



Fourth Quarterly Report  
*of the* Independent Monitor  
*for the* Oakland Police Department

Robert S. Warshaw  
Independent Monitor

Office of the Independent Monitor  
Police Performance Solutions, LLC  
P.O. Box 396, Dover, NH 03821-0396

January 27, 2011

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## Section One

### *Introduction*

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This is the fourth quarterly report of the Monitor of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* in the United States District Court for the Northern District of California. In January, 2010, under the direction of Judge Thelton E. Henderson, the Parties agreed to my appointment as Monitor of the Oakland Police Department (OPD). In this capacity, I oversee the monitoring process that began in 2003 under the previous monitor and produced 14 status reports. The current Monitoring Team conducted our fourth quarterly site visit from November 15, through November 19, 2010, to evaluate the Department's progress with the NSA during the three-month period of July 1, through September 30, 2010.

In the body of this report, we again report the compliance status with the remaining active Tasks of the Agreement. By the end of the seven-year tenure of the previous monitor, the Department was in full compliance with 32 of the 51 required Tasks, and in partial compliance with 16 additional Tasks. As a result, the Parties agreed to reduce the number of Tasks under "active" monitoring to the current list of 22.

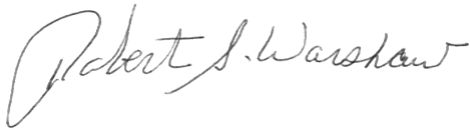
During this reporting period, we continue to find the Department in Phase 1 compliance with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD is now in compliance with 12 of the remaining 22 Tasks. While this is an increase of two from the third reporting period, we reported in our third quarterly report that the Department had regressed by falling from 11 to 10 compliant requirements. The status of other requirements has changed in this reporting period, and the bases for these are described below.

We acknowledge both the possibility and, perhaps, the likelihood that the Department has, in fact, advanced in its road towards compliance. We credit the Department for its earnest attempts to move the process forward. As a result of Court-ordered technical assistance, the Monitoring Team and representatives of the Department have met and conferred on several occasions to explore ways to enhance the Department's policies and procedures so that they better comport with the trends and innovations in contemporary American policing. The Department in general – and Chief Anthony Batts, in particular – have been receptive to these dialogues; and we credit the Chief with a new rigor and infusion of commitment to organizational change. The Court-ordered weekly reports have underscored the active engagement of the Department's senior executives, who have consistently demonstrated their professional resolve to address the important issues at hand.

The Plaintiffs' attorneys, John Burris and James Chanin, have been vigorous advocates for change, and have demonstrated their willingness to explore processes and dialogues to bring this effort to a successful plateau.

Since the publication of our last report, the City has sworn in a new Mayor. I have had the opportunity to discuss at length with Mayor Jean Quan the importance of this process and the observations of the Monitoring Team. Mayor Quan has been a tireless advocate for police reform. Her stated intent to become intimately involved with this process shall unquestionably be an asset in our mutual efforts to assure that the Oakland Police Department will be all it can be, and that the citizens of Oakland receive the quality of service that they richly deserve.

Chief Batts has been in his position for a little more than one year. His challenge to overcome historical and other issues that preceded his tenure cannot be fulfilled without the support of personnel at all ranks within the Police Department. With the leadership of the City's new administration and the hard work of all those who are Parties in this matter, we hope that the road ahead brings the results for which we continue to strive.

A handwritten signature in cursive script that reads "Robert S. Warshaw". The signature is written in dark ink and is positioned above the printed name of the signatory.

Chief (Ret.) Robert S. Warshaw  
*Monitor*

**Monitoring Team:**

Chief (ret.) Charles D. Reynolds  
*Deputy Monitor*

Lt. Colonel (ret.) J. Rick Brown  
Robin Busch-Wheaton  
Eric P. Daigle, Esq.  
Commander (ret.) John M. Girvin  
Chief (ret.) Melvin C. High  
John M. Klofas, Ph.D.  
Assistant Director (ret.) Joseph R. Wolfinger

## *Compliance Assessment Methodology*

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The body of this report is comprised of our assessments of compliance with the individual requirements of the 22 active Tasks of the NSA. Each requirement is followed by information about the compliance status of the requirement during our previous reporting period, a discussion regarding our assessments and the current status of compliance, a summary notation of Phase 1 and Phase 2 compliance (see below), and our planned next steps in each area.

The Monitor's primary responsibility is to determine the status of the Oakland Police Department's compliance with the requirements of the 22 active Tasks. To accomplish this, the Monitoring Team makes quarterly visits to Oakland to meet with OPD's Office of Inspector General (OIG) and other Department personnel – at the Police Department, in the streets, or at the office that we occupy when onsite in the City. We also observe Departmental practices; review Department policies and procedures; collect and analyze data using appropriate sampling and analytic procedures; and inform the Parties and, on a quarterly basis, the Court, with information about the status of OPD's compliance.

Our Team determines compliance through an examination of policies and implementation of practices that are relevant to each of the active Tasks. First, we determine if the Department has established an appropriate policy or set of procedures to support each requirement. Following this, we determine if the Department has effectively implemented that policy.

Based on this process, we report the degree of compliance with requirements on two levels. First, we report if the Department has met policy compliance. Compliance with policy requirements is known as **Phase 1 compliance**, and the Department achieves it when it has promulgated appropriate policies and trained relevant Department members or employees in their content. Second, we report on the extent to which the Department has implemented the required policies. Implementation-level compliance is reported as **Phase 2 compliance**. In general, to achieve full compliance, the Department must achieve both Phase 1 and Phase 2 compliance; that is, an appropriate policy must be adopted, trained to, and operationally implemented.

Our conclusions with regard to Phase 1 or Phase 2 compliance will fall into the following categories:

- **In compliance:** This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).
- **Partial compliance:** This is reported when at least one, but not all, requirements of a Task have achieved compliance, showing progress towards full compliance. Tasks will remain in partial compliance as long as we determine there is continued progress toward reaching substantial, or full, compliance.
- **Not in compliance:** This is reserved for instances where partial compliance has not been achieved and no progress has been made.

Many sub-requirements of the 22 active Tasks require the analysis of multiple instances of activity, cases, or observations. In these circumstances, our analysis is based on a review of all cases or data, or, when appropriate, on statistically valid samples of the population. To reach our conclusions based on analyses of cases, the Department must meet a minimal standard. The Parties have agreed upon these compliance standards, which range from 85% to 95% to a Yes/No standard.

This methodology supports a sound and rigorous review of the Department's compliance with the requirements of the 22 active Tasks. We recognize, however, that the high demands of this methodology may not be fully realized in all elements of all reviews. There will be circumstances in which we will be unable to determine fully the compliance status of a particular requirement due to a lack of data, incomplete data, or other reasons that do not support the completion of our work in a manner consistent with timely reporting. Under such circumstances, we will opt not to compromise our methodology by forcing a conclusion regarding compliance levels. Instead, we will report a finding as **"Deferred."** This finding is not intended to reflect negatively on the Department or to otherwise imply insufficient progress. In such circumstances, we expect that a more complete assessment of compliance in the area in question will be determined in our next report.

Our compliance assessment methodology directs the Monitoring Team in our work and underlies the findings presented in this report. We fully expect that this methodology will govern our work throughout our tenure in this project. Any consideration of revision or change of this methodology will be presented to the Parties and the Court.

### *Executive Summary*

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This is the fourth report of the Monitoring Team in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* This Executive Summary is not intended to replicate the body of the entire report. Instead, it highlights the more significant findings, trends, patterns, or concerns that materialized as a result of our evaluation.

From November 15, through November 19, 2010, we conducted our fourth site visit to Oakland. At that time, we met with several Department officials, including the Chief and Assistant Chief of Police and the Deputy Chiefs; as well as personnel from the Office of Inspector General (OIG), Bureau of Field Operations (BFO), Bureau of Investigations (BOI), Bureau of Services (BOS), Internal Affairs Division (IAD), Training Division, and Communications Division; OPD officers, managers, supervisors, and commanders, including sergeants, lieutenants, and captains.

We also conferred with the Plaintiffs' attorneys, City Administrator, and the Office of the City Attorney (OCA). During and since the time of our site visit, we attended Department meetings and technical demonstrations; reviewed Departmental policies; conducted interviews and made observations in the field; and analyzed OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation.

During this reporting period, we continue to find the Department in Phase 1 compliance with all 22 of the remaining active Tasks. We also find that the Department's full compliance level increased by two – a reversal from the last reporting period, when the Department's full compliance level had dropped by one. The Department is now in compliance with 12 (55%) of the 22 active Tasks, in partial compliance with eight (36%) Tasks, and not in compliance with one (5%) Task. We deferred a compliance determination with one Task.

Some Tasks have shifted in compliance levels to achieve this cumulative result. Task 26, which addresses the Force Review Board, went from partial compliance to in compliance. Task 30, which addresses the Executive Force Review Board, also went from partial compliance to in compliance. Task 33, which addresses the reporting of misconduct, went from not in compliance to partial compliance. Task 34, which addresses stop data, went from deferred compliance to partial compliance. Task 40, which addresses the Personnel Assessment System (PAS), went from not in compliance to partial compliance.

Given the duration of the NSA and the serious nature of policing, these results are disappointing. The attention to detail and the consistency of implementing policy into practice is wanting. The question of sustainability, which should be at the heart of this project's eventual outcome, is perpetually imperiled by OPD's failure to meet the very mandates of the Agreement to which the Department contributed and which it accepted.

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



## Section Two

### Compliance Assessments

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#### Task 2: Timeliness Standards and Compliance with IAD Investigations

##### Requirements:

*Fairness to complainants, members/employees and the public requires that internal investigations be completed in a timely fashion.*

- 1. On or before December 1, 2003, OPD shall develop policies regarding timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.*
- 2. Compliance with these timeliness standards shall be regularly monitored by IAD command and the Department's command staff. If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.*

(Negotiated Settlement Agreement III. B.)

##### Comments:

We found OPD in compliance with Task 2 during the first, second, and third reporting periods. Per Departmental policy, in order to be considered timely, at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days.<sup>1</sup> During our last quarterly review, we found that 89% of Class I cases and 94% of Class II cases were in compliance with established timelines – a slight drop from the previous reporting period. Additionally, for those cases that involved at least one sustained finding, 100% were in compliance with established discipline timelines.

##### Discussion:

As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 2, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 2. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

**Task 2.1** requires that internal investigations (IAD and Division Level) – including review, approval, findings, and discipline – be completed in accordance with the timeliness standards developed by OPD (compliance standard: 85%). To assess this subtask, we reviewed a list of all internal investigations resulting in formal findings (unfounded, sustained, exonerated, or not

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<sup>1</sup> OPD classifies misconduct as either “Class I” or “Class II.” Per DGO M-03, Class I offenses “are the most serious allegations of misconduct and, if sustained, shall result in disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution.” Class II offenses include “all minor misconduct offenses.”

sustained) that were approved between July 1, and September 30, 2010, and calculated the number of days between the complaint date and the approval date for each case.<sup>2</sup> We excluded from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or service complaints, and those that did not involve Manual of Rules (MOR) violations. We segregated the remaining cases into Class I or Class II categories. If a case involved at least one alleged Class I violation, we classified it as Class I.

Of the 80 Class I cases we reviewed, 73, or 91%, were in compliance with established timelines – a slight increase from the last reporting period, when 89% of the Class I cases were timely. Of the 105 Class II cases we reviewed, 102, or 97%, were in compliance with established timelines – also a slight increase from the last reporting period, when 94% of the Class II cases were timely. Of the 17 sustained findings that we reviewed, 100% were in compliance with established discipline timelines.<sup>3</sup> This is the second consecutive period in which this was the case. OPD is in compliance with Task 2.1.

**Task 2.2** requires that IAD and OPD command staff regularly monitor compliance with these timeliness standards (compliance standard: Yes/No). The primary responsibility for monitoring compliance with timeliness standards rests with IAD, which generates weekly reports listing the Department's open investigations and critical deadlines for investigations retained in IAD and those handled at the Division level. The reports are distributed to IAD command staff and the respective Bureau Deputy Chiefs.

In addition to the reports, the IAD Commander discusses pending deadlines for key open investigations during IAD's weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. IAD also occasionally, as needed, emails individual reminders on cases approaching due dates to investigators and their supervisors. During this reporting period, we received and reviewed copies of individual Bureau and Department-wide Open Investigation Reports, Cases Not Closed Reports, 180-Day Timeline Reports, and agendas for the weekly meetings between the Chief and IAD staff. The content of these documents demonstrates active monitoring of case timeliness. A Monitoring Team representative also attended many of these weekly meetings. The Department is in compliance with Task 2.2.

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<sup>2</sup> It is possible that extensions were granted in some of those cases that, based on these comparisons, appear to be out of compliance. Because of the high compliance rate, we did not review investigation extensions.

<sup>3</sup> We reviewed 16 total cases involving sustained findings – one case involved two sustained findings.

**Task 2.3** requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards (compliance standard: Yes/No). During this reporting period, IAD opened 395 cases, a decrease from 504 cases opened in the previous quarter. In addition, the Chief approved 436 cases, an increase from 406 cases approved in the previous quarter. IAD Command attributes the decrease in complaints to overall decreased Department staffing.

We note that the vast majority of cases that were approved in a particular quarterly review period were opened prior to the beginning of the review period, and that there is not necessarily a direct correlation between cases opened and cases approved in any given quarter. In any event, there was not a proliferation of cases during the reporting period that would have triggered a staffing increase pursuant to the NSA. OPD is in compliance with Task 2.3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

Prior to our next site visit, we will review and provide feedback to OPD on the Department's proposed changes to DGO M-03. If necessary, we will conduct follow-up meetings during the visit. During the next reporting period, we will again confer with IAD command staff regarding workload trends and staffing requirements.

## Task 3: IAD Integrity Tests

Requirements:

*IAD shall be proactive as well as reactive.*

1. *IAD shall conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct.*
2. *IAD shall have frequency standards, among other parameters, for such integrity tests.*

(Negotiated Settlement Agreement III. C.)

Comments:

During the first, second, and third reporting periods, we found OPD in partial Phase 2 compliance with this Task. We noted that OPD's methods need to be more effective if the Department is to achieve consistent, credible, and reliable testing that helps it perform at a high level absent a high level of misconduct complaints. Specifically, our analysis focused on OPD's investigations related to members or employees that are the subject of repeated allegations. During prior site visits, OPD expressed its inability to complete a successful integrity test of two targeted members, primarily because it lacked the resources and equipment necessary for continuous surveillance.

Discussion:

As previously reported, OPD published Internal Affairs Policy & Procedures 07-01, *Integrity Testing*, which incorporates the requirements of this Task, on January 25, 2007. The Department updated this policy in January 2009. The revised policy also incorporates the requirements of Task 3. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

**Task 3.1** requires that IAD conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct (compliance standard: Yes/No), and **Task 3.2** requires that IAD's integrity tests be conducted in accordance with the frequency standards and other parameters IAD has established (compliance standard: 90%).

To assess Phase 2 compliance for these subtasks, we reviewed threshold reports to determine whether OPD has identified members or employees who are the subject of repeated allegations. We also reviewed files for all integrity tests that were conducted – including operations plans, after-action reports, and supporting documents – from July 1, through September 30, 2010. Our review of these files focused on the scope of the investigations, whether OPD conducted integrity tests where members/employees were the subject of repeated allegations, and whether the selective integrity tests conducted comply with the parameters IAD has established. During our most recent site visit, we interviewed the IAD Commander, the sergeant who oversees the Integrity Testing Unit, and other IAD personnel.

During the current reporting period, the Department conducted eight select integrity tests based on a review of the IAD database. The documentation shows that two of the tests were focused on two individual employees who were the subjects of repeated allegations of misconduct. The Department successfully conducted both tests, focusing on whether the officers completed the required Stop Data Reports when detaining subjects. While both officers passed the tests because they completing the required reports, we are concerned that the Department did not focus on the *justifications* of the stops by the officers. While the underlying purpose of stop data reporting is to prevent profiling, officers are also required to document the legal basis for the detention. IAD should have investigated the stops conducted by the involved officers to determine if they were lawful.

Also during this reporting period, the Department conducted five planned integrity tests, in which it checked the records of nine members to verify that their vital information was current and that they were compliant with Department policy. All five planned tests passed.

The final integrity test focused on multiple OPD officers who failed to appear in traffic court pursuant to issued subpoenas. This type of test supports the integrity standard of the Department, and we encourage OPD to expand these types of integrity tests. The integrity test failed, and subsequently, IAD opened up an investigation of the officers' who failed to comply with the subpoena. This IAD investigation is still ongoing.

OPD continues to make progress in integrity testing. However, we are concerned that the Department is not conducting integrity testing under the standards that are required to properly test the Department's compliance with policy and the Negotiated Settlement Agreement. Only one of the tests conducted this review period was substantial enough to test the operational integrity of the Department effectively. During our most recent site visit, we discussed with OPD some areas of needed improvement, as well as the steps that the Department is taking to bolster integrity testing, including adding new personnel to the unit.

Based on the progress that we observed during this reporting period – specifically, the scope of investigations of employees who are the subject of repeated allegations – we continue to find the Department in partial compliance with this Task. Compliance is dependent on increased performance over the next reporting period.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will meet with the sergeant who oversees the ITU and the IAD Commander to discuss the Department's efforts to strengthen integrity testing, particularly given its limited resources. We will also verify compliance with established frequency standards for testing and compliance with procedures.

## Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process

Requirements:

1. *Within 90 days, OPD shall develop a policy regarding an informal complaint resolution process which may be used by supervisors and IAD to resolve service complaints and Class II violations that do not indicate a pattern of misconduct as described in Section III, paragraph H (2). This process shall document the receipt of the complaint, date, time, location, name or the person making the complaint, the name of the person receiving the complaint, how the matter was resolved and that the person making the complaint was advised of the formal complaint process with the CPRB. The documentation shall be forwarded to an IAD Commander for review. If the informal complaint resolution process fails to resolve the complaint or if the person making the complaint still wishes to make a formal complaint, the person receiving the complaint shall initiate the formal complaint process pursuant to Section III, paragraph E. An IAD Commander shall make the final determination whether the ICR process will be utilized to resolve the complaint. OPD personnel shall not unduly influence persons making a complaint to consent to the informal complaint resolution process.*

2. *IAD shall establish a central control system for complaints and Departmental requests to open investigations. Every complaint received by any supervisor or commander shall be reported to IAD on the day of receipt. If IAD is not available, IAD shall be contacted at the start of the next business day. Each complaint shall be assigned an Internal Affairs case number and be entered into a complaint database with identifying information about the complaint. OPD personnel shall notify IAD and the Chief of Police, or designee, as soon as practicable, in cases likely to generate unusual public interest.*
3. *Criteria shall be established which must be met prior to moving, from “open” to “closed,” any investigation in the complaint database.*<sup>4</sup>

(Negotiated Settlement Agreement III. D.)

Comments:

Only two provisions of Task 4 (4.7 and 4.10) are being actively monitored under the MOU. During all of the previous reporting periods, we found OPD in compliance with both of these requirements. Overall, we found that complaints received by any supervisor or commander were reported to IAD on the day of receipt or at the start of the next business day. We also found that OPD complied with criteria it has established when resolving complaints via informal complaint resolution, administrative closure, or summary finding.

Discussion:

There are four Departmental policies that incorporate the requirements of Tasks 4.7 and 4.10:

- **Department General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of these subtasks.
- **Department General Order M-3.1:** As previously reported, OPD published Department General Order M-3.1, *Informal Complaint Resolution Process*, which incorporates the requirements of these subtasks, on December 6, 2005. General Order M-3.1 was revised in February 2008, and August 2008. The revised policy also incorporates the requirements of these subtasks.
- **Special Order 8552:** As previously reported, OPD published Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual*, on February 1, 2007. This policy incorporates the requirements of these subtasks.
- **Communications Division Policy & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007. This policy incorporates the requirements of these subtasks.

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<sup>4</sup> The underlined requirements are the only provisions of Task 4 that are being actively monitored under the MOU.

As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 4.7** requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt (compliance standard: Yes/No). If IAD is not available, the supervisor or commander shall contact IAD at the start of the next business day. To assess Phase 2 compliance for Task 4.7, we reviewed 53 Daily Incident Log (DIL) entries and a random sample of 72 IAD case files that were approved during the period of July 1, through September 30, 2010. We also reviewed the complaint intake process in IAD during our November site visit, verifying by observation and interview the daily transfer of complaints to IAD via the DILs. We found no evidence of unwarranted delay in the delivery of these cases, or in the intake process once IAD was made aware of them. The electronic transfer of DILs works as designed, and OPD is in compliance with Task 4.7.

**Task 4.10** requires that OPD comply with criteria it has established when resolving complaints through informal complaint resolution (ICR), administrative closure, or summary finding (compliance standard: 90%). This subtask is intended to ensure that OPD provides the proper level of investigation for each complaint and does not resolve meritorious complaints of misconduct without determining – and documenting – whether the OPD member or employee committed misconduct.

During this reporting period, from a sample of IAD cases that were approved between July 1, and September 30, 2010, we reviewed eight cases resolved via administrative closure, 10 cases resolved via informal complaint resolution, and eight cases that were resolved via summary finding. Additionally, we reviewed two cases in which an administrative closure and an ICR were used, for different allegations of the same complaint. In all of the ICRs we reviewed, the complainants agreed with the informal complaint resolution process. Where an agreement was secured in a telephone conversation, a notation was made in the complainant's signature box.

The administrative closures that we reviewed were properly investigated before arriving at the determination that such a closure was appropriate. In three of the cases, either the employees or the situation complained of were the responsibility of another jurisdiction. Two involved other law enforcement agencies (California Highway Patrol and the Marin County Sheriff's Office), and the other – a complaint of a homeless encampment – was on state property and was referred to state agencies for resolution. In another case, a complaint of damaged property during the execution of a search warrant, it appeared that the investigation could have been closed by exonerating the officers, although an administrative closure was not improper based on the desire of the complainant.

Two of the administrative closures dealt with officer-involved shootings. We clarified with OPD the practice of using this designation – administrative closure – for such cases. OIG personnel advised that IAD will investigate every instance of an officer-involved shooting, but if there is no actual complaint associated with the case, the investigation will be classified as No MOR (Manual of Rules) Violation and administratively closed if no violations are uncovered during the investigation.

The cases resolved via summary finding were all approved for such designation as required by policy. These cases are further discussed in Task 5.

OPD is in compliance with Task 4.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We are currently reviewing proposed changes to DGO M-03, which will have an impact on this and other Tasks. We will work with the Department to ensure that the proposed changes, if approved, do not jeopardize compliance.

## Task 5: Complaint Procedures for IAD

Requirements:

1. *On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the person receiving the complaint. In the event that such a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant and any witnesses. This information, as well as a description of the complaint, shall immediately, or as soon as circumstances permit, be documented on a Complaint Form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a complaint. The supervisor or appropriate Area Commander notified of the complaint shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.*
2. *An on-duty supervisor shall respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I*



*misconduct contemporaneous with the arrest. The supervisor shall ensure the Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints, by a jail inmate shall be handled in the same manner as other civilian complaints.*

3. *In each complaint investigation, OPD shall consider all relevant evidence, including circumstantial, direct and physical evidence, and make credibility determinations, if feasible. OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.*
4. *OPD shall develop provisions for the permanent retention of all notes, generated and/or received by OPD personnel in the case file.*
5. *OPD shall resolve each allegation in a complaint investigation using the "preponderance of the evidence" standard. Each allegation shall be resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure. The Department shall use the following criteria for determining the appropriate disposition:*
  - a. *Unfounded: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.*
  - b. *Sustained: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.*
  - c. *Exonerated: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accord with law and with all Oakland Police Department rules, regulations, or policies.*
  - d. *Not Sustained: The investigation did not disclose sufficient evidence to determine whether or not the alleged conduct occurred.*
  - e. *Administrative Closure: The investigation indicates a service complaint, not involving an MOR violation, was resolved without conducting an internal investigation; OR*
  - f. *To conclude an internal investigation when it has been determined that the investigation cannot proceed to a normal investigative conclusion due to circumstances to include but not limited to the following:*
    - 1) *Complainant wishes to withdraw the complaint and the IAD Commander has determined there is no further reason to continue the investigation and to ensure Departmental policy and procedure has been followed;*
    - 2) *Complaint lacks specificity and complainant refuses or is unable to provide further clarification necessary to investigate the complaint;*
    - 3) *Subject not employed by OPD at the time of the incident; or*
    - 4) *If the subject is no longer employed by OPD, the IAD Commander shall determine whether an internal investigation shall be conducted.*

- 5) *Complainant fails to articulate an act or failure to act, that, if true, would be an MOR violation; or*
- 6) *Complaints limited to California Vehicle Code citations and resulting tows, where there is no allegation of misconduct, shall be referred to the appropriate competent authorities (i.e. Traffic Court and Tow Hearing Officer).*
- g. *Administrative Closures shall be approved by the IAD Commander and entered in the IAD Complaint Database.*
- 6. *The disposition category of "Filed" is hereby redefined and shall be included under Administrative Dispositions as follows:*
  - a. *An investigation that cannot be presently completed. A filed investigation is not a final disposition, but an indication that a case is pending further developments that will allow completion of the investigation.*
  - b. *The IAD Commander shall review all filed cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed and may direct the closure or continuation of the investigation.*
- 7. *Any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions.*

(Negotiated Settlement Agreement III. E.)

Comments:

During all of the previous reporting periods, we found OPD in partial compliance with Task 5. Tasks 5.1-5.5 address information gathered at time of complaint and notifications required. We found OPD out of compliance with Task 5.4, but in compliance with the remaining subtasks in the group. In addition, we found that 72% of the cases we reviewed were in compliance with all elements of Tasks 5.15 and 5.16. We also found that the verification of all notes being contained in the file, as required by Task 5.17, was missing in 24% of the cases we reviewed. In 16% of the cases we reviewed, the preponderance of evidence standard was not applied to some or all of the allegations, as required by Task 5.18. We found OPD in compliance with Task 5.6 (jail complaints), Task 5.19 (proper dispositions), Task 5.20 (tolling and filed cases), and Task 5.21 (employee interviews).

Discussion:

There are several Departmental policies that incorporate the various requirements of Task 5:

- **Departmental General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 5.)
- **Communications Division Operations & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents*, on April 6, 2007.
- **Training Bulletin V-T.1:** As previously reported, OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006.
- **Special Order 8270:** As previously reported, OPD published Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility*, on June 24, 2005.
- **Special Order 8565:** As previously reported, OPD published Special Order 8565, *Complaints Against Department Personnel*, on May 11, 2007.
- **IAD Policy & Procedures 05-02:** As previously reported, OPD published IAD Policy & Procedures 05-02, *IAD Investigation Process*, on December 6, 2005.

In addition, NSA stipulations issued on December 12, 2005, and March 13, 2007, incorporate the requirements of this Task.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

To verify Phase 2 compliance with Tasks 5.1 through 5.5, we reviewed 53 entries that appeared on the Daily Incident Logs (DILs) that were completed during September, 2010. As noted in our last report, we met with representatives from IAD and Communications on August 12, 2010, to discuss issues with the completion of DILs potentially affecting OPD's compliance with Task 5.4. (See details in the Task 5.4 section below.) This meeting followed a similar meeting, which took place on May 26, 2010. Following these meetings, OPD agreed to change the format of the DIL to ensure that information required by Task 5 is captured. Given that these changes did not take place until after our August meeting and some follow-up email correspondence between IAD staff and the Monitoring Team, we advised OPD that we would only review DILs completed in September, 2010.

**Task 5.1** requires that when a citizen wishes to file a complaint, the citizen is brought to a supervisor or IAD, or a supervisor is summoned to the scene (compliance standard: 95%). During the last reporting period, we found that OPD had a 98% compliance rate with this subtask. During the current reporting period, of the 53 DIL entries, three cases were received in person in IAD, and 10 cases were referred directly to IAD from Communications, rather than being referred to a non-IAD field supervisor. In three of these 10 DIL records, there was no reference to any contact with the complainant – that is, the log's "Time Complainant Contacted"

field was blank. We note that OPD has previously been in compliance with this subtask, and all of the complaints assigned to field supervisors were in compliance during this review period. We deem OPD in compliance with this subtask during this reporting period, but note that if the Department is going to offer the DILs as documentation of its compliance with this requirement, the time of complainant contact must be recorded in all cases, including those referred to IAD.

**Task 5.2** requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay be documented (compliance standard: 85%). Of the 53 DIL entries we reviewed, there appeared to be two instances of at least a three-hour delay. In the first instance, a complaint of officers speeding in an unmarked car, the complaint was received at 09:01 hours, and assigned at 12:05 hours, with a message left for the complainant at 12:09 hours. No reason for the delay was documented. In the second instance, a complaint regarding response times, the complaint was received at 08:30 hours, assigned to IAD at 11:30 hours, and the complainant was contacted at 11:45 hours. The box “Over 3 hours” (a new addition to the form) was appropriately checked, but no explanation was given for the delay. These two cases are not in compliance. However, during the reporting period, we found that OPD has a 96% compliance rate with this subtask. OPD is in compliance with Task 5.2.

**Task 5.3** requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint (compliance standard: 90%). Of the 53 records in our dataset, we identified six instances in which the complainant “refused” interaction with a supervisor. In all of these cases, the complainants did not answer a contact or callback number provided; and since OPD personnel had no advance notice of the refusal prior to the attempted callback, we removed these incidents from consideration. In two of the cases, supervisors also responded to the address that was believed to be the source of the call, but no one answered the door. In all six of these “refused” cases, enough information was obtained by Communications personnel to generate a complaint and forward the relevant information to IAD. OPD is in compliance with Task 5.3.

**Task 5.4** requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander (compliance standard: 85%). In its February 2009 audit of these subtasks, the previous monitor accepted the “DIL system as functionally equivalent to this requirement,” and noted that the system “places the responsibility that the Area Commander previously held on the Communications Division. It still requires that the Area Commander be notified of the complaint.” In order to be in compliance with this subtask, the DIL should contain the identification of personnel; witnesses or identifying information, if known (log should say “unknown” if not known); the date, time, and location of the incident; and the time of contact or attempt to contact the complainant by a supervisor.

During the last reporting period, we found that 73% of the records we reviewed lacked some or all of the required information. As mentioned above, we met with IAD and Communications personnel during our May and August site visits to address the Department’s failure to capture the required information. OPD committed to altering the DIL form to contain “forced response”

boxes for the items mandated by this subtask. As a result, we confined our review to records generated after the form was changed and Communications personnel were trained on the new requirements. During this reporting period, we found that three, or 6%, of the 53 records we reviewed lacked some of the required information and did not indicate that the information was unknown. This is a marked improvement over our previous reviews; the compliance rate during the last reporting period was 27%. During this reporting period, OPD has a 94% compliance rate with this subtask, and is in compliance with Task 5.4.

**Task 5.5** requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD (compliance standard: 95%). The DILs are administered by the Communications Division and forwarded to IAD each business day. Additionally, the DIL contains a field to record the name of Area Commander notified and the time of notification. This field was blank in 12, or 23%, of the 53 records we reviewed. With a compliance rate of 77%, OPD is not in compliance with Task 5.5. We caution the Department that creating a form or a system to record information is not enough. Personnel must be held accountable for properly capturing required information. As we have seen in our previous reviews of other Tasks, the failure to complete forms that were created specifically to document compliance requirements can be problematic. OPD is not in compliance with Task 5.5.

**Task 5.6** requires that an on-duty supervisor shall respond to take a complaint received from a jail inmate, taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest (compliance standard: 90%). The supervisor shall ensure that the Communications Division is notified and forward any pertinent documents to IAD. All other misconduct complaints by a jail inmate shall be handled in the same manner as other civilian complaints. During our last evaluation, we found OPD in compliance with Task 5.6.

To assess Task 5.6 during this reporting period, we reviewed all complaints that appeared to have originated from North County Jail, Santa Rita Jail, or Juvenile Hall, and were approved between July 1, and September 30, 2010. We identified four such complaints using the IAD database. We reviewed each complaint for two triggering events: an allegation of Class I misconduct and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was “handled in the same manner as other civilian complaints.”

Of the four cases we reviewed, only one met the criteria for an immediate response by a supervisor; and in this case, an on-duty supervisor did, in fact, respond, make the proper notifications, and forward the appropriate information. The alleged Class 1 misconduct was use of a racial epithet. Because the subject officer was separated from service in the recent layoffs, the case was administratively closed.

The other three cases in our dataset did not meet the criteria for this subtask. Class I misconduct was not alleged in any of them. In two of the cases, the complaint was not lodged contemporaneous with the arrest. In the remaining case, a supervisor responded to the jail even though the allegation was one of discourtesy.

OPD is in compliance with Task 5.6.

**Task 5.12** requires that the Watch Commander ensures that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD (compliance standard: 90%). Since by definition these complaints must be made contemporaneous with the arrest, an on-duty supervisor must respond to the jail. Under current policy, complaints that are received and/or handled by on-duty supervisors must be recorded by the Communications Division on the Daily Incident Log (DIL), which is forwarded daily to IAD. Just as with the notifications and duties of the Watch Commander outlined in Tasks 5.1-5.5, we deem the DIL system as functionally equivalent to the requirements of Task 5.12, and the Department is thus in compliance with this Task.

To assess **Tasks 5.15 through 5.19**, and **Task 5.21**, we reviewed a random sample of 25 IAD cases that were approved between July 1, and September 30, 2010. This sample included investigations completed by IAD and Division-Level Investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.<sup>5</sup>

As in our previous reviews, we treated **Tasks 5.15 and 5.16** as a single Task with several elements, specifically that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements (compliance standard: 85%). During the previous assessment period, we deemed the Department in compliance with *all* of these required elements 72% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 13, or 52%, in compliance with *all* of these required elements. OPD is not in compliance with Tasks 5.15 and 5.16.

In all of the cases we reviewed, it appeared that OPD gathered and considered all relevant evidence.<sup>6</sup> Where warranted, follow up interviews were conducted in all but one case. In this case, a complaint of rudeness and excessive force during a traffic stop, two officers who were on scene were not interviewed because they indicated in their reports that they did not see the use of force in question. Additionally, a witness indicated that the subject/complainant was kned in the head. Rather than asking the complainant if this occurred, OPD unfounded the allegation because he did not complain of the act.

Of note, in another case, a complainant's son potentially had knowledge of a case but was not interviewed because he was in jail. The investigation was appropriately returned to the investigator, and the investigator conducted the interview.

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<sup>5</sup> Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

<sup>6</sup> For purposes of our review, we consider evidence to be physical evidence and/or photographs of same. We distinguish evidence from interviews, as does the Task.

OPD continues to be challenged by credibility assessments. As mentioned previously, the Department, for the most part, appears to start from the premise that complainants are not credible, and officers are. In six of the cases we reviewed, credibility assessments were not included. Five of these cases were summary findings, but this designation does not relieve the Department from the obligation to assess the credibility of the parties involved; many of the summary findings we have reviewed over the past year included credibility assessments.

In five other cases, the credibility assessments were poor. In one case, the investigator rather subjectively notes, "Moreover, certain statements he (the complainant) makes are just not believable." In this same case, a civilian witness who claimed that a supervisor provided the complainant with the names and badge numbers of involved officers – in contradiction of the supervisor who denies providing the information – is characterized as an exceptional witness who, in this one discrepancy, is apparently sympathetic to officers and wanted to help them.

In the other four cases, handwritten notes by reviewers appropriately identified problems with the credibility assessments, but they were allowed to stand. The comments, however, were encouraging. In one, a complainant's credibility assessment consisted of a litany of his prior arrests, and a reviewer noted the list was irrelevant. In another, there was a notation: "weak argument – not considered." In another, the investigator questioned the credibility of the complainant because his mother encouraged him to file the complaint, and the reviewer appropriately noted that while this may be true, it does not impact his credibility.

We note that OPD has provided reference materials and training sessions for sergeants on what constitutes proper credibility assessments. We also recognize that we continue to review cases that were substantially completed before this information was made available; and we remain hopeful that as more recent cases are sampled, the chronic issues associated with credibility assessments will be addressed.

The NSA requires that "OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses." Where OPD makes such efforts and is unable to resolve inconsistent statements, the underlying charge would presumably, by definition, be not sustained. Therefore, in our review of this Task, we removed from consideration not sustained findings based on inconsistent statements. In one case, an allegation of officers failing to provide their names and badge numbers, inconsistent statements were not resolved. Both the officers and the complainant were deemed credible and the allegation should have been not sustained rather than unfounded.

OPD is not in compliance with Tasks 5.15 and 5.16.

**Task 5.17** requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file (compliance standard: 85%). OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). During our previous quarterly review, we found this form missing or blank in six, or 24%, of the 25 cases we reviewed. During this reporting period, the form was present in 100% of our sample. OPD is in compliance with this subtask.

**Task 5.18** requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard (compliance standard: 90%). During the previous reporting period, OPD complied with this subtask in 84% of the cases we reviewed. During this reporting period, OPD complied with this Task in 21 cases, or 84%. In the cases that were out of compliance, investigators reached determinations of exonerated or unfounded, rather than not sustained, or in at least one case, sustained. Three of these involved rudeness allegations and/or the failure to provide name and badge number allegations, with no independent witnesses.

The other case was a summary finding of three complaints of excessive force in dealing with a large group protest that had taken over a freeway. All of the complaints came from concerned citizens who observed the incidents on the television news. At least one officer was videotaped using force (baton strikes) that he failed to document. Given the nature of the event and the actions of the protestors, the strikes were apparently appropriate. However, the investigator went to great lengths to justify the officer's failure to document them. The investigator consulted with the Department's subject matter expert "in understanding human performance during critical incidents." He explained "fragmented recall," "selective attention," and that a "...person involved in an overwhelming situation will normally recall the greatest threat and could forget about other things that occurred that were less threatening." This notion is at variance with the standard applied to citizens who often perceive their encounters with the police as stressful, and yet the slightest discrepancies in their recollections routinely lead to OPD questioning their credibility. The officer, when confronted with the video of him using undocumented baton strikes, was "shocked...that he had completely forgotten" this use of force. The videotaped, undocumented use of force should have been treated as a separate OPD-initiated allegation and sustained. We take no issue with the consideration of the mitigating factors of dealing with a large, violent group in determining a penalty, if any. OPD is not in compliance with Task 5.18.

**Task 5.19** requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure (compliance standard: 95%). While we do not agree with all of the findings for the cases we reviewed (see above), each allegation identified in all but one of the 25 cases was resolved with one of the acceptable dispositions. In one case, complaints of profanity and threatening to plant drugs, each occurring on separate days, were treated as one allegation. They were, in fact, two allegations. Nonetheless, OPD is in compliance with this subtask.

**Task 5.20** requires that the IAD Commander review all "filed" cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed (compliance standard: 90%). A filed case is defined as an investigation that cannot be presently



completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. According to our review of the IAD database, OPD currently does not have any cases classified as filed. Cases categorized as “tolling” appear to fit this definition.<sup>7</sup>

During our November site visit, we met with the IAD commanding officer, who advised that as of that date, four cases were classified as tolling. Two involve civil litigation against the City and/or the Department, and two involve criminal cases in which the complainants are not cooperating, most likely on the advice of legal counsel. All cases appear to be properly tolling. These cases are reviewed with the Chief during his weekly IAD meetings and listed by case number on the printed meeting agendas. OPD is in compliance with this subtask.

**Task 5.21** requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken (compliance standard: 90%). However, with the approval of the IAD Commander, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. In nine of the 25 cases we reviewed, not all subject members or employees were interviewed. Eight of these were approved to be resolved via summary finding, however, and so interviews were not required. In the remaining case, the use of force complaint mentioned above, given the allegations, all officers on scene when the force was allegedly used should have been interviewed. Nonetheless, OPD is in compliance with Task 5.21.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

Prior to our next site visit, we will review and provide feedback to OPD on the Department’s proposed changes to DGO M-03. If necessary, we will conduct follow-up meetings during the visit. We will also meet with IAD and OIG personnel regarding specific cases of concern, as we did during our last two site visits.

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<sup>7</sup> OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304.

## Task 6: Refusal to Accept or Refer Citizen Complaints

### Requirements:

*Refusal to accept a citizen complaint, failure to refer a citizen to IAD (when that citizen can be reasonably understood to want to make a citizen's complaint), discouraging a person from filing a complaint, and/or knowingly providing false, inaccurate or incomplete information about IAD shall be grounds for discipline for any OPD member or employee.*

(Negotiated Settlement Agreement III. F.)

### Comments:

During the first, second, and third reporting periods, we found the Department in Phase 2 compliance with Task 6.

### Discussion:

As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 6, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 6. The requirements of this Task are also incorporated into Manual of Rules sections 314.07, 398.70, and 398.76. As the Department has trained at least 95% of relevant personnel on this policy, we find OPD in continued Phase 1 compliance with this Task.

**Task 6** requires that OPD 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, are disciplined (compliance standard: 95%).

To assess Phase 2 compliance with this Task, we reviewed 53 Daily Incident Log entries from September, 2010; and a random sample of 74 IAD investigations (conducted by both IAD and via Division-level investigation) for the period of July 1, through September 30, 2010. We found no cases in which an allegation of failure to accept or refer a complaint went unaddressed.

We also queried the IAD database to identify any allegations of MOR 398.70-1, Interfering with Investigations, MOR 398.76-1, Refusal to Accept or Refer a Complaint, and MOR 398.76-2, Failure to Accept or Refer a Complaint; that were investigated and approved during this same time period. We identified eight such cases. In one case, a case involving unnecessary handcuffing, the Chief sustained a violation of MOR 398.76-1, and the officer received a seven-day suspension. In the remaining seven cases, while we may disagree with some of the Chief's determinations (resolving the allegations as unfounded, versus not sustained), sustained findings were not warranted.

OPD is in compliance with Task 6.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 7: Methods for Receiving Citizen Complaints

Requirements:

*On or before December 1, 2003, OPD shall develop a policy to strengthen procedures for receiving citizen complaints:*

- 1. IAD or Communication Division personnel shall staff a recordable toll-free complaint phone line, 24-hours a day, and receive and process complaints in accordance with the provisions of Departmental General Order M-3. The complainant shall be advised that the call is being recorded when a complaint is taken by IAD.*
- 2. Guidelines for filing a citizen's complaint shall be prominently posted and informational brochures shall be made available in key Departmental and municipal locations.*
- 3. OPD shall accept anonymous complaints. To the extent possible, OPD shall ask anonymous complainants for corroborating evidence. OPD shall investigate anonymous complaints to the extent reasonably possible to determine whether the allegation can be resolved.*
- 4. OPD personnel shall have available complaint forms and informational brochures on the complaint process in their vehicles at all times while on duty. Members/employees shall distribute these complaint forms and informational brochures when a citizen wishes to make a complaint, or upon request.*
- 5. IAD shall be located in a dedicated facility removed from the Police Administration Building.*
- 6. Complaint forms and informational brochures shall be translated consistent with City policy.*
- 7. Complaint forms shall be processed in accordance with controlling state law.<sup>8</sup>*

(Negotiated Settlement Agreement III. G.)

Comments:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the second and third reporting periods, we found OPD in compliance with this Task.

Discussion:

OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 7, on December 6, 2005. General

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<sup>8</sup> The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 7. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance with this Task, we reviewed all cases listed in the Internal Affairs Division database as originating from complainants who were “anonymous,” “unknown,” “refused,” or any forms of those terms (such as “unk”) and that were approved between July 1, and September 30, 2010. We also reviewed all complaints during this selected time period that were tagged by IAD as originating from an anonymous complainant, and complaints in which the complainant field in the database was blank, to determine whether any were made anonymously.

During our May site visit, we met with IAD staff to encourage personnel to standardize the manner in which these cases are recorded in the database, to make them easier to identify. We noted some increased uniformity in way anonymous complaints are noted in the database. However, not all have “Anonymous” in the complainant’s last name database field, as agreed to during our meeting and in our subsequent email communication with IAD staff. We are aware that we may have identified entries made before that meeting, and will look for continued progress during future reviews.

Based on the above-listed criteria, we identified 14 cases as potential anonymous complaints during this reporting period. From these, we removed five that we determined were not true anonymous complaints. One was an OPD-initiated investigation of employees who were never identified. However the complainant was not anonymous – it was, in fact, the Department, who initiated the complaint. In the other four cases, the complainants or contact information were known from the beginning of the investigations. In one of these, the complainant wished to be identified as anonymous, but he cooperated with IAD, and IAD personnel knew his name and contact information. In the others, the complainants were uncooperative, but not anonymous.

Of the nine remaining cases, in one case the complainant was identified via caller ID during the course of the investigation. Eight were true anonymous complaints, and we determined that these cases were investigated to the extent reasonably possible. In one of these, OPD also identified a companion complaint, with a known complainant, of the same incident.

The Department, therefore, complied with Task 7.3 in all eight cases, or 100%. OPD is in compliance with Task 7.3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## Task 16: Supporting IAD Process-Supervisor/Managerial Accountability

### Requirements:

*On or before December 1, 2003, OPD shall develop a policy to ensure that supervisors and commanders, as well as other managers in the chain of command, shall be held accountable for supporting the IAD process. If an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, then that supervisor or manager shall be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene.*

(Negotiated Settlement Agreement III. O.)

### Comments:

During the first reporting period, although we noted that while IAD conducted quality investigations in the vast majority of cases we reviewed and generally made appropriate findings, we found the Department out of compliance with Task 16 due to our concerns with the disciplinary hearing process. During the second and third reporting periods, our reviews showed that OPD had improved in this area, and we found the Department in compliance with this Task. Nevertheless, during our most recent site visit, our review of one case, wherein the questionable conduct of officers and a supervisor escaped the required command review, demonstrates the need for continued vigilance and close scrutiny of IAD cases and use of force reports. We referred this matter to OPD for its further review.

### Discussion:

As previously reported, two Department policies, Department General Order M-03 and Training Bulletin V-T.1, incorporate the requirements of Task 16. OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 16.) OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, on June 1, 2006. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 16.1** requires that supervisors and commanders, as well as other managers in the chain of command, are held accountable for supporting the IAD process (compliance standard: Yes/No); and **Task 16.2** requires that if an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, the supervisor or manager is held accountable, through OPD's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene (compliance standard: 90%).

To assess Task 16, we examined the 53 Daily Incident Log entries from September, 2010; and a random sample of 72 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between July 1, through September 30, 2010; and the seven sustained Class I investigations that were approved by the Chief between July 1, through

September 30, 2010. From this review, we identified one case in which a supervisor was alleged to have failed to adhere to the required standard. In this case, IAD sustained a violation against a police services technician for intentionally obstructing the IAD investigative process. We concur with the Department's resolution of this matter, and we continue to find the Department in compliance with Task 16.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will again meet with the IAD Commander to discuss any Task 16-applicable cases for the next reporting period, and we will assess the propriety of IAD's findings and actions.

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

Requirements:

*Within 260 days from the effective date of this Agreement, the Chief of Police shall, based on contemporary police standards and best practices, develop and implement policies to address the following standards and provisions:*

Approval of Field-Arrest by Supervisor

1. *OPD shall develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates on calls for service. The policies developed in this Section shall require supervisors to respond to the scene of (at least) the following categories of arrest, unless community unrest or other conditions at the scene make this impractical:*
  - a. *All Felonies;*
  - b. *All drug offenses (including narcotics, controlled substances and marijuana arrests if the subject is taken to jail).*
  - c. *Where there is an investigated use of force;*
  - d. *Penal Code §§69, 148 and 243(b)(c).*

*The responding supervisor shall review the arrest documentation to determine whether probable cause for the arrest, or reasonable suspicion for the stop, is articulated, to ensure that available witnesses are identified, to approve or disapprove the arrest in the field, and to log the time of the contact.*<sup>9</sup>

(Negotiated Settlement Agreement IV. A.)

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<sup>9</sup> The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

Comments:

Only one provision of Task 18 (18.2.2) is being actively monitored under the MOU. During all of the previous reporting periods, we found the Department in compliance with this subtask.

Discussion:

As previously reported, OPD published an arrest approval and report review policy, DGO M-18, *Arrest Approval and Review in the Field* (May 13, 2004; and updated October 1, 2005), which incorporates the requirements of Task 18. In December 2006, OPD published Special Order 8536, *Probable Cause Arrest Authorization and Report Review*. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 18.2.2** requires that supervisors review arrest documentation to verify that available witnesses are identified (compliance standard: 90%). To assess Phase 2 compliance with this subtask during this reporting period, we reviewed arrest documentation for all of the applicable arrest categories, as well as documentation for arrests resulting in an investigated use of force. Specifically, we reviewed a random sample of 24 adult arrest reports, and 22 juvenile arrest reports documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); and documentation for 53 arrests resulting in an investigated use of force; that occurred between July 1, and September 30, 2010. We reviewed these to determine if the reports listed witnesses or appropriately noted “no known witnesses,” or referred to a canvass with no witnesses produced. In keeping with previous practice, if there was no mention of any witnesses in the crime report narrative, we accepted a “0” in the “witness” box on the cover sheet as sufficient documentation.

Of the 24 adult arrest reports, we excluded eight from our assessment for one or more of the following reasons: the arrest involved a warrant; the arrest occurred outside of our selected time period; the incident was, in fact, a psychiatric detention that did not involve an arrest; or the arrest involved a misdemeanor offense that was not one of the arrests applicable to Task 18.2.2. Of the 16 remaining adult arrests, 14 were in compliance with Task 18.2.2. This represents an 88% compliance rate among adult arrests for this subtask. The two other felony arrest reports did not, as per the requirement, list witnesses, appropriately note “no known witnesses,” or refer to a canvass with no witnesses produced.

Of the 22 juvenile arrest reports, we excluded 10 from our assessment for one or more of the following reasons: the arrest involved a warrant; the arrest occurred outside of our selected time period; the incident was, in fact, a psychiatric detention or juvenile runaway detention that did not involve an arrest; or the arrest involved a misdemeanor offense that was not one of the arrests applicable to Task 18.2.2. The remaining 12 were in compliance with Task 18.2.2. This represents a 100% compliance rate among juvenile arrests for this subtask.

Of the 53 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.<sup>10</sup>

OPD has shown improvement meeting the requirements of Task 18.2.2 with the adult and juvenile arrests during this reporting period. This may have resulted from the Deputy Chief of the Bureau of Field Operations recently assigning members of his staff to audit adult and juvenile arrest reports and take appropriate corrective action if the requirements of Task 18.2.2 have not been met. We will continue to monitor closely the documentation for felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); of adults and juveniles.

Our review revealed an overall 98% compliance rate for Task 18.2.2. OPD is in compliance with this requirement.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will discuss with OIG the possibility of conducting continued audits of Task 18.2.2 to sustain the Department's compliance in this area.

## Task 20: Span of Control for Supervisors

Requirements:

*On or before August 14, 2003, OPD shall develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The policy shall provide that:*

1. *Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
2. *During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and operational needs, whether or not to backfill for the absence of the sergeant on leave.*
3. *If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
4. *If long-term backfill requires the loan or transfer of a supervisor from another*

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<sup>10</sup> This number includes only Level 1, 2, and 3 uses of force because per DGO K-4, the documentation of witnesses of Level 4 uses of force is not required.



*unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Comments:

During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with Task 20. During the last reporting period, we found that 94% of the squads we reviewed met the 1:8 span of control. However, we found that only 76% of the squads we reviewed were supervised by their primary, or assigned, supervisors; most of the remainder were supervised by certified acting sergeants who were not actually assigned to supervise their squads.

Discussion:

As previously reported, directives relevant to this Task include: Departmental General Order A-19, *Supervisory Span of Control*, issued on July 26, 2006; Departmental General Order D-13, *Assignment to Acting Higher Rank or Classification*, issued on June 17, 1999; and Special Order 8435, *Acting Sergeant Selection Process*, issued on July 26, 2006. Although Special Order 8435 updates the Department's policy on acting supervisors, we have previously encouraged OPD to update DGO D-13 so that it incorporates the updated information. We learned recently from the Bureau of Field Operations (BFO) Deputy Chief that these revisions are currently underway.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 20.1** requires that sufficient primary sergeants be assigned at the draw board/master detail level to permit one primary sergeant for every eight officers under normal conditions (compliance standard: Yes/No).

During the first two reporting periods, we did not assess this subtask due to the lack of reliable documentation. At that time, we reported that there was no official OPD "master detail" that both listed sergeants' assignments as of the time of the "draw" at the beginning of the year and was also updated throughout the year as loans, transfers, and other personnel changes alter supervisory assignments. During the last reporting period, we were granted access to Telestaff, the Department's electronic scheduling system. We found that Telestaff functions as a "master detail" that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. OPD is in compliance with Task 20.1.

**Task 20.2** requires that relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Targeted Enforcement Task Force I, Parole and Corrections Team, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%).<sup>11</sup> To assess this subtask, we reviewed a stratified random sample of 14 days (within our selected

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<sup>11</sup> During the third reporting period, the Department discontinued the Targeted Enforcement Task Force II.

time period) of Daily Details for the squads listed above. Specifically, we reviewed Daily Details for the following dates: July 1, 9, 14, and 31, 2010; August 2, 3, 8, and 20, 2010; and September 11, 15, 20, 21, 23, and 26, 2010. For the purposes of this requirement, we considered certified acting sergeants to be primary supervisors if they were assigned to supervise their particular squads; we considered them in compliance if the Department's weekly Personnel Orders listed the certified acting sergeants' acting assignments.

Of the 387 applicable squads we reviewed, we found that 306 (79%) were supervised by their primary supervisors; we found 76 % of the squads in compliance with this subtask during the last reporting period. Of the squads *not* supervised by their primary supervisors, 16 (4% of the total) were supervised by "backfill" sergeants working overtime, 50 (13% of the total) were supervised by certified acting sergeants, and 15 (4% of the total) were not supervised. During this reporting period, no squads were supervised by officers who were not certified to act as sergeants.

OPD is not in compliance with Task 20.2.

**Task 20.3** requires that a supervisor's span of control for the Department's relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Targeted Enforcement Task Force I, Parole and Corrections Team, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio on a day-to-day basis (compliance standard: 90%).

To assess Task 20.3, we reviewed the above-referenced Daily Details and counted the number of officers being supervised and the supervisors for each relevant squad. For the purposes of this requirement, canine officers, field trainees, desk personnel, and police technicians do not count toward the eight. In addition, we considered certified acting sergeants to be supervisors, but any instance of a squad supervised by an "acting" supervisor who was not certified by the Department's program was considered out of compliance. Of the 387 applicable squads we reviewed, 369 (95%) met the 1:8 span of control. During the third reporting period, 94% of the squads we reviewed were in compliance with this requirement. OPD is in compliance with Task 20.3.

**Task 20.4** requires that the Department's Area Commanders make backfill decisions and that these decisions are consistent with policy and operational needs. An Area Commander "backfills" a sergeant slot when the assigned, or primary, sergeant is unable to supervise his/her squad on a short-term basis ("due to sickness, vacation, compensatory time off, schools, and other leaves").

To assess this subtask, we reviewed the above-referenced Daily Details and noted the squads that were supervised by backfill sergeants on short-term bases. We found 16 instances (4% of the total we reviewed) of backfill supervisors in our sample. During the last reporting period, we found that backfill sergeants represented 7% of the total. OPD is in compliance with Task 20.4.

**Task 20.5** requires that the span of control for special operations is determined by an Area Commander and is reasonable. In addition, the Department requires that sergeants or certified acting sergeants supervise all special operations.

To assess this subtask, we reviewed a random sample of 25 special operations plans of the 79 total operations conducted between July 1, through September 30, 2010, to determine whether the span of control for these operations was determined by the relevant commander and was reasonable. Specifically, we looked at the nature of the operations; the number of officers involved in the operations; and, if any acting supervisors were certified acting sergeants. Our review found that all 25 of the special operations in our sample met these requirements.

OPD is in compliance with Task 20.5.

**Task 20.6** requires that the Chief or his designee make decisions regarding any loans or transfers for long-term backfill. As noted above in our discussion of Task 20.4, an Area Commander “backfills” a sergeant’s slot when the primary, or assigned, sergeant is unable to supervise his/her squad on a short-term basis. However, the Chief or his designee (generally, the Assistant Chief or Deputy Chief) is required to determine any loans or transfers for *long-term* backfill.

We reviewed the Department’s weekly Personnel Orders issued between July 1, through September 30, 2010, for the signature of the Chief or his designee, usually the Assistant Chief. We found that all of the Personnel Orders during this time period contained such a signature, indicating the Chief’s approval.

The NSA does not require written documentation of loans and transfers for long-term backfills – merely that such loans and transfers are approved by the Chief or his designee. However, OPD policy requires such documentation. Specifically, Departmental General Order B-4, *Personnel Assignments, Selection Process, and Transfers*, states, “A unit commander/manager who needs a loan of personnel shall submit a justifying loan request to his/her Deputy Chief/Director requesting the loan.” As noted previously, 35% of loans and transfers reviewed by the Office of Inspector General (OIG) in a recent assessment were not included on the weekly Personnel Orders nor otherwise documented. Following these findings, Bureau of Field Operations (BFO) staff promised to improve its documentation of loans and transfers. Based on our recent discussions with the BFO Deputy Chief and other BFO personnel, as well as our review of Personnel Orders for other purposes (see above), it appears that OPD’s practice comports with Departmental policy.

OPD is in compliance with Task 20.6.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

OPD's span of control remains a matter of concern for all Parties. The role of a supervisor in the daily management of a police agency is a core issue that must also be a core Departmental value. Throughout our engagement in this process, we have strived to illuminate the nexus between this requirement and almost all others in the NSA. While we do not question the sensitivity of the Department to the need for close, consistent, and active supervision; we continue to encourage the City and the Police Department to undertake the bold steps that may be required for implementation of this requirement.

## Task 24: Use of Force Reporting Policy

Requirements:

*The policy shall require that:*

1. *Members/employees notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force.*
2. *In every investigated use of force incident, every member/employee using force, and every member/employee on the scene of the incident at the time the force was used, shall report all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor.*
3. *OPD personnel document, on the appropriate form, any use of force and/or the drawing and intentional pointing of a firearm at another person.*
4. *A supervisor 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.*
5. *OPD notify:*
  - a. *The Alameda County District Attorney's Office immediately or as soon as circumstances permit, following a use of lethal force resulting in death or injury likely to result in death.*
  - b. *The City Attorney's Office as soon as circumstances permit following the use of lethal force resulting in death or serious injury. At the discretion of the City Attorney's Office, a Deputy City Attorney shall respond to the scene. The Deputy City Attorney shall serve only in an advisory capacity and shall communicate only with the incident commander or his/her designee.*
  - c. *Departmental investigators regarding officer-involved shootings, in accordance with the provisions of Section V, paragraph H, of this*

*Agreement.*

6. *OPD enter data regarding use of force into OPD's Personnel Assessment System (PAS).*

(Negotiated Settlement Agreement V. A.)

Comments:

We found OPD in partial compliance with Task 24 during all of the previous reporting periods. During the last reporting period, we found that OPD was in compliance with all of the Task 24 subtasks, but we found OPD in partial compliance with the requirement that OPD enter data regarding uses of force into its Personnel Assessment System (PAS). We noted that the system contains only limited information about these incidents, and thus, is limited in its utility to supervisors.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 24. OPD revised DGO K-4 on August 1, 2007. On April 15, 2009, OPD issued Special Order 8977, amending DGO K-4. The revised policy and Special Order also incorporate the requirements of Task 24. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for Task 24 for this reporting period, we requested 89 use of force reports, including: all 21 Level 2 use of force reports and all 32 Level 3 reports; and a random sample of 36 Level 4 use of force reports; covering incidents that occurred between July 1, and September 30, 2010.

**Task 24.1** requires that members/employees notify their supervisor as soon as practicable following any reportable use of force or allegation of excessive use of force (compliance standard: 95%). To assess this subtask, we reviewed the UOF reports, crime reports (when applicable), and Computer Assisted Dispatch (CAD) purges for all of the force incidents in our dataset. We found that all 21 Level 2 incidents, and all 32 Level 3 incidents, that we reviewed were in compliance with this requirement. Level 4 uses of force are self-reporting, and consequently, less documentation is required than for Levels 1, 2, and 3 incidents. DGO K-4, Section VI A.1., states that involved personnel shall notify and brief their supervisors immediately or as soon as practicable. We found that in all 36 Level 4 incidents in our sample, a supervisor was notified regarding the force incident. OPD is in compliance with Task 24.1.

During our most recent site visit, we met with representatives from OIG, IAD, and the Training Division to discuss what measures the Department was implementing to prevent conflicts of OPD personnel who were involved in an incident conducting the investigation or review of the incident. OPD recently assigned a sergeant full time to review submitted use of force reports for quality and completeness. The sergeant returns reports for any necessary corrections, and counsels investigators not to conduct an investigation in the future if they are in any way involved in the use of force that is being investigated.

**Task 24.2** requires that in every reportable use of force incident, every member/employee on the scene of the incident at the time the force was used, reports all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor (compliance standard: 95%); and **Task 24.3** requires that OPD personnel document, on the appropriate form, every use of force and/or the drawing and intentional pointing of a firearm at another person (compliance standard: 95%). Our review of the UOF reports, crime reports, and supplemental reports for the incidents in our sample found that 98% met these requirements. We found that for Level 2 and Level 3 incidents, this information was primarily contained in the UOF reports; for Level 4 incidents, the information frequently appeared in the actual offense reports. OPD is in compliance with Tasks 24.2 and 24.3.

During this reporting period, OPD revised the Department's use of force reports to require an affirmative statement noting the name and unit number of the supervisor who was notified, and in instances where a supervisor responds to a scene, the time that the supervisor arrived. We noted that the vast majority of UOF reports now contain the arrival date and time of the supervisor. The transition to the new report appears to be moving smoothly. We recommend that OPD continue to use OIG's audit process to ensure continued compliance with these requirements.

**Task 24.4** requires that a supervisor respond to the scene upon notification of a Level 1, 2, or 3 use of force or an allegation of excessive use of force, unless community unrest or other conditions makes such response impracticable (compliance standard: 95%). We found that supervisors responded to the scene in all but one of the 53 applicable Level 2 and Level 3 incidents in our sample. The one use of force incident involved a protest and a large unruly crowd control situation. The fact the supervisor did not respond to the scene of this incident is justified and was documented appropriately in the relevant UOF report. OPD is in compliance with Task 24.4.

Tasks 24.5, 24.6, and 24.8 require certain notifications in uses of force relative to officer-involved shootings and the use of lethal force.<sup>12</sup> Specifically, **Task 24.5** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the Alameda County District Attorney's Office immediately or as soon as circumstances permit (compliance standard: 95%). **Task 24.6** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the City Attorney's Office as soon as circumstances permit (compliance standard: 95%). **Task 24.8** requires that following every officer-involved shooting, OPD notify Homicide and Internal Affairs investigators (compliance standard: 95%). We did not review any Level 1 use of force reports during this reporting period; therefore, we are making no change in our previous in compliance determination on Tasks 24.5, 24.6, and 24.8. OPD is in compliance with these subtasks.

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<sup>12</sup> Task 24.7 is no longer applicable.

**Task 24.9** requires OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS), now the Personnel Assessment System (PAS) (compliance standard: 95%). During the last reporting period, we noted that IPAS included only limited information about the use of force reports – namely, the report number, corresponding crime report number, the force level and type of force used, the incident date, and some other basic information. During this reporting period, OPD began to enter narratives from the use of force reports into IPAS. During the next reporting period, we will consider the completeness and accuracy of the data entry. OPD is not in compliance with Task 24.9.

OPD is in partial compliance with Task 24.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will follow up with OPD regarding the Department's research into a possible technology solution to prevent investigator and reviewer conflicts from occurring, by using computer database tracking in the use of force report intake phase. We will also consider the completeness and accuracy of the data entry of use of force reports into IPAS.

## Task 25: Use of Force Investigations and Report Responsibility

Requirements:

*An on-scene supervisor is responsible for completing an investigated use of force report in accordance with the provisions of Departmental General Order K-4, "Reporting and Investigating the Use of Force."*

1. *OPD shall develop and implement a policy for conducting and documenting use of force investigations that include, at a minimum:*
  - a. *Documentation of the incident in either an Offense or Supplemental Report from the member(s)/employee(s) using force; and/or, when necessary, a statement taken from the member(s)/employee(s) using force;*
  - b. *Separating and separately interviewing all officers who were at the scene at the time of the incident;*
  - c. *A Supplemental Report from other members/employees on the scene or a statement taken, if deemed necessary by the investigating supervisor;*
  - d. *Identification and interviews of non-Departmental witnesses;*
  - e. *Consideration of discrepancies in information obtained from members, employees and witnesses, and statements in the reports filed;*
  - f. *Whether arrest reports or use of force reports contain "boilerplate" or "pat language" (e.g., "fighting stance", "minimal force necessary to control the situation");*
  - g. *Documentation of physical evidence and/or photographs and a summary*

- and analysis of all relevant evidence gathered during the investigation;  
and*
- h. Consideration of training/tactical issues involving the availability and practicality of other force options.*
- i. Supervisor's justification as to why any element of the policy was not documented; and*
- 2. All supervisors shall be trained in conducting use of force investigations and such training shall be part of a supervisory training course.*
- 3. Use of force investigations shall include a recommendation whether the use of force was objectively reasonable and within Department policy and training. The recommendation shall be based on the totality of the circumstances and shall consider, but is not limited to, the following factors:*
  - a. Whether the force used was pursuant to a legitimate law-enforcement objective;*
  - b. Whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the members/employees were attempting to achieve;*
  - c. Whether the member/employee used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts;*
  - d. Whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped;*
- 4. use of force reports shall be reviewed by the appropriate chain-of-review as defined by policy.  
The type of force used, the identity of the involved members, and the report preparer shall be the determining criteria for utilizing the appropriate chain-of-review. Reviewers may include, when appropriate, the chain-of-command of the involved personnel, the appropriate Area Commander on duty at the time the incident occurred, other designated Bureau of Field Operations commanders, and as necessary, the chain-of-command of the involved personnel up to the Division Commander or Deputy Chief/Director, and the Internal Affairs Division.  
Reviewers for Level 1-3 use of force investigations shall:*
  - a. Make a recommendation as to whether the use of force was in or out of policy,*
  - b. Order additional investigation and investigative resources when necessary, and*
  - c. Comment on any training issue(s) when appropriate.*
- 5. Any recommendation that the use of force did not comply with Department policy shall result in the incident being referred to the Internal Affairs Division to conduct additional investigation/analysis, if necessary.*



6. *Members/employees involved in a use of force incident resulting in serious injury or death and/or an officer-involved shooting, shall be separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed.*

(Negotiated Settlement Agreement V. B.)

Comments:

During the first and second reporting periods, we found OPD in partial compliance with Task 25. During the third reporting period, we found the Department in compliance with this requirement. At that time, we noted that the Department had improved in use of force investigation timeliness from prior reporting periods.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 25. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 25. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for Task 25 for this reporting period, we requested 89 use of force reports, including: all 21 Level 2 use of force reports and all 32 Level 3 reports; and a random sample of 36 Level 4 use of force reports; covering incidents that occurred between July 1, and September 30, 2010.

**Task 25.1** requires IAD to complete a use of force report for every Level 1 use of force, and an on-scene supervisor to complete a use of force report for every Level 2 and 3 use of force (compliance standard: 95%). To assess this requirement, we reviewed documentation for 53 Level 2 and Level 3 incidents. In all of the Level 2 and 3 incidents in our sample, a supervisor responded to the scene and completed a UOF investigation. In addition, one Level 3 incident in our sample was downgraded from a Level 3 to a Level 4 force incident by a supervisor who was at the scene; in this instance, the change was properly documented and comported with the governing documents. OPD is in compliance with Task 25.1.

**Task 25.2** requires that use of force reports/investigations include NSA-required elements (compliance standard: 90%) and are timely pursuant to DGO K-4 (compliance standard: 95%). Our review of applicable UOF reports reveals compliance with the NSA-required elements.

Although the reports met the technical compliance standard of this subtask, we are troubled by the “boilerplate” or “pat language” used to justify the officer’s use of force in one of the Level 2 incidents we reviewed. The investigator included the following opinion in the UOF report: “I know from training and experience such incidents are stressful, and may cause officers to have diminished situational awareness, tunnel vision and distorted perceptions. In addition perception

of events are not necessarily the reality of what occurred.” Similar “boilerplate” or “pat language” was used by a different UOF investigator in an EFRB report that we reviewed during the second reporting period. This kind of reporting is contrary to the requirements of the NSA, and bypasses the UOF investigator’s duty to report factual descriptions or articulation from the officer employing the force. Absent a finding by a qualified expert that the described “diminished situational awareness, tunnel vision and distorted perceptions” *were present*, this type of commentary is both non-factual and inappropriate.

We assessed timeliness using a 15-day time limit for Level 2 and Level 3 incidents, and a review of the report by the end of the reviewing supervisor’s next scheduled work day for Level 4 incidents. This is a recent change by OPD from requiring a supervisor’s review by the end of the tour of duty for Level 4 incidents; we supported this change. Five of the reports we reviewed were not submitted in a timely fashion, according to their respective requirements. We also reviewed extension requests for these reports, and the reports were completed within the time constraints, or met the new timeline granted, with the exception of one Level 3 report. OPD is in compliance with Task 25.2.

**Task 25.3** requires that all supervisors are trained on how to conduct use of force investigations and such training is part of a supervisory training course (compliance standard: 95%). We recommend that OPD work more diligently to prevent supervisors who are involved in a use of force from conducting the investigation. Training in this area will help to eliminate conflicts and ensure that impartial investigations are conducted. We also recommend that OPD provide additional training to supervisors on the “Discrepancies in Evidence” area of the use of force report. Use of force investigators should understand the importance of *investigating* – not just reporting – an incident. It is critical to both OPD and the public that conflicts in evidence or statements by personnel or witnesses be identified and thoroughly addressed. OPD is in compliance with Task 25.3 based on our verification of supervisors’ training records during the last reporting period. We will review a new sample of supervisors’ training records during the next reporting period to verify that they received the required use of force training.

**Task 25.4** requires that the investigations include required recommendations (compliance standard: 90%). Areas of recommendation include: whether the force used was pursuant to a legitimate law enforcement objective; whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the officers were attempting to achieve; whether the officers used reasonable verbal means to attempt to resolve the situation without force, if time and circumstance permitted such attempts; and whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped. All of the Level 2 and Level 3 reports we reviewed during this reporting period were in compliance with this requirement. OPD is in compliance with Task 25.4.

**Task 25.5** speaks to the review process, which includes chain of command review, making assessments as required by the NSA and policy, and ensuring that any violation of policy results in the incident being referred to Internal Affairs to conduct additional investigations or analysis (compliance standard: 95%). We found that the supervisors included the required details and that

the chain of command conducted critical reviews. In the Level 2 and 3 reports we reviewed, we found that the chain of command generally did a satisfactory job reviewing and commenting on the quality of the investigations. All of the Level 4 reports were reviewed by supervisors, as required. OPD identifies tactical issues and documents corrective action among supervisors and subordinates. Chain of command reviewers frequently comment on the appropriateness of the force, as well as the tactics utilized. OPD is in compliance with Task 25.5.

**Task 25.6** addresses the need to keep officers involved in use of force incidents resulting in serious injury or death, or involved in a shooting, be separated from each other at the scene, and kept apart until they have been interviewed and completed their reports (compliance standard: 95%). Our review of the applicable Level 2 and Level 3 reports revealed 100% compliance with this requirement. OPD is in compliance with Task 25.6.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will confirm with OPD what plans the Department has to make use of force refresher training a more consistent part of the Department's training calendar.

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

Requirements:

*OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:*

- 1. Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
- 2. Require the FRB to review all use of force investigations;*
- 3. Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
- 4. Require the FRB to forward sustained policy violations to the Discipline Officer.*
- 5. Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
- 6. Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
- 7. Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
- 8. Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*

9. *Minimally, that one member of the FRB shall be replaced at least annually.*  
(Negotiated Settlement Agreement V. C.)

Comments:

During all of the previous reporting periods, we found OPD in partial compliance with Task 26. We found in the last reporting period that OPD had particular difficulty meeting Force Review Board (FRB) timeliness requirements.

Discussion:

As previously reported, our review of Department General Order K-4.1, *Force Review Boards* (August 1, 2007), determined that this policy comports with the requirements of Task 26. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 26.1** requires that the Force Review Board (FRB) review all Level 2 use of force investigations following the completion of the internal investigation (compliance standard: 95%). DGO K-4.1 requires that the FRB chair convene an FRB to review the factual circumstances of all Level 2 cases within 90 days of receipt of the use of force packet from IAD. OPD provided documentation for 24 incidents that were heard by the Board during this reporting period – July 1, through September 30, 2010. We determined that all 24 of the reports, or 100%, were in compliance. OPD is in compliance with this subtask.

**Task 26.2** requires that for every Level 2 use of force investigation, the FRB make a recommendation as to whether the use of force was in or out of policy (compliance standard: 95%). Of the cases we reviewed, all 24, or 100%, contained a recommendation noting the use of force was in compliance with policy. All 24 FRB reports noted agreement with the recommendation of the FRB by the Chief or his designee. OPD is in compliance with this subtask.

**Task 26.3** requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to IAD for investigation (compliance standard: 95%). There were two cases in our dataset in which that determination was made. In both cases, the Board directed the FRB Coordinator to refer the use of force incident to IAD for a finding of policy non-compliance. OPD is in compliance with this subtask.

**Task 26.4** requires that the FRB make recommendations to the Chief of Police regarding additional use of force training, changes in policies or tactics, additional standards, investigatory policies, or training for use of force investigations (compliance standard: Yes/No). **Task 26.5** requires that the FRB conduct an annual review of use of force cases examined to identify any patterns of use of force practices (including K-3) that may have policy or training implications (compliance standard: Yes/No). **Task 26.6** requires that the FRB issue an annual report to the Chief of Police reporting on its annual review (compliance standard: Yes/No). These three subtasks are addressed in a memorandum submitted to the Chief dated March 11, 2010. The memorandum identifies patterns, relating to officers conducting foot pursuits of subjects who

they believed to be armed, in yards; officers tackling subjects; and the use of Tasers on handcuffed subjects. The memorandum also makes training recommendations, related to the Board's tasking of supervisors with conducting training on issues identified by the Board, and the submission of the training conducted to the Board. The memorandum states that the FRB now orders that involved officers attend hearings so that, if necessary, command personnel can also provide training during the actual hearings. We anticipate that the FRB will issue another annual memorandum to the Chief in the spring, and we look forward to reviewing it.

OPD is in compliance with Tasks 26.4, 26.5, and 26.6.

After close scrutiny of the provisions of this requirement, we now find the Department to be in compliance with Task 26.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We request that OPD again schedule its FRB hearings during our next quarterly visit, to permit us to continue to observe and evaluate the process.

## Task 30: Firearms Discharge Board of Review

Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
2. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Comments:

During the second and third reporting periods, we found the Department in partial compliance with Task 30 primarily due to the EFRBs not being commenced in a timely fashion.

Discussion:

As previously reported, OPD published Departmental General Order K-4.1, *Force Review Boards* (February 17, 2006), which incorporates the requirements of Task 30. OPD revised

DGO K-4.1 on August 1, 2007. The revised policy also incorporates the requirements of Task 30. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 30.1** requires that OPD convene an EFRB within 45 days of the completion of the use of force (UOF) report by IAD (compliance standard: 95%). We reviewed documentation for one Level 1 force incident in which two officers discharged their firearms and an armed suspect sustained serious but non-life-threatening injuries. OPD appropriately convened an EFRB within 45 days of the completion of the use of force report covering the incident. In addition, the EFRB report was completed within the 60-day requirement. OPD is in compliance with this subtask; however, we note that this finding is based on our review of only one case.

**Task 30.2** requires that the EFRB has access to recordings and/or transcripts of interviews of all personnel on scene, including civilian witnesses, and is empowered to call in any OPD personnel it believes should testify (compliance standard: Yes/No). In the documentation we reviewed, recorded statements and/or transcripts were available from all officers on the scene and other personnel needed to testify. OPD remains in compliance with this subtask.

**Task 30.3** requires that OPD complies with the policies and procedures set forth in DGO K-4.1, *Force Review Boards* (compliance standard: Yes/No). This policy outlines several requirements, including who comprises the Board, the material to be made available for the Board, the conduct of the Board, the information to be memorialized and follow-up actions, if warranted. We reviewed the Board Report that was prepared for the one incident that occurred during the current reporting period. The required attendees were present; and after review and deliberations, the Board determined that the subject officer's actions were in compliance with Department policy. The EFRB finding was endorsed by the Chief. The Board discussed policy changes and training recommendations, and certain officers received training after the Board concluded its duties. The EFRB recommended the issuance of an Information Bulletin following the Board proceedings; the Department disseminated an Information Bulletin promptly, as directed. The Department is in compliance with this subtask.

OPD is in compliance with Task 30, though this finding is based on only one case.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will follow up with OPD regarding the revisions to DGO K-4.1 during our next site visit.

We also request that OPD schedule any outstanding EFRBs during our site visit, so that we may attend and observe the proceedings.

## Task 33: Reporting Misconduct

### Requirements:

*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.*

- 1. Any member/employee of OPD may report a suspected case of police misconduct confidentially to the commander of IAD.*
- 2. The member/employee reporting this conduct shall indicate clearly to the commander of IAD that the report is being made under these confidential provisions.*
- 3. 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.*
- 4. The case shall be investigated without disclosure of the complainant's name, unless and until such disclosure is required by law.*
- 5. 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.*

(Negotiated Settlement Agreement VI. A.)

### Comments:

During the first three reporting periods, our queries of the IAD database revealed no cases in which a member failed to report the misconduct of another member. Therefore, considering the Department's previous non-compliant status, and in the face of there being no new data, we found there was no affirmative justification for altering the previous findings, and held the Department out of compliance with this Task.

### Discussion:

As we have reported previously, OPD has developed several policies that, in concert, incorporate the requirements of this Task. These include: *Manual of Rules* (MOR) Section 314.48, Reporting Violations of Laws, Ordinances, Rules or Orders; MOR Section 314.49, Confidential Reporting of Police Misconduct; Departmental General Order D-16, Check-In and Orientation; MOR Section 370.18, Arrests; and MOR Section 370.27, Use of Physical Force. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 33.1** requires that in all sustained internal investigations, OPD conducts an assessment to determine whether members/employees/supervisors knew or should have known that misconduct occurred (compliance standard: 95%); and **Task 33.2** requires that where OPD determines that members/employees/supervisors knew or should have known that misconduct occurred but did not report it as required, OPD is required to take appropriate action (compliance standard: 95%).

To assess OPD's Phase 2 compliance with these subtasks, we met with IAD personnel and queried the IAD database to identify any cases that were approved during July 1, 2010, through September 30, 2010, that were applicable to Task 33. We found no cases identified by OPD where a member failed to report the misconduct of another member. Further, there were no reports of confidential cases filed during this reporting period.

We also reviewed all 21 of the IAD cases in which findings were sustained during the current reporting period to determine if officers or employees were or should have been aware of misconduct and failed to report it. We found one case in which it appears that misconduct should have been recognized and reported by OPD employees. In that case, several OPD employees had attended a public event during which an OPD sergeant engaged in inappropriate conduct; however, the case was opened by IAD based on the complaints of citizens who had learned of the event via news coverage. OPD is not in compliance with Tasks 33.1 and 33.2.

**Task 33.3** requires that OPD must maintain a functioning procedure that incorporates the NSA requirements related to establishing and maintaining confidential reporting of misconduct. These requirements include: **Task 33.3.1:** confidential reports of suspected misconduct may be made in person, by telephone, or in writing (compliance standard: Yes/No); **Task 33.3.2:** any OPD member/employee may report suspected misconduct confidentially to the IAD Commander, who shall document the report in a confidential file that shall remain accessible only to this IAD Commander (compliance standard: Yes/No); **Task 33.3.3:** confidentially reported cases are investigated without disclosure of the complainant's name, unless and until such disclosure is required by law (compliance standard: 95%); and **Task 33.3.4:** OPD informs all new and current employees of OPD's confidential reporting procedures (compliance standard: 95%).

The OPD has established procedures as required by Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4. Confidential reports of suspected misconduct may be made by various means to the IAD Commander; cases are investigated without identifying the complainant; and documentation of the report and investigation are kept in a confidential file maintained by the IAD Commander. During this reporting period, OPD hired seven new employees; all were briefed on the Department's confidential reporting procedures. The Department is in compliance with Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance



Next Steps:

We will meet with the IAD Commander to discuss any Task 33-applicable cases that have been approved during the next reporting period and assess the actions taken by IAD. We will review categories of cases that indicate that misconduct is being reported. We will also assess the Department's adherence to the confidentiality reporting process.

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

Requirements:

- 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."*

(Negotiated Settlement Agreement VI. B.)

Comments:

During the first two reporting periods, we found the Department out of compliance with Task 34, as officers were not completing the required forms as set forth in the NSA, and we were concerned with the accuracy of data entry. During the third reporting period, we deferred our compliance determination, due to the issuance of a new Departmental policy that set new procedures for the collection and storage of the data concerning all investigative stops of citizens.

Discussion:

As previously reported, General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*; and Report Writing Manual (RWM) Inserts R-2, N-1, and N-2 incorporate the requirements of Task 34. As the Department has trained at least 95% of relevant personnel on the-above listed policies, we find OPD in continued Phase 1 compliance with this Task.

On June 12, 2010, OPD issued Special Order 9042, *New Procedures Regarding Stop Data Collection*, which updates DGO M-19 and RWM R-2; and used its electronic PowerDMS system to disseminate Special Order 9042 to the Department. Although we verified via PowerDMS that

nearly 96% of relevant personnel received and read the new procedures, we are concerned that this sort of computer-based instruction is insufficient to train officers on this critical new Department policy. We urge OPD to provide more substantial *in-person* training on Special Order 9042. In future reporting periods, we will verify that the Department has trained at least 95% of relevant personnel on this policy.

**Task 34.1** requires that Stop Data Forms be filled out for every vehicle stop, field investigation, and detention (compliance standard: 90%). To assess Task 34.1 during this reporting period, we reviewed a random sample of 300 stops to match them with corresponding completed Stop Data Forms. Our sample included: 100 Computer Aided Dispatch (CAD) entries; 100 Field Contact Cards; and 100 traffic citations entered by Alameda County. Using the Department's Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 97% of the stops in our sample. OPD is in compliance with Task 34.1.

**Task 34.2** requires that Stop Data Forms are filled out with the following information: 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop (arrest or no arrest); 9) whether a search was conducted; 10) outcome of any search; and 11) offense category (felony, misdemeanor, or infraction) (compliance standard: 85%). The entering of stop data into the Field Based Reporting (FBR) system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system does not allow the form to be completed.

OPD has made progress in ensuring that Stop Data Forms are completed by officers in an efficient and accurate manner. However, we are concerned that, in specific stops, the reason for the stop is not clearly identified to support the Constitutional standards requirement. More specifically, none of the options available for officers to select under "5) reason for the stop" clearly elicit or help to articulate an identifiable basis and/or authority for the stop.

Special Order 9042 mandates that, for each investigative encounter and consent search not resulting in an arrest, a Field Contact Card be completed that documents the reason for the encounter or search. The necessary supporting information may be documented on a Field Contact Card, but that report is independent from the Stop Data Form. The Department has discussed the possibility of integrating these forms in the future. Such an integration – if the Department conducts accompanying training on the Constitutional standards – may meet the Department's documentation requirements. Special Order 9042 articulates "that investigative detentions, traffic stops, arrests, searches and property seizures by officers shall be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution."

As noted above, our sample of 300 stops included 100 CAD entries. This sub-sample included 83 car stops and 17 walking stops made by OPD. For the 17 walking stops, we reviewed Stop Data Forms and the accompanying Field Contact Cards that are required by policy. In three of the stops, no justification for the stop was recorded in the Field Contact Cards. In two additional

walking stops, the Stop Data Forms and Field Contact Cards inadequately documented the justification for the stops. Therefore, we found that five (29%) of the 17 walking stops either had no justification or an inadequate explanation of the reason for the stop.

The Department is not in compliance with Task 34.2. During the next reporting period, we will review a sample of Field Contact Cards to analyze the legitimacy of stops and/or subsequent activity.

**Task 34.3.1** requires that OPD have a stop data database that can be summarized, searched, queried, and reported by personnel authorized by OPD (compliance standard: Yes/No). As per Special Order 9042, officers “complete an electronic FPR [Field Based Reporting] Stop Data Collection Form (SDF) for certain arrests, every detention not resulting in an arrest (vehicle, walking, and bicycle stops), every consent search of a person conducted and any other investigative encounter. A SDF shall also be completed for consensual encounters (contacts) where the member talks with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, although the person is free to leave.” Data from the electronic Field Based Reporting system is automatically sent to the Department’s Forensic Logic Quicksearch program. Quicksearch allows Department personnel to search for and query officers’ stop data. We experimented with the Quicksearch program and found that the stop data is summarized and easy to review. The Department is in compliance with Task 34.3.1.

**Task 34.3.2** requires that the data captured on the Stop Data Forms be entered completely and accurately into the database (compliance standard: 85%). As noted above, the entering of stop data into the Field Based Reporting system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system will not allow the form to be completed. Task 34.3.2 was created to govern the submission of data from the written forms to the computerized system. Since this type of data entry is no longer necessary, the Department is in compliance with Task 34.3.2.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will meet with OIG and other relevant Department personnel to discuss the Department’s progress in this area since the June 12, 2010 policy amendment. We will further discuss with the Department its various Task 34-related data systems to assess their operability, accuracy, and utility in storage and ease of access to stop data. We will continue to work with OPD on ways to verify expeditiously the legal basis for stops, searches, and other related activities. During the next reporting period, we will also review a sample of Field Contact Cards to analyze the legitimacy of stops and/or subsequent activity.

## Task 35: Use of Force Reports-Witness Identification

### Requirements:

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 use of force incident.*

(Negotiated Settlement Agreement VI. C.)

### Comments:

During all of the previous reporting periods, we found OPD in compliance with Task 35.

### Discussion:

As previously reported, OPD published Special Order 8066, *Use of Force—Witness Identification* (April 12, 2004), which incorporates the requirements of Task 35. Additionally, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which also incorporates the requirements of Task 35. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 35. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for Task 35 for this reporting period, we reviewed 43 use of force reports, including: all 21 Level 2 use of force reports and all 32 Level 3 reports covering incidents that occurred between July 1, and September 30, 2010. (Per DGO K-4, Level 4 use of force reports do not require witness identification.)

We evaluated Task 35.1 in conjunction with Task 35.2. **Task 35.1** requires that UOF reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene (compliance standard: 90%); and **Task 35.2** requires that when there are no known witnesses, UOF reports specifically state this fact (compliance standard: 90%). All 53 UOF reports in our dataset comported with these requirements. OPD is in compliance with these subtasks.

**Task 35.3** requires reports to document instances where witnesses are present but circumstances prevent the author of the report from gathering the data (compliance standard: 90%). Of the 53 applicable UOF reports we reviewed, two fell into this category. In both, the UOF investigators documented in the report the circumstances that prevented the OPD from obtaining the required witness information. OPD is in compliance with Task 35.3.

**Task 35.4** requires that UOF reports include the names of all other OPD members/employees witnessing the incident (compliance standard: 90%). We found no instances when an OPD witness was not documented in any of the 53 reports we reviewed.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will discuss with OIG the possibility of conducting audits of Task 35 to sustain the Department's compliance in this area.

## Task 37: Internal Investigations-Retaliation Against Witnesses

Requirements:

*OPD shall prohibit retaliation against any member or employee of the Department who:*

- 1. Reports misconduct by any other member or employee, or*
- 2. 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.*

*(Negotiated Settlement Agreement VI. E.)*

Comments:

During the third reporting period, we examined the four cases alleging retaliation that were approved between April 1, and June 30, 2010. Our review found that all four cases were investigated appropriately and that the IAD findings were reasonable. As a result, we found the Department in compliance with Task 37.

Discussion:

As previously reported, OPD published Special Order 8092 on November 23, 2003, which incorporates the requirements of Task 37. This policy consists of two Manual of Rules (MOR) sections: 398.73, *Retaliation Against Witnesses*; and 398.74, *Retaliation Against Witnesses, Accountability*. These MOR provisions (revised in lieu of a City policy on retaliation) incorporate the requirements of Task 37. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 37.1** requires that officers be held accountable for retaliating against employees or members who report misconduct or serve as witnesses in proceedings against other members/employees (compliance standard: 95%); and **Task 37.2** requires that supervisors, commanders, and managers be held accountable if they knew or reasonably should have known that persons under their supervision engaged in retaliation (compliance standard: 95%).

To assess these subtasks, during this reporting period, we reviewed the six cases that were completed during the period of July 1, through September 30, 2010, in which allegations of retaliation were raised. We found that all cases were appropriately resolved; however, five of the six cases did not involve an OPD member who was alleged to be the victim of retaliation. In all the five cases reviewed, *citizens* complained that an officer harassed them because they had filed complaints with IAD. Inasmuch as the alleged victims were not members of OPD, and Task 37 specifies retaliation against a *member of the Department*, these cases did not fit the definition of Task 37.

The sixth case involved an officer who claimed that his supervisor, who wanted him to request a transfer out of his unit, subjected him to a number of petty insults. The officer claimed that after he reported his supervisor's harassment to IAD, his supervisor continued to harass him and his fellow officers shunned him. The IAD interviews produced denials by the supervisor and the complainant's fellow officers who said they had observed no such incidents. Since no officer acknowledged being a witness to any of the incidents of which the complainant complained and all denied having shunned him, the investigation was concluded and the allegations in the case were held as "not sustained."

In this particular case, we were concerned that all the investigative remedies might not have been exhausted and the investigation might very well have been concluded prematurely. Further the Department may have missed the opportunity to have conducted a more confidential inquiry at which time tactics to include, but not be limited to, an "integrity test," or "close command observation," may have been undertaken.

OPD is in compliance with Tasks 37.1 and 37.2.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will review cases that were approved between October 1, through December 31, 2010, in which retaliation was alleged, to determine if the cases were adequately investigated and appropriately resolved.

## Task 40: Personnel Assessment System (PAS)-Purpose

Requirements:

*Within 635 days from the effective date of this Agreement, OPD shall enhance its existing complaint-tracking and select indicator systems so that it has a fully implemented, computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of OPD and its personnel. This data shall be used by OPD: to promote professional police practices; to manage the risk of police misconduct; and to evaluate and audit the performance of OPD members of all ranks, employees, and OPD units, subunits and shifts. PAS shall contain information on the following:*

- 1. All uses of force required to be reported by OPD;*
- 2. OC spray canister check-out log (see Section V, paragraph D)*
- 3. All police-canine deployments; where the canine is deployed in a search for or to apprehend a suspect(s). It does not include, deployments for the purpose of locating bombs, narcotics, missing persons, etc., where the canine is not involved in an investigated use of force (i.e., deliberately or inadvertently bites or injures a person) If such force occurs, a Use of Force report is required.*
- 4. All officer-involved shootings and firearms discharges, both on duty and off duty, excluding an intentional discharge while at a range facility; a discharge while engaged in a lawful recreational activity, such as hunting or target practice; a discharge by Criminalistics Division personnel for the purpose of scientific examination; and a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury;*
- 5. All on-duty vehicle pursuits and on-duty vehicle collisions;*
- 6. All complaints, whether made to OPD or CPRB;*
- 7. All civil suits and/or tort claims related to members' and employees' employment at OPD, or which contain allegations which rise to the level of a Manual of Rules violation;*
- 8. Reports of a financial claim as described in Section VI, paragraph G (3).*
- 9. All in-custody deaths and injuries;*
- 10. The results of adjudications of all investigations related to items (1) through (9), above, and a record of investigative findings, including actual discipline imposed or non-disciplinary action administered;*
- 11. Commendations and awards;*
- 12. All criminal arrests of and charges against OPD members and employees;*
- 13. All charges of resisting or obstructing a police officer (Penal Code §§69 and*

- 148), assault on a police officer (Penal Code §243(b)(c), or assault-with-a-deadly-weapon on a police officer [Penal Code §245(c)(d)];*
- 14. Assignment history and rank history for each member/employee;*
  - 15. Training history for each member/employee;*
  - 16. Line-of-duty injuries;*
  - 17. Sick leave usage, particularly one-day sick leaves;*
  - 18. Report Review Notices or Case Evaluation Reports for the reporting member/employee and the issuing investigator;*
  - 19. Criminal cases dropped due to concerns with member veracity, improper searches, false arrests, etc.; and*
  - 20. Other supervisory observations or concerns.*

(Negotiated Settlement Agreement VII. A.)

Comments:

During the first and second reporting periods, we found OPD in compliance with this Task. During the third reporting period, we found OPD in Phase 1 compliance, but not in Phase 2 compliance with Task 40, due to delay in the entry of critical data.

Discussion:

As previously reported, OPD published Departmental General Order D-17, Personnel Assessment Program (February 24, 2007) which incorporates the requirements of Task 40 and Task 41. OPD published a revised version of D-17 on August 20, 2008. The revised version also incorporates the requirements of Task 40 and Task 41. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Tasks 40 and 41 require that OPD develop and implement a computerized relational database to manage risk; promote professional practices; and evaluate and audit the performance of all OPD employees, units, subunits, and shifts. Task 40 governs the data requirements of the system, and Task 41 governs the way the system is to operate as a risk management tool. By all indications, these two Tasks are critical to the overall Agreement, in that they provide a system for assessing the conduct of OPD personnel, identifying those who need early intervention to prevent more substantial problems, and carrying out and managing that intervention. Together, Tasks 40 and 41 define a complex system involving the collection and analysis of numerous pieces of information, and clear action on that analysis, when appropriate.

The system in place to address Tasks 40 and 41 is known as the Personnel Assessment System (PAS). More specifically, the system for inputting and storing the required data has been known as IPAS, and the overall system for managing the process and outputting the required reports and for use in evaluation is known as PAS.

In previous reports, we commented on the bifurcation of this system and the potential problems related to the limited computerization of some parts of the system. In response, OPD noted that it is working with a vendor on the use of another system which will address some of these



problems. At present, that system is not in use, and therefore cannot be considered in this report. However, OPD has responded to our concerns with changes, including increased audits, to address data issues and the entry of narrative information into IPAS that had previously not been included. These steps have improved the data management process in the system.

During our November site visit, we once again reviewed a variety of data relevant to these Tasks, including a wide range of documents covering all aspects of PAS. Tasks 40 and 41 are divided into 33 practice-related subtasks that include 12 additional lower-level provisions. As with our previous reviews, we requested and received from OPD material for each of the Tasks and subtasks.

With regard to Phase 2 compliance, IPAS records for the quarter of July 1, through September 30, 2010 show that data were entered for the fields required by Task 40. The volume of data entered during the quarter is consistent with earlier reports at a total of 54,846 pieces of information. This included: 1,071 uses of force; 356 misconduct complaints; 2,726 notes by supervisors; and 3,445 arrests. The largest categories of information are training history (22,254); sick leave hours (12,848); assignment history (8,137); and rank/class history (2,311). A further breakdown of the types of use of force shows that for the current reporting period, there were three Level 1 incidents; 33 Level 2 incidents; 94 Level 3 incidents; and 1,035 Level 4 incidents. There were no reported case review notices or notices of cases dropped due to concerns about search or arrest procedures. There were no civil suits documented. According to PAS staff, if present, these would be recorded through IAD.

**Task 40** requires that PAS contain information on each of the elements required by the NSA. In earlier reports, we found the data collection and input process to be accurate. In our third quarterly report, however, we raised concerns about the timeliness of data entry and the lack of a system for tracking and report when data were entered. Our underlying concern was that users of the system could not be certain that data were accurate and up-to-date at any given point in time.

Following our report, the Department instituted a weekly report for each of the databases in which all custodians of record are required to report on the status of documents entered in to PAS. Included in the report is a record of the most recent report available in their database, and a requirement to document and explain any backlogs in the recording of data. OPD has also altered the IPAS SuperViewer so that it now opens up with a table documenting the dates for which the most recent data have been entered for each required data field. Together these changes address concerns regarding the timeliness of data and the ability for users to understand what data are currently available.

The Department has also made another change that has begun to address concerns raised in our last report. OPD now enters narrative descriptions of uses of force directly into PAS. Before this, only counts were available. Supervisors conducting reviews including PAS activity reviews of their subordinates would need to request copies of use of force reports from IAD. The inclusion of narratives is a valuable improvement in the usability of the system.

For this review, our interviews, examinations of reports, and queries of the system all indicate that the data collection previously noted as meeting requirements continues. As noted in our last report, OPD has also initiated its own quarterly compliance assessment report for Tasks 40 and 41. This has remained an important quality control measure in the Department, and is consistent with a commitment to systematically address compliance requirements. The most recent report, dated September 13, 2010, noted some minor delays in entering arrest data. The report also includes an analysis of the use of IPAS by supervisory staff, and a response to issues raised by the Monitoring Team in our last quarterly report. That response detailed several important changes in the system, including the improvements in data tracking noted above.

This process of quarterly self-assessment, examination, and remedial planning, is a critical part of any complex data collection and storage program. It is an important quality control step developed by OIG. Our review of the recent document found the report to be detailed and thorough. The generation and use of this report is an important part of the IPAS processes in the Department.

We are tracking one issue related to the data requirements of this Task. For two categories of data, IPAS recorded no cases over this reporting period. We inquired with OPD as to whether the systems for recording those data are still operable. For criminal cases dropped as a result of concerns over search or arrest practices, and for case review notices and evaluations, OPD has indicated that no cases in these categories have been reported. If they had, this data would be made available in PAS through IAD. In response to our inquiry, OPD also informed us that handling report review notices and case evaluation reports will now be transferred to CID, and that CID will be responsible for maintaining the database and ensuring that the data are entered into PAS. We will continue to review this process during our next site visit.

By addressing our concerns over the currency of data, OPD has now facilitated the examination of trends in that data that was begun during the second reporting period, but excluded from our last report because of concerns with the completeness of data. The following table was prepared by OPD and reviewed by the Monitoring Team. The tracking of these data allows OPD to use the system not only to assess individual officers, but also to consider trends at the overall Department levels, as well as in commands within the Department. It is also worth noting that key PAS staff are considering several options in the ways to display this data in an effort to make it as clear and useful as possible. The data presented here are not intended to reflect compliance criteria, but simply to serve as an indicator of how the process of risk management is proceeding. They are presented here without analysis, simply as a means of tracking data generated by IPAS which may be of value to OPD.

<b>OPD KEY INDICATORS - MONITORING TEAM CRITERIA</b>							
				10/1/09 to	1/1/10 to	4/1/10 to	7/1/10 to
<b>Percent of Arrests Associated with</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>12/31/09</b>	<b>3/31/10</b>	<b>6/30/10</b>	<b>9/30/10</b>
A Use of Force (levels 1,2,3 - <b>per reporting officer</b> )	3.76	2.65	2.52	2.63	2.52	1.17	3.74
A Use of Force (levels 1,2,3,4 - <b>per reporting officer</b> )	27.60	31.39	31.75	34.06	37.68	28.17	32.73
A Police Pursuit ( <b>per reporting officer</b> )	1.57	1.66	2.55	3.09	2.63	4.61	3.65
An IA Complaint ( <b>per subject officer sworn only</b> )	7.21	8.56	8.36	8.09	7.42	6.94	9.56
An In-Custody Injury	1.66	0.24	2.20	2.93	2.24	1.63	2.08
Each Hour of Sick Leave ( <b>excludes civilians</b> )	122.59	125.47	147.55	170.01	201.55	169.77	279.48
				10/1/09 to	1/1/10 to	4/1/10 to	7/1/10 to
<b>Number of Arrests per</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>12/31/09</b>	<b>3/31/10</b>	<b>6/30/10</b>	<b>9/30/10</b>
Officer Involved Shooting ( <b>includes shootings involving animals which includes force types 1.21, 24, 27 and 26-21</b> )*	413	533	868	1150	464	2767	462
Vehicle Collisions ( <b>excludes civilians</b> )	148	161	142	139	186	461	231
Civil Suit ( <b>excludes civilians</b> )	51	106	707	511	1546	2767	0
All Arrest	15709	17048	19090	4601	4639	5534	3694
Note							
* = Data obtained from the IPAS SuperViewer on 11/20/10.							
All other data was obtained from the PAS Administration Unit IPAS Administration Model.							

In the last reporting period, we were deeply concerned that the utility of IPAS was compromised by unexplored delays in the recording of critical data. The finding that data were not necessarily available in a timely fashion was a somewhat serendipitous outcome of the examination of trends in the data over time. Our concern led to a finding of non-compliance with Task 40. OPD has initiated a process to resolve our concerns by establishing new procedures that address this problem and by undertaking its own tracking of the data. The improvements occurred during the quarter under review and started to be reflected in the data analyzed for the current reporting period. These changes should also come to be reflected in policy as work on IPAS continues.

At the current time, existing policy reflects the requirements of the NSA. The Department has begun to address our concerns over the accuracy and completeness of data that we noted in our last report. This merits a movement to partial compliance. Further progress will be based on assessment of the completeness of data for the entire duration of the next reporting period. OPD is thus in partial Phase 2 compliance with Task 40.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

## Task 41: Use of Personnel Assessment System (PAS)

Requirements:

*Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole. The policy shall include the following elements:*

- 1. The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
- 2. The Department shall retain all PAS data for at least five (5) years.*
- 3. The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
- 4. PAS, the PAS data, and reports are confidential and not public information.*
- 5. On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
- 6. Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*
- 7. When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the*

*member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).*

8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

*Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.*

*Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.*

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*

15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Comments:

Our first review, which focused primarily on the listed requirements of the Negotiated Settlement Agreement, revealed that OPD rectified earlier procedural concerns from the previous monitor. As a result, we found OPD in compliance with Task 41. In the last two reporting periods, however, we focused on the functionality of PAS. We found that some supervisory reviews of officers exceeding IPAS thresholds were incomplete, in that they did not provide sufficient analysis of information, or that they offered inadequate explanations of findings that no patterns of problematic behavior were detected. In several such cases from the previous two reporting

periods, findings of no pattern of risk behavior were accompanied by little explanation. Of equal concern was the fact that the inadequacies of these reports were not identified by the multiple layers of supervisors who signed off on the officers' reviews. This combination of concerns led to our finding that OPD was not in compliance with Task 41.

#### Discussion:

As previously reported and noted above, OPD published Departmental General Order D-17, *Personnel Assessment Program*, which incorporates the requirements of Task 40 and Task 41. As the Department has trained at least 95% of relevant personnel on this policy, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, the Department produced a draft Information Bulletin, "Documenting PAS Activity Reviews and Analysis." The final bulletin was scheduled for official release next quarter. However, the draft was included in the current reporting period in information sent to supervisors as part of the command reviews of PAS meeting evaluations. It provided additional detail on expectations regarding documentation of analysis of relevant incidents, including uses of force and complaints.

During the current reporting period, we continued our examination of the stages of the PAS process consistent with this Task. We examined the threshold analyses that were performed for the period of July 1, through September 30, 2010. This included a review of the histogram analysis completed by the IPAS Administration Unit, and the identification of officers meeting the single-event threshold.

During this reporting period, nine officers were identified for PAS meetings based on the histogram analyses. An additional seven officers were slated for review based on arrest data that had been delayed. Eighteen officers passed a single-event threshold during the quarter based on involvement in an in-custody death, demotion, or management referral.

In our last quarterly report, we raised concerns over the seemingly small number of officers that were being selected for PAS reviews based on exceeding thresholds. During our site visit, we learned from the PAS unit that a larger number of officers (approximately 60) had actually passed thresholds, but that the number selected for PAS review was reduced because many of these officers were recently reviewed and were already on supervisory monitoring or intervention status. This provided a useful – although not complete – answer to our concerns; we will continue discussion of the selection methodology during our next site visit. We also recommend that OPD provide a list of those meeting thresholds and their current PAS status with regard to intervention and monitoring, as well as the dates of their most recent PAS reviews.

Along with the analyses noted above, we also reviewed notification memoranda and other PAS activity review and report documents, as well as the use of PAS for reasons other than threshold-initiated reviews. In accordance with the Task requirements, we reviewed PAS for placement of officers on special assignment (10 officers), transfer of officers (14 officers), and commendations (16 officers).



An important function of PAS is to provide supervisors with regular, relevant information on officers. To consider that function, we also reviewed 24 reports of regular quarterly reviews by supervisors of all officers under their command. The reports we examined were thorough and detailed. During the next reporting period, we will identify a sample of supervisors for whom we will examine the reports of quarterly reviews of officers.

At the opposite end of the PAS process, the system calls for follow-up reports of officers under supervision or monitoring, as well as reports of officers not discharged from the process by the end of one year. We reviewed all reports completed during the current reporting period. Our examination of 13 follow-up reports, and reports of two officers not discharged from monitoring, revealed the documents to provide sound descriptions of the officer-supervisor interaction and explanations for its current status. In subsequent reviews, we will examine reports of a sample of officers previously selected for monitoring or supervision.

The most critical use of PAS is in the supervisory review of officers who may be experiencing work-related problems. These officers are identified for PAS review through the threshold analyses. It has been the analysis of reports of these meetings that have raised concerns in our two previous reports. For this reporting period, we examined the reports of 26 PAS reviews, all those completed for the quarter. Seven of these reviews involved the re-hearing of cases due to incomplete data available for previous reviews. In the completed cases, after review up the chain of command, 13 officers were recommended for supervisory monitoring and nine were recommended for intervention. Four officers were reviewed, and no patterns of problems were detected. It is significant to note that the proportion of employees recommended for intervention or monitoring is substantially higher for this quarter than was evident in our reviews for previous reporting periods.

The change noted above is associated with other important procedural changes that are consistent with efforts to address concerns we noted in the previous two reporting periods – namely, the incomplete or insufficient analysis of some cases. First and foremost has been the return of cases to reviewers for reconsideration. That occurred in 10 of the cases included for the quarter. According to OPD, since our last report, 21 PAS Activity Review Reports and three Disposition/Follow-up Meeting Reports have been returned through the chain of command as requiring additional information. It was also common during this reporting period that the returned cases were accompanied by a copy of the draft Information Bulletin “Documenting PAS activity Reviews and Analysis” noted earlier. It describes the acceptable standard for analysis and write-up of PAS information.

Perhaps the most critical change that is responsive to the concerns raised in our earlier reports is reflected in the fact that in 11 cases of PAS review, the initial recommendation made by the first-line supervisor was rejected and changed in the supervisor sign-off process. In every case, that change went from a finding of no response needed, to a requirement for supervisory monitoring or intervention. Furthermore, the current pattern that appears to emerge from these reversals is one in which the recommendations in the earlier cases were changed by the Deputy Chief. In cases heard later in the reporting period, other supervisors also recommended changes earlier in

the command review sequence. In several cases, which were reviewed late in the reporting period, the initial reviewing sergeant made the recommendation for monitoring or intervention in the initial meeting decision. These developments seem consistent with efforts to address the concerns that had a negative impact on compliance findings as noted in our earlier reports.

Finally, we also examined usage levels among supervisors in the Department. While there is variation across commands, there were also indications of substantial use. For the relevant quarter, supervisors entered nearly 3,000 supervisory notes. As noted previously, supervisors appear to be making good use of the system.

Overall, the data provide many positive indicators of use of this system despite the problems noted in our previous reports. The basic processes of entry, storage, and analysis of data are taking place and have been improved upon with the addition to the database of narrative information regarding uses of force and with attention to the timeliness of data. Officers with potential problems are being identified. The Department is holding PAS meetings, and officers are placed in intervention and supervisory monitoring. There appears to be an increasing willingness to use these resources to manage risk by providing appropriate assistance to officers.

Some of the positive developments with PAS appear to be related to a change introduced by OPD earlier this year. At that time, the Department began holding bi-weekly IPAS meetings, intended to identify and address system problems, and address the issues linked to officer needs. These meetings are managed by OIG and attended by the Chief of Police, Deputy Chiefs, and other key command staff. The City's Risk Manager and the City Attorney are also invited. Among other things, these meetings have even gone beyond the requirements of this Task to identify and review the Department's "Top 30" personnel based on either number of complaints or uses of force. The lists are also maintained in IPAS. We look forward to reviewing the minutes of the bi-weekly IPAS meetings on future visits.

Finally, with regard to other issues raised in our last report: We are pleased to hear of progress with a vendor that has had a long history with the Department but now appears to be making progress toward additional computerization of PAS. We remain concerned the system is bifurcated with regard to its level of computerization, and therefore vulnerable to disruption. Notifications to officers and supervisors are not automatic. Communication regarding PAS reviews is likewise conducted via email and is not automatically recorded in the system. The value of this system depends on its accumulation of accurate information over time. The failure to automate introduces a substantial vulnerability based on availability of personnel, and the possibility of human error. Incomplete or inaccurate work in this area could seriously damage the dependability of the system.

A second concern noted in our last report dealt with the absence from PAS of narrative descriptions of the circumstances involved in uses of force. In PAS, only counts of these events were available. Supervisors were required to request copies of reports from Internal Affairs when the documents were needed for personnel reviews. As noted above, during the quarter under review, OPD has begun entering narratives of all uses of force directly into PAS. This includes Level 4 uses of force, about which we expressed particular concerns.

With the completion of this site visit, we acknowledge the efforts of OPD with regard to continued developments in the structure and use of PAS. The Department has been responsive to our concerns, and has also independently evaluated and altered parts of the system and its processes. We continue to be optimistic about the progress being made. With regard to the requirements of this Task, we continue to report a finding of Phase 1 compliance based on the relevant policy foundation.

As we have discussed in the past, Phase 2 compliance requires judgment about the operation and efficacy of the system prescribed in the Agreement and reflected in policy. In previous reporting periods, we have been dismayed by cases that failed to reflect either the letter or spirit of the Task requirements. Following each of our reports, the Department has taken steps to address the identified problems. In this reporting period, the Department's effort is reflected in the return of numerous PAS reviews for reconsideration by the sergeants who conducted the reviews and wrote the reports. The necessity of returning this volume of cases for review, however, indicates that the full acceptance of the purpose and goals of the system has still not been achieved across the Department. A successful risk management system must be fully integrated across the Department, and should not require extraordinary work by the Deputy Chiefs or the PAS Committee, who now find it necessary to return a significant number of cases for reconsideration and correction. A functional system may still depend on oversight through the chain of command; it should rarely require corrective intervention in individual cases in order to serve the goals of risk management. We recognize that the Department continues to make efforts to ameliorate the problem of unacceptable review findings. Achieving Phase 2 compliance, however, will require that the risk management system be widely and fully used by personnel throughout the Department – especially the sergeants who are responsible for conducting the PAS reviews that are a critical step in the risk management process.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

Next Steps:

We will continue to examine closely the processes of collection and storage of data and the use of that data in the IPAS review process during our next site visit. We are particularly concerned with understanding the impact of ongoing improvements in the management and operation of the system. We recognize these as having significant implications for compliance. In particular, we will examine reports of PAS activity reviews with an interest in the quality of the reviews and the justification for decisions regarding monitoring or intervention. Of special interest to us will

be the extent to which quality is reflected in the initial recommendations in the review process and changes up the chain of command are unnecessary. Where initial quality is of concern, of course, we will expect to see continued vigilance in the command review process. We will also track other IPAS issues that are relevant to compliance through the examination of reports of the minutes of Department's regular IPAS meetings.

During the next site visit, we will move forward with our analysis of both the data and PAS processes. As indicated above, we will examine documentation of the process for a sample of officers who have gone through it. We will also sample reports that should be reflected in the PAS database. Finally, we will continue to support OPD's work on the risk management dashboard for its overall value in supporting PAS and as a means of assessing the reliability of data. We, along with OPD, recognize its value as the Department pursues the goals of risk management consistent with the Negotiated Settlement Agreement.

## Task 42: Field Training Program

### Requirements:

*Within 323 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Field Training Program. This plan shall address the criteria and method for selecting FTOs, the training provided to FTOs to perform their duty, 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 plan must ensure proper reporting, review and approval of probationary officers' reports.*

### Field Training Program Coordinator

*The Chief of Police shall assign a full-time sergeant for the first year who shall develop and implement the new policies and procedures described in this section. The Chief of Police shall determine, upon successful completion of the development and implementation of these policies, if it is necessary to continue the position at the rank of sergeant, but in any event, the position shall continue as a full-time position.*

### Trainee Rotation

*During their field training, trainee officers shall rotate to a new FTO and a new geographic area of the City at predetermined intervals. Prior to rotation, trainee officers shall be interviewed by the Field Training Program Coordinator or his/her designee and given an opportunity to raise any questions or concerns they may have about the quality of training provided to them.*

### FTO Participation Incentives

*OPD shall increase the incentives for participation in the FTO program so that the Department will have a larger pool of qualified, experienced candidates from which to choose.*

#### FTO Candidate Nomination and Requirements

*FTO candidates shall be nominated by field supervisors and commanders, but shall be approved for assignments to this duty, and for retention in it, by the Chief of Police. All FTO candidates must have completed three (3) years of Departmental service before selection, unless specifically authorized by the Chief of Police. FTO candidates shall be required to demonstrate their commitment to community policing, and their problem-solving and leadership abilities. Ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy shall be primary criteria in the selection of FTOs. Excessive numbers of sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304, or excessive numbers of use of force incidents shall bar a candidate from selection as an FTO for no less than two (2) years.*

#### Decertification

*The presumptive result of sustained disciplinary action, completed within the time limits imposed by Government Code Section 3304, against an FTO or the FTO Program Coordinator for excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation or gender-based discrimination or slurs, or other serious examples of police misconduct, shall be removal from the FTO program. The Deputy Chief of the member's chain of command may recommend to the Chief of Police to grant an exception to this presumption after conducting a hearing on the facts of the matter. The Chief of Police shall document the approval/disapproval in writing.*

#### FTO Assignment

*Assignment to an FTO position shall be contingent upon successful completion of a training course designed for this position and shall be approved by OPD and the State of California Peace Officers' Standards and Training.*

#### FTO Evaluation

*At the end of a complete FTO cycle, trainee officers leaving the FTO program shall anonymously evaluate each of their FTOs. OPD shall develop a form for such evaluations which emphasize effectiveness at training and effectiveness at supervision. The evaluation form shall also assess the degree to which the FTO program reflected policies, procedures, values and other information taught in the recruit academy. The FTO evaluation forms shall be reviewed by the Field Training Program Coordinator and the individual FTO's commander and supervisor. The Field Training Program Coordinator shall provide evaluation information to the FTOs as a group, concerning program effectiveness. Each FTO shall also be provided with evaluation information regarding their individual performance. The individual evaluation forms shall not be made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms.*

#### Daily Evaluation Audit

*The Field Training Program Coordinator, or his/her designee, shall 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.*

#### Trainee Officer Assignment

*When a trainee officer's FTO is absent, the trainee officer shall not be assigned to field duties with an "acting" FTO. They shall be placed with another certified FTO, or shall be assigned to non-field duties, pending the availability of a certified FTO.*

#### Field Commander and FTO Supervisor Training

*OPD shall provide field commanders and supervisors with 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 the individual duties and responsibilities within the FTO program.*

#### Focus Groups

*The Field Training Program Coordinator and Academy staff shall conduct focus groups with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six (6) months after completion of the field training program, to determine the extent to which the Academy instructors and curriculum prepared the new officers for their duties.*

#### Consistency of Training

*The results of these focus group sessions shall be reviewed at a meeting to include the Training Division Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief. If it is determined that there is a substantial discrepancy between what is taught in the Academy and what is taught in the FTO program, there shall be a determination as to which is correct, and either the training Academy or the FTO program shall make the necessary changes so that the desired training information is consistent. In the event that the discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program as a whole, the review group shall determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The results of the meeting of this review group shall be documented and this information shall be provided to the Monitor. (Negotiated Settlement Agreement VIII. A.-L.)*

#### Comments:

In August 2009, since no Academy was planned for the near future, the Parties agreed that there would be no active monitoring of this Task. In addition, since there were no new officers being trained, OPD decertified all then current Field Training Officers (FTOs). During the past year, OPD recruited and began training 21 new officers and five lateral officers via its FTO program; however, during the second reporting period, due to the City's budget cuts, OPD laid off all new officers, both trainees and laterals.

#### Discussion:

Due to the termination of the recruitment and training of new officers, this requirement has been placed in a deferred compliance status.

Compliance Status:

Phase 1: In compliance

Phase 2: Deferred

## Task 43: Academy and In-Service Training

Requirements:

A. Academy Training Plan

*Within 540 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Academy and in-service training to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions, and aware of and able to implement the most contemporary developments in police training. This plan shall include a review of OPD's training curriculum, with additional emphasis on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community. The plan shall also address the criteria and method for selecting OPD training instructors, the 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 arriving at the plan regarding staffing, training content and methodology, OPD shall consult with at least four (4) other, large law-enforcement agencies within the United States which have excellent reputations for professionalism. In particular, OPD shall consult with these agencies about qualifications and other criteria to be used in selecting staff for training positions. OPD shall also review the approach of these other law enforcement agencies in training both new staff and experienced staff on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community.*

B. Professionalism and Ethics

*OPD shall expand professionalism and ethics as a training topic within the recruit academy, in-service training, and field training. Wherever possible, OPD shall include and address issues of professionalism and ethics using curricula that employ realistic scenario-based training exercises.*

C. Supervisory and Command Training

*OPD shall provide all sergeants and commanders with mandatory 40-hour in-service supervisory and leadership training. Officers shall attend training prior to promotion to the rank of sergeant. Lieutenants shall attend training within six (6) months of promotion. Such training shall include supervisory and command accountability, and ethics and professionalism, with emphasis on supervisory and management functions and situations, and shall include both scenario-based training and case studies.*

D. In-Service Training

*OPD shall provide all members with forty (40) hours of in-service training every eighteen (18) months.*

1. *Sergeants shall receive at least 20 hours of training designed for supervisors every 18 months.*

2. *Members at the rank of lieutenant and above shall receive at least 20 hours of training designed for commanders every 18 months.*

E. Training Staff Record Review

*Appointment to the Academy staff or other staff training position shall also require a review of the record of the individual being considered, to ensure that the individual does not have a record of any Class I offense, as defined in Section III, paragraph H (1), within the prior two (2) years, and that the individual is supportive of the philosophy and values of OPD.<sup>13</sup>*

(Negotiated Settlement Agreement IX. A.-E.)

Comments:

Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. During our last reporting period, we found that OPD training records were complete, and that 98% of the members and employees in our sample received the required in-service training within the prescribed 24 months.

Discussion:

As previously reported, OPD published General Order B-20, *Departmental Training Program* (April 6, 2005), which incorporates the requirements of Task 43. As the Department has trained at least 95% of relevant personnel on this policy, we find OPD in continued Phase 1 compliance with this Task.

**Task 43.1.1** requires that OPD's training plan ensure that OPD members, particularly its dispatchers, and civilian evidence technicians, are adequately trained for their positions (compliance standard: Yes/No). To assess this subtask, we interviewed OPD Training Division personnel; and reviewed training schedules, course outlines, and the Department's 2009 training plan. We also reviewed the training records of a stratified random sample of 100 OPD members and employees, including 60 officers, 24 sergeants and 16 dispatchers; to determine if the members and employees received adequate training for their positions.

As we have found in our previous reviews, the training records provided by OPD were complete, legible, and responsive to our review requirements. The Department produced a record for each member and employee in our sample. For each member or employee, we reviewed the training s/he received during previous years, and calculated the number of hours recorded in his/her record. For the sworn officers in our sample, we credited the California Peace Officer Standards and Training (POST)-certified Continued Professional Training (CPT) as counting toward the requirement.

All 100 employees in our random sample received adequate training for their positions. All of the dispatchers in our random sample received training. All of the officers and sergeants in our sample received appropriate in-service training within the past 24 months.

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<sup>13</sup> The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.



OPD is in compliance with Task 43.1.1.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will again review the training records of a stratified random sample of OPD members and employees, including officers, civilian evidence technicians, sergeants, and dispatchers; to determine if the members and employees received adequate training for their positions.

## Task 45: Consistency of Discipline Policy

Requirements:

On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.

1. *The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*
2. *The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*
3. *All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.*
4. *The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*<sup>14</sup>

(Negotiated Settlement Agreement X. B.)

Comments:

Only two provisions of Task 45 (45.1 and 45.4) are being actively monitored under the MOU. During the last reporting period, we found the Department in compliance with Task 45.4; but out of compliance with Task 45.1, which requires that OPD maintain a centralized system for

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<sup>14</sup> The underlined requirements are the only provisions of Task 45 that are being actively monitored under the MOU.

documenting and tracking all forms of discipline and corrective action. We found that the IAD database could be used to identify cases in which findings were sustained, but that there were gaps in the data.

Discussion:

As previously reported, on December 5, 2006, OPD published General Order M-03, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy and Procedure Manual; and the Departmental Discipline Policy (Training Bulletin Index Number V-T), incorporate the requirements of Task 45. OPD published revised versions of the Training Bulletins on May 30, 2007, and is in the process of finalizing a new series of revisions to the policy. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

**Task 45.1** requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level (compliance standard: Yes/No). To assess Phase 2 compliance with this subtask, we queried the IAD database to identify all of the cases that were approved with at least one sustained finding between July 1, and September 30, 2010. This query revealed 21 cases, resulting in 31 sustained findings. On January 5, 2011, we reviewed the IAD database and found that only 77% of the sustained findings had the dates of discipline listed. This represents a decrease from the last reporting period, when we found that 90% had the dates of discipline listed. OPD is not in compliance with Task 45.1.

**Task 45.4** requires that discipline be imposed in a manner that is fair and is consistent with the Discipline Matrix (compliance standard: 95%). The Department updated and revised its Discipline Matrix on September 2, 2010, during the current reporting period. We found that in all of the sustained findings in the 21 cases in our dataset, the discipline imposed fell within the Discipline Matrix then in use. In one case, the discipline range on the Matrix was up to a three-day suspension, and the Chief imposed a five-day suspension. This departure to impose a more severe penalty than the Discipline Matrix recommended was reasonable in light of the fact that the officer had three sustained findings.

During the period of July 1, through September 30, 2010, OPD decided and reported six cases following Skelly hearings.<sup>15</sup> Our review reveals that all six cases (100%) were decided after Skelly hearings on reasonable grounds. The most serious case involved an officer who was to be

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<sup>15</sup> In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, the California Supreme Court ruled that as a part of due process, public employees are entitled to certain procedural safeguards before discipline is imposed against them. These include: (1) notice of the disciplinary action proposed to be taken; (2) a statement of the reasons therefor; (3) a copy of the charges and materials upon which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing the discipline. The ruling applies to dismissals, demotions, and suspensions, but not to so-called “informal discipline,” such as reprimands, warning letters or oral warnings (It also does not apply to probationary employees).

terminated for various violations including providing false information. His termination was upheld after the Skelly hearing. Four other cases that involved suspensions were unchanged; and in one case, a two-day suspension was reduced to a one-day suspension. The Skelly hearings were all reasonable in their outcome. OPD is in compliance with Task 45.4.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

We will review the IAD cases in which sustained findings were made during October 1, through December 31, 2010, to determine if the discipline for these cases fell within the guidelines of the Discipline Matrix or, if it departed, if it was adequately documented. We will also review any IAD cases in which Skelly hearing results were finalized.

## Section Three

### Conclusion: Critical Issues

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In this and previous reports, we have noted concerns with the level of detail in some OPD reports or in supervisory reviews of material. We have tended to characterize our concern in this area as relating to incompleteness or inexactness in the way material is presented. As we move forward with our reviews, we continue to assess these and similar issues as they have affected the compliance process. We must consider that our concern with that lack of attention in some areas may, in fact, be cause for even greater concern than we have acknowledged to this point. The question is whether we should see the inattention to detail as reflective of a somewhat cavalier approach to the changes required to achieve compliance. We have noted before, and we cannot emphasize strongly enough now, that in our judgment, the details within the Negotiated Settlement Agreement, signed so long ago in this case, were not intended to stand by themselves. They are, instead, intended as a roadmap to the organizational change that would reflect constitutional policing at the highest of American standards while serving the interests of public safety on behalf of the citizens of Oakland.

In that spirit, we all appreciate that the many calls for the maintenance of records and the collection of data that are contained in the Negotiated Settlement Agreement are, of course, not intended to be ends in and of themselves. Instead, it is the value that the collected information may hold that matters. It is the analysis of data and the actions taken based on those analyses that reflect the goals of all of our efforts. The relevant behavior matters: not the mere counting of things. Certainly the building of systems for the collection of data is important, but neither those systems, nor the data they collect, can be sufficient by themselves as indicators of compliance.

The critical questions regarding these systems in OPD include such things as: Does the stop data provide evidence of the lawfulness and legitimacy of stops by the police? Does the use of force data portray the legitimate and justifiable use of force? Where the facts identify problems, do the data help understand and rectify those problems? Does the accumulation of data in IPAS result in the identification of and remediation of possible problems among officers? It should be clear that these questions do not lend themselves only to the analysis of the legality of the actions of individual officers, but also involve leadership regarding the acceptability and desirability of outcomes and the best practice in contemporary policing. It is a responsibility shared among all parties to assure that the spirit and substance of the Negotiated Settlement Agreement, not simply the required processes, are reflected in the work under this Monitorship.

There is a corollary issue, related to the one above, that members of the Monitoring Team have become increasingly concerned with as we approach the end of our first year in this process. As the leadership and management of OPD makes progress on implementing the requirements of the NSA and as command staff reflect the full intent of the Agreement, the engagement of the rest of

the organization becomes increasingly important. Ultimately, the success of the NSA depends on the leadership of the Department, and the adoption of key principles and practices by officers and their front-line supervisors. Effective communication of the purpose and goals of this process is at least as important as meeting the technical requirements of the individual Tasks and subtasks that may incorrectly be seen to direct our efforts. No matter how deep the commitments of Departmental leaders, the work is incomplete if it fails to permeate the Department and be reflected in the behavior of officers as they interact with the citizens of Oakland. These issues are most salient with regard to the three key areas noted above: the lawfulness and appropriateness of stops made by police; the legitimacy of the use of force; and the value added through the risk management system.

Perhaps, in this report, our concern with the influence of the NSA across the entire Department is best illustrated with the work on the risk management system. It is clear, incidentally, that substantial work on PAS has occurred and that the work has been significant to the improvement of this system. The PAS Administrative Unit has been committed to the development of the system and innovative in its approach. Earlier in this report, we noted that the PAS Administrative Unit and OPD command staff, in this reporting period alone, returned 21 PAS reviews through the chain of command for reexamination and revision. We see this as an indicator that the risk management system and perhaps its underlying philosophy are not yet accepted or embraced at the front lines of the Department. No part of the NSA can be effective if full support is not clear across the organization, and if the requirements of compliance are not recognized as clear expectations by all Department personnel.

Earlier we noted two critical and inextricably linked problems that have impeded the Department's ability to achieve and sustain NSA compliance: the Department's focus on process, rather than substantive outcome; and the failure of officers and others in the Department to embrace the NSA reforms in their routine work. If, over the course of the past eight years, NSA reforms have been reduced to a skeleton of disconnected processes, it is little wonder that they have had minimal impact on the daily work of officers. The Monitoring Team is clear in our expectations and audit methodology, and the current Departmental leadership represents a departure from the past in its commitment and energy. With a new Mayor present to oversee the process of police reform, and some notable recent progress, we are hopeful that the Department's best days are yet to come.

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## Appendix

### *Acronyms*

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The following is a listing of acronyms frequently used in our quarterly reports.

<b>Acronym</b>	<b>Definition</b>
ACSO	Alameda County Sheriff's Office
BFO	Bureau of Field Operations
BOI	Bureau of Investigation
BOS	Bureau of Services
CAD	Computer Assisted Dispatch
CHP	California Highway Patrol
CID	Criminal Investigation Division
CPRB	Citizens' Police Review Board
CPT	Continued Professional Training
DGO	Departmental General Order
DIL	Daily Incident Log
DLI	Division-level investigation
EFRB	Executive Force Review Board
FRB	Force Review Board
FTO	Field Training Officer
FTP	Field Training Program
FTU	Field Training Unit
IAD	Internal Affairs Division
IB	Information Bulletin
ICR	Informal Complaint Resolution
IPAS	Input for Personnel Assessment System
MOR	Manual of Rules
NSA	Negotiated Settlement Agreement
OCA	Office of the City Attorney
OIG	Office of Inspector General
OPD	Oakland Police Department
PAS	Personnel Assessment System
POST	Peace Officer Standards and Training
RMM	Risk Management Memorandum
RWM	Report Writing Manual
SDF	Stop Data Form
SO	Special Order
TB	Training Bulletin
UOF	Use of force