

# **Oakland Police Department**

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## **Negotiated Settlement Agreement**

### **14th Semi-Annual Report**

**August 1, 2009 – January 31, 2010**

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Date: September 24, 2010

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## INTRODUCTION

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

In this 14th semi-annual report, the Office of the Inspector General (OIG) summarizes the Department’s compliance status and efforts to implement provisions of the Agreement for the period from August 1, 2009 through January 31, 2010. This document marks a transition between two monitoring teams. The first Independent Monitoring Team (the IMT), which served for seven years, completed its tenure in January 2010. The status of compliance stated in this report is based upon this team’s assessments.

As of late January 2010, the Department has been paired with a new monitor (Police Performance Solutions, LLC). This monitor, PPS-IMT, consists of experts in law enforcement, police monitoring, auditing and evaluation, intergovernmental relations, civil rights compliance, constitutional considerations, and best practices in contemporary policing. It will be monitoring compliance based on a Memorandum of Understanding that includes 22 of the original 51 tasks.

The first Independent Monitoring Team deserves hearty thanks for its seven years of dedicated support in the process of creating a “best practices” Department. The team - Rachel Burgess, Kelli Evans, Charles Gruber, and Christy Lopez – began serving in 2003 and monitored the Department's compliance with the Negotiated Settlement Agreement through January 22, 2010.

Over the last seven years, the Department has changed the way it does business, resulting in much improved training, supervision, self-monitoring, and accountability. There continue to be areas in need of improvement and the Department will work closely with the new monitor to ensure meaningful and lasting change.

### PURPOSE OF THE AGREEMENT

The purpose of the Agreement is to promote police integrity and prevent conduct that deprives persons of the rights, privileges, and immunities secured or protected by the Constitution and laws of the United States. The Agreement’s focus is directed towards the following eight core areas:

1. Internal Affairs Investigations
2. Use of Force Reporting
3. Discipline
4. Internal Personnel Assessment System
5. Field Supervision

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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

6. Training
7. Management Oversight
8. Auditing and Review Systems.

Stakeholders include the citizens of Oakland, the City of Oakland, the Plaintiffs' Attorneys, and the Oakland Police Officers' Association. An independent monitor (the IMT) assesses and evaluates compliance with the provisions of the Agreement.

## **BACKGROUND**

In July 2000, the Oakland Police Department (OPD) discovered that four officers who worked the night shift in West Oakland, the self-named "Riders," had allegedly abused citizens by using unlawful force, planting evidence and fabricating police reports. The conduct of these officers gave rise to a lawsuit brought by multiple plaintiffs seeking both monetary compensation and reforms within the Department.

In January 2003, the City of Oakland resolved the litigation by mutually agreeing to a court-approved Negotiated Settlement Agreement that required major changes in how the Department reports, investigates, and uses force. The Agreement set up an effective system to identify problem officers, investigate complaints related to officer conduct and ensure that officers who train others are the best in the Department.

The reforms and standards required by the Agreement aimed to make the Oakland Police Department one of the best in the nation by promoting effective and respectful policing. The Department considers compliance with the Agreement to be part of its commitment to provide competent and effective law enforcement to the citizens of Oakland. The goals of the Agreement are to use the best available practices for police supervision, training and accountability, and to enhance OPD's ability to protect the lives, rights, dignity, and property of the community.

The Agreement also set up systems to strictly monitor officer performance and promptly and appropriately discipline officers who violate rules and policies or who fail to report rule-breaking by others. The Oakland Police Department has invested valuable resources so that citizens will have confidence in the system and know that their complaints are handled properly and without delay.

The Department is working collaboratively with the Court, Independent Monitoring Team, Plaintiffs' Attorneys, employee unions and other stakeholders to ensure that our compliance with the Agreement results in an accountable Department.

## COMPLIANCE OVERVIEW

### COMPLIANCE PROGRESS SUMMARY

For implementation, delegation, and tracking purposes, Agreement reform provisions were separated into 52 separate tasks. Only 51 are assessed for actual practice compliance (the 52nd task concerns contractual housekeeping provisions). Only the IMT can deem the Department in compliance, and only after conducting an audit of each task. In order to achieve full compliance, three stages of compliance must be satisfied: policy, training, and actual practice (implementation). Implementation activities and the compliance status of each task are outlined in the Task Implementation section of this report (Appendix A). Implementation progress is summarized in Table 1.

**Table 1. Task Compliance Status**

Task Status	Tasks as of February 9, 2010
Tasks in Policy Compliance	51 of 51
Tasks in Training Compliance	44 of 44
Tasks in Full Actual Practice Compliance	32 of 51
Tasks in Partial Actual Practice Compliance	16 of 51
Tasks Out of Compliance	3 of 51

The status of each task is reported here as of February 9, 2010. Table 2 lists the 51 tasks with their due dates and summarizes the state of compliance.

**Table 2. State of Compliance, Tasks 1 – 51 (as of February 9, 2010).**

Task	Task Name	Due Date	Policy Compliance	Training Compliance	Partial Practice Compliance	Full Practice Compliance Date
1	IAD Staffing and Resources	8/13/2004	√	√		11/06
2	Timeliness Standards and Compliance with IAD Investigations	6/15/2004	√	√		6/09; 12/09
3	IAD Integrity Tests	6/1/2005	√	√	√	
4	Complaint Control System for IAD and Informal Complaint Resolution Process	6/15/2004	√	√		5/09



Task	Task Name	Due Date	Policy Compliance	Training Compliance	Partial Practice Compliance	Full Practice Compliance Date
5	Complaint Procedures for IAD	6/15/2004	√	√	√	
6	Refusal to Accept or Refer Citizen Complaints	6/1/2005	√	√		
7	Methods for Receiving Citizen Complaints	6/15/2004	√	√	√	
8	Classifications of Citizen Complaints	6/15/2004	√	√		4/09
9	Contact of Citizen Complainants	8/13/2004	√	√		2/09
10	Procedure Manual for Investigations of Citizen Complaints	8/13/2004	√	√		11/06
11	Summary of Citizen Complaints Provided to OPD Personnel	8/13/2004	√	√		3/09; 10/09
12	Disclosure of Possible Investigator Bias	6/15/2004	√	√	√	
13	Documentation of Pitchess Responses	7/1/2005	√	√		4/06
14	Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims	6/15/2004	√	√		11/05
15	Reviewing Findings and Disciplinary Recommendations	6/15/2004	√	√		11/06; 7/09
16	Supporting IAD Process-Supervisor/Managerial Accountability	6/15/2004	√	√		
17	Supervisory Span of Control and Unity of Command	1/20/2004	√	N/A		12/05
18	Approval of Field-Arrest by Supervisor	1/20/2004	√	√	√	
19	Unity of Command	1/20/2004	√	√		2/08
20	Span of Control	8/14/2003	√	√	√	

Task	Task Name	Due Date	Policy Compliance	Training Compliance	Partial Practice Compliance	Full Practice Compliance Date
21	Members', Employees' and Supervisors' Performance Reviews	5/5/2004	√	√		1/09
22	OPD/DA Liaison Commander	4/15/2003	√	√		6/07
23	Command Staff Rotation	1/20/2004	√	N/A		11/05
24	Use of Force Reporting Policy	7/20/2004	√	√	√	
25	Use of Force Investigations and Report Responsibility	7/20/2004	√	√	√	
26	Use of Force Review Board (UFRB)	7/20/2004	√	√	√	
27	Oleoresin Capsicum Log and Checkout Procedures	7/20/2004	√	√		5/09
28	Use of Force-Investigation of Criminal Misconduct	7/20/2004	√	√		7/09
29	IAD Investigation Priority	7/20/2004	√	√		7/09
30	Firearms Discharge Board of Review	7/20/2004	√	√	√	
31	Officer-Involved Shooting Investigation	7/20/2004	√	√		4/08; 1/10
32	Use of Camcorders	7/20/2004	√	N/A		10/03
33	Reporting Misconduct	8/25/2003	√	√	√	
34	Vehicle Stops, Field Investigation and Detentions	8/25/2003	√	√	√	
35	Use of Force Reports-Witness Identification	8/25/2003	√	√		1/10
36	Procedures for Transporting Detainees and Citizens	8/25/2003	√	√		12/08
37	Internal Investigations-Retaliation Against Witnesses	8/25/2003	√	√		
38	Citizens Signing Police Forms	8/25/2003	√	√		4/06

Task	Task Name	Due Date	Policy Compliance	Training Compliance	Partial Practice Compliance	Full Practice Compliance Date
39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	8/25/2003	√	√		12/09
40	Personnel Assessment System (PAS) – Purpose	6/28/2005	√	√	√	
41	Use of Personnel Assessment System (PAS)	6/28/2005	√	√	√	
42	Field Training Program	4/16/2004	√	√		4/09
43	Academy & In-Service Training	2/15/2005	√	√		7/09
44	Performance Appraisal Policy	7/7/2004	√	√	√	
45	Consistency of Discipline Policy	6/15/2004	√	√	√	
46	Promotional Consideration	7/8/2003	√	N/A		9/09
47	Community Policing Plan	8/1/2003	√	√		11/08; 11/09
48	Departmental Management and Annual Management Report	7/02/2003	√	√		6/08
49	Monitor Selection and Compensation	4/15/2003	√	N/A		8/03
50	Compliance Unit Liaison Policy	3/4/2003	√	N/A		8/03
51	Compliance Audits and Integrity Tests	9/1/2005	√	N/A		10/05; 11/06

## **AUDITS AND REVIEWS**

### **THE AUDIT AND INSPECTIONS UNIT OVERVIEW**

In accordance with the Agreement, the Department is required to conduct six annual audits. The following six areas are to be prioritized, but OIG may substitute audits of other areas:

1. Arrest and offense reports and follow-up investigation reports
2. Use of force incident reports and use of force investigations
3. Complaint processing and investigation
4. Mobile Data Terminal traffic
5. Personnel evaluations
6. Citizen accessibility to the complaint process and the availability of complaint forms.

The Audit/Inspections Unit (“Audit Unit”) of OIG is committed to conducting audits of key areas of the Agreement, including issues or concerns that are central to the objectives of the Department and the Chief of Police.

### **SUMMARY OF AUDITS AND REVIEWS CONDUCTED**

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

1. Mobile Data Terminal Traffic
2. Refusal to Accept or Refer Citizen Complaints – Task 6
3. Disclosure of Possible Investigator Bias – Task 12
4. Span of Control for Supervisors – Task 20
5. Vehicle Stops, Field Investigation and Detentions – Task 34.

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

### **Mobile Data Terminal Traffic**

OIG initiated its sixth annual audit of the Mobile Data Terminals (MDTs) on November 12, 2009. The purpose of this audit was to examine the content of car-to-car message transmissions and ensure that user-generated messages do not violate Department policy, the Agreement, or local and/or federal laws. The audit revealed a slightly higher number of daily transmissions between mobile data terminals than found in the 2008 audit (1.21 versus 1.03 transmissions per day). Of the 111 individual messages transmitted in the audit period, none were found to contain inappropriate language, wording that constitutes a policy violation or lengthy conversations unrelated to work. Although 843 members and employees were authorized to use the VisionTEK system (MDT computer system), during this audit, only 57 of those transmitted car-to-car messages. This number has dropped significantly; in the 2008 audit, 76 people used the VisionTEK system.

The Mobile Data system manager, a sergeant in the Bureau of Field Operations, works with Information Technology Unit staff to monitor and archive MDT transmissions. ITU downloads MDT transmission reports monthly to the secure MDT shared drive, which can only be accessed

by authorized personnel. ITU retains reports on the MDT shared drive for a five-year period. The system manager utilizes the MDT shared drive to review the monthly reports and takes appropriate action if necessary. MDT data was not available to the system manager for a few months in 2009 due to ITU staffing changes. However, this problem has been resolved.

### **Refusal to Accept or Refer Citizen Complaints – Task 6**

On July 20, 2009, OIG assessed the Department's progress towards achieving compliance with Task 6 requirements. For this review, the audit team focused on three areas of complaint acceptance:

- Discouraging a person from filing a complaint (e.g., the officer's refusal to provide a citizen with his/her name, or badge or serial number)
- Personnel failing to call a supervisor to the scene when a citizen wished and/or it was apparent that the citizen wished to file a complaint
- IAD investigators failing to identify a Task 6 violation.

OIG found that with additional training, policy clarification, and overall increased knowledge of the complaint process, the Department has significantly improved its rate of proper complaint acceptance. Potential complaints have been successfully documented by use of recordings, electronic assignment reports, or memos to IAD. In addition, it appears that members/employees are doing a much better job of documenting potential complaints and of asking clarifying questions when it is unclear if someone wants to make a complaint.

However, the Department still fell short of the required 95% compliance. In this audit, 89% of the investigations properly identified and investigated apparent Task 6 violation(s). Of the 35 cases reviewed, three were found out of compliance and one was indeterminate. In two cases, the audit team did not agree with the IAD findings and believed that the Task 6 allegations should have been sustained. In both instances, the subject officers either did not call a supervisor or properly initiate the complaint process. The audit team also identified one incident in which a supervisor did not initiate the complaint process when it was apparent to the audit team that the complainant demonstrated he wanted to file a complaint.

### **Disclosure of Possible Investigator Bias - Task 12**

On April 21, 2009, OIG initiated an audit of internal investigations focusing specifically on Task 12. The purpose of this audit was to determine if investigators are properly disclosing any bias, which may interfere with a fair and impartial investigation of a citizen complaint.

This review found the Department was short of compliance for Task 12.1 and in compliance with Task 12.2. The audit did not identify any investigations in which Task 12.3 and 12.4 were applicable.

In 2006, the IMT had found the Department completely out of compliance with Task 12. Only nineteen (32%) internal investigations had properly completed recusal letters, the Department had poorly documented potential investigator bias, and a few investigations had been conducted by investigators who were directly involved in the incident.

For this second audit of Task 12, OIG examined 147 internal investigations, all closed between January 1 and March 31, 2009, and with intake dates between April 2007 and January 2009. It found that 118 (80%) of the investigations had properly completed recusal letters as required by **Task 12.1**, noting that although short of the 90% compliance standard, the improvement was major. In addition, improvement occurred over the time period of the audit.

Seventeen (12%) of the IAD investigations audited failed to meet the standards for this task because of missing signatures and/or dates. It was not uncommon for an investigation to be handled by more than one investigator, requiring multiple letters to be completed. Twelve (8%) IAD investigations audited had recusal letters that had been completed after an investigation had been initiated. However, in these cases, failure to complete recusal letters prior to the start of the investigation appeared to have no negative impact on the integrity of the investigations.

**Task 12.2** requires involved investigators to recuse themselves from the investigation where it is clear that the nature of the relationship could be perceived to compromise the investigative process. Each of the 147 investigations audited met this standard.

**Task 12.3** requires that in more ambiguous situations, investigators involved make full disclosure, in writing, to their supervisors. The audit did not identify any applicable investigations. **Task 12.4** is conditionally based on Task 12.3. It requires that in the case of a Class I investigation, the supervisor being informed in writing make a recommendation to IAD or, in the case of a division-level investigation, the unit commander. Since the audit failed to find an investigation in which an ambiguous situation occurred, there were no applicable investigations.

### **Span of Control - Task 20**

Task 20 requires the Department to ensure a sufficient number of primary supervisors (regularly assigned sergeants and certified acting sergeants) supervise its field operations so that no field team exceeds a span of control of one sergeant to eight officers.

When Task 20 was audited by the IMT in September 2004, OPD was found out of compliance. The only criterion the Department successfully met at that time was development and publication of a policy containing Agreement mandates. Instead of completing a second audit, the IMT met with OIG and recommended that the Department improve its documentation by including additional information on its Daily Detail forms. Subsequently, the Department's Daily Detail Policy (DGO I-16) incorporated the suggested changes to the Daily Detail forms.

In March 2009, OIG conducted its first review of Task 20 to determine if OPD policies, procedures, and practices regarding the number of officers assigned to each field sergeant were in accordance with established Agreement guidelines and internal policies.

**Task 20.1** requires sufficient Bureau of Field Operations primary sergeants be assigned at draw board/Master Detail level to permit one primary sergeant for every eight officers under normal conditions. Of 120 squads audited, OIG found 111 squads (92%) met the mandates of this task.

**Task 20.2** requires Patrol shifts, Crime Reduction Teams (CRTs), Probation and Corrections Team (PACT), and Fugitive/Warrant units to be actually supervised by their primary sergeant or

certified acting sergeant. OIG found the Department provided officers in field operations with a regularly assigned sergeant/certified acting sergeant 83% of the time, just short of the 85% requirement.

**Task 20.3** requires that Span of Control (including Patrol, CRT, PAC, Fugitive/Warrant Unit) does not exceed 1:8 on a day-to-day basis. OIG found the Department in compliance with this subtask. Of 987 squads reviewed, OIG found 903 (91%) consisted of at least one supervisor, with no more than eight police officers under his/her jurisdiction. Daily Details indicated that when the span of control requirement was exceeded, the most frequent ratio was 1:9 (40 squads).

**Task 20.4**, which requires Watch Commanders to make backfill decisions consistent with policy and operational needs, was not assessed during this review.

**Task 20.5** requires span of control for special operations to be determined by the Watch Commander. OIG reviewed the Department's Operations Plans for the month of January 2009 and found the Department fell just short of the 90% required compliance rate. Of 85 squads, 75 (88%) were supervised by a sergeant/certified acting sergeant. OIG noted that ratios above one supervisor to eight officers were reasonable when compared to the type of operation they worked.

OIG found the Department not yet compliant with **Task 20.6**, which requires the Chief or Deputy Chief to determine loan/transfers for long-term backfill. Of 17 supervisors' transfer/loan assignment profiles, 65% met the requirements of this task. As OIG noted, the Department has a practice of allowing transfers/loans within the same/bureau without requiring the information to be placed on a Personnel Order or to be approved by the Chief. A review of the iPAS system and the Personnel Orders found an inconsistency in Department practice. Sometimes these inter-bureau/division transfers/loans were placed on the Personnel Orders, which the Chief signs, but sometimes they were not. Additionally, the Department's policy on loans states that the Chief of Police does not need to authorize a loan of less than 90 days.

### **Improvement of Stop Data Documentation – Task 34**

On May 11, 2009, OIG began an examination of OPD's Stop Data collection efforts to see if there had been an improvement in practice since the IMT assessed Task 34 in 2008 (audit published January 2009). This review focused on two areas found deficient in the IMT audit:

1. Officers completion of Stop Data forms as required (**Task 34.1**)
2. Accurate entry of Stop Data information into the database (**Task 34.3.2**)

OIG found that although improvements had been made, neither task was at full compliance.

The IMT audit examined a sample of records gleaned from the 40,507 field contacts and citations written between January 1 and July 30, 2008. The IMT concluded that 27% of the records could not be matched up with Stop Data forms, meaning that the overall compliance rate was 73%. This compliance rate included both definite matches and possible matches. Citations were at 80% and Field Contacts were at 46%.

**Task 34.1** requires that OPD members complete a Stop Data Form for every vehicle stop, field investigation and detention. Of 100 randomly selected citations and field contacts written

between October 1, 2008 and March 31, 2009, OIG found that 78% were located in the Stop Data database, meaning there was a matching stop data form for the citation or field contact. This was an improvement of 5% since the IMT audit. OIG found that 81.6% of citations were in compliance by having a matching stop data form, as were 72.5% of field contacts.

While the compliance rate for citations barely changed between the IMT review and OIG's review, the rate of compliance for field contacts improved significantly (from 46% to 72.5%). But this had little impact on the overall compliance rate, because field contacts comprised only 22% of the IMT sample, versus 40% in the OIG sample. OIG sampled a larger percentage of field contacts because the IMT had identified field contacts as having the most serious deficiencies. In the Stop Data database, field contacts comprise approximately 15% of the total entries.

**Task 34.3.2** requires that data captured on Stop Data Forms be *completely* and *accurately* entered into the Stop Data Databases.

The Stop Data are kept in two sub-databases ("New Form" and "Old Form"). The combined database contained 272,651 records at the time of the OIG review, an increase of 81,922 (43%) since the IMT audit. Less than 0.5% of the records entered after the IMT audit went into the Old Form database, so the New Form database was used to examine current patterns of missing data. Of the 177,777 records in the entire New Form Database:

- 1,480 records did not display the date of contact (less than 1%).
- 2,271 records did not display a time of contact (1.28%)
- 1,386 records did not display a location (less than 1%)
- 1,160 did not list the race of the person stopped (less than 1%)
- 2,363 records did not display the officer's serial number (1.33%).

A random sample of 48 records with missing data fields was reviewed to identify causes for the missing information. All but four of these records were citations (a ratio of 12:1). Blank entries in data fields corresponding to date, time, location and serial number were due to officers not reporting the information or SoftFile clerical staff not entering it into the database.

When other database fields were blank, despite officers having reported the information, reasons appeared to be the poor quality of the copy from the NCR (No Carbon Required) citation form, illegible handwriting, or unauthorized abbreviations. As a result, the information was considered invalid or missed. It appeared that missing data was most commonly associated with the citation NCR form.

OIG pointed out that absence of data regarding the race of the person stopped removes the key information needed by the Stop Data program. Upon analysis, it noted that different race codes are used for different Departmental forms, which is likely the cause of the use of invalid Stop Data race codes:

- For crime reports and other documents, the "actual race" of the person is supposed to be recorded, and officers must be as specific as possible.
- However, Stop Data forms require officers to document the "perceived race" of the person stopped and therefore race codes are more general.



Although these two sets of race codes may be necessary and serve different purposes, OIG pointed out that if officers were given clearer instructions, some of the problems regarding invalid Stop Data race codes would be alleviated.

## **APPENDIX A:**

### **TASK IMPLEMENTATION**

Implementation activities for each specific Task are detailed on the following pages. In some Tasks, lead-in language is provided and referenced for clarity. These lead-ins are paraphrased reiterations of the Agreement provisions, and in no way alter the requirements of the Agreement.

## **INTERNAL AFFAIRS DIVISION**

### **Task 01: IAD Staffing and Resources**

#### **Settlement Agreement Language**

- “By August 13, 2004, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations.” (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- “By August 13, 2004, OPD must train all personnel to ensure they have received, understand and comply with new and revised Departmental policies and procedures.” (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- “By August 13, 2004, the IAD procedural manual must address: assignment and rotation of officers; training and qualifications of members and other personnel in IAD; appropriate background checks of IAD personnel; and confidentiality of IAD information.”

#### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in November 2006.

#### **Deliverables**

- Internal Affairs Division Policy and Procedures Manual (IAD Manual)
- Internal Affairs Division Policy and Procedure 07-07, *Office Security*

#### **Implementation Activities**

The Manual was published on December 6, 2005 and training was completed in early 2006.

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### **Task 02: Timeliness Standards and Compliance with IAD Investigations**

#### **Settlement Agreement Language**

- “By June 15, 2004, OPD must develop and, by July 1, 2004, implement timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.”
- “IAD command and the Department’s command staff must regularly monitor compliance with these timeliness standards.”
- “If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing must be increased to maintain timeliness standards.”

## **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in June and December 2009.

### **Deliverables**

- Departmental General Order M-3, *Complaints Against Department Personnel or Procedures*
- Departmental General Order M-3.1, *Informal Complaint Resolution Process*
- Departmental General Order M-3.2, *Citizen's Police Review Board*
- Special Order 8553, TB V-T.1, *Internal Investigations Procedure Manual*

### **IMT Audit Summary**

**Task 2.1** requires at least 85% of Class I cases reviewed and 85% of Class II cases reviewed be in compliance with OPD timeliness standards. An investigation is considered timely if it is completed, reviewed, and approved within 180 days of the IAD intake date. For sustained cases, timeliness also requires that the discipline recommendation process – including Chief of Police approval, disapproval, or return for further investigation – must have been completed within 30 calendar days of the IAD Commander approval of the investigation.

In its December 2009 audit, the IMT found OPD in continued compliance with Task 2.1 and praised OPD for “greatly improved timeliness,” noting improvements in other aspects of investigations, such as quicker contact with complainant and initiation of investigations, which allow for better investigations and send a message of responsiveness to the community. The IMT also noted that OPD continued to improve in the area of disciplinary timeliness since its June 2009 and December 2008 reviews.

Internal investigation timeliness is a critical part of the Settlement Agreement, and the IMT praised OPD for significant progress in this area. However, it encouraged OPD to consider changing its IAD timeline back to 90 days, noting that the 180-day timeline for completion of IAD investigations is much longer than most agencies' deadlines.

The IMT noted that IAD now has systems in place to ensure timeliness and is decreasing its backlog of overdue investigations. Half of Class I cases are already being completed in less than 130 days and half of Class II cases are being completed in less than 105 days.

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## **Task 03: IAD Integrity Tests**

### **Settlement Agreement Language**

- “By June 1, 2005, IAD must conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct.”
- “By June 1, 2005, IAD must set frequency standards, among other parameters, for such integrity tests.”

## **Status: In Policy, Training and Partial Practice Compliance**

### **Deliverables**

- Internal Affairs Division Policy and Procedures Manual
- Revised Departmental General Order M-3, *Complaints Against Department Personnel or Procedures* (Rev. 15 Feb 08)
- Special Order 8553, TB V-T.1, *Internal Investigations Procedure Manual*

### **IMT Audit Summary**

**Task 3.1** requires OPD to conduct integrity tests in situations where members or employees are the subject of repeated allegations of misconduct. In its audit published September 2009, the IMT found OPD out of compliance with this task because, while it had developed standards and criteria for identifying individuals who are the subject of repeated allegations of misconduct, it had not conducted any integrity tests on such individuals.

Since 2008, OPD has used the policy to identify and evaluate officers who receive repeated allegations of certain types of misconduct. Between 80 – 100 officers who meet or exceed OPD's repeated allegations thresholds have been identified. OPD identified several officers who received more than a dozen separate complaints of misconduct (not including complaints alleging excessive force) over a 15-month period and one officer who received 20 separate misconduct complaints during a 15-month period. However, upon analysis, OPD determined that a very small number of the officers were appropriate subjects for integrity testing, and none were given integrity tests.

The IMT found that the Department's assessment of whether officers may be appropriate subjects for integrity testing was too narrow. As well, during the review period, staffing and logistical challenges hampered the Department from conducting any repeated-allegations integrity tests. For example, the Integrity Unit consists of a single sergeant. As a result, OPD failed to adequately train responsible personnel regarding conducting integrity tests even though the testing is mandated by the NSA, has the potential to reap significant risk management rewards, and may save officers' careers.

**Task 3.2** requires IAD to conduct selective integrity tests in accordance with parameters established by IAD. The IMT reviewed the four selective integrity tests that OPD conducted during the period under review and found that in each case, IAD complied with all applicable criteria. In some tests, a second investigator played a significant role in conducting the investigation but did not complete a recusal form. The IMT recommended that any investigator who plays a significant role should complete a recusal form to ensure that he or she does not have any actual or perceived conflicts of interest with the subject(s) of the test. OPD has agreed to adopt this practice going forward.

The IMT praised OPD for making the following improvements since the 2006 audit:

- Maintaining a chronological log of activities for each of the tests conducted. (In 2006, such logs were not routinely maintained for integrity tests and there was often insufficient documentation of investigative activities.)

- Preparing and completing after-action reports in a timely manner for each of the completed tests discussing policy, training, and risk management issues and whether other MOR violations were discovered during the tests.
- Ensuring review and approval by the IAD Commander and Chief of Police of each of the after-action reports. The IMT noted that timeliness had improved in this area since the last IMT audit.

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#### **Task 04: Complaint Control System for IAD**

##### **Settlement Agreement Language**

- “By June 15, 2004, OPD must develop a policy regarding an informal complaint resolution process to be used by supervisors and IAD to resolve minor complaints not rising to the level of Class I misconduct. The Settlement Agreement sets forth certain criteria that must be included in this informal complaint resolution process.”
- “By October 1, 2004, OPD must implement this informal complaint resolution process.”
- “By June 15, 2004, OPD must develop a policy establishing a central control system for complaints and Departmental requests to open investigations. The Settlement Agreement sets forth certain criteria that must be included in this central control system.”
- “By October 1, 2004, OPD must implement this central control system.”

##### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in May 2009. Task 4.7, requiring all complaints to be reported to IAD on the day of receipt or at the start of the next business day, was found in conditional compliance.

##### **Deliverables**

- Revised Departmental General Order M-3, *Complaints Against Department Personnel or Procedures*
- Special Order 8071, *Tracking and Monitoring Internal Affairs Division Cases*
- Special Order 8553, TB V-T.1, *Internal Investigations Procedure Manual*

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#### **Task 05: Complaint Procedures for IAD**

##### **Settlement Agreement Language**

- “By June 15, 2004, OPD must develop a policy to provide immediate access to a supervisor to all citizens seeking to file a complaint. The Settlement Agreement sets forth certain criteria to be followed if there is delay greater than three hours in providing access to a supervisor or if the complainant refuses to travel to or wait for a supervisor.

- By June 15, 2004, OPD must develop a policy to provide Oakland City Jail inmates the opportunity to file a complaint against OPD officers/employees. The Settlement Agreement sets forth certain criteria that must be included in this policy.
- “By June 15, 2004, OPD must develop policies setting standards for IAD investigations and dispositions of citizen complaints, including that: OPD must consider all relevant evidence; make credibility determinations where feasible; attempt to resolve inconsistencies in witness statements; employ the “preponderance of evidence” standard; and permanently retain all notes related to the investigation. This provision also defines the five investigative dispositions (unfounded; sustained; exonerated; not sustained; and filed) and requires that each allegation in a complaint be resolved with one of these dispositions.
- “By August 13, 2004, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations.” (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- “By August 13, 2004, OPD must train all personnel to ensure they have received, understand and comply with new and revised Departmental policies and procedures.” (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- “By August 13, 2004, the IAD procedural manual must address: assignment and rotation of officers; training and qualifications of members and other personnel in IAD; appropriate background checks of IAD personnel; and confidentiality of IAD information.”

### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Information Bulletin, *Preliminary Complaint Investigation Procedures*
- Revised Departmental General Order M-3, *Complaints Against Department Personnel or Procedures* (Rev. 15 Feb 08)
- Special Order 8553, TB V-T.1, *Internal Investigations Procedure Manual*

#### **IMT Audit Summary**

During this reporting period, the IMT reviewed nine subtasks of Task 5 related to complaint procedures. Overall, the IMT noted that OPD investigations of officer misconduct complaints have vastly improved since the inception of the Agreement.

Timeliness of investigations continues to improve. Complaints are no longer buried in a database just because the complainant is a third-party or anonymous. While more work remains to be done, officers are much better about reporting complaints of misconduct to their supervisors, and supervisors are much better about accepting those complaints and initiating the IAD process.

#### ***Tasks 5.2 – 5.5 Complaint Procedures for IAD - January 2010***

When it first assessed these subtasks in April 2009, the IMT suggested that OPD could come into compliance fairly quickly if it focused on complying with its own policies and adopted IMT recommendations. In the review published January 2010, the IMT found that OPD improved its

compliance levels dramatically during the period reviewed, and declared it now in compliance with Tasks 5.2 – 5.5.

**Task 5.2** requires that OPD document and give the reason for any delay in supervisory response beyond three hours. Compliance means that 85% of complaints requiring a field response are responded to by a supervisor in the field within three hours. In April 2009, the IMT found only 29% of applicable complaints were compliant. In the current audit, the IMT found most cases requiring a field response were attended to within three hours. There were only two cases (out of 21 complaints) delayed more than three hours. In both cases, the reason for the delay was documented. Therefore, the IMT found OPD in compliance with Task 5.2.

**Task 5.3** requires that if the complainant refuses to wait for the field supervisor, the field supervisor shall make all reasonable attempts to gather certain information from the complainant. Of 111 cases reviewed, the IMT confirmed only three instances in which complainants refused to wait for a supervisor. OPD had gathered the required information in all three cases. The IMT found OPD in compliance with Task 5.3, praising the Department for ensuring that information is documented so that complainants can be contacted later.

**Task 5.4** requires that complaints received by OPD personnel be communicated to Area Commanders to ensure they are aware of the number and type of complaints being made and can oversee response by a field supervisor. The required compliance rate is 85%. During the current review, the IMT found that of 111 complaints, the Area Commander had been notified in 106 (95%) instances. Therefore, it found OPD in compliance with Task 5.4

**Task 5.5** requires that specific complaint information be forwarded to IAD, including identification of personnel, witnesses or identifying information, if known (log should say “unknown” if not known); date, time, and location of incident; time of contact or supervisor’s attempt to contact; complainant’s first and last name; and disposition. Soon after the January 2010 IMT audit of Task 5, OPD modified its field complaint intake process. Some information required by Task 5.5 will be documented in the complaint memoranda completed by field supervisors.

The IMT found that most complaints were accompanied by a complaint memorandum that incorporated critical facts related to the complaint. Based on its knowledge of these complaint memoranda, along with the fact that every complaint included information sufficient to contact the complainant, and that OPD had a high compliance rate with the policies in effect at the time of its review, the IMT found OPD in conditional compliance with Task 5.5.

#### ***Task 5.6 Complaint Procedures for Jail Inmates – November 2009***

Requirements for taking complaints from jail inmates became more general after OPD closed its own jail in 2005 and began taking detainees to detention facilities operated by the Alameda County Sheriff’s Office. Procedures specific to OPD were no longer applicable. However, the core requirement remains: OPD shall take complaints of misconduct from jail inmates contemporaneous to that misconduct.



The IMT assessed compliance with this task in two ways. It looked at whether:

- Supervisors went to the jail to take an inmate's complaint when the complaint related to Class I misconduct contemporaneous to arrest, or
- OPD had a process to ensure that jail complaints were communicated to supervisors and that supervisors responded, took the complaint, and forwarded this information to IAD.

The IMT considered that immediate supervisory response was required only when both the complaint and the alleged misconduct occurred contemporaneous to arrest. Of 17 cases received from jail inmates during the selected time period, only five related to alleged misconduct that had just occurred. Of these five, four were in compliance.

The IMT was concerned to discover that current Alameda County Sheriff's Office officials had no knowledge about the requirement that OPD supervisors respond to the jail to take complaints in some circumstances, even though OPD has been sending detainees to their detention facilities since mid-2005.

In most instances, this lack of knowledge is immaterial; however, inmates will sometimes wait until officers are gone before complaining about the officers' actions. According to jail officials, the default response to a complaint from a detainee by jail staff is to advise the inmate to make a complaint once they are released. Consequently, OPD does not learn of these complaints when they are made and thus has no opportunity to respond as required by the NSA.

The Alameda County Sheriff's office agreed to OPD's request that it distribute a memo to jail staff regarding what to do if an inmate wants to make a complaint against an OPD officer. If implemented, this approach is an improvement that will help ensure that complaints about serious misconduct are not lost when the complainant is brought to jail. However, given the newness of this change, past problems with taking complaints (noted in IMT reviews of Task 4.7 and Task 6), and no confirmation from OPD that jail staff understand the request and are able to carry it out, the IMT was unable to determine if the Department was in compliance.

#### ***Task 5.15 - 5.19 & 5.21 Complaint Procedures for IAD – January 2010***

In its audit report published January 2010, the IMT found IAD not yet in compliance with the requirements that it gather and adequately analyze all evidence (**Tasks 5.15 and 5.16**); that its findings be supported by a preponderance of the evidence (**Task 5.18**); or that each allegation in a case be identified and resolved with a finding (**Task 5.19**).

The IMT found IAD in compliance with the requirements that all investigator notes be retained in the IAD case file (**Task 5.17**); and that any member or employee who is a subject of an internal investigation be interviewed and have a recorded statement taken (**Task 5.21**).

**Tasks 5.15 and 5.16** require OPD to gather all relevant evidence – including circumstantial, direct and physical evidence, follow-up interviews, and objective indicators – and then adequately consider that evidence, including making credibility determinations where feasible and resolving inconsistent statements.

The IMT noted how far OPD had come since 2003, when it was the exception rather than the rule for investigations to include all relevant documentation such as medical records, photographs of injuries or of the scene, dispatch records, or statements from third party witnesses. Even critical interviews of complainants and subject officers were often not conducted. In contrast, OPD now knows how to collect appropriate evidence for internal investigations and routinely identifies and seeks out involved parties and third-party witnesses. OPD sergeants responding to the scene to take misconduct complaints immediately initiate the complaint process, including interviewing complainants, canvassing for witnesses, and drafting fairly detailed memoranda within hours of the complaint being made.

But the IMT found that at times investigators spent time and effort collecting unnecessary or redundant evidence while failing to collect material necessary to establish facts or resolve issues critical to the complaint. Therefore, the IMT found the compliance rate for the portion of the tasks requiring OPD to gather all relevant evidence to be 68%.

As for the portion of these tasks requiring OPD to adequately consider relevant evidence, the IMT found a compliance rate of 57%. The IMT found analysis of relevant evidence hampered by flawed credibility determinations, lack of investigator objectivity, and tolerance for unacceptable behavior.

The IMT found OPD in compliance with **Task 5.17**, which requires that all investigator notes be retained in the IAD case file, noting that OPD easily met the 85% compliance requirement with a compliance rate of 98%. It also found that handwritten notes and the completion of a declaration concerning whether notes are in the file provided some assurance that notes are retained.

**Task 5.18** requires that each allegation in a complaint be resolved using the preponderance of the evidence standard. A preponderance of the evidence is sometimes described as evidence that the allegation is “more likely than not” to be true. The IMT found that OPD’s findings were supported by a preponderance of the evidence in only 57% of the cases reviewed. Reasons for not reaching findings supported by the evidence included flawed credibility assessments, lack of investigator objectivity, and a tolerance for some types of misconduct.

**Task 5.19** requires that OPD identify and resolve with a finding all allegations of misconduct. The IMT found OPD properly identified and assigned findings in only 74% of cases reviewed. It criticized tolerance for inappropriate behavior in searches and detentions, rude behavior toward citizens, and inadequate supervision. Cases reviewed reflected a pattern of OPD officers assuming an authority that they did not have to search someone or some place. The IMT noted numerous complaints of rudeness and petty mistreatment by officers towards the community they are sworn to serve.

Although the IMT found OPD not compliant with task 5.19, it did note several encouraging factors. It found that IAD supervision has become closer, more knowledgeable, and more demanding in recent years. It also noted fewer allegations of excessive force in the current review and found that upon investigation, force complaints generally involved lower level types of force. Also, IAD investigations of force allegations were often streamlined because a use of

force investigation, or report, had previously been completed, so that OPD was able to expend fewer resources investigating these cases.

OPD is in compliance with **Task 5.21**, which requires that, except in cases eligible for summary finding, any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of the incident giving rise to the allegation of misconduct, be interviewed and have a recorded statement taken. The IMT noted that even in summary finding cases, investigators were required to obtain the approval of the IAD Commander before deciding not to interview subject or witness officers. The IMT found that in 94% percent of cases reviewed, investigators interviewed all subject or witness officers unless they had received approval in advance not to, well exceeding the 90% compliance requirement.

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## **Task 06: Refusal to Accept or Refer Citizen Complaints**

### **Settlement Agreement Language**

“By June 15, 2005, OPD must develop and implement a policy that refusing to accept a citizen complaint; failing to refer a citizen to IAD where appropriate; discouraging a person from filing a complaint; and/or knowingly providing false, inaccurate or incomplete information about IAD shall be grounds for discipline.”

### **Status: In Policy and Training Compliance**

#### **Deliverables**

- *Manual of Rules* Section 398.76, *Refusal to Accept or Refer Citizen Complaint* (published as Special Order 8902, *Update of Department Manual of Rules*)
- Departmental General Order M-3, *Complaints Against Department Personnel or Procedures*
- Special Order 8553, TB V-T.1, *Internal Investigations Procedure Manual*

### **OIG Audit Summary**

On July 20, 2009, OIG assessed the Department’s progress towards achieving compliance with Task 6 requirements. For this review, the audit team focused on three areas of complaint acceptance:

- Discouraging a person from filing a complaint (e.g., the officer’s refusal to provide a citizen with his/her name, or badge or serial number)
- Personnel failing to call a supervisor to the scene when a citizen wished and/or it was apparent that the citizen wished to file a complaint
- IAD investigators failing to identify a Task 6 violation.

OIG found that with additional training, policy clarification, and overall increased knowledge of the complaint process, the Department has significantly improved its rate of proper complaint acceptance. Potential complaints have been successfully documented by use of recordings,

electronic assignment reports, or memos to IAD. In addition, it appears that members/employees are doing a much better job of documenting potential complaints and of asking clarifying questions when it is unclear if someone wants to make a complaint.

However, the Department still fell short of the required 95% compliance. At this audit, 89% of the investigations properly identified and investigated apparent Task 6 violation(s). Of the 35 cases reviewed, three were found out of compliance and one was indeterminate. In two cases, the audit team did not agree with the IAD findings and believed that the Task 6 allegations should have been sustained. In both instances, the subject officers either did not call a supervisor or properly initiate the complaint process. The audit team also identified one incident in which a supervisor did not initiate the complaint process when it was apparent to the audit team that the complainant demonstrated he wanted to file a complaint.

The IMT noted that the Department has made significant improvement since 2008 when it was 70% compliant on this task. At that time, the IMT found that a lack of understanding the requirements for receiving a complaint played a role in non-compliance with Task 6.

Based on the data reviewed, the IMT found the Department to be improving identification and investigation of Task 6 allegations. As a result of training and experience, officers and supervisors are doing a good job of accepting, documenting and initiating the complaint process. Officers and supervisors are asking clarifying questions and documenting potential complaints (e.g., electronic recordings and written documentation). In addition, when in doubt as to a citizen's desire to file a complaint, sergeants are routinely placing the incident on the Communications Division Daily Incident Log or forwarding written documentation of their actions directly to IAD.

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## **Task 07: Methods for Receiving Citizen Complaints**

### **Settlement Agreement Language**

- “By June 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy strengthening its procedures for receiving citizen complaints. The Settlement Agreement sets forth certain criteria that must be included in this policy, including that OPD: establish a staffed complaint hotline; make complaint forms, brochures and guidelines easily and widely available, including in OPD vehicles; translate those forms; and accept anonymous complaints.”
- “By October 1, 2004, OPD must implement the above referenced policy.”
- “By June 1, 2004, IAD must be located in a dedicated facility removed from the Police Administration Building.”

### **Status: In Policy, Training and Partial Practice Compliance**

## **Deliverables**

- Revised *Manual of Rules* Section 314.49, *Confidential Reporting of Police Misconduct*. Acceptance of anonymous complaints was created and is in effect
- Relocation of the Internal Affairs Division to City Hall Plaza is complete
- Revised Departmental General Order M-3, *Complaints Against Department Personnel or Procedures*
- Special Order 8553, TB V-T.1, *Internal Investigations Procedure Manual*
- Information Bulletin, *Internal Affairs Notification*
- Information Bulletin, *Preliminary Complaint Investigation Procedures*

## **Implementation Activities**

- The IAD reports that anonymous complaints continue to be accepted. The revised IAD complaint forms are currently being used to document and file citizen complaints. Revised *Manual of Rules* Section 314.49, *Confidential Reporting of Police Misconduct*; the acceptance of anonymous complaints was created in March of 2004 and is currently in effect.

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## **Task 08: Classifications of Citizen Complaints**

### **Settlement Agreement Language**

- “By June 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy establishing a classification system for citizen complaints. The Settlement Agreement calls for complaints to be divided into two categories (Class I and Class II) according to the severity of the offense.”
- “By October 1, 2004, OPD must implement this classification system.”

### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in April 2009.

## **Deliverables**

- Revised Departmental General Order M-3, *Complaints Against Department Personnel or Procedures*
- Special Order, 8553, TB V-T, *Internal Investigations Procedure Manual*

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## **Task 09: Contact of Citizen Complainant**

### **Settlement Agreement Language**

“By August 13, 2004, OPD must develop and, by October 1, 2004, implement, a policy requiring that IAD, or the investigator assigned to an investigation, contact citizens who have made complaints as soon as possible, in order to determine the nature, scope and severity of the complaint, as well as to identify potential witnesses and/or evidence as quickly as possible.”

### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in February 2009.

### **Deliverables**

Internal Affairs Division Policy and Procedures Manual

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## **Task 10: Procedure Manual for Investigations of Citizen Complaints**

### **Settlement Agreement Language**

- “III. INTERNAL AFFAIRS DIVISION (IAD)”
- “By August 13, 2004, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations.” (This requirement applies to Tasks 1–16.)
- “By August 13, 2004, OPD must train all personnel to ensure that they have received, understand, and comply with new and revised Departmental policies and procedures.” (This requirement applies to Tasks 1–16.)

### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in November 2006.

### **Deliverables**

Internal Affairs Division Policy and Procedures Manual

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## **Task 11: Summary of Citizen Complaints Provided to OPD Personnel**

### **Settlement Agreement Language**

- “By August 13, 2004, OPD must, based on contemporary police standards and best practices, develop a policy requiring that complaint investigators:
  - provide the member/employee with a brief synopsis of any complaint alleged against them, but not allow the member/employee to read the complaint itself or to review citizen or other witness statements prior to the member/employee’s interview;
  - notify the immediate supervisor and commander of the subject of an investigation that a complaint against the subject has been filed; and
  - upon completion of the investigation and issuance of a final report, provide subject members/employees with access to the underlying data upon which an IAD report is based, including all tape-recorded interviews, transcripts and investigator’s notes.”
- “By October 1, 2004, OPD must implement this policy.”

### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in November 2009.

### **Deliverables**

Internal Affairs Division Policy and Procedures Manual

### **IMT Audit Summary**

In October 2009, the IMT reviewed **Task 11.3** to see if the Department could be labeled fully compliant on this task. Task 11.3 requires that the complaint subject’s immediate supervisor and commander be notified of the complaint at the same time the subject is notified. The purpose of this requirement is to ensure that supervisors and commanders have more complete knowledge of their subordinates’ actions, and of how these actions are perceived so that they can provide better supervision.

The previous IMT audit of Task 11, in March 2009, found that this notification occurred in 38 of the 51 cases assessed, or at a 75% compliance rate. This fell short of the 85% compliance rate required, and the IMT held OPD in conditional compliance with this subtask.

The October 2009 audit found OPD in compliance with Task 11.3. During this assessment, the IMT reviewed 54 cases that were resolved via summary finding or formally investigated between January 6 and September 1, 2009. The IMT found documentation of the required notification in 53, or 98%, of the cases reviewed.

In nearly every case, notification was documented in the case files via both notations in the chronological logs and copies of the cover emails sent to supervisors and commanders. In six cases, IAD provided documentation of notification that was not included in the case files.

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## **Task 12: Disclosure of Possible Investigator Bias**

### **Settlement Agreement Language**

“By June 15, 2004, OPD must develop and, by October 1, 2004, implement, a policy requiring that investigators (IAD and field) disclose relationships that might lead to a perception of bias regarding the subject(s) of any investigation, including family relationships, outside business relationships, romantic relationships and close work or personal friendships. The Settlement Agreement sets forth certain criteria regarding when and how investigators and their supervisors must act on these disclosures.”

### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Revised Departmental General Order M-3, *Complaints Against Department Personnel or Procedures*
- Special Order 8553, TB V-T.1, *Internal Investigations Procedure Manual*

#### **OIG Audit Summary**

On April 21, 2009, OIG initiated an audit of internal investigations focusing specifically on Task 12, Disclosure of Possible Investigator Bias. The purpose of this audit was to determine whether investigators are properly disclosing any bias that may interfere with a fair and impartial investigation of a citizen complaint.

This review found the Department was short of compliance for Task 12.1 and in compliance with Task 12.2. The audit did not identify any investigations in which Task 12.3 and 12.4 were applicable.

When the IMT first audited Task 12 in 2006, it found the Department completely out of compliance. Only nineteen (32%) internal investigations had properly completed recusal letters. The Department had poorly documented potential investigator bias and a few investigations had been conducted by investigators who were directly involved in the incident.

For this second audit of Task 12, OIG examined 147 internal investigations, all closed between January 1 and March 31, 2009, and with intake dates between April 2007 and January 2009. It found that 118 (80%) of the investigations had properly completed recusal letters as required by **Task 12.1**, noting that although short of the 90% compliance standard, the improvement was major. In addition, improvement occurred over the time period of the audit.

Seventeen (12%) of the IAD investigations audited failed to meet the standards for this task because of missing signatures and/or dates. It was not uncommon for an investigation to be handled by more than one investigator, requiring multiple letters to be completed. Twelve (8%) investigations had recusal letters that had been completed after an investigation had been



initiated. However, in these cases, failure to complete recusal letters prior to the start of the investigation appeared to have no negative impact on the integrity of the investigations.

**Task 12.2** requires involved investigators to recuse themselves from the investigation where it is clear that the nature of the relationship could be perceived to compromise the investigative process. Each of the 147 investigations audited met this standard.

**Task 12.3** requires that in more ambiguous situations, investigators involved make full disclosure, in writing, to their supervisors. The audit did not identify any applicable investigations. **Task 12.4** is conditionally based on Task 12.3. It requires that in the case of a Class I investigation, the supervisor being informed in writing make a recommendation to IAD or, in the case of a division-level investigation, the unit commander. Since the audit failed to find an investigation in which an ambiguous situation occurred, there were no applicable investigations.

### **IMT Audit Summary**

In its January 2010 audit of Task 12, the IMT reviewed misconduct investigation cases approved between December 1, 2008, and September 1, 2009, finding that of 53 cases, 46 cases (87%) documented that all officers properly disclosed whether they had any bias that might preclude them from investigating the case. The IMT noted that for each case there are often two or even three investigators, including an intake officer, who conducts the initial investigation of the complaint and, in cases involving summary findings, often completes the investigation. In other cases, the case may be reassigned mid-investigation, resulting in three investigators throughout the course of the investigation. In its dataset, the IMT identified at least 103 investigators in the 53 cases reviewed. Of these 103 investigators, 96 investigators (93%) completed recusal forms prior to initiating their investigation of the case. The IMT held that assessing compliance with **Task 12.1** by considering not cases but investigators appropriately captures the intent of Task 12.1 and, for this reason, found OPD in compliance with Task 12.1. The IMT also noted that recusal forms were not always accurate or useful.

The IMT found OPD out of compliance with **Task 12.2**. The IMT noted that in three cases, the investigator was not removed from the case even after expressing a belief that he could not conduct a fair or impartial investigation, or was directly involved in the incident subject to investigation. The IMT also found several instances where cases were investigated as division-level investigations and therefore conducted by persons working closely with the subject of the investigation.

Finally, since the IMT found two cases where nothing was done upon notification of bias or potential bias, it found OPD not in compliance with **Task 12.3**.

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### **Task 13: Documentation of Pitchess Responses**

#### **Settlement Agreement Language**

“By June 1, 2005, OPD must implement an additional check on Pitchess discovery motion responses.”

#### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in April 2006.

#### **Deliverables**

Internal Affairs Division Policy and Procedures Manual 07-02

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### **Task 14: Investigation of Allegations of Manual of Rules Violations Resulting from Lawsuits and Legal Claims**

#### **Settlement Agreement Language**

“By June 15, 2004, OPD must develop and, by October 1, 2004, implement, a policy requiring that it investigate allegations of Manual of Rules violations resulting from certain lawsuits and legal claims, treating them in the same manner as other citizens’ complaints. The Settlement Agreement sets forth certain criteria that must be included in this policy.”

#### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in November 2005.

#### **Deliverables**

- Revised Departmental General Order M-3, *Complaints Against Department Personnel or Procedures* (Rev. 15 Feb 08)
- Departmental General Order E-3.1 *Department Notification* (18 Jan 08)
- Special Order 8815 Revision to DGO E-3.1 (1 Feb 08)

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## **Task 15: Reviewing Findings and Disciplinary Recommendations**

### **Settlement Agreement Language**

- “By June 15, 2004, OPD shall develop a policy to ensure that, except upon written authorization from the Chief of Police, the appropriate chain-of-review, from the first-level commander up, shall be responsible for reviewing recommended findings and the Discipline Officer shall be responsible for making disciplinary recommendations in sustained internal investigations.”
- “By October 1, 2004, OPD must implement this policy.”

### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in November 2006.

### **Deliverables**

- Revised Departmental General Order M-3, *Complaints Against Department Personnel or Procedures*
- The Departmental Discipline Policy Manual (including the Discipline Matrix)
- Special Order 8552, Summary Findings
- Special Order 8553, TB V-T.1, *Internal Investigations Procedure Manual*

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## **Task 16: Supporting IAD Process – Supervisor/Managerial Accountability**

### **Settlement Agreement Language**

- “By June 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy that holds supervisors and commanders, as well as other managers in the chain of command, accountable for supporting the IAD process. Where an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed a Class I offense, that supervisor or manager must be held accountable, through the Department’s administrative discipline process, for failure to supervise, failure to review and/or failure to intervene.”
- “By October 1, 2004, OPD must implement this policy.”

### **Status: In Policy and Training Compliance**

### **Deliverables**

- Revised Departmental General Order M-3, *Complaints Against Department Personnel or Procedures*
- Special Order 8553, TB V-T.1, *Internal Investigations Procedure Manual*

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### **Task 17: Audit, Review and Evaluation of IAD Functions**

#### **Settlement Agreement Language**

OPD and the Monitor shall conduct audits, reviews and evaluations as specified in Section XIII, paragraph H, and Section XIV, paragraph B.

#### **Status: In Policy and Full Practice Compliance**

- This task has no separate requirements or provisions.
- Training is not required for this Task.
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in December 2005.

**Deliverables:** Not Applicable

**Implementation Activities:** Not Applicable

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## **SUPERVISORY SPAN OF CONTROL AND UNITY OF COMMAND**

### **Task 18: Approval of Field-Arrest by Supervisor**

#### **Settlement Agreement Language**

“By January 20, 2004, OPD must develop and implement a policy requiring the approval of field-arrests by a supervisor in most cases. This policy necessitates that OPD develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates. The Settlement Agreement sets forth certain criteria regarding supervisor review of field-arrests, including that, under ordinary circumstances, supervisors respond to the scenes of field arrests for felonies; narcotics-related possessory offenses; situations where there is an investigated use of force; and arrests for obstructing, resisting, or assaulting an officer.”

#### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Revised Departmental General Order M-18, *Arrest Approval and Report Review in the Field*
- SO 8257, *Supervisors Approval of Arrest*

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### **Task 19: Unity of Command**

#### **Settlement Agreement Language**

“By January 20, 2004, OPD must develop and implement a policy requiring that, with rare exceptions justified on a case-by-case basis, each OPD member or employee has a single, clearly identified supervisor or manager, working the same schedule and having the same days off as the individuals whom they supervise.”

#### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in February 2008.

#### **Deliverables**

- Department General Order A-3, *Department Organization*
- New Departmental General Order A-19, *Supervisory Span of Control*

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## **Task 20: Span of Control for Supervisors**

### **Settlement Agreement Language**

“By August 14, 2003, OPD must, based on contemporary police standards and best practices, develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The Settlement Agreement sets forth certain provisions that must be included in the policy. Most notably, the Settlement Agreement requires that, under normal conditions, OPD assign one primary sergeant to each Area Command Field Team. Additionally, a supervisor’s span of control cannot exceed eight members.”

### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Assignment of one primary sergeant to each Area Command Field Team (under normal conditions)
- A supervisory ratio not exceeding eight members to one Area Command Field Team primary sergeant (with certain exceptions)
- BFO Policy and Procedure 03-02, *Supervisory Span of Control*
- Bureau of Investigations (BOI) Policy and Procedures 04-02, *Supervisory Span of Control*

#### **Implementation Activities**

The Department replaced BFO 03-02 and BOI 04-02 with DGO A-19, *Supervisory Span of Control*. Additionally, Special Order 8435, *Acting Sergeant Selection Process* was published, establishing procedures for ensuring that those individuals who serve as acting sergeants have the necessary skills and training to do so.

#### **OIG Audit Summary**

Task 20 requires the Department to ensure a sufficient number of primary supervisors (regularly assigned sergeants and certified acting sergeants) supervise its field operations so that no field team exceeds a span of control of one sergeant to eight officers.

In March 2009, OIG conducted its first review of Task 20 to determine if OPD policies, procedures, and practices regarding the number of officers assigned to each field sergeant were in accordance with established NSA guidelines and internal policies.

When Task 20 was audited by the IMT in September 2004, OPD was found out of compliance. Instead of completing a second audit, the IMT met with OIG and recommended that the Department improve its documentation by including additional information on its Daily Detail forms. Subsequently, the Department’s Daily Detail Policy (DGO I-16) incorporated the suggested changes to the Daily Detail forms.

**Task 20.1** requires sufficient Bureau of Field Operations primary sergeants be assigned at draw board/Master Detail level to permit one primary sergeant for every eight officers under normal conditions. Of 120 squads audited, OIG found 111 squads (92%) met the mandates of this task.

**Task 20.2** requires Patrol shifts, Crime Reduction Teams (CRTs), Probation and Corrections Team (PACT), and Fugitive/Warrant units to be actually supervised by primary sergeants or certified acting sergeants. OIG found the Department provided officers in field operations with a regularly assigned sergeant/certified acting sergeant 83% of the time, just short of the 85% required. Area I had the lowest percentage of time that regular supervisors actually supervised their squads, primarily due to two squads with full-time non-certified acting sergeants.

**Task 20.3** requires that Span of Control (including Patrol, CRT, PAC, Fugitive/Warrant Unit) does not exceed 1:8 on day-to-day basis. OIG found the Department in compliance with this subtask. Of 987 squads reviewed, OIG found 903 (91%) consisted of at least one supervisor, with no more than eight police officers under his/her jurisdiction. Daily Details indicated that when the span of control requirement was exceeded, the most frequent ratio was 1:9 (40 squads).

**Task 20.5** requires span of control for special operations to be determined by Watch Commander. OIG reviewed the Department's Operations Plans for the month of January 2009 and found the Department fell just short of the 90% required compliance rate. Of 85 squads, 75 (88%) were supervised by a sergeant/certified acting sergeant. OIG noted that ratios above one supervisor to eight officers were reasonable when compared to the type of operation they worked.

OIG found the Department not yet compliant with **Task 20.6**, which requires the Chief or Deputy Chief to determine loan/transfers for long-term backfill. Of 17 supervisors' transfer/loan assignment profiles, 65% met the requirements of this task. As OIG noted, the Department has a practice of allowing transfers/loans within the same/bureau without requiring the information to be placed on a Personnel Order or to be approved by the Chief. A review of the iPAS system and the Personnel Orders found an inconsistency in Department practice. Sometimes these inter-bureau/division transfers/loans were placed on the Personnel Orders, which the Chief signs, and some were not. Additionally, the Department's policy (DGO B-4) on loans states that the Chief of Police did not need to authorize a loan of less than 90 days.

### **IMT Audit Summary**

In its December 2009 audit, the IMT found OPD not yet in full compliance with Task 20, but noted substantial progress. The IMT found four of six subtasks in compliance and praised OPD for more consistent supervision and better trained supervisors who perform what many consider to be the most difficult job in any law enforcement agency.

- **Task 20.1** – Of 58 total relevant squads reviewed, seven were “open” – i.e., had no assigned primary supervisor, at the draw. The IMT pointed out that even a few “open” squads undermine the benefits of consistent supervision. It urged OPD to make a stronger effort to ensure that even “less desirable” squads are assigned permanent/primary supervisors at the draw. Although the IMT noted that OPD had improved assignment of regular primary

supervisors, it still found the Department not yet in compliance with Task 20.1 because OPD had not assigned sufficient primary supervisors to allow for consistent, qualified supervision.

- **Task 20.2** – Of 1,925 squads reviewed, 1,448 (75%) were supervised by their primary supervisors. Most of the squads deemed out of compliance were supervised by someone; often times this person was a sergeant working overtime to “backfill” for another sergeant. In too many instances, the squad was led by an officer who had not been certified to act as a sergeant. Officers not been certified to act as supervisors may not have the skill set or training to adequately perform critical supervisory functions such as assessing the propriety of arrests and searches, investigating uses of force, responding to field complaints, and monitoring vehicle pursuits. Approximately a quarter of relevant squads were not supervised by their assigned primary supervisors during the time period reviewed. The IMT found OPD out of compliance with Task 20.2 because it had not attained a sufficient level of actual supervision by primary supervisors.
- **Task 20.3** – Of 1,925 squads reviewed, 1,659 (86%) met the 1:8 span of control. While this is short of the 90% compliance level requirement, the IMT found OPD in compliance with this task. It noted that OPD has made considerable efforts to ensure a proper ratio of sergeants to officers. A 1:8 ratio, and often lower, is the now the norm at OPD. No sergeant is assigned more than eight officers and where squads do on occasion exceed eight officers, it is with the notification and approval of the appropriate commander.
- **Task 20.4** – The IMT found OPD in compliance with Task 20.4, noting that the Department generally takes a thoughtful rather than ad hoc approach to making backfill decisions.
- **Task 20.5** – The IMT found that the span of control was out of compliance for five of 101 special operations during the period reviewed. In these five cases, the officer put in charge did not meet OPD’s criteria for acting supervisors for the type of special operation being undertaken and/or the number of officers being supervised. However, with a compliance rate of 95%, OPD was found in compliance with Task 20.5.
- **Task 20.6** – The IMT found OPD in compliance with Task 20.6 because the intent of this requirement is facilitated by discussion of loans and transfers at weekly meetings, as well as listing loans and transfers on the personnel orders. However, while noting that the NSA does not require written approval by the Chief of Police or Deputy Chief on loans and transfers for long-term backfills, the IMT encouraged OPD to move forward to ensure that the reasons for each loan and transfer are documented in writing.

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## **Task 21: Members’, Employees’ and Supervisors’ Performance Review**

### **Settlement Agreement Language**

- “By May 5, 2004, OPD must, based on contemporary police standards and best practices, develop and implement a member, employee and supervisor performance review policy. The Settlement Agreement sets forth certain criteria that must be included in this policy.”



- “By July 7, 2004, OPD must hold its supervisors and commanders/managers responsible for identifying patterns of improper behavior of their subordinates. Failure to identify patterns and instances of misconduct when the supervisors or commanders/managers knew or reasonably should have known of the misconduct shall constitute grounds for discipline.”
- “By July 7, 2004, Bureau of Field Operations sergeants and lieutenants must scrutinize arrests and uses of force that have been historically associated with police misconduct.”

**Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in January 2009.

**Deliverables**

- Revised Departmental General Order B-6, *Performance Appraisal*
- Special Order 8329, *Supervisory Semi-Monthly and Management Semi-Annual Meetings*

**Implementation Activities**

Special Order 8832 was published March 5, 2008, which removes the requirement that supervisors and commanders/managers document the required twice monthly and twice yearly meetings with their subordinates. The meetings must continue to occur as required by DGO B-6, but supervisors and commanders/managers no longer have to maintain documentation about the meetings.

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**Task 22: OPD/DA Liaison Commander**

**Settlement Agreement Language**

- “By April 15, 2003, OPD must, based on contemporary police standards and best practices, develop and implement a Management-Level Liaison (MLL) to the courts, the District Attorney’s Office and the Public Defender’s Office. This unit or person is to ensure that cases that are lost or dropped due to performance problems or misconduct, or indicia thereof, are tracked.”
- “The MLL is required to meet and cooperate with the Monitor. The District Attorney and Public Defender offices may attend these meetings.”

**Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in June 2007.

**Deliverable**

Revised Departmental General Order A-18, *Management-Level Liaison*.

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**Task 23: Command Staff Rotation**

**Settlement Agreement Language**

“By January 20, 2004, OPD must, based on contemporary police standards and best practices, develop and implement a regular rotation of Departmental command staff, consistent with the Department’s immediate needs and best interests.”

**Status: In Policy and Full Practice Compliance**

- Training is not required for this task.
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in November 2005.

**Deliverable**

Chief of Police Memorandum, *Command Officer Assignment and Rotation Policy*

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## **POLICY AND PROCEDURES FOR USE OF FORCE NOTIFICATION AND REPORTING**

### **Task 24: Use of Force Reporting Policy**

#### **Settlement Agreement Language**

“By July 20, 2004, OPD must develop and implement a policy for reporting use of force that requires:

- All members/employees to notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force;
- All members/employees at the scene to report all investigated uses of force on the appropriate form in every investigated use of force incident, unless otherwise directed by the investigating supervisor;
- OPD personnel to document any use of force and/or the drawing and intentional pointing of a firearm at another person;
- A supervisor to 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;
- OPD to notify the Alameda County District Attorney’s Office, the City Attorney’s Office and Departmental investigators in certain use of force incidents; and
- OPD to enter data regarding use of force into OPD’s Personnel Information Management System (PIMS).”

#### **Status: In Policy, Training and Partial Practice Compliance**

- The requirement that OPD enter all use of force reports into PAS (Task 24.9) was under assessment as a part of the PAS review at the time that the IMT assessed the Use of Force Reporting Policy.

#### **Deliverables**

- Revised Departmental General Order K-3, *The Use of Force*
- Revised Departmental General Order K-4, *Reporting the Use of Force*
- Revised Departmental General Order K-4.1, *Investigating the Use of Force*
- Training Bulletin III-H, *Use of Less-lethal Force*
- Revised Report Writing Manual inserts

#### **IMT Audit Summary**

In its December 2009 audit of Task 24, the IMT found OPD in compliance with every subtask but **Task 24.1**, which requires OPD personnel to notify their supervisors as soon as practicable following any reportable use of force or allegation of excessive use of force. Based on the use of force investigative reports and supplemental materials reviewed, the IMT determined that during

the period reviewed, the compliance level for this subtask had fallen from 95% to 90%. (The April 2009 IMT audit had found OPD in compliance with all requirements of Task 24.) Since the compliance standard for this provision is a stringent 95%, the IMT found OPD no longer in compliance with Task 24.1, and therefore in partial compliance with Task 24.

**Tasks 24.2 and 24.3** require OPD personnel who use force and those who are on scene at the time force is used to report the force on the appropriate forms. Based on the use of force investigative reports and supplemental materials reviewed, the IMT determined that OPD personnel properly reported force at a 97% compliance level.

**Task 24.4** requires a supervisor to 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. In its 2008 audit, the IMT found that supervisors responded to the scene in 98% of incidents reviewed. In its most current audit, based on the use of force investigative reports and supplemental materials reviewed, the IMT determined that a supervisor responded to the scene of the use of force in all of the Level 1, 2, and 3 incidents reviewed. Accordingly, it found OPD remains in compliance with Task 24.4.

**Task 24.5** and Task 31.4 require OPD to notify the Alameda County District Attorney's Office immediately or as soon as circumstances permit following every use of lethal force resulting in death or injury likely to result in death. Based on the fact that investigators from the DA's office arrived on scene and/or attended interviews of the involved officers occurring within hours of the incidents in each of the cases and our interviews with the District Attorney's Office, the IMT find OPD in compliance with this subtask.

**Task 24.6** and Task 31.5 require OPD to notify the City Attorney's Office as soon as circumstances permit following every use of lethal force resulting in death or injury likely to result in death. Although the notification was not specifically documented in the investigative files, the IMT found OPD compliant based on interviews of departmental personnel regarding their notification practices, its observation of a Deputy City Attorney at shooting scenes, and the City Attorney's Office's confirmation that it continues to receive timely notice of all shootings.

The IMT also found OPD in compliance with **Task 24.8**, which requires OPD to notify both the Homicide Division and the Internal Affairs Division following every officer-involved shooting.

**Task 24.9** requires OPD to enter all use of force reports into PAS. This subtask is under assessment as part of the PAS review.

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## **Task 25: Use of Force Investigation and Report Responsibilities**

### **Settlement Agreement Language**

"By July 20, 2004, OPD must develop and implement a policy for conducting use of force investigations."

### **Status: In Policy, Training and Partial Practice Compliance**

## Deliverables

- Revised Departmental General Order K-3, *The Use of Force* (1 Aug 07)
- Revised Departmental General Order K-4, *Reporting the Use of Force* (1 Aug 07)
- Revised Departmental General Order K-4.1, *Investigating the Use of Force* (1 Aug 07)
- Training Bulletin III-H, *Specialty Impact Munitions* (26 Jul 06)
- Departmental General Order K-4, *Reporting and Investigation Use of Force* (1 Aug 07)
- Report Writing Manual U-1, *Use of Force Reports* (20 Aug 07)

## IMT Audit Summary

The December 2009 IMT audit of Task 25 found the Department compliant with all but a portion of one subtask (Task 25.2, Timeliness of Use of Force Investigations).

**Task 25.1** requires IAD to complete a use of force report for every Level 1 use of force and an on-scene supervisor to complete a use of force report for every Level 2 and 3 use of force. The IMT reviewed investigative reports completed by IAD for all Level 1 cases and use of force reports completed by on-scene supervisors for all Level 2 and Level 3 cases during the time in question. It also reviewed a sample of Level 4 use of force reports and found that they had been categorized appropriately. (OPD policy permits on-scene supervisors to reduce the force level of specified Level 3 uses of force to Level 4 cases when the force does not result in injury, there are no allegations of misconduct, and no indication that the force was out of policy.)

In addition, the IMT reviewed every Internal Affairs force complaint involving incidents alleged to have occurred during April of 2009. A total of 21 force complaints involved incidents alleged to have occurred during this time period; 14 of the 21 complaints involved incidents in which a use of force report should have been completed. Officers notified their supervisors as required by OPD policy in all 14 of these incidents. Accordingly, OPD remains in compliance with Task 25.1.

**Task 25.2** requires OPD to conduct timely use of force investigations. The IMT found OPD was still out of compliance with the timeliness requirement, although it noted that the Department has shown some improvement in timeliness since the April 2008 IMT audit (percentage of force investigations meeting required deadlines rose from 21.3% to 56%).

The IMT was most concerned about timeliness of Level 1 uses of force. Currently, OPD requires Level 1 use of force investigations to be completed (including IAD Commander approval) within 75 calendar days of the incident plus one documented extension approved by the Chief of Police in advance of the due date. Of 15 Level 1 cases reviewed by the IMT, only one was completed within this timeframe. The EFRB relies upon the completed IAD investigation in order to conduct its review of Level 1 cases, so some of these incidents were not reviewed by top commanders for several months to nearly a year after they occurred.

Level 2 and 3 use of force investigations are considered timely if they are completed (including Division Commander approval) within 15 calendar days of the incident plus one documented extension approved in advance of the due date. The IMT reviewed a total of 28 Level 2 and 3 use of force investigations. Twenty-three of the investigations were completed within the deadline

(75% of the Level 2 investigations and 85% of the Level 3 investigations). While not yet meeting the 95% compliance standard, this is marked improvement over our last audit when only 13% of Level 2 investigations and 35% of Level 3 investigations were completed within the deadline. These improvements are the result of greater management oversight by BFO commanders, including the assignment of a hardworking administrative sergeant to monitor the timeliness and quality of these investigations. In addition, field sergeants are becoming increasingly adept at conducting use of force investigations.

In addition to requiring that OPD conduct timely use of force investigations, **Task 25.2** requires that use of force reports include a number of elements, such as documenting that: all officers at the scene are separated and separately interviewed; non-OPD witnesses are identified and interviewed; discrepancies in statements are considered and physical evidence is analyzed. The IMT found the Department was meeting the elements at an overall compliance level of 90%, a slight improvement from its prior audit. The IMT praised OPD for continuing to make considerable progress in its use of force investigations and found it in compliance with Task 25.2.

**Task 25.3** requires OPD to train all of its patrol and Internal Affairs supervisors on conducting use of force investigations as part of a supervisory training course. Since OPD had a high level of compliance during the 2008 IMT audit, the team did not reassess this requirement.

**Task 25.4** requires OPD to include details in each use of force investigation case. Information provided should show whether the:

- Force was pursuant to a legitimate law enforcement objective
- Type and amount of force was proportional to the resistance encountered and reasonably related to the objective the officers were attempting to achieve
- Officer used reasonable verbal means to resolve the situation, if time and circumstances permitted
- Force was de-escalated or stopped reasonably when resistance decreased or stopped.

The IMT found a 96% overall compliance percentage for Task 25.4 and stated that OPD remains in compliance with Task 25.2.

**Task 25.5** requires OPD to include the following when reviewing use of force reports:

- Whether chain of command under which member working at the time force was used reviewed the use of force
- Recommendation regarding whether the force complies with policy
- Whether additional investigation and investigative resources were ordered when necessary
- Whether recommendation that use of force does not comply with policy was referred to IAD for additional investigation/analysis if necessary.

The IMT found an overall compliance percentage for Task 25.5 to be 96%. OPD remains in compliance with Task 25.5.

**Task 25.6** requires that when officers are involved in officer-involved shootings or uses of force that result in death or serious injuries, OPD separate the officers from each other as soon as practicable and keep them apart until they have completed their reports and been interviewed.

The IMT noted sustained improvement in OPD's compliance with this requirement. While the standard for this provision is 95%, based on a current 92% compliance level, the IMT found OPD in compliance with this task.

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## **Task 26: Use of Force Review Board (UFRB)**

### **Settlement Agreement Language**

"By July 20, 2004, OPD must develop and implement a policy to enhance the Use of Force Review Board. The Settlement Agreement sets forth certain criteria that must be included in this policy."

### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Revised Departmental General Order K-4, *Reporting the Use of Force*
- Revised Departmental General Order K-4.1, *Investigating the Use of Force*
- Training Bulletin III-H, *Use of Less Lethal Force*
- New or revised Report Writing Manual insert

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## **Task 27: Oleoresin Capsicum Log and Checkout Procedures**

### **Settlement Agreement Language**

- "By July 20, 2004, OPD must develop and implement a policy for logging the checking out and use of Oleoresin Capsicum (OC) spray canisters by any member or authorized employee."
- "By July 22, 2004, this log must be computerized and electronically accessible and OPD must regularly prepare and distribute reports."

### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in May 2009.

#### **Deliverables**

- Departmental General Order C-8, *Oleoresin Capsicum (OC)*
- Oleoresin Capsicum Log

- Oleoresin Capsicum checkout electronic tracking and database
- Special Order 8061, *Oleoresin Capsicum (Pepper Spray) Log and Checkout Procedures*

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## **Task 28: Use of Force – Investigation of Criminal Misconduct**

### **Settlement Agreement Language**

- “By July 20, 2004, OPD must develop and implement a policy to report, as soon as possible, any use of force situation, citizen complaint, or other member/employee-involved action in which there is apparent evidence of criminal misconduct by a member/employee to the Alameda County District Attorney’s Office.”
- “By July 20, 2004, when OPD initiates an interview or interrogation of OPD personnel and it appears that the subject may be charged with a crime, or the subject asserts his or her Fifth Amendment rights on grounds that the answers to questions posed may be incriminating, such interrogation must be preceded by a Lybarger warning.”
- “By August 13, 2004, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations.” (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- “By August 13, 2004, OPD must train all personnel to ensure they have received, understand and comply with new and revised Departmental policies and procedures.” (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- “By August 13, 2004, the IAD procedural manual must address: assignment and rotation of officers; training and qualifications of members and other personnel in IAD; appropriate background checks of IAD personnel; and confidentiality of IAD information.”

### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in July 2009.

### **Deliverables**

- Revised Departmental General Order M-4, *Coordination of Criminal Investigations*
- Internal Affairs Division Policy and Procedures Manual

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## **Task 29: IAD Investigation Priority**

### **Settlement Agreement Language**

- “By July 20, 2004, OPD must develop and implement a policy to coordinate its administrative investigation of a member/employee with the Alameda County District Attorney’s Office if a criminal proceeding is potentially viable.”



- “By July 20, 2004, when OPD initiates an interview or interrogation of OPD personnel and it appears that the subject may be charged with a crime or the subject asserts his or her Fifth Amendment rights on grounds that the answers to questions posed may be incriminating, such interrogation must be preceded by a Lybarger warning.”
- “By August 13, 2004, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations.” (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- “By August 13, 2004, OPD must train all personnel to ensure they have received, understand and comply with new and revised Departmental policies and procedures.” (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- “By August 13, 2004, the IAD procedural manual must address: assignment and rotation of officers; training and qualifications of members and other personnel in IAD; appropriate background checks of IAD personnel; and confidentiality of IAD information.”

### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in July 2009.

### **Deliverables**

- Departmental General Order M-4, *Coordination of Criminal Investigations*
- Internal Affairs Division Policy and Procedures Manual
- Internal Affairs Division Policy and Procedure 07-06, *IAD Call-Out Procedures*

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## **Task 30: Firearms-Discharge Board of Review**

### **Settlement Agreement Language**

“By July 20, 2004, OPD must develop and implement a policy requiring that it convene a Firearms Discharge Board of Review for every officer-involved firearms discharge. The Settlement Agreement sets forth criteria that must be included in this policy.”

### **Status: In Policy, Training and Partial Practice Compliance**

Policy: The Department completed the revision of the remaining provisions in Internal Affairs Policy & Procedure 05-04, *Procedures for Force and Death Investigations* was published on June 16, 2006 and Homicide Policy and Procedures 01, *Lethal Force/In-Custody Death Investigations* was published on May 13, 2006.

### **Deliverables**

- Revised Departmental General Order K-4, *Reporting the Use of Force*
- Revised Departmental General Order K-4.1, *Investigating the Use of Force*

- Departmental General Order K-4.1, *Force Review Boards* (1 Aug 07)

### **IMT Audit Summary**

In its January 2010 review, the IMT found the Department in partial compliance with Task 30. In particular, it found subtasks 30.1 and 30.2 were not yet in compliance.

**Task 30.1** requires OPD to convene an EFRB within 30 days of the Internal Affairs Division's completion of an administrative investigation of certain officer-involved shootings. The IMT found the EFRB was convened within 30 days of the completion of the Internal Affairs investigation in 7 of 13 cases reviewed. The IMT noted that while this 54% compliance rate is better than the previous audit's 50% rate, in that audit, delays were fairly short (between 2 and 16 days) and did not materially affect the review process. During the present audit, some cases were not heard by the Review Board until two to three months after completion of the administrative investigation due to delays past the deadline of more than 60 days. Therefore, the IMT found OPD out of compliance with Task 30.1.

**Task 30.2** requires that the EFRB have access to recordings and/or transcripts of interviews of all personnel on the scene, including citizen witnesses, and that it be empowered to call in any OPD personnel it believes should testify. The IMT found OPD in compliance with these requirements, noting that EFRB members generally have access to recordings and/or transcripts of interviews of OPD personnel and other witnesses and that the Board is empowered to call in any OPD personnel to testify. It frequently solicits the opinion of OPD subject matter experts.

In order to ensure adequate review of each officer-involved shooting, **Task 30.3** requires that OPD comply with the policies and procedures set forth in General Order K-4.1, *Force Review Boards*. The IMT evaluated OPD's compliance with requirements in six areas:

1. Board composition and presentation
2. Review board binder availability and content
3. Conduct of board
4. Review board reports
5. Board recommendation follow-up
6. Record retention and reporting.

The Department was in compliance with four of the six requirements of Task 30.3. The IMT found the Department out of compliance with board composition because a deputy city attorney did not attend some of the review boards. Also, review board requirements were found out of compliance because the draft Departmental publication regarding the incident, a required element, was missing in 11 of the 13 reports reviewed.

Because it is not in compliance with the Board Composition and Presentation nor the Review Board requirements of this task, OPD is not in compliance with Task 30.3.

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## **Task 31: Officer-Involved Shooting Investigation**

### **Settlement Agreement Language**

“OPD shall develop a policy to ensure that, in every officer-involved shooting in which a person is struck, Homicide and Internal Affairs investigators respond to the scene. The shooting investigation shall be conducted in partnership with, and when deemed appropriate by, the Alameda County District Attorney’s Office. Interviews of the subject officer(s) shall be conducted jointly with the appropriate staff from Homicide and the Office of the District Attorney. The District Attorney and City Attorney shall be notified in accordance with the provisions of Section V, paragraph A (5), of this Agreement. All evidentiary material shall be duplicated and provided to the Alameda County District Attorney’s Office, the Internal Affairs Division, and the City Attorney’s Office.”

### **Status: In Policy, Training and Full Practice Compliance**

#### **Deliverables**

- Revised Departmental General Order K-3, *The Use of Force*
- Revised Departmental General Order K-4, *Reporting the Use of Force*
- Revised Departmental General Order K-4.1, *Investigating the Use of Force*
- Training Bulletin V-O, *Officer Involved Shooting*

#### **Implementation Activities**

- The Use of Force policies were published on February 18, 2006, and the Internal Affairs Policy & Procedure 05-04 was published on June 16, 2006
- Departmental General Order K-4, *Reporting and Investigation Use of Force* (1 Aug 07)
- Homicide Policy and Procedure 01, *Lethal Force/In-Custody Death Investigations* (13 May 07)
- IAD Policy and Procedure 05-04 (16 Jun 06)
- Training Bulletin III-N, *Police Conduct with the Mentally Ill* (29 Sep 06)

#### **IMT Audit Summary**

Task 31 requires the following in every officer-involved shooting in which a person is struck:

- Homicide and Internal Affairs investigators respond to the scene
- OPD conduct OIS investigations in partnership with, and when deemed appropriate by, the Alameda County District Attorney’s Office
- Interviews of the subject officer(s) be conducted jointly with the appropriate staff from Homicide and the office of the District Attorney
- OPD copy and provide all evidentiary material to the Alameda County District Attorney’s Office, the Internal Affairs Division, and the City Attorney’s Office.

In its December 2009 audit, the IMT reviewed all 15 Level 1 use of force incidents reported between November 1, 2007 and February 6, 2009, focusing on the 13 officer-involved shootings. It found that OPD continues to remain in compliance with Task 31.

According to the IMT, the Department now conducts comprehensive administrative investigations of officer-involved shootings and reviews them at the highest levels of the Department. With the exception of an accidental discharge by an officer in front of his home in another county, both Homicide and Internal Affairs investigators responded to the scene of each of the officer-involved shootings to begin conducting separate, parallel investigations.

OPD continues to cooperate with the District Attorney in investigating officer-involved shootings. In the case of the accidental discharge and three shootings that did not result in any deaths or life-threatening injuries to suspects, the District Attorney declined to participate in investigations or interviews of the subject officers. In the remaining nine incidents, investigators from the District Attorney's Office responded to the scene and/or participated in the subject officer interviews. In addition, OPD and the District Attorney's Office have agreed to confer with one another regarding identifying an appropriate agency to conduct the officer-involved shooting investigation if a conflict of interest arises.

After the District Attorney's Office has completed its review, it issues its own officer-involved shooting report, informing the Department of its decision whether to prosecute the subject officers. Historically, it has taken months – and in some cases, over a year – to receive the District Attorney's report. The IMT noted that these delays have continued despite the agreement reached in late 2006 that the DA's Office would endeavor to provide OPD with a determination within two weeks of receiving OPD's completed investigative packet.

Finally, Homicide provides all evidentiary material to the District Attorney's Office and the Internal Affairs Division. The City Attorney's Office receives this information and the evidence gathered by the Internal Affairs Division when reviewing the Internal Affairs investigation and the materials prepared for the Executive Force Review Board.

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## **Task 32: Use of Camcorders**

### **Settlement Agreement Language**

“Within 390 days from the effective date of this Agreement, OPD shall develop and implement a revised policy, and appropriate forms, regarding use of force reporting and review.

#### **H. Use of Camcorders**

OPD shall explore the use and cost-effectiveness of camcorders in Patrol vehicles.”

### **Status: In Policy and Full Practice Compliance**

- No training required for this Task.
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in October 2003.

## **Implementation Activities**

The Department's research and recommendations were presented to the Chief of Police in a report dated September 8, 2003.

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## **REPORTING PROCEDURES**

### **Task 33: Misconduct**

#### **Settlement Agreement Language**

“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.

- Any member/employee of OPD may report a suspected case of police misconduct confidentially to the commander of IAD.
- The member/employee reporting this conduct shall indicate clearly to the commander of IAD that the report is being made under these confidential provisions.
- 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.
- The case shall be investigated without disclosure of the complainant's name, unless and until such disclosure is required by law.

This confidential reporting procedure shall be made known to every member/employee of OPD and to all new members/employees of OPD within two (2) weeks of hiring.”

#### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Departmental General Order D-16, *Check-In and Orientation*
- September 1, 2002 *Manual of Rules* revisions:
  - Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules or Orders*
  - Manual of Rules Section 314.49, *Confidential Reporting of Police Misconduct*
  - Manual of Rules Section 370.18, *Arrests*
  - Manual of Rules Section 370.27, *Use of Physical Force*
  - Training Bulletin V-T.3, *Reporting Misconduct*

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## **Task 34: Vehicle Stops, Field Investigation and Detentions**

### **Settlement Agreement Language**

“Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

- A. Vehicle Stops, Field Investigation and Detentions
  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.’”

### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Special Order 8012, *Racial Profiling Stop-Data Collection Form*
- DGO-M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*

#### **OIG Audit Summary**

On May 11, 2009, OIG began an examination of OPD’s Stop Data collection efforts to see if there had been an improvement in practice since the last IMT assessment of Task 34, published January 2009. This review focused on two areas found deficient in the IMT audit:

1. Were the officers completing Stop Data forms as required? (**Task 34.1**)
2. Was the Stop Data information being accurately entered into the database? (**Task 34.3.2**)

OIG found that although improvements had been made, neither task was at full compliance.

The IMT audit, published January 2010, examined a sample of records gleaned from the 40,507 field contacts and citations written between January 1 and July 30, 2008. The IMT concluded that 27% of the records could not be matched up with Stop Data forms, meaning that the overall

compliance rate was 73%. This compliance rate included both definite matches and possible matches. Citations were at 80% and Field Contacts were at 46%.

**Task 34.1** requires that OPD members complete a Stop Data Form (SDF) for every vehicle stop, field investigation and detention. Of 100 randomly selected citations and field contacts written between October 1, 2008 and March 31, 2009, 78% were located in the Stop Data database, meaning there was a matching stop data form for the citation or field contact. This was an improvement of 5% since the IMT audit. OIG found that 81.6% of citations were in compliance by having a matching stop data form, as were 72.5% of field contacts.

While the compliance rate for citations barely changed between the IMT's review and OIG's review, rate of compliance for field contacts improved significantly (from 46% to 72.5%). But this had little impact on the overall compliance rate, because field contacts comprised only 22% of the IMT sample, versus 40% in the OIG sample. OIG sampled a larger percentage of field contacts because the IMT had identified field contacts as having the most serious deficiencies. In the Stop Data database, field contacts comprise approximately 15% of the total entries.

**Task 34.3.2** requires that data captured on Stop Data Forms be *completely* and *accurately* entered into the Stop Data Databases.

The Stop Data is kept in two sub-databases ("New Form" and "Old Form"). The combined database contained 272,651 records at the time of the OIG review, an increase of 81,922 (43%) since the IMT audit. Less than 0.5% of the records entered after the IMT audit went into the Old Form database, so the New Form database was used to examine current patterns of missing data. Of the 177,777 records in the entire New Form Database:

- 1,480 records did not display the date of contact (less than 1%).
- 2,271 records did not display a time of contact (1.28%)
- 1,386 records did not display a location (less than 1%)
- 1,160 did not list the race of the person stopped (less than 1%)
- 2,363 records did not display the officer's serial number (1.33%).

A random sample of 48 records with missing data fields was reviewed to identify causes for the missing information. All but four of these records were citations, a ratio of 12:1. Blank entries in data fields corresponding to date, time, location and serial number were due to officers not reporting the information or SoftFile clerical staff not entering it into the database. When other database fields were blank, despite officers having reported the information, reasons appeared to be the poor quality of the copy from the NCR (No Carbon Required) citation form, illegible handwriting, or unauthorized abbreviations. As a result, the information was considered invalid or missed. It appeared that missing data was most commonly associated with the citation NCR form.

OIG pointed out that absence of data regarding the race of the person stopped removes the key information needed by the Stop Data program. Upon analysis, it noted that different race codes are used for different Departmental forms, which is likely the cause of the use of invalid Stop Data race codes. For crime reports and other documents, the "actual race" of the person is supposed to be recorded, and officers must be as specific as possible. However, Stop Data forms



require officers to document the “perceived race” of the person stopped and therefore race codes are more general. Although these two sets of race codes may be necessary and serve different purposes, OIG pointed out that more clear instructions would help alleviate the problem of invalid Stop Data race codes.

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### **Task 35: Use of Force Reports – Witness Identification**

#### **Settlement Agreement Language**

“Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

##### **A. Use of Force Reports – Witness Identification**

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 incident.”

#### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in January 2010.

#### **Deliverables**

- Revised Departmental General Order K-4, *Reporting the Use of Force*
- Revised Departmental General Order K-4.1, *Investigating the Use of Force*
- Special Order 8066, *Use of Force – Witness Identification*

#### **IMT Audit Summary**

Task 35 requires that OPD 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. When there are no known witnesses, the fact must be stated in use of force reports. Where witnesses are present but circumstances prevent the author of the report from determining the identification, phone number, or address of the witnesses, this must be stated and explained in the reports. Finally, use of force reports must include the names of all other OPD members/employees witnessing the incident.

In its December 2009 audit, the IMT found OPD in actual practice compliance with Task 35. Of 43 cases reviewed, 39 (91%) included all of the required contact information or sufficient information to contact witnesses should it be necessary and/or stated when there were no known witnesses to the incident.

The IMT found that OPD had improved significantly in witness identification since its last audit, when only 83% of cases reviewed included the required witness information. The IMT found substantially better documentation in use of force investigations when there are no known witnesses to an incident.

Eight cases in the IMT review involved incidents where supervisors did not obtain all or part of the required witness information. In seven of these cases (88%), the reports explain the reason why the information was not obtained, a marked improvement since the 2008 IMT audit, when only 56% of applicable investigations included documentation of the reasons why witness information was not obtained. Due to the small sample size, the IMT found the Department in compliance at 88%.

With the exception of a single Level 3 case, all cases reviewed included the names of OPD members and employees who witnessed the use of force. Other than this, reports consistently included the names of OPD personnel who witnessed the use of force and generally also included the names of OPD personnel who were on scene but did not witness the incident. This practice provides risk management benefits to OPD, including assisting it in supervising and managing its personnel.

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## **Task 36: Procedures for Transporting Detainees and Citizens**

### **Settlement Agreement Language**

“Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

#### **B. Procedures for Transporting Detainees and Citizens**

1. OPD shall continue to require every member and employee to log in and log out on the radio when transporting a detainee or any other civilian. The radio report shall include time, mileage, location, purpose of transport, gender of individual being transported, and identification of the member or employee involved in the transport.
2. This requirement does not apply to ‘wagons’ engaged exclusively in the transport of prisoners. These ‘wagons’ shall continue to comply with the provisions of Departmental General Order (DGO) O-2, ‘Transportation of Prisoners and Persons in Custody.’”

### **Status: In Policy, Training and Full Practice Compliance**

- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in December 2008.

## **Deliverables**

Special Order 8262, *Transportation of Persons in Police Vehicles*

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### **Task 37: Internal Investigations – Retaliation Against Witnesses**

#### **Settlement Agreement Language**

“Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

##### **E. Internal Investigations – Retaliation Against Witnesses**

“OPD shall prohibit retaliation against any member or employee of the Department who: reports misconduct by any other member or employee, or 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.”

#### **Status: In Policy and Training Compliance**

## **Deliverables**

September 1, 2002, *Manual of Rules* revisions:

- Manual of Rules Section 398.73, *Retaliation Against Witnesses*
- Manual of Rules Section 398.74, *Retaliation Against Witnesses, Accountability*

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### **Task 38: Citizens Signing Police Forms**

#### **Settlement Agreement Language**

“Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

##### **F. Citizens Signing Police Forms**

OPD personnel shall be required to ensure that citizens who sign written statements on a Statement form draw a diagonal stripe from the end of the written narrative to the bottom of the page, and sign along that stripe. Statements taken on offense reports shall be signed by the citizen immediately following the statement.”

**Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in April 2006.

**Deliverables**

- Revised Report Writing Manual Insert S-1, Statement
- Information Bulletin, *Citizens Signing Police Forms*

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**Task 39: Personnel Arrested, Sued and/or Served with Civil or Administrative Process**

**Settlement Agreement Language**

“Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

**G. Personnel Arrested, Sued and/or Served with Civil or Administrative Process**

1. OPD shall continue its policy requiring OPD personnel to report, to IAD directly and through his/her chain of command, within 72 hours, any occurrence in which that member or employee has been:
  - a. Arrested; or
  - b. Sued and/or served with civil or administrative process related to his/her employment or containing allegations which rise to the level of a Manual of Rules violation.
2. OPD shall develop a policy requiring OPD personnel to report to the Chief of Police, through his/her chain of command, within 72 hours, that they have been served with civil or administrative process, including tort claims, financial claims, whenever applying for a transfer to or serving in:
  - a. The Gang Unit, Vice/Narcotics Section, Intelligence Division or Internal Affairs Division;
  - b. An assignment that may tend to indicate a conflict of interest with respect to the performance of his/her official duties; or
  - c. A specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.
3. For the purposes of this Agreement, allegations involving “financial claims” mean civil or administrative process claims relating to judgments for collection related to property seizures, taxes, judgments for money owed, debt as a debtor or creditor, filing bankruptcy, garnishments, liens, attachments on bank or savings accounts, spousal support, child support and/or foreclosure.”

**Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in December 2009.

## **Deliverables**

- September 1, 2002, *Manual of Rules* revision; *Manual of Rules* Section 314.28, *Notification*
- Special Order 8064, *Reporting Civil Actions Served*
- Departmental General Order E-3.1 *Department Notification* (18 Jan 08)
- Special Order 8815 Revision to DGO E-3.1 (1 Feb 08)

## **Implementation Activities**

The Internal Affairs Division created a new Departmental General order for this task, E-3.1, *Compliance to Department Notification*. It provides specific guidelines for the selection into specialized units, notification requirements, the IAD Integrity Testing Unit responsibilities, and notification compliance checks.

## **IMT Audit Summary**

Task 39 requires that OPD personnel report within 72 hours of being arrested, sued, or served with civil or administrative process containing allegations which rise to the level of a Manual of Rules violation. The report must be made directly to IAD and through the chain of command (personnel are held accountable if they do not do so). Subtask 39.3 further requires that OPD personnel serving in or being considered for transfer to a unit or assignment that may tend to indicate a conflict of interest with respect to the performance of official duties or in a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered report being served with civil or administrative process to Chief of Police within 72 hours, through the chain of command (and are held accountable if they do not).

The IMT found the Department in compliance with Task 39 and praised OPD for coming “light years” since its last review of this task, when the system in place was “very lackluster.” OPD handled all cases in which OPD personnel should have reported within 72 hours and did not appropriately. OPD’s discovery of personnel that should have reported, but did not, is due to the new systems in place to proactively identify members/employees who have been arrested, sued or served and did not report it as required. OPD now receives regular updates from the City of Oakland’s Risk Management Department, which is automatically notified by the State Department of Motor Vehicles of City employees with suspended or expired licenses. In addition, fingerprints of every member of the Department are now included in a California Department of Justice database.

Currently, OPD conducts random integrity tests of two Department personnel every quarter. (The IMT suggested that OPD move from random integrity tests to target those with some indication of a potential problem.) Each test includes checks for warrants, wanted persons, driver’s license, garnishments, public records, LRMS, sex/arson registration, domestic violence; any calls to a police department about the individual or to that individual’s place of residence; and a public county courthouse record search.

The IMT noted that OPD now has a system of reviewing persons slated for transfer to certain specialized units to ensure that any arrests, lawsuits, or financial problems are identified and

assessed prior to transfer. A person selected for transfer to one of these specialized units must complete a "Statement of Compliance" form. The IAD Integrity Unit must review financial information related to the person, such as credit reports, and document findings on a "Financial Summary" form. The IMT found that as of September 2009, forms had been turned in for each person assigned to a specialized unit. With few exceptions the forms were complete and apparently accurate. The IMT commended OPD, and IAD's one-person Integrity Unit in particular, for the effort put into implementing this important program.

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## **INTERNAL PERSONNEL ASSESSMENT SYSTEM**

### **Task 40: Personnel Assessment System**

#### **Settlement Agreement Language**

“By June 28, 2005, OPD must develop and implement a Personnel Information Management System (PIMS). This computerized relational database must maintain, integrate and retrieve data necessary for supervision and management of OPD and its personnel. Specifically, this data must be used by OPD to promote professional police practices; manage the risk of police misconduct; and evaluate and audit the performance of OPD members of all ranks, employees and OPD units, subunits and shifts. The Settlement Agreement sets forth particular information that must be captured by PIMS.”

#### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Subcommittee on the PAS
- Department General Order D-17, *PAS Purpose*
- Relational database and associated computer hardware and software

#### **Implementation Activities**

Despite the initial challenges, the Department has continued to develop, test, and improve an early identification system and intervention policy that complies with the provisions of Tasks 40 and 41. This policy, known as PAS, utilizes a “homegrown” computerized relational database system developed through collaboration between the City’s Police and Information Technology departments. This system, known as iPAS, is accessible to all commanders, managers and supervisors via the City’s intranet system. Utilizing a web browser, commanders, managers and supervisors are able to review iPAS data for all Agreement requirements relating to their subordinates. The Department is one of only a few law enforcement agencies that have implemented such a system, which enables supervisors, managers and commanders to comprehensively track and monitor the job performance of their members and employees.

#### **IMT Audit Summary**

OPD is required under **Task 40** to fully implement a computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of OPD and its personnel. That database is also required to contain information on each of the elements required by the Agreement. This integrated data system supports an administrative process, set out under Task 41, whereby OPD members and employees who demonstrate certain at-risk behavior are subject to identification, review, monitoring or intervention by their supervisors and commanders.

The IMT found OPD in partial compliance with Task 40, noting that there are a few important areas in which IPAS data is incomplete, inaccurate, and/or organized in a way that makes retrieving accurate and complete information unreasonably difficult.

**Task 40.1** requires OPD to fully implement a computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of OPD and its personnel. The creation of its Internal Personnel Assessment System (IPAS) has made OPD compliant with Task 40.1.

**Task 40.2** requires OPD to implement a computerized relational database that incorporates complete and accurate data for 19 dimensions. During its last audit of the system, the IMT found that the majority of the data in IPAS was complete and accurate as compared to other OPD data and databases. However, there were some serious data quality problems regarding the following five dimensions:

1. Officer-Involved Shootings
2. Financial Claims
3. In-Custody Injuries
4. Agreement-Specified Arrests
5. Adjudication Data.

During the current audit, there were still a few areas of significantly incomplete, missing, or incorrectly categorized data. The IMT expects that OPD should be able to attain compliance with Task 40.2 soon, but had to find it not yet compliant.

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## **Task 41: Use of Personnel Assessment System**

### **Settlement Agreement Language**

“By June 28, 2005, OPD must develop a policy for the use of PAS, including supervising and auditing the performance of specific members, employees, supervisors, managers and OPD units, as well as OPD as a whole. The Settlement Agreement sets forth extensive requirements regarding how PIMS must be used.”

### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Subcommittee on the Personnel Information Management System
- Chief of Police Memorandum, *Personnel Information Management System* (May 15, 2003)
- Revised Departmental General Order M-5, *Case Evaluation and Report Review Notice*
- Report Writing Manual Insert E-3
- Department General Order D-17, *PAS Purpose*
- Case Evaluation and Report Review Notice form



## Implementation Activities

See Task 40.

## IMT Audit Summary

The integrated data system required under Task 40 supports an administrative process, set out under **Task 41**, whereby OPD members and employees who demonstrate certain at-risk behavior are subject to identification, review, monitoring or intervention by their supervisors and commanders.

Certain subtasks found compliant in the November 2008 IMT audit of Task 41 were not reassessed for the current audit since the IMT found no indication that their compliance status has changed. Also, during the period under review, according to OPD, no members under PAS jurisdiction were transferred for making unsatisfactory progress. Accordingly, as during the last audit, Tasks 41.28, 41.28.1 and 41.28.2 were not applicable during this audit.

The IMT found OPD in compliance with all but two of Task 41's thirty-plus provisions. Given the high level of compliance with most of the task, the IMT would have found OPD in conditional compliance with Task 41, except that one of the two non-compliant tasks, Task 41.21, showed troubling signs of mendacity.

**Task 41.12.2** requires that individuals in intervention must be dismissed from the room while their supervisor and commander discuss intervention strategy and response. According to the PAS Disposition Meeting Reports, this was done for two of the three (66%) members in intervention. Due to the small sample size, the IMT conducted a broader review of PAS Disposition Meeting Reports (of individuals subject to intervention or supervisory monitoring as a result of exceeding any threshold between April 2008 and April 2009). In the majority of instances, members were dismissed from the meetings as required by Task 41.12.2. However, there were instances where individuals were not dismissed or it could not be ascertained. Accordingly, the IMT found OPD no longer in compliance with **Task 41.12.2**

**Task 41.21** requires that all division/watch commanders and managers hold quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of their units, and identifying potential or actual performance problems within the unit. These meetings must consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention

The IMT was concerned about the veracity of information provided by the Intelligence Unit, IAD and OIG for Task 41.21 and therefore found OPD out of compliance with this task. Two IAD quarterly meetings were held on the same day and two OIG quarterly meetings were held on consecutive days. According to Intelligence Unit reports, meetings took place in March, June, and October 2008 but the reports for all three meetings were all prepared on the same day in October 2008. Additionally, all of the reports from the Intelligence Unit contained the same, non-substantive boilerplate language. If the meetings did occur, they were extremely poorly documented and/or non-substantive. The IMT challenged OPD to review the meeting reports and take disciplinary action should it determine that the meetings did not occur as reported.

Additionally, it urged OPD to ensure that future documentation from this critical unit comport with OPD policy for documenting command review meetings.

The IMT also highlighted two tasks (**Task 41.11** and **41.27**) that called for meetings with a designated commander/manager. While both these tasks were found in compliance, the IMT noted that a command presence sends a critical message to members and employees powerfully communicating the serious goals of the PAS process and helps contribute to its effectiveness.

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## **FIELD TRAINING OFFICER PROGRAM**

### **Task 42: Field Training Program**

#### **Settlement Agreement Language**

“By April 16, 2004, OPD must develop and implement a plan to enhance its Field Training Program. This plan must address: the criteria and method for selecting Field Training Officers (FTOs); the training provided to FTOs to perform their duty; the 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 Settlement Agreement sets forth extensive requirements that must be part of this new Field Training Program.”

#### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in April 2009. Tasks 42.4.3-42.4.5, regarding the requirements of the Field Training Officer selection process, and 42.12.2, regarding correcting discrepancies between teachings in the Academy and the FTO program, were found in conditional compliance.

#### **Deliverables**

- Revised Departmental General Order B-8, *Field Training Program*
- Revised FTO Program procedures and evaluation forms

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## **ACADEMY AND IN-SERVICE TRAINING**

### **Task 43: Academy Training Plan**

#### **Settlement Agreement Language**

“By February 15, 2005, OPD must develop and implement a plan to enhance its Academy and in-service training to ensure that OPD personnel at all levels are adequately trained for their positions, and are aware of and able to implement the most contemporary developments in police training. The Settlement Agreement sets forth criteria that must be contained in this enhanced Academy and in-service training plan and parameters for the frequency and documentation of in-service training. In addition, this provision sets new training criteria for sergeants and command staff.”

#### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in July 2009.

#### **Deliverables**

Revised Departmental General Order B-20, *Departmental Training Procedures*

#### **IMT Audit Summary**

In July 2009, the IMT audited **Task 43.1.1**, which 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 that OPD members are adequately trained for their positions, the IMT reviewed the perishable skills training records of a random sample of 74 of the 603 OPD officers and sergeants assigned to applicable, non-administrative positions in the Bureau of Field Operations, the Criminal Investigation Division, and the Support Operations Division. The training records showed that OPD was not yet in compliance with Task 43.1.1.

However, this review occurred during the Department’s year-long officers’ Continued Professional Training cycle – which includes the required perishable skills training segments. Therefore, the IMT agreed to suspend its audit for approximately a month and a half. Once the training cycle was completed, the IMT reviewed the training records of the members originally found to be out of compliance and verified that these members were now in compliance.

The IMT found OPD in conditional compliance with Task 43.1.1. While the Department did not provide perishable skills training to all officers and sergeants within 24 months or less from their previous training, it did provide the training to 100% of the officers and sergeants reviewed. OPD provided this training within 24 months or less from previous perishable skills trainings for 85% of the officers and sergeants reviewed.

The IMT praised two improvements in the way the Training Division manages its training cycles. First, its CPT is structured so that the training is run for one full year on an ongoing basis, alternating years between officers and sergeants. This will help ensure that all members are trained within the required 24-month period. Second, the Training Division now has a CPT coordinator, an officer who reports to the In-Service Training Sergeant, whose primary responsibility is to track members' attendance in CPT. These significant improvements will help OPD attain unconditional compliance during the next training cycle.

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## **PERSONNEL PRACTICES**

### **Task 44: Performance Appraisal Policy**

#### **Settlement Agreement Language**

“By July 7, 2004, OPD must write performance appraisals individually for each member/employee being evaluated and shall accurately reflect the quality of each member/employee’s performance. These performance appraisals must accurately reflect the quality of the member/employee’s performance. The Settlement Agreement sets forth criteria for these performance appraisals, including documentation of complaints and patterns of conduct and accountability of PSA lieutenants for the quality of community contacts by their beat officers. The Settlement Agreement further designates the supervisor responsible for completing the performance appraisal and requires OPD to conduct regular audits of the performance appraisal system to ensure compliance with the Settlement Agreement.”

#### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Revised Departmental General Order B-6, *Performance Appraisal*
- Special Order 8650, Revision of DGO B-6, Part III

#### **Implementation Activities**

Special Order 8791 was published November 26, 2007, which revises the requirements for documenting performance in members/employees’ performance appraisals. Appraisers no longer have to include written narratives by other supervisors for members/employees who have had multiple supervisors in a rating period or have collateral duties outside of their normal job assignment. In lieu of the written narrative, Appraisers are required to consult with other applicable supervisors and document that the consultation took place.

#### **IMT Audit Summary**

**Task 44.1.1** requires OPD supervisors to provide annual individual written performance appraisals that accurately reflect quality of performance. The IMT praised OPD’s progress in this area, noting that in its previous audit of this task (May 2006), only 73% of files reviewed contained up-to-date performance appraisals. In the current audit, the IMT found that, allowing for a 30-day grace period following the appraisal deadlines, 86% of 72 files reviewed contained current performance appraisals. (It did note that without a grace period of at least two weeks, OPD would be only 51% in compliance with this subtask.) The compliance standard for this subtask is 85%. Accordingly, the IMT found OPD in compliance with Task 44.1.

**Task 44.1.2** requires members’ performance appraisals to include sufficient documentation and consideration of the following six elements: nature and progress of complaints and investigations; uses of force; sick and injured leave; arrests for certain narcotics-related possessory offenses; Penal Code Section 69, 148, and/or 243 (b)(c) arrests; and vehicle

accidents. The compliance standard for this subtask is 85%. The IMT found OPD averaging 97%: 84% compliant with uses of force and 100% compliant with the other five elements.

The IMT cross-referenced information in the members' appraisals on the nature and progress of complaints and investigations with IPAS data. It found that data regarding the nature and progress of complaints was complete and accurate when compared to iPAS. OPD is in compliance with Task 44.1.2.

**Task 44.2** requires that supervisors/managers review, sign, and date every performance appraisal of members/employees within their direct chain command. This task also requires that reviewers who disagree with the appraisal submit a written addendum expressing their concerns. The IMT found OPD in compliance with these requirements: 92% of the 74 appraisals reviewed included the required signatures, and none of the appraisals reviewed indicated a disagreement between reviewers.

**Task 44.3** requires that performance appraisals of members/employees with substantial collateral duties include consultation with the member/employee's other supervisor or manager. After the last IMT review, it was recommended that the appraisal form be modified to elicit specific information from reviewers about collateral duties (and transfers). The Department revised the form to elicit this information. Although the IMT found OPD in compliance with this subtask, it noted documentation of consultations varied widely in quality

**Task 44.4** requires that appraisals of members supervised by two or more individuals due to a transfer are completed in accordance with DGO B-6. The last IMT appraisal did not assess this provision because insufficient documentation was contained in performance appraisals and personnel files to reliably determine when or if a member/employee had been transferred. In the current review period, the IMT found OPD in compliance with Task 44.4. In 38 of the 39 situations in which a transfer occurred, the supervisor consulted with the subordinate's previous supervisor(s). Several supervisors described these consultations in detail and, in some cases, went above and beyond this requirement, even speaking with the subordinates' colleagues for input.

**Task 44.5** requires that performance appraisals of promoted employees be completed by their new supervisors. Two members in the IMT sample were promoted during the review period. Both had completed appraisals as required, making OPD in compliance with Task 44.5.

**Task 44.6** incorporates the requirements of Tasks 21.7 and 41.7. Both tasks are assessed in conjunction with the IMT assessment of Tasks 41.7 and 41.20.

**Task 44.7** requires that Area Captains hold their subordinate supervisors accountable for working to enhance the quality of community contacts. As of December 2, 2009, every Area Captain was on the delinquent appraisals list. Task 44.7 is the only outstanding portion of Task 44. Had it satisfied the requirements of this provision, the Department would have been in compliance with Task 44.

**Task 44.8** requires that OPD conduct regular audits of the performance appraisal system. The IMT praised the diligent efforts of Personnel Division employees, who publish a delinquent appraisals list every two weeks and present status updates of the delinquencies at Department

MAP meetings. As a result of recommendations in the February 2009 OIG audit, the Personnel Division recently sent out a Department-wide email message containing information intended to assist supervisors to improve their performance appraisals. This information included a newly published Information Bulletin, Performance Appraisal Tips (24Feb09), which cites common appraisal errors and problems identified by OIG in its February audit and gives suggestions for fixing these errors. The IMT praised this concrete, problem-solving and found OPD in compliance with Task 44.8.

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## **Task 45: Consistency-of-Discipline Policy**

### **Settlement Agreement Language**

“By June 15, 2004, OPD must revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner. The updated disciplinary policy must describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate, and establish a centralized system for documenting and tracking all forms of discipline and corrective action. The Settlement Agreement also sets forth general criteria for OPD’s response to sustained findings in Class I and Class II investigations.”

### **Status: In Policy, Training and Partial Practice Compliance**

#### **Deliverables**

- Departmental Discipline Policy Manual (including the Discipline Matrix)
- Departmental General Order M-3, *Complaints Against Department Personnel or Procedures*
- Special Order 8553, TB V-T.1, *Internal Investigations Procedure Manual*
- Internal Affairs Policy and Procedure 07-05, *Skelly Process*

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## **Task 46: Promotional Consideration**

### **Settlement Agreement Language**

- “By July 8, 2003, OPD’s promotion policy must be modified so that sustained misconduct cases against a member/employee are an important factor in determining promotability, including presumptive ineligibility for promotion for twelve months following the sustained finding of a Class I violation.
- The Settlement Agreement further requires the Chief of Police to consider the following criteria, in addition to other factors, in making promotional determinations:
  - (a) Commitment to community policing;
  - (b) Quality of citizen contacts;
  - (c) Number of citizen complaints;
  - (d) Instances of unnecessary use of force; and



(e) Support for Departmental integrity measures.”

**Status: In Policy, Training and Partial Practice Compliance**

**Deliverables**

Memorandum from the Office of Chief of Police on Promotional Consideration (16 Jan 07)

**Implementation Activities**

In June 2008, the Personnel Division published Personnel Policy and Procedure Manual 08-08, *Promotional Consideration Procedure*. The manual specifically outlines all the required steps and documents necessary for making promotional decisions.

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## COMMUNITY POLICING PLAN

### Task 47: Community Policing Plan

#### Settlement Agreement Language

“By August 1, 2003, OPD must develop and implement a plan to strengthen its commitment to local communities. The Settlement Agreement sets forth particular requirements the plan must include: OPD must host at least one community meeting per quarter in each Patrol Service Area; each patrol supervisor and officer assigned to a regular beat or geographic area of the City must attend a minimum of one community meeting per quarter in the Area to which he/she is regularly assigned; OPD must develop mechanisms to measure its community policing and problem solving activities; OPD must incorporate positive statistics on community policing and problem solving activities in “Crime-Stop” meetings, along with information on citizen complaints and use of force incidents; and OPD must arrange a meeting within sixty days unless not feasible with representatives of an organization active within Oakland, if the organization communicates a concern regarding specific police personnel or practices.”

#### Status: In Policy, Training and Full Practice Compliance

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in November 2008 and again in November 2009.

#### Deliverables

- Departmental General Order B-7, *Requests for Meetings and Public Appearances*
- Bureau of Field Operations Policy and Procedure 03-03, *Community Meetings*
- Training Bulletin III-A.5, *Problem-Oriented Policing and the 2003 Reorganization of the Patrol Division*

#### Implementation Activities

In August 2008, the Department published the revised version of Training Bulletin III-A.5. The new Community-Oriented Policing Training Bulletin provides more specific measurements that will be used to measure problem solving and community policing.

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## **DEPARTMENTAL MANAGEMENT AND ANNUAL MANAGEMENT REPORT**

### **Task 48: Departmental Management and Annual Management Report**

#### **Settlement Agreement Language**

“By September 5, 2003, OPD must develop and implement a policy requiring each functional unit of OPD to prepare a management report every twelve months. The report must include relevant operating data and highlight ongoing or extraordinary problems and noteworthy accomplishments. The Settlement Agreement further requires that Division commanders meet individually with the Chief of Police and their respective Deputy Chiefs to thoroughly review the management reports of that Division.”

#### **Status: In Policy, Training and Full Practice Compliance**

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in June 2008.

#### **Deliverables**

- New Departmental General Order A-7, *Annual Management and Departmental Report*
- Annual Management Reports
- Memorandum from the Chief of Police on Annual Management Reports (1 Apr 07)

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## **INDEPENDENT MONITORING**

### **Task 49: Monitor Selection and Compensation**

#### **Settlement Agreement Language**

“By April 15, 2003, the parties must select a Monitor, subject to the approval of the Court, who shall review and report on OPD’s implementation of, and assist with, OPD’s compliance with the Settlement Agreement. The Settlement Agreement sets forth extensive provisions related to the Monitor’s duties.”

#### **Status: In Policy and Full Practice Compliance**

- No training required for this Task.
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in August 2003.

#### **Deliverables**

- Professional Services Agreement and Scope of Services for the Independent Monitor
- Departmental General Order N-13, *Exchange of Document Protocols*

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## **COMPLIANCE UNIT**

### **Task 50: Compliance Unit Liaison Policy**

#### **Settlement Agreement Language**

“By March 4, 2003, OPD must create a Compliance Unit to serve for the duration of the Settlement Agreement. The Compliance Unit will serve as the liaison between OPD, the Monitor and Plaintiffs’ counsel, and will assist with OPD’s compliance with the Agreement. Among the Compliance Unit’s many duties is the preparation of a semi-annual report describing the steps taken, during that reporting period, to comply with the provisions of the Settlement Agreement.”

#### **Status: In Policy and Full Practice Compliance**

- No training required for this Task.
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in August 2003.

#### **Deliverables**

- Training Bulletin V-S, *Publication Development* (April 30, 2003)
- Special Order 8009, *Settlement Agreement 6-Week Progress Reports* (May 7, 2003)
- Special Order 8010, *Comments and/or Recommendation by Departmental Personnel Regarding Departmental Publications* (May 8, 2003)
- Special Order 8011, *Compliance Unit Liaison Policy* (May 9, 2003)

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### **Task 51: Compliance Audits and Integrity Tests**

#### **Settlement Agreement Language**

- “By September 1, 2005, following the implementation of policies and procedures required by the Settlement Agreement, OPD must conduct annual audits of: arrest and offense reports (including follow-up investigation reports); use of force incident reports and use of force investigations; complaint processing and investigation; Mobile Data Terminal traffic; personnel evaluations; and citizen accessibility to the complaint process and the availability of complaint forms.
- The Settlement Agreement further sets minimum requirements for these audits and requires that their results be reported in OPD’s semi-annual compliance reports.”

#### **Status: In Policy and Full Practice Compliance**

- No training required for this Task.
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice October 2005 and November 2006.

## **Deliverables**

- Special Order 8011, *Compliance Unit Liaison Policy* (May 9, 2003)
- Training Bulletin V-P, *Guidelines for Audits and Inspections*

## **Implementation Activities**

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

1. Mobile Data Terminal Traffic
2. Refusal to Accept or Refer Citizen Complaints – Task 6
3. Disclosure of Possible Investigator Bias – Task 12
4. Span of Control for Supervisors – Task 20
5. Vehicle Stops, Field Investigation and Detentions – Task 34.

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## **HOUSEKEEPING PROVISIONS**

### **Task 52: Housekeeping Provisions**

This Task describes the contractual housekeeping provisions of the Agreement. It explains in detail the reports and records to be maintained by the Department, the implementation and jurisdiction of the Agreement, and the meet and confer process.

**THERE ARE NO POLICIES OR PRACTICES REQUIRED UNDER THIS TASK AND IT IS NOT INCLUDED IN TRACKING.**

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## **APPENDIX B:**

## **LIST OF ACRONYMS**



<b>Term</b>	<b>Definition</b>
Agreement, the	The Negotiated Settlement Agreement
Audit Unit	The OIG Audit and Inspections Unit
BFO	Bureau of Field Operations
BOI	Bureau of Investigations
BOS	Bureau of Services
CID	The Criminal Investigations Division
CIR	Complaint Investigation report
CLASS	Campus Life & School Safety
CNR	Complainant Notification Report
CPT	Continued Professional Training
CRT	Crime Reduction Team
Department, the	The Oakland Police Department
DGO	Department General Order
DIL	Daily Incident Log
DIT	The City's Department of Information Technology
DLI	Division Level Investigation
EFRB	Executive Force Review Board
EVALIS	Personnel Performance Evaluation Information System (superseded by iPAS)
FC	Field Contact
FRB	Force Review Board
IAD	The Internal Affairs Division
ICR	Informal Complaint Resolution
IMT, the	The Independent Monitoring Team
iPAS	Internal Personnel Assessment System
ITU	The Information Technology Unit
MAP	The Management Assessment Program
MDT	Mobile Data Terminal Traffic
MLL	Management-Level Liaison
N/A	not applicable
NCPC	Neighborhood Crime Prevention Council
NSA	The Negotiated Settlement Agreement
NSC	Neighborhood Services Coordinator
OC	Oleoresin Capsicum, or pepper spray

<b>Term</b>	<b>Definition</b>
OCOP	The Office of the Chief of Police
OIG	The Office of Inspector General
OPD	The Oakland Police Department
P&P	Policy and Procedures Manual
PAC	Parole & Corrections Team
PAS	Personnel Assessment System
PEU	Property & Evidence Unit
PIMS	Personnel Information Management System (superseded by PAS)
POBAR	Public Safety Officers Procedural Bill of Rights Act
POST	The California Commission on Peace Officer Standards and Training
PSA	Police Service Area
PSO	Problem-Solving Officer
SARA	Scanning, Analysis, Response and Assessment
SDU	Special Duties Unit
SO	Special Order
SOG	Special Operations Group
TB	Training Bulletin
UFRB	Use of Force Review Board