Oakland Police Department

Negotiated Settlement Agreement

16th Semi-Annual Report

August 1, 2010 – January 31, 2011

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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[1] ("the Agreement") with the goal of transforming the Department into a model agency with superior police practices. The Department has striven to implement such practices in the areas of supervision, accountability, police intervention programs, use of force, and misconduct investigations.

Soon after the Agreement was made, U.S. District Court Judge Thelton Henderson (Northern District of California) approved appointment of an Independent Monitoring Team to monitor compliance with the Negotiated Settlement Agreement. This team completed its tenure when the Agreement expired in January 2010. Later that month, the Department was paired with a new monitor (Police Performance Solutions, LLC), Chief Robert Warshaw.

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

The current Monitor assesses compliance with each of the 22 MOU tasks and provides quarterly summaries of his findings. However, to assure that it maintains its hard-won success, the Department continues to review all 51 tasks.

In this sixteenth semi-annual report, the Office of the Inspector General (OIG) summarizes the Department's compliance status and efforts to implement provisions of the MOU for the period from August 1, 2010 through January 31, 2011. During this time period, the Monitor released his third and fourth quarterly reports based on site visits made August 9 through 13, 2010 (evaluating progress during April 1 through June 30, 2010) and November 15 through 19, 2010 (evaluating progress during July 1 through September 30, 2010), respectively.

Over the last eight years, the Department has changed the way it does business, resulting in much improved training, supervision, self-monitoring, and accountability. It has put into practice or revised policies and procedures to reflect current industry standards. There continue to be areas in need of improvement; the Department is working closely with the new monitor to ensure meaningful and lasting change.

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

COMPLIANCE PROGRESS OVERVIEW

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

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

Although task implementation can fluctuate quarter to quarter, an overview of Phase 2 Implementation Compliance status shows a positive trend. The first quarterly report found 10 tasks in compliance, 6 tasks in partial compliance, and 5 tasks not in compliance. This fourth quarterly report shows 12 tasks in compliance, 8 tasks in partial compliance, and 1 task not in compliance.

Implementation progress as of January 27, 2011 (date of publication of the *Fourth Quarterly Report of the Independent Monitor for the Oakland Police Department*) is summarized in Table 1 below. Table 2 (following page) lists the 22 tasks by number and title and summarizes their state of compliance as of the same date.

Table 1. Task Compliance Status.

Task Status	Tasks as of January 27, 2011
Tasks in Policy Compliance	22 of 22
Tasks in Training Compliance	22 of 22
Tasks in Compliance, Implementation	12 of 22
Tasks in Partial Compliance, Implementation	8 of 22
Tasks Not in Compliance, Implementation	1 of 22
Deferred Tasks*	1 of 22

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

Table 2. State of Compliance (as of January 27, 2011).

Task		Phase 1: Policy and Training	Phase 2: Implementation			
		In Compliance	In Compliance	Partial Compliance	Not in Compliance	Deferred
Task 2:	Timeliness Standards and Compliance with IAD Investigations	X	X			
Task 3:	IAD Integrity Tests	X		X		
Task 4:	Complaint Control System for IAD and Informal Complaint Resolution Process (4.7 and 4.10 only)	X	X			
Task 5:	Complaint Procedures for IAD	X		X		
Task 6:	Refusal to Accept or Refer Citizen Complaints	X	X			
Task 7:	Methods for Receiving Citizen Complaints (7.3 only)	X	X			
Task 16:	Supporting IAD Process – Supervisor/Managerial Accountability	X	X			
Task 18:	Approval of Field – Arrest by Supervisor (18.2.2 only)	X	X			
Task 20:	Span of Control for Supervisors	X		X		
Task 24:	Use of Force Reporting Policy	X		X		
Task 25:	Use of Force Investigations and Report Responsibility	X	X			
Task 26:	Use of Force Review Board (UFRB)	X	X			
Task 30:	Firearms Discharge Board of Review	X	X			
Task 33:	Reporting Misconduct	X		X		
Task 34:	Vehicle Stops, Field Investigation and Detentions	X		X		
Task 35:	Use of Force Reports – Witness Identification	X	X			
Task 37:	Internal Investigations – Retaliation Against Witnesses	X	X			
Task 40:	Personnel Assessment System (PAS) – Purpose	X		X		
Task 41:	Use of Personnel Assessment System (PAS)	X			X	
Task 42:	Field Training Program	X				X
Task 43:	Academy and In-Service Training (43.1.1 only)	X	X			
Task 45:	Consistency of Discipline Policy (45.1 and 45.4 only)	X		X		
Total Tasks		**22**	**12**	**8**	**1**	**1**

OFFICE OF INSPECTOR GENERAL AUDITS AND REVIEWS

During this reporting period, the Audit Unit completed seven audits/reviews to identify deficiencies that could impact compliance with the Agreement and Departmental policy, as well as inefficiencies in practice. Additionally, three audits were completed by the Veritas Assurance Group (Veritas), a law enforcement auditing consultant hired by OIG to help build auditing capacity and assist with developing work plans for achieving substantial compliance.

 The audits/reviews conducted were of:
1. Mobile Data Terminal Traffic
2. Complaint Procedures for IAD – Task 5.17
3. Summary of Citizen Complaints Provided to OPD Personnel – Task 11
4. Witness Identification and Documentation – Task 18.2.2
5. Force Review Board – Task 26.1 (Veritas)
6. Executive Force Review Board – Task 30.1 (Veritas)
7. Vehicle Stops, Field Investigation and Detentions – Task 34 (OIG)
8. Vehicle Stops, Field Investigation and Detentions – Task 34 (Veritas)
9. Use of Force Reports – Witness Identification – Task 35
10. Promotional Consideration - Task 46.2

Mobile Data Terminal Traffic

The Department is required to conduct annual audits of Mobile Data Terminal (MDT) traffic by checking the in-car computers used for warrant checks, stolen vehicle inquiries and mobile messaging.

On November 15, 2010, OIG initiated its seventh annual audit of the Department's use of MDTs, examining content of car-to-car message transmissions to ensure that user-generated messages do not violate Department policy, the Agreement, or local and/or federal laws. All car-to-car messages are sent via the MDT system.

The audit team interviewed Information Technology Unit (ITU) staff and reviewed the content of MDT data logs and user-generated messages. Three months (totaling 91 days) were randomly selected for review: March, June, and September of 2010. Each message contained the officer's name, the date, and the time. The messages were logged into the Radix servers' database by sequential order and name, which enabled OIG to confirm that no messages were lost during the audit.

In the 91 days covered by this audit, 84 individual messages were transmitted. The average number of MDT transmissions was less than one (0.92) per day, which was even less than in 2009 (1.21 per day). During this audit period, only 56 members/employees transmitted car-to-car messages. None of the messages reviewed were found to contain inappropriate language, wording that constitutes a policy violation, or lengthy conversations unrelated to work.

The Mobile Data System Manager (MDSM), a sergeant in the Bureau of Field Operations, works with ITU 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. On completion of the monthly review, the MDSM sends an email memorandum to OIG documenting the date of review and findings.

Complaint Procedures for IAD – Task 5.17

Task 5.17 requires that OPD develop provisions for the permanent retention of all notes generated and/or received by OPD personnel in the internal investigations case file. This means that the Department must permanently maintain all case notes generated and/or received during the course of an internal investigation in the case file.

OPD Training Bulletin V-T.1, *Part III Internal Investigation Procedural Manual*, states that, "Handwritten notes shall be maintained in the Investigative File. At the conclusion of the investigation, all handwritten notes shall be merged and permanently retained in the Control File." The IAD Investigative Notes Declaration form (IAD Form – 11) was developed so that an investigator can declare and document that in fact all notes generated and/or received by OPD personnel in the course of an internal investigation are in the case file.

On August 2, 2010, OIG initiated an audit of all internal investigations closed between May 1 and July 31, 2010 resulting in a finding (*unfounded*, *exonerated*, *not sustained* and/or *sustained*). Administratively closed cases and cases closed as the result of an informal compliant resolution were not included in the audit population, nor were on-duty traffic collision investigations.

No review can conclusively determine that notes or other materials were withheld from any file or inappropriately destroyed. Nonetheless, the presence of a declaration that notes are in the file provides some assurance that notes are retained.

The compliance standard for Task 5.17 is 85%. The audit team examined 92 case files and determined that 75 (82%) of the files contained IAD Form – 11. This is a significant improvement in performance over the findings of last two audits conducted by the Monitor:
- July 22, 2010 report   13 of 25 (52% compliance rate)
- April 11, 2010 report   17 of 25 (68% compliance rate)

However, the Department still fell short of compliance. Since the audit was completed, progress has been made and subsequent reviews by OIG and the Monitor have found the Department in compliance.

Summary of Citizen Complaints Provided to OPD Personnel – Task 11

Task 11 requires that investigators provide members/employees with a brief synopsis of any complaint alleged against them; that investigators notify the member's/employee's immediate supervisor and commander; that such synopses are preserved within the investigation file; and that upon completion of the IAD investigation, the subject member/employee have access to the investigative file.

The *Internal Affairs Division Policy & Procedures Manual* (IAD 10-01), effective January 19, 2010, requires notification of a complaint, along with the Complaint Investigation Report be forwarded to the subject member/employee as well as his/her immediate supervisor and commander. Department policy also requires all notes and documents related to an internal investigation be maintained in the investigation file.

On August 24, 2010, OIG initiated an audit of Task 11, examining closed internal investigations resulting in a formal finding (*unfounded*, *exonerated*, *not sustained* and *sustained*). Specifically, the auditor reviewed a random sample of 53 investigations closed between May 1 and July 31, 2010 to determine if complaint notifications were sent to the subject member/employee and his/her immediate supervisor and commander and whether a copy of the synopsis was maintained in the investigative file.

Only two of the 53 investigations reviewed did not include complete documentation of notification to all the involved officers and their immediate supervisors/ commanders. Both cases involved multiple subject officers. Compliance standards for Tasks 11.1 through 11.3 are 85%. Audit results, shown in Table 3 below, were 96% or better.

The auditor also consulted with the IAD commander regarding Task 11.4. There were no cases during the review period in which subject members/employees were denied access to the investigative file upon completion of the investigation.

Table 3. Task 11 Audit Results.

Task	Description	Compliance Standard	Audit Result
Task 11.1	Investigators provide members/employees a brief synopsis of the complaint	85%	(51 of 53) 96%
Task 11.2	The synopsis is preserved within the investigative file	85%	(53 of 53) 100%
Task 11.3	The members/employees immediate supervisor and commander are notified of the complaint	85%	(51 of 53) 96%
Task 11.4	Upon completion of the IAD investigation, the subject member/employee has access to the investigative file	Yes / No	Yes

The auditor determined that the Department is maintaining compliance with Task 11.

Witness Identification and Documentation – Task 18.2.2

Only one provision of Task 18 (*Approval of Field-Arrest by Supervisor*) is being actively monitored under the MOU: Task 18.2.2. This subtask requires supervisors to review arrest documentation to ensure that available witnesses are identified. Per policy, the Department is required to identify and document all known witnesses to the criminal offense in the appropriate offense report. If there are no known witnesses, members shall document this fact in the appropriate offense report.

On August 16, 2010, OIG initiated an audit of Task 18.2.2 by examining documentation for all applicable arrest categories, as well as documentation for arrests resulting in a Level 1, 2 or 3 use of force. Specifically, the team reviewed a random sample of 85 arrest reports that occurred between July 1 and August 6, 2010 (56 adult arrest reports, 7 juvenile arrest reports, and 22 arrests resulting in investigated uses of force), to determine if the reports listed witnesses, appropriately noted "no known witnesses," or referred to a canvass with no witnesses produced. Table 4 shows audit results for this task.

The compliance standard for Task 18.2.2 is 90%. The audit team found that 77 of 85 reports (91%) contained witness information or documented there were no known witnesses.

Table 4. Task 18.2.2 Audit Results.

	Reports in Compliance		Witness Information Documented	"No known Witnesses" Documented	Witness Documentation Missing
Adult Arrests	49 of 56	88%	18	31	7
Juvenile Arrests	7 of 7	100%	1	6	0
Use of Force	21of 22	95%	14	7	1
Total	77 of 85	91%	33	44	8

The audit determined the Department is maintaining compliance with Task 18.2.2.

Force Review Board – Task 26.1

Task 26.1 requires that all Level 2 uses of force (UOF) be reviewed by the Force Review Board (FRB) within 90 days of the completed internal investigation. This task was reviewed by Veritas, an independent auditing group with experience conducting performance, compliance, and consent decree audits for public safety agencies.

Veritas found that all 16 FRBs convened in July, August, and September of 2010 were convened well within the 90-day requirement. According to Veritas, the system now in place to track Level 2 uses of force and schedule them for a board is working well.

Executive Force Review Board – Task 30.1

Task 30.1 requires that all Level 1 uses of force, in-custody deaths and vehicle-pursuit-related deaths be reviewed by the Executive Force Review Board (EFRB) within 45 days of completion of the internal investigation.

Reviewing all records for boards convened July through September, 2010, Veritas found that the only EFRB held during that period was convened during the 45-day requirement. Veritas noted that the UOF Coordinator's duties had been expanded in July 2010 to include tracking EFRB

cases. Its recommendations were intended to focus more attention on tracking all cases requiring EFRB review.

Vehicle Stops, Field Investigation and Detentions – Task 34 (OIG)

Task 34 requires completion of a stop data form when an officer detains or "stops" a person in the field. Stop data forms must be filled out for every vehicle stop, field investigation, and detention; the forms must capture the required information; the data captured on the stop data forms must be entered completely and accurately into a database; and OPD's stop data database must have the capacity to be summarized, searched, queried, and reported by authorized OPD personnel.

On October 8, 2010, OIG initiated an audit of Task 34 to determine if stop data forms were being completed as required. Two audits, using different sampling methodologies, were done of citation data for the period of July 1 through September 30, 2010. OIG pulled samples of field contact cards, car and walking stops, and citations – the activities most likely require a stop data form to be completed. For each field contact, car stop, walking stop, and citation in the sample, a search for the stop data form was conducted. At the start of the audit, citation data was only available through September 22, 2010, so eight days of the audit period were missing for citation data.

The first sampling methodology involved the random selection of six days in each month of the audit period (July, August, and September). Field contacts, citations, and car and walking stops during these days were reviewed, for a total of 2,089 incidents. Of the 2,089 incidents reviewed, 1,974 stop data forms were located (94% compliance). The second sampling methodology involved the random selection of all field contacts, citations, and car and walking stops for the entire audit period, for a total of 584 incidents. Of the 584 incidents reviewed, 565 stop data forms were located (97% compliance). Since the required compliance percentage is 90%, the audit determined that the Department is in compliance with the requirement that stop data forms be completed when required.

The audit found that stop data forms include the required information since the new Field Based Reporting form has mandatory fields that must be completed before the form can be finalized and approved. In addition, a comparison of data on the stop data form and data in associated reports indicated that officers are routinely entering accurate stop information on the stop data form. Finally, the data can be searched, queried, summarized and reported.

Vehicle Stops, Field Investigation and Detentions – Task 34 (Veritas)

Veritas examined OIG's November 2010 audit of Task 34 and published its assessment on December 7, 2010. Due to unavoidable sampling limitations associated with an outside vendor's delay in entering citation data, the data used for vehicle and pedestrian stops as well as field contact cards was drawn from July 1 through September 30, 2010, while citation data was drawn from July 1 through September 22, 2010.

Veritas found that OIG audit sampling, randomness and confidence levels were adequate to support the audit's findings that:

- Officers are completing stop data forms in excess of the 90% rate required by the NSA.
- Information required by this task is being captured on the stop data forms.
- The current database, though clumsy, allows data to be summarized, queried, and reported as required.
- Stop data forms are being entered into the database accurately. The new system for completing the forms does so electronically and automatically uploads them into the database, eliminating data entry errors associated with the previous system.

Use of Force Reports – Witness Identification – Task 35

Task 35 requires that every Use of Force Level 1, 2, or 3 report 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. If no witnesses were known to be present, the report must so state. If witnesses were present but circumstances prevented the author of the report from determining their identification, phone number or address, these circumstances must be documented. Names of all other members/employees of OPD witnessing the use of force incident must be included in the report.

On October 13, 2010, OIG initiated a review of Task 35. All Level 2 and 3 use of force reports for incidents that occurred between July 1 and September 30, 2010 were reviewed (55 reported incidents). The two Level 1 uses of force had not been heard by the Executive Force Review Board and therefore were not reviewed. The review found that the Department has maintained 100% compliance with Task 35. All reviewed UOF reports properly documented witness identification.

For the review period, 55 reports were applicable to Task 35: 32 Level 3 uses of force and 23 Level 2 uses of force. Each of the 55 reports reviewed properly documented names, telephone numbers, and addresses of witnesses as set forth in **Task 35.1**. Of 26 reports applicable to **Task 35.2** (documentation of no known witnesses), 100% included the fact that there were no known witnesses to the incident.

There were two incidents in which possible witnesses were present at the incident but circumstances prevented the author of the report from gathering the information as stipulated by **Task 35.3**. Both reports documented the reasons why the information was not obtained.

The Department is also in compliance with **Task 35.4**. The review found 38 incidents in which OPD members witnessed the reported use(s) of force. Each report documented the name of the witnessing member(s). For the remaining 17 incidents, no OPD members witnessed the use of force.

Promotional Consideration - Task 46.2

Task 46.2 requires that OPD have in place a system which appropriately incorporates required integrity, accountability, and community policing factors into the promotions process, and that provides accurate and complete information to the Chief of Police and City Administrator so that they can effectively assess these factors in deciding whom to promote.

On September 18, 2010, OIG initiated a review of Task 46.2 to determine if promoted candidates had any sustained Class I offenses within 12 months preceding promotion. To determine compliance, discipline histories (as documented in iPAS) were reviewed for candidates promoted between May 1, 2009 and August 30, 2010. There were 14 promotions during this period and three promotional processes for eight sergeant, three lieutenant, and three captain positions. The review indicated none of the promoted candidates had a sustained Class I offense within 12 months prior to their promotion.

These findings and those of earlier reviews by OIG and the prior monitoring team that covered September 2006 to May 2009 show that the Department is complying with Task 46.2 and has been maintaining compliance since September 2006.

CURRENT ISSUES AND APPROACHES

IAD Integrity Tests – Task 3

Over the course of 2010, the Internal Affairs Integrity Testing Unit (IAD ITU) significantly increased the frequency and number of integrity tests being run. Four selective integrity tests were conducted in 2009; in 2010, IAD ITU conducted eleven selective and twelve planned integrity tests. Fourteen of the integrity tests conducted in 2010 specifically focused on individuals who were identified in current or prior repeated allegations reports. Several internal investigations have been initiated as a result of the 2010 integrity tests.

IAD developed Departmental General Order M-3.3, Integrity Testing, which dictates policy for integrity testing that can be done at the division level. The Department believes these steps will ensure that its integrity testing program is sufficiently robust enough to adequately detect and correct problem conduct of officers.

The new IAD Commander has reorganized IAD ITU to provide better operational efficiency. This change took effect in mid-December 2010, and added an additional supervisor and investigator to assist with conducting more field integrity tests.

In September, Department staff visited the Los Angeles Police Department (LAPD) to learn about its integrity testing process. LAPD provided additional insight, suggestions, and guidance regarding the integrity testing process. The IAD Commander has also coordinated an initial Bay Area law enforcement IAD integrity testing meeting to exchange ideas and to network on this important policing concept. This meeting was held on February 23, 2011.

The Department is working with a law enforcement auditing consultant to review the integrity testing program and provide additional recommendations to how IAD ITU can conduct more efficient and effective tests.

Complaint Procedures for IAD – Task 5

Task 5 relates primarily to the quality of internal investigations. Substantive portions of the task include witness interviews, credibility assessments, and the preponderance of evidence standard. Since IAD cases have 180 days to be completed, improvements to IAD cases may take time to show up in audits.

In June of 2010, the IAD provided training to all OPD commanders so they would be better equipped to review IAD cases and train their subordinate staff. IAD and OIG also provided training in September and October of 2010 to all supervisors who handle IAD cases. Handouts provided during training are a valuable tool for investigators completing these investigations.

The Department has taken numerous steps to gain compliance in Task 5. IAD corrective action has included negative case evaluation notices for investigators. A division level investigation training session on credibility assessments and preponderance of evidence (to be conducted by IAD and the City Attorney's Office) is being scheduled.

IAD has focused more intently on credibility assessments contained within the Division Level Investigations. Reviewers of Division Level Investigations will continue to speak personally with the investigators when they observe an inadequate credibility assessment, to provide first hand direction on how to correct the deficiency. The investigator's Bureau Commander will also be advised of the inadequate credibility assessment to document the issue/training provided.

For quality assurance, division level and internal affairs investigations will continue to be reviewed by OIG staff.

Span of Control for Supervisors – Task 20

The Department is in compliance with all requirements of span of control (Task 20), except for subtask 20.2, which requires field teams to be supervised by their primary supervisors 85% of the time.

OPD fully agrees that a reasonable span of control for supervisors is essential to ensuring accountability and providing proper supervision, particularly for units in field assignments. However, consistency of supervision by the primary supervisor continues to be a challenge for the Department.

Due to authorized leave time (example: vacation and sick leave) and mandatory training requirements, primary supervisors are able to supervise their squads approximately 75% of the time, falling short of the 85% requirement.

Although staffing resources are in short supply, additional sergeants have been transferred to field duties to help with consistency of supervision and minimize the use of acting sergeants. The Department is also identifying ways to increase the amount of time primary supervisors are supervising their squads by better management of discretionary time off and identifying efficiencies in non-discretionary leave. The Department will continue to work with the Monitor to find the best way to achieve compliance by exploring both acceptable alternatives to the primary sergeants and alternate methodologies to assess compliance.

Use of Force Reporting Policy – Task 24

Task 24.9, the only subtask of Task 24 out of compliance, requires the Department to enter use of force data into iPAS. Currently, the Department enters all use of force reports into a database that reports information to iPAS. OPD is examining how the system can capture additional information but believes it is complying with task and policy requirements.

In the second quarterly report, the Department was found out of compliance with this subtask because use of force training points were not included in PAS. In the third quarterly report, it was found out of compliance due to lack of a sufficient summary of each use of force incident in iPAS.

In his fourth quarter report, the Monitor found that OPD had begun to enter narratives from the use of force reports into iPAS. The Monitor intends to consider the completeness and accuracy of this data entry during its next reporting period. The Monitor will also follow up with OPD regarding the Department's research into a possible technology solution to prevent investigator

and reviewer conflicts from occurring, using computer database tracking in the use of force report intake phase.

Reporting Misconduct – Task 33

OPD has remained out of compliance with this task since the prior Monitor's watch due to a case from 2008 in which OPD believed it was required by law to disclose confidential information during a Skelly proceeding. The City Attorney's Office concurred with OPD's course of action in handling that case. In a 2009 case, OPD maintained confidentiality that was never audited by either the former or the current monitoring team. OPD has policy and procedures in place for handling confidential complaints and has trained all personnel on them.

Task 33.1 requires that in all sustained internal investigations, OPD conduct an assessment to determine whether members/employees/supervisors knew or should have known that misconduct occurred. Task 33.2 requires that where OPD determines that members, employees, or supervisors knew or should have known that misconduct occurred but did not report it as required, OPD take appropriate action.

In his fourth quarterly report, the Monitor found OPD out of compliance with these subtasks because of a case in which misconduct ought have been recognized and reported by OPD employees. In that case, several OPD employees had attended a public event during which a supervisor engaged in inappropriate conduct. The case was opened by IAD based on complaints of citizens who had learned of the event via news coverage, rather than officers' self-report. The Monitor noted that this case was not identified by OPD as one in which misconduct failed to be reported.

OIG audited 15 cases submitted with sustained findings in September and October 2010. None of the cases revealed that a sergeant or an employee should have reported misconduct but didn't. The audit found that the Department is conducting analysis on each sustained case to determine whether a member, supervisor or employee knew or should have known that misconduct occurred. However, during the audit, OIG found this analysis was not readily apparent in the investigative report. This can be problematic as the reviewer would have to go through each report to locate the analysis needed for this task. In response to direction from the Chief of Police, the IAD Commander implemented a simple change to streamline audit review. The revised Report of Investigation now has a section entitled "Member/Employee Accountability."

Task 33.3.2 requires that confidentially reported misconduct files remain accessible only to the IAD Commander. The IAD Commander has ensured that these investigations remain accessible only to him by removing the investigations from the IAD Server and keeping the documentation in his office.

Task 33.3.3 requires that confidentially reported cases be investigated without disclosure of the complainant's name, unless and until such disclosure is required by law. This task has remained out of compliance for two years due to the 2008 case where OPD did not maintain confidentiality because it believed it was required by law to disclose the information during a Skelly proceeding. (The City Attorney's Office concurred with OPD's course of action in handling that case.)

Task 33.3.4 requires that OPD inform all new and current employees of OPD's confidential reporting procedures. All current employees received this training when this policy was first completed. The Chief of Police directed Personnel staff to ensure that new employees received this training. All 67 employees hired in 2010 (including part-timers) were properly trained.

Vehicle Stops, Field Investigation and Detentions – Task 34

In his fourth quarterly report, while noting that OPD has made progress in ensuring that Stop Data Forms are completed by officers in an efficient and accurate manner, the Monitor found the Department not in compliance with Task 34.2. This subtask requires Stop Data Forms to be filled out with detailed information regarding the stop, including time, reason, description of the person stopped, and outcome of any search. The Monitor was concerned that, in specific stops, none of the options available for officers to select under "reason for the stop" clearly elicited or helped to articulate an identifiable basis and/or authority for the stop.

The Monitor suggested that the Department look into integrating the Field Contact Card with the Stop Data Form and then provide training on Constitutional standards to meet the Department's documentation requirements. The Department is in the process of acting on the Monitor's recommendation to integrate the Field Contact Card and Stop Data Form.

The Department has begun doing extensive daily and weekly audits of stop data collection and has found compliance to be consistently well over 95%. Compliance levels have been even higher for discretionary based stops.

Although not required by the MOU, the Department is also developing the ability to begin analyzing the data being collected. The Department is seeking outside assistance in this analysis so that it can properly understand the meaning of the data.

Personnel Assessment System Purpose – Task 40

Tasks 40 and 41 concern the Personnel Assessment System (iPAS) database and its use as a risk-management tool. Task 40 governs the data requirements of the system. Although the Monitor found Task 40 in partial compliance in his fourth quarterly report, he praised the Department for addressing issues of accuracy and completeness of data.

The Monitor noted several positive ways that the Department is dealing with iPAS data requirements, including:
- Institution of a weekly report for each of the databases in which all custodians of record are required to report on the status of documents entered in to iPAS.
- Modification to iPAS system so that it now opens up with a table documenting the dates for which the most recent data have been entered for each required data field.
- Narrative descriptions of uses of force are now directly inserted into iPAS.
- Examination of trends, allowing OPD to use the system not only to assess individual officers, but also to consider trends at the overall Department levels, as well as in commands within the Department.

Although extensive efforts are made to ensure iPAS data is timely, accurate, and complete, the Department is concerned that quality assessment controls implemented may not be sufficient to provide the highest quality data possible. OPD has diligently inspected and reviewed iPAS and determined that the technology is working and the system is displaying data that it finds in the many disparate databases that "feed" iPAS.

However, regarding some elements, the data fed to iPAS does not always meet required standards. For example, arrest data had not been entered in a timely manner due to lack of staffing. The Department is now entering all of the arrest data manually, on an overtime basis, within 10 days of the arrest. OPD has contracted with Motorola to develop the necessary technology to accomplish the transfer of arrest data from Alameda County to OPD automatically and expects the solution to be fully deployed by April 2011.

The Department has developed and implemented a plan to ensure that the various custodians of record are being held accountable for ensuring that the information in the system is timely, accurate, and complete. In addition to certain arrests, several other data elements were taking too long to be entered and therefore could not be viewed in iPAS in a timely manner. OPD responded by reducing data entry delays, and more importantly, identifying elements where data entry delays occurred.

Every Custodian of Record responsible for each data element inspects records and completes a report each week documenting the status of data entry efforts, including identifying any backlogs and the reasons for them. This new reporting process quickly identifies any data entry issues impacting iPAS and affords OPD the best opportunity to quickly resolve the problem.

Use of the Personnel Assessment System – Task 41

Task 41 governs the way the iPAS system is operated as a risk management tool.

After initially finding OPD in compliance with Task 41, the Monitor reported weakness in the functionality of iPAS in his second quarterly report. Supervisory reviews of officers exceeding iPAS thresholds did not provide sufficient analysis of information and, when no pattern of problematic behavior was found, the explanations were inadequate. Multiple layers of supervisors who signed off on officers' reviews failed to recognize these inadequacies. Thus, the task was not in Phase 2 compliance.

In the fourth quarterly review, the Monitor noted that efforts had been made to address his concerns about incomplete or insufficient analysis of some cases, including the return of cases to reviewers for reconsideration.

The Monitor is still concerned about system vulnerability. The system is not completely automated, which introduces a substantial vulnerability given the dependence on specific personnel and the possibility of human error. Also, the Monitor noted that a successful risk management system must be fully integrated across the Department, and should not require extraordinary work by the Deputy Chiefs or the PAS Committee, who now find it necessary to return a significant number of cases for reconsideration and correction.

The Monitor acknowledged the efforts of OPD regarding continued development in the structure and use of PAS. The Department has been responsive to concerns and has also independently evaluated and altered parts of the system and its processes. Finally, it noted that achieving Phase 2 compliance will require that the risk management system be widely and fully used by personnel throughout the Department – especially the sergeants who are responsible for conducting the PAS reviews, a critical step in the risk management process.

OPD agrees that automation will benefit the effectiveness of the PAS program. Until this can be achieved, the PAS Administration Unit ensures compliance by maintaining a PAS Notification database and other documents that track all notifications by date. The PAS Notification database includes workflow functionality. Case status associated with the PAS process (*open*, *review*, *follow up*, and *closed*) can be indicated by selecting the appropriate field. The review system is closely monitored and tracked in a computer application. Additionally, OPD has begun to implement improvements that exceed NSA requirements.

- First, to enhance PAS activity review documentation and analysis, OPD is exploring a more advanced system that automates the review process, allowing direct data entry for use of force, vehicle pursuit, and other high-risk incident reports.

- Second, the monthly PAS inspection meetings provide timely and significant opportunities to share information and strategies addressing high and low level performance activities of OPD personnel. PAS Activity Review and Report documentation and recommendations are also discussed to ensure more complete and thorough reviews. Recently, the City's Risk Manager attended to provide additional support and insight regarding reducing and managing risk.

- Third, training has been developed and scheduled for all OPD commanders to improve data analysis and documentation. Individual reviews of supervisory analysis and documentation continue to be inspected at the Deputy Chief level for sufficient analysis and justification of recommendations. The reviews have significantly improved the process and outcomes are better aligned with the goals of the program.

- Finally, the PAS Administration Unit compiles a comparison report on a semi-annual basis that compares use of force incidents, complaints, sick leave and vehicle collisions by bureau and sub-units. The report provides averages by bureau/division and sub-unit. This report can be referenced to determine if a member is above or below the bureau/division and/or sub-unit average. The semi-annual report, along with the Command View feature in iPAS, can reveal reductions and increases in performance activity that will allow the Department to measure, assess and reduce risk.

Field Training Program – Task 42

The Field Training Program was operational for a short period of time earlier in 2010, just prior to significant layoffs within the Department. Currently, the Department does not have any certified or assigned field training officers. The Monitor has declared that if OPD is able to recruit new officers and reinstate its Field Training Program, he will assess this task. Until then, it remains in deferred compliance status.

Consistency of Discipline Policy – Task 45

Task 45 is concerned with consistency of discipline. Only two provisions of this task (45.1 and 45.4) are being actively monitored under the MOU.

During the fourth quarterly review, the Monitor found the Department in compliance with Task 45.4 but out of compliance with Task 45.1, which requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action. The IAD database could be used to identify cases in which findings were sustained, but there were gaps in the data. The Monitor's review of the database revealed that only 77% of the sustained findings had the dates of discipline listed (the third quarterly report found 90% listed dates of discipline). In response to this, OPD has modified its process so that specifics (dates and discipline) are entered from the date approved, rather than after the Skelly process has been approved. If a change is made at the Skelly hearing, the database is modified at that time.

Regarding Task 45.4, which requires that discipline be imposed in a fair manner consistent with the Discipline Matrix, the Monitor noted that in all of the sustained findings in the dataset he reviewed, discipline imposed fell within the Discipline Matrix then in use. In one case, the discipline range on the Matrix was up to a three-day suspension, and the Chief imposed a five-day suspension, which the Monitor found reasonable in light of the fact that the officer had three sustained findings.

The Department updated and revised its discipline matrix on September 2, 2010. It also eliminated the Discipline Officer position and made discipline recommendations the responsibility of the chain-of-command. This shift places responsibility for management decisions with supervisors and commanders. An added benefit is that discipline will have more institutional credibility if it is recommended from within the chain-of-command as opposed to a commander outside the command structure. This is a key piece in developing the leadership skills of the Department's supervisors and commanders.

CONCLUSION

The last year has shown an increase in the overall number of tasks in compliance. The Department has developed a plan to bring into compliance the few remaining tasks that require more time. Oakland's new Mayor, Jean Quan, has pledged support for the City's efforts to fulfill the requirements of the Agreement, and has established a working group (consisting of her office, OPD, the City Administrator, and the City Attorney's office) to ensure better communication between the City and OPD, and a more coordinated effort to achieve compliance.

The City and the Department are taking concerted steps to ensure that NSA goals are met, increasing accountability across all supervisory and command levels, enhancing transparency, and re-emphasizing community service. For example, the Department is working to implement structural changes that will result in better management oversight and accountability. The City is in the process of creating a new position, the rank of commander of police. This would be an appointed position, giving the Chief of Police discretion to choose commanders who have demonstrated leadership, willingness to hold people accountable, and a dedication to community policing. The Department is also developing a plan to reorganize, which will provide a more manageable span of control. Further, the City is exploring ways to implement better independent oversight to help build the community's trust in the Department.

The Department recognizes the importance of transparency in its relationship with the community. OIG has begun posting audits on the Department's website so that community members and members of the Police Department can easily access that information. The decision to open the CompStat crime meeting to the public is another example of an overall push towards greater transparency. Since December 2010, citizens can see what the Department is doing about crime trends where they live.

By informing the community as much as possible about the Department's efforts towards compliance and its operations, a connection is made that strengthens our community policing efforts. The community working group that OIG established in December 2010 (composed of faith-based organizations, the Citizen's Police Review Board, people involved in street outreach, and the American Civil Liberties Union) is also focused on increased transparency and greater understanding.

The Department is reemphasizing community service in all its training. The cornerstone of its enhanced community policing plan is having beat officers participate in solving local problems identified by people on their beat. Patrol officers will be required to have a collaborative working relationship with problem solving officers who serve the same community.

Finally, as a part of its dedication to increased connectivity between officers and the community, the Department will encourage officer participation in several programs that have historically been successful at building relationships between the police and the community, particularly those that focus on youth.

The Department and the City remain committed to achieving full compliance with the NSA, working together to attain the goal of ensuring meaningful and lasting change.