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# **Oakland Police Department**

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## **Negotiated Settlement Agreement**

### **Combined Tenth and Eleventh Semi-Annual Report**

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Chief of Police

Date: December 17, 2008

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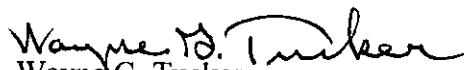
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## FOREWORD

### A MESSAGE FROM THE CHIEF OF POLICE

The Negotiated Settlement Agreement (*the Agreement*) required the Oakland Police Department to conduct an in-depth review of its entire operations with the aim of becoming a more responsive, effective, and accountable organization. Ensuring compliance with the provisions of the Agreement remains one of my top priorities. Although tremendous progress has been made, we continue to encounter challenges in working to become fully compliant with the Agreement. We have met—and will continue to meet—each challenge with solutions and a commitment to stay true to the Agreement. Working collaboratively with the Court, Independent Monitoring Team, Plaintiffs' Attorneys, employee unions, and other stakeholders, we have adopted new practices to ensure that our compliance with the Agreement results in an accountable Department. This collaborative partnership will be particularly important as we enter a time of tight budget constraints and a downturn in the economy.

We have seen significant improvements in the Internal Affairs Division and our Use of Force Program, which will continue to impact our ability to detect misconduct, identify areas for improvement, and encourage exemplary work. As we approach the final year of the Agreement, I believe the Department will meet the standards set forth in the Agreement, increasing our status as a premier law enforcement agency.

  
Wayne G. Tucker  
Chief of Police

## **A MESSAGE FROM THE INSPECTOR GENERAL**

Over the last several years, the Department has made significant strides towards compliance with the Negotiated Settlement Agreement. This progress has been a direct result of hard work by Department line staff, supervisors, and managers. Our work has resulted in an improved quality of internal affairs cases, use of force reporting, employee behavior monitoring, and exceptional administrative staff reports. As we institutionalize these new practices, we continue to build trust with the community that will bear fruit in our efforts to fight crime.

The Office of Inspector General (OIG) will continue to provide sound assessments of our compliance with the Agreement. OIG will continue to meet proactively with commanders to ensure that they receive timely feedback regarding their performance. In addition, we will rely more heavily on the Compliance Assessors to provide monthly reports at the biweekly Management Assessment Program meetings. With increased vigilance and expertise, I believe the Department can and will attain full compliance with the Negotiated Settlement Agreement.

A handwritten signature in black ink, appearing to read "Paul J. Figueroa", written in a cursive style.

Paul Figueroa  
Captain of Police  
Office of Inspector General

## EXECUTIVE SUMMARY

### INTRODUCTION

The Negotiated Settlement Agreement (hereinafter referred to as *the 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, states:

*The City and OPD shall file regular status reports with the Court delineating the steps taken by OPD to comply with the provisions of this Agreement. Commencing within 120 days from the effective date of this Agreement, these reports shall be filed twice annually, at six-month intervals, until this Agreement is terminated.*

Since January 22, 2003, the City and the Department have implemented the reforms outlined in 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 area of supervision, accountability, police intervention programs, use of force, and misconduct investigations.

In this report, the Department’s combined the 10th and 11th semiannual reports, the Office of Inspector General (OIG) summarizes the Department’s compliance status and efforts to implement provisions of the Agreement for the period from July 1, 2007 through June 30, 2008. Where appropriate, it also contains more up-to-date information as of November 15, 2008, because we felt it was important to include timely information.

OIG notes that the Department has made tremendous progress during this reporting period. The Department continues its intense efforts to comply with the Agreement and intends to achieve full compliance by January 2009.

### 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. Personnel Assessment System
5. Field Supervision
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 Monitoring Team (the IMT) assesses and evaluates compliance with the provisions of the Agreement.

## **ACCOMPLISHMENTS AND CHALLENGES**

### **Office of Inspector General**

OIG is responsible for oversight and review of reform work within the Department. Through audits, reviews, Compliance Assessor oversight, and regular meetings with executive management, OIG is building the Department's self-monitoring capacity. OIG facilitated the development and/or revision of a number of policies critical to ensuring successful implementation of Agreement requirements, including policies on criminal misconduct investigations, probable cause arrest authorization, performance appraisals, complaints against Department personnel or procedures, community policing, and daily details. OIG continually assesses the need for technological solutions that will increase the efficiency and effectiveness of Department work practices, including reform efforts.

### **Internal Affairs Division**

The Internal Affairs Division (IAD) has been challenged by an upsurge in complaints/allegations and by the high level of investigative work it must devote to each complaint. Despite these serious challenges, IAD made significant progress in ensuring compliance with the Agreement through the development of:

- An evolving IAD database,
- Investigative Plans for all investigations being assigned at the division level,
- Continuing professional training for sergeants, and
- Completion of the IAD Training Module and its installation in the IAD database.

This reporting period, IAD investigators received training in the areas of Internal Affairs investigations, interview techniques, sexual harassment / discrimination investigations, retaliation allegations, and officer-involved shootings.

### **Improved Investigations of Use of Force Incidents**

Officers and sergeants continue to improve the reporting and investigation of force incidents. Force complaints are down. Thorough investigations are conducted by IAD of all allegations of inappropriate force, revealing few in which the force was found out of policy. To ensure that the Department achieves full compliance with the use of force requirements, training is ongoing. The Department's use of force expert routinely works with sergeants, lieutenants, and captains to reinforce use of force policies. Also, officers involved in use of force incidents and their sergeants are required to appear before the Force Review Board to receive training when deficiencies are identified during an incident where force is used. IMT audits of use of force conducted during this reporting period show significant improvement in the way OPD reports and investigates use of force incidents.

### **Award-Winning Personnel Assessment System**

During this reporting period, OPD and the City's Department of Information Technology improved an award-winning relational database (iPAS) that gathers information on the work

activities of Department personnel. The iPAS is used to assist supervisors in identifying employees who need counseling, intervention, or remedial help as well as to recognize superior performance. The Personnel Assessment System (PAS) Administration Unit uses the data contained in iPAS to develop quarterly threshold reports that identify officers and employees who may be exhibiting at-risk behaviors, poor performance, or exceptional positive activity. The implementation of PAS has significantly increased the culture of accountability within the Department. Supervisors, managers, and commanders cannot disavow knowledge of personnel performance issues, as this data is made accessible to them for each of their subordinates. With this information readily available, supervisors are better equipped to manage the performance of their subordinates, commending when appropriate and taking effective corrective action when necessary.

### **Accomplishments in Officer Supervision, Community Policing, and Crime Fighting Efforts**

Departmental accountability has been improved by implementing policies and procedures that require supervisors to evaluate tactical decisions, identify training needs, and approve arrests in the field. Supervisor span of control has been reduced to one sergeant for every eight officers, permitting closer attention to squads. In January 2008, the Department reorganized its patrol function to a geographic system of policing and began a new schedule (12 hour shifts) to improve consistency of staffing and continuity of supervision.

The Department continues to increase community policing efforts. Personnel from the Department's Bureau of Field Operations attend quarterly meetings with community members at local Neighborhood Crime Prevention Council meetings, allowing residents to get information from the Department and help in identifying criminal and quality of life issues that are affecting the community. Problem-Solving Officers (PSOs) continue to be a cornerstone of the Department's community policing efforts, working daily with community members on projects they have deemed important in their respective neighborhoods. The Department has invested heavily in the area of outreach, especially to local youth.

### **Improvements in Departmental Training**

The Training Division is committed to providing high-quality, professional training to Department personnel and ensuring that instruction is supportive of OPD's values, ethics and philosophy. The Training Division has implemented a mentoring program to assist Police Officer Trainees in any issues that may arise during their training. It has also developed a better evaluation process for grading instructors on the quality of their instruction. As a result of these programs, a rigorous selection process, and the use of rubrics in the training and testing of recruits, the Police Academy attrition rate has dropped 10% from the average rate of prior Academies.

### **COMPLIANCE SUMMARY UPDATE**

There are three phases of compliance: policy compliance, training compliance, and actual practice compliance. Policy compliance is achieved when a policy regarding a specific task is completed and approved by the IMT. Training compliance is achieved when the Department has trained 95% of the required personnel and can document that achievement. Actual practice

compliance is achieved when the IMT conducts an audit and deems the Department in compliance with a task. Table 1 below depicts the current status of compliance as of November 15, 2008.

**Table 1. Task Compliance Status**

Task Status	Tasks in Compliance as of November 15, 2008
Tasks in Policy Compliance	51 of 51
Tasks in Training Compliance	44 of 44
Tasks in Partial Practice Compliance	21 of 51
Tasks in Full Practice Compliance	18 of 51

The Department has achieved policy compliance for 51 of 51 tasks. All 44 tasks requiring training are in training compliance. We are in the process of completing training in policy areas that have been updated recently and anticipate additional policy updates that will require us to document the training.

The IMT has found the Department in full actual practice compliance with 18 tasks and in partial actual practice compliance with 21 tasks. Additionally, the Department has written new policies and revised a number of policies associated with Agreement tasks, which were approved by the IMT during this reporting period.

## **AUDITS AND REVIEWS**

During this reporting period, the OIG Audit and Inspections Unit (Audit Unit) completed nine audits/reviews:

1. Mobile Data Terminal Traffic
2. Personnel Practices
3. Investigations of Allegations of Manual of Rules Violations Resulting from Lawsuits and Legal Claims
4. Informal Complaint Resolutions
5. Receiving and Processing Complaints
6. Methods for Receiving Citizen Complaints
7. Summary of Citizen Complaints Provided to OPD Personnel and Disclosure of Possible Investigator Bias
8. Timeliness Standards and Compliance with Internal Affairs Division Investigations
9. Members', Employees' and Supervisors' Performance Review.

In addition, OIG published an audit of OC Log and Checkout Procedures on October 17, 2008 and an audit of Use of Force Reports on November 3, 2008. The purpose of conducting these audits/reviews was to identify deficiencies that could impact compliance with the Agreement and Departmental policy, as well as inefficiencies in practice.

## **CONCLUSION**

During this reporting period, the Department has been closing the gap on outstanding issues impacting compliance. Enormous progress has been made, with the Department on target for achieving full compliance by January 2009. The Office of Inspector General, along with

commanders and managers throughout the Department, continues to monitor compliance through internal audits and reviews, and by working closely with the IMT. The City and Department remain committed to providing quality service to the citizens of Oakland , and we recognize that achieving compliance with the Agreement will bring us closer to this ultimate goal.

## **ACHIEVEMENTS**

As of the date of the publication of this report, the Department has achieved a number of successes.

### **OFFICE OF INSPECTOR GENERAL**

OIG is responsible for oversight of reform work within the Department and provides support and guidance to relevant personnel. OIG is also responsible for conducting independent audits and reviews of the Department's practices and procedures and assesses whether Agreement goals and objectives are reachable and sustainable. OIG's oversight of the Department's reform work combined with its independent analysis ensures that the Department is building an internal capacity to monitor itself in the future.

In order to keep executive management up-to-date regarding compliance issues, accountability, and policy updates, OIG regularly meets with the Chief, Assistant Chief, Deputy Chiefs, and Deputy Director. This direct access has meant quicker resolution of problems and increased efficiency.

### **Monitoring Compliance**

OIG has developed a comprehensive plan designed to meet the Department's goal of compliance with the Agreement. This plan requires OIG to meet regularly with Compliance Assessors, selected from a range of OPD units, review their monthly reports, and develop solutions to challenges that might hamper the Department's reform efforts. OIG also meets with Bureau Commanders when necessary to implement these solutions.

Management Assessment Program (MAP) meetings are equally important. These biweekly assemblies to discuss and support the Department's reform are regularly attended by the Chief of Police, command staff, OIG, Compliance Assessors, City attorneys, Independent Monitors (the IMT), and other groups. MAP meetings provide an opportunity to reinforce the importance of police reforms to the organization. The City's attorneys provide legal updates and answer questions respecting liability issues and litigation trends in police cases. Compliance Assessors also discuss compliance issues. Managerial accountability continues to be the central focus of these meetings, along with identifying deficiencies and developing measures to counter them.

OIG has implemented a bimonthly Compliance Assessor meeting to augment the monthly Compliance Assessor reports. OIG staff meets with Compliance Assessors prior to the MAP meetings to discuss successes and/or problem areas within their specific tasks, and identify possible solutions. Results of these meetings are then shared with commanders at MAP.

### **Accomplishments**

OIG facilitated the development and/or revision of a number of policies critical to ensuring successful implementation of Agreement requirements, including policies on criminal misconduct investigations, probable cause arrest authorization, performance appraisals, complaints against Department personnel or procedures, community policing, and daily details.

OIG continues to conduct probative audits and reviews to ensure compliance with the Agreement. During this reporting period, the Audit Unit completed nine audits/reviews:

1. Mobile Data Terminal Traffic
2. Personnel Practices
3. Investigations of Allegations of Manual of Rules Violations Resulting from Lawsuits and Legal Claims
4. Informal Complaint Resolutions
5. Receiving and Processing Complaints
6. Methods for Receiving Citizen Complaints
7. Summary of Citizen Complaints Provided to OPD Personnel and Disclosure of Possible Investigator Bias
8. Timeliness Standards and Compliance with Internal Affairs Division Investigations
9. Members', Employees' and Supervisors' Performance Review.

### **Proactive Approach**

OIG continually assesses the need for technological solutions that will increase the efficiency and effectiveness of Department practices, including reform efforts. OIG recently purchased a document tracking system that will allow it to provide internet-based training and track document publications electronically. This will increase the efficiency of OIG data entry and improve its ability to distribute training bulletins/policy updates in a timely fashion.

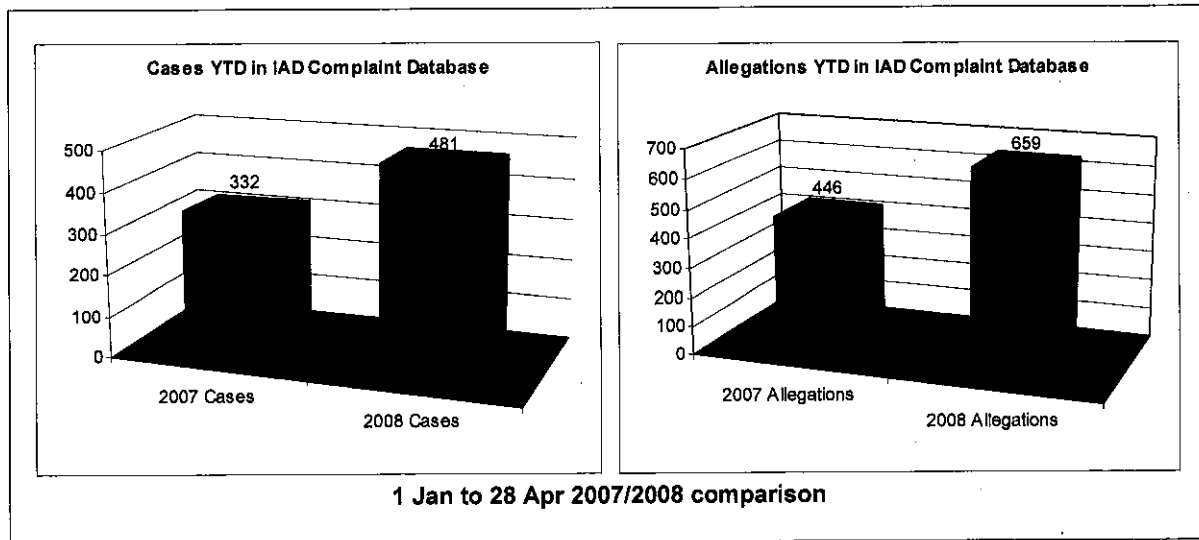
In addition, after discussions with the IMT and recommendations from leadership in the Criminal Investigation Division, the Department successfully pursued and obtained grant monies to fund new technology that enhances its ability to gather evidence concerning crimes and suspects through state-of-the-art recording equipment. This technology has been installed and is now available for all investigators to use. This will increase OPD's transparency as an agency and provide valuable criminal case evidence.

Through the audits, reviews, Compliance Assessor oversight, and regular meetings with executive management, OIG is building the Department's capacity to self-monitor. OIG has identified, and helped highlight for management, a number of deficiencies that impact compliance. As the substantial compliance period draws closer, audits and reviews are essential to identify shortcomings and the solutions to overcome them.

### **INTERNAL AFFAIRS DIVISION**

IAD continues to face a high number of complaints/ allegations, each of which must be thoroughly investigated. In 2008, the number of complaints received by OPD increased dramatically. This development, combined with the challenges faced with sustaining a high level of investigation of complaints IAD receives, continues to cause concern.

IAD has a staff of 32: 1 captain, 2 lieutenants, 13 sergeants, 12 officers, and 4 civilian staff members. It has been projected that IAD will receive approximately 1,400 complaint database entries per year. The first four months of 2008 showed a 45% increase in the number of complaints accepted and a 48% increase in the number of allegations raised within those complaints when compared to the first four months of 2007 (see Figure 1).



**Figure 1. Comparison of first quarter 2007 to first quarter 2008. Total number of complaints and allegations have significantly increased.**

Given the increase in complaints and allegations and the requirement that IAD respond with a significantly high level of investigation to all complaints—even low-level, less serious complaints and those that may not involve police misconduct—it is projected that IAD will continue to need a high level of staffing and to incur overtime costs in order to maintain a high level of productivity, consistent with OPD policies.

Despite these serious challenges, IAD continues to maintain a high level of quality in the receipt, processing, and investigation of internal misconduct complaints, while looking to help the Department improve in the same areas outside the Division. Work being done to accomplish this, detailed below, has resulted in improved standards of investigating complaints of misconduct and use of force and the application of a more consistent and timely disciplinary process.

IAD made significant progress in ensuring compliance with the Agreement through:

- Development of the evolving IAD database. The IAD Training Module, provided as a result of findings from internal investigations, has been completed and installed in the IAD database. This module allows training to be tracked and monitored.
- Completion and approval of the IAD Intake Manual (IAD P&P 07-03). The manual improves consistency and accountability in the intake process. On a larger scale, IAD collaborates frequently with OIG and the IMT to review, revise, and develop numerous informational bulletins, special orders, unit policy and procedures, and Department General Orders. Revisions have been completed for several policies that provide guidance and direction to personnel in IAD and throughout the Department during complaint investigations.

IAD also provides support for division-level investigations. Examples include:

- **Quality Assurance Program feedback.** The Investigations Section Lieutenant and Administrative Sergeant provide valuable feedback to division level investigators, discussing on-going investigative needs and concerns by way of face-to-face meetings, telephone calls, and email exchanges. Formal written feedback is provided using an investigative feedback form designed to help IAD identify where additional training or personalized attention is needed.
- **Provision of Investigative Plans.** Each plan provides the division level investigator a template upon which to build his/her investigation. The plan is developed by the intake officer and further refined by the IAD Administration Section commander to provide clear guidance to the investigator.
- **Participation in Continuing Professional Training for sergeants.** Sergeants are most often assigned to conduct division level investigations. Proper training and updates ensure that their investigations meet the same high standards as investigations completed in IAD.

IAD is confident that its policies and systems, based on IAD staff institutional knowledge as well as input from the IMT and the City Attorney's office, will continue to improve and adapt to the ever-changing law enforcement environment, well beyond the Agreement deadline of 2010. While much of what IAD does on a daily basis is centered on compliance with the Agreement, the division looks toward the future with an eye toward sustainability of best practices.

### **IAD Compliance Unit Efforts**

The Compliance Unit is responsible for handling compliance with 21 of the IAD-related Agreement tasks and works with OIG, the City Attorney's Office, and the IMT in order to ensure that current policy complies with Agreement requirements. The Compliance Unit also revises policy related to accepting, processing, and investigating complaints. The Unit also conducts periodic reviews of the Department's compliance with Agreement reforms in order to identify and resolve performance deficiencies. The Compliance Unit is the Division's liaison to the IMT and routinely responds to requests for information from the IMT.

### **Other IAD Accomplishments**

Several Department policies, including DGO M-3 (*Complaints Against Departmental Personnel or Procedures*), DGO M-3.1 (*Informal Compliant Resolution Process*), and Training Bulletins V-T (*Discipline Policy*) and V-T.1 (*Internal Investigation Procedures*), were revised and several stipulations to the Agreement were negotiated to reflect the mutually agreed upon "best practice" of the Department. A new IAD Daily Incident Log was also developed to ensure compliance with Task 5, *Complaint Procedures for IAD*, including those task requirements that were not previously being tracked, and the IAD complaint line was redesigned to help ensure that no calls go unanswered.

This reporting period, IAD investigators received training in the areas of Internal Affairs investigations, interview techniques, sexual harassment/discrimination investigations, retaliation allegations, and officer-involved shootings.



## IMPROVED INVESTIGATIONS OF USE OF FORCE INCIDENTS

The Agreement required the Department to adopt new policies and procedures to investigate force incidents so that the City is better equipped to detect force trends or inappropriate application of force. Better reporting and investigation of force incidents allows the City and the Department to identify training issues, provide intervention services to officers in need, protect citizens from unnecessary uses of police force, manage risk, and reduce liability.

In February 2006, the Department published the new Use of Force policies; DGO K-3, *Use of Force*; DGO K-4, *Reporting and Investigating Use of Force*; and DGO K-4.1, *Force Review Boards*. Training compliance for these policies was attained in May 2006, with over 700 members and applicable professional staff being trained. Additional training is offered when necessary.

The Department has revised and will continue to revise its newly adopted investigative procedures to remove any redundancies and inefficiencies found in the process. Our goal was to make our procedures attainable and sustainable, assuring that they do not hamper personnel's ability to do their work. Revisions were approved by the IMT and were published August 1, 2007. The revised policies save time in the field investigations and also give supervisors more discretion to determine what level of force investigation to conduct, while still holding them accountable for their decisions.

Implementing these policies has improved the quality and completeness of the Department's force investigations. Use of force investigation packets now contain detailed information not previously included, resulting in better, more complete investigations.

- Reviewers are provided the information needed to determine the appropriateness of force used and to hold supervisors accountable for how investigations are conducted in the field.
- Involved and witness officers are now separated while being interviewed, and they are completing their own reports to provide an accurate account of the incident.
- If misconduct is discovered during the course of the use of force investigation, supervisors are required to initiate an investigation.
- Additionally, strides are being made to identify poor tactical decisions if they occur during the course of the incident, and to provide follow up training for the officers.

Officers and sergeants continue to improve the reporting and investigation of force incidents. Both IAD and the Citizens' Police Review Board are receiving fewer force complaints. Thorough investigations are conducted by IAD of all allegations of inappropriate force, revealing few in which the force was found out of policy.

IMT audits of Use of Force showed significant improvement in the way OPD reports and investigates use of force incidents. The audits found the Department in full compliance with Tasks 24 and 31, which require that a supervisor be notified of use of force incidents and respond

to the scene to conduct an investigation; that members report use of force properly; and that proper coordination of interviews and notifications are made for lethal force incidents or incidents likely to result in serious injury. They also found that the Department is nearly in full compliance with Task 26, which requires that certain types of force be reviewed by a Force Review Board to determine if the use of force complies with Departmental policy.

The Department was found in partial compliance with Tasks 25 and 35, which require that use of force reports be thorough: providing an analysis of the evidence, addressing any discrepancies in officer and witness statements, documenting witnesses to the use of force, and addressing whether the use of force was proportional to the resistance encountered by the subject. In addition, these tasks require use of force reports to be reviewed by the chain of command. Reviewers must make compliance recommendations.

Although the Department did not meet all the requirements of Tasks 25 and 35, it has made significant improvements in the quality and completeness of use of force reports. Training is ongoing to ensure that the Department achieves full compliance with the use of force requirements. The Department's use of force expert routinely works with sergeants, lieutenants, and captains to reinforce the use of force policies. Also, officers involved in use of force incidents and their sergeants are required to appear before the Force Review Board to receive training when deficiencies are identified during an incident where force is used.

In addition, the Department has created a new position, Use of Force Coordinator. The officer in this position is responsible for tracking use of force cases. The Department has struggled to meet use of force reporting timelines; the new coordinator will assist the Department in complying with these timelines.

## **AWARD-WINNING PERSONNEL ASSESSMENT SYSTEM**

The Agreement requires the Department to develop and implement an early identification system and intervention program. The purpose of this program, known as PAS, is to identify officers and employees of the Department who exhibit at-risk behavior or substandard performance. Early identification of these behavior patterns facilitates supervisory intervention and ensures timely corrective action. Intervention is intended to prevent officers and employees from continually exhibiting poor behavior and engaging in poor performance practices that may ultimately result in Internal Affairs complaints, judgment payouts in civil litigation, and ill will between the community and the Department. Through the implementation of PAS, careers can be saved, police sergeants are given the information they need to better supervise their subordinates, and the community as a whole is better served.

The Agreement also requires the Department to employ a computerized database system to gather and consolidate performance information from various sources into one easily accessible point. Initially, Motorola was chosen to provide the Personnel Performance Evaluation Information System (EVALIS), but failed to meet delivery deadlines. To meet Agreement requirements in a timely manner, the Department collaborated with the City's Department of Information Technology (DIT) to develop and launch i-PAS, which gathers information on individual officer or employee activities from existing data records. These data records document activity in various areas of law enforcement work, including complaints, uses of force, arrests,

awards, pursuits, and vehicle collisions. The information is delivered to supervisors, managers and commanders through a secured intranet application known as the i-PAS SuperViewer.

Employing the PAS process and accessing critical data via i-PAS, the PAS Administration Unit is now able to develop quarterly threshold reports that identify officers and employees who may be exhibiting at-risk behaviors, performing poorly, or doing exceptionally well. (Identification of superior work performance has been a benefit of the PAS and I-PAS systems.) Persons meeting a threshold as identified by the PAS Activity Review Panel are subjected to a comprehensive PAS Activity Review and Report conducted by their immediate supervisor and reviewed via the chain of command. From this review, supervisors may recommend one of four options:

1. Intervention – An area of concern exists and a specific strategy must be implemented to address the area of concern.
2. Supervisory Monitoring – A performance issue exists and a monitoring plan is required, with timelines for evaluation.
3. No Action – A threshold was met, but no at-risk behavior or deficiency was identified.
4. Recognition – Performance was exceptional and commendation or award is recommended.

The supervisors' recommendations must be reviewed and accepted via the chain of command and the PAS Activity Review Panel. Once accepted, recommended actions must be taken and follow-up must be provided for intervention and supervisory monitoring. Since the publication of the PAS policy, iPAS has generated seven threshold reports. There have been 23 members/employees placed in intervention and 18 in supervisory monitoring as of November 25, 2008. In addition, seven members/employees have been recommended for recognition.

PAS and i-PAS are not just technological and policy achievements. Implementation of PAS has significantly increased the culture of accountability within the Department. Supervisors, managers, and commanders cannot disavow knowledge of personnel performance issues, as this data is made accessible to them for each of their subordinates. With this information readily available, supervisors are better equipped to manage the performance of their subordinates, commending when appropriate and taking effective corrective action when necessary.

Creation of i-PAS is a significant achievement for the Department. It is an award-winning system, recognized in 2007 by Project Management International (3rd Place Project of the Year Award for government technology solutions; only U.S. recipient of this award) and by the Public Technology Institute (Honorable Mention, Technology Solutions Awards: Public Safety and Emergency Management). The Department's efforts in personnel assessment have been recognized by other law enforcement agencies, which have requested information on PAS and i-PAS as they work to create their own intervention systems.

## **ACCOMPLISHMENTS IN OFFICER SUPERVISION, COMMUNITY POLICING, AND CRIME FIGHTING EFFORTS**

### **Supervisory Oversight**

The Agreement required the Department to implement a number of changes to improve supervisory oversight and accountability measures. Policies and procedures have been adopted

for promoting personnel who meet Agreement requirements. Accountability has been improved by implementing policies and procedures that require supervisors to evaluate tactical decisions, identify training needs, and approve arrests in the field. Supervisors have received training on investigating complaints of misconduct and the use of force. Field supervisors are required to conduct biweekly performance reviews and annual performance evaluations of subordinates. The span of control has been reduced to 1:8, allowing supervisors to better focus attention on their squads.

Administrative investigations of force and misconduct are carefully tracked, monitored, and reviewed at several levels to ensure timely completion, thoroughness, and compliance with policy. Moreover, force and misconduct investigations are closely examined to review the circumstances around the incident to identify any training or policy concerns involving the officer and his or her supervisor or commander. Administrative investigations now have a much broader view, allowing the Department to identify and address problems at every level of the organization.

In i-PAS, Field Supervisors have a powerful tool to aid in identifying high performers as well as those who may need intervention to avoid career-ending incidents. It makes performance information readily available to supervisors and holds them accountable: ignorance of poor performance or at-risk behavior is not accepted.

Department personnel know that a cultural shift has occurred and that they will be held accountable for their actions or neglect of duty. Identification of personnel not meeting our standards and implementation of plans to address the specific issue are expected. PAS threshold reports are produced as a check to reinforce supervisory and managerial accountability. Personnel know what is expected of them. The standard must be high if we are to be a model police agency.

### **Model Community Policing Programs**

The City Council has an established policy on Community Policing. The Agreement advances that policy by requiring the Department to develop and implement a plan to strengthen its commitment to and relationships with local communities. This is an ongoing process as the Department continues to establish and strengthen its community relations. Personnel from the Department's Bureau of Field Operations attend quarterly meetings with community members at local Neighborhood Crime Prevention Council meetings. These interactions not only provide a venue for residents to get information from the Department, but also help in identifying criminal and quality of life issues that are affecting the community. The Department remains committed to sustaining and expanding its community partnerships.

#### **Problem-Solving Officer Program**

The Problem-Solving Officers continue to be central to the Department's community policing efforts. PSOs deploy daily into all areas of Oakland to work with community members on projects they have deemed important in their respective neighborhoods. PSOs have been trained to use the SARA (Scanning, Analysis, Response and Assessment) model of problem solving, which has proven to be an effective tool. Successful projects are later presented to other officers as well as the command staff during the biweekly Crime Stop meetings. In September 2008, the goal of 57 fulltime PSOs and 6 experienced supervising sergeants was reached.

### Community Outreach

The Department recognizes it cannot address the crime situation facing Oakland without the assistance of Oakland residents. Therefore, the Department has invested heavily in the area of outreach, especially to local youths. In 2007, OPD co-sponsored block parties with Youth Uprising and, in conjunction with the Youth Employment Program, have established job fairs in East and West Oakland to improve relationships with local youth. Recognizing the power of the music culture and its influence on the youth in the community, the Department collaborated with several local rappers including "Too Short" to hold direct and productive conversations on how OPD can collaborate to better influence the community.

### Prosecuting and Charging Repeat Offenders

Collaboration is an essential element of community policing. A positive example of this occurred in Police Service Area (PSA) 5. The residents of PSA 5 expressed frustration with criminal control of their neighborhoods. PSA 5 Lieutenant Sharon Williams met with the community and showed them that the Department was making arrests, but the criminals were often released with little or no jail time. Lt. Williams also brought this to the attention of Alameda County Assistant District Attorney Tom Rogers. Mr. Rogers explained to the community that the courts were short on judges to try these cases. With the assistance of their Neighborhood Service Coordinators, residents submitted hundreds of letters to Governor Schwarzenegger's office explaining the local crime problem and the need for more judges. As a result of this collaborative effort, two new judges were assigned to Alameda County in October of 2007.

Another example of collaboration occurred with the District Attorney's office. The District Attorney's office cannot prosecute the high number of minor criminal offenses committed in Oakland because of a lack of resources, a reality that frustrates community policing efforts because repeated criminal violations, often by the same perpetrators, continue to reoccur in several communities. This constant criminal activity adversely impacts the quality of life of Oakland residents and destroys the peace and tranquility of our neighborhoods. The Department, in partnership with the City Attorney's office and with the support of the Mayor's office, achieved an agreement with the District Attorney's office to create a Quality of Life Misdemeanor Prosecution Program in the City. The Program authorizes city attorneys to prosecute misdemeanor offenses in connection with community policing projects. The program has been approved and is now in effect.

### **Commitment**

The Department's commitment to community policing has been clearly communicated to officers and staff. Patrol Squads and investigators have been working closely with PSOs on different projects to reduce crime and to improve the quality of life for Oakland residents. During Crime Stop meetings, Commanders share details of Patrol Squad SARA projects. This focus on teamwork and accountability demonstrates the Department's continuing commitment to community policing.

In January 2008, the Department reorganized its patrol function to a geographic system of policing and began a new schedule (12 hour shifts) to improve consistency of staffing and continuity of supervision. Implementation of the reorganization was a monumental task.

The Department's reorganized patrol function makes both patrol and specialized units responsible to an assigned area captain. Under the new system, the Department has more stringent staffing requirements and has improved its documentation of daily staffing. In addition, whenever supervision vacancies exist, the Department has promoted sergeants to fill vacancies, despite continuing staffing shortage challenges. The Department has also created a pool of certified acting sergeants to backfill positions for absent sergeants or when promotions are not feasible.

In addition to the patrol function reorganization, the Agreement span of control requirement (one field sergeant supervises a maximum of eight officers) has resulted in tighter supervision. To prove compliance with span of control, documentation of staffing for every shift must be consistent and reliable. As a result, the Department has developed policies to ensure that Daily Details and Special Operations plans are reviewed for accuracy and approved by a commander; that they include the information necessary for officer safety and accountability; and that they are maintained in a consistent manner.

The reorganization complements and is consistent with the Department's goal of achieving substantial practice compliance in 2008. Geographic accountability and consistency of supervision are critical to both reducing crime and ensuring that Agreement requirements are fulfilled.

## **IMPROVEMENTS IN DEPARTMENTAL TRAINING**

The Agreement requires the Department to implement a plan to enhance its Academy and In-Service training to ensure that officers, supervisors, and commanders receive adequate and regular training. The training provided must include additional emphasis on ethics, professionalism, critical thinking, problem solving, conflict resolution, and relationships, as well as incorporate scenario-based exercises. In addition, Task 43 requires the Department to evaluate the content and quality of training provided to OPD personnel and to track all training that occurs.

On April 16, 2008, the IMT finalized its audit of the Department's Training Program. The audit found "excellent improvement" in the Training Program and anticipated that the Department can reach full compliance with this task very soon. Despite the staffing challenges associated with training a large number of new police recruits and fulfilling the POST (California Commission on Peace Officer Standards and Training) recertification process, the Department is implementing systems and programs to continue improving the Training Program and to address shortcomings identified by the IMT.

The Training Division is committed to providing high-quality, professional training to the Department, ensuring that instruction is supportive of OPD's values, ethics, and philosophy. The Training Division has:

- Established a mentoring program to assist Police Officer Trainees deal with issues that may arise during their training. An experienced former OPD sergeant, now an annuitant, meets regularly with trainees to discuss issues that may impact their success in the academy. For example, when it was recently discovered that a student was dyslexic, he

was put in contact with a veteran officer, also dyslexic, for mentoring. Further, the report-writing instructor was informed and met individually with the student to ensure his success despite the handicap.

- Increased the amount of ethics instruction offered during academy training. Throughout their time in the academy, Police Officer Trainees are presented with scenarios calling for ethical law enforcement decision-making. Each trainee is required to prepare a written memorandum that describes the incident and tells what the ethical issues are and how he or she would respond to the situation. These memoranda are then reviewed, responses are discussed, and the proper response is elucidated. Having a written response allows Training staff to focus on how trainees are learning to interpret and handle these ethical dilemmas. It also provides an opportunity to more thoroughly educate officers on their responsibilities and the Department's expectations.
- Recognized the need to alter existing Continued Professional Training (CPT) schedules to ensure that all officers and sergeants receive their CPT at intervals of no greater than 24 months. As a result a new schedule has been implemented that will enable the Department to comply with the Agreement and POST requirements.
- Implemented an observation checklist to grade instructors and provide feedback regarding instruction quality. Training sergeants and the commander will aim to complete six instructor evaluations per week. The evaluations allow the Training Staff to identify instructors who are unprepared or who may be undermining OPD's efforts to improve ethics and professionalism, as well as to assess/document whether the instructor is supportive of the Department's philosophy and values.
- Hosted Instructor Development Courses to ensure that all OPD instructors are properly trained to instruct.

The 163<sup>rd</sup> Basic Academy graduated with an attrition rate of approximately 26%, a full 10% below the average OPD Basic Academy attrition rate. This improvement results from a combination of factors, including the use of mentoring, a rigorous selection process, and the use of rubrics in the training and testing of recruits.

## IMT AUDITS

During this reporting period, the IMT released 12 audits:

1. Task 7.3, *Accepting and Investigating Anonymous Complaints*;
2. Task 7.5, *Distributing Complaint Forms and Informational Brochures*;
3. Task 19, *Unit of Command*;
4. Task 20, *Span of Control*;
5. Task 24, *Use of Force Reporting Policy*;
6. Task 25, *Use of Force Investigations and Report Responsibility*;
7. Task 26, *Use of Force Review Board*;
8. Tasks 28 and 29, *Use of Force – Investigations of Criminal Misconduct and IAD Investigation Priority*;
9. Task 31, *Officer-Involved Shooting Investigation*;

10. Task 35, *Use of Force Reports-Witness Identification*;
11. Task 36, *Procedures for Transporting Detainees and Citizens*; and
12. Task 43, *Academy and In-Service Training*.

As of the publication of this report, the IMT released an additional two audits: Task 30, *Firearms Discharge Board of Review* and Task 48, *Department Management and Annual Management Report*. The Department achieved full compliance with Tasks 19, 24, 31 and 48, and partial compliance with Tasks 25, 30, 35, 36, and 43.



## COMPLIANCE OVERVIEW

The Compliance Unit continues to provide compliance oversight and review policies related to the Agreement. The Compliance Unit is responsible for overseeing the Department's internal Compliance Assessors and providing direction to the assigned personnel to further the Department's efforts toward compliance with the Agreement. In the revised compliance assessment plan, the Department will conduct monthly assessments for 45 of the 51 Tasks required by the Agreement. The assessments are an ongoing process to refine the report criteria and ensure follow-up when necessary. As identified in the Agreement, the Compliance Unit serves as the liaison between OPD, the IMT, and the Plaintiffs' Attorneys, and assists with the Department's compliance with the Agreement. The Unit maintains project implementation tracking on tasks assigned to the three bureaus (Services, Investigation, and Field Operations) and the Internal Affairs Division. Additionally, OIG coordinates cross-organization implementation issues and works to resolve interpretation differences within the Agreement.

While serving as liaison between the OPD, the IMT, and Plaintiffs' Attorneys, the Compliance Unit continues to conduct Monthly Meetings, on behalf of the IMT, to focus on everything from policy, training, and implementation progress to agreement language changes and clarifications. The Compliance Unit continues to be the custodian of all NSA documentation created by the Department and also puts together agendas and tracks meeting minutes, which are distributed to all participants as a record of meetings and discussions held among stakeholders. The meetings have produced changes and clarifications in the Agreement language, modifications to implementation timelines for several Tasks, and a modified review process for publication drafts.

### 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 a 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. Implementation progress is summarized in Table 2.

**Table 2. Task Compliance Status**

Task Status	Tasks as of November 15, 2008
Tasks in Policy Compliance	51 of 51
Tasks in Training Compliance	44 of 44
Tasks in Full Actual Practice Compliance	18 of 51
Tasks in Partial Actual Practice Compliance	21 of 51

The status of each task is reported here as of November 15, 2008. A number of tasks are still not in full actual practice compliance, but have been recognized as being in partial compliance by the IMT. Table 3 lists the 51 tasks with their due dates and summarizes the current state of compliance.

**Table 3. Current State of Compliance, Tasks 1 – 51 (As of November 15, 2008).**

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	√	√	√	
3	IAD Integrity Tests	6/1/2005	√	√	√	
4	Complaint Control System for IAD and Informal Complaint Resolution Process	6/15/2004	√	√	√	
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	√	√	√	
9	Contact of Citizen Complainants	8/13/2004	√	√		
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	√	√	√	
12	Disclosure of Possible Investigator Bias	6/15/2004	√	√		
13	Documentation of Pitchess Responses	7/1/2005	√	√		04/06
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
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	√	√		06/07 conditional compliance
19	Unity of Command	1/20/2004	√	√		02/08
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	√	√	√	
22	OPD/DA Liaison Commander	4/15/2003	√	√		06/07
23	Command Staff Rotation	1/20/2004	√	N/A		11/05
24	Use of Force Reporting Policy	7/20/2004	√	√		4/08
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	√	√	√	
28	Use of Force-Investigation of Criminal Misconduct	7/20/2004	√	√		
29	IAD Investigation Priority	7/20/2004	√	√		
30	Firearms Discharge Board of Review	7/20/2004	√	√	√	
31	Officer-Involved Shooting Investigation	7/20/2004	√	√		4/08
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	√	√	√	
36	Procedures for Transporting Detainees and Citizens	8/25/2003	√	√	√	
37	Internal Investigations-Retaliation Against Witnesses	8/25/2003	√	√		
38	Citizens Signing Police Forms	8/25/2003	√	√		04/06
39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	8/25/2003	√	√		
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	√	√	√	

Task	Task Name	Due Date	Policy Compliance	Training Compliance	Partial Practice Compliance	Full Practice Compliance Date
43	Academy & In-Service Training	2/15/2005	√	√	√	
44	Performance Appraisal Policy	7/7/2004	√	√	√	
45	Consistency of Discipline Policy	6/15/2004	√	√	√	
46	Promotional Consideration	7/8/2003	√	√	√	
47	Community Policing Plan	8/1/2003	√	√	√	
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

## TRAINING COMPLIANCE

The Department continues to train personnel successfully on Agreement-related policies. Training rosters are completed for each task and the information is logged into the Training Management System. Based on the completed rosters, the Training Division identifies members and employees who have not been trained and follows up regularly to ensure that supervisors provide training to those individuals. The Training Division continues to provide accurate reports, with supporting rosters, to show training compliance. Training is on-going as policies are published and lesson plans are developed. The IMT has found OPD to be in training compliance.

## **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 and Inspections Unit of OIG is also committed to conducting audits of other 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 nine audits/reviews. The audits/reviews conducted were of Mobile Data Terminal Traffic (MDT); Personnel Practices; Investigations of Allegations of Manual of Rules Violations Resulting from Lawsuits and Legal Claims; Informal Complaint Resolutions; Receiving and Processing Complaints; Methods for Receiving Citizen Complaints; Summary of Citizen Complaints Provided to OPD Personnel and Disclosure of Possible Investigator Bias; Timeliness Standards and Compliance with Internal Affairs Division Investigations; and Members', Employees' and Supervisors' Performance Review. In addition, OIG published an audit of OC Log and Checkout Procedures on October 17, 2008 and an audit of Use of Force Reports on November 3, 2008. The purpose of conducting these audits/reviews was to identify deficiencies that could impact compliance with the Agreement and Departmental policy, as well as inefficiencies in practice.

#### **Mobile Data Terminal Traffic Audit**

OIG completed its fourth annual audit of Mobile Data Terminals on December 27, 2007. The audit revealed that the number of daily transmissions between mobile data terminals has continued to decline from the previous years. Of the 282 messages transmitted during the audit period, none were found to contain inappropriate language, wording that constituted a policy violation, or lengthy conversations unrelated to work. Messages continue to be archived by ITU and reviewed by the Mobile Data Systems Manager. OIG recommended that ITU complete a written policy and procedure for the archiving and maintenance of MDT transmissions.

#### **Personnel Practices Audit**

In March 2007, OIG initiated an audit to determine if OPD was complying with Task 44, *Personnel Practices*, which requires that OPD provide annual performance appraisals to its members and employees that give accurate descriptions of the members/employees' performance for the year. The audit indicated that OPD was in compliance with five of the nine practice requirements of Task 44, ensuring that annual performance appraisals include:

1. Written, annual performance appraisals from immediate supervisors;
2. Documentation of sustained and not sustained complaints against members/employees;
3. Documentation of members' uses of force; sick/injured leaves; arrests for narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrests for other offenses; arrests involving charges of Penal Code §§69, 148 and/or 243(b)(c); and vehicle accidents;
4. Dated signatures from respective supervisors/managers in the direct chain of command, up to the Deputy Chief of the respective Bureau, when appropriate; and
5. Completion of the performance appraisal by the new supervisor of a promoted member/employee.

Although the audit indicated that OPD has improved in executing Agreement directives, it also noted that the Department was still out of compliance with three requirements of Task 44. (One requirement was not assessed and in future audits, will be assessed as part of Task 41.) To be in full compliance with this task, the Department must continue to do well in the areas mentioned above and improve in the following areas:

6. Ensure that members/employees who have significant collateral duties outside of their normal assignments (i.e., instructors, tactical team operations and support, task force assignments) are rated on these duties.
7. Strive to track the movement of members/employees and know who their respective supervisors are during the year so that the supervisors can be tasked to provide input for the members/employees performance appraisals.
8. Document Department efforts in building partnerships to fight crime in the Oakland community.

The Department revised DGO B-6 on May 26, 2006 to aid in its ability to comply with Task 44. Although the DGO included all the directives of Task 44, changes to the policy and the performance appraisal form, specifically provision of clearer instructions, may aid the Department in achieving full compliance.

### **Investigations of Allegations of Manual of Rules Violations Resulting from Lawsuits and Legal Claims Audit**

In April 2007, OIG initiated an audit of Task 14, which requires the Department to investigate allegations of Manual of Rules violations arising out of lawsuits and legal claims. The current policy, DGO M-3, was implemented on December 6, 2005. The most recent Internal Affairs Division policy, 06-01, *Legal/Tort Claims*, was implemented December 22, 2006. Together they incorporate the requirements delineated in the Agreement under Task 14.

Beginning with a list of 183 claims and litigations filed between January 1, 2006 and December 31, 2006, OIG determined that the Department conducted the appropriate investigations 99.42% of the time. Closer inspection of a representative sample of cases revealed that investigations were not being delayed, modified, or terminated because of their related civil issues.

Through IAD and division level investigations, coupled with the Department's review process, the Audit Unit found that OPD met the requirements of Task 14 in that:

- IAD received notifications of lawsuits and legal claims and investigated any associated allegations of Manual of Rules violations (Task 14); and

- Internal investigations were handled separately from City Attorney investigations, and that OPD did not delay, halt, modify, or terminate investigations because the underlying matter was in civil litigation (Task 14.1).

There were no applicable cases for Tasks 14.2 and 14.3. Task 14.2 allows the Chief of Police to hold findings of an internal investigation in abeyance if he/she determines that a concurrent civil litigation is likely to yield additional information relevant to the internal investigation, but requires that the delay last no longer than necessary and reasons for the delay must be documented. Task 14.3 does not take effect unless a finding is held in abeyance as provided for in Task 14.2. In such a case, Task 14.3 requires the Chief to ensure that the "investigation continues on all areas of the internal investigation." Since no cases were held in abeyance, there were no applicable cases for 14.2 and 14.3.

### **Informal Complaint Resolutions Audit**

OIG initiated an audit of Informal Complaint Resolutions (ICRs) on June 11, 2007. Task 4, *Complaint Control System for IAD*, states the specific requirements for ICRs, as does DGO M-3. There are 10 requirements associated with Task 4. For purposes of the audit, four requirements (forwarding documentation to IAD; ensuring that persons making a complaint are not unduly influenced; acknowledging receipt of the complaint; and notifying the Chief of Police in cases likely to generate unusual interest) were not assessed. OIG's audit of the remaining tasks found the Department to be in compliance with all seven tasks as they pertain specifically to the ICR process. While some of the tasks pertain to both the ICR process and the formal complaint process, for this audit, only completed ICRs were reviewed. There were 53 ICRs reviewed for this audit.

The ICR documentation, according to Task 4.2 of the Agreement, must include eight elements:

1. Receipt of the complaint,
2. Date of complaint,
3. Time of complaint,
4. Location of complaint,
5. Name of person making the complaint,
6. Name of person receiving the complaint,
7. How the matter was resolved, and
8. That the person making the complaint was advised of the formal complaint process.

For the eight required elements, the Department was 100% in compliance with all but one, the documentation of time. There were three incidents in which the time was not documented, resulting in 94.3% compliance for that specific element. Averaging the compliance rate for all eight elements, the Department was 99.3% in compliance with Task 4.2, well above the 85% compliance requirement.

According to Task 4.10, both the subject member/employee and the violation must be eligible for the ICR process. In only one case out of 53 was the ICR process incorrectly applied to resolve a Class I allegation of misconduct, which is not eligible for the ICR process.

Overall, the Department has made significant strides towards full compliance with Task 4, specifically with the ICR process. The Department's complaint database, where complaints are

assigned either an intake number or an IAD case number, has been credited by the IMT as being a focal point of the improvements made to the IAD's Complaint Control System. With only minor adjustments needed for the case tracking system, the Department is well on its way to compliance with Task 4.

### **Receiving and Processing Complaints Audit**

In May of 2007, OIG initiated a review to determine OPD compliance with Tasks 5, 8, and 9. Task 5, *Receiving and Processing Complaints*, requires that OPD conduct a complete and thorough investigation to allow for a supportable and reasoned finding. Task 8, *Classification of Citizen Complaints*, requires that OPD classify complaints to distinguish between the most serious and less serious violations. Task 9, *Contact of Citizen Complainant*, requires that, after receiving a complaint, OPD investigators contact complainants as soon as possible.

The OIG review of Tasks 5, 8 and 9 specifically examined Tasks 5.15, 5.16, 5.18, 5.19, 5.21; 8.1, 8.5, 8.8, 8.9; and 9.1. OIG found OPD in compliance with seven of the ten requirements assessed during review:

1. Each allegation in a complaint is resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Filed.
2. Every member or employee who is the subject of an internal investigation is interviewed – as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant.
3. Misconduct complaints are categorized according to “Class I” or “Class II” offenses;
4. Statements and interviews in “Class I” investigations are tape-recorded.
5. Statements and interviews from OPD personnel in “Class II” investigations are tape-recorded.
6. To determine the nature, scope and severity of the complaint, as well as to identify potential witnesses and/or evidence, citizen complainants are contacted as soon as possible by IAD or the assigned investigator.
7. When an assigned investigator encounters a “Class I” violation during a “Class II,” division-level investigation, he/she shall contact the IAD Commander. (There were no applicable cases for this requirement.)

Although the review indicated that OPD greatly improved in executing the directives in the Agreement, the Department has not yet achieved full compliance with Task 5. To be in full compliance, the Department must continue to do well in the areas mentioned above and improve in the following areas:

8. Gathering and documenting all relevant evidence, including circumstantial, direct, and physical evidence, and make credibility determinations, if feasible.
9. Resolving any inconsistent statements among witnesses, by reference to physical evidence, and/or use of follow-up interviews and or other objective indicators.
10. Providing documented analysis of evidence supporting a finding for each allegation in a complaint investigation, ensuring that the “preponderance of the evidence” standard is met.

OIG's review did not assess all requirements of Task 8; however, based on OIG's review and the IMT's Fall 2006 Review, all but one of the Task 8 requirements appeared to be in compliance. OIG found the Department in compliance with Tasks 8.1, 8.5 and 8.8, and found no applicable



cases for 8.9. During the Fall 2006 Review, the IMT had found the Department in compliance with Tasks 8.2, 8.3, 8.6 and 8.7, which were not assessed during the OIG review. Task 8.4 was not assessed by OIG and was found out of compliance by the IMT.

Full compliance with Task 8 can be attained with just a little more emphasis by IAD staff. The OIG review found that IAD was maintaining compliance with Task 8.1. In addition, the OIG review indicated IAD was in compliance with Tasks 5.21, 8.5, 8.8 and 9.1 (which had not been found in compliance during the IMT Fall 2006 Review). Compliance was due to IAD's continued effort to ensure that all subject and witness personnel are interviewed, statements taken are tape-recorded, and complainants are contacted as soon as possible.

Although full compliance with Tasks 5 and 8 has not yet been attained, IAD has greatly improved the quality of its investigations and documentation of contacting and obtaining information from complainants as soon as possible.

### **Methods for Receiving Citizen Complaints Audit**

In October of 2007, OIG initiated an audit of Task 7, *Methods for Receiving Citizen Complaints*, to determine OPD's compliance with the task. Although Task 7 has eight requirements, the audit included an assessment of only six of these requirements. Since Task 7.3, *Investigation of Anonymous Complaints*, requires an in-depth review of the complaint process, it was not assessed due to time constraints. Task 7.5, *Distribution of Complaint Forms and Informational Brochures*, was not assessed since the IMT's audit of this task in July 2007 had found OPD in compliance.

The Department has made significant progress in complying with the mandates of Task 7 as evidenced by the improvements it has made since the IMT audited Task 7 during the ninth reporting period (January 2007). At that time, the IMT noted the following instances of noncompliance:

- Three calls were made to the line during non-business hours, two of which went unanswered.
- Complaint forms were unavailable at key locations. While all of the locations had guidelines properly posted, complaint forms and informational brochures were not readily available to the public.
- *Your Guide to Filing a Complaint Against the Police* brochure was translated into Spanish, Chinese, and Vietnamese, but the complaint forms inserted into all versions of the brochure were in English only.

The OIG audit of Task 7 indicated that the Department had effectively addressed the issues outlined in the IMT audit and was in compliance with all six of the assessed requirements:

- Task 7.1—The complaint line was staffed by Departmental personnel. All calls placed were received by Department personnel.
- Task 7.2—The Public Notice entitled *Your Guide to Filing A Complaint Against the Police* was posted in seven of the eight locations required by IAD P&P 05-01. (The only location that did not have the guidelines posted was the Oakland Coliseum, which is not a City of Oakland facility.) However, at all of the eight locations, complaint forms and brochures were available by request or on display.

- Task 7.4—All members interviewed had complaint forms and informational brochures available either in their vehicles or on their persons.
- Task 7.6—IAD continued to maintain its dedicated facility, removed from the Police Administration Building.
- Task 7.7—Both complaint forms and informational brochures had been translated into Spanish, Chinese, and Vietnamese, in accordance with City policy.
- Task 7.8—Complaint forms continued to be processed in accordance with controlling state law.

### **Timeliness Standards and Compliance with Internal Affairs Division Investigations**

On February 29, 2008, OIG initiated an audit to determine whether OPD is complying with Task 2 of the Agreement. Task 2, *Timeliness Standards and Compliance with Internal Affairs Division (IAD) Investigations*, requires that OPD conduct a complete and thorough investigation of citizens' complaints in a timely fashion. Timeliness standards are regularly monitored by IAD command and the Department's command staff, and if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing must be increased to maintain timeliness standards. This was the first audit of Task 2 conducted by OIG. The investigations reviewed were opened between April 1, 2007 and June 30, 2007.

When the IMT reviewed Task 2 (Fall 2006 Review, *updated 1/18/07*), it found the Department out of compliance with one requirement of Task 2 (Task 2.1, *Completing Internal Investigations in a Timely Fashion*) and in compliance with the other two requirements (Tasks 2.2 and 2.3).

The timeliness standard at the time of the IMT's Fall 2006 Review required that:

- IAD investigations be completed within 90 days
- Division Level Investigations (DLIs) within 120 days
- ICRs within 90 days.

Revised DGO M-3, approved on February 6, 2008, increased the timeliness standard requirement for all internal investigations and ICRs to 180 days. In order to obtain a more accurate picture of the Department's performance in completing investigations in a timely fashion, OIG used the new 180-day standard in assessing compliance for Task 2.1.

The OIG audit revealed OPD is still not in compliance with Task 2.1. The audit examined 76 internal investigations. Thirty-four of the investigations (45%) were completed within 180 days. Forty-two (55%) were not and were on average 41 days past due. The 76 internal investigations were completed in an average of 175 days. The audit also examined all 52 ICRs during the audit period, and found they were completed within 180 days 96% of the time.

The audit stratified the 76 investigations by type (IAD and DLI) and class (Class I and Class II). Using the new 180-day standard, OPD improved compliance of DLIs from 13% (IMT Review finding) to 50%. The compliance rate of the 52 Class I investigations was 46% and that of Class II investigations, 50%. Finally, five of the seven investigations resulting in discipline (71%) met the standard for the discipline timeline of 30 days.

The Department has maintained compliance with Tasks 2.2 and 2.3.

## **Summary of Citizen Complaints Provided to OPD Personnel and Disclosure of Possible Investigator Bias**

On February 29, 2008, OIG initiated an audit to determine if OPD is complying with Tasks 11 and 12 of the Agreement.

Task 11, *Summary of Citizen Complaints Provided to OPD Personnel*, requires that an investigator of a citizen complaint provide a brief synopsis of the complaint alleged against an OPD member/employee to that member/employee. (The subject member/employee is not allowed to read the complaint itself or to review citizen statements or other statements prior to the member's/employee's interview.) A copy of the synopsis is to be maintained in the IAD investigation file and the subject Member/Employee's immediate chain of command is to be notified of the allegation and investigation.

Task 12, *Disclosure of Possible Investigator Bias*, requires investigators to disclose relationships that might lead to the perception of bias regarding the subject(s) of any investigation. In cases where it is clear that the nature of the relationship could be perceived to compromise the investigative process, the investigator(s) shall recuse him/herself from the investigation.

When the IMT reviewed Tasks 11 and 12 (Fall 2006 Review, *updated 1/18/07*), it found the Department out of compliance with all of Task 11, with the exception of 11.4, and all of Task 12. Task 11.4 requires that upon completion of the IAD investigation and issuance of a final report by IAD, the subject member/employee have access to the underlying data on which the report is based, including all tape-recorded interviews, transcripts, and investigators' notes.

The OIG audit revealed that OPD was in compliance with Task 11 and partial compliance with Task 12. Sixty internal investigations were examined for the purposes of this audit.

Regarding Task 11, 87% (52) of the investigations properly documented that the subject member/employee was provided a synopsis of the citizen complaint and a copy of that synopsis was included in the IAD investigation file. A full 85% (51) of the investigations had properly documented that the subject member/employee's immediate chain of command was notified of the allegation and investigation.

The Department achieved partial compliance for Task 12. Only 32% (19) of the investigations had properly completed recusal letters. The audit found no investigations in which the investigator conducting the investigation should have been removed to ensure a fair and impartial investigation.

## **Members', Employees' and Supervisors' Performance Review**

In April 2007, OIG conducted a second audit to determine whether OPD is complying with Task 21, *Members', Employees' and Supervisors' Performance Review*. (OIG had conducted a prior audit in September 2005; the IMT had conducted one in May 2006.)

Task 21 requires that OPD commanders and managers meet twice a year with their subordinate members, employees, and supervisors to coach them on their strengths and weaknesses and that the commanders and managers document these meetings. Additionally, Task 21 requires that

specified OPD members/employees receive informal performance reviews twice a month and that these meetings be documented.

Task 21 has two subtasks, 21.1 and 21.2. Task 21.1 was not assessed in this audit. When the audit was initiated, the Department was in the process of developing a system that would more easily track reporting relationships between commanders/managers and their subordinates over time. The Department has recently implemented a new system that will archive quarterly organizational charts, making it easier to audit this requirement in the future.

The audit of Task 21.2 indicated that OPD was in compliance. Task 21.2 requires specified OPD supervisors to meet with their respective subordinates at least twice a month to conduct informal performance reviews and to document these meetings. The Department has made significant progress in its ability to document compliance for Task 21.2. However, subsequent to the completion of this audit, the documentation requirements for this Task were changed. In the future, the documentation used to assess compliance will no longer be required to achieve compliance.

It was recommended that a revision be made to DGO B-6 to ensure that OPD supervisors are aware of this responsibility: when a member/employee works three weeks or more in a particular month, the supervisor is responsible for conducting at least two informal performance reviews with the member/employee. If a member/employee works at least two weeks but less than three weeks in a particular month, the supervisor is responsible for conducting at least one informal performance review with the member/employee.

## **CONCLUSION**

The audits discussed in this section show increased compliance with significant portions of the Agreement. The audits provided the Department with information regarding successes and areas for improvement. As we continue to implement solutions, we look forward to the next round of audits, so we may continue on the path of improvement and/or show that many of the positive changes have become institutionalized.

## **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 Section III. A; page 7, lines 3-8 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

#### **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.

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

- Settlement Agreement Section III. B; page 7, lines 9-17 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

#### **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 Partial Practice Compliance**

### **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*

### **OIG Audit Summary**

On February 29, 2008, OIG initiated an audit to determine whether OPD is complying with Task 2 of the Agreement. Task 2, *Timeliness Standards and Compliance with Internal Affairs Division (IAD) Investigations*, requires that OPD conduct a complete and thorough investigation of citizens' complaints in a timely fashion and that timeliness standards are regularly monitored by IAD command and the Department's command staff. Also, if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.

This was the first audit of Task 2 conducted by OIG. The investigations reviewed were opened between April 1, 2007 and June 30, 2007. Per revised DGO M-3, approved on February 6, 2008, the timeliness standard requirement for all internal investigations and ICRs is 180 days. The OIG audit revealed that OPD is still not in compliance with Task 2.1. The audit examined 76 internal investigations: 34 (45%) were completed within 180 days and 42 (55%) were not (on average, these were 41 days past due). The 76 internal investigations were completed in an average of 175 days. The audit also examined all 52 ICRs during the audit period, and found they were completed within 180 days 96% of the time.

The audit stratified the 76 investigations by type (IAD and DLI) and class (Class I and Class II). Using the new 180-day standard, OPD has improved compliance of DLIs from 13% in the IMT review to 50% in this audit. The compliance rate of the 52 Class I investigations was 46% and that of Class II investigations, 50%. Finally, five of the seven investigations resulting in discipline (71%) met the standard for the discipline timeline of 30 days.

The Department maintained compliance with Tasks 2.2 and 2.3.

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

- Settlement Agreement Section III. C; page 7, lines 18-22 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

### **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*

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

- Settlement Agreement Section III. D; page 7, line 23 – page 8, line 17 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: 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 Partial Practice 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*

##### **OIG Audit Summary**

OIG initiated an audit of ICRs on June 11, 2007. Task 4, *Complaint Control System for IAD*, states the specific requirements for ICRs, as does Department General Order M-3. There are ten requirements associated with Task 4. Four requirements (forwarding documentation to IAD, unduly influencing persons making a complaint, complaint receipt, and notification of Chief of Police in cases likely to generate unusual interest) were not assessed. OIG’s audit of the remaining seven tasks found the Department to be in compliance with all seven tasks as they pertain specifically to the ICR process. While some of the tasks pertain to both the ICR process and the formal complaint process, for purposes of the audit, only completed ICRs were reviewed.



The ICR documentation, according to the Agreement, must include eight elements. Informal complaints will document 1) the receipt of the complaint; 2) the date of complaint; 3) the time of complaint; 4) the location of complaint; 5) the name of the person making the complaint; 6) the name of the person receiving the complaint; 7) how the matter was resolved; and, 8) that the person making the complaint was advised of the formal complaint process. For the eight required elements, the Department was 100% in compliance with all but one, the documentation of time. There were three incidents in which the time was not documented resulting in 94.3% compliance for that specific element. After averaging the compliance rate for all eight elements the Department was 99.3% in compliance with Task 4.2, well above the 85% compliance requirement.

According to Task 4.10, the subject member/employee and violation must be eligible for the ICR process. In only one case, the ICR process was incorrectly applied to resolve a Class I allegation of misconduct, which is not eligible for the ICR process.

Overall, the Department has shown significant strides towards full compliance with Task 4, especially with the ICR process. The Department's complaint database, where complaints are assigned either an intake number or an IAD case number, has even been credited by the IMT as being a focal point of the improvements made to the IAD's Complaint Control System. With only minor adjustments to the case tracking system the Department is well on its way to 100% compliance with Task 4.

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

- Settlement Agreement Section III. E; page 8, line 18 – page 11, line 7 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: BOS

#### **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 and Training 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*

#### **OIG Audit Summary**

In May of 2007, the OIG initiated a review to determine if OPD is complying with Task 5 of the Agreement. Only five requirements of Task 5 were assessed, Tasks 5.15, 5.16, 5.18, 5.19, and 5.21. OIG found the Department in compliance with two of the five reviewed Task 5 requirements, including:

- Ensuring each allegation in a complaint is resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Filed;
- Ensuring every member or employee who is the subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, is interviewed;

Although the review indicated that OPD has greatly improved in executing the directives in the Agreement, it also found that the Department has not yet achieved full compliance with Task 5. To be in compliance with these tasks, the Department must continue to do well in the areas mentioned above and improve in the following areas:

- Gathering and documenting all relevant evidence, including circumstantial, direct and physical evidence, and making credibility determinations, if feasible.
- Making efforts to resolve, by reference to physical evidence, and or use of follow-up interviews and or other objective indicators, any inconsistent statements among witnesses.
- Documenting analysis of the evidence supporting a finding for each allegation in a complaint investigation, ensuring the “preponderance of the evidence” standard is met.

Even though full compliance with Task 5 has not yet been attained, IAD has greatly improved the quality of its investigations.

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

- Settlement Agreement Section III. F; page 11, lines 8-12 (lead-in page 6, line 24- page 7, line 2)
- Assigned Unit: IAD

#### **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*

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

- Settlement Agreement Section III. G; page 11, line 13 – page 12, line 7 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

#### **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.
- IAD has installed a complaint hotline. As of the publication of this report, all equipment has been installed in order for the hotline to run properly and at full capacity. When the IAD is closed for business, the hotline is forwarded to the Communications Division where a dispatcher takes the information from the caller and disseminates it to the on-duty supervisor. The complaint hotline requirements are outlined in DGO M-3 and the IAD Manual.

### **IMT Audit Summary**

Task 7.3 requires OPD to accept and investigate anonymous complaints to the extent reasonably possible. The IMT completed a compliance review of this aspect of Task 7 in December of 2007 and found OPD not yet in compliance with this requirement. While the IMT noted many examples of good investigations of anonymous complaints, it also found cases out of compliance because investigators did not take the investigative steps that reasonably should have been taken or documentation was inadequate and inaccurate. Of the 25 anonymous complaints of misconduct that the IMT focused on, 18 (72%) were investigated to the extent reasonably possible. In three more cases, the IMT was unable to determine whether the complaint was investigated to the extent reasonably possible, but based upon the available information, it appears it was not.

The IMT noted that while OPD is not yet in compliance with the Settlement Agreement's requirement that anonymous complaints be investigated to the extent reasonably possible, it does a far better job investigating these cases than previously and no longer dismisses out-of-hand complaints made anonymously. In nearly every complaint reviewed, IAD conducted some investigation of the complaint where at all possible. The IMT also noted when the IAD commander received the IMT report, he immediately developed and presented to investigators a training regarding anonymous complaints detailing the IMT findings and setting out its recommendations. As well, IAD reports that, going forward, investigators and intake officers will listen to all audio recordings related to complaints.

### **OIG Audit Summary**

In October of 2007, the OIG initiated an audit of Task 7. All but two of the eight requirements for this Task were audited. Tasks 7.3 and 7.5 were not assessed. Task 7.3, Investigation of Anonymous Complaints, was not assessed due to time constraints since it requires an in depth review of the complaint process. Task 7.5, Distribution of Complaint Forms and Informational

Brochures, was not assessed since the IMT conducted an audit of this task in July 2007 and found the OPD to be in compliance.

OIG's audit of Task 7 indicated that the Department was in compliance with six of the six requirements that were assessed.

1. Task 7.1—The Department maintained its complaint line and ensured that it was staffed by Departmental personnel. All calls placed were received by Department personnel.
2. Task 7.2—The Department successfully posted its Public Notice entitled *Your Guide to Filing A Complaint Against the Police* in seven of the eight locations required by Internal Affairs Division (IAD) Policy and Procedures 05-01. The one location that did not have the guidelines posted was the Oakland Coliseum, which is not a City of Oakland facility. However, at all of the eight locations, complaint forms and brochures were available by request or on display.
3. Task 7.4—All members interviewed had complaint forms and informational brochures available either in their vehicles or on their persons.
4. Task 7.6—The IAD continued to maintain its dedicated facility removed from the Police Administration Building.
5. Task 7.7—The Department had both complaint forms and informational brochures translated into Spanish, Chinese, and Vietnamese, in accordance with City policy.
6. Task 7.8—Complaint forms continued to be processed in accordance with controlling state law.

The Department has made significant progress in complying with the mandates of Task 7 as evidenced by the improvements it has made since the IMT's audit of Task 7 during the ninth reporting period (January 2007).

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

- Settlement Agreement Section III. H; page 12, line 8 – page 13, line 12 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

#### **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 Partial Practice Compliance**

### **Deliverables**

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

### **OIG Audit Summary**

In May of 2007, the OIG initiated a review to determine if OPD is complying with Task 8 of the Agreement. The review focused on Tasks 8.1, 8.5, 8.8 and 8.9. The review found the Department in compliance with 8.1, 8.5 and 8.8, and found no cases that were applicable to 8.9.

- Ensuring that misconduct complaints are categorized according to “Class I” or “Class II” offenses (8.1);
- Ensuring statements and interviews in “Class I” investigations are tape-recorded (8.5);
- Ensuring statements and interviews from OPD personnel in “Class II” investigations are tape-recorded (8.8); and
- When an assigned investigator encounters a “Class I” violation during a “Class II”, division-level investigation, he/she shall contact the IAD Commander (8.9).

Although OIG’s review did not assess all requirements of Task 8, based on OIG’s review and the IMT’s Fall 2006 Review, all but one of the Task 8 requirements appear to be in compliance. During its Fall 2006 Review, the IMT found the Department in compliance with Tasks 8.2, 8.3, 8.6 and 8.7, which were not assessed during the OIG review. Task 8.4 was not assessed by OIG and was found out of compliance by the IMT.

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

- Settlement Agreement Section III. I.; page 13, lines 13-16 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

### **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 and Training Compliance**

### **Deliverables**

Internal Affairs Division Policy and Procedures Manual

### **OIG Audit Summary**

In May of 2007, the OIG initiated a review to determine if OPD is complying with Task 9 of the Agreement. The OIG review found that OPD was in compliance with Task 9.

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

- Settlement Agreement Section III; page 6, line 23 – page 7, line 2
- Assigned Unit: IAD

### **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**

### **Deliverables**

Internal Affairs Division Policy and Procedures Manual

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

- Settlement Agreement Section III. J; page 13, lines 17-26 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

### **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 Partial Practice Compliance**

### **Deliverables**

Internal Affairs Division Policy and Procedures Manual

### **OIG Audit Summary**

On February 29, 2008, OIG initiated an audit to determine if OPD is complying with Task 11 of the Agreement. Task 11, *Summary of Citizen Complaints Provided to OPD Personnel*, requires that an investigator of a citizen complaint provide a brief synopsis of the complaint alleged against an OPD member/employee to that member/employee. A copy of the synopsis is to be maintained in the IAD investigation file and the subject Member/Employee's immediate chain of command is to be notified of the allegation and investigation. In addition, the subject member/employee is not allowed to read the complaint itself or to review citizen statements or other statements prior to the member's/employee's interview.

The OIG audit revealed that OPD was in compliance with Task 11. Sixty internal investigations were examined for the audit of Task 11. Of the 60 investigations reviewed, 52 (87%) of the investigations properly documented that the subject member/employee was provided a synopsis of the citizen complaint and a copy of that synopsis was included in the IAD investigation file, and 51 (85%) properly documented that the subject member/employee's immediate chain of command was notified of the allegation and investigation.

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

- Settlement Agreement Section III. K; page 14, lines 1-11 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

#### **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 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*

### **OIG Audit Summary**

On February 29, 2008, OIG initiated an audit to determine if OPD is complying with Task 12 of the Agreement. Task 12, *Disclosure of Possible Investigator Bias*, requires investigators to disclose relationships that might lead to the perception of bias regarding the subject(s) of any investigation. In cases where it is clear that the nature of the relationship could be perceived to compromise the investigative process, the investigator(s) shall recuse him/herself from the investigation.



The OIG audit revealed that OPD was in partial compliance with Task 12. Only 19 (32%) of the 60 investigations reviewed had properly completed recusal letters. The audit found no investigations in which the investigator conducting the investigation should have been removed to ensure a fair and impartial investigation.

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

- Settlement Agreement Section III. L.; page 14, lines 12-14 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

#### **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

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

- Settlement Agreement Section III. M.; page 14, lines 15-24 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

#### **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)

### **OIG Audit Summary**

In April 2007, the OIG initiated an audit of Task 14, which requires the Department to investigate allegations of Manual of Rules violations arising out of lawsuits and legal claims. Beginning with a list of 183 claims and litigations filed between January 1, 2006 and December 31, 2006, the audit found that the Department conducted the appropriate investigations 99.42% of the time. Closer inspection of a representative sample of cases revealed that investigations were not being delayed, modified, or terminated because of their related civil issues.

Through IAD investigations and Division Level investigations, coupled with the Department's review process, the OPD was meeting the requirements of Task 14 in that 1) Internal Affairs receives notifications of lawsuits and legal claims and investigates any associated allegations of Manual of Rules violations (Task 14), and 2) internal investigations are handled separately from City Attorney investigations and OPD does not delay, halt, modify, or terminate investigations because the underlying matter is in civil litigation (Task 14.1).

There were no applicable cases for Tasks 14.2 and 14.3. Task 14.2 allows the Chief of Police to hold findings of an internal investigation in abeyance if he/she determines that a concurrent civil litigation is likely to yield additional information relevant to the internal investigation, but requires that the delay last no longer than necessary and reasons for the delay must be documented. Task 14.3 does not take effect unless a finding is held in abeyance as provided for in Task 14.2. Task 14.3 requires the Chief, in these instances to ensure that the "investigation continues on all areas of the internal investigation." There were no cases held in abeyance and therefore, there were no applicable cases for 14.2 and 14.3.

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

- Settlement Agreement Section III. N; page 15, lines 1-4 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

#### **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 Section III. O.; page 15, lines 5-11 (lead-in page 6, line 24 – page 7, line 2)
- Assigned Unit: IAD

#### **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 Section IV; page 15, lines 15-18
- Assigned Unit: N/A

#### **Settlement Agreement Language**

“By January 20, 2004, OPD must develop and implement, based on contemporary police standards and best practices, policies to address certain standards and provisions (set forth in section IV, paragraphs A–F) related to Supervisory Span of Control and Unity of Command.”

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

- This task has no separate requirements or provisions. It covers the overall timelines for Tasks 18, 19, 21, and 23. There are no specific provisions covered by this Task.
- Compliance Date: January 20, 2004
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in December 2005.

**Deliverables:** Not Applicable

**Implementation Activities:** Not Applicable

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

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

- Settlement Agreement Section IV. A.; page 15, line 19 – page 16, line 5 (lead-in page 15, lines 16-18)
- Assigned Unit: BFO

#### **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 Conditional Practice Compliance**

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

#### **Deliverables**

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

#### **IMT Audit Summary**

During the last reporting period, the IMT conducted its second audit of actual practice compliance with this task and found that OPD had made significant progress in ensuring that its Supervisors respond to the scene of designated arrests and that required elements are reviewed and documented sufficiently. The IMT found the Department in compliance with all requirements of Task 18, with the exception of the witness identification requirement, which they did not assess. The IMT will be assessing OPD's compliance with the witness identification requirement in an upcoming audit. If the police reports show that witness identification is not occurring as required, OPD will fall out of full compliance with Task 18.

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

- Settlement Agreement Section IV. B; page 16, lines 6-10 (lead-in page 15, lines 16-18)
- Assigned Unit: BFO

#### **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*

**IMT Audit Summary**

During this reporting period, the IMT conducted an audit of actual practice compliance with this task and found OPD 100% compliant with both requirements of the task. Not only is this achievement a stark contrast to the practice in place when the Agreement was initiated, it also contrasts with the last reporting period, when this audit could not be completed because OPD was unable to provide the basic operational data necessary to conduct this assessment. The requirement of clear and close supervision is critical both to OPD’s operational effectiveness and its system of accountability. OPD’s compliance with this task is thus an important step towards reaping the benefits of its reform efforts.

Task 19.1 requires a single, clearly identified supervisor or manager for each member or employee. The IMT was able to clearly identify a single supervisor for each of OPD’s 1,015 members and employees as of June 1, 2007: compliance was 100%. OPD is doing very well in assigning a single, clearly defined supervisor to its officers.

Task 19.2 requires that sergeants work the same schedules as the individuals they supervise. The IMT found that of the 665 members and employees reporting to a sergeant as of June 1, 2007, 86 had a schedule that varied by more than two hours or worked some different days than their sergeant. In addition, 15 members and employees had schedules listed on the organizational charts as “varies.” (Most of these employees were annuitants conducting background checks.) The remaining members and employees (85%) worked the same schedules as their sergeants or had a schedule variance of two hours or less. The review showed that each instance of a schedule variance greater than two hours or with different days off was justified by the nature of the member/employee’s assignment, including his/her duties and the level of supervision otherwise being provided. The IMT found the Department in 100% compliance with this task.

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

- Settlement Agreement Section IV. C; page 16, line 11 – page 17, line 1 (lead-in page 15, lines 16-18)
- Assigned Unit: BFO

### **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 and Training 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

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

- Settlement Agreement Section IV. D.; page 17, lines 2-19 (lead-in page 15, lines 16-18)
- Assigned Unit: BOS

**Note:** DGO B-6 is covered by and includes Tasks 21 and 44. Both of these Tasks share the same deliverable.

### **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 Partial Practice Compliance**

### **Deliverables**

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

### **Implementation Activities**

During this reporting period, 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.

### **OIG Audit Summary**

In April 2007, OIG conducted a second audit to determine whether OPD is complying with Task 21 of the Agreement. Task 21, *Members', Employees' and Supervisors' Performance Review*, requires that OPD commanders and managers meet twice a year with their subordinate members, employees, and supervisors to coach them on their strengths and weaknesses and that the commanders and managers document said meetings. Additionally, Task 21 requires that specified OPD members/employees receive informal performance reviews twice a month and that said meetings be documented.

Task 21 has two subtasks, Tasks 21.1 and 21.2. Task 21.1 was not assessed in this audit. When the audit was initiated, the Department was in the process of developing a system that would more easily track reporting relationships between commanders/managers and their subordinates over time. The Department has recently implemented a new system that will archive quarterly organizational charts, making it easier to audit this requirement in the future.

The audit of Task 21.2 indicated that OPD was in compliance with its requirements. Task 21.2 requires specified OPD supervisors to meet with their respective subordinates at least twice a month to conduct informal performance reviews and document these meetings. The Department has made significant progress in its ability to document compliance for 21.2. However, subsequent to the completion of this audit, the documentation requirements for this Task were changed. In the future, the documentation used to assess compliance during this audit will no longer be required to achieve compliance.

It was recommended that a revision be made to Departmental General Order B-6 to ensure that OPD supervisors are aware of their responsibility: when a member/employee works three weeks or more in a particular month, the supervisor is responsible for conducting at least two informal performance reviews with the member/employee. If a member/employee works at least two weeks but less than three weeks in a particular month, the supervisor is responsible for conducting at least one informal performance review with the member/employee.

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

- Settlement Agreement Section IV. E.; page 17, line 20 – page 18, line 1 (lead-in page 15, lines 16-18)



- Assigned Unit: BOI

**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.

**Deliverables**

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

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**Task 23: Command Staff Rotation**

- Settlement Agreement Section IV. F; page 18, lines 2-8 (lead-in page 15, lines 16-18)
- Assigned Unit: OCOP

**Settlement Agreement Language**

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*

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

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

- Settlement Agreement Section V. A; page 18, line 13 – page 19, line 12 (lead-in page 18, lines 11-12)
- Assigned Unit: BFO

#### **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 Full 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.
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in April 2008.

#### **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

#### **Implementation Activities**

The Use of Force policies were published on February 18, 2006 and launched on May 13, 2006. Since the launch of the new Use of Force policies there has been a significant increase in the number of reports completed by members. Both good and poor tactical decisions made by

officers and supervisors have been identified, resulting in retraining when deemed necessary. The identification of, and training for, tactical considerations that are associated with uses of force continue to be explored.

### **IMT Audit Summary**

During this reporting period, the IMT conducted a compliance assessment of Task 24. The new use of force reporting policies represent a significant improvement over prior policy, which did not require officers to report most use of force. Consistent with contemporary law enforcement practices, the new policies require OPD officers to report all significant levels of force, including, for example, hand strikes, use of tasers or OC spray, or pointing firearms at an individual. The new policies also require officers to summon their supervisors to the scene when certain levels of force are used or there is an allegation that such force was used. Until the current reporting period, the IMT had refrained from conducting a formal audit of OPD's compliance with the new use of force reporting and investigation provisions in order to provide the Department an opportunity to adjust to the new policies and procedures. The IMT audit found OPD in compliance with all of the requirements of this task.

Task 24.1 requires OPD personnel to notify their supervisors as soon as practicable following any reportable use of force or allegation of excessive use of force. It also requires personnel to report force on the appropriate forms. Based on the use of force investigative reports and supplemental materials reviewed, the IMT found that personnel notified their supervisors and properly reported the force used in 96% of the cases reviewed. In the cases that were out of compliance, supervisors were notified but not as soon as practicable. This appears to have been due, at least in part, to a lack of understanding of OPD's use of force reporting policies.

Tasks 24.2 and 24.3 require OPD personnel who use force and OPD personnel 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 used in 45 of the 47 incidents. This represents a 96% compliance level.

Task 24.4 requires supervisors to respond to the scene upon notification of certain levels of force in order to conduct a use of force investigation. The IMT found that supervisors responded as required in 98% of cases reviewed, making OPD in compliance with Task 24.4.

The remaining requirements of Task 24 relate to notification of OPD's Homicide and Internal Affairs Divisions and the District Attorney's Office and City Attorney's Office when officers fire their weapons at suspects or use force that results in death or injury likely to result in death. The IMT found that OPD notified Homicide and Internal Affairs as required in each of the officer-involved shooting cases reviewed. Likewise, although there were issues with documentation, the IMT found that OPD notified both the District Attorney's Office and the City Attorney's Office as required by the Settlement Agreement. Therefore, the IMT found OPD in compliance with the requirements of Tasks 24.5, 24.6, and 24.8.

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

- Settlement Agreement Section V. B; page 19, line 13 – page 21, line 16 (lead-in page 18, lines 11-12)
- Assigned Unit: BFO

### **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)

#### **Implementation Activities**

The Use of Force policies were published on February 18, 2006. Under these new policies, Use of Force investigative packets now contain detailed information that previously was not consistently available. This has resulted in better, more complete investigations and a review process that can take into account all information when determining the appropriateness of uses of force. However, in many cases, it has taken multiple hours, over several days, for supervisors to complete the required reports. As they become more proficient at Use of Force Investigations, the time to complete the reports should decrease.

#### **IMT Audit Summary**

During the current reporting period, the IMT conducted a review of Task 25 and found OPD to be in partial compliance.

Task 25.1 requires that Internal Affairs complete use of force reports in the most serious use of force cases including officer-involved shooting cases and other uses of force that result in or create a substantial risk of death or serious injury. For all other uses of force, depending on the level of force used, on-scene supervisors or officers are required to complete use of force reports. The compliance standard for this requirement is 95%. The IMT found that OPD is doing a very good job in adjusting to the new use of force policies. Use of force reports were completed as required by Task 25.1 in 98% of the cases we reviewed.

Task 25.2 requires OPD to investigate any use of force in a timely manner and include specific elements in the Use of Force Reports (i.e. supplemental reports/statements from all personnel on the scene at the time of incident, consideration of discrepancies, and documentation and analysis of evidence). OPD is not in compliance with this requirement. Only 21% of the investigations the IMT reviewed met the timeline requirements. The average compliance rate for the nine

required elements was 80%. While OPD has made considerable progress in the quality of its use of force investigations, it is not yet in compliance with Task 25.2.

Task 25.3 requires OPD to train all of its patrol and Internal Affairs supervisors on how to conduct use of force investigations as part of a supervisory training course. The IMT reviewed the training records of all 103 of OPD's current patrol and Internal Affairs sergeants and lieutenants and found the Department in compliance with this requirement. Ninety-nine of the supervisors and commanders received supervisory investigations training last year when the Department updated its new use of force policies and procedures.

Task 25.4 requires OPD to include the following recommendations in each use of force investigation: Whether force was pursuant to a legitimate law enforcement objective; whether type and amount of force was proportional to the resistance encountered and reasonably related to the objective the officers were attempting to achieve; whether the officer used reasonable verbal means to resolve the situation, if time and circumstances permitted; and whether the force was de-escalated or stopped reasonably when resistance decrease or stopped. Averaging compliance percentages for each of these recommendations, the IMT found OPD in compliance on this task with an overall compliance percentage of 97%.

Task 25.5 requires OPD to include the following when reviewing use of force reports: whether the case had been reviewed by chain of command under which the member was working at the time force was used; whether the force complied with policy; whether additional investigation and investigative resources ordered when necessary; and whether any recommendation that use of force did not comply with policy was referred to IAD for additional investigation/analysis if necessary. The primary purpose of use of force reporting is to ensure that officers who use out-of-policy force are held accountable and re-trained where necessary. While the IMT was concerned and disappointed that OPD did not refer any questionable cases to IAD, averaging the subtask compliance percentages, the overall compliance percentage for Task 25.5 was 91%. OPD is in compliance with Task 25.2.

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. Internal Affairs routinely assesses compliance with this task upon at its arrival at the scenes of officer-involved shootings. While the Department was not yet in compliance, the IMT noted significant improvement in OPD's compliance with this requirement. In seven (88%) of the eight Level 1 shooting investigations, the IMT determined that officers were separated as required by this task.

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

- Settlement Agreement Section V. C; page 21, line 17 – page 22, line 11 (lead-in page 18, lines 11-12)
- Assigned Unit: BFO

### **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**

During the current reporting period, the IMT conducted a review of Task 26 and found OPD to be in partial 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

### **Implementation Activities**

The Use of Force policies were published on February 18, 2006.

### **IMT Audit Summary**

During this reporting period, the IMT conducted a compliance assessment of Task 26 and found OPD in partial compliance with this task.

Task 26.1 requires the OPD Force Review Board (FRB) to review all Level 2 Use of Force Investigations following completion of investigation of the incident by a supervisor. Under current policy, the following types of force are considered Level 2 uses of force: any strike to the head (except for intentional strikes with an impact weapon which are considered Level 1 uses of force); carotid restraints that do not result in the loss of consciousness; uses of impact weapons where contact is made; unintentional firearms discharges that do not result in any injuries; police canine bites; and any use of force which results in injuries to the subject requiring emergency medical treatment or hospital admittance. During the time period for the cases the IMT reviewed, use of a taser was also considered a Level 2 use of force subject to review by the FRB. The IMT found that the FRB reviewed each of the investigations in the IMT audit sample following completion of an incident investigation by a supervisor. Accordingly, the IMT found OPD in compliance with Task 26.1.

However, the IMT noted that some FRB reviews seemed perfunctory, perhaps due to the lack of a consistent high-level command presence at the FRBs. After the IMT brought this to the Department's attention, a change was made to require that a deputy chief, patrol captain, or other experienced captain attend the board. The IMT praised this positive development as critical for the Department.

Task 26.2 requires the FRB to make a recommendation regarding whether the use of force was in or out of policy for every Level 2 use of force. The FRB made a recommendation in all of the Level 2 cases assessed. Accordingly, OPD is in compliance with Task 26.2.

Task 26.3 requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to the Internal Affairs Division for investigation. Since the FRB did not

determine that any of the incidents assessed for this review were out of compliance with OPD policy, this provision was not applicable.

Task 26.4 requires the FRB to make recommendations to the Chief of Police regarding additional use of force training; changes in policies or tactics; additional standards; investigatory policies; or training for use of force investigations. The IMT noted that OPD is not yet in compliance with this requirement: sufficient recommendations to the Chief were made in just a third of the cases reviewed. In several cases where recommendations should have been made, the FRB did not make *any* recommendations to the Chief. In other cases, while the FRB made at least one recommendation, the recommendations were not sufficient given the nature and seriousness of the issues requiring remediation.

Task 26.5 requires the FRB to conduct an annual review of the use of force cases it examines to identify any trends in use of force that may have policy or training implications. The IMT found OPD in compliance with this requirement. According to the FRB's annual review report, it conducted a total of 15 Force Review Boards in 2007 and reviewed 110 use of force investigations. Beginning this year, the FRB began requiring officers to come into the FRB immediately following the Board's discussion of the incident. The FRB began this process in order to provide the officer and his or her sergeant "on-the-spot" counseling directly from the Board and to recognize good conduct. The IMT encouraged this positive development, which ensures that remedial training is provided quickly with little likelihood that the training message will be misinterpreted or misconstrued.

Task 26.6 requires the FRB to report its annual review findings to the Chief of Police. The FRB issued a brief annual report summarizing its use of force trends review. The report was distributed to the Chief, Deputy Chiefs, and City Attorney's Office. The report contains global statistical information regarding the number of different types of force incidents and notes the trends discussed above. While the IMT suggested that the report would be more useful to the Chief and other departmental managers if it included a detailed analysis of force issues, it found OPD in compliance with this requirement.

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

- Settlement Agreement Section V. D.; page 22, lines 12-16 (lead-in page 18, lines 11-12)
- Assigned Unit: BOI

#### **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 Conditional Practice Compliance**

### **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 Section V. E.; page 22, lines 17-21 (lead-in page 18, lines 11-12)
- Assigned Unit: BOI

### **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 and Training Compliance**

### **Deliverables**

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

### **Implementation Activities**

Departmental General Order M-4, *Coordination of Criminal Investigations*, had been revised to clarify procedures. The policy was revised and renamed M-4.1, which was published on April 21, 2006.



### **IMT Audit Summary**

During this reporting period, the IMT conducted an audit of actual practice compliance with this task. The parties agreed that OPD will be considered in compliance with this task if it notifies the District Attorney within 24 hours of the BOI Deputy Chief learning of criminal misconduct by an OPD member. Previously, the BOI Deputy Chief was required to inform the District Attorney within two hours.

Task 28 requires that OPD report to Alameda County District Attorney's office all uses of force; citizen complaints; and other member/employee-involved actions in which there is apparent evidence of criminal misconduct by a member/employee. The IMT found that OPD's notification processing is improving; however, at the time of its review, notifications were not occurring in a timely manner. In four of the eight relevant cases reviewed, notification to the District Attorney did not occur within two hours of OPD's determination of reasonable suspicion of criminal misconduct as required by OPD's policy. In three of the cases, the IMT was unable to determine whether notification occurred within two hours; however, in many instances, it appeared that notification eventually occurred but not until weeks or months after OPD had learned of the apparent criminal activity. In only one case was the IMT able to confirm that the District Attorney or other relevant law enforcement agency was notified within two hours of the BOI Deputy Chief's determination of reasonable suspicion.

The IMT found that lack of timely notifications appeared related to a misunderstanding of the purpose of notification and the requirements of applicable policies. But since OPD has now developed a system to ensure that timely notifications occur, the IMT anticipates that OPD's compliance in this area will improve dramatically going forward.

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

- Settlement Agreement Section V. F; page 22, line 22 – page 23, line 2 (lead-in page 18, lines 11-12)
- Assigned Unit: BOI

#### **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 and Training Compliance**

### **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*

### **Implementation Activities**

Departmental General Order M-4, *Coordination of Criminal Investigations*, had been revised to clarify procedures. The policy, revised and renamed M-4.1, was published on April 21, 2006.

### **IMT Audit Summary**

During this reporting period, the IMT conducted an audit of actual practice compliance with this task. While the IMT did not find OPD in compliance with Task 29, they did find that OPD's handling of criminal misconduct allegations is vastly improving and continuing to evolve.

Task 29.1 requires that OPD coordinate its administrative investigation of members/employees with the Alameda County District Attorney's Office, or relevant criminal investigators, if a criminal proceeding is potentially viable. Compliance requires that IAD coordinate with the criminal investigation, including the Alameda County District Attorney if applicable. The IMT found that such coordination has improved tremendously over what was previously observed, but the system in place is still somewhat haphazard and inconsistent. Although there have been problems in coordinating criminal administrative interviews of those member/employees who are the subjects of criminal misconduct investigations, there are no written protocols regarding this area. There also appears to be a difference in understandings of how such coordination between the Criminal Investigations Division (CID) and IAD should occur. OPD is currently in the process of ensuring future misunderstandings do not occur between the two divisions and that the investigations are conducted in an efficient manner.

Task 29.2 requires that when OPD initiates an interview or interrogation of OPD personnel and it appears that the subject may be charged with a crime, or he or she asserts their Fifth Amendment rights on grounds that the answers to questions posed many incriminating, such interrogations must be preceded by a Lybarger warning. A Lybarger warning, named after the 1985 case, *Lybarger v. Los Angeles* 40 Cal. 3d 822, requires that the subject officer in a criminal investigation be ordered to provide an administrative statement; told that he or she may be disciplined if they refuse to do so; and be advised that the statement will not be used against them in any criminal proceeding.

Of the 12 cases the IMT reviewed, seven required Lybarger warnings. For the most part, OPD provided proper warnings to personnel suspected of criminal misconduct, but in two of the seven instances in which OPD should have “Lybargered” personnel prior to the interview, it did not occur, causing OPD to be out of compliance with this task.

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

- Settlement Agreement Section V. G.; page 23, lines 3-9 (lead-in page 18, lines 11-12)
- Assigned Unit: BFO

**Compliance Date:** July 20, 2004

#### **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 and Training 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)

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

- Settlement Agreement Section V. H.; page 23, lines 10-19 (lead-in page 18, lines 11-12)
- Assigned Unit: BOI

**Note:** Task 31.4 and 31.5 were assessed as part of Task 24.

#### **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**

- Policy: Training Bulletin V-O, Officer Involved Shooting, was published on August 21, 2003. However, the IMT indicated that we published the training bulletin(s) associated with this Task prior to their engagement with the Department. The IMT reviewed the training bulletin and advised the Department that it did not adequately incorporate the requirements of the Agreement.
- Although the above-listed training bulletin addresses the provisions of this Task, portions of this Task will also be reflected in the following Department publications:
  - Revised Departmental General Order K-3, *The Use of Force*;
  - Revised Departmental General Order K-4, *Reporting the Use of Force*; and
  - Revised Departmental General Order K-4.1, *Investigating the Use of Force*.
- Compliance Date: July 20, 2004
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in April 2008.

### **Deliverables**

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**

The IMT found OPD in compliance with all requirements of Task 31, which deals with officer-involved shooting investigations. Task 31.1 requires that Homicide and Internal Affairs investigators respond to the scene of every officer-involved shooting. The IMT found that both Homicide and Internal Affairs investigators conducted separate, parallel investigations: Homicide investigators conducted criminal investigations while Internal Affairs investigators conducted administrative investigations, focusing on policy and training compliance, whether proper tactics were used, and other risk management issues. Therefore, the Department is in compliance with this task. Prior to the Agreement, OPD did not conduct administrative investigations of officer-involved shootings. As a result, it missed opportunities to identify and correct deficiencies in this critical area. The Department is now doing comprehensive administrative investigations of officer-involved shootings and reviewing them at the highest level. On-scene response by Internal Affairs investigators is a central component of these administrative investigations.

Task 31.2 requires OPD to conduct officer-involved shooting investigations in partnership with, and when deemed appropriate by, the Alameda County District Attorney's Office. In all cases the IMT reviewed, OPD cooperated with the District Attorney and is in compliance with this task. The District Attorney's Office has praised OPD's cooperation as "exemplary." OPD

notifies the District Attorney's Office in a timely fashion following officer-involved shootings, giving the District Attorney an opportunity to come out to the scene and participate in subject officer investigations. Likewise, OPD provides the District Attorney's Office with evidence it has gathered so that it can conduct its own assessments. After the District Attorney's Office has completed its review, it issues an officer-involved shooting report, informing the Department whether or not it has decided to prosecute the subject officers. Historically, it has taken months and in some cases over a year for OPD to receive the District Attorney's report. The IMT noted that despite an agreement reached in late 2006, in which the District Attorney's Office would endeavor to provide OPD with a determination within two weeks of receiving OPD's completed investigative packet, these delays have continued. Excessive delays in receiving the District Attorney's determination prolong the already high levels of stress and anxiety experienced by officers who are involved in shootings. The IMT encouraged the Department to continue to work with the District Attorney's Office to address this issue.

Task 31.3 requires that interviews of the subject officer be conducted jointly with the appropriate staff from Homicide and the District Attorney's Office. Homicide investigators conducted interviews of the subject officers in all officer-involved shootings. In five incidents, Homicide conducted the subject officer interviews jointly with investigators from the District Attorney's Office and provided the District Attorney an opportunity to participate in the subject officer interviews in all of the cases. Accordingly, OPD is in compliance with Task 31.3.

Tasks 31.4 and 31.5 are redundant of requirements contained in Task 24 (24.5 and 24.6, respectively) and were found in compliance. Accordingly, they were not separately assessed for Task 31.

Task 31.6 requires OPD to provide all evidentiary material to the District Attorney's Office, the Internal Affairs Division, and the City Attorney's Office. OPD is in compliance with this requirement. Based on the IMT's review of the investigative files and its interviews with Homicide personnel and the District Attorney's Office, during the course of and at the completion of its criminal investigation, 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. OPD is in compliance with this task.

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

- Settlement Agreement Section V. I; page 23, lines 20-21 (lead-in page 18, lines 11-12)
- Assigned Unit: BFO

### **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
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in October 2003.

**Deliverables**

Research report.

**Implementation Activities**

The Department's research and recommendations were presented to the Chief of Police in a report dated September 8, 2003. On June 6, 2003, the Chief of Police requested that a report of a funding source study be completed. This request was assigned to the BFO with a due date of July 7, 2003, and the report was provided to the Chief. As of the publication of this report, the Department has been awarded \$521,000 on a COPS Federal Technology Grant and the City has earmarked approximately \$1,438,000 for the purchase of In Car Videos.

A Request for Proposals process concluded in February 2006 and the Department identified a vendor (Digital Patroller) to install approximately 80 cameras in police vehicles, including constructing a video network and installing security equipment to support secure video transmissions for an amount exceeding \$1,900,000. During this reporting period, the Department has continued to implement the program. The Department has installed 101 cameras and upgraded equipment.

## REPORTING PROCEDURES

### Task 33: Misconduct

- Settlement Agreement Section VI. A; page 23, line 25 – page 24, line 16 (lead-in page 23, lines 23-24)
- Assigned Unit: BOS

#### 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 Section VI. B; page 24, line 17 – page 25, line 6 (lead-in page 23, lines 23-24)
- Assigned Unit: BFO

**Compliance Date:** August 25, 2003

#### **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*

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

- Settlement Agreement Section VI. C; page 25, lines 7-16 (lead-in page 23, lines 23-24)
- Assigned Unit: BOS

#### **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 Partial Practice Compliance**

Policy: Special Order 8066, *Use of Force – Witness Identification*, was published on December 23, 2003. However, in February 2004, the IMT determined that the term “when applicable” as referenced in two sections of the Order did not provide specific guidelines of when officers must take statements from witnesses. The Department agreed, revised the Order to remove the ambiguity, and published a revised Special Order on April 1, 2004. The provisions of Special Order 8066 were folded into the published versions of DGO’s K-4 and K-4.1.

### **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**

Compliance standards for this task were lowered in the tenth reporting period from 95% to 85% or 90%. During this reporting period, the IMT continued to work with OPD in this area, and upon completing a formal compliance assessment of Task 35, found the Department in partial compliance.

Task 35.1 requires use of force reports to include the name, telephone number, and address of witnesses to use of force incidents when such information is reasonably available to the members/employees on the scene. Task 35.2 requires that use of force reports document when there are no known witnesses. The compliance standard for these requirements is 90%. The IMT noted that while OPD is not yet in compliance with this task, it has seen substantial improvement: 83% of cases reviewed included all of the required contact information or sufficient information to contact the witnesses should it be necessary (e.g., if a phone number was missing but the name and address were documented, the IMT considered the case compliant) and/or stated when there were no known witnesses to the incident.

Task 35.3 requires that when witnesses are present but circumstances prevent the investigator from obtaining their identification, phone number, or address, the use of force report document the reasons why such information was not obtained. Since only five of nine of the investigations (56%) included documentation of the reasons why witness information was not obtained, the IMT found OPD not yet in compliance with this task.

Task 35.4 requires OPD to include in use of force reports the names of all OPD personnel who witness the incident. OPD is in compliance with this requirement. Based on the use of force reports and investigative files, all of the cases reviewed included the names of OPD members

and employees who witnessed the use of force. The IMT noticed a dramatic improvement in this area. 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. Accordingly, OPD is in compliance with Task 35.4.

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

- Settlement Agreement Section VI. D.; page 25, lines 17-24 (lead-in page 23, lines 23-24)
- Assigned Unit: BOS

#### **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 Partial Practice Compliance**

Policy: Special Order 8262, Transportation of Persons in Police Vehicles, was published September 15, 2005.

#### **Deliverables**

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

#### **IMT Audit Summary**

During this reporting period, the IMT conducted an audit of OPD’s actual practice compliance with Task 36. This is the IMT’s second audit of this task and considerable improvements were made, allowing for partial practice compliance to be given to this task. The IMT looked at a total of 353 transports made by OPD members for the one-month period of March 15, 2006 through April 15, 2006.

Task 36.1 requires that officers log in and out on the radio when transporting a detainee or any other civilian (unless the transport is done by a wagon). Of the sample provided to the IMT, 83% of the members and employees logged both in and out as required. While falling short of compliance, this is significant progress from the 63% documented in the IMT’s first audit of this task.

Task 36.2 requires that radio reports regarding applicable transports include the following information: time (beginning and ending), mileage (beginning and ending), location (beginning and ending), purpose of transport(s), gender of individual(s) being transported, and identification of the member or employee involved in the transport(s). Based on the documentation provided to the IMT, the overall rate in which the required elements were included in radio reports was 84.8%, placing OPD in compliance with this requirement.

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

- Settlement Agreement Section VI. E.; page 25, line 25 – page 26, line 9 (lead-in page 23, lines 23-24)
- Assigned Unit: BOS

#### **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*

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

- Settlement Agreement Section VI. F; page 26, lines 10– 14 (lead-in page 23, lines 23-24)
- Assigned Unit: BOS

#### **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 Section VI. G.; page 26, line 15 – page 27, line 11 (lead-in page 23, lines 23-24)
- Assigned Unit: BOS

**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 and Training Compliance**

#### **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**

During this reporting period 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.

## **PERSONNEL ASSESSMENT SYSTEM (PAS)**

### **Task 40: Personnel Assessment System (Formerly PIMS)**

- Settlement Agreement Section VII. A; page 27, line 13 – page 28, line 22
- Assigned Unit: BOS

#### **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 and Training 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 i-PAS, 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 i-PAS 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.

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### **Task 41: Use of Personnel Assessment System (Formerly PIMS)**

- Settlement Agreement Section VII. B; page 28, line 23 – page 33, line 24
- Assigned Unit: BOS

#### **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 and Training 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.

## **FIELD TRAINING OFFICER PROGRAM**

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

- Settlement Agreement Section VIII; page 33, line 25 – page 37, line 4
- Assigned Unit: BOS

#### **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 Partial Practice Compliance**

#### **Deliverables**

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



## ACADEMY AND IN-SERVICE TRAINING

### Task 43: Academy Training Plan

- Settlement Agreement Section IX.; page 37, line 5 – page 38, line 19
- Assigned Unit: BOS

#### 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 Partial Practice Compliance

Compliance Date: February 15, 2005

#### Deliverables

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

#### IMT Audit Summary

The IMT audit found the Department in partial compliance with the requirements of Task 43. During the tenth reporting period, many of the compliance standards for this task had been lowered from 95% to 90% or modified to include a more subjective pass/fail assessment.

In addition to Task 43's requirements related to Academy training, Task 43 requires that OPD provide all supervisors and commanders/managers with mandatory 40-hour in-service supervisory and leadership training. The Settlement Agreement stipulates specific areas that must be covered in this training, including instruction in supervisory and command accountability, ethics and professionalism, and supervisory and management functions and situations. Pursuant to this task, all supervisors must receive the mandatory leadership training prior to their promotion while all commanders must attend this training within six months of their promotion.

The IMT completed an audit of this task during the current reporting period, finding that OPD was in compliance with most of Task 43, including requirements that:

1. OPD implement a training plan that includes elements required by the Settlement Agreement (43.1).
2. OPD training include additional emphasis on ethics and professionalism, critical thinking and problem-solving, conflict resolution, and relationships with the community (43.1.2).
3. OPD consult with at least four other large law-enforcement agencies that have excellent reputations for professionalism regarding the areas listed above in number two (43.1.4).
4. OPD expand professionalism in all aspects of training (recruit academy, in-service training, and field training), using realistic scenario-based training exercises (43.2).

5. Sergeants and commanders receive 40-hours in-service supervisory and leadership training before (for sergeants) or within six months of (for commanders) promotion (43.3).
6. All members receive 40 hours of training every 18 months (43.4).
7. Sergeants receive at least 20 hours of supervisory training every 18 months (43.4.1).
8. Commanders receive at least 20 hours of commander training every 18 months (43.3.2).

The IMT found that OPD was not in compliance with three important requirements:

1. Ensuring that certain OPD officers and employees are adequately trained for their positions and trained to use the most contemporary developments in policing (43.1.1).
2. Establishing criteria and methods for selecting, training, evaluating, and maintaining records for OPD training instructors (43.1.3).
3. Reviewing the complaint history of every in-service or Academy training instructor prior to appointment to ensure that instructors are supportive of the philosophy and values of the Department and have not had a sustained Class I offense within the two years prior to appointment (43.5).

While the IMT praised portions of OPD training as “exemplary” for exceeding California’s statewide standards for law enforcement training in several areas, and noted that the Department has committed substantial resources to improving and updating its training in recent years, it concluded that OPD still needs to improve in some areas—most importantly in how it selects, retains, and evaluates training instructors.

Overall, the IMT labeled the quality of training observed during this audit as “uneven.” In some instances, good training materials that had been painstakingly developed were unused and replaced with ineffective or substandard training. In addition, too many officers had not received the required amount of perishable skills training at the required frequency (every 24 months). The IMT called this a “significant deficiency” because perishable skills training is directly related to officer safety, focusing on issues such as tactical firearms, arrest and control procedures, tactical communications, and driving.

## PERSONNEL PRACTICES

### Task 44: Performance Appraisal Policy

- Settlement Agreement Section X. A; page 38, line 23 – page 40, line 7 (lead-in page 38, lines 21-22)
- Assigned Unit: BOS

**Note:** DGO B-6 is covered by and includes Tasks 21 and 44. Both of these Tasks share the same deliverable.

#### 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

During this reporting period, 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.

##### OIG Audit Summary

In March 2007, OIG initiated an audit to determine if OPD is complying with Task 44 of the Agreement. Task 44, Personnel Practices, requires that OPD provide annual performance appraisals to its members and employees and that the contents of the members/employees’ performance appraisals provide accurate descriptions of the members/employees’ performance for the year. OIG’s audit indicated that OPD was in compliance with five of the nine practice requirements of Task 44, including:

- Providing its members/employees with written, annual performance appraisals from their immediate supervisors;

- Considering and documenting sustained and not sustained complaints against its members/employees in their performance appraisals;
- Considering and documenting in the members' performance appraisals their uses of force; sick/injured leaves, arrests for narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrests for other offenses; arrests involving charges of Penal Code §§69, 148 and/or 243(b)(c); and vehicle accidents;
- Ensuring its members/employees' performance appraisals contain signatures, along with the dates, from their respective supervisors/managers in the direct chain of command, up to the Deputy Chief of the respective Bureau, when appropriate; and
- Having the new supervisor of a promoted member/employee complete the member/employee's performance appraisal.

Although the audit indicated that OPD has improved in executing the directives in the Agreement, the audit also found that the Department is still out of compliance with three requirements of Task 44. One requirement could not be assessed. It will be assessed as part of Task 41 in future audits. To be in full compliance with this task, the Department must continue to do well in the areas mentioned above and improve in the following areas.

- The Department should ensure that members/employees who have significant collateral duties (i.e., instructors, tactical team operations and support, task force assignments, etc.) outside of their normal assignments are rated on these duties.
- The Department should strive to track the movement of its members/employees and to know who their respective supervisors are during the year so that the supervisors can provide input for the members/employees performance appraisals.
- The Department should document its efforts in building partnerships to fight crime in the community it serves.

The Department revised DGO B-6 on May 26, 2006 to aid in its ability to comply with Task 44. Although the DGO includes all the directives of Task 44, changes to the policy and the performance appraisal form, specifically providing more clear instructions, may aid the Department in achieving full compliance.

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

- Settlement Agreement Section X. B; page 40, line 8 – page 41, line 3 (lead-in page 38, lines 21-22)
- Assigned Unit: IAD

### **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 Section X. C.; page 41, lines 4-16 (lead-in page 38, lines 21-22)
- Assigned Unit: BOS

### **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**

During this reporting period, 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.

## **COMMUNITY POLICING PLAN**

### **Task 47: Community Policing Plan**

- Settlement Agreement Section XI; page 41, line 17 – page 42, line 9
- Assigned Unit: BFO

#### **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 Partial Practice Compliance**

##### **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**

During this reporting period, the Department worked on revising Training Bulletin III-A.5 due to the Department’s structural reorganization and to provide more specific measurements that will be used to measure problem solving and community policing. The revised Training Bulletin was published after the reporting period, in August 2008.

## DEPARTMENTAL MANAGEMENT AND ANNUAL MANAGEMENT REPORT

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

- Settlement Agreement Section XII; page 42, lines 10-17
- Assigned Unit: BOS

#### 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)

#### IMT Audit Summary

During this reporting period, the IMT conducted an audit of actual practice compliance with this task and found OPD in compliance. During the tenth reporting period, all compliance standards for this task were lowered from 95% to 85% or modified to include a more subjective pass/fail assessment. The IMT found significant improvement in the quality and timeliness of OPD's annual management reports, praising the greater detail and thoroughness of the reports as increasing their potential as useful planning and oversight tools for OPD upper management.

Task 48.1.1 requires that functional units prepare management reports every 12 months. The IMT noted that while OPD did not quite meet General Order A-7 deadlines, it improved greatly in this area. Drafts of the annual management reports were submitted no later than March 2008, and were available to the Chief and other commanders for the management report discussion meetings. Final reports were completed no later than early May. This is a striking improvement over what the IMT found during its previous review, when annual management reports had still not been completed by November of the following year. The IMT found that the actual timing of the submission of the 2007 annual management reports was consistent with the intent of the Settlement Agreement and did not compromise the Department's discussion of unit management. OPD is in compliance with Task 48.1.1.

Task 48.1.2 requires that management reports include relevant operating data and highlight ongoing or extraordinary problems and noteworthy accomplishments. Each of the 22 reports the

IMT reviewed achieved a score of 9.8 or higher. This represents a compliance rate of 100%, a significant improvement over OPD's compliance rate of 84% for its 2005 annual management reports and its rate of 22% for its 2004 annual management reports. Overall, the 2007 annual management reports now include, for the most part, the amount and type of data necessary to assist upper management, including the Chief of Police, in identifying problems and potential solutions in each division. While the IMT suggested that OPD could improve further by ensuring that all reports include more probing, detailed, and thoughtful discussions of the unit's operational plans and goals for the upcoming year, it commended OPD for its successful efforts to improve the quality of its annual management reports and found the Department in compliance with Task 48.1.2.

Task 48.2 requires that division commanders individually meet with the Chief of Police and respective deputy chief to thoroughly review management report of that division. This year, the meetings between Division Commanders were more formalized than during previous audits. In addition, the meetings were recorded. The IMT was provided advance notice of the meetings, which occurred over two days in early to mid-March, and was able to attend. The discussions the IMT observed during these well-attended meetings were informative and included some probing questioning, although the IMT did note that the quality of discussions was inconsistent and would benefit from greater emphasis on using the collected data/information to discuss plans and challenges for the upcoming year. OPD is in compliance with Task 48.2.



## **INDEPENDENT MONITORING**

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

- Settlement Agreement Section XIII. A; page 42, line 18 – page 53, line 19
- Assigned Unit: OCOP

#### **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
- 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*

## COMPLIANCE UNIT

### Task 50: Compliance Unit Liaison Policy

- Settlement Agreement Section XIV. A; page 53, line 21 – page 54, line 5
- Assigned Unit: OIG

#### 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
- 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 Section XIV. B; page 54, lines 6-22
- Assigned Unit: OIG

#### 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

- 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 Mobile Data Terminal Traffic; Personnel Practices; Investigations of Allegations of Manual of Rules Violations Resulting from Lawsuits and Legal Claims; Informal Complaint Resolutions; Receiving and Processing Complaints; Methods for Receiving Citizen Complaints; Summary of Citizen Complaints Provided to OPD Personnel and Disclosure of Possible Investigator Bias; Timeliness Standards and Compliance with Internal Affairs Division Investigations; and Members', Employees' and Supervisors' Performance Review. In addition, OIG published an audit of OC Log and Checkout Procedures on October 17, 2008 and an audit of use of force on November 3, 2008. The purpose of conducting these audits/reviews was to identify deficiencies that could impact compliance with the Agreement and Departmental policy, as well as inefficiencies in practice.

## **HOUSEKEEPING PROVISIONS**

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

- Settlement Agreement Section XV; page 54, line 23 – page 60, line 3
- Assigned Unit: N/A

**Status:** Not Applicable

**Deliverables:** None

**Implementation Activities:** None

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.**

## **APPENDIX B:**

### **LIST OF ACRONYMS**

| Term            | Definition                                                               |
|-----------------|--------------------------------------------------------------------------|
| Agreement, the  | The Negotiated Settlement Agreement                                      |
| Audit Unit      | The OIG Audit and Inspections Unit                                       |
| BOI             | Bureau of Investigations                                                 |
| BOS             | Bureau of Services                                                       |
| BFO             | Bureau of Field Operations                                               |
| CID             | The Criminal Investigations Division                                     |
| CPT             | Continued Professional Training                                          |
| Department, the | The Oakland Police Department                                            |
| DGO             | Department General Order                                                 |
| DIT             | The City's Department of Information Technology                          |
| DLI             | Division Level Investigation                                             |
| EVALIS          | Personnel Performance Evaluation Information System (superseded by iPAS) |
| 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                                                           |
| OC              | Oleoresin Capsicum, or pepper spray                                      |
| 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                                             |
| PAS             | Personnel Assessment System                                              |
| PIMS            | Personnel Information Management System (superseded by PAS)              |
| POST            | The California Commission on Peace Officer Standards and Training        |
| PSA             | Police Service Area                                                      |
| PSO             | Problem-Solving Officer                                                  |
| SARA            | Scanning, Analysis, Response and Assessment                              |
| SO              | Special Order                                                            |
| TB              | Training Bulletin                                                        |
| UFRB            | Use of Force Review Board                                                |