

Oakland Police Department



Negotiated Settlement Agreement

Combined Twelfth & Thirteenth Semi-Annual Report

July 1, 2008 – July 31, 2009



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Oakland Police Department
Office of Inspector General

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A handwritten signature in blue ink, appearing to read "H. Jordan".

Howard A. Jordan
Acting Chief of Police

24 AUG 09

Date: August 24, 2009

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FOREWORD

January 21, 2010 will mark the contractual end of the Negotiated Settlement Agreement between the Oakland Police Department and the Plaintiffs in *Delphine Allen, et al. v. City of Oakland*. The original term of the Agreement was five years, with a two-year extension. Over the last seven years, the Oakland Police Department has made substantial changes in policy and procedures and has effected a wholesale change in culture to ensure that the citizens of the City of Oakland receive the best possible service from their police department.

While an incredible amount of progress has been made in achieving the goals and objectives of the Agreement, there is still work to be done. There is little doubt in my mind that the original drafters of the Negotiated Settlement Agreement had no idea that seven years later the process would have become so complicated and challenging! This is not to say the process has not been worthwhile. On the contrary, this journey has been an important part of the process. Few worthwhile things in life are easy to achieve.

The Oakland Police Department continues on its course with the dedicated intention to be in compliance with all portions of the Negotiated Settlement Agreement by the end of 2009. While a demonstrated period of time is still required to show substantial compliance, creating the need to extend some portions of the agreement, the achievements realized by the men and women of the Oakland Police Department are nothing short of miraculous. Through their hard work, the face of the Department has changed for the better.

In the coming months, the Office of Inspector General will continue its pivotal role in guiding the Oakland Police Department through this next step in the process of shaping the organization into one of the most contemporary and professional police departments in the Nation. Even now, many of our newly developed policies and practices are being hallmarked by others throughout the law enforcement profession.

As the newest commander of the Office of Inspector General, I have some big shoes to fill. The accomplishments of my predecessor, Captain Paul Figueroa, will not easily be matched and I am thankful for the solid foundation upon which I will continue to build. The ultimate goal of this office is to support and bring to reality the Department's goal of reaching full compliance with the Negotiated Settlement Agreement and then maintaining that compliance. This will be accomplished by:

- Bringing a renewed focus to those areas of the Negotiated Settlement Agreement where the Department has yet to achieve compliance.
- Identifying and analyzing the issues in each of those areas which keep the Department from being in compliance.
- Establishing and implementing specific measures to adjust or correct those issues.
- Conducting on-going evaluations to ensure the desired results are being achieved.

The Office of Inspector General is committed and looking forward to its continued collaborative efforts with the Plaintiff's Attorney's, Independent Monitoring Team, and other stakeholders in order to move forward in realizing the goals and objectives of the Agreement. This report will

provide insight into the Department's accomplishments and the current status of compliance with the Agreement.

It is my sincere hope that the reader realizes this journey has not been just about ending the Agreement. This is a journey from which the Oakland Police Department will emerge as a 21st century law enforcement organization: stronger, more efficient, more professional, and dedicated to serving our community.

A handwritten signature in black ink, appearing to read 'B.H.F.', with a stylized flourish at the end.

Benson H. Fairrow
Captain of Police
Office of Inspector General

INTRODUCTION

The Negotiated Settlement Agreement states¹:

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 areas of supervision, accountability, police intervention programs, use of force, and misconduct investigations.

In this report, which combines the 12th and 13th semi-annual reports, the Office of the Inspector General (OIG) summarizes the Department's compliance status and efforts to implement provisions of the Agreement for the period from July 1, 2008 through July 31, 2009. The Department has made continuous progress during this reporting period.

PURPOSE OF THE AGREEMENT

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

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

¹ An agreement entered into between the City and Plaintiffs in the Delphine Allen, et al. v. City of Oakland, et al., consolidated case number C00-4599 TEH (JL) otherwise known as the "Riders" cases, Section XIII. A. 1

BACKGROUND

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

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

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

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

The Department is working collaboratively with the Court, Independent Monitoring Team, Plaintiffs’ Attorneys, employee unions, and other stakeholders to ensure that our compliance with the Agreement results in an accountable Department. This collaborative partnership is particularly important now, when tight budget constraints are the norm.

POSITIVE CHANGES NOTED BY THE INDEPENDENT MONITORING TEAM

During this review cycle, the IMT highlighted a number of areas demonstrating how far the Department has come since the Settlement was instituted seven years ago. These changes have made the Department noticeably stronger.

Responding to Citizen Complaints

The IMT was impressed by OPD’s provision of the right type and level of investigation in misconduct complaints. It attributed much of this dramatic improvement to the consistent commitment and hard work of the Internal Affairs Division (IAD) and OPD leadership, including several past commanders of IAD. The changed approach to investigations allows OPD to address community concerns more proactively.

For example, OPD now documents that supervisors have spoken to a subject officer about alleged misconduct (often a complaint of poor demeanor or work performance) before an informal complaint resolution is approved. OPD also is doing a better job forwarding closed “service complaints” to the appropriate commander so that the Department can consider whether policies or procedures should be changed to provide better police service to the Oakland community. These changes will have a positive impact on police/community relations going forward.

OPD’s disciplinary timeliness has improved significantly over the past two years, improving the quality of its investigations. The more timely the investigation, the easier it is to get relevant evidence and information from people. For example, when a supervisor quickly responds to interview the complainant, obtaining a complete statement, what could take days or weeks to investigate can be completed in a few hours. This allows for needed information to be more readily accessible and witnesses’ recollections are fresher. Of particular significance is the fact no complaint of misconduct from the public or internal complaint of misconduct has taken more than a year to investigate, which is a huge improvement from seven years ago when hundreds of cases were unaccounted for or took well over a year to investigate.

Additionally, intake officers are now responding to citizens who have complaints in a respectful, receptive manner rather than escalating antagonism.

The IMT noted that in the early days, complaints not received directly by IAD were often lost or ignored. Incoming complaints were not numbered, tracked or investigated. The Internal Affairs Division now has a system in place – The Daily Incident Log – to identify, track and investigate all incoming complaints. Every complaint received by a supervisor or commander is reported to IAD on the day of receipt. Implementation of this process reflects a striking cultural shift.

Even where cases listed on the Daily Incident Log were out of compliance, IAD learned of them eventually, usually fairly rapidly, and in most cases, a field supervisor had already contacted the complainant, or attempted to contact the complainant by the time IAD learned of the complaint. This is a striking and laudable contrast to past practice within OPD. As the IMT noted, of the 99 complaints listed on the log during its review of Task 4, it is likely that none would have been reported to IAD for investigation prior to the implementation of the Agreement.

Accountability

The IMT found many exemplary instances of OPD holding supervisors and managers accountable for the Internal Affairs process. Now IAD’s command staff actually issues case evaluation reports for unacceptable internal investigations and for missing internal IAD deadlines. This improved accountability has no doubt elevated the quality and timeliness of IAD investigations.

The Department has made enormous improvement since the last IMT audit and over the course of the Agreement in reporting misconduct. The IMT praised the cultural shift, noting that OPD is getting better at asking hard questions and holding people accountable, and that now officers make a concerted effort to candidly describe what they have seen and heard. As a result, community relations are strengthened.

When the Agreement was established, it had been commonplace for citizens to consult attorneys complaining of physical abuse by the police. Now this has become a rare event. OPD has shown steady and demonstrable improvement in its willingness and ability to assess whether its personnel are reporting misconduct that they knew or reasonably should have known occurred. The IMT review of Task 33, published May 2009, found that misconduct was reported appropriately or that OPD conducted an adequate assessment of whether misconduct was reported in 83% of cases reviewed. Although OPD fell short of compliance, this was a dramatic improvement from the previous IMT audit, where this happened less than 4% of the time.

To ensure the viability of a criminal proceeding, OPD must coordinate administrative investigation of members/employees with the Alameda County District Attorney's Office or relevant criminal investigators. The IMT praised the Department's dramatic improvement in this area, noting that relevant divisions within OPD have created a model system for working with each other when investigating criminal and administrative misconduct. Clearly, OPD's practice in many areas of accountability has grown stronger.

Supervision and Training

The IMT found significant improvement in supervisory/subordinate contact, in stark contrast to a few years ago, when officers reported having infrequent interaction with their supervisors. The increased interaction between supervisors and subordinates is due, in part, to other changes OPD has implemented as a result of the Agreement. These changes include requiring sergeants and the officers they supervise to work on the same days and during the same hours. Officers, employees, and supervisors interviewed consistently reported having frequent contact with their supervisors on a range of performance issues including arrest approval, report review, and supervisory response to use of force incidents.

The IMT has noted a radical improvement since its 2008 audit in the quality of Academy and in-service instructors. Just a year ago, OPD was not in compliance with the selection of its trainers. Instructor files were incomplete, information was outdated or of poor quality. Some instructors did not meet minimum requirements; others may or may not have. It was difficult to tell. Now, inactive instructors or those who do not meet standards have been decertified. Every new instructor appointed since the last audit meets the standards. The OPD Training Division staff is proactively evaluating and managing instructors.

Community Relations

The IMT commended OPD for continuing to regularly host meetings in communities throughout the City, and applauded the Department's efforts to increase meeting participation in parts of the City where community attendance has been low. These efforts have included calling a special community meeting to request greater community involvement in anti-violence efforts, requiring officers to spend more time walking their beats in order to meet community members and help prevent crime, and working with Neighborhood Service Coordinators to conduct outreach to individuals and encourage their participation in police-community meetings. As a result of these and other efforts, OPD has reported new working partnerships in some Areas and the

reinvigoration of Neighborhood Crime Prevention Council groups that had become defunct. Patrol supervisors and officers regularly attended community meetings during the quarter in the Areas to which they were regularly assigned. Significantly, an additional 10 civilian and sworn employees also attended community meetings, even though they were not required to do so.

COMPLIANCE OVERVIEW

COMPLIANCE PROGRESS SUMMARY

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

Table 1. Task Compliance Status

Task Status	Tasks as of July 31, 2009
Tasks in Policy Compliance	51 of 51
Tasks in Training Compliance	44 of 44
Tasks in Full Actual Practice Compliance	30 of 51
Tasks in Partial Actual Practice Compliance	15 of 51
Tasks Out of Compliance	6 of 51

The status of each task is reported here as of July 31, 2009. Table 2 lists the 51 tasks with their due dates and summarizes the current state of compliance.

Table 2. Current State of Compliance, Tasks 1 – 51 (as of July 31, 2009).

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	√	√		06/09
3	IAD Integrity Tests	6/1/2005	√	√	√	
4	Complaint Control System for IAD and Informal Complaint Resolution Process	6/15/2004	√	√		05/09
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	√	√		04/09
9	Contact of Citizen Complainants	8/13/2004	√	√		03/09
10	Procedure Manual for Investigations of Citizen Complaints	8/13/2004	√	√		11/06
11	Summary of Citizen Complaints Provided to OPD Personnel	8/13/2004	√	√		03/09

Task	Task Name	Due Date	Policy Compliance	Training Compliance	Partial Practice Compliance	Full Practice Compliance Date
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	√	√	√	
19	Unity of Command	1/20/2004	√	√		02/08
20	Span of Control	8/14/2003	√	√		
21	Members', Employees' and Supervisors' Performance Reviews	5/5/2004	√	√		01/09
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	√	√		04/08
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	√	√		05/09
28	Use of Force-Investigation of Criminal Misconduct	7/20/2004	√	√		07/09
29	IAD Investigation Priority	7/20/2004	√	√		07/09
30	Firearms Discharge Board of Review	7/20/2004	√	√	√	
31	Officer-Involved Shooting Investigation	7/20/2004	√	√		04/08
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	√	√		12/08
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	√	√		

Task	Task Name	Due Date	Policy Compliance	Training Compliance	Partial Practice Compliance	Full Practice Compliance Date
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	√	√		04/09
43	Academy & In-Service Training	2/15/2005	√	√		07/09
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	√	√		11/08 (47.3 not yet assessed)
48	Departmental Management and Annual Management Report	7/02/2003	√	√		06/08
49	Monitor Selection and Compensation	4/15/2003	√	N/A		08/03
50	Compliance Unit Liaison Policy	3/4/2003	√	N/A		08/03
51	Compliance Audits and Integrity Tests	9/1/2005	√	N/A		10/05, 11/06

AUDITS AND REVIEWS

THE AUDIT AND INSPECTIONS UNIT OVERVIEW

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

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

The Audit 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:

1. Mobile Data Terminal Traffic
2. Complaint Procedures for IAD – Task 5 (5.2, 5.3, 5.4 and 5.5)
3. Receiving and Processing Complaints – Tasks 5, 8 and 9
4. Investigating Anonymous Complaints – Task 7.3
5. Arrest Approval and Report Review – Task 18
6. Use of Force – Tasks 24, 25 and 35
7. Oleoresin Capsicum Log and Checkout Procedures – Task 27
8. Personnel Practices – Task 44
9. Promotional Consideration – Task 46.

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

OIG completed its fifth annual audit of the Mobile Data Terminals (MDTs) on December 12, 2008. The purpose of this audit was to examine the content of car-to-car message transmissions and ensure that user-generated messages do not violate Department policy, the Agreement, or local and/or federal laws. The audit revealed that the number of daily transmissions between mobile data terminals has continued to decline and now averages one per day. Of the 89 individual messages transmitted in the audit period, none were found to contain inappropriate language, wording that constitutes a policy violation or lengthy conversations unrelated to work.

Although 843 members and employees were authorized to use the VTEK system, during this audit, only 76 of those transmitted car-to-car messages.

Following recommendations of the previous audit, the Information and Technology Unit developed Special Order 8967, "Update Responsibilities of the Information Technology Unit," published on December 3, 2008. The order covers archiving and maintenance of the MDT transmissions. As well, the Department periodically reminds personnel of appropriate MDT usage via Daily Bulletin items.

Complaint Procedures for IAD – Task 5 (5.2, 5.3, 5.4 and 5.5)

On January 28, 2009, OIG initiated a review of a portion of Task 5, specifically Tasks 5.2, 5.3, 5.4 and 5.5.

These sub-tasks require OPD to respond to a citizen complaint made in the field within three hours. If there is a delay greater than three hours, the reason for such delay is to be documented by the person receiving the complaint. In addition, where the complainant refuses to travel to a supervisor or wait for one, the member/employee makes all reasonable attempts to obtain identification. Furthermore, the Area Commander is notified and information about the complaint, as specified in OPD policy, is forwarded to IAD.

The review looked at the Daily Incident Logs (DILs) completed by the Communications Division and forwarded to IAD for the months of October and December 2008, to determine the Department's progress in meeting the standards of Tasks 5.2, 5.3, 5.4 and 5.5. There were a total of 118 entries made during October and December. Upon an initial review of the logs, three entries were deselected because they were not complaints, leaving a total of 115 to be examined for this review.

Task 5.2 requires that a supervisor or IAD respond to citizen complaints made in the field within three hours. In Addition, if the field response is not made within three hours, documentation for the delay is required. Of the 115 complaints on the DILs for October and December 2008, 80 required a field response by a supervisor. Of these 80 complaints, OPD responded within three hours 71 times. There was no documentation of the reason for the delay for the nine complaints in which the response time was greater than three hours. The Department needs to ensure that the reason for the delay is properly documented.

Only one of the 115 incidents was applicable to Task 5.3; in the event a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable efforts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant or any witnesses. An effort to gather the required information was made by the officers and documented.

Regarding Task 5.4, there was clear documentation in 97 of the 115 (84%) DIL entries that an Area Commander was notified of the incident.

Finally, the Department fully documented all of the complaint information and forwarded it to IAD, as required by Task 5.5, in 31 of 115 cases. The Department is doing a good job of

accepting and initiating the complaint process in the field. Complainants' names, or their refusals to give names, were documented 100% of the time and addresses were documented 94% of the time. However, improvement is needed in documenting complainant contact numbers. While the Department also fell short in documenting witness information, names of subject personnel and date/time/location of incident, in many cases the missing information did not appear to be a problem of supervisors failing to gather it, but rather an incomplete or missing explanation for why the information was not available. In addition, the most critical information for the initiation of a complaint investigation is the complainant's name and phone number.

Receiving and Processing Complaints – Tasks 5, 8 and 9

In July 2008, OIG initiated its third review of the Department's Receiving and Processing Complaints policy, Departmental General Order (DGO) M-3. The review focused on investigations by the Internal Affairs Division into allegations of Manual of Rules Violations resulting from citizen complaints. The review covered parts of Task 5 and Task 8, and all of Task 9. Although the Department did not meet full compliance for all the reviewed tasks, it did show continued improvement. As a whole, the investigations were complete and thorough. With a little more attention to detail, the Department will be in full compliance with Tasks 5, 8 and 9.

Task 5, *Receiving and Processing Complaints*, requires that OPD conduct a complete and thorough investigation in order to allow for a supportable and reasoned finding. Task 8, *Classification of Citizen Complaints*, requires that OPD classify complaints to distinguish between most serious and less serious violations. Task 9, *Contact of Citizen Complainant*, requires that complainants be contacted as soon as possible by OPD investigators.

Of the eleven tasks assessed, the Department was in compliance with five (5.15, 5.16, 5.17, 5.18 and 8.1). These require investigators to: gather and document relevant evidence; make credibility determinations; resolve inconsistent statements among witnesses; properly analyze evidence and use the "preponderance of evidence" standard; and properly categorize complaints.

The Department was in partial compliance with three tasks related to taking and recording statements (5.21, 8.5 and 8.8).

- Task 5.21 requires members or employees who are subjects of an internal investigation, or who have been on the scene of an incident at which misconduct has been alleged by a complainant, to be interviewed. Out of 45 investigations, one did not meet the standard because an investigator failed to interview personnel at the scene of the incident. Five others were Summary Finding investigations which had no documented pre-approval to interview fewer people than required by Task 5.21. The Audit Team found that these five investigations were appropriately investigated as Summary Findings and would have been in compliance with Task 5.21 had proper pre-approval been obtained.
- Tasks 8.5 and 8.8 fell just short of the 90% compliance standard at 89% and 87%, respectively. One Class I investigation did not meet the standard because the investigator conducted a one-minute telephone interview without recording it or providing an explanation for why it was not recorded. Three other investigations were Summary Findings. The investigator stated he/she conducted interview(s) but did not document that

they were recorded. It is possible the interviews were in fact recorded but not placed on the server or Internal Affairs Division investigation control file.

The Department did not achieve compliance in Task 8.4. The audit team found that 70% of the 10 investigations met the standard that, unless otherwise directed by the Chief of Police, Class I offenses be investigated by IAD investigators.

Two tasks have fallen out of full compliance since the 2007 OIG review. Task 5.19 requires each allegation be resolved by one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Filed. Only 84% of the investigations met this standard. Task 9.1 requires that complainants be contacted as soon as possible. While 89% of the investigations reviewed met the standard, the result is just short of the required 90%.

Investigating Anonymous Complaints – Task 7.3

In November 2008, OIG initiated a compliance audit of OPD practices in investigating anonymous complaints for the time period of December 1, 2007 through December 1, 2008. Task 7.3 requires that OPD accept anonymous complaints and investigate them to the extent reasonably possible to determine whether the allegation(s) can be resolved. Also, to the extent possible, OPD asks anonymous complainants for corroborating evidence. Current policies² were implemented on February 15, 2008.

In nine of the ten (90%) investigations reviewed, OPD accepted the anonymous complaints and investigated them to determine the facts of the events that resulted in the allegations. Corroborating evidence was sought and any refuting evidence considered. A single case in the audit population did not fully resolve all of the possible Manual of Rules violations. If this case is held out of compliance, the Department has achieved a 90% compliance rate, falling short of the 95% required. However, the spirit of Task 7.3 is to ensure that anonymous complaints are not overlooked or minimized just because the complainant is not identified. In this case, the unresolved issues with the investigation did not stem from the anonymity of the complainant. For this reason and because of the small sample size, OIG found the Department in conditional compliance with Task 7.3.

Arrest Approval and Report Review – Task 18

In March 2009, OIG initiated its second audit of Task 18, Arrest Approval and Report Review. The audit covered felony, drug, Penal Code §§ 69, 148, 243 (b) (c), and use of force arrests occurring between January 15 and February 15, 2009. The audit found the Department in compliance with four of the five requirements of Task 18. The audit team noted that had more arrest documents properly recorded the presence or absence of witnesses, the Department would have achieved full compliance with Task 18.

² Departmental General Order M-3, *Complaints Against Departmental Personnel or Procedures* and Departmental Special Order 8924, *Revision of Departmental General Order M-3*.

Of the arrest documents reviewed, 98% contained sufficient articulation of probable cause or reasonable suspicion for the stop/detention. The audit team found only two arrests out of compliance. At the time the audit was conducted, the Records Division had not received the associated Crime Reports for the arrests, thus the two arrests were determined to be out of compliance.

The audit also found that supervisory log times were documented for 96% of the arrests. Proper use of the updated Consolidated Arrest Report, which includes a designated signature block for the supervisor to sign along with a box designated for the log time of contact, has had a positive effect on achieving compliance. Log times and supervisory contact are centrally located on one form.

The Department has yet to achieve compliance with witness identification, which has a compliance requirement of 90%. The Department fell short with 87% compliance. For some of the arrests deemed out of compliance, officers did not provide identification of witnesses, although it was apparent to the audit team that there were witnesses at the scene. In other cases, officers simply did not state that there were no known witnesses, when it was reasonable to conclude that none were present based upon the report narratives.

Use of Force – Tasks 24, 25 and 35

In March 2008, OIG initiated an audit of OPD use of force investigations for the time period of February 1, 2008 to March 31, 2008. The audit assessed the Department's efforts towards achieving compliance with Tasks 24, 25, and 35, which cover issues such as: notification of the supervisor by an officer or other employee when force is used, response to the scene by the supervisor, identification and interview of witnesses, documentation of injuries, collection of physical evidence, and assurance that the use of force investigation report includes analysis of evidence. Use of force investigations must be completed, submitted, and reviewed by the officer's chain of command in a timely manner.

This audit revealed two areas of use of force reporting and investigations requiring improvement. First, before an investigation is deemed complete, reviewers must ensure that all required documents are identified and included in the packet. Many times cases were judged to be out of compliance not because of the actions of the officers, but because the required documents were not included in the use of force packet. Finally, the timelines must be adhered to, and if not, the chain of command must be held accountable.

Task 24 – Task 24 requires that a supervisor be notified and that he/she respond as soon as practicable following either an investigated use of force or an allegation of excessive force. In their reports, members and employees are to document both the use of force and whether they used the force or were merely present when force was being used. The audit revealed that supervisors were being notified and subsequently responding to the scene. Also, officers were correctly documenting their own use of force, but were not always describing force employed by other officers.

Task 25 – The audit team found that the Department was in compliance with most of the Task 25 requirements. For example, the Department was in compliance with the requirement that an

on-scene supervisor complete a Use of Force Report. Task 25 requirements include: use of force investigations include documentation of the incident in an offense or supplemental report; statements from the member(s) and employee(s) when necessary; separating and interviewing all officers who were at the scene; identification and interviews of non-Departmental witnesses; consideration of discrepancies in information received from members, employees and witnesses; and documentation as well as analysis of physical evidence. Additionally, recommendations must be made as to whether the use of force was reasonable and within policy, as well as proportional to the level of resistance being employed by the suspect. Finally, investigations must be reviewed by the appropriate chain of command and determined to be either in policy or out of policy. When the actions are judged to be out of policy, the investigation must be turned over to IAD for further work.

In some areas the Department fell short of the 90% compliance rate. For example, evidence was summarized and analyzed 77% of the time. Identification and interviews of witnesses occurred 85% of the time. Consideration of training and tactical issues occurred 84% of the time and explanations justifying why any element of policy was not covered occurred 63% of the time. In addition, the Department failed to comply with two other requirements. It reached 90% compliance with appropriate chain of command review of use of force reports, falling short of the required 95% compliance rate, and it was not in compliance with the requirement that use of force reports be completed within the timelines set forth in Department General Order K-4.

Task 35 – Task 35 requires that witness information be properly recorded or a notation made that there were no known witnesses. Further, where witnesses were present but circumstances prevented the author of the report from determining their identity, phone number or address, an explanation must be provided. Finally, use of force reports must include the names of all other members/employees of OPD who witnessed the use of force. The Department was found to be in compliance with these tasks.

Oleoresin Capsicum Log and Checkout Procedures – Task 27

On March 19, 2008, OIG audited Task 27, Oleoresin Capsicum Log and Checkout Procedures, for the time period of January 1, 2007 to March 31, 2008. Task 27 has two requirements: that OPD maintain a log of all oleoresin capsicum (OC) canisters checked out and used by its members and employees, and that it produce a computerized, electronically accessible OC log and regularly prepare and distribute accurate reports in order to detect and/or prevent the misuse of OC.

This fourth audit of OPD's OC Log and Checkout Procedures indicates that OPD is in compliance with all but one of the requirements of Task 27. The Department maintains a log of all its members/employees who check out and use OC canisters and it distributes a monthly report to its command staff and supervisors, allowing them to monitor the usage of the personnel under their respective jurisdictions.

However, the Department is out of compliance in report accuracy. Four times the replacement reason for a particular OC canister varied in the handwritten log and the OC database. When the discrepancies were investigated, the replacement reason was neither what was recorded on the handwritten log nor what was recorded in the OC database. This problem, combined with a

number of other discrepancies between the handwritten log and the OC database and the fact that OC canisters are not being replaced after a use of force incident, as required by policy, resulted in an out of compliance finding for report accuracy.

The Audit team recommended that the Department make sure information on the handwritten OC log is reviewed and all errors are corrected and initialed prior to any information being entered into the computerized OC checkout log, thereby eliminating any discrepancies between the two logs. It also encouraged the Department to ensure that its OC database is updated with the correct replacement codes.

The Department lacks full compliance with Task 27.2, which requires that the log be computerized and electronically accessible and that accurate reports be regularly prepared and distributed. While the Department's OC logs are computerized and electronically accessible and these reports are regularly prepared and distributed, the Department still needs to reach compliance with producing accurate monthly OC reports. The audit indicated that 291 OC canisters were issued during the audit period. Of these, 187 (64%) were distributed as "Initial Issue." The remaining 104 canisters were used to replace OPD member/employee canisters.

The Audit team recommended that the Department require all members to replace their OC canisters after using them in a use of force incident, ensuring that policy is followed. The auditors recommended that the Department simplify the tracking and reporting of OC by updating the database, eliminating outdated fields and making sure all changes made to the OC electronic log are made to the OC handwritten log.

Discrepancies listed in this audit were brought to the attention of the Bureau of Investigations Deputy Chief and the Property and Evidence Unit (PEU) Sergeant. The PEU staff agreed with the discrepancies found in the audit and corrected nearly all of them. In addition, DGO C-8, Oleoresin Capsicum, was sent out for training a second time, with particular emphasis on the requirement that OC canisters are turned in after they are used during a use of force incident.

The changes made will help the Department achieve full compliance with Task 27.

Personnel Practices – Task 44

On October 8, 2008, OIG initiated its third audit of Task 44 to determine if OPD personnel practices and procedures regarding performance appraisals are in accordance with established Agreement guidelines and OPD's DGO B-6, *Performance Appraisal*. Additionally, the intent was to identify policy and/or practice deficiencies and propose solutions.

Although the Department is in compliance with considering complaints, uses of force, arrests, sick/injured leaves and vehicle accidents, the audit found some discrepancies between the data in the performance appraisals and the data in the Department's Internal Personnel Assessment System (iPAS). For example, some supervisors were not documenting Level 4 uses of force. The audit also found OPD continues to be out of compliance in the same three areas of documentation as the 2007 OIG audit. Even so, the Department improved its performance overall.

Prior to this audit, two audits were conducted by the IMT and two audits by OIG. This audit found OPD in compliance with the same requirements as the 2007 OIG audit:

- 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 Department is in compliance with considering complaints, uses of force, arrests, sick/injured leaves and vehicle accidents, the audit found some discrepancies between the data in the performance appraisals and the data in iPAS. For example, some supervisors were not documenting Level 4 uses of force.

The Department remains out of compliance in documenting consultations from a technical expert or a specialized unit for members/employees with substantial collateral duties and consultations from the prior supervisors of member/employees who had multiple supervisors during the year. It was also not documenting that Police Service Area (PSA) Lieutenants are held accountable for ensuring that their subordinates enhance community contacts.

Since the Department continues to fall short of compliance in these areas, it is recommended that Department General Order B-6 and the Performance Appraisal Form be revised to provide better guidance to supervisors, and that remedial training be provided to all personnel responsible for evaluating members/employees on their performance. Additional training will help the Department achieve full compliance with Task 44.

Promotional Consideration – Task 46

On November 18, 2008, OIG initiated its second audit of Task 46, Promotional Consideration, for the audit period of October 1, 2007 through December 31, 2008. The audit assessed departmental compliance with promotional consideration requirements outlined in the Agreement, specifically, the Department's process of considering and selecting candidates for promotion. The audit found the Department in full compliance with Task 46.1 and 46.3. Task 46.2 could not be analyzed because no candidate during this review had a sustained Class I finding within 12 months preceding promotion.

Four promotional processes occurred during the audit period. The 24 promoted candidates included one deputy chief, two captains, four lieutenants, and sixteen sergeants. To assess compliance with Task 46, OIG reviewed each candidate's discipline history and other

promotional consideration documentation. The audit found that none of the promoted candidates had a sustained finding of a Class I offense three years prior to promotion. However, six candidates had Class II sustained findings during the three years prior to promotion. The Chief of Police informed the audit team that he was aware of the details of each case along with the sustained findings and had considered them during the promotional process.

Task 46.1 requires that promotions of candidates with sustained misconduct cases within three years preceding the promotion include consideration of misconduct history as an important factor. The Department was found 100% in compliance for Task 46.1. Of the 24 promotional candidates, six had sustained misconduct cases within three years preceding promotion. All six candidates received sustained findings for Class II offenses; none received sustained findings for Class I offenses. Documentation of misconduct cases for four candidates was included in the promotional consideration packages provided to the Chief of Police by the Personnel Division.

Task 46.2 requires that Candidates with sustained Class I offenses within 12 months preceding the promotion are presumptively ineligible for promotion. No candidate had a sustained Class I finding within 12 months preceding promotion. In the five years prior to promotion, one candidate had a sustained Class I offense. This candidate also received a sustained finding four years prior to promotion. Therefore, there were no applicable candidates for Task 46.2.

Task 46.3 requires promotional decisions include consideration of candidate's commitment to community policing; quality of citizen contacts; number of sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304; instances of unnecessary use of force; and support for Departmental integrity measures. The Department was found in compliance with Task 46.3.

Although interview notes for three candidates could not be located in Personnel Division files, the community policing factor was captured in each candidate's supervisor/commander input forms. In addition, although documentation of the interviews was not included in the packages, the Chief confirmed that he conducted interviews with the two Captains and interviewed the Deputy Chief with the participation of the Assistant Chief. Because the Chief receives information from a variety of sources about promotional candidates, the missing interview notes did not negatively effect compliance with Task 46.3.

The audit team encouraged the Personnel Division to implement a more effective filing system. Many files were incomplete, not well organized, or not centrally located. In some instances, documentation for several candidates was grouped in one file in no particular order, making it very difficult to locate required documents. Improved filing will make it easier to document compliance with Task 46.

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. Task 1.3, requiring IAD members and other personnel to be trained, was found in conditional compliance.

Deliverables

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

Implementation Activities

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

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

- Settlement Agreement 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 Full Practice Compliance

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

## Deliverables

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

## IMT Audit Summary

**Task 2.1** requires that all internal investigations—including review, approval, findings, and discipline—be completed in compliance with the timeliness standards developed by OPD. The IMT separately assessed timeliness of investigations of Class I and Class II allegations. Internal investigations that were unfounded, exonerated, or not sustained, whether Class I or Class II, Division Level Investigation or IAD, were timely if completed within 180 days after the date of intake. Internal investigations that were sustained were timely if the investigation was completed within 180 days and the discipline recommendation process – including Chief of Police approval, disapproval, or return for further investigation – was completed within 30 calendar days of the IAD Commander approval of the investigation.

In January 2009, the IMT found that OPD was in compliance with the timeliness requirements for Class II investigations (92%), but fell short of compliance with Class I investigations (79%) and disciplinary recommendations (79%). In a follow up review in June 2009, the IMT re-assessed timeliness requirements and found the Department in full compliance; Class I investigations 90%, Class II investigations 93% and discipline recommendations 95%. In addition, the IMT noted there has been progress in ensuring that the statutory §3304 deadline is not exceeded: OPD reports that presently no pending investigations have exceeded the deadline.

In their January 2009 review, the IMT found OPD in compliance with **Task 2.2**, which requires that IAD and OPD Command staff regularly monitor compliance with the established timeliness standards, and with **Task 2.3**, which requires IAD to increase staffing when necessary to maintain timeliness standards.

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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 Full Practice Compliance**

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

### **Deliverables**

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

### **IMT Audit Summary**

The IMT audit of Tasks 4.1 – 4.8 was published in December 2008. Its audit of Tasks 4.9 and 4.10 was published in May 2009. It found the Department in compliance with all but one of these tasks. Task 4.7 was found to be in conditional compliance because the complaint intake process has improved greatly and continues on an upward trend.

**Task 4.1** requires that OPD has an informal complaint resolution process that can be used to resolve allegations of Class II misconduct. **Task 4.2** requires that informal complaints document: receipt of complaint; date, time, location of incident; name of person making complaint, how matter was resolved, and that the person making the complaint was advised of the formal complaint process. **Task 4.3** requires that the documentation of informal complaints is forwarded to IAD for review, and that it is sufficiently complete. **Task 4.4** requires that if the informal complaint process fails to resolve the complaint process, or the person making the complaint still wishes to make a formal complaint, the person receiving the complaint should initiate the formal complaint process in accordance with Settlement Agreement Section III.E, *Complaint Procedures for IAD*. **Task 4.5** requires that OPD personnel do not unduly influence persons making a complaint to consent to the informal complaint resolution (ICR) process. **Task 4.6** requires that IAD have a central control system for complaints and Departmental requests to open investigations. OPD is in compliance with each of these tasks.

**Task 4.7** requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt. If IAD is not available, IAD must be contacted at the start of the next business day. Overall, 100 of the 112 (87%) field complaints were in compliance with Task 4.7. The IMT found OPD in conditional compliance with Task 4.7.

Under the guidance of OIG, OPD developed a Daily Incident Log and accompanying policies and protocols. The IMT noted the striking cultural shift the implementation of this process reflected from years earlier when complaints not received directly by IAD were often lost or ignored. Even where cases listed on the DIL were out of compliance, in all cases, IAD learned of them eventually, usually fairly rapidly, and in most cases, a field supervisor had already contacted the complainant, or attempted to contact the complainant by the time IAD learned of the complaint – a striking and laudable contrast to past practice within OPD.

**Task 4.8** requires that OPD ensure that all complaints received are actually processed and tracked as such. In contrast to the practice a few years ago, when hundreds of complaints a year were not assigned an identifying number and were effectively lost, a review of all 1,662 matters entered into the IAD database between December 1, 2007, and November 19, 2008, demonstrated that all but four had received an IAD case number, which is assigned to all misconduct complaints, or an IAD intake number, which is assigned to all matters that OPD determines are not misconduct complaints. OPD is in compliance with Task 4.8.

**Task 4.9** requires that OPD personnel notify IAD and the Chief of Police, or designee, as soon as practicable, in cases likely to generate unusual interest. The IMT determined that there were nine such cases during the time period under review and that OPD was in compliance for each of these cases.

**Task 4.10** requires that OPD comply with criteria it has established when resolving complaints via informal complaint resolution, administrative closure, or summary finding. This subtask is meant to ensure that OPD provide the proper level of investigation for each complaint and not resolve meritorious complaints of misconduct without determining—and documenting—whether the OPD member or employee committed misconduct. The IMT audit found OPD in compliance with this task.

The IMT praised OPD’s “impressive” improvement in providing the right type and level of investigation of misconduct complaints. The IMT recognizes that this change occurred because of the consistent commitment and hard work of IAD and OPD leadership, including several past commanders of IAD.

The IMT praised the changes in OPD’s approach to investigations that will allow it to address community concerns more proactively. For example, OPD now documents that supervisors have spoken to subject officers about alleged misconduct (often a complaint of poor demeanor or work performance) before they approve an ICR. This critical advance ensures that complaints of minor misconduct can positively impact police/community relations. OPD also is doing a better job in forwarding complaints that are closed as “service complaints” to the appropriate commander so that the Department can consider whether policies or procedures should be changed to provide better police service to the Oakland community. This also is a positive way to use the information learned during a misconduct investigation to improve police/community relations.

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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, Training and Partial Practice Compliance

Deliverables

Information Bulletin, *Preliminary Complaint Investigation Procedures*

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

IMT Audit Summary

During this reporting period, the IMT reviewed five subtasks of Task 5. Four of the subtasks (5.2-5.5) were related to responding to the scene of complaints, gathering the appropriate information and making the appropriate notifications. (Task 5.1 was assessed as part of Task 6, and was not reviewed). The fifth subtask (5.20) was related to the quarterly review of filed Internal Affairs cases. Of the five subtasks reviewed, the IMT found OPD in compliance with two of them. Therefore, Task 5 continues to be in partial practice compliance.

OPD has developed a system that centralizes receipt of field complaints and the forwarding of those complaints to IAD. This system appears to have resulted in better immediate response to field complaints, fewer “lost” complaints, and more complete and consistent information about complaints being sent to IAD. Although this system is not yet where it needs to be, the IMT felt that OPD can come into compliance with these requirements in the near future.

Task 5.2 requires that OPD document any delay in supervisory response beyond three hours. OPD requires this response be in-person, while the Agreement appears to require a field response only in response to complaints about conduct that has just occurred. The IMT only considered cases with no response or a delayed response *in which a field response was required*. Of the 17 applicable complaints, only five cases documented the reason for the delay of over three hours. The IMT noted that supervisors sometimes “responded” to field complaints by telephoning the complainant, which was not always appropriate. The IMT found OPD not yet compliant with this task.

Task 5.3 requires that if the complainant refuses to wait for the field supervisor, the field supervisor shall make all reasonable attempts to gather certain information from the complainant. In the 115 cases received during the review period, the IMT was able to confirm that complainants refused to wait for a supervisor in six instances. OPD gathered the required information in five (83%) of these cases. Although this subtask requires a compliance rate of 90%, given the small dataset and OPD’s general practices in this area, the IMT found OPD in compliance with Task 5.3.

Task 5.4 requires that the complaints received by OPD personnel be communicated to the Area Commander. Of the 111 applicable complaints reviewed, the IMT was able to determine that the Area Commander had been notified in 87 (78%) instances. The IMT found OPD not yet compliant with this task.

Task 5.5 requires that that specific complaint information be forwarded to IAD. Information required includes: identification of personnel, witnesses or identifying information, if known (log should say “unknown” if not known); date, time, and location of incident; time of contact or attempt to contact by supervisor; complainant’s first and last name; and disposition. Although the IMT found OPD not yet in compliance with this task, they did note that OPD was doing a good job ensuring that complaints are listed on the DIL and forwarded to IAD. However, all the information required was not yet being captured.

Task 5.20 requires that all “filed” cases be reviewed quarterly by the IAD Commander to determine whether the conditions that prevented investigation and final disposition have changed. The IMT found IAD’s handling of cases in which investigation is delayed because of outside circumstances (whether “filed” or “tolled”) to be generally very good and in compliance with the intent of the Agreement.

In five of the thirteen cases reviewed, the IMT found that the investigation was delayed or halted because the investigator gave other cases priority rather than because the circumstances of the tolled case required it. These cases were among the oldest cases in the dataset. In the eight newer cases, it did not appear that cases were delayed solely because the statutory deadline was tolled. Rather, the IMT found that, although the case may have been delayed or halted at some point

during the investigation, this was appropriate given the circumstances of the case, and that OPD continued to investigate these cases to the extent possible. With the exception of one case, there is documentation in each of these cases of approval by the Chief or his designee (i.e., the IAD Commander) to hold these cases in abeyance.

Although the official approval or review required by the Agreement and OPD policy did not occur in every case, all the cases in the dataset indicated routine review by IAD Command staff during the course of the investigation. Because IAD's handling of filed and tolled cases is solidly in line with professional policing practices and consistent with Agreement requirements, the IMT found OPD in compliance with Task 5.20.

OIG Audit Summary

During this reporting period, OIG completed two audits of Task 5. The first was published in July of 2008 and reviewed subtasks 5.15 through 5.19 and 5.21. The second review, published July 14, 2009, assessed subtasks 5.2 through 5.5. Results of the two separate audits are detailed below.

OIG Audit of Tasks 5.15 through 5.19 and 5.21

In July 2008, OIG initiated its third review of the Department's Receiving and Processing Complaints policy, DGO M-3. The review focused on investigations by the Internal Affairs Division (IAD) into allegations of Manual of Rules Violations resulting from citizen complaints. The review covered parts of Task 5 and Task 8, and all of Task 9. Although the Department did not meet full compliance for all the reviewed tasks, it did show continued improvement. As a whole, the investigations were complete and thorough. With a little more attention to detail, the Department will be in full compliance with Tasks 5, 8 and 9.

The Department was in compliance with four tasks (5.15, 5.16, 5.17 and 5.18). These require investigators to: gather and document relevant evidence; make credibility determinations; resolve inconsistent statements among witnesses; and properly analyze evidence and use the "preponderance of evidence" standard.

The Department was not in compliance with Task 5.21, which requires members or employees who are subjects of an internal investigation, or who have been on the scene of an incident at which misconduct has been alleged by a complainant, to be interviewed. Out of 45 investigations one did not meet the standard because an investigator failed to interview personnel at the scene of the incident. Five others were Summary Finding investigations that had no documented pre-approval to interview fewer people than required by Task 5.21. The Audit Team found that these five investigations were appropriately investigated as Summary Findings and would have been in compliance with Task 5.21 had proper pre-approval been obtained.

One task fell out of compliance since the 2007 OIG review. Task 5.19 requires each allegation be resolved by one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Filed. Only 84% of the investigations met this standard.

OIG Audit of Tasks 5.2 through 5.5

On January 28, 2009, OIG initiated a review of a portion of Task 5, specifically Tasks 5.2, 5.3, 5.4 and 5.5.

These subtasks require OPD to respond to a citizen complaint made in the field within three hours and if there is a delay greater than three hours, the reason for such delay is documented by the person receiving the complaint. In addition, where the complainant refuses to travel to a supervisor or wait for one, the member/employee makes all reasonable attempts to obtain identification. Furthermore, the Area Commander is notified and information about the complaint, as specified in OPD policy, is forwarded to IAD.

The review looked at the Daily Incident Logs (DILs) completed by the Communications Division and forwarded to IAD for the months of October and December 2008, to determine the Department's progress in meeting the standards of Tasks 5.2, 5.3, 5.4 and 5.5. There were a total of 118 entries made during October and December. Upon an initial review of the logs, three entries were deselected because they were not complaints, leaving a total of 115 to be examined for this review.

Task 5.2 requires that a supervisor or IAD respond to citizen complaints made in the field within three hours. In Addition, if the field response is not made within three hours, documentation for the delay is required. Of the 115 complaints on the DILs for October and December 2008, 80 required a field response by a supervisor. Of these 80 complaints, OPD responded within three hours 71 times. There was no documentation of the reason for the delay for the nine complaints in which the response time was greater than three hours. The Department needs to ensure that the reason for the delay is properly documented.

Only one of the 115 incidents was applicable to Task 5.3; in the event a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable efforts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant or any witnesses. An effort to gather the required information was made by the officers and documented.

Regarding Task 5.4, there was clear documentation in 97 of the 115 (84%) DIL entries that an Area Commander was notified of the incident.

Finally, the Department fully documented all of the complaint information and forwarded it to IAD, as required by Task 5.5, in 31 of 115 cases. The Department is doing a good job of accepting and initiating the complaint process in the field. Complainants' names, or their refusals to give names, were documented 100% of the time and addresses were documented 94% of the time. However, improvement is needed in documenting complainant's contact numbers. While the Department also fell short in documenting witness information, names of subject personnel and date/time/location of incident, in many cases the missing information did not appear to be a problem of supervisors failing to gather it, but rather an incomplete or missing explanation for why the information was not available. In addition, the most critical information for the initiation of a complaint investigation is the complainant's name and phone number.

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### **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*

##### **IMT Audit Summary**

Task 6 requires that OPD discipline members/employees who refuse to accept a citizen complaint, fail to refer a citizen to IAD (when the citizen can be reasonably understood to want to make a citizen’s complaint), discourage a person from filing a complaint, and/or knowingly provide false, inaccurate, or incomplete information about IAD. The IMT published its audit review of Task 6 in November 2008. While OPD was not yet in compliance with this task, the IMT noted that substantial improvement has been made.

In the period reviewed, IAD did not sustain any allegations of a failure to take a complaint, refusal to accept or refer complaint, refusal to provide name or serial number, or any other Task 6-related Performance of Duty or Conduct Toward Others allegations. The IMT felt that some of these allegations should have been sustained. It found instances of officers not calling a supervisor or otherwise properly initiating the complaint process, and of supervisors not initiating the complaint process properly when they were called to the scene.

Some instances of not properly recognizing or taking complaints appeared to be deliberate, particularly in investigations conducted near the beginning of the time period reviewed. In part, lack of proper identification or investigation appeared to reflect apparent confusion regarding the proper handling of misconduct complaints within IAD.

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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 concerns methods for receiving citizens' complaints. During this audit, the IMT found OPD in compliance with six of the eight subtasks. Task 7.3, investigation of anonymous complaints, was found out of compliance in a prior audit (December 2007) and has not been audited since. Task 7.5, OPD personnel distribute complaint forms and information brochures when an individual wishes to make a complaint and upon request, was found in compliance during the IMT's July 2007 review.

Task 7.1 requires that OPD establish a recordable, toll-free complaint phone line that is staffed by OPD personnel 24-hours per day to receive and process complaints in accordance with General Order M-03. At least 85% of the calls made by the IMT to test the complaint line must have been answered before the seventh ring. OPD has the complaint phone-line in place and 16 of the 20 test calls (80%) made to the line were found in compliance. Although this was one call short of the 85% requirement, given that two of the calls were eventually answered, the IMT found OPD in compliance with 7.1.

Task 7.2 requires that guidelines for filing a misconduct complaint are prominently posted and informational brochures are made available in key Departmental and municipal locations, including that they are kept with Neighborhood Service Coordinators for availability at Neighborhood Crime Prevention Council meetings, and that these materials are available on the OPD website. Visits during this reporting period showed that complaint guidelines are prominently posted in all of the required locations, and complaint forms and informational brochures are available. In addition, all 13 NSCs interviewed by the IMT confirmed that OPD has provided them with complaint forms and brochures to provide to interested community members.

Task 7.4 requires that OPD personnel have complaint forms and brochures available in their vehicles at all times while on duty. The IMT interviewed officers and sergeants to determine compliance. Of the 52 valid tests conducted by the IMT, 50 (96%) members interviewed had both complaint forms and complaint guideline brochures in their cars or briefcases while on duty.

Task 7.6 requires that IAD is located in a dedicated facility removed from the Police Administration Building. The IMT confirmed that all IAD offices and personnel are located at 250 Frank Ogawa Plaza.

Task 7.7 requires that complaint forms and informational brochures are translated consistent with City policy. The IMT confirmed that *Your Guide to Filing a Complaint Against the Police* and its complaint form inserts have been translated into Chinese, Spanish, and Vietnamese.

Task 7.8 requires that complaint forms be processed in accordance with controlling state law. General Order M-03 implemented a complaint acceptance and investigation system that is in accord with controlling state law. Whether that system is adhered to is assessed as part of the assessment of the other IAD-related Agreement tasks.

OIG Audit Summary

In November 2008, OIG initiated a compliance audit of Task 7.3 for the time period of December 1, 2007 through December 1, 2008. Task 7.3 requires that OPD accept anonymous complaints and investigate them to the extent reasonably possible to determine whether the allegation(s) can be resolved. Also, to the extent possible, OPD asks anonymous complainants for corroborating evidence. Current policies—*DGO M-3, Complaints Against Departmental Personnel or Procedures* and *Departmental Special Order 8924, Revision of DGO M-3*—were implemented on February 15, 2008.

In nine of the ten (90%) investigations reviewed, OPD accepted the anonymous complaints and investigated them to determine the facts of the events that resulted in the allegations. Corroborating evidence was sought and any refuting evidence considered. A single case in the audit population did not fully resolve all of the possible MOR violations. If this case is held out of compliance, the Department has achieved a 90% compliance rate, falling short of the 95% required. However, the spirit of Task 7.3 is to ensure that anonymous complaints are not overlooked or minimized just because the complainant is not identified. In this case, the unresolved issues with the investigation did not stem from the anonymity of the complainant. For this reason and because of the small sample size, OIG found the Department in conditional compliance with Task 7.3.

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## 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 Full Practice Compliance

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

### Deliverables

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

## IMT Audit Summary

Task 8 concerns classifications of citizen complaints. In its audit published April 2009, the IMT found OPD in full compliance with this task.

**Task 8.1** requires that misconduct complaints be categorized according to Class I (more severe) or Class II (less severe) offenses. During this review, the IMT found that of the 155 discrete allegations, all but two were categorized according to Class I and Class II offenses. OPD now routinely identifies every allegation as Class I or Class II, helping to ensure that investigations are handled appropriately.

**Task 8.2, 8.3, 8.6 and 8.7** require that Class I offenses are the most serious allegations of misconduct, which, if proven, might serve as the basis for a criminal prosecution and/or dismissal from OPD; Class II offenses include only minor misconduct situations; and Class II violations (that do not indicate a pattern of misconduct) discovered by a supervisor, commander, or manager in the normal course of supervision may be addressed through non-disciplinary corrective action. General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and OPD's related Discipline Matrix effectuate the requirements for these Tasks.

**Task 8.4** requires that, unless otherwise directed by the Chief of Police or acceptable designee (i.e., Acting Chief, Assistant Chief, or Deputy Chief), Class I offenses are investigated by IAD investigators. The IMT noted significant progress in this area since its last audit. During this review, the IMT found that in 93% of the cases in the dataset that included Class I allegations, the investigation was either completed by IAD, as required, or conducted by other Department divisions but with the Chief or Assistant Chief approval. In most instances, there is detailed documentation in the file regarding the case, allowing the Chief or his designee to determine whether the case is appropriate for division-level investigation despite the Class I allegation.

The IMT noted that of the 30 discrete Class I investigations in the dataset, almost a third were investigated by division supervisors. The purpose of requiring that Class I allegations be investigated by IAD is to ensure that the most serious allegations of misconduct benefit from IAD's expertise and relative independence. Nonetheless, resource constraints can require that, where the facts of the allegation permit, some Class I allegations are investigated by division supervisors (usually first-line supervisors in the subject officer's chain of command). Requiring that this critical decision be made only at the highest levels helps ensure that the decision is not taken lightly or overused.

**Task 8.5** requires that *all statements and interviews in Class I investigations are audio recorded*, but need not be transcribed, except at the request of the subject member/employee, complainant, command staff, IMT, or OIG. **Task 8.8**, on the other hand, requires that statements and interviews *from OPD personnel in Class II investigations are audio recorded* but need not be transcribed, except at the request of the subject member/employee, complainant, command staff, IMT, or OIG. During its last audit of Tasks 8.5 and 8.8, the IMT found that interviews were properly recorded in 91% of the cases reviewed. During this audit period, the IMT found a compliance rate of 98%. In one case complainant interviews were recorded but were not saved to the IAD server and cannot be located. The IMT considered this case to be out of compliance

**Task 8.9** requires that, if in the course of a Class II, division-level investigation, a unit commander or the assigned investigator encounters a Class I violation, s/he contact the IAD Commander, and the IAD Commander consult with the Chief of Police to determine whether the investigation should be forwarded to IAD or remain as a division-level investigation. During this audit period, Task 8.9 was not applicable in any of the 52 cases reviewed.

### **OIG Audit Summary**

In July 2008, OIG initiated its third review of the Department's Receiving and Processing Complaints policy, DGO M-3. The review focused on investigations by IAD into allegations of Manual of Rules Violations resulting from citizen complaints. The review covered parts of Task 5 and Task 8, and all of Task 9. Although the Department did not meet full compliance for all the reviewed tasks, it did show continued improvement. As a whole, the investigations were complete and thorough. With a little more attention to detail, the Department will be in full compliance with Tasks 5, 8 and 9.

The Department was in compliance with Task 8.1, which requires investigators to properly categorize complaints.

Tasks 8.5 and 8.8 fell just short of the 90% compliance standard at 89% and 87%, respectively. One Class I investigation did not meet the standard because the investigator conducted a one-minute telephone interview without recording it or providing an explanation for why it was not recorded. Three other investigations were Summary Findings. The investigator stated he/she conducted interview(s) but did not document that they were recorded. It is possible the interviews were in fact recorded but not placed on the server or Internal Affairs Division investigation control file.

The Department did not achieve compliance with Task 8.4. The audit team found that 70% of the 10 investigations met the standard that, unless otherwise directed by the Chief of Police, Class I offenses be investigated by IAD investigators.

Task 8.9 was not assessed during this review.

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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, Training and Full Practice Compliance

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

Deliverables

Internal Affairs Division Policy and Procedures Manual

IMT Audit Summary

Task 9 requires that citizen complainants be contacted as soon as possible by IAD or the investigator assigned to the investigation to determine the nature, scope, and severity of complaints, as well as to quickly identify potential witnesses and/or evidence. This requirement is meant to ensure that OPD quickly initiates complaint investigations, in part to identify and collect evidence that may be fleeting. OPD's compliance rate of 88%, just short of the 90% compliance rate required by the agreed-upon protocol, was deemed sufficient for a finding of actual compliance for Task 9.

The IMT noted that IAD practice in this area has changed significantly for the better. In several instances, OPD was found in compliance with Task 9 based on the information gathered by a field supervisor while taking a complaint in the field, often as part of a use of force investigation.

OIG Audit Summary

In July 2008, OIG initiated its third review of the Department's Receiving and Processing Complaints policy, DGO M-3. The review focused on investigations by IAD into allegations of Manual of Rules Violations resulting from citizen complaints. The review covered parts of Task 5 and Task 8, and all of Task 9. Although the Department did not meet full compliance for all the reviewed tasks, it did show continued improvement. As a whole, the investigations were complete and thorough. With a little more attention to detail, the Department will be in full compliance with Tasks 5, 8 and 9.

Task 9.1 requires that complainants be contacted as soon as possible. While 89% of the investigations reviewed met the standard, the result is just short of the required 90%.

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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**

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

### **Deliverables**

Internal Affairs Division Policy and Procedures Manual

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Task 11: Summary of Citizen Complaints Provided to OPD Personnel

- Settlement Agreement 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 Full Practice Compliance

Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in March 2009. Tasks 11.3, requiring IAD to notify subject’s members/employees immediate supervisors and commanders, and 11.4, requiring that, for sustained complaints,

subject members/employees have access to underlying data on which the report is based, once the final report is issued, were found in conditional compliance.

Deliverables

Internal Affairs Division Policy and Procedures Manual

IMT Audit Summary

The IMT found OPD compliant with this Task 11, although two of the four subtasks were conditionally compliant. The IMT praised OPD, and IAD in particular, for making significant progress since the last IMT review.

OPD now has in place a well-functioning system for ensuring that officers and employees, and their chains of command, are notified of an allegation of misconduct against the officer or employee. Each subject officer and his/her chain of command is emailed a copy of the Complaint Notification Report, which includes a brief synopsis of the complaint, and retains the CNR and the email documenting that it was sent in the case file. Notification is also documented in the chronological log, accessible via the IAD database and a copy of which is included in each case file.

Task 11.1 requires that subjects of misconduct allegations be provided a brief synopsis of the complaint prior to interview, but *not* be permitted to review complaint or witness statements made to the complaint investigator prior to the interview. In six of the 51 cases assessed (88%), the synopsis was provided to the subject employee. The IMT noted that OPD's 88% compliance with this task is a great improvement over the 37% compliance rate found in its last review.

Task 11.2 requires that OPD retain the synopsis provided to the officer in the case file. In every case in which the subject was notified, the synopsis (i.e., the CNR and/or CIR) was included in the case file. This 100% compliance rate is a marked improvement over the 37% compliance rate found in the last review.

Task 11.3 requires that the subject's immediate supervisor and commander be notified of the complaint at the same time the subject is. The IMT was unable to determine whether this notification occurred in 13 of the 51 cases assessed. This compliance rate of 75% falls short of the 85% compliance rate required for this task. However, because the IMT believe that in at least some of these instances, notification occurred but was simply not properly documented, and because of OPD's performance on the remainder of this task, it found OPD in conditional compliance with Task 11.3. The IMT noted that the 75% compliance rate is also a significant improvement over the 38% compliance rate found during the last review.

Task 11.4 requires that where allegations of misconduct were sustained, all subject members/employees have access to underlying data on which the internal investigation of their conduct was based, after completion of the investigation and the issuance of the final investigative report. The IMT was aware of one case in which the subject member alleged that information was inappropriately withheld from him. Once IAD's investigation is complete, the

IMT plans to conduct an assessment of this allegation to determine whether information was inappropriately withheld. In the interim, it found OPD in conditional compliance with this task.

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### **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*

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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

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### **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)

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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

**IMT Audit Summary**

Task 16 requires that supervisors and managers be held accountable to support the IAD process. The IMT found OPD not in compliance with this task.

**Task 16.1** requires that OPD hold supervisors, commanders, and other OPD managers accountable for “supporting the IAD process.” A variety of Agreement tasks, including **Task 16.2**, specifically address ways in which OPD leadership must support the IAD process: supervising – and intervening when necessary – to prevent, detect, and effectively respond to misconduct by officers under their command.

In conjunction with the IMT’s ongoing monitoring, the IMT noted and reviewed instances where supervisors, commanders, and other managers did not support the IAD process, and assessed whether OPD held leadership accountable for any failures to support the IAD process. The IMT noted that OPD is doing a better job of holding leadership accountable for supporting the IAD process, but is not yet where it needs to be. It found many exemplary instances of OPD holding supervisors and managers accountable. IAD command staff now issues negative case evaluation reports for unacceptable internal investigations and for missing internal IAD deadlines.

In other instances, OPD did not hold supervisors and managers accountable, and these cases indicated that, despite significant advances in this area, entrenched obstacles to supervisory accountability remain. Instances of OPD supervisors and commanders not supporting the IAD process continue to surface. Currently OPD is investigating a high-level commander for failing to report an internal complaint of misconduct with the result that OPD will not be able to impose any discipline in a case where the allegations, if true, are quite serious.

One of the most direct ways in which OPD supervisors and commanders can support the “IAD process” is by properly supervising, reviewing, and intervening in the actions of their subordinates to ensure those actions are appropriate. Task 16.2 requires that where *OPD finds* that an OPD member or employee committed Class I misconduct, OPD must determine whether a supervisor or manager should have reasonably determined that the subordinate committed misconduct and hold the supervisor or manager accountable as appropriate.

The IMT identified seven cases during this time period in which a Class I allegation was sustained *and* there were apparent supervisory failures. OPD complied with Task 16.2 in five of the seven cases reviewed.

The IMT found cases in compliance with Task 16.2 even where there were supervisory failures, provided that OPD identified and investigated them (e.g., 07-0254). It also found cases in compliance even where it disagreed with OPD’s disposition in a case (e.g., 05-0728). OPD was only found to be out of compliance with Task 16.2 where it failed to sufficiently identify or investigate apparent supervisory failures. In two of the cases reviewed, OPD did not properly identify and investigate the apparent supervisory failures.

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

Deliverables: Not Applicable

Implementation Activities: Not Applicable

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

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

- Settlement Agreement 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 Partial Practice Compliance**

#### **Deliverables**

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

#### **OIG Audit Summary**

In March 2009, OIG initiated its second audit of Task 18, Arrest Approval and Report Review. The audit covered felony, drug, Penal Code §§ 69, 148, 243 (b) (c), and use of force arrests occurring between January 15 and February 15, 2009. The audit found the Department in compliance with four of the five requirements of Task 18. The audit team noted that had more arrest documents properly recorded the presence or absence of witnesses, the Department would have achieved full compliance with Task 18.

Ninety-eight percent of the arrest documents reviewed contained sufficient articulation of probable cause or reasonable suspicion for the stop/detention. The audit team found only two arrests out of compliance. At the time the audit was conducted, the Records Division had not received the associated Crime Reports for the arrests, thus the two arrests were determined to be out of compliance.

The audit also found that supervisory log times were documented for 96% of the arrests. Proper use of the updated Consolidated Arrest Report, which includes a designated signature block for the supervisor to sign along with a box designated for the log time of contact, has had a positive effect on achieving compliance. Log times and supervisory contact are centrally located on one form.

The Department has yet to achieve compliance with witness identification (Task 18.2.2), which has a compliance requirement of 90%. The Department fell short with 87% compliance. For some of the arrests deemed out of compliance, officers did not provide identification of witnesses, although it was apparent to the audit team that there were witnesses at the scene. In other cases, officers simply did not state that there were no known witnesses, when based on the report narratives it was reasonable to conclude that none were present.

### **IMT Audit Summary**

Task 18 requires supervisors to respond to the field to approve any arrest involving a Level 1, 2, or 3 use of force; a felony; drug charges; or charges of Penal Code §§ 69, 148, 243 (b)(c). This requirement applies unless community unrest or other conditions at the scene make supervisory response impractical. In addition to responding to the field, Task 18 requires supervisors to review the arrest documentation to determine whether probable cause for the arrest and reasonable suspicion for the stop is articulated; ensure available witnesses are identified; and approve or disapprove the arrest in the field.

OPD has consistently found that supervisors and officers are complying with all Task 18 requirements except the witness identification requirement (Task 18.2.2). Since the IMT found OPD in compliance with the rest of Task 18 in 2007, its most recent review focused specifically on this witness identification provision. Consistent with OPD's own compliance assessor, the IMT found OPD not in compliance with Task 18's requirement that certain categories of arrest include documentation of the identity of available witnesses or documentation when there are no witnesses. As a result, OPD is no longer in conditional compliance with Task 18.

The compliance standard for Task 18 is 90%. The average rate of witness identification was 77%. Witnesses or the absence of witnesses were identified in 70% of the felony arrests; 65% of the drug arrests; 73% of the arrests for Penal Code §§ 69, 148, 243 (b)(c); and 100% of the arrests involving Level 1, 2, or 3 uses of force. While many of the arrests reviewed may have been non-compliant because officers failed to document when there were no witnesses, other arrests were noncompliant because officers failed to identify readily available witnesses.

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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*

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## **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 Full Practice Compliance

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

Deliverables

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

Implementation Activities

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

IMT Audit Summary

Task 21 requires that OPD commanders and managers meet with their subordinates at least twice per year to coach them regarding their strengths and weaknesses, and that OPD supervisors meet with each of their subordinates at least twice per month for informal performance reviews. The IMT found OPD in compliance with this task.

Task 21.1 requires OPD commanders and managers to meet with their subordinates at least twice per year to coach them regarding their strengths and weaknesses. Until March 2008, OPD required that these meetings be documented and tracked. The parties agreed to eliminate the documentation and tracking requirement based, in part, upon improvements in OPD's supervisory systems, including improvements in span of control, force reporting, and arrest approvals.

Task **21.2** requires OPD supervisors to meet with each of their subordinates at least twice per month for informal performance reviews. As in the case of Task 21.1, the documentation and tracking requirement was eliminated in March 2008. In addition, the parties agreed to limit the twice per month meeting requirement to the following units: Patrol, Crime Reduction Teams, IAD, Intelligence Division, Parole & Corrections Team, Special Duty Units, Traffic Operations Section, Special Operations Group, Fugitive Unit, Problem Solving Officers, and Campus Life and School Safety.

The IMT praised OPD for significant improvement in supervisory/subordinate contact, which starkly contrasted with findings of a few years ago when officers reported having infrequent interaction with their supervisors. Officers, employees, and supervisors interviewed consistently reported having frequent contact with their supervisors on a range of performance issues. These issues include arrest approval, report review, and supervisory response to use of force incidents. The increased interaction between supervisors and subordinates is due, in part, to other changes OPD has implemented as a result of the Agreement. These changes include requiring sergeants and the officers they supervise to work on the same days and during the same hours and requiring sergeants to respond to the field to approve arrests and evaluate uses of force.

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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*

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## **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

## **OIG Audit Summary**

In March 2008, OIG initiated an audit of OPD use of force investigations for the time period of February 1, 2008 to March 31, 2008. The audit assessed the Department's efforts towards achieving compliance with Tasks 24, 25, and 35, which cover issues such as notification of the supervisor by an officer or other employee when force is used, response to the scene by the supervisor, identification and interview of witnesses, documentation of injuries, collection of physical evidence, and analysis of evidence. In addition, use of force investigations must be completed, submitted, and reviewed by the officer's chain of command in a timely manner.

Task 24 requires that a supervisor be notified and that he/she respond as soon as practicable following either an investigated use of force or an allegation of excessive force. In their reports, members and employees are to document both the use of force and whether they used the force or were merely present when force was being used. The audit revealed that supervisors were being notified and subsequently responding to the scene. Also, officers were correctly documenting their own use of force. However, officers were not always describing force that was employed by other officers.

The audit revealed an area of use of force reporting and investigations that must be improved to achieve compliance with Task 24. Before an investigation is deemed complete, reviewers must ensure that all required documents are identified and included in the packet. Many times cases were judged to be out of compliance not because of the actions of the officers, but because the required documents were not included in the use of force packet.

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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)

OIG Audit Summary

In March 2008, OIG initiated an audit of OPD use of force investigations for the time period of February 1, 2008 to March 31, 2008. The audit assessed the Department's efforts towards achieving compliance with Tasks 24, 25, and 35, which cover issues such as notification of the supervisor by an officer or other employee when force is used, response to the scene by the supervisor, identification and interview of witnesses, documentation of injuries, collection of physical evidence, and analysis of evidence. In addition, use of force investigations must be completed, submitted, and reviewed by the officer's chain of command in a timely manner.

The audit team found that the Department was in compliance with most of the Task 25 requirements. For example, the Department was in compliance with the requirement that an on-scene supervisor complete a Use of Force Report. Other Task 25 requirements include: documentation of the use of force incident in an offense or supplemental report; statements from the member(s) and employee(s) when necessary; separating and interviewing all officers who were at the scene; identification and interviews of non-Departmental witnesses; consideration of discrepancies in information received from members, employees and witnesses; and documentation as well as analysis of physical evidence. Additionally, recommendations must be made as to whether the use of force was reasonable and within policy, as well as proportional to the level of resistance being employed by the suspect. Finally, the investigations must be reviewed by the appropriate chain of command and determined to be either in policy or out of policy. When the actions are judged to be out of policy, the investigation must be turned over to the Internal Affairs Division for further work.

In some areas the Department fell short of the 90% compliance rate. For example, evidence was summarized and analyzed 77% of the time. Identification and interviews of witnesses occurred 85% of the time. Consideration of training and tactical issues occurred 84% of the time and explanations justifying why any element of policy was not covered occurred 63% of the time. In addition, the Department failed to comply with two other requirements. It reached 90% compliance with appropriate chain of command review of use of force reports, falling short of the required 95% compliance rate, and it was not in compliance with the requirement that use of force reports be completed within the timelines set forth in Department General Order K-4.

The audit revealed two areas of use of force reporting and investigations that must be improved to achieve compliance with Task 25. First, before an investigation is deemed complete, reviewers must ensure that all required documents are identified and included in the packet. Many times cases were judged to be out of compliance not because of the actions of the officers, but because the required documents were not included in the use of force packet. Finally, the timelines must be adhered to, and if not, the chain of command must be held accountable.

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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**

#### **Deliverables**

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

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Task 27: Oleoresin Capsicum Log and Checkout Procedures

- Settlement Agreement 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 Full Practice Compliance

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

Deliverables

- Departmental General Order C-8, *Oleoresin Capsicum (OC)*
- Oleoresin Capsicum Log
- Oleoresin Capsicum checkout electronic tracking and database
- Special Order 8061, *Oleoresin Capsicum (Pepper Spray) Log and Checkout Procedures*

IMT Audit Summary

Task 27 requires that the OPD log OC canisters checked out by OPD personnel, using a computerized and electronically accessible log to regularly prepare and distribute accessible and accurate reports. The IMT found OPD in compliance with this task.

Task 27.1 requires OPD to keep a log of all OC canisters checked out by OPD personnel that list all OC canisters distributed to OPD personnel. The IMT found that finite and mutually exclusive possible replacement reasons appear to be fully and consistently captured in the hand-written logs and the computerized database kept by the Property and Evidence Unit.

Task 27.2 has two distinct requirements: First, it requires OPD to maintain its OC log in an electronic format. A comparison of hand-written OC logs to computerized printouts provided by OIG showed that data entered into OPD's computer tracking system is more than 99% accurate. Second, it requires that OPD regularly prepare and distribute *accurate* reports regarding OC control and tracking.

The IMT was concerned that OPD personnel were failing to submit their OC canisters for replacement following a reported use of force involving OC spray. This is an important officer safety issue because officers who have used their canisters and not exchanged them for a replacement may find themselves on the street with insufficient spray remaining when the tool is next needed. As a result, officers may need to escalate incidents that otherwise could have been handled with the use of OC spray.

Following OIG's October 2008 Task 27 audit, OPD made a concerted effort to improve its practices. Since December 2008, OPD has implemented a systematic and thorough process for ensuring that monthly reports of OC usage are accurate. As a result, through proactive management efforts, OPD commanders now have a solid handle on when, how often, and which officers use OC spray during use of force incidents. Accordingly, the IMT found OPD in compliance with Task 27.

OIG Audit Summary

In March 2008, OIG initiated an audit of Task 27, *Oleoresin Capsicum Log and Checkout Procedures*, for the time period of January 1, 2007 to March 31, 2008. Task 27 has two requirements: that OPD maintain a log of all OC canisters checked out and used by its members and employees, and that it produce a computerized, electronically accessible OC log and regularly prepare and distribute accurate reports in order to detect and/or prevent the misuse of OC.

The audit found that OPD's OC Log and Checkout Procedures were in compliance with Task 27.1 and part of 27.2. The Department maintains a log of all its members/employees who check out and use OC canisters, which is computerized and electronically accessible, and it distributes a monthly report to its command staff and supervisors, allowing them to monitor the usage of the personnel under their respective jurisdictions.

However, the Department is out of compliance in report accuracy. Four times the replacement reason for a particular OC canister varied in the handwritten log and the OC database. When the discrepancies were investigated, the replacement reason was neither what was recorded on the handwritten log nor what was recorded in the OC database. This problem, combined with a number of other discrepancies between the handwritten log and the OC database and the fact that OC canisters are not being replaced after a use of force incident, as required by policy, resulted in an out of compliance finding for report accuracy.

During the audit, discrepancies listed in this audit were brought to the attention of the Bureau of Investigations Deputy Chief and the PEU Sergeant. The PEU staff agreed with the discrepancies found in the audit and corrected nearly all of them. In addition, DGO C-8 was sent out for training a second time, with particular emphasis on the requirement that OC canisters are turned in after they are used during a use of force incident.

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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, Training and Full Practice Compliance**

##### **Deliverables**

- Revised Departmental General Order M-4, *Coordination of Criminal Investigations*

- Internal Affairs Division Policy and Procedures Manual

### **Implementation Activities**

DGO 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**

Task 28 requires that the DA or relevant law enforcement agency be notified “as soon as possible” of “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 OPD in conditional compliance with this task.

Previously, the IMT had found no system in place for ensuring timely notification of criminal misconduct or coordination of investigative efforts, resulting in notifications made too late to permit OPD and outside agencies to coordinate efforts from the outset. OPD subsequently placed BOI responsibility for these responsibilities at a higher level and with different personnel. Three consecutive IAD commanders successfully implemented and maintained systems for ensuring that instances of apparent criminal misconduct are, for the most part, identified early and handled with alacrity.

The IMT reviewed 53 cases from January 1 through December 31, 2008 that included apparent evidence of criminal misconduct (defined as reasonable suspicion of criminal misconduct). OPD had found reasonable suspicion of serious criminal misconduct in 19 of these cases. The IMT found that OPD timely notified the proper individuals in 17 of the 19 cases reviewed. The two cases out of compliance reflected some continuing misunderstanding about Task 28 requirements and indicated the need for continuing close oversight by upper-level OPD management.

Both BOI and IAD dramatically improved their systems for ensuring appropriate handling of cases of apparent criminal misconduct. Given the significant improvement and generally high level of achievement, as well as the small dataset, the IMT found OPD in conditional compliance with Task 28, even though its compliance rate did not meet the stringent 95% threshold required by this Task.

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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, Training and Full Practice Compliance

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

Deliverables

- Departmental General Order 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

DGO 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

Task 29 concerns IAD investigation priority. The IMT found OPD in compliance with this task.

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. There were 13 cases in the IMT dataset in which a criminal case was potentially viable. The IMT found OPD in compliance with all but one of these cases, a dramatic improvement since last year’s review. In this case, it was unable to determine whether proper coordination occurred.

The relevant divisions within OPD have created a good system for working with each other when investigating criminal and administrative misconduct. Their approach to conducting criminal and administrative investigations is a model one in many respects.

Task 29.2 requires that an OPD interview or interrogation of OPD personnel be preceded by a Lybarger warning if it appears the subject may be charged with a crime, or asserts Fifth Amendment rights. The IMT found that OPD used Lybarger warnings where appropriate in all cases it reviewed. It noted that this compliance reflects improvement since the last review, when OPD did not always properly administer Lybarger warnings.

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### **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, Training and Partial Practice Compliance**

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

#### **Deliverables**

- Revised Departmental General Order K-4, *Reporting the Use of Force*
- Revised Departmental General Order K-4.1, *Investigating the Use of Force*
- Departmental General Order K-4.1, *Force Review Boards* (1 Aug 07)

#### **IMT Audit Summary**

In its review published September 2008, the IMT found OPD in partial compliance with Task 30.

**Task 30.1** requires OPD to convene an EFRB within 30 days of the completion of the administrative investigation conducted by Internal Affairs of certain officer-involved shootings. The EFRB was convened within 30 days of the completion of the Internal Affairs investigation in three of the eight cases reviewed. In all but one of the cases, delays ranged from two to sixteen days. In the remaining case, the EFRB reviewed the case more than three months after the

completion of the Internal Affairs investigation. Accordingly, the IMT found OPD not yet in compliance with Task 30.1.

This issue had been included as an area of concern in the third IMT status report of 2004. OPD responded that when its initial assessment of a critical incident raises concerns about training, tactics, or officer safety, it will provide the involved officers with timely feedback rather than waiting several months for the EFRB to occur. This stop-gap measure is good, but timely completion of officer-involved shooting investigations and EFRB review is still needed.

**Task 30.2** requires that the EFRB have access to recordings and/or transcripts of interviews of all personnel on the scene, including citizen witnesses, and that it be empowered to call in any OPD personnel it believes should testify. Although one EFRB lacked transcripts for all significant witness interviews due to insufficient funds, the IMT found OPD in compliance with these requirements.

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

The IMT found OPD in conditional compliance with Task 30.3 until it can assess whether OPD fully implements and maintains its plan to consistently forward recommendations for sustained findings to the Discipline Officer where the Board finds tactical, policy or training violations associated with the shooting.

1. **Board Composition and Presentation** specifies the voting and non-voting members who are required to attend each EFRB. It also requires that presentations be made to the Board by both IAD and the Homicide Section. OPD is in compliance with the Board composition and presentation requirements of General Order K-4.1. One of the Board's persistent strengths has been the involvement of high-level commanders reviewing the cases. In each of the shooting cases reviewed, all of the required non-voting individuals attended the EFRB. This marks significant progress over prior practices
2. **Review Binder Availability and Content** requires that before each EFRB, OPD provide each voting member of the Board with a binder that contains: shooting investigation report; copy of appropriate offense report; ancillary documents; daily detail of involved personnel; Communications Division audio tape; CAD purge; medical/coroner reports; scene diagram; photographs; training and use of force history of involved personnel; and applicable Departmental policies and publications. OPD is in compliance with this requirement.
3. **Conduct of Boards** establishes a number of specific requirements regarding how the EFRBs must be conducted. OPD is in conditional compliance with these requirements. In each of the eight officer-involved shooting cases reviewed, IAD and Homicide made presentations to the EFRB regarding their investigations. The IMT observed significant improvement in the level of discussion at the EFRBs. Board members frequently identify important training and tactical issues and the need to reinforce, clarify or adjust OPD

policies and training. These are critical Board functions and ones in which the IMT has seen steady improvement since the inception of the Agreement.

In six of eight cases reviewed, the Board found that officers committed significant violations of OPD policies and/or training in their actions leading up to or associated with the shootings. However, it only recommended disciplinary action in one of the cases. In this case, it made the required determination and forwarded its sustained finding to the Discipline Officer. It is unclear why the Board did not recommend disciplinary action for the violations in any of the other cases. The IMT could not discern any reason for this disparate treatment given the nature, extent, and seriousness of the violations, which were so significant that they likely contributed to the shootings in some cases and could have resulted in the death or serious injury of the involved officers.

The IMT found OPD in conditional compliance with Task 30.3 until it can assess whether OPD fully implements and maintains its plan to consistently forward recommendations for sustained findings to the Discipline Officer where the Board finds tactical, policy or training violations associated with the shooting.

4. **Review Board Reports** requires that a report be prepared following each Executive Force Review Board. OPD is in compliance with this requirement.
5. **Board Recommendation Follow-Up** requires recommendations be assigned to a Deputy Chief for implementation; tracked by the Chief of Staff; and reported on at the Management Assessment Program meetings until they are implemented. For the recommendations arising out of the cases reviewed for this audit, OPD did not follow this process. Despite this fact, the IMT found OPD in compliance with this task because it has ensured that the recommendations are being implemented. However, disconnect between actual practices and the provisions of the General Order may lead to recommendations falling through the cracks. This risk is exacerbated by the fact that tracking and implementation of recommendations has relied almost exclusively on a single commander with myriad other responsibilities.
6. **Record Retention and Reporting** requires IAD to serve as custodian of records for use of force reports. The EFRB is also required to conduct an annual review of all cases each year to identify patterns and practices that may have policy or training implications. The policy requires that this review be distributed to the Chief and Deputy Chiefs by the end of the first quarter of the following year. OPD is in compliance with these requirements.

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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

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)

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### **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 for this Task.
- 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.

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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*

IMT Audit Summary

Task 33 requires OPD personnel to report misconduct that they observe or learn of to their supervisor and/or the Internal Affairs Division. While OPD is not yet in compliance with Task 33, the IMT praised the Department and IAD for having made significant progress since its last review.

Task 33.1 requires that in all sustained internal investigations, OPD conduct an assessment to determine whether other OPD personnel knew or should have known that the misconduct occurred, and, if so, whether it was reported as required by OPD policies. The IMT found OPD not yet in compliance with Task 33.1. Noting the Department's improved performance over time, the IMT believed that OPD can attain compliance before the end of the year. Reviewing a total of 57 cases, the IMT found that misconduct was appropriately reported in 83% of them, a dramatic improvement since the last IMT audit, which found misconduct appropriately reported only once in 26 cases. The IMT noted that OPD has shown steady and demonstrable improvement in its willingness and ability to assess whether its personnel are reporting misconduct that they knew or reasonably should have known occurred. Investigative files reflected improved questioning by OPD investigators regarding what other members/employees observed or understood about incidents resulting in sustained allegations of misconduct.

Task 33.2 requires OPD to impose appropriate discipline if it determines that a member or employee knew or should have known that misconduct occurred but did not report it as required. Despite the improvements discussed above, OPD did not determine in a single case that a member or employee failed to report misconduct. Accordingly, there were no cases for the IMT to assess. In 10 of the 57 cases reviewed, the IMT found that OPD did not adequately assess whether a member or employee failed to report misconduct of which they were aware.

The IMT determined that OPD has implemented many of the elements of a confidential reporting system required by the Agreement. However, it found OPD not in compliance with **Task 33.3** because it did not maintain confidentiality in the sole confidential misconduct report received during the period covered by this review, which is a specific requirement of Task 33.3.3. OPD acknowledges that it did not seek the advice of counsel prior to releasing the confidential information. In the future, prior to releasing such information, OPD reports that it intends to consult with the Office of the City Attorney. For the one confidential case reviewed by the IMT, OPD's legal counsel concluded after the fact that OPD was justified in releasing the information based on both Skelly Due Process Rights and the Public Safety Officers Procedural Bill of Rights Act (POBAR). In the post hoc opinion of OPD's counsel, both Skelly and POBAR required the release of the identity of the complainant and the interview with the complainant.

The IMT is not aware of any precedent that would prohibit OPD from withholding the identity of the confidential complainant or redacting interviews in the case at issue, and have advised OPD and their counsel of this. The IMT was concerned that not redacting or withholding the complaint's interviews and initial complaint, especially in a case that is sustained, undermines

the purpose of having a confidential misconduct reporting process. Individuals will be wary of filing confidential complaints of misconduct if the Department does not make an effort to maintain confidentiality in the event the case is sustained. Such cases are the very ones where maintenance of confidentiality may be most important to complainants who fear possible retribution for making meritorious complaints of misconduct.

The IMT found OPD in compliance with **Tasks 33.3.1, 33.3.2, and 33.3.4**. Confidential reports of suspected misconduct were made by an OPD member or employee in person, by telephone, or in writing; the IAD commander conducted the intake interview and documented the complaint in a confidential file; and sworn and civilian employees were informed of OPD's confidential reporting procedure.

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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*

### **IMT Audit Summary**

**Task 34.1** requires that OPD members complete a Stop Data Form (SDF) for every vehicle stop, field investigation and detention. In order for a Field Contact (FC) Card or citation record to be considered a match with an SDF record, it had to match on date, officer serial number, address and time. Based on these criteria, the sample had 27% non-matches (20% of citations and 54% of FCs). These statistics clearly show that OPD is not in compliance with this task. OPD will be taking corrective action, including discipline, to ensure that SDFs are completed for each stop. The BFO Deputy Chief has asked supervisors to ensure that there are SDFs where appropriate when reviewing officers' reports.

**Task 34.2** requires that OPD members accurately complete all the required elements on Stop Data Forms for every vehicle stop, field investigation, and detention. OPD is in compliance with Task 34.2.

The IMT found OPD in compliance with **Task 34.3.1**, which required the Department to create a database capable of performing the functions required by the Agreement. **Task 34.3.2** requires that data captured on Stop Data Forms be *completely* and *accurately* entered into the Stop Data Databases. Only 49% of the random sample reviewed was completely and accurately entered into the SDF Databases.

OPD reports that it is working with the data entry vendor to improve accuracy of data entry. The Department believes that the inaccurate truncation of addresses has been recently resolved and that inaccurate entry of search information was due to an incorrect instruction by the vendor. OPD will be internally auditing this in the coming months to ensure that these problems have been resolved.

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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*

OIG Audit Summary

In March 2008, OIG initiated an audit of OPD use of force investigations for the time period of February 1, 2008 to March 31, 2008. The audit assessed the Department’s efforts towards achieving compliance with Tasks 24, 25, and 35, which cover issues such as notification of the supervisor by an officer or other employee when force is used, response to the scene by the supervisor, identification and interview of witnesses, documentation of injuries, collection of physical evidence, and analysis of evidence. In addition, use of force investigations must be completed, submitted, and reviewed by the officer’s chain of command in a timely manner.

Task 35 requires that witness information be properly recorded or a notation made that there were no known witnesses. Further, where witnesses were present but circumstances prevented the author of the report from determining their identification, phone number or address, an explanation must be provided. Finally, use of force reports must include the names of all other members/employees of OPD who witnessed the use of force. The Department was found to be in compliance with these tasks.

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### **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 Full Practice Compliance

- Policy: Special Order 8262, Transportation of Persons in Police Vehicles, was published September 15, 2005.
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in December 2008.

### Deliverables

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

### IMT Audit Summary

In its audit published in December 2008, the IMT found OPD in compliance with Task 36.

**Task 36.1** requires officers to log in and out on the radio when transporting a detainee or any other civilian. This requirement applies unless the transport is done by wagon. Task 36.1 promotes both officer and community safety by ensuring that the Department is aware of the identity, location, and activities of police officers and the individuals whom they transport. Based on the documentation reviewed for this audit, members and employees logged both in and out as required in 93% of the transports reviewed, an improvement over the 83% compliance in 2007 and the 63% in 2005.

**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). The IMT found that the overall rate at which required elements were included in radio reports was 94%.

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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*

IMT Audit Summary

In its Task 37 review published March 2009, the IMT found OPD is not yet sufficiently investigating allegations of retaliation by supervisors against OPD personnel for reporting misconduct, although it continues to improve in this area. Investigation of allegations of retaliation was sufficient in 12 (71%) of 17 cases reviewed, a marked improvement over the previous review, when the IMT found no cases adequately investigated. OPD identified and carefully considered retaliation allegations. This is a significant improvement over past practice.

Nonetheless, OPD’s investigations of retaliation cases are not yet where they need to be. One case reviewed, initiated in 2006 and not completed until 2008, was handled so poorly that even if every other case was compliant, the IMT would still find OPD out of compliance. The deficiencies cannot be ascribed simply to the age of the case.

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### **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

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.

INTERNAL PERSONNEL ASSESSMENT SYSTEM

Task 40: Personnel Assessment System

- 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, Training and Partial Practice Compliance

Deliverables

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

Implementation Activities

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

IMT Audit Summary

OPD is required under Task 40 to fully implement a “computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of OPD and its personnel.” That database must also contain information on each of the elements required by the Agreement. The IMT found OPD in partial compliance with Task 40.

OPD has created an early identification and intervention system (the Internal Personnel Assessment System, or IPAS), available to all supervisors and commanders to assist in managing personnel, which contains a wide range of data on departmental personnel. While much of the

system's data accurately reflects information from other OPD data sources, there are several critical areas in which IPAS data is incomplete, inaccurate, and/or organized in an unwieldy manner.

The results of intervention and supervisory monitoring have been mixed. Some members and employees have exhibited improved behavior while others have not. OPD currently is underutilizing IPAS for assessing and managing at-risk behavior. Because IPAS is a new system, there is a learning curve. Additional training for supervisors and commanders in how to identify potential at-risk behavior along with some system adjustments will assist OPD to take greater advantage of this powerful tool.

Task 40.1 requires OPD to fully implement a computerized relational database to maintain, integrate and retrieve data necessary for supervision and management of OPD. This database, part of an early identification and intervention system, is intended to improve OPD's ability to manage the risk of police misconduct and to better evaluate the performance of OPD members and employees. OPD is in compliance with Task 40.1 through creation of IPAS, which has become an indispensable system and highly valued tool used for a variety of management purposes.

Despite the fact that IPAS had been operational for over a year, discrepancies were not identified sooner due to the lack of a systematic quality assurance component. There were no or inadequate systems in place to ensure complete and accurate entry of data into the databases from which IPAS data is mined or to ensure that the IPAS data warehouse itself was capturing complete and accurate data.

During this audit, IPAS was inoperable for a total of two months while OPD and the City's Department of Information Technology (DIT) attempted to address various data issues. A primary architect of the system no longer works for the City, leaving a knowledge gap about key programming issues and possible solutions. OPD and DIT have begun a much-needed investigation into possible technical and process solutions for maintaining a high-level of IPAS stability and data quality.

Task 40.2 requires OPD to implement a computerized relational database that incorporates complete and accurate data for 19 dimensions in order to monitor the existence of at-risk or commendable behavior. Once OPD and DIT repaired IPAS, the IMT found that most data in IPAS was complete and accurate compared to other OPD data and databases.

In addition to reviewing the accuracy and completeness of IPAS data, the IMT conducted an assessment of the timeliness of IPAS data by reviewing how quickly samples of use of force incidents and complaints were available in IPAS. A sample of 67 use of force incidents showed that 63 (94%) of the incidents were captured in IPAS in a timely fashion. A random sample of 49 complaints was found to be timely for 45 (92%) of the complaints.

However, the IMT identified a number of serious data quality problems regarding the following dimensions: officer-involved shootings, collisions, in-custody injuries, adjudication data, financial claims, and Agreement-specified arrests. Accordingly, OPD is not yet in compliance with Task 40.2.

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

- 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, Training and Partial Practice Compliance**

##### **Deliverables**

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

##### **Implementation Activities**

See Task 40.

##### **IMT Audit Summary**

The IMT published its review of Task 40 in November 2008, finding OPD in partial compliance.

**Task 41.1** requires that OPD implement a Personnel Assessment System that includes supervision and audit of performance of members, employees, supervisors, managers and OPD units, as well as OPD as a whole. **Task 41.2** requires that the Chief of Police designate a PAS Administration Unit to be responsible for administering PAS policy and giving written notification at least quarterly to the appropriate Deputy Chief/Director and responsible commander/manager of members/employees who meet PAS criteria. **Task 41.3** requires that IPAS be electronically maintained by the City’s Department of Information Technology. The IMT found OPD in compliance with these tasks.

**Task 41.4**, which requires OPD to maintain all IPAS data for at least five years, could not be assessed because IPAS has only been operational since December 2006.

**Task 41.5** requires that the IMT, the Inspector General and the Compliance Coordinator “have full access to IPAS to the extent necessary for the performance of their duties under the NSA.” **Task 41.6** requires that PAS and PAS data and reports remain confidential. **Task 41.7** requires commanders and managers to review their subordinates on a quarterly basis to detect any pattern or series of incidents which may indicate at-risk behavior. **Task 41.8** required OPD to develop a policy in consultation with Plaintiffs’ Counsel and the IMT that defines peer groups and a methodology for determining when a member/employee or group of members/employees may be engaging in at-risk behavior. The IMT found OPD in compliance with these requirements.

**Task 41.9** requires that any member/employee identified as meeting thresholds for complaints of misconduct or Agreement-related arrests (resisting, obstructing or battery on a police officer) in a 30-month period be identified as a subject for PAS intervention review. Since August 2006, 16 OPD members have been recommended for supervisory monitoring and 20 have been recommended for intervention. Common strategy elements in interventions have been: training (9); referral to EAP (7); referral to a professional counselor (4); and referral to a mental health professional (2). However, during this audit, the IMT discovered that all relevant threshold reports were based on incomplete arrest data and reflected an undercount of relevant arrests, thus not identifying outliers. In particular, the IMT continued to identify officers in its sample with incomplete and/or missing Agreement-related arrest information. Therefore, the IMT found OPD not in compliance with this task.

**Task 41.10** requires that when review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the immediate supervisor must conduct a more intensive review of performance and personnel history and prepare a PAS Activity Review and Report. **Task 41.11** requires that members recommended for intervention attend a documented non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The IMT found OPD in compliance with these tasks.

Based upon a review of all Disposition/Follow-Up Meeting Reports and interviews with the supervisors of officers placed in intervention, it is clear that the purpose of those meetings was to “review member’s performance and discuss the issues and recommended intervention strategies” as required by **Task 41.12.1**; that the responsibility for intervention strategies rested on the shoulders of supervisors as required by **Task 41.13**; and that designated commanders were involved in monitoring individuals in intervention and supervisory monitoring as required by **Task 41.14**. Interviews with all 10 supervisors who held disposition meetings for those individuals in intervention confirmed that nine of ten members were dismissed from the room while the supervisor and commander continued to discuss the member’s intervention strategy and response as required by **Task 41.12.2**. The IMT found OPD in compliance with the requirements of these tasks.

**Task 41.15** requires that members who are subject to review as part of the PAS process (having been recommended for review by the PAS Activity Review Panel, a commander/manager, or as the result of meeting a single-event threshold) are subject to one of the following options: no action, supervisory monitoring or intervention. The IMT found OPD in compliance with Task 41.15.

**Task 41.16** requires that all OPD members recommended for supervisory monitoring be monitored for a minimum of three months and attend two documented, mandatory follow-up meetings with their supervisor at one and three months. Excluding the member whose chain-of-command overruled a recommendation for supervisory monitoring as well as the two officers who were recently recommended for supervisory monitoring, the IMT found OPD in compliance with Task 41.16.

**Task 41.17** requires OPD to monitor individuals placed in PAS intervention for a minimum of 12 months. Individuals must attend two documented, mandatory follow up meetings at three months and one year with their immediate supervisor and commander. It is not possible to determine whether OPD is in full compliance with Task 41.17 because most people in intervention had not reached the 12-month milestone. However, based upon 100% member attendance at the first mandatory follow-up meeting, the IMT found OPD in conditional compliance with Task 41.17.

**Task 41.18** allows members/employees subject to PAS intervention for minor, easily correctible performance deficiencies to be dismissed from the jurisdiction of PAS upon written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. Such dismissals from PAS may only occur after the member's three-month follow-up meeting. Only one member, in intervention following a DUI arrest, was recommended for early dismissal, in compliance with Task 41.18. Accordingly, the IMT found OPD in compliance.

**Task 41.19** requires that the extension of PAS jurisdiction for members/employees who are not discharged from intervention at the one-year follow-up be made in writing for a specific period in three-month increments at the discretion of the member/employee's responsible Deputy Chief. Under **Task 41.19.1**, when PAS jurisdiction is extended beyond the minimum one-year review period, additional review meetings involving the employee and his/her commander or manager and supervisor must take place at least every three months. PAS intervention was not extended for any members who entered intervention between April 1, 2007 and March 31, 2008. Therefore Tasks 41.19 and 41.19.1 were not applicable during this audit.

**Task 41.20** requires commanders and managers to assess whether subordinate commanders/managers are adhering to policy and addressing at-risk behavior. The IMT has concluded that commanders are using IPAS on a quarterly basis to analyze relevant information concerning personnel under their command. The IMT found OPD in compliance with this task.

**Task 41.21** requires that all division/watch commanders and managers hold quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of their units, and identifying potential or actual performance problems within the unit. These meetings must consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. **Task 41.21.2** requires that minutes of the meetings be taken and retained for five years. In sum, just over a third of the required quarterly command review meetings required to be held by Division commanders have taken place. As a result, OPD is not yet in compliance with task 41.21.

**Task 41.22** requires that Division/Watch commanders meet at least annually with their Deputy Chief and the IAD Commander to discuss the state of their commands and “any exceptional performance, potential or actual performance problems” within the unit. The IMT found OPD in compliance with this task.

**Task 41.21.3** requires commanders and managers to take appropriate action on identified patterns of at-risk behavior and/or misconduct. Since no patterns of potential at-risk behavior and/or misconduct were identified in the review period, Task 41.21.3 was not applicable. The IMT noted that given the size of OPD and the nature of the work it engages in, there are ample opportunities for commanders and managers to identify patterns of at-risk behavior and/or potential misconduct. It suggested that OPD is underutilizing IPAS for assessing at-risk behavior.

**Task 41.23** requires that Division/watch commanders and managers develop and document plans to ensure managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent. Since, with one exception, the command review process discussed above did not identify any patterns of at-risk behavior, commanders and managers did not develop or document any plans to ensure managerial and supervisory accountability. Task 41.23 therefore was not applicable during this audit.

**Task 41.24** (PAS Information Considered for Commendations, Promotions, Transfers, Special Assignments and Performance Appraisals) Based upon interviews with Assistant Chief Howard Jordan, the Personnel Division Manager, the Awards Committee Commander, and OPD commanders, the IMT found that IPAS is utilized for promotions, performance appraisals, and commendations but not for transfers or special assignments. Since IPAS information is not used as part of the transfer process or for special assignments, OPD is not yet in compliance with Task 41.24.

**Task 41.25** requires that intervention strategies implemented as a result of PAS Activity Review and Reports be documented in a “timely” manner, or within 7 days of their attempt or completion. The IMT found OPD not in compliance, with very little documentation of timely completion of intervention strategy items. OPD recently created the Intervention Strategy Confirmation Report to document completion of intervention strategies. The IMT anticipated that compliance would be achieved quickly once the strategy confirmation document is available and fully utilized.

**Task 41.26** requires that relevant and appropriate PAS information be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. The IMT found OPD in compliance with this task.

**Task 41.27** requires that when a Deputy Chief/Director is notified that a member/employee has been recommended for intervention by the PAS Activity Review Panel, a meeting be held within 20 days and attended by the employee and the member/employee’s designated commander/manager. The IMT found OPD in compliance with this task but urged the Department to ensure that commanders actually attend all review meetings in the future because their presence powerfully communicates the serious goals of the PAS process and helps contribute to its effectiveness.

**Tasks 41.28, 41.28.1 and 41.28.2** set forth requirements for transfers of members/employees who are making unsatisfactory progress while on a PAS intervention. During the period under review, no members under PAS jurisdiction were transferred. Accordingly, these tasks were not applicable during this audit.

**Task 41.29** requires that sustained complaints from incidents subsequent to a member/employee's referral to PAS continue to result in corrective measures and that those measures do not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. While disciplinary recommendations do take IPAS data into account, the Discipline Officer indicated that the PAS administrative process does not factor into disciplinary proceedings. OPD is therefore in compliance with Task 41.29.

**Task 41.29.1** requires that a "member/employee's exclusion or continued inclusion in PAS is at the discretion of the Chief of Police or his/her designee and is documented." For the period under review the PAS Activity Review Panel recommended that 19 members and employees be placed on supervisory monitoring or intervention. With the exception of one case, the IMT found that all members and employees were excluded or included in PAS at the discretion of the PAS Administration Unit and/or PAS Activity Review Panel. Accordingly, OPD is in compliance with Task 41.29.1.

**Task 41.30** requires OPD to hold a semi-annual meeting between the Chief of Police, the PAS Activity Review Panel, the PAS Oversight Committee, the IAD Commander and the IMT to review the operation and progress of PAS. At these meetings OPD administrators are required to summarize the number of employees who have been identified for review and intervention (**41.31.1**) and the various intervention strategies that have been utilized as a result of all PAS Reviews (**41.31.2**). The overall goal of the meetings is to consider whether the PAS policy is adequate for detecting patterns of misconduct or poor performance issues and whether PAS reviews are achieving their goals (**Task 41.31.3**). With the exception of Task 41.30, OPD is in compliance with these requirements. The most recent Semi-Annual PAS Meeting was held on July 29, 2008, and was attended by the IMT along with the Assistant Chief, IAD Commander, the BFO and BOI Deputy Chiefs, the police officer and licensed therapist who sit on the PAS Activity Review Panel, and the PAS Coordinator. This was the third semi-annual meeting that has occurred; the Chief of Police has not attended any of the meetings.

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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 Full Practice Compliance

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

Deliverables

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

IMT Audit Summary

In its audit published April 2009, the IMT found OPD in compliance or conditional compliance with the many subtasks of Task 42, Field Training Program.

Field Training Program Coordinator (42.1): Task 42.1.1 required the Chief of Police to assign a full-time sergeant as a Field Training Program Coordinator (FTPC) for the first year of the Agreement to develop and implement the new FTO policies and procedures. This never happened and is no longer applicable since the first year of the Agreement has passed. However, given the significance of the Field Training Unit, the IMT recommends that OPD assign it a permanent, skilled and experienced full-time sergeant.

Task 42.1.2 required the Chief of Police to determine whether the FTPC position should continue at the rank of sergeant after the FTO policies were implemented, and requires that the position remain full time. When the Chief learned of the Department’s failure to comply with Task 42.1, he directed the FTPC to begin reporting to the BFO administrative sergeant. This reporting structure has been maintained, providing the FTPC supervisory support when necessary. Accordingly, OPD remains in compliance with Task 42.1.2.

Trainee Rotation (42.2): Task 42.2.1 has two distinct requirements: OPD must rotate trainee officers to a new FTO at predetermined intervals and to a new geographic area of the City. **Task 42.2.2** requires that prior to rotation, trainee officers be interviewed and given an opportunity to raise any questions or concerns they may have about the quality of the training they are receiving. OPD remains in compliance with Task 42.2.

FTO Participation Incentives (42.3): Task 42.3 requires OPD to increase the incentives for participation as an FTO in order to increase the pool of qualified experienced candidates. The IMT noted that at its 2005 audit, OPD had certified a total of 29 FTOs. At its 2006 audit, OPD had certified a total of 21 additional FTOs. As of August 2008, OPD had certified a total of 115 FTOs. OPD remains in compliance with Task 42.3.

FTO Candidate Nomination and Requirements (42.4): Task 42.4.1 requires that FTO candidates be nominated by OPD field supervisors and commanders with the Chief of Police making the final determinations regarding FTO assignment and retention. OPD remains in compliance with Task 42.4.1.

However, the IMT raised a concern about this task. In 2008, when OPD hired and trained a large number of new officers in a short period of time, a large number of new FTOs were certified in a relatively short time period. The IMT discovered that a number of new field training officers did not appear to meet new program standards. Not only did OPD not disqualify any candidates due to complaint or use of force histories, it certified a number of candidates who were extreme outliers in terms of complaints and uses of force. OPD acknowledged that the selection process occurred very quickly and could have been more discerning. Based on concerns the IMT raised regarding the FTO selection process, OPD reevaluated all candidates, not allowing candidates who need further development to train new officers until they prove their suitability. The IMT placed its audit on hold pending OPD's completion of this reevaluation, which took several months.

As part of its reevaluation process, OPD directed each Area Commander to reassess the qualifications of the FTOs under their chain of command. OPD decertified seven FTOs who had recently been sustained for serious misconduct, and informally monitored nine more. As part of its revision of General Order B-8, OPD is making the command review process it used to reassess the FTOs a required component of the initial FTO selection process to ensure appropriate candidate scrutiny.

Task 42.4.2 requires that FTO candidates complete three years of Departmental service before selection, unless specifically authorized by the Chief. OPD remains in compliance with Task 42.4.2.

Task 42.4.3 requires that FTO candidates demonstrate commitment to community policing, as well as problem solving and leadership abilities. **Task 42.4.4** requires that OPD make ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy "primary criteria" in its selection of FTOs. **Task 42.4.5** places a two-year ban on candidates with an excessive number of citizen complaints, sustained investigations or excessive numbers of use of force. The IMT had serious concerns about whether OPD was subjecting candidates to a meaningful assessment of these criteria. However, based on the

remedial measures OPD implemented regarding the selection process, including reassessing, decertifying, placing FTOs on informal monitoring, and revising its policy to ensure that candidates receive appropriate scrutiny, the IMT found OPD in conditional compliance with these tasks.

Decertification (42.5): Task 42.5.1 requires that removal from the program be the presumptive result of a sustained allegation of excessive force; unlawful arrest; false testimony; racial, ethnic, sexual-orientation or gender-based discrimination or slurs; or other serious examples of police misconduct. During this review period, six FTOs had Class I allegations sustained involving unlawful searches and false testimony. OPD decertified five FTOs and decertified the sixth after being notified by the IMT. Since the Department's failure to decertify one individual was an oversight and OPD immediately initiated decertification after learning of its oversight, the IMT found OPD in compliance with Task 42.5.1.

Task 42.5.2 requires that any exceptions to the presumptive removal requirement be granted only with the approval of the Chief upon recommendation by the member's Deputy Chief and following a hearing conducted on the facts of the matter. **Task 42.5.3** requires the Chief to document in writing his approval or disapproval of the Deputy Chief's disqualification recommendation. These provisions are not applicable since no exceptions were made to the presumptive removal requirement

FTO Assignment (42.6): Task 42.6 makes assignment to a FTO position contingent upon successful completion of a training course designed for FTOs and approved by OPD and the State of California Commission on Peace Officer Standards and Training (POST). OPD continues to be in compliance with this requirement.

FTO Evaluation (42.7): Task 42.7.1 requires that at the end of every complete FTO cycle, trainee officers anonymously evaluate each of their FTOs. **Task 42.7.2** requires that the FTPC and each FTO's supervisor and commander review the FTO evaluation forms. OPD has improved documentation in this area, including requesting and maintaining "read receipts" from the supervisors and commanders. **Task 42.7.3** requires the FTPC to provide evaluation information about program effectiveness to the FTOs as a group. **Task 42.7.4** requires OPD to evaluate each FTO's individual performance. **Task 42.7.5** prohibits OPD from making available trainees' evaluation forms to FTOs in the interest of maintaining the anonymity of trainee officers. OPD remains in compliance with these requirements.

Daily Evaluation Audit (42.8): Task 42.8 requires the FTPC or designee to conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers and that the selection standards for FTOs are maintained. It also requires OPD to implement a self-auditing system to ensure that the selection standards are met. OPD is in compliance with these requirements.

Trainee Officer Assignment (42.9): Task 42.9 prohibits OPD from assigning trainee officers to field duties with "acting" FTOs when regularly assigned FTOs are absent. OPD remains in compliance with this requirement.

Field Commander and FTO Supervisor Training (42.10): Task 42.10 requires OPD to provide field commanders and supervisors training on the FTO program, including: the field-training curriculum; the role of the FTO; supervision of FTOs and probationary employees; the evaluation process; and individual duties and responsibilities within the FTO program. OPD remains in compliance with this requirement.

Focus Groups (42.11): Task 42.11.1 requires the FTPC and Academy staff to conduct focus groups with randomly selected trainees midway through the field-training cycle, upon completion of field training, and six months after completion of the field training program. Task 42.11.2 requires that the purpose of the focus groups be to determine the extent to which the Academy instructors and the curriculum prepared the new officers for their duties. OPD remains in compliance with these requirements

Consistency of Training (42.12): Task 42.12.1 requires that certain commanders (Training Division Commander; FTO Program Coordinator; BFO Deputy Chief; and BOS Deputy Chief) meet to review the results of focus group sessions. OPD remains in compliance with this requirement.

Task 42.12.2 requires that if there is a substantial discrepancy between what is taught in the Academy and what is taught in the FTO program, OPD determine which is correct and make the necessary changes to keep training consistent and appropriate. In a number of instances, trainees in focus groups identified as discrepancies what the Field Training Unit characterized as mere “stylistic” differences. Therefore, the IMT found OPD in conditional compliance with Task 42.12.2.

Task 42.12.3 requires that in the event that discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program as a whole, the review group determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The IMT recommended that the Unit immediately counsel FTOs whenever it learns of any discrepancies and to document this counseling in the FTO’s file.

Task 42.12.4 requires OPD to document the results of the focus group review meetings and provide the results to the IMT. OPD remains in compliance with this requirement.

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## **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 Full Practice Compliance**

Compliance Date: February 15, 2005

#### **Deliverables**

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

#### **IMT Audit Summary**

In June 2009, the IMT published its review of portions of Task 43 and found the Department in full compliance with subtasks 43.1.3, 43.4.1 and 43.5. During its March 2008 review of Task 43, the IMT discontinued its review of 43.1.3 and 43.5, mid-review, due to the poor quality of the instructor files. The IMT’s March 2008 review of Task 43 also found 43.4.1 in conditional compliance. The IMT published a subsequent audit of 43.1.1 in July 2009, since 43.1.1 had also been found out of compliance in the March 2008 review.

**Task 43.1.1** requires that OPD’s training plan ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions, and that it trains OPD personnel to implement the most contemporary developments in policing.

The IMT’s March 2008 audit of Task 43.1.1 found that the Department’s dispatchers and civilian evidence technicians received the required number of hours of training for their positions. However, the Department was not in compliance with the requirement that every 24 months, every officer and sergeant who routinely effects the physical arrest of criminal suspects complete at least 14 hours of POST-certified perishable skills training in the following areas: tactical firearms; arrest and control; driver training; and tactical communications. The March audit found only 58% of the officers and sergeants received perishable skills training consistent with POST requirements.

During the 2009 assessment of 43.1.1, OPD did not provide perishable skills training to all officers and sergeants within 24 months or less from their previous training; however, it did provide the training to 100% of the officers and sergeants reviewed. OPD provided this training within 24 months or less from previous perishable skills trainings for 85% of the officers and sergeants reviewed. Accordingly, OPD is in conditional compliance with Task 43.1.1.

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

**Task 43.1.3** requires OPD to establish criteria and methods for: selecting OPD training instructors; training provided to instructors; procedures for evaluating the content and quality of training provided to OPD personnel; and procedures for maintaining training records for OPD personnel. In stark contrast to the last audit, every file reviewed by the IMT during this review period contained at least some documentation that these criteria had been assessed, although the type and level of documentation varied across the files. The IMT also found several memoranda which documented the Training Division Commander's close supervision and accountability, in a striking contrast to past practice, when instructors taught without regular observation, evaluation, or monitoring by Training Division personnel.

**Task 43.4.1** requires that all OPD sergeants receive at least 20 hours of in-service training designed for supervisors every 24 months. During the last audit of Task 43, the IMT found OPD in conditional compliance with this subtask. During this audit period, the IMT found the Department was at 98% compliance for sergeants receiving the required training at the required frequency.

**Task 43.5** requires OPD to review, prior to appointment, the complaint history of every in-service or Academy training instructor. In addition, no training instructor can be appointed unless the individual is shown to be supportive of the philosophy and values of OPD and to have no sustained Class I offense within the two years prior to appointment. For instructors who were selected prior to the inception of the Agreement, OPD was required to review their complaint histories to ensure that these instructors also met the standards.

The IMT found OPD in compliance with Task 43.5, noting significant progress since its March 2008 audit of Task 43, when very few files contained any assessment of whether the instructor was supportive of the philosophy and values of OPD. During the current review period, the IMT found instructor files significantly improved. Training Division personnel, particularly the most recent former Commander and the current Academy Sergeant, worked diligently to ensure that the files are well-organized, complete and up-to-date. In addition, the Training Division has made several useful improvements to its instructor recordkeeping system. Each instructor file now contains an administrative log upon which Training Division personnel make entries when a file has been updated or an instructor's status has changed. The Training Division also developed

an Academy Instructor Code of Conduct that lists the Department's recruit training philosophy and expectations of the instructor/police officer trainee relationship, signed by all instructors and placed in their files.

General Order B-20, published in 2005, established and formalized new procedures and standards for serving as a training instructor, including requiring standardized oral board interviews and review of instructor candidates' personnel evaluation matrices, including IAD complaint history, among other information. Candidates selected prior to the implementation of B-20 did not participate in oral board interviews or matrix reviews because these processes did not exist at the time of their selection.

Following the implementation of B-20, OPD agreed to review the suitability of all of its instructors including their complaint histories. In the 2008 audit the IMT could not verify that this review had occurred for all candidates. In many cases where the review did occur, it was poorly documented. During the current review period, the Training Division Commander reviewed each file and conducted IPAS checks on *all* of the instructors, including evaluating their complaint histories to determine whether any had sustained Class I offenses within the two years prior to appointment as instructors. None of the current instructors had any sustained Class I offenses within the two years prior to appointment as instructors.

The Training Division has also made a notable effort to collect or recreate information about all instructors certified prior to 2008. Files of longer-serving instructors without instructor interview questionnaires or oral board information now include memoranda from the Training Division Commander stating that, although some of the required information could not be located, the individual may continue to serve as an instructor until s/he no longer meets the requirements in DGO B-20. Overall, the IMT found all instructor files better organized, containing much more substantive information than at its last review.

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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

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

On October 8, 2008, OIG initiated its third audit of Task 44 to determine if OPD personnel practices and procedures regarding performance appraisals are in accordance with the established Agreement guidelines and OPD’s DGO B-6. Additionally, the intent was to identify policy and/or practice deficiencies and to propose solutions.

This audit found that OPD is in compliance with the same requirements as the 2007 OIG audit:

- 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 Department is in compliance with considering complaints, uses of force, arrests, sick/injured leaves and vehicle accidents, the audit found some discrepancies between the data in the performance appraisals and the data in iPAS. For example, some supervisors were not documenting Level 4 uses of force in the performance appraisals.

The Department remains out of compliance in documenting consultations with a technical expert or a specialized unit supervisor for members/employees with substantial collateral duties and consultations from the prior supervisors of member/employees who had multiple supervisors during the year. It was also still falling short in documenting that PSA Lieutenants are held accountable for ensuring that their subordinates enhance community contacts.

Since the Department continues to fall short of compliance in these areas, it is recommended that Department General Order B-6 and the Performance Appraisal Form be revised to provide better guidance to supervisors, and that remedial training be provided to all personnel responsible for evaluating members/employees on their performance. Additional training will help the Department achieve full compliance with Task 44.

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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*

### IMT Audit Summary

The IMT audit of Task 45 was published July 2009. In this audit, the IMT found the Department in compliance with subtasks 45.2 and 45.3 but not in compliance with subtasks 45.1 and 45.4. It was most concerned about subtask 45.4, stating that until factors such as political interference, favoritism, conflicts of interest, or other inappropriate factors play no role in OPD's disciplinary process, the system will not function as intended and will do a disservice to the OPD members and employees.

**Task 45.1** requires OPD to maintain a centralized system for documenting and tracking all forms of discipline and corrective action. Supervisory notes files provide foundational information for annual performance appraisals and help ensure that subsequent supervisors are aware of members' and employees' strengths and areas in need of improvement. This is particularly important in an agency such as OPD where personnel frequently are transferred to new supervisors.

At its November 2006 audit of Task 45, the IMT found that OPD had not yet developed a centralized system for documenting or tracking corrective action imposed at the Division level. At that time, paper files were maintained in several locations throughout the Department.

In its July 2009 review, the IMT found that supervisory notes files are available to supervisors in a single, centralized electronic hub through iPAS. This centralized system tracks discipline and corrective action resulting from IAD cases.

The Department has also created a system for tracking corrective action resulting from Division-level supervision, but this system has not yet been fully implemented throughout OPD as evidenced by empty or near-empty files in some critical units. Accordingly, OPD is not yet in compliance with Task 45.1. It remains to be seen how the supervisory notes files will function going forward given the very recent transition from paper to computerized files.

**Task 45.2** requires OPD's Discipline Officer (the IAD Commander) to make discipline recommendations in all sustained internal investigations. OPD remains in compliance with this task. All vehicle collision investigative files and 97% of the misconduct investigations reviewed contained discipline recommendations.

**Task 45.3** requires that before recommending discipline, unless directed by the Chief of Police, the Discipline Officer convene a meeting with the Deputy Chief or designee in the affected chain

of command for a confidential discussion of the misconduct, including mitigating and aggravating factors and the member or employee's overall performance. OPD is in compliance with Task 45.3.

**Task 45.4** requires that OPD impose discipline that is fair and consistent with the Discipline Matrix. As discussed below, OPD is in compliance with Task 45.4 for vehicle collision cases but is not yet in compliance with Task 45.4 for misconduct cases.

During its last audit of Task 45, the IMT found that discipline recommendations were generally at the lowest level penalty possible without regard to mitigating and aggravating factors. Since that audit, OPD published a revised version of its Discipline Matrix. It found that a number of the penalties and formulas set forth in the original Discipline Matrix, if applied, would result in unduly harsh discipline. Consequently, the revised Matrix establishes lower presumptive penalties for many rule violations. These lower penalties have made it easier for OPD to recommend and impose discipline that falls within the parameters of the Matrix in most cases.

During this review, the IMT observed a more rigorous assessment of mitigating and aggravating factors, including consideration of the member or employee's discipline history, the consequences of the misconduct, the member or employee's role in the misconduct, and acceptance of responsibility and/or remorse.

Detailed review of multiple aspects of Task 45.4 follows.

**Task 45.4.a: Whether the MOR allegations selected and sustained were consistent with the facts of the alleged misconduct.**

In its 2006 audit of Task 45, the IMT found that in 86% of the cases reviewed, OPD selected and/or sustained Manual of Rules violations that did not fit the facts of the alleged misconduct. Without exception, this practice resulted in disciplinary recommendations and final disciplinary decisions that were less severe than called for had the MOR provisions listed in the Matrix been properly applied.

During the current audit, the IMT observed significant progress in this area. Appropriate MORs were selected and sustained in all 94 of the vehicle collision investigations, a striking contrast to the last audit, when *none* of the vehicle collision investigations included MOR provisions consistent with the facts of the cases. As well, the IMT found that OPD selected and sustained MORs consistent with the facts of the alleged misconduct in 98% of misconduct investigations reviewed.

**Task 45.4.b: Whether the discipline imposed was consistent with the formulas set forth in the Discipline Matrix.**

In its 2006 audit, the IMT found that only 10% of cases reviewed resulted in discipline consistent with the formulas set forth in the Matrix. This time, in all but one of the 94 vehicle collision cases reviewed, OPD imposed discipline that was consistent with the formulas set forth in the Discipline Matrix.

Of the cases involving sustained complaints of misconduct, OPD imposed discipline that was consistent with the formulas set forth in the Discipline Matrix 88% of the time. Each case in which discipline was not imposed consistent with the formulas set forth in the Matrix resulted in no discipline at all being imposed or a downward departure from the Matrix's proscribed range of penalties.

**Task 45.4.c: When there were variances outside of the proscribed ranges, whether there was specific written justification for such variances (e.g., mitigating or aggravating factors).**

In the 2006 audit, nearly all cases reviewed had penalties that varied outside of the proscribed discipline ranges due to improper charging practices and/or misapplication of the Matrix. There was no specific justification for these practices, each of which resulted in a downward departure from the Matrix's proscribed penalty ranges. During the current audit, the IMT found substantially fewer cases had variances outside of the proscribed discipline ranges. Only two of the vehicle collision cases had variances and both of these cases included specific written justification for the variances.

Eleven of the misconduct investigation cases concluded with discipline that varied from the proscribed ranges. Each of these cases resulted in no discipline being imposed or in discipline imposed that was below the discipline established by the Matrix. Six (55%) of these 11 cases included specific written justification explaining the variances. This included several cases resulting in last chance agreements or retirement in lieu of termination.

**Task 45.4.d: Whether any inappropriate factors (e.g., favoritism, bias or conflicts of interest, political interference) appear to have played a role in the disciplinary system.**

In the 2006 audit, there was widespread misapplication of the Matrix. This is no longer the case. However, the IMT still sees instances of inconsistent treatment, which undermines OPD's efforts to establish a fair and consistent disciplinary system. There has been significant improvement in OPD's ability and willingness to impose discipline that is fair and consistent, but the IMT still finds cases where this does not occur. These tend to fall into one or both of two categories:

- Cases involving popular or well-connected officers or commanders, including officers and commanders who are given leeway because they are regarded as strong performers or high producers.
- Cases in which OPD selects and sustains MOR provisions that carry a lower penalty in order to decrease the maximum possible discipline that can be imposed and/or because OPD does not want to "stigmatize" officers with certain findings.

The IMT is most concerned about cases of apparent favoritism. As OPD becomes more adept at applying the Matrix, fewer cases fall into the category of inapt MOR designation, but apparent favoritism continues to be seen.

Cases of apparent favoritism, although few in number, are of particular concern because actual or perceived favoritism in the disciplinary process makes officers and the community lose trust in

the entire system and make it more difficult to uphold disciplinary decisions through appeal and arbitration. Unfair disciplinary decisions also embolden the offending officers to commit misconduct again, sometimes with escalating severity and consequences.

Further, in a number of instances, favoritism results not only in lax discipline but in officers not being sustained at all for misconduct (including serious misconduct) or having sustained findings overturned by OPD notwithstanding the strength of the objective evidence. Of the misconduct cases reviewed for this audit, in 12 cases it appeared possible that inappropriate factors (favoritism, conflicts of interest, or political interference) played a role in the disciplinary process. In these cases, reduced discipline or no discipline was required: such result could not be explained by any discernable legitimate factors.

The IMT also observed troubling inconsistencies in the manner in which OPD's Skelly officers review sustained discipline cases. Officers and employees are entitled to a Skelly hearing in disciplinary cases resulting in punitive action involving a loss of pay. Absent a conflict of interest, OPD captains and deputy chiefs serve as the Department's Skelly officers, presiding over Skelly hearings. The hearings are intended to provide members and employees an opportunity to respond to the proposed discipline prior to its imposition. Many of OPD's Skelly officers make decisions that are rationally related to the facts and circumstances of the cases they review. Other Skelly officers, however, have automatically reduced discipline without regard to the facts and circumstances of the case.

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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

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

OIG Audit Summary

On November 18, 2008, OIG initiated its second audit of Task 46, Promotional Consideration, for the audit period of October 1, 2007 through December 31, 2008. The audit assessed departmental compliance with promotional consideration requirements outlined in the Agreement, specifically, the Department's process of considering and selecting candidates for promotion. The audit found the Department in full compliance with Task 46.

Four promotional processes occurred during the audit period. The 24 promoted candidates included one deputy chief, two captains, four lieutenants, and sixteen sergeants. To assess compliance with Task 46, OIG reviewed each candidate's discipline history and other promotional consideration documentation.

Tasks 46.1 and 46.2 require the Department to consider sustained misconduct cases within the three years preceding promotion and make presumptively ineligible those candidates with sustained Class I (serious misconduct) cases 12 months preceding promotion. The audit found that none of the promoted candidates had a sustained finding of a Class I offense three years prior to promotion. However, six candidates had Class II sustained findings during the three years prior to promotion. Documentation of misconduct cases for four candidates was included in the promotional consideration packets that were provided to the Chief of Police by the Personnel Division. The two candidates, for whom the documentation was missing from their packets, had sustained findings for preventable vehicle accidents. During an interview with the Chief of Police, he informed the audit team that he was aware of the details of all cases with sustained findings and had considered them during the promotion process.

Task 46.3 requires promotional decisions include consideration of candidate's commitment to community policing; quality of citizen contacts; number of sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304; instances of unnecessary use of force; and support for Departmental integrity measures. The Chief of Police was provided with comprehensive promotional packets regarding each candidate, which included supervisor/commander input forms as well as interview notes from interviews conducted by commanders. The interviews specifically included questions about community policing. Although interview notes for three candidates could not be located in Personnel Division files, the community policing factor was captured in each candidate's supervisor/commander input forms. Because the Chief received information from a variety of sources about promotional candidates, the missing interview notes did not negatively effect compliance with Task 46.3. The Department was found in compliance with Task 46.3.

The audit team recommended that the Personnel Division implement a more effective filing system. Many files were incomplete, not well organized, or not centrally located. In some instances, documentation for several candidates was grouped in one file in no particular order, making it very difficult to locate required documents. Improved filing will make it easier to document compliance with Task 46.

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## 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

In Full Practice Compliance with all but Task 47.3, which has not been assessed as of June 30, 2009.

#### Deliverables

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

#### Implementation Activities

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

#### IMT Audit Summary

**Task 47.1** requires OPD to host at least one community meeting per quarter in each Patrol Service Area. Based on the documentation reviewed, OPD went well beyond the requirement, holding 150 community meetings in the first quarter of 2008, including at least one meeting in each PSA. Accordingly, OPD is in compliance with Task 47.1.

The IMT commended OPD for continuing its practice of regularly hosting meetings in communities throughout the City and applauded the Department's efforts to increase meeting participation in parts of the City where community attendance has been low. These efforts have included calling a special community meeting to request greater community involvement in anti-violence efforts; requiring officers to spend more time walking their beats in order to meet community members and help prevent crime; and working with NSCs to conduct outreach to individuals to encourage their participation in police-community meetings. As a result of these and other efforts, OPD has reported new working partnerships in some Areas and the reinvigoration of NCPC groups that had become defunct.

**Task 47.2** requires each patrol supervisor and officer assigned to a regular beat or geographic Area of the City to attend a minimum of one community meeting per quarter in the Area s/he is regularly assigned. The IMT found OPD in compliance with **Task 47.2.1**. Further, since 89% of the 414 patrol supervisors and officers required to attend community meetings during the quarter did so in the Area to which they were regularly assigned, OPD is in compliance with **Task 47.2.2**.

**Task 47.3** requires OPD to implement mechanisms to measure its community policing and problem-solving activities. During the last IMT review of Task 47, OPD was not in compliance with Task 47.3 because it had not yet sufficiently implemented the required measurement mechanisms. Recent revisions to the community policing training bulletin include specific guidance regarding mechanisms to measure the effectiveness of OPD's community policing and problem-solving efforts. The IMT will assess OPD's compliance with Task 47.3 once OPD has had sufficient time to implement these measurement mechanisms.

**Task 47.4** requires OPD to incorporate positive statistics on community policing and problem-solving activities, and information on citizen complaints and use of force incidents into Crime-Stop meetings. In its last review, the IMT found OPD out of compliance with this subtask. At that time, OPD Crime-Stop meetings did not include the elements required by this task, much less incorporate these elements as a regular part of the meetings.

In contrast, the IMT found that OPD now regularly includes as a part of its Crime-Stop meetings reports by commanders regarding the number of vehicle collisions, pursuits, uses of force, and Internal Affairs complaints generated by OPD personnel in various divisions. In addition to reporting raw statistics, commanders discuss any positive or negative trends they may have identified. This new format has been the norm for over a year. Accordingly, OPD is in compliance with Task 47.4.

**Task 47.5** requires OPD to meet within 60 days with representatives of established organizations active within Oakland, community groups, or church groups, if an organization communicates a concern regarding specific police personnel or practices. This requirement applies unless it is not feasible for OPD to meet with the organization within the designated time period. OPD was not able to produce documentation of any requests covered by this task for the period reviewed. In order to assess Task 47.5, the IMT interviewed staff persons at two community organizations active within Oakland, as well as six Neighborhood Service Coordinators to determine whether requests for meetings with OPD were held within 60 days except where not feasible. All interviewees indicated that requests for meetings with OPD occurred within the 60-day time

frame, and that the Department was generally very responsive to meeting requests. Accordingly, OPD is in compliance with Task 47.5.

These reports stand in stark contrast to the past in which community groups frequently expressed frustration about the Department's lack of responsiveness in general, including to requests to meet. The Department's continuing efforts to inject greater levels of transparency into OPD, and its outreach to community groups, including vocal critics, are encouraging signs of progress in this regard. The IMT commends OPD for these efforts, and encourages the Department to strengthen these ties and to build additional relationships throughout Oakland's diverse communities.

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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)

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

#### **Deliverables**

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

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COMPLIANCE UNIT

Task 50: Compliance Unit Liaison Policy

- Settlement Agreement 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 for this Task.
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice in August 2003.

Deliverables

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

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### Task 51: Compliance Audits and Integrity Tests

- Settlement Agreement 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 for this Task.
- Actual Practice Compliance: The IMT found the Department in full compliance with actual practice October 2005 and November 2006.

### **Deliverables**

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

### **Implementation Activities**

During this reporting period, the Audit Unit completed nine audits/reviews. The audits/reviews conducted were of Mobile Data Terminal Traffic (MDT); Complaint Procedures for IAD – Task 5 (5.2, 5.3, 5.4 and 5.5); Receiving and Processing Complaints – Tasks 5, 8, 9; Investigating Anonymous Complaints – Task 7.3; Arrest Approval and Report Review – Task 18; Use of Force – Tasks 24, 25, 35; Oleoresin Capsicum Log and Checkout Procedures – Task 27; Personnel Practices – Task 44; and Promotional Consideration – Task 46.

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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.

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## **APPENDIX B:**

# **LIST OF ACRONYMS**

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

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