being appropriately documented. OPD must recognize that a reliable stop data collection system, as well as clear guidelines for collecting and analyzing stop data, is integral to both the management of the Department and building public trust.
- E. The issue described above also suggests the value of considering the broader issue of training. As required, OPD’s training efforts are governed by state standards, which define minimum requirements for pre-service and in-service training. The complexities of the Agreement guiding this Monitorship, however, go beyond any set of minimal guidelines. These circumstances suggest there may be much to be gained through a full consideration of the thoroughness of existing training. OPD has taken advantage of the opportunities for roll-call and on-line training. These and similar methods can be both efficient and effective, but they must also be reviewed periodically to assure that they satisfy agency needs. The complexity of modern policing, further complicated by the requirements of monitoring, place a great burden on training to prepare officers for their daily work and to advance and make increasingly significant contributions over their careers. Assuring the highest quality training can also help ensure that the work done in satisfaction of the requirements of the Negotiated Settlement Agreement makes the greatest possible contribution to the Department.
- F. Finally there is an additional issue that, like training, relates to both immediate practical issues and to larger questions of perspective within the Department. In assessing compliance for this report, members of the Monitoring Team carefully reviewed a wide range of internal and external complaints and investigations. The documentation in these cases has sometimes been uneven. We have noted a trend in which relatively minor issues, such as questions of courtesy, are documented extensively and in great detail. On the other hand, what appear to be more serious accusations are sometimes documented more sparingly. This finding suggests that opportunities to learn critical lessons from the complaint and review process might be missed because important detail is left out. It is, of course, possible that this misalignment of seriousness and attention is an artifact of the external scrutiny associated with the NSA. That would be unfortunate, as it would be the opposite of the goals of both the Monitor and the Department with our shared interest in quality policing.

The issues noted above contain elements that range in scope from operational concerns to questions about how a police department moves forward under the process of a monitorship. The Oakland Police Department is a large and prestigious police department that faces a wide array of complicated issues as it seeks to serve the diverse Oakland community. Progress meeting the compliance requirements to this point is clear evidence that the Department can resolve operational issues even when they require significant change. The broader questions posed by the six issues discussed above are more complex. We are optimistic, however, on completion of our first site visit, that OPD is well-positioned to move past viewing the remaining Tasks as “imposed from outside,” and instead, to adopting them as its own guidelines for quality policing.

Appendix

Acronyms

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

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