

# Oakland Police Department

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## Negotiated Settlement Agreement

### 20th Annual Report

February 1, 2014– January 31, 2015

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## INTRODUCTION

Since January 22, 2003, the City of Oakland and the Oakland Police Department (OPD) have been implementing the reforms outlined in the Negotiated Settlement Agreement<sup>1</sup> (NSA) with the goal of transforming the Department into a model agency with superior police practices. The Department has striven to implement such practices in the areas of supervision, accountability, police intervention programs, use of force, and misconduct investigations.

The original NSA reform provisions were separated into 52 tasks for implementation, delegation, and tracking purposes (only 51 were assessed for actual practice compliance – the fifty-second task dealt with contractual housekeeping provisions). A Memorandum of Understanding (MOU) succeeded the NSA, requiring continued, but more narrowly focused, oversight. The MOU focuses on the 22 tasks that were not yet in full compliance and/or were considered to be the most critical tasks when the NSA expired.

The Monitor, Chief Robert Warshaw, Police Performance Solutions, LLC, assesses compliance with each of the 22 MOU tasks and provides quarterly summaries of his findings.

In this twentieth annual report, the Office of the Inspector General (OIG) summarizes the Department's compliance status and efforts to implement provisions of the MOU for the period of February 1, 2014 through January 31, 2015. During this time period, the Monitor released four reports (the seventeenth, eighteenth, nineteenth, and twentieth quarterly status reports) based on site visits conducted throughout the year.

The Department has changed the way it does business, resulting in much improved training, supervision, self-monitoring, and accountability. It has put into practice or revised policies and procedures to reflect current industry standards. As a result, there has been a decline in citizen complaints, uses of force, and pursuits. The Department strives for continuous improvement, and remains dedicated to meaningful and lasting change.

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

## COMPLIANCE PROGRESS OVERVIEW

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

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

Implementation progress as of January 21, 2015 (date of publication of the *Twentieth Quarterly Report of the Independent Monitor for the Oakland Police Department*) is summarized in Table 1 below. Table 2 lists the 22 tasks by number and title and summarizes their state of compliance as of the same date.

**Table 1. Task Compliance Status**

Task Status	Tasks as of January 21, 2015
Tasks in Training and Policy Compliance	22 of 22
Tasks in Compliance, Implementation	19 of 22
Tasks in Partial Compliance, Implementation	1 of 22
Tasks Not in Compliance, Implementation	0 of 22
Deferred Tasks*	2 of 22

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

**Table 2. State of Compliance (as of January 21, 2015)**

Task		Phase 1: Policy and Training	Phase 2: Implementation			
		In Compliance	In Compliance	Partial Compliance	Not in Compliance	Deferred
Task 2:	Timeliness Standards and Compliance with IAD Investigations					
Task 3:	IAD Integrity Tests					
Task 4:	Complaint Control System for IAD and Informal Complaint Resolution Process (4.7 and 4.10 only)					
Task 5:	Complaint Procedures for IAD					
Task 6:	Refusal to Accept or Refer Citizen Complaints					
Task 7:	Methods for Receiving Citizen Complaints (7.3 only)					
Task 16:	Supporting IAD Process – Supervisor/Managerial Accountability					
Task 18:	Approval of Field – Arrest by Supervisor (18.2.2 only)					
Task 20:	Span of Control for Supervisors					
Task 24:	Use of Force Reporting Policy					
Task 25:	Use of Force Investigations and Report Responsibility					
Task 26:	Force Review Board (FRB)					
Task 30:	Executive Force Review Board (EFRB)					
Task 33:	Reporting Misconduct					
Task 34:	Vehicle Stops, Field Investigation and Detentions					
Task 35:	Use of Force Reports – Witness Identification					
Task 37:	Internal Investigations – Retaliation Against Witnesses					
Task 40:	Personnel Assessment System (PAS) – Purpose					
Task 41:	Use of Personnel Assessment System (PAS)					
Task 42:	Field Training Program					
Task 43:	Academy and In-Service Training (43.1.1 only)					
Task 45:	Consistency of Discipline Policy (45.1 and 45.4 only)					
<b>Total Tasks</b>		<b>22</b>	<b>19</b>	<b>1</b>	<b>0</b>	<b>2</b>

## OFFICE OF INSPECTOR GENERAL AUDITS

During this reporting period, the Office of Inspector General completed six audits of NSA related tasks and three audits of non-NSA related policy and procedures. Two of the NSA related audits were completed by OIG Audit Unit staff and four were completed by Elite Performance Assessment Consultants (EPAC). The purpose of the audits was to identify deficiencies that could impact compliance with the Agreement and Departmental policy, as well as inefficiencies in practice.

NSA-related audits are listed below and summarized in this section:

1. Methods of Receiving Citizen's Complaints (Task 7)
2. IAD Staffing and Resources (Task 1)
3. Members', Employees' and Supervisors' Performance Reviews (Task 21)
4. OC Log and Check-out Procedures (Task 27)
5. Personnel Practices (Task 44)
6. Complaint Procedures for IAD (Task 5)

Non-NSA related audits that were conducted are listed below:

7. Citizen Informant Files (DGO O-04) – April 2014
8. Citizen Informant Files (DGO O-04) – November 2014
9. Search Warrant (TB I-F)

### **Methods of Receiving Citizen's Complaints (Task 7)**

On June 21, 2014, EPAC completed an audit of Task 7, Methods of Receiving Citizen's Complaints. Task 7 requires:

Task 7.1 - OPD establishes a recordable, toll-free complaint hotline. The hotline is staffed by OPD personnel and advises that the call is being recorded.

Task 7.2 - Citizen Complaint guidelines are properly posted and informational brochures are made available in key Departmental and municipal locations.

Task 7.3 - OPD accepts anonymous complaints and investigates them to the extent reasonably possible to determine whether the allegation can be resolved. To the extent possible, OPD asks anonymous complainants for corroborating evidence.

Task 7.4 - The OPD personnel have citizens complaint brochures in their vehicles at all times while on-duty.

Task 7.4 - Citizen's complaint brochures are made available when requested by a citizen or wishing to make a complaint.

Task 7.5 - The IAD is located at a facility other than the Police Administration Building.

Task 7.6 - The OPD complaint form and brochure (TF-3208) comply with City policy.

Task 7.7 - OPD complaint forms are processed in accordance with state law.

**Findings**

OPD was compliant with all subtasks with the exception of Task 7.1. OPD staff addressed the non-compliant issue with the Communications Section. OPD's solution was to re-rout the phone line through the Communications Section supervisor's office, update the Section's policy and procedures, and train appropriate personnel.

**Internal Affairs Division (IA) Staffing and Resources (Task 1)**

On June 26, 2014, EPAC completed an audit of Task 1, IAD Staffing and Resources. Task 1 requires:

Task 1.1 - IAD assignments are made in accordance with the IAD manual.

Task 1.2 - IAD rotations are in accordance with the IAD manual.

Task 1.3 - Training and qualifications of members and other personnel in IAD are consistent with the IAD manual.

Task 1.4 - Confidential information is maintained in accordance with the IAD manual.

**Findings**

OPD was found non-compliant with Task 1. In response to the audit, IAD proposed and implemented the following solutions:

- Task 1 awareness training to all supervisors and commanders assigned to IAD.
- Creation of new "IAD Selection Check List" to consolidate multiple pre-existing forms in order to cover all facets of the IAD selection process.
- Create and update Task 1 folders for current and prospective IAD personnel.
- Designate Task 1 responsibilities to supervisory and command staff.
- Supervisory Note File (SNF) entries during performance appraisal periods which document current performance review, recommendations for retention of assignment, and willingness to remain in the IAD assignment.
- Drafting new Policy and Procedure to formalize Task 1 protocols.
- Creating secure storage for case files.
- Quarterly Review of all Task 1 folders by the IAD Commander.

The OIG conducted several follow-up inspections and confirmed that the IAD fully implemented all proposed solutions.

### **Members', Employees' and Supervisors' Performance Reviews (Task 21)**

On June 26, 2014, EPAC completed an audit of Task 21, Members', Employees' and Supervisors' Performance Reviews. Task 21 requires:

Task 21.1 - Every OPD commander/manager shall meet at least twice per year with each of his/her immediate subordinate members, employees and supervisors, to coach them regarding their strengths and weaknesses

Task 21.2 - Supervisors of the following units shall meet individually with members and employees at least twice per month for informal performance reviews. Supervisors shall maintain a record of these informal reviews. Affected units include: Patrol Division, Crime Reduction Teams, Internal Affairs Division, Intelligence Division, Parole and Corrections (PAC) team, Special Duty Units (SDU), Traffic Operations Section, Special Operations Section, Fugitive Unit, Problem Solving Officers (PSO), and Campus Life and School Safety (CLASS).

### **Findings**

OPD was found non-compliant with Task 21.2. In response to the audit findings, the OIG proposed the following solutions:

- The OIG issued a Departmental e-mail to all management and supervisory level personnel. The e-mail advised in detail the standards for performance reviews and reminded responsible personnel that corresponding documentation is required in iPAS using a Supervisory Note File (SNF) format. This e-mail provided additional clarity regarding performance reviews and aimed to eliminate any confusion among involved personnel.
- The Office of Inspector General will conduct a follow-up inspection of applicable units to reassess the Department's level of compliance for supervisors' performance reviews. This inspection will be completed no later than 90 days following the Office of Chief of Police's review and response to the Management Response.

Since the conclusion of the audit, OIG has conducted follow-up inspections and there has been improvement. OIG is continuing to assess.

### **OC Log and Check-out Procedures (Task 27)**

On June 30, 2014, EPAC completed an audit of Task 27, OC Log and Check-out Procedures. Task 27 requires:

Task 27.1 - Keep a log of all Oleoresin Capsicum (OC) canisters checked out by OPD personnel.

Task 27.2 - The log is computerized and electronically accessible. Accurate reports are prepared regularly and distributed.

### **Findings**

OPD was found compliant with all requirements of Task 27.

**Personnel Practices (Task 44)**

On July 18, 2014, the OIG completed an audit of Task 44, Personnel Practices. Task 44 requires:

Task 44.1.1 - Personnel receive annual Performance Appraisals from appropriate supervisor/manager.

Task 44.1.2 - Performance Appraisals are completed in conformance with Settlement Agreement Requirements:

Supervisors and commanders shall document, in performance appraisals, that they are aware of the nature and progress of complaints and investigations against members/employees, and shall consider all sustained and not sustained complaint findings completed within the time limits imposed by Government Code Section 3304, in their performance appraisals of subordinates

(Members Only)

uses of force; “sick” and “injured” leaves; arrests for narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrests for other offenses; arrests involving charges of Penal Code §§69, 148 and/or 243(b) (c); and vehicle accidents.

Task 44.2 - Performance Appraisals signed by appropriate supervisors/managers in direct chain and Appraisals include written addendum by disagreeing reviewers.

Task 44.3 - Appraisals of members with substantial collateral duties document the results of the consultation with the other supervisor or manager.

Task 44.4 - Appraisals of members supervised by two or more individuals due to a transfer document the results of the consultation of the other supervisor(s) or manager(s).

Task 44.5 - Appraisals of promoted members/employees completed by new supervisor.

Task 44.6 - Supervisors and commanders/managers who knew or should have known of patterns of misconduct but failed to identify them are held accountable.

(Not assessed since the 2007 Independent Monitoring Team agreed that this provision incorporates the requirements of Tasks 21.7 and 4.7 and both tasks are to be assessed in conjunction with the assessment of Tasks 41.7 and 41.20.)

Task 44.7.1 - Performance Appraisals of Area Captains document that their subordinates work to enhance community policing.

(Unable to assess due to organizational/structural changes in 2013)

Task 44.7.2 - Area Captains are held accountable for whether their subordinates are working to enhance the quality of community contacts.

(Unable to assess due to organizational/structural changes in 2013)

Task 44.8 - OPD is conducting regular audits of the performance appraisal system.

### **Findings**

OPD was found non-compliant with Tasks 44.2, 44.3, 44.4, and 44.8. In response to the audit, the Personnel Section proposed and implemented the following solutions:

- The Personnel Section will re-issue Special Order 8791 to remind supervisors of their responsibilities in completing a Performance Appraisal.
- The Personnel Section began conducting regular audits of the performance appraisal system as of the end of 2013.

The Personnel Section also implemented several changes to improve the appraisal process:

- Issue a Special Order extending the performance appraisal due dates to Personnel from the 10<sup>th</sup> day of the month to the 25<sup>th</sup> of the month to ensure supervisors have enough time to document iPAS information that covers the entire appraisal period and submit the appraisal to Personnel within the allotted time period.
- Provide training in upcoming sergeants' CPT and a Command Retreat on performance appraisals.
- Revise DGO B-6 to reflect the recommended changes from the audit and clean-up of outdated language that are no longer applicable.

The OIG conducted several follow-up inspections and confirmed that the Personnel Section fully implemented all proposed solutions with the exception of the DGO B-06 policy revision. Revision of the document is currently going through the appropriate process.

### **Complaint Procedures for IAD (Task 5)**

On October 28, 2014, the OIG completed an audit of the Informational Business Card Process (IBC), which is related to Task 5, Complaint Procedures for IAD. The intent of the audit was to determine if the Department was compliant with the newly implemented requirements of the IBC process. DGO M-3 and Special Order 9112 requires:

- The Department will furnish IBCs to members.
- Members shall carry and/or have direct access to IBCs while on-duty. "Direct access to" is defined as: A place where a member can quickly and easily obtain an IBC to provide to citizens, when required or asked, without unnecessary delay.

- If the complainant refuses or is unable to wait for a supervisor, the member of employee shall:
  - provide the complainant with an OPD Informational Business Card (IBC) and Complaint Form (TF-3208) with his/her name, serial number and CAD incident number;
  - enter a CAD notation to the call;
  - use the Radio Disposition Code of “IBC” (Informational Business Card);
  - and call the Communications Section Supervisor with the date of the referral, incident number and brief description of the incident to be added to the Complaint Referral Log (TF-3367) within 24 hours of the referral.
  
- If a member or employee is unsure whether a citizen wishes to make a complaint, he/she shall:
  - provide the citizen with an Informational Business Card and/or Complaint Form (TF-3208) with his/her name, serial number and CAD Incident Number;
  - enter a CAD notation to the call;
  - use the Radio Disposition Code of “IBC” (Informational Business Card);
  - and call the Communications Section Supervisor with the date of the referral, incident number and brief description of the incident to be added to the Complaint Referral Log (TF-3367) within 24 hours of the referral.

### **Findings**

OPD was found compliant with all requirements of the IBC process.

## **CONCLUSION**

The Department has worked closely with the Monitor to identify solutions to issues that have prevented it from achieving full compliance. These efforts have proven fruitful as the Department is now in compliance with 19 of 22 Tasks, an increase in compliance of five tasks over the previous year. The Department and the City remain committed to achieving full compliance with the NSA and will continue working with all the stakeholders to attain the goal of ensuring meaningful and lasting change.