



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

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October 25, 2013

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## Section One

### *Introduction*

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This is the fifteenth 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. The current Monitoring Team conducted our fourteenth quarterly site visit from August 12, August 16, 2013, to evaluate the Department's progress with the NSA during the three-month period of April 1, through June 30, 2013.

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.

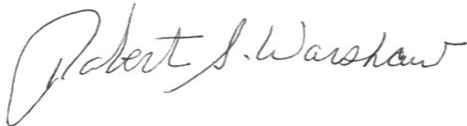
During this reporting period, we continue to find the Department in Phase 1, or policy compliance, with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD is in compliance with 15 of the 22 remaining Tasks, and in partial compliance with seven Tasks. This is the highest number of Tasks in full compliance since the beginning of our tenure. These overall numbers reflect a change from partial compliance to in compliance with two Tasks (Task 26, Force Review Board [FRB]; and Task 45, Consistency of Discipline); from not in compliance to partial compliance with one Task (Task 37, Internal Investigations - Retaliation Against Witnesses); and from deferred compliance assessment to in compliance with one Task (Task 30, Executive Force Review Board [EFRB]).

During the last (fourteenth) reporting period, we found the Department in Phase 2 compliance with 13 Tasks and in partial compliance with seven Tasks. We found one Task to be not in compliance, and we deferred our assessments on one Task.

Even as we note improvements over the last report, however, we must also note that significant concerns remain. In important areas, these are seen in proceedings that sometimes lack either the detail or specificity they require, or the structure and formality appropriate to the significance of the Task. We recognize partial compliance with Task 30 (Executive Force Review Boards) with the expectation that a consistent structure and review process will be maintained in those proceedings. Likewise, we find the Department in partial compliance on Task 33 regarding reporting misconduct, and Task 37 regarding witness intimidation in internal investigations. In these areas, little progress is noted.

There are also areas in which progress toward compliance is evident but not yet sufficient to alter our formal findings. This is true in Tasks 40 and 41, for which considerable work is progressing on the development of a new risk management system; and Task 34 and the Department's improving effort to collect and analyze stop data.

With this report, we find progress toward compliance and also recognize the need for increased effort in key areas. This combination reflects a number of important factors that could continue to support movement forward. These include leadership in the Department, and a greater mindfulness on the parts of many others that the Department must abide by its mandate from the Court – and of course, the community.



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*Monitor*

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## *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 toward 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%, or 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.

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## *Executive Summary*

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This is the fifteenth 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 August 12, through August 16, 2013, we conducted our fifteenth site visit to Oakland. As we do during each site visit, we met with several Department officials, including the Chief and Assistant Chief of Police and 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 Section, and Communications Section; OPD officers, managers, supervisors, and commanders – including sergeants, lieutenants, and captains. We also conferred with the Plaintiffs' attorneys, City Administrator, and 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.

For the current reporting period, we find that there has been an increase in compliance levels from those noted in our last report. For the quarter under review, we once again found OPD in Phase 1 compliance with all 22 of the remaining active Tasks. The Department is in Phase 2 compliance with 15 (68%) of the 22 active Tasks, and in partial compliance with seven (32%) Tasks.

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: Force Review Board (FRB)	√	√			
Task 30: Executive Force Review Board (EFRB)	√		√		
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	15	7	0	0



## 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.)

##### Background:

During the last reporting period, we found OPD in compliance with Task 2. 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>

##### 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 sustained) that were approved between April 1, and June 30, 2013, and calculated the number of days between the complaint date and the approval date for each case. We excluded from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or

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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.”

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.

As noted above, Departmental policy requires that investigations be completed within 180 days. Of the 58 Class I cases we reviewed, 52, or 90%, were in compliance with established timelines – a slight decrease from the 93% we found during the last reporting period. Three of the Class I cases were completed in exactly 180 days, and 35 cases were completed in between 170 and 179 days. Of the 103 Class II cases we reviewed, 96, or 93%, were in compliance with established timelines – a decrease from the 98% we found during the last reporting period. Three of the Class II cases were completed in exactly 180 days, and 52 cases were completed in between 170 and 179 days. Of the 39 sustained findings that we reviewed, 38 (97%) were in compliance with established discipline timelines.<sup>2</sup> This was a slight increase from the 95% that we found during the last reporting period.

OPD is in compliance with Task 2.1. During the last reporting period, we learned that in a few instances, the Department missed the window to discipline officers who were sustained for misconduct. In these cases, OPD completed the investigations, and informed the subjects of the sustained findings and the Department's *intent* to discipline them, in a timely fashion. However, because OPD did not inform the subjects what their discipline would be within the one-year timeframe dictated by California Government Code Section 3304, the Department was unable to mete out the discipline.<sup>3</sup> OPD changed its procedures to assure appropriate and timely notifications in the future. We noted our serious concern that officers who were found by OPD to violate the Department's Manual of Rules could not receive the discipline approved by the Chief due to the Department's violation of the Government Code. We will continue to monitor this issue closely in future reporting periods.

**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.

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<sup>2</sup> We reviewed 20 cases involving sustained findings; several cases involved more than one sustained finding.

<sup>3</sup> California Government Code Section 3304 governs many aspects of the internal affairs functions of police departments in California. In part, 3304 states:

“[N]o punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct... In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2). The public agency shall not be required to impose the discipline within that one-year period.”

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 occasionally attends and observes these weekly meetings. The Department is in compliance with Task 2.2.

**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 the current reporting period, IAD opened 478 cases, a decrease of 17 cases from the last reporting period. The Chief approved 799 cases, a decrease of 515 cases from the last reporting period. According to the Department, there is a 14% decrease in opened cases during the same time period last year.

In addition, during this reporting period, there were no additional personnel added to IAD; however, there was a decrease in sworn staffing of two officers and one sergeant. One officer (formerly assigned to Intake) was reassigned at the direction of the Chief. Another officer (formerly assigned to the Integrity Testing Unit) was directed by the City to not report to duty due to the processing of an approved medical retirement. One sergeant was reassigned to the role of an acting lieutenant in the Patrol Division at the direction of the Chief. The IAD Commander has requested additional personnel to accommodate investigators' caseloads, which have increased due to denied requests to conduct Division-level investigations (DLIs).

OPD is in compliance with Task 2.3.

OPD is in Phase 2 compliance with Task 2.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

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.)

### Background:

OPD has been in compliance with this Task since the sixth reporting period.

### 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 the Department's Phase 2 compliance with these subtasks, we reviewed files – including operations plans, after-action reports, supporting documents and evidence – related to the 13 integrity tests that were conducted from April 1, through June 30, 2013. Our review focused on the scope of the investigations, whether OPD conducted integrity tests on members and employees who were the subject of repeated allegations, and whether the selective integrity tests that OPD conducted complied with the parameters established by IAD. Of the 13 tests conducted during this reporting period, six were planned tests, in which the Integrity Testing Unit reviewed the records of OPD members and employees to verify that their vital information and records were current and therefore compliant with Departmental policy.<sup>4</sup> We found that all six focused on individual members and employees of OPD who were the subjects of high numbers of allegations of misconduct over the prior 18 months; all six planned tests passed.

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<sup>4</sup> Planned integrity tests are designed specifically to test the compliance – with Departmental policies or procedures – of specific members or employees who are identified as the subject of the test.

The remaining seven integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies.<sup>5</sup> Two of these tests were conducted on officers who were the subjects of repeated allegations, and addressed the sources of the repeated allegations. Of the seven selective tests, four passed. One of the remaining tests was inconclusive, and two failed administratively.

In reviewing the selective tests during this reporting period, there was a broad range of subjects. Two of the selective integrity tests monitored the performance of officers – including how they monitored radio traffic, documented stops, responded to calls, drove Department vehicles, and interacted with the public. Both of these tests passed.

One selective test focused on allegations that a police officer trainee (POT) failed to disclose important information to his background investigator. The investigation found that this failure kept from the Department the trainee's past involvement in illegal activities. As a result, the case was referred to IAD, and the trainee was terminated.

Another selective test monitored whether service technicians were properly marking and towing vehicles, and another monitored alleged retaliatory actions taken against the equipment of command staff.

In another test, ITU personnel conducted audits of a civilian employee who was alleged to have lied during his background investigation; this test passed.

In the remaining test, ITU investigated a civilian employee who was believed to be abusing her assignment to the Medical Unit with secondary employment. The investigation revealed additional MOR violations; the case was sent to IAD for further investigation.

OPD is in Phase 2 compliance with Task 3.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will again meet with ITU and the IAD Commander to discuss the Integrity Testing Unit and its testing.

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<sup>5</sup> Pursuant to Internal Affairs Policy & Procedures 07-01, selective integrity tests are targeted enforcement tools aimed at addressing specific issues regarding specific members, employees, or units.

## 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>6</sup>

(Negotiated Settlement Agreement III. D.)

### Background:

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.

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<sup>6</sup> The underlined requirements are the only provisions of Task 4 that are being actively monitored under the MOU.

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, and again in June 2013. 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.

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 93 Daily Incident Log (DIL) entries and a random sample of 94 IAD case files that were approved during the period of April 1, through June 30, 2013. The Office of Inspector General forwards completed DILs to us on a daily basis. We found no evidence of unwarranted delay in the delivery of these complaints or in the intake process once IAD was made aware of them. 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%).<sup>7</sup> 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 April 1, and June 30, 2013, we reviewed 11 cases in which at least one allegation was resolved via administrative closure, 10 cases in which at least one allegation was resolved via informal complaint resolution (ICR), and one case in which at least one allegation was resolved via summary finding.

In all of the ICRs we reviewed, the complainants agreed to the informal complaint resolution process. Where an agreement was secured in a telephone conversation, that information was contained in the case documentation (in many cases, the exact minute/second mark of the agreement was recorded) and in follow-up letters to the complainants. Two of the cases stemmed from complainants' dissatisfaction with OPD's response times to their calls for service. In another case, a citizen alleged that an officer failed to stop at two stop signs. In still another case resolved via ICR, the complainant's stolen vehicle was not properly entered into the Department's Stolen Vehicle System; and as a result, the car was towed as if abandoned.

Four ICRs involved allegations of poor demeanor. Two of these complaints were lodged against civilian personnel and stemmed from telephone calls with the complainants. The other two involved interactions between citizens and officers in the field.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. Two of the cases were administratively closed because it was determined that OPD employees were not involved in the alleged acts. In one, a caller complained about the slow response time to her uncle's medical emergency, but the investigation revealed that the California Highway Patrol and the Oakland Fire Department responded – not OPD. In the other case – an allegation of excessive force at a local hospital – it was determined that the subject of the complaint was an Alameda County Sheriff's Office (ACSO) deputy.

Four cases were administratively closed because they did not involve MOR violations, and the complainants were upset with existing OPD policies. In one, a citizen complained because she was appropriately required to return her grandchild to the baby's biological mother. In another, the complainant was upset that he could not file a larceny report against his wife because their

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<sup>7</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.



property was jointly owned. In another, a citizen did not wish to participate in the complaint process, and then expressed her displeasure when she received a routine letter from IAD.

We noted one case in which an administrative closure was requested, but not approved. The complaint involved poor response time, which would normally be considered a service complaint that is appropriate for administrative closure, but the investigation revealed that the delay resulted from a dispatcher not following proper protocol. The case was ultimately closed via ICR at the request of the complainant.

The remaining allegations that were administratively closed comported with policy, in that the complaints either lacked specificity, claimed innocence of charges best left to appropriate adjudication venues to decide, or otherwise did not constitute MOR violations. Where they were accompanied by allegations that warranted a full investigation, these additional allegations were investigated in accordance with policy. We also identified several administrative closures in our Task 7.3 (Anonymous Complaints) review, and they are further discussed in that section.

The case resolved via summary finding was approved for such designation as required by policy. The complainant alleged improper demeanor and procedure in the handling of a domestic incident. The entire incident was captured on PDRD, negating the need to interview the involved officers. We noted one case in which a summary finding was requested, but not approved. The allegations stemmed from an incident in which the complainant was placed under psychiatric hold. An IAD lieutenant denied the request to reach a finding based on the completed reports, and instead required that the officers be interviewed. Summary findings are further discussed in Task 5.

OPD is in compliance with Task 4.10.

OPD is in Phase 2 compliance with Task 4.

Compliance Status:

Phase 1: In compliance

Phase 2: In 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.)

Background:

During the last reporting period, for the first time since our tenure began, we found OPD in compliance with Task 5. In each of the previous reporting periods, we found the Department in partial compliance with Task 5.<sup>8</sup>

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.

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<sup>8</sup> Pursuant to an agreement among the Parties, Tasks 5.7- 5.11, and 5.13-5.14 are not subject to active monitoring.

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 93 entries that appeared on the Daily Incident Logs (DILs) that were completed between April 1, and June 30, 2013. We identified these by randomly selecting 21 dates during this reporting period and reviewing the entries for each of those dates.

**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 OPD in compliance with this subtask. During the current reporting period, of the 93 DIL entries, six cases were received by IAD, which, in turn, notified the Communications Division. Supervisors took 37 complaints in the field; and in the remaining 50 cases, complainants called 911 to express their dissatisfaction. In these latter cases, IAD or field supervisors were notified, except when the complaints were against Communications personnel (these were handled by a Communications supervisor) or were clearly service complaints (e.g., slow response time with no specific officer complained of). We noted 37 such service complaints. During this reporting period, OPD has a 100% compliance rate with Task 5.1.

**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%). OPD has added a checkbox to the DIL to record such delays. In addition to reviewing this section of the logs, we also checked the times of complaint receipt and supervisor contact with the complainant (or attempted contact where the complainant was unavailable – see Task 5.3). We did not identify any cases in which there appeared to be greater than a three-hour delay in contacting the complainant. OPD remains 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 93 records in our dataset, we identified 13 instances in which the complainant “refused” interaction with a supervisor. In four cases, the complainants were irate and terminated the telephone calls from the supervisors. In one case, a third party answered the telephone and indicated that the complainant was unavailable. In another case, a supervisor responded to a medical facility, but the complainant was sedated and could not participate in an interview. In yet another case, a supervisor responded to the scene and located the probable complainant among a group, but no one in the group would confirm or deny that they lodged a complaint. In the remaining cases, the complainants simply did not answer the callback numbers provided, and supervisors left messages where voicemail was available. 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 order to achieve compliance with this subtask, the DIL should contain the identification of personnel; witnesses or identifying information, if known (the log should state “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, OPD had a 100% compliance rate with this subtask. During this reporting period, all of the logs we reviewed contained the required information (“unknown” was checked in 17 records). OPD has a 100% compliance rate during this reporting period, 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%). OPD had a compliance rate of 100% with this subtask during the last reporting period. The DILs are administered by the Communications Section 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 properly completed in all of the records we reviewed. OPD is in 100% compliance with Task 5.5 during this reporting period.

**Task 5.6** requires that an on-duty supervisor 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 of the inmate. 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, Glenn E. Dyer Detention Facility, or Juvenile Hall, and were approved between April 1, and June 30, 2013. We identified five such complaints using the IAD database. We reviewed these complaints 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.”

Three of the five complaints were lodged contemporaneous to the arrest of the complainant, but none of these contained at least one allegation of Class I misconduct. We note, however, that in all of these incidents, on-duty supervisors responded to North County Jail and interviewed the complainants. In one, the complainant was upset with his search by Alameda County Sheriff’s Office (ACSO) deputies, and the case was administrative closed. The other two cases were investigated and appropriate findings were rendered.

Two complaints were not lodged contemporaneous with the arrests of the complaints. In one, a woman called IAD two days after her arrest to contest the justification for her psychiatric hold. In the other, a lieutenant reviewing PDRD footage noted a possible complaint on the part of an arrestee and initiated an investigation. In this case, an allegation of excessive force was exonerated, but a demeanor allegation was sustained based on the PDRD evidence.

OPD is in compliance with Task 5.6.

**Task 5.12** requires that the Watch Commander ensure 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, the Communications Section must record on the DIL complaints that are received and/or handled by on-duty supervisors; the DIL is forwarded daily to IAD. As mentioned in past reports, we deem the DIL system as functionally equivalent to the requirements of Task 5.12, and the Department remains in compliance with this subtask.

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 April 1, and June 30, 2013. 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.

As in our previous reviews, we treated **Tasks 5.15 and 5.16** as a single subtask 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 88% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 22, or 88%, in compliance with *all* of these required elements.

In seven cases, investigators conducted follow-up interviews with officers or civilians to seek clarification. In four of the cases, complainants and/or witnesses were re-interviewed. In the remaining three cases, some of the involved officers were interviewed more than once.

In three cases, credibility assessments were problematic. In one, a case initiated by OPD based on an investigative news story airing on television, the involved officers' credibility assessments were all boilerplate, despite their inability to recall key facts as highlighted in the summaries of their interviews. In another case, initiated by the Integrity Testing Unit and involving dereliction of duty, the subject officer was deemed credible despite some inconsistencies in his statements and the behavior that resulted in sustained findings. In the remaining case, a claim of poor demeanor allegedly occurring between two employees, the complainant was inappropriately deemed not credible. The complainant has a history of lodging complaints, and has been deemed not credible in other investigations, but in this case, there were no inconsistencies that called her credibility into question.

In seven other cases, complainants or witnesses were appropriately deemed not credible. In several cases, PDRD recordings or recorded telephone conversations directly contradicted their statements. In two cases, unbiased witnesses refuted the complainants' allegations.

We did not identify any cases in which relevant evidence was not identified or considered during this review.

**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 the previous reporting period, we found OPD in 100% compliance with this subtask. During this reporting period, the form was again properly completed in all 25 cases we reviewed. 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 last reporting period, OPD complied with this subtask in 96% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 23, or 92%, of the 25 cases in our sample. In the case initiated by the ITU mentioned above, we believe a sustained finding was warranted for failing to respond to calls for service requiring backup. While other allegations were sustained, IAD reached a finding of not sustained for this allegation. In another case involving an allegation of failure to accept or refer a complaint, we believe the appropriate finding should have been not sustained, rather than the unfounded determination rendered by IAD.

We did not note any cases in which the recommended findings of the investigator were overturned during the review process. However, as in the past, we identified one case in which an officer's failure to activate his PDRD was handled informally as a "discovery violation." OPD policy allows this practice if the infraction is minor in nature and is discovered by a supervisor rather than raised by a complainant, provided the subject officer does not have a history of similar conduct. The officer's history was not included in the investigation, and so we do not know if this officer has a pattern of similar behavior. PDRDs have been deployed for some time now, and their recordings have proven extremely valuable in administrative investigations. The longer they remain in use, the less likely it becomes that a lack of training and familiarity with their operation is responsible for their non-use in situations required by policy.

OPD is 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%). Our sample of 25 cases contained 78 allegations that received dispositions as follows: 21 exonerated; 6 not sustained; 37 unfounded; 13 sustained; and one administratively closed. PDRD video continues to be used in more and more cases to arrive at definitive conclusions. Overall, we disagreed with two of the findings, as described in Task 5.18. With a 97% compliance rate, OPD is in Phase 2 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. As part of our review of this Task, we also review cases that are tolling. 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.

During our most recent site visit, we met with the Deputy Chief of the Bureau of Risk Management and the commanding officer of IAD, who advised that as of that date, no cases were classified as filed, and three cases were designated as tolling. One involved civil litigation against the City and/or the Department; and in the remaining two cases the subject or witness officers were unavailable. All cases appeared to be filed or tolling according to policy. These cases are reviewed with the Chief during his weekly IAD meetings and are 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. Six of the 25 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. (These do not include the cases referenced in Task 4, for which summary findings were also appropriate.) In four of these cases, the availability of PDRD video was the primary reason interviews were unnecessary. In the other cases, audio recordings such as taped telephone conversations negated the need for interviews.

OPD is in compliance with Task 5.21.

OPD is in Phase 2 compliance with Task 5.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## 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.)

### Background:

During the previous reporting period, 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 and 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 to IAD, are disciplined (compliance standard: 95%).

To assess Phase 2 compliance with this Task, we reviewed a random sample of 93 Daily Incident Log entries from April 1, through June 30, 2013; and a random sample of 25 IAD investigations (conducted by both IAD and via Division-level investigation) that were closed during the same period. 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 three such cases. However, none of these cases resulted in sustained findings for one or more of the applicable MOR violations.

In one case, a complainant alleged that a clerk at the Police Administration Building (PAB) was rude to her and refused to refer her to a supervisor. The complainant was unable to identify the

employee in a photo array, and so OPD interviewed everyone matching the general description provided by the complainant. All denied contact with the complainant, and the allegations were not sustained. In another case, a complainant accused a supervisor in CID of rudeness and failing to take a complaint. While we disagree with the unfounded finding for this latter allegation (the finding should have been not sustained), a sustained finding was not warranted. In the third case – an OPD-initiated case based on an integrity test – an officer was investigated for interfering with an investigation for having contact with employees who were potential witnesses in the investigation. That allegation was not sustained.

Since there were no sustained findings for one or more of the applicable MOR violations, OPD remains in Phase 2 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>9</sup>
- (Negotiated Settlement Agreement III. G.)

Background:

Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the past several 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 Order M-03 was revised in February 2008, and most recently in June, 2013. 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 April 1, and June 30, 2013. 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.

Based on the above-listed criteria, we identified 25 cases as potential anonymous complaints during this reporting period. After review, we determined that 21 were true anonymous complaints. Of these 21, the complainant was identified during the course of the investigations in three cases. In one, the complainant spoke at a City Council meeting and IAD gleaned his name from the speaker sign-in sheet. In another, a complaint regarding poor response time, the Public Safety Supervisor recognized the complainant from dealing with his initial call for service. In the third case, it was determined that the complaint was a duplicate of another case in which the complainant was known.

Thirteen of the remaining 18 complaints were received via telephone calls to the Communications Division. Four were reported to officers or supervisors in the field, and one was generated after reviewing Twitter messages pertaining to an Occupy Oakland protest.

Where possible, complainants were asked to provide corroborating evidence. In nearly all cases, the complainants terminated the contact before OPD could secure additional details of the complaint. However, the complaints were investigated to the extent reasonably possible as

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<sup>9</sup> The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

required by this subtask. IAD or field supervisors attempted to re-contact complainants if a callback number was available, even if the complainants expressly stated they wished to remain anonymous. In one case, a supervisor was dispatched to the area from which the complaint originated and located a group possibly containing the complainant. None of those contacted would either confirm or deny that they called.

Seventeen of the 18 cases were closed via administrative closure. Each met the criteria for such closure, and most lacked the details to identify the specific alleged misconduct and/or OPD personnel involved in the incidents. Three involved complaints of poor response time to calls for service. Four involved complaints of displeasure with general service delivery, such as failure to address quality of life issues or placing an inordinate emphasis on writing traffic tickets. Two complaints pertained to Animal Services Section activities, and three were lodged against Communications personnel. The one case that was not administratively closed stemmed from an Occupy Oakland protest and involved a named officer and a specific location.

Four cases did not, in our opinion, rise to the level of a complaint. The fact that OPD classified them as complaints is not a compliance concern; we merely make the observation that the complaint process could have been avoided. For example, in one, a citizen expressed displeasure to an officer because she was not allowed into City Council chambers since the room was filled to capacity. Before a sergeant arrived on scene, the woman snuck into chambers via another entrance. The sergeant approached the woman, who was simply happy to be inside the room and indicated that she had no complaint, but one was generated anyway. In another case, a citizen approached a supervisor on the scene of a search warrant execution and indicated that she was going to go downtown and file a complaint. However, she never articulated any specific allegations despite the supervisor's repeated inquiries that were captured on a PDRD recording. In still another case, a citizen was upset that Animal Services was closed. While Animal Services' hours of operation may not be to the liking of every citizen, this need not have been a complaint. As is our practice, we will discuss all of these cases with IAD during our next site visit.

The Department remains in Phase 2 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.)

### Background:

In the last reporting period, we found the Department to be in Phase 2 compliance with Task 16.

### 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 during this reporting period, we examined 93 Daily Incident Log entries from April 1, through June 30, 2013; a random sample of 94 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between April 1, through June 30, 2013; and the four sustained Class I investigations that were approved by the Chief between April 1, through June 30, 2013.

Task 16 requires, in part, that a 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.

During this reporting period, we reviewed seven approved IAD investigations, and determined that four had sustained Class I findings. All four showed acceptable analyses of supervisors' abilities to identify the sustained misconduct.

One particularly concerning investigation revealed a lack of proper supervisory oversight and resulted in a sustained finding against multiple supervisors. This investigation was initiated when it was determined that several IAD investigations expired prior to sending out the discipline notification letters pursuant to Government Code Section §3304. This investigation focused on the IAD chain of command and concluded that there was a lack of proper oversight for processing of the disciplinary findings.

The remaining three sustained IAD investigations involved sustained Class I offenses that we also found to be in compliance. One of the cases alleged that members of the Department, including supervisors, loitered at a bar apparently involved in prostitution and allegedly received compensation from the bar. Another case involved alleged retaliation among OPD employees. The last case involved an OPD dispatcher who was arrested during a domestic incident; the investigation concluded that the supervisor failed to properly supervise – and guide the actions of – the officer who investigated the incident. Our review found that the IAD investigator sufficiently addressed the role of the subject's supervisors in the sustained conduct. As we discussed with OPD during our last site visit, the investigation report's member/employee accountability section should include an analysis of whether it was reasonable for a supervisor – through reviewing reports, investigating force, or supervising an officer – to identify misconduct. A transparent organization identifies – through close and effective supervision – any possible misconduct of its members.

During this reporting period, the cases that we reviewed properly evaluated supervisors' accountability. OPD is in compliance with this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will, as in the past, meet with the IAD Commander to discuss any Task 16-applicable cases for the next reporting period and steps the Department is taking to improve IAD investigators' evaluations of supervisors' accountability.

## 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>10</sup>*

(Negotiated Settlement Agreement IV. A.)

### Background:

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.

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<sup>10</sup> The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.



We reported in our tenth quarterly report that OPD provided us with a copy of Training Bulletin I-O.4, *Legal Aspects Of Searching Persons On Parole And Probation*, effective November 23, 2011. The purpose of the Training Bulletin is to guide OPD members on documenting the means of confirming the status of the parolee or, if a probationer, their status and whether an appropriate search clause exists. The Training Bulletin also provides guidance in situations where inconsistent information is discovered in AWS, CORPUS, or CRIMS regarding a probationer's status.<sup>11</sup>

**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, 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 63 adult and four juvenile arrest reports documenting felony arrests; drug arrests; and arrests for Penal Code 69, 148, and 243(b)(c); as well as documentation for 28 arrests resulting in an investigated use of force; that occurred between April 1, and June 30, 2013. We reviewed these to determine if supervisors reviewed the reports that 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 63 adult arrest reports, we excluded 45 from our dataset; and of the four juvenile arrest reports, we excluded one from our dataset; for one or more of the following reasons: the arrest involved a warrant or probation or parole warrant detention; 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 remaining 18 adult arrests and three juvenile arrests, there was one report that did not document the presence of witnesses or no known witnesses; and all arrests were approved by a supervisor. This represents a 95% compliance rate relating to adult/juvenile arrests for this subtask. In addition, of the 28 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.<sup>12</sup> This represents a 100% compliance rate among arrests resulting in an investigated use of force for this subtask.

Our review revealed an overall 97% compliance rate for Task 18.2.2. OPD is in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

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<sup>11</sup> Automated Warrant System, Criminal Oriented Records Production Unified System, or Consolidated Records Information Management System.

<sup>12</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.

Next Steps:

We will meet with OIG to discuss the Department's protocols for conducting audits of this Task to ensure sustainability.

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

(Negotiated Settlement Agreement IV. C.)

Background:

During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with Task 20.

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.

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 third reporting period, we were granted access to Telestaff, the Department's electronic scheduling system. Telestaff continues to function as a "master detail" that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. OPD remains 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, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%).

As we have reported previously, in February 2012, OPD implemented a new, tiered system of supervision in the Bureau of Field Operations (BFO). Under this system, each squad is assigned one primary sergeant and one relief sergeant. In the absence of both the squad's primary and relief sergeants, the squad is supervised by one of four "Tier 2 relief supervisors." As we have noted in past quarterly reports, these changes significantly alter the way in which we assess both Tasks 20.2 and 20.3: we no longer examine the supervision of patrol squads on only a random sample of days, but the supervision of *each squad* on *each day* of the reporting period.

We consider supervision by both primary sergeants and relief sergeants as in compliance for this subtask. We do not, however, consider OPD's "certified acting sergeants" to be legitimate supervisors for this purpose – even if, according to the Department, these individuals were "assigned" as primary or relief sergeants for a particular squad. Since the beginning of our tenure, we have expressed our concerns regarding the Department's practice of certified acting sergeants. Sergeants are the building blocks of a police department's supervisory structure – they respond to scenes, handle complaints from citizens, approve arrests made by officers, and review and write reports that are eventually sent up the chain of command. Officers must know who they report to; the consistency of supervision makes a police organization effective and increases officers' accountability to their department, and the department's accountability to the community it serves. A so-called acting sergeant who is assigned to supervise a squad of officers does not provide the mentoring, training, guidance, and intervention that his/her squad needs.

When we met recently with Department officials regarding Task 20, they informed us that OPD is discontinuing its use of certified acting sergeants for patrol-related duties. The Department intends to continue to use certified acting sergeants in non-patrol assignments. We have asked the Department to revise its policy accordingly; we will follow up on this issue during the next reporting period and discuss it further in our next quarterly report.

To assess Task 20.2 during this reporting period, we reviewed spreadsheets prepared by the Department for the months of April, May, and June 2013 that, by date, note which type of sergeant supervised each squad – a primary sergeant, relief sergeant, Tier 2 relief sergeant, or

other. (Using Telestaff, we also spot-checked this data to verify its accuracy.) We calculated per squad the compliance percentages for this subtask during this reporting period. Every Task 20.2-applicable squad must be supervised by a legitimate primary or relief sergeant at least 85% of its working shifts in order for the Department to be in compliance with this subtask.

During the last reporting period, 36 of the 51 applicable squads were in compliance with this subtask. During this reporting period, of 43 applicable squads, 22 were in compliance – that is, 22 squads were supervised by either a primary or relief sergeant at least 85% of the reporting period. As 21 squads were not in compliance with this subtask, 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, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio on a day-to-day basis (compliance standard: 90%).<sup>13</sup> During this reporting period, we were unable to assess this subtask due to technical difficulties. We are therefore deferring our assessment of Task 20.3; we will assess this subtask during the next reporting period.

**Task 20.4** requires that the Department's Area Commanders make backfill decisions and that these decisions are consistent with policy and operational needs (compliance standard: 90%). Due to the Department's new supervisory structure, this subtask may no longer be applicable. As noted in our last quarterly report, we have initiated conversations with the Parties regarding this issue. For now, we are deferring our compliance determination 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 (compliance standard: 90%). In addition, the Department requires that sergeants supervise all special operations. To assess this subtask, we reviewed a random sample of 25 special operations plans of the 110 total operations conducted between April 1, through June 30, 2013, to determine whether the span of control for these operations was determined by the relevant commander and was reasonable. Our review found that all 25 of the special operations in our sample met these requirements. OPD is in compliance with Task 20.5.

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<sup>13</sup> The Department recently disbanded its Neighborhood Enforcement Team.

**Task 20.6** requires that the Chief or his designee make decisions regarding any loans or transfers for long-term backfill (compliance standard: 85%). 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 April 1, through June 30, 2013, for the signature of the Chief or his designee. 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 the Chief or his designee approves such loans and transfers. 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.” 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.

OPD is in partial Phase 2 compliance with Task 20.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

## 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.)

Background:

During the last reporting period, we found OPD in compliance with Task 24.

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 also incorporates the requirements of Task 24. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. 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.

During our May 2013 site visit, we again met with OPD command personnel and OIG to discuss ongoing problem areas in use of force reports and their supervisory reviews, and the Force Review Boards (FRB)/Executive Force Review Boards. We also reminded the Department of our continued concern with the lack of adequate justification in citizen encounters that lead to an investigated use of force. We continue to encourage OPD command personnel to pay close attention to these issues.

During this reporting period, the sample we requested for review (86 total) included: one Level 1; seven Level 2; 20 Level 3; and 58 Level 4 reports completed between April 1, and June 30, 2013.<sup>14</sup>

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<sup>14</sup> We requested 88 use of force reports, but two of the Level 4 reports were not included in the electronic files provided for assessment.

**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. The documentation for all of the incidents we reviewed was in compliance with this requirement.

Level 4 uses of force are self-reporting, and consequently, less documentation is required than for Level 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. In all 86 incidents in our sample, a supervisor was promptly notified regarding the force incident. OPD has a 100% compliance rate with this subtask. OPD is in compliance with Task 24.1.

**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%). All of the use of force reports, crime reports, and supplemental reports for the incidents in our sample met these requirements. We found that for Level 1 deadly force incidents, this information was contained in the crime and Internal Affairs Division reports; for Level 2 and Level 3 incidents, this information was contained in the use of force reports; and for Level 4 incidents, the information frequently appeared in the actual use of force, crime, or offense reports. Accordingly, we find OPD in compliance with Tasks 24.2 and 24.3.

**Officers Pointing Firearms:** During this reporting period, we reviewed a total of 86 use of force incidents; 55 of those incidents involved officers pointing firearms. The 55 events included: three Level 2, six Level 3, and 46 Level 4 uses of force; and involved 143 instances of OPD officers drawing and pointing their firearms.<sup>15</sup>

Overall, we determined officers' pointing of their firearms to be appropriate in 139, or 97%, of the 143 instances we assessed.<sup>16</sup> We were unable to find the pointing of a firearm necessary or justified in eight instances of the 143 instances we assessed, due to the absence of any indication that the officer(s) or others faced imminent threat of harm. In addition, several events lacked justification for the initial detention that led to the pointing of the firearms.

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<sup>15</sup> The majority of the incidents we reviewed fell into one of the following categories: officers making high-risk vehicle stops; officers searching and entering buildings or premises with or without search warrants; and officers were attempting to detain subjects, either by foot pursuit or by searching areas such as alleys and yards.

<sup>16</sup> As in our more in-depth assessment of such incidents during the sixth reporting period, we gave the benefit of the doubt to involved officers whenever there was a question as to whether an officer's action was appropriate. We also assumed that the pointing of firearms was justified in cases where officers were responding to a burglary or criminal trespass involving an actual structure search, or when making a high-risk vehicle stop based on the legitimate belief that the vehicle was stolen.

The total racial breakdown for the 55 use of force events reviewed is as follows: Black, 78%; Hispanic, 9%; White, 5%; and Asian, 6%, and Other, 2%. We also tabulated the racial breakdown of the subjects involved in the events where, in our opinion, the pointing of a firearm was not necessary or appropriate and found the following: the four unjustified pointing of firearms all involved Black subjects.

In all cases, the supervisory review found the officers' use of force appropriate, objectively reasonable for a legitimate law enforcement purpose, and in compliance with OPD policy. While officers' actions in particular cases are troubling, the continued unquestioned supervisory and command approval – of both the documentation of officers' actions and the actions themselves – is illustrative of a need to address supervisory deficiencies.

OPD is in compliance with Tasks 24.2 and 24.3.

**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%). Supervisors responded to the scene in all 28 applicable Level 1, 2, and 3 incidents in our sample. This represents a 100% compliance rate. 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>17</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%). During this reporting period, there was one Level 1 use of force report in our dataset. OPD made the required notifications as required by the NSA. OPD is in compliance with these subtasks.

**Task 24.9** requires OPD to enter data regarding use of force into OPD's Personnel Assessment System (PAS) (compliance standard: 95%). PAS now allows personnel to access use of force reports directly. OPD is in compliance with Task 24.9.

OPD is in Phase 2 compliance with Task 24.

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<sup>17</sup> Task 24.7 is no longer applicable.



Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

We will continue to meet with OPD to provide feedback on specific use of force reports and to assess how the Department is addressing the serious issue of pointing firearms – the act of which may not only be unnecessary and inappropriate, but which also elevates the risk for unfortunate and unjustified firearm discharges.

## 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.)

Background:

During the last reporting period, we found OPD in compliance with Task 25.

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. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. 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.

During this reporting period, we requested and reviewed 86 use of force reports, including: one Level 1; seven Level 2; 20 Level 3; and a random sample of 58 Level 4 use of force reports; that were completed between April 1, and June 30, 2013.

**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 during this reporting period, we reviewed documentation for 28 Level 1, 2, and 3 incidents. In all of the incidents, a supervisor responded to the scene and completed a use of force investigation. In addition, eight Level 3 incidents in our sample were downgraded to a Level 4 use of force incident by a supervisor who was at the scene; the changes were 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%). All of the reports we reviewed for this subtask included the NSA-required elements. To assess investigation timeliness, we used a 75-day time limit for Level 1 incidents (including IAD Commander approval) plus one documented extension approved by the Chief of Police in advance of the due date, and a 15-day time limit for Level 2 and Level 3 incidents. For Level 4 incidents, as of November 23, 2010, OPD requires a review of the report by the end of the reviewing supervisor's next scheduled workday. This is a change – which we supported – from requiring a supervisor's review by the end of the tour of duty; it became effective by Special Order 9057.

During this reporting period, 86, or 100%, of the 86 reports we examined were submitted within the time limits established by this subtask. As noted above, Level 2 and Level 3 force investigations are considered timely if they are completed (including Division Commander approval) within 15 calendar days of the incident, with one documented approved extension by the Division Commander allowed. We only consider extensions if they were approved by the appropriate personnel *prior* to the pre-extension due date.

During this reporting period, we noted slight improvement in the documentation of physical evidence, the inclusion of photographs, analyses of relevant evidence gathered, and consideration of tactical and training issues.

Although we noted some instances in which supervisors addressed officers who did not use their Portable Digital Recording Devices (PDRDs), we are again troubled by the number of officers opting not to activate their recording devices when required. During this reporting period, OPD commanders took supervisory action by admonishing officers for not using their PDRDs as required in the Level 2, 3, and 4 cases we assessed. We are further troubled that many supervisory personnel routinely address these violations of policy merely as training matters requiring counseling and an entry into officers' Supervisory Notes Files.

OPD's overall compliance rate for timeliness is 100%, and for NSA-required elements is 100%. 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%). OPD is incorporating use of force training into its sergeants' continued professional training that is offered every 18 months to two years. As we have noted previously, we encourage OPD to continue to provide periodic refresher training to underscore to supervisors the importance of conducting complete, thorough, and impartial use of force investigations that are submitted in a timely fashion. During this reporting period, according to the Department, OPD provided use of force training for 41 new or acting sergeants, 75 sergeants, and 30 commanders. OPD is in compliance with Task 25.3.

**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.

During this reporting period, we reviewed two Level 4 use of force incidents that involved the unjustified pointing of firearms. These two reports did not comport with NSA-required elements; each of the incidents involved an unnecessary escalation to potentially using lethal force in situations where other less lethal force options were available to the officers or should have been considered.

The remainder of the cases, however, contained information showing that the force was used for a legitimate law enforcement purpose, was reasonable to the resistance encountered, and was de-escalated when resistance decrease or stopped; and that verbal means were used to attempt to resolve the situation without force.

OPD's compliance rate for this subtask is 95%. 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%). During this reporting period, we found that the supervisors included the required details, and the chain of command conducted critical reviews. In all but two of the Level 1, 2, 3, and 4 reports we reviewed, the chain of command reviewed and commented on the quality of the investigations, any corrective action that was identified, and the appropriate documentation required for Supervisory Notes Files.

OPD's compliance rate for this subtask is 98%. 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%). We found the applicable Level 1 and Level 2 reports in compliance with this requirement. OPD is in compliance with Task 25.6.

OPD is in Phase 2 compliance with Task 25.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will continue to discuss with OPD the use of force command review process, investigator impartiality, and lack of use of the Portable Digital Recording Devices (PDRDs) by officers in violation of OPD policy.

## Task 26: Force Review Board (FRB)

### 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.)

### Background:

During the last reporting period, we found OPD in partial compliance with Task 26.

### 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 all seven incidents that were heard by the board during this reporting period of April 1, through June 30, 2013. We determined that all seven of the FRB reports we reviewed were timely. 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%). All seven FRB reports we reviewed contained recommendations noting that the use of force was in or not in compliance with policy, and all seven noted agreement with the recommendation of the FRB by the Chief or his designee. OPD is in compliance with Task 26.2.

**Task 26.3** requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to the Internal Affairs Division for disposition (compliance standard: 95%). Of the seven incidents that were heard by the board during this reporting period, one UOF event was found out of compliance, thereby requiring a referral to IAD. 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). During the current reporting period, the FRBs identified training issues; and discussed improper tactics, use of force reporting, activation of the PDRD, and the need for corrective supervisory counseling. OPD is in compliance with this subtask.

**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); and **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). The FRB issued its most recent annual review on April 23, 2013. The review identified several patterns and practices, including: officers are continuing to chase suspects who they believed to be armed with handguns into yards; and are striking resisting suspects to the head with either their fists and/or palm-hammer strikes. In addition, the review found that many officers are documenting in their reports that they *had* to use force because of the risk that a suspect may be armed; and that they are not appropriately considering tactics during high-risk situations. The review also emphasized the need for canine officers, supervisors, and commanders to consider modifying the canine announcement to fit the incident in question – for example, circumstances in which a warning announcement could jeopardize officer safety.

According to the annual review, the FRBs have been tasking supervisors to train their officers after the board has identified training issues. The supervisors are required to document this training in the officers' Supervisory Notes Files and enter the information into PAS. Subject-matter experts conduct more involved training, and a training roster is submitted to the Training Section. The involved officer(s) are directed to be present during the presentation to receive training from the board's voting members and subject-matter experts, and/or praise for any outstanding work. Additionally, as a result of the findings of the FRB, the Department revises or develops new information or training bulletins, which are distributed to OPD personnel via the Department's electronic PowerDMS system. OPD is in compliance with these subtasks.

OPD is in Phase 2 compliance with Task 26.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule FRBs during our quarterly site visits, so that we may attend and observe the proceedings. The Department scheduled four FRBs during our most recent site visit; we will discuss these in our next report. We again request that the Department schedule its FRB hearings during our quarterly site visits; it is critical to our assessments that we be able to observe and evaluate the FRB process.

## Task 30: Executive Force Review Board (EFRB)

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.)

Background:

During the last reporting period, we deferred our Phase 2 assessment of Task 30 due to an EFRB that fell outside of the reporting period.

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 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.



To assess the Department's compliance with this Task, in addition to reviewing EFRB documentation, we observed one EFRB during our May site visit. The EFRB determined that the officers' use of lethal force, resulting in an injury, was in compliance with OPD policy. This critical firearm discharge incident is summarized (as the first incident) below.

**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%). The EFRB reviewed two incidents during this reporting period:

- The first incident involved a traffic enforcement stop based on credible information that the suspect possessed a firearm. The vehicle stop ultimately resulted in the non-fatal shooting by an OPD officer of a suspect who did, in fact, possess a firearm. As he stepped out of the vehicle, the suspect was visibly armed. The officer saw the suspect turn toward her with a firearm in his hand, and fired, striking the suspect in the armpit.
- The second incident involved a critical firearm discharge by an officer pursuing an armed shooting suspect. The suspect had shot another OPD officer in the leg. The suspect subsequently pointed his firearm directly at the assisting officer, who fired to protect his life. The rounds missed their intended target, and no one else was injured.

We verified that the EFRBs held during this reporting period fell within 45 days of the completion of the use of force reports covering the incidents.

OPD is in compliance with this subtask.

**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 is 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 reports that were prepared for the two incidents that were heard by the board during the current reporting period. The required attendees were present in both cases. After review and deliberations, the board determined that the subject officers' actions in all four cases were in compliance with Departmental policy. The Chief endorsed the EFRB findings within 60 days of the board's decision. The board identified the adequacy of equipment, tactics, an analysis of each application of force, investigative concerns, and training issues that required the appropriate corrective action.

However, despite the Department's technical adherence to these provisions, we have observed during our recent site visits and technical assistance visits that the board's informality and lack of structure is not consistent with the conduct a review process of this nature. We intend to continue discussions with the Department regarding the necessity to improve the conduct of these boards. Accordingly, OPD is not in compliance with this subtask.

OPD is in partial Phase 2 compliance with Task 30.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

## 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.)

Background:

Since monitoring under the NSA began, OPD has received confidential reports of misconduct in only three cases. During the last two reporting periods, we found OPD to be in partial compliance with Task 33.

Discussion:

As we have noted 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. The Department has trained at least 95% of relevant personnel on these policies, and remains in Phase 1 compliance with this Task.

**Task 33.1** requires that in all sustained internal investigations, OPD conduct an assessment to determine whether members/employees/supervisors knew or should have known that misconduct occurred (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%).

In the twelfth reporting period, we found OPD to be not in compliance – and during the last two reporting periods, we found OPD to be in partial compliance – with these subtasks, as a result of IAD cases involving incidents that occurred during Occupy Oakland demonstrations. In those cases, many officers claimed not to have observed actions that occurred close to them; OPD officers consistently avoided commenting about the misbehavior – and sometimes, felonious actions – of their fellow officers; and while officers apparently remembered seeing participants in the demonstrations and riots clearly, they often could not say which officers were next to them even when they viewed videos of the incidents.

To assess OPD's Phase 2 compliance with these subtasks during this reporting period, we met with the Deputy Chief of the Bureau of Risk Management; and queried the IAD database to identify any cases with sustained findings and discipline approved between April 1, and June 30, 2013, that were applicable to Task 33. We identified and reviewed 38 cases with 49 sustained findings that were approved during this reporting period. We found no instances where OPD disregarded indications that its employees or officers failed to report misconduct.

We commented in our last report that “the activation of PDRDs can be key in resolving allegations of use of force that arise from citizen contacts – particularly during demonstrations. Accordingly, it is a serious violation for an officer dealing with such circumstances to fail to activate his/her PDRD.” This is especially critical in a police department where there is a culture that officers do not report serious misconduct by fellow officers. During this reporting period, we reviewed the supervisory notes entered into PAS during January and June 2013. We found that in January, 14 of 97 notes by supervisors dealt with officers' failure to activate their PDRDs

or other PDRD-related issues such as failure to upload or charge the battery. In June, 10 of 61 such notes related to PDRD failures. It is apparent that failure to activate and record on PDRDs remains a serious concern.

**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%).

As we have reported previously, 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. Since monitoring began under the NSA, OPD has received only three such confidential reports. No new confidential reports were received during the current reporting period.

There were 14 new hires during the current reporting period. All were briefed/trained on confidential reporting procedures as required by Task 37. The new employees signed documents to memorialize the training that is a part of the hiring module/practice before new employees report for duty/assignment.

Based on our review, OPD remains in partial Phase 2 compliance with Task 33.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

## 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.)

### Background:

OPD has been in partial compliance with this Task for the past 11 reporting periods. We noted that officers were entering the required stop data into the Field Based Reporting (FBR) computer system; however, we found that the reported and documented "reason for the stop" did not consistently and/or sufficiently meet Constitutional requirements and/or provide authority for the stops. We additionally found that when officers engaged a group of individuals, data was often recorded for one member of the group, but not for the remaining members, which significantly distorted the stop data. And finally, we found that officers were often incorrectly classifying the "reason for the stop." Due in part to these issues, which in effect, invalidated the accuracy of the collected stop data, the Department has not conducted an analysis of the data as prescribed and required by Department policy.

### 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. The Department trained 95% of relevant personnel on these policies as required; we found and continue to find OPD in Phase 1 compliance with this Task.

In June of 2010, OPD issued Special Order 9042, *New Procedures Regarding Stop Data Collection*, which revised DGO M-19 and RWM R-2 to provide further guidance regarding requirements related to consensual encounters and detention. This Special Order was

appropriately disseminated via OPD's electronic PowerDMS system. During the sixth reporting period, OPD began training on these revisions, which included the definition and articulation of a consensual encounter and detention, along with training on how to complete Field Investigation Reports to adequately document investigative encounters. During the eighth reporting period, we verified that OPD trained at least 95% of relevant personnel on these subjects and Special Order 9042.

In November 2012, OPD issued Special Order 9101, *Revised Stop Data Collection Procedures*, which further revised DGO M-19, *Racial Profiling* in order to further clarify and define racial profiling, consensual encounters, detention, and the scope of the policy. During the current reporting period, OPD developed and began training on these revisions. During our most recent site visit, we verified that the Department trained at least 95% of relevant personnel on these revisions as required.

During the previous reporting period (March 2013), OPD issued revised Special Order 9101, *Revised Stop Data Collection Procedures*, which further revises DGO M-19, *Racial Profiling*. Shortly thereafter, OPD issued a revision to the Report Writing Manual to address issues relating to completion of the Stop Data Form, specifically clarifying that a Stop Data Forms must be completed when self-initiated encounters are conducted and that Stop Data Forms are not required for radio dispatch calls for service, citizen flag-downs, search warrants, and community caretaking incidents. Also during the current reporting period, OPD continued training on the definitions of racial profiling to include the definition of a consensual encounter, what a detention is, and the scope of the policy. OPD has trained at least 95% of relevant personnel on these subjects and the above-described policy revisions.

**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 375 stops to match them with corresponding completed Stop Data Forms. This sample included 125 Computer Aided Dispatch (CAD) entries, 125 Field Contact Cards, and 125 traffic citations. 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 be 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 entry 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.

During this reporting period, OPD did not conduct any internal audit of its stop data forms. We again encourage OPD to continue to conduct these audits in future reporting periods. After over two years of urging the Department to focus its attention on making and implementing applicable policy revisions – and developing necessary training – to ensure that the justification exists *prior* to the temporary detention of persons; that data be entered on each person who is detained; and that the reason for the encounter be properly identified; the Department adopted these recommendations during the tenth reporting period. The purpose of implementing such a strategy will help the Department to identify any disparities in its treatment of citizens. OPD represents that the implementation of the revised Special Order will sufficiently address and clarify issues related to the collection of data. We saw an improvement with OPD documenting the reason for the stop – and as such, OPD is in compliance with Task 34.2.

**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 FBR [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. During this reporting period, we continued to experiment with the Quicksearch program and found that the stop data is summarized and easy to review. As noted above, in May 2011, OPD merged the Stop Data Form with the Field Contact Card, intending to provide one document for officers to enter stop data and providing them with a narrative portion for which they can articulate the factual support for the stop.

During our most recent site visit, we again met with OPD personnel responsible for data collection and analysis. We found that the Department’s revisions to policies and additional training have resulted in the collection of what appears to be accurate data since April 2013. OPD has further organized this data into tables and graphs depicting – both globally and by district – the breakdown of stops, reasons for the stops and resulting action taken, including searches, the results of searches and arrests and other actions. Although the data is sufficient to conduct preliminary analyses to determine whether there appears to be any disparate treatment within one or more population groups, we have cautioned OPD to defer drawing definitive conclusions until the database is of sufficient size to preclude numerical distortions. We have suggested that 12 months of data should be sufficient.

We have recommended that, in the meanwhile, OPD take steps to elevate interest in and attention to stop data by officers, supervisors, and command staff through the issuance of training bulletins; and by way of briefings and general discussions about the present data. In addition, we have recommended that command staff commence the development of possible intervention protocols should the data appear indicative of disparate treatment of any population group or groups.

While OPD has not produced an official report that documents a summary of the data collected or analysis of data, the data described above is indicative of OPD progress with this requirement reflected provided in the November 15, 2004 policy. That policy requires that the Racial Profiling Manager shall produce a written report to the Chief of Police at least twice per year that includes an analysis of the data collected, and appropriate policy recommendations. Based on our knowledge, while OPD has not prepared such a report in the last three years, we are hopeful that, even though such a report may be preliminary, this will occur during prior the close of the next reporting period. Although we are encouraged with the progress made during the last two reporting periods, OPD is not in full 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.

OPD is in partial Phase 2 compliance with Task 34.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit and upcoming technical assistance visits, we will again meet with relevant Department personnel to discuss the Department's progress in this area. We will further discuss the Department's 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 the legal basis for stops, searches, and other related activities expeditiously. We will also discuss how conducting internal audits of its stop data forms can help the Department to identify any disparities in its treatment of citizens.



## 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.)

### Background:

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 28 use of force reports, including: one Level 1; seven Level 2; and 20 Level 3 use of reports covering incidents that occurred between April 1, and June 30, 2013. (Per DGO K-4, Level 4 use of force reports do not require witness identification.)

We assessed Task 35.1 in conjunction with Task 35.2. **Task 35.1** requires that use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene (compliance standard: 90%); and **Task 35.2** requires that when there are no known witnesses, the use of force reports specifically state this fact (compliance standard: 90%). All 28 reports that we reviewed 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%). During this reporting period no incidents fell into this category. OPD is in compliance with Task 35.3.

**Task 35.4** requires that use of force 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 the 28 reports we reviewed. OPD is in compliance with Task 35.4.

OPD is in Phase 2 compliance with Task 35.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

Next Steps:

During our next site visit, we will continue to request and examine any related audits completed by OIG to ensure that OPD is moving toward the long-term sustainability of this Task.

## 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.)

Background:

During the last reporting period, we found OPD not in compliance with Task 37. In that report, we cited a case we regarded as involving serious retaliation after an officer provided information about another officer's beating a handcuffed prisoner. We noted that not enough was done to identify the perpetrator or protect the reporting officer when the retaliation came to light.

Discussion:

As previously reported, we have found OPD in continued Phase 1 compliance with this Task. OPD published Special Order 8092 on November 23, 2003, which incorporated 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. OPD has trained at least 95% of relevant personnel on these policies.

**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%).

OPD identified seven cases that it considered as containing allegations of retaliation during the period of April 1, through June 30, 2013. Four of the cases were not yet complete. We reviewed the remaining three cases; and found that in one case, OPD conducted a thorough investigation and concluded that the charge of retaliation was unfounded.

OPD closed the other two cases administratively. In one of these, the complainant advised that she wished to discuss the matter with her supervisor and did not wish to complain that retaliation had occurred. In the other, the case was consolidated with another case and the investigation was ongoing.

OPD is in partial Phase 2 compliance with Task 37.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

## 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.)

### Background:

In the last six reporting periods, we found OPD to be in partial Phase 2 compliance – following reporting periods of non-compliance that were related to data problems. The ongoing temporary solution to these problems has been to enter arrest data by hand and move forward with plans for the arrest data to be incorporated into the County’s data system. As of the current reporting period, arrest data remain problematic, but progress toward a solution continues. The test of an auto-feed to County system continues, but all cars do not have the necessary equipment. The automatically entered arrest data should be complete and accurate when all the new equipment is available and installed. There is no estimate of when that may occur. In the interim, to assure accuracy in PAS, arrest data continue to be entered manually. These data issues are now relevant to a larger project involving implementation of a new Records Management System (RMS) for the department. At the time of our last site visit, the Department was just beginning to consider issues relevant to the compatibility and complementary character of the new RMS system and the new Risk Management System for which an RFP is being created.

While progress had been slow on the new Risk Management System, which is being referred to as IPAS2, the project is now moving forward at a rapid pace. The contractor has set forth a schedule of meetings and other preparatory work in anticipation of the release of an RFP in November of this year. The meetings include department personnel, including those from Risk Management, IT representatives from Oakland City Information Technology and City officials. One significant limitation in this process has been the absence of a technically oriented Subject Matter Expert (SME) who is attached to the Police Department. During our last site visit, there was significant movement directed toward the Department hiring its own SME.

A related question was also discussed during the site visit. The method of providing maintenance for the IPAS2 system remained undecided. Two options were under examination: providing services in house, through the city or contracting with the vendor for maintenance. The question requires careful consideration but should be resolved with the creation of the RFP.

Another significant issue regarding the IPAS2 project also remained outstanding. That dealt with the fundamental system design question of whether the new system would use an integrated database to store information or would continue to draw of data from the various independent data currently in use. This is a critical question that had just become part of the discussion recently. Movement forward on the IPAS2 project should improve prospects for achieving compliance on Task 40 and 41.

### Discussion:

General Order D-17, Personnel Assessment Program, which incorporates the requirements of Tasks 40 and 41, was revised in July, 2012; however, a significant revision undertaken more recently but has not been signed off on as of the time of our last site visit. In the existing draft, the relevant material is divided into two separate policies, one addressing general risk management issues and the other dealing with the technical aspects of managing the database. The policy also alters the PAS review procedures to incorporate an initial internal review by the

PAS unit when officers meet thresholds, and then engaging supervisors in developing and implementing risk reduction plans when appropriate. This procedure is intended to reduce the number of false positive findings that have created substantial work for supervisors and, in some cases, required resubmission when the supervisory reviews were judged inadequate. The unfinished status of this policy revision was noted in our last report.

The Department continues to operate under the existing version of General Order D-17 thus continuing to meet requirements for Phase 1 compliance. Progress on moving the new policy forward is important, however, to avoid long lags in which the operation of the system does not accurately reflect the procedures described in the extant policy. We will continue to inquire as to the status of this policy.

Tasks 40 and 41 are divided into 33 practice-related subtasks that include 12 additional lower-level provisions. As with all previous reviews, we requested and received material for each of the Tasks and subtasks. Our data request allowed for the replication and extension of the data analysis reflected in our earlier reports.

PAS records for the quarter of April 1, through June 30, 2013 indicate that data were entered for all of the fields required by Task 40 – including the arrest data. The required data for the quarter included reports of 522 uses of force. This is a reduction of over 5% from the previous reporting period, and continues a downward trend begun over a year ago and mostly closely linked to declines in Level 4 uses of force. The data for the current reporting period indicate that there were 3697 arrests, an increase of nearly 30% from the previous quarter. This reverses three quarters of significant decline and returns the level to that seen the same quarter one year ago. We will continue to focus on these large changes in arrests to ensure that they do not represent problems in data management.

A further breakdown of the types of use of force shows that, for this reporting period, there were 26 Level 3, 10 Level 2, and three Level 1 uses of force. These are only minor differences from the previous reporting period. The table also shows a decrease of 5% in Level 4 uses of force, to a total of 483. This is the fifth consecutive quarter with significant reductions in that number, but the smallest decline in that time period. As expected, the overall drop in uses of force reflects the major drop in level 4 cases. The data count for the current reporting period and the seven prior reporting periods is presented in the table below.

OPD Performance Activity Comparison by Quarter								
Performance Activity	July 1 to September 30 2011	October 1 to December 31 2011	Jan 1 to March 31, 2012	April 1 to June 30, 2012	July 1 to September 30, 2012	October 1 to December 31, 2012	January 1 to March 31, 2013	April 1 to Jun 30, 2013
Level 1 Uses of Force	6	3	4	3	1	0	1	3
Level 2 Uses of Force	19	48	28	14	5	7	3	10
Level 3 Uses of Force	38	108	50	31	29	15	26	26
Level 4 Uses of Force	1066	797	1034	962	741	612	509	483
Unintentional Firearms Discharge	0	0	0	0	0	0	0	0
Sick Leave Hours	10406.31	12084.56	12734.56	11229.36	9634.3	9857.65	11286.53	11041.94
Line of Duty Injuries	52	43	47	50	46	30	32	54
Narcotics Related Possessory Offenses Arrests	482	445	641	452	508	280	407	560
Vehicle Collisions	11	7	13	15	15	7	18	12
All Vehicle Pursuits	117	89	77	99	83	57	18	64
All Arrest	3470	3402	3656	3649	3516	2943	2853	3697
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	61	61	58	72	58	31	34	36
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	16	24	38	24	8	7	9	4
Awards	70	65	66	99	121		76	55
Assignment History	9498	9498	9414	9588	9720	9791	10361	10337
Case Evaluation Reports	321	193	209	191	453	203	635	444
Report Review Notices--Positive	0	1	6	7	12	12	5	8
Report Review Notices--Negative	0	0	1	0	0	0	0	0
Canine Deployments	112	71	96	93	63	43	64	59
Financial Claims	0	3	0	0	0	0	0	0
Internal Affairs Complaints	386	316	404	375	465	277	186	295
In-Custody Injuries	56	97	75	39	24	13	21	13
Civil Suits (Tort Claims)	7	22	11	7	11	3	4	4
Criminal Cases Dropped	0	0	20	87	300	91	416	282
O.C. Checkouts	41	34	55	29	15	11	58	16
Officer Involved Shootings	4	2	4	3	2	1	2	3
Rank / Class History	2336	2336	2286	2272	2338	2326	2391	2334
Training History	21017	21084	26100	11255	5182	2096	20108	19589
Supervisory Notes	3338	3281	3568	3139	3072	3117	3139	3304
Arrest Made Against OPD	0	0	0	2	1	0	0	0

The PAS Administration Unit continues to audit the database to assure its accuracy on a nearly daily basis. As noted in our previous report, those audits now extend to reviews of the original reports and not simply the summaries of data forwarded to the risk management database. The PAS Unit is conducting “custodian of record” audits of the original forms being fed to PAS. This continues to reveal problems associated with separate databases but nothing unexpected. The problem is relevant to the new IPAS2 design. A unified system, rather than the current feeder system, would help eliminate the problems and the need for these audits.

The status of the PAS data issues remains largely unchanged from our last report except that there is clear progress toward IPAS2 as well as significant issues that remain to be addressed.

The Department continues to enter arrest data manually, while working to automate the process and assure accuracy. Policy changes have been drafted, and were awaiting the needed endorsement at the time of our last site visit. These issues support continued recognition of partial compliance with this requirement.

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.)

### Background:

The processes of identifying officers for review based on passing risk thresholds remained current but unchanged for the quarter. Under the risk management policy, which is currently in draft, the PAS Unit will conduct initial reviews of officer surpassing thresholds to determine if the quantitative findings are accompanied by substantive concerns. The Risk Management Unit has not implemented this procedure yet due to the current status of the policy. Risk Management staff are being trained on this process and are completing test reviews. It will be important to monitor this process when it comes on line for two important reasons. First, the training is showing that the reviews take considerable time and resources that could overburden the system. Second, officers may not fully support their review by civilians. Proper training can make a significant contribution to addressing these issues.

### Discussion:

As noted above, OPD revised and issued Departmental General Order D-17, Personnel Assessment Program in July 2012. A new version is currently in revision awaiting appropriate signatures. Based on the existing policy, we again find OPD in continued Phase 1 compliance with this Task. We must note again, however, our expectations that the revised policy will be full adopted in the near future.

For this 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 April 1, through June 30, 2013. This included a review of peer-based threshold analyses completed by the PAS Administration Unit and the identification of officers meeting the single-event threshold.

In accordance with this Task requirement, we reviewed PAS processes for the system's use in placement of officers on special assignment, transfer of officers, and commendations. An important function of PAS is to regularly provide supervisors with relevant information on officers. To consider that function, we again reviewed reports of regular quarterly PAS command reviews of officers by supervisors in select OPD units, including IAD and the Training Section.

The PAS process also 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 reports that were completed during the current reporting period. These document supervisory reviews of officers who have been selected for some form of action as a result of PAS reviews.

For the reporting period ending June 30, 2013, OPD concluded a total of 35 PAS reviews; down from 50 in the previous reporting period. Reviews are included in the table below only after they are signed off through the level of the PAS Review Panel. The table below tracks the review process and shows that supervisors recommended that no action be taken in 28, or 80%, of the 35 reviews for the current reporting period. However, two reviews resulted in recognition, leaving two recommendations for monitoring and two for supervision. No action was thus recommended

in 86% of cases. The table also shows that commanders did not disagree with lower-level recommendations in any of the cases. Deputy Chiefs disagreed with the commanders' decisions in two, or 6%, of their decisions, and the PAS Review Panel suggested revisions in six or 17% of the findings of the Deputy Chiefs, ultimately reducing the no action levels to 83%.

The process shows a desirable scrutiny up the chain of command but also supports a concern over the high number of false positives – officers selected for review that are not found to reflect problematic levels of risk. This may result from over-selection of cases under the current threshold model or insufficiently critical reviews or inconsistency at both levels. This should be addressed when the process is revised to include first stage reviews by the PAS Unit. That should help to establish a more consistent review standard at the initiation of the process.

As the PAS unit continues to train to accept their new role in initial reviews we remain concerned that increased workload not overload the system. The danger is that without appropriate resources and reasonable expectations about the detail required in the internal reviews, the risk management system could suffer. Elsewhere, where similar reviews are done, the workload is managed by limiting the breadth of reviews focusing most attention on the areas where thresholds are surpassed. This will need to be carefully monitored to avoid detrimental effects.

The value of the data in the chart below is in tracking data over time, and using it to increase the rigors of the review process as it serves the goal of risk reduction.

<b>Summary of PAS Reviews and Recommendations 2011-13</b>																	
	PAS Reviews Completed	Supervisor Rec- no action	%	Recognition	%	Supervisor Rec- Monitoring	%	Supervisor Rec- Intervention	%	Commander rec Concurs w Supervisor	%	Dep. Chief Concurs w Commander	%	PAS Panel Concurs w DC	%	Pending	Number of personnel that exceeded a threshold
<b>2011</b>																	
January	11	9	82%	0	0%	2	18%	0	0%	10	90%	11	100%	10	90%	0	11
February	9	8	89%	0	0%	1	11%	0	0%	9	100%	9	100%	8	89%	0	5
March	17	10	59%	1	5%	4	24%	2	12%	17	100%	17	100%	17	100%	0	11
April	12	11	92%	0	0%	0	0%	1	8%	12	100%	12	100%	12	100%	0	18
May	10	6	60%	0	0%	2	20%	2	20%	10	100%	10	100%	10	100%	0	7
June	8	6	80%	0	0%	1	10%	1	10%	8	100%	8	100%	8	100%	0	7
July	11	7	63%	0	0%	4	36%	0	0%	9	90%	10	90%	10	100%	0	16
August	2	2	100%	0	0%	0	0%	0	0%	2	100%	2	100%	2	100%	0	23
September	19	13	68%	0	0%	5	26%	1	5%	18	94%	18	94%	19	100%	9	16
October	12	10	83%	0	0%	2	17%	0	0%	11	92%	11	92%	12	100%	0	26
November	16	11	69%	1	1%	2	13%	3	19%	15	94%	10	63%	12	75%	0	47
December	22	16	73%	0	0%	6	27%	0	0%	21	95%	19	86%	22	100%	0	14
<b>Total</b>	149	109		2		29		10		142		137		142		9	201
<b>Average</b>	12.4	9.1	77%	0.2	1%	2.4	0	0.8	6%	11.8	96%	11.4	94%	11.8	96%	0.8	16.8
<b>2012</b>																	
January	7	5	71%	0	0%	2	29%	0	0%	7	100%	7	100%	7	100%	7	14
February	5	4	80%	0	0%	1	20%	0	0%	2	40%	2	40%	2	40%	0	59
March	19	12	63%	0	0%	4	21%	3	16%	18	95%	17	89%	18	95%	33	7
April	25	17	68%	0	0%	5	20%	3	12%	25	100%	25	100%	25	100%	22	41
May	27	17	63%	0	0%	2	7%	0	0%	26	96%	25	92%	27	100%	14	58
June	43	41	95%	0	0%	2	5%	0	0%	41	95%	42	98%	43	100%	15	17
July	66	61	92%	1	5%	3	5%	2	30%	65	98%	65	98%	64	97%	0	18
August	32	29	90%	1	0%	2	6%	0	0%	27	84%	26	81%	27	84%	8	35
September	15	10	67%	1	0.1	3	20%	1	7%	15	100%	11	73%	13	87%	1	16
October	12	10	83%	0	0%	2	17%	0	0%	11	92%	11	92%	12	100%	0	26
November	16	11	69%	1	1%	2	13%	3	19%	15	94%	10	63%	12	75%	0	47
December	22	16	73%	0	0%	6	27%	0	0%	21	95%	19	86%	22	100%	0	14
<b>Total</b>	289	233		4		34		12		273		260		272		100	352
<b>Average</b>	24.1	19.4	76%	0.3	1%	2.8	0	1.0	7%	22.8	91%	21.7	84%	22.7	90%	8.3	29.3
<b>2013</b>																	
January	27	19	70%	1	4%	7	26%	0	0%	27	100%	27	100%	24	89%	5	14
February	13	13	100%	0	0%	0	0%	0	0%	9	69%	8	62%	10	77%	5	7
March	10	10	100%	0	0%	1	10%	0	0%	10	100%	10	100%	6	60%	6	11
April	10	10	100%	0	0%	0	0%	0	0%	10	100%	10	100%	9	90%	2	4
May	14	8	57%	2	14%	2	14%	2	14%	14	100%	13	93%	12	86%	8	18
June	11	10	91%	0	0%	1	9%	0	0%	11	100%	10	91%	8	73%	1	4
<b>Total</b>	398.1	322		7.333		47.833		15		376.75		359.67		363.7		135	439.33
<b>Running</b>																	
<b>Average</b>	49.76	40.3	85%	0.917	0	5.9792	11%	1.875	3%	47.094	94%	44.958	90%	45.46	80%	16.9	9.7

For our quarterly reports, we also review the PAS histories of officers who had either a Level 1 use of force or been arrested for a criminal offense in the past quarter. For the current reporting period, three officers met these criteria for examination by virtue of a Level 1 use of force. The officers all had prior history of meeting PAS thresholds including complaint and Level 4 thresholds but showed no significant patterns of problems.

The Department continues to make significant efforts to address problems in the risk management data and processes. These are reflected in their work with the consultant on the development of the RFP for IPAS2 and by internal work on the revised review process. As noted, this needs final policy approval. The risk management system thus continues on a path of significant development. We are concerned that, in the interim period, while the new system is developing, the efforts to address the non-technological problems such as those with the review process and the role of front line supervisors may unnecessarily be put on hold. Progress toward compliance can be made even during this period of technology improvements.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

Next Steps:

During our next site visit, we will continue to work with the Department to examine the processes of collecting and storing data, and the use of that data in the PAS review process. We will focus on issues relating to the reliability of data with special attention to the audit function and its focus on the quality of original reports. We will be particularly concerned with advancements being made in the development of IPAS2, but will also focus on the effectiveness of those processes that are *not* tied to the new information technology. Our chief focus will remain on the effective use of the risk management system during the reporting period.

### *Sergeants' Use of PAS*

During this reporting period, to learn more about sergeants' experiences using PAS, we conducted a one-hour focus group of five sergeants – each of whom has worked for the Department for at least 10 years and currently supervises officers. Below are some of the highlights of our discussion:

- The sergeants said that they use PAS multiple times each week.
- According to the sergeants, many within the Department believe that the system is in place to help people in trouble, but it “catches up” late – that is, an officer might be assigned to a different unit, where the supposedly problematic behavior is no longer an issue.
- The sergeants believe it is “a labor-intensive process” – perhaps 20-25 hours of work – to complete the paperwork required for officers who have met different PAS thresholds.
- The sergeants said that some of the data the system offers is limited; for instance, there are only very brief summaries of misconduct complaints available, and these short summaries often do not include all aspects of the complaint.
- According to the sergeants, Supervisory Notes Files are “useful, but not very user-friendly.” The sergeants said that they have not received consistent directions regarding what should be entered in these SNFs.
- The sergeants said that, although PAS is slow, it is helpful to be able to use one system for the information they need – especially when completing officers' performance appraisals, because all of the information is in one place.
- The sergeants would like the opportunity to have greater influence in identifying problematic subordinates and to provide feedback regarding the recommendations for members or employees who are on supervision or monitoring.
- The sergeants would like to receive additional training on how the system works.
- The sergeants shared that they spend an overwhelming amount (at least 90%) of their time completing administrative tasks; they would like to receive assistance preparing the PAS-required reports so that they have more time to supervise officers in the field.
- According to the sergeants, more members and employees take the system more seriously now than they did when it was first activated. Having the system in place puts pressure on sergeants to document even informal conversations with their subordinates; the sergeants said that some officers “don't trust you as much [as they did prior to PAS]” because they believe you will document your discussion.

We appreciate the time and candor of the sergeants who participated in our focus group, and we look forward to conducting additional assessments to learn about how the Department uses PAS.



## 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.)*

### Background:

In 2009, the Parties agreed that there would be no active monitoring of this Task, since hiring had ceased and no Academy was planned for the near future. OPD decertified all then-current Field Training Officers. We deferred our compliance finding for Task 42 until the program was reinstated to address the needs of new officers.

During the twelfth reporting period, we found that OPD had followed the FTO selection procedures required by the NSA and was, for the first time, in compliance with Task 42. We also found OPD in compliance with this Task during the last two reporting periods.

### Discussion:

During our most recent site visit, we met with and interviewed the officer who serves as Field Training Coordinator; and reviewed related memoranda, evaluation forms, and other documentation.

At the time of our May 2013, site visit, 38 trainees were in their sixth week in the field assigned to FTO officers. Since then, 30 trainees graduated from the FTO Program on July 19, 2013; four trainees resigned; and four remained in the FTO Program; at the time of our review. Three of the four were extended due to performance deficiencies that required correction, and one due to service in the Marine Corps Reserve.

The Basic Academy that began with 51 trainees was ultimately reduced to 40; these trainees graduated in September, and following one transitional week, entered the FTO Program. We will discuss this further in our next report.

At time of our last site visit, there were 55 FTOs – seven of whom were unavailable for assignment as an FTO due to their current work assignment. At the time of the recent changes in the senior management of OPD, 23 officers were being processed to serve as FTOs. Since senior officer participation is required in the FTO process, the changes disrupted the selection of these 23 officers. The vetting process for these officers is being redone, and the interviews and selection by senior OPD officers will be completed before they enter the FTO Program.

**Task 42.1** requires that the Field Training Program Coordinator is a full-time position (compliance standard: Yes/No). A full-time officer is currently assigned to supervise the program. OPD is in compliance with this subtask.

**Task 42.2.1** requires that trainee officers rotate to a new Field Training Officer (FTO) and a new geographic area of the City at predetermined intervals (compliance standard: 90%). Trainees are rotated every four weeks to a new assignment and new FTO. While the limited number of FTOs may prevent 100% of trainees to be assigned to different geographic areas each rotation, OPD has rotated all trainees to different assignments shifts and areas throughout the overall training period and remains in compliance with this subtask.

**Task 42.3.1** requires that incentives for participation as an FTO are increased (compliance standard: Yes/No). Officers who serve as FTOs are paid incentive pay for their service. In addition, the program includes several incentives (e.g., chevrons, administrative days, and priority for selection as training) as incentives for participation. No changes to the incentives for participation in the FTO Program have occurred. OPD is in compliance with this subtask.

**Task 42.4.1** requires that field supervisors and commanders nominate FTO candidates (compliance standard: 90%), and the Chief of Police determines FTO assignments and retention (compliance standard: Yes/No); **Task 42.4.2** requires that FTO candidates complete three years of service before selection, unless authorized by the Chief (compliance standard: Yes/No); **Task 42.4.3** requires that FTO candidates are required to demonstrate commitment to community policing and problem solving and leadership abilities (compliance standard: 95%); **Task 42.4.4** requires that ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy are primary criteria in the selection of FTOs (compliance standard: 95%); and **Task 42.4.5** requires that candidates with excessive numbers of citizen complaints, sustained investigations or excessive numbers of use of force incidents are barred from selection as an FTO for no less than two years (compliance standard: 95%). Candidates are recommended by their supervisors and commanders; and must have work and performance records as required by this section. FTOs are screened for commitment to community policing and candidates with excessive numbers of complaints and/or sustained instances of uses of force are not selected. The selection of all FTOs to be certified (newly

selected FTOs) and those to be recertified (FTO previously selected and decertified when new officers were not being hired) followed the requirements outlined in the NSA. The screening of the new candidates to be added to the FTO Program had been completed at the time of our May 2013 review. OPD is in compliance with these subtasks.

**Task 42.5** requires that FTOs be decertified following sustained disciplinary action for serious misconduct specified (compliance standard: Yes/No). OPD is in compliance with this subtask. During the current reporting period, one FTO was decertified after receiving a sustained Class I violation.

**Task 42.6** requires that assignment to a FTO position is contingent upon successful completion of a training course for the position (compliance standard: Yes/No). FTOs are not assigned until they have successfully completed program training. OPD is in compliance with this subtask.

**Task 42.7.1** requires that at the end of a complete FTO cycle, trainee officers anonymously evaluate each of their FTOs (compliance standard: 95%); **Task 42.7.2** requires that FTO evaluation forms are reviewed by the Program Coordinator and the FTO's commander and supervisor (compliance standard: 95%); **Task 42.7.3** requires that the Field Training Program Coordinator provides evaluation information to the FTOs as a group, concerning program effectiveness (compliance standard: Yes/No); **Task 42.7.4** requires that each FTO is provided with evaluation information regarding his/her individual performance (compliance standard: Yes/No); and **Task 42.7.5** requires that individual evaluation forms are not made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms (compliance standard: Yes/No). Trainees are evaluated by their FTOs on a daily basis beginning with their second week of field assignment. The patrol sergeant prepares a weekly progress report; and at the end of each four-week cycle, the FTO prepares an end-of-phase report. Trainee officers anonymously evaluate their FTOs at the end of each phase. Trainees are provided evaluations of their performance throughout the program. FTOs do not receive individual evaluation forms but do receive feedback regarding their performance. The evaluation forms are reviewed by the FTP Coordinator, commander, and supervisor; and filed in the FTO Coordinator's office. OPD is in compliance with these subtasks.

**Task 42.8** requires that the Field Training Program Coordinator, or his/her designee, conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers (compliance standard: Yes/No). FTOs complete a daily evaluation of the trainees; and the program coordinator receives, reviews, audits, and files all evaluation forms. OPD is in compliance with this subtask.

**Task 42.9** requires that when a trainee officer's FTO is absent, the trainee officer is not assigned to field duties with an "acting" FTO, but is placed with another certified FTO, or assigned to non-field duties, pending the availability of a certified FTO (compliance standard: 95%). If a trainee's FTO is unavailable, the trainee is assigned to another FTO. If no FTO is available, the trainee is assigned to a sergeant or non-patrol assignment. In April 2013, during a staff meeting,

the FTO Coordinator discovered that a trainee officer had been assigned for a two-day period to work with an officer who had attended FTO training but had not been approved as an FTO by the Chief. The FTO Coordinator reassigned the trainee to an approved FTO. By email, he advised all sergeants and commanders of the requirement that trainees can only work with OPD-certified FTOs and explained the option if one is not available. The FTO Coordinator met personally with the sergeant where the mistake occurred. OPD moved promptly to rectify the problem and remains in compliance with this subtask. In May, a trainee rode with a Recruit Training Officer (RTO) who a lieutenant mistakenly believed had the same certification as an FTO. The FTO Coordinator pointed out the error to the lieutenant, and a supervisory note was entered in PAS.

**Task 42.10** requires that Field Commanders and FTO Supervisors be provided training (compliance standard: 95%). All sergeants and commanders to whom FTOs would be assigned were trained by the program in both group and individual sessions before they were assigned FTO duties. OPD is in compliance with this subtask.

**Task 42.11** requires that focus groups are conducted by the Field Training Program Coordinator and Academy staff with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six months after completion of the field training program (compliance standard: Yes/No). The coordinator conducts focus groups with randomly selected trainees, as required by the NSA. The focus group is designed to elicit issues encountered in the program and ensure that inconsistencies in training are identified and rectified. The first focus group of 11 trainees was held on May 23, 2013, at the halfway mark in the FTO training; and the second group of 12 trainees was held on July 18, 2013. Training Section and FTO officers attended both meetings. We reviewed the memoranda that reported the results of the two meetings, and found that they elicited the trainees' opinions on their academy and FTO training. Trainees expressed a desire for more training on use of PDRDs, understanding the radio and its use, and navigation through the City. Overall, the trainees in both groups rated the consistency of academy training with FTO training high. OPD is in compliance with this subtask.

**Task 42.12** requires that the results of the focus group sessions be reviewed at a meeting to include the Training Section Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief (compliance standard: Yes/No). The coordinator explores the consistency of field training with that of the Academy at several points during the program. He interviews every trainee every four weeks before they are rotated to new assignments and new FTOs. He also participates in biweekly meetings with the Training Commander in which the FTO training is discussed to identify training issues. At the end of the FTO training cycle, a final evaluation report of the trainee's performance is prepared; and trainees rate the FTOs and the program. In order to ensure that training and the FTO Program are consistent, biweekly meetings attended by the Training Commander, the FTO Coordinator, and his lieutenant are held. A quarterly review panel – composed of the Deputy Chief of the BFO, the BOS Deputy Chief, a BRM/OIG lieutenant, a Training Division lieutenant, the FTU supervisor and FTO coordinator – met and reviewed the results of the two focus groups that were held. OPD is in compliance with this subtask.

An annual assessment of the performance of the FTU and all FTOs was conducted on February 19, 2013. The assessment panel was composed of the two BFO Deputy Chiefs, the Deputy Chief of the Bureau of Risk Management, a use of force subject matter expert (SME), the FTO coordinator and captains who command the IAD, three BFO units, and the FTU.

As we observed in our last three reports, OPD has fulfilled the requirements of Task 42. Increasing the number of approved and trained FTOs who are available to address a larger number of trainees is important to the continued success of the program. OPD is in Phase 2 compliance with Task 42.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

## 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>18</sup>*

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

Background:

Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. This subtask requires OPD to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions. During the last reporting period, we found that 96% of the members and employees in our sample received the required in-service training.

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 these policies, OPD is in continued Phase 1 compliance with this Task.

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<sup>18</sup> The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.



**Task 43.1.1** requires that OPD's training plan ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions (compliance standard: Yes/No). For this reporting period, we reviewed the training records of a stratified random sample of 70 OPD members and employees – including 43 officers, 11 sergeants, two lieutenants, two evidence technicians, and 12 dispatchers – to determine if the members and employees received adequate training for their positions.

The Department produced a record for each member and employee in our sample. For each, 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. CPT is, according to California state requirements, to be delivered to every officer every two years; OPD uses an 18-month cycle.

Training of police evidence technicians (PET) is the responsibility of the BFO where they are assigned. A new training coordinator was appointed in January 2013. During our last review, we found that three of the five PETs did not receive training adequate for their positions.

During this review, we found that one PET and one dispatcher did not receive training adequate for the position. We have requested the training files for all PETs and are reviewing them for our November 2013 site visit.

During the past two years, we have examined the training received by the PETs who are identified in our random reviews. OPD has made some progress in this area since we have begun to examine PET training by arranging for PETs to attend segments of the officers' CPT training and for several PETs to receive training by OPD Crime Laboratory employees. Overall training of PETs, however, has been disorganized and needs to be improved.

The most obvious deficiencies are in its initial job training and continuing professional in-service training. New PETs are trained on-the-job; OPD still has no fixed training requirements or program for either initial or continuing job training. The PETs are assigned to the BFO, and the PETs' coordinator is a police officer. We note that while the cost of training may be a factor, there are many ways in which good training can be arranged at reasonable costs; for instance, OPD placed PETs in the officers' CPT course when the information presented was of value to their work. The Department's Crime Laboratory is another resource that has barely been tapped. While OPD Crime Laboratory employees provide training to other police agencies, this unit does not have a formal role in training OPD PETs.

The remainder of the files in our random sample revealed training appropriate to their position. One officer in our survey was excused for medical reasons; one sergeant retired; one dispatcher resigned, and another was on medical leave. Overall, 64 (97%) of the 66 members and employees in our sample who were available to train received appropriate training to their jobs. The following chart reflects the results of our survey.

	Records Reviewed	Retired, Resigned or Medical	Available to Train	Training Received	%
<b>Officers</b>	43	1	42	42	100%
<b>Sergeants</b>	11	1	10	10	100%
<b>Lieutenants</b>	2	0	2	2	100%
<b>Dispatchers</b>	12	2	10	9	90%
<b>Evidence Technicians</b>	2	0	2	1	50%
<b>Total</b>	70	4	66	64	97%

OPD is in Phase 2 compliance with Task 43.1.1.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

### 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.*

(Negotiated Settlement Agreement X. B.)

Background:

During the last two reporting periods, we found OPD in compliance with Task 45.

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. 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 with at least one sustained finding that were approved between April 1, through June 30, 2013. This query yielded 32 cases, containing 50 sustained findings. Of these 32 cases, 31 (97%) contained all of the necessary information. OPD is in compliance with the requirement that it maintain an adequate system for documenting and tracking discipline and corrective action.

Our review further revealed that six of the 32 cases containing eight findings did not have the discipline conference or discipline letter until the third quarter of 2013. We set these cases aside and will review them during our next quarterly review. We also added six cases with seven findings that were identified during our May review in which the discipline dates were in the second quarter, not the first, of 2013. We, therefore, examined 32 cases containing 49 findings in which the discipline conference and discipline letter occurred during the first quarter of 2013.

**Task 45.4** requires that discipline be imposed in a manner that is fair and consistent (compliance standard: 95%). To this end, the Department has developed and revised a Discipline Matrix. The Department most recently updated and revised its Discipline Matrix on September 2, 2010. We reviewed all the cases with sustained findings that were decided during the period of April 1, through June 30, 2013. We found that in 47 of the 49 findings the discipline imposed was reasonable and fell within the Discipline Matrix. In two cases, the discipline fell outside the Matrix, but the discipline imposed was reasonable and adequately justified. We note, as we have previously, that the Discipline Matrix is only a guide and can be departed from with reasonable justification.

During the period of April 1, through June 30, 2013, Skelly hearings were held for 17 IAD cases involving 23 sustained findings in which discipline of a one-day suspension or greater was recommended. In all (100%) of the 23 findings, the recommended discipline was upheld (18 findings) or reduced (five findings) with adequate justification.

OPD is in compliance Phase 2 compliance with Task 45.

Compliance Status:

Phase 1: In compliance

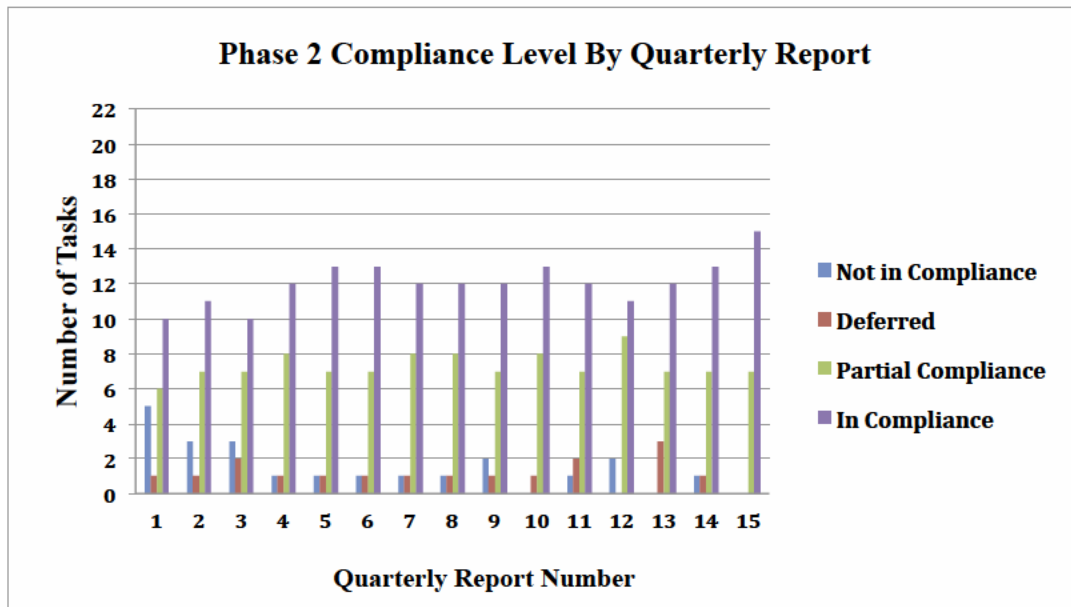
Phase 2: In compliance

## Section Three

### *Conclusion: Critical Issues*

This is our fifteenth quarterly report. The status of compliance with the 22 active requirements of the Negotiated Settlement Agreement is shown for all of our quarterly reports in the graph below. It shows that overall compliance is now at the highest level since the beginning of our tenure. In all, 15, or 68%, of the Tasks are in Phase 2 compliance.

These overall numbers reflect a change from partial compliance to in compliance with two Tasks (Task 26, Force Review Board [FRB]; and Task 45, Consistency of Discipline); from not in compliance to partial compliance with one Task (Task 37, Internal Investigations - Retaliation Against Witnesses); and from deferred compliance assessment to in compliance with one Task (Task 30, Executive Force Review Board [EFRB]).



## Appendix A

### Cumulative Key Indicator Data

	PAS ADMIN UNIT STATISTICAL COMPARISON OAKLAND POLICE DEPARTMENT - KEY INDICATOR BY MONTH 2011 & 2012																								Graph	
	JUL 11	AUG 11	SEP 11	OCT 11	NOV 11	DEC 11	JAN 12	FEB 12	MAR 12	APR 12	MAY 12	JUN 12	JUL 12	AUG 12	SEP 12	OCT 12	NOV 12	DEC 12	JAN 13	FEB 13	MAR 13	APR 13	MAY 13	JUN 13		
Percent of Arrests Associated with Reporting Officers	2.64	1.66	1.01	5.72	6.70	0.84	3.01	2.42	1.24	2.11	1.76	0.71	0.80	1.26	0.94	0.88	0.79	0.53	1.38	0.84	1.87	0.91	1.28	1.07		
A Use of force (ie. 12.24*) per reporting officer	32.24	32.31	31.15	24.68	25.17	34.21	26.05	34.55	31.86	34.62	27.22	24.57	24.66	21.13	18.33	26.44	17.90	20.75	23.66	17.95	16.67	13.38	13.91	16.52		
A Use of force (ie. 12.24*) per reporting officer	2.91	4.90	1.56	2.53	2.30	3.09	1.74	2.34	2.17	3.60	2.53	0.79	3.83	2.10	0.98	3.41	1.67	0.53	2.53	5.05	0.47	1.82	2.26	1.15		
AVIA Complaint (per subject officer sworn only)	10.20	8.67	8.10	9.59	9.19	6.19	9.26	12.64	8.28	11.16	7.21	2.84	12.93	10.95	8.89	11.61	5.21	7.49	5.75	6.74	3.65	6.28	8.39	7.75		
AVIA Complaint (per subject officer sworn only)	1.28	1.23	1.17	4.31	3.35	0.37	3.09	2.08	1.24	2.02	0.84	0.47	0.96	0.59	0.45	0.39	0.79	0.11	0.46	0.48	0.19	0.25	0.40	0.44		
Back Hour of Sick Leave (excludes civilians)	210.02	229.51	184.11	230.28	283.83	235.15	229.77	246.75	276.95	285.70	209.65	158.94	168.79	177.80	192.72	244.9	226.6	188.1	300.7	288.4	172.1	155.1	252.5	243.1		
Number of Arrests per (blank if cases)																										
Officer (ie. of Shootings includes shootings involving animals which includes force types 21, 24, 27 and 26-27)	1098.00	286.50	321.00	1336.25	1043.00	180.43	0.00	215.50	189.67	326.00	1266.00	313.25	198.17	198.17	0.00	205.00	508.50	108.75	277.00	1088.00	302.75	280.20	281.50	281.50		
Vehicle collisions (excludes civilians)	1098	381	1284	336	95	152	421	96	323	379	652	1266	627	170	1113	513	1017	208	277	1088	302.75	280.20	281.50	281.50		
C1 - All Arrest (includes All Arrest (includes to court)	1098	1142	1284	1345	1045	1067	1263	1155	1293	1338	1304	1266	1233	1189	1113	1025	1017	995	870	831	1068	1211	1251	1126		

## Appendix B

### *Selected Inactive Task Assessments*

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**During this reporting period, we conducted assessments of three inactive Tasks: Tasks 28 and 29 (jointly) and Task 39.**

**Task 28** requires that OPD report to the Alameda County District Attorney's Office, as soon as possible, all uses of force; citizen complaints; and other member/employee-involved actions in which it appears there may be criminal misconduct by a member/employee; and **Task 29** requires that OPD coordinate its administrative investigation of members/employees with the Alameda County District Attorney's Office if a criminal proceeding is potentially viable; and when OPD initiates an interview or interrogation of OPD personnel and it appears that the subject may be charged with a crime, or the subject asserts his or her Fifth Amendment rights on grounds that the answers to questions posed may be incriminating, such interrogations are preceded by a Lybarger warning.

To assess Tasks 28 and 29, we requested from the Department a sample of 16 IAD cases that were approved between January 1, and June 30, 2013, in which the Department identified apparent evidence (or "reasonable suspicion") of criminal misconduct.

We carefully reviewed the cases to determine how OPD proceeded with any required reporting, and coordinated its internal investigation and any parallel investigation by the District Attorney's Office, the OPD Criminal Investigation Division, or the relevant agency. While all 16 cases in our sample technically involved violations of law, most of them involved low-level violations such as traffic infractions. Only one of the cases in our sample was potentially viable vis-à-vis the requirements of Tasks 28 and 29.

In this case, OPD opened an investigation after an officer emailed her chain of command that she had been arrested for a DUI by the California Highway Patrol (CHP). Following her advisement, the IAD investigator contacted the involved CHP office for a copy of the report and other related documents. According to the chronological log for this case, CHP delayed forwarding the requested report for at least two weeks; from the documentation we received from IAD, it is not clear whether IAD *ever* received the report. (There was no arrest report in the case file, and no mention of its receipt in the chronological log.) Nevertheless, IAD completed its own internal investigation, which also found that the officer falsely reported sick time. Ultimately, the Chief of Police sustained the case and terminated the officer.

From our review of the case file, we determined that OPD met all of the requirements of Tasks 28 and 29. In this case and in every other instance in which an officer was interviewed as part of an investigation, s/he was read the Lybarger warning; this appears to be a standard practice at OPD.

We will conduct another assessment of these Tasks in future reporting periods.

**Task 39** requires:

- Within 72 hours of being arrested, OPD personnel report arrest to IAD directly and through chain of command (and are held accountable if they do not).
- Within 72 hours of being sued or served with civil or administrative process containing allegations that rise to the level of a Manual of Rules violation, OPD personnel report same to IAD directly and through chain of command (and are held accountable if they do not).
- Within 72 hours of being served with civil or administrative process OPD personnel serving in or being considered for transfer to: Alcoholic Beverage Action Team (ABAT); Alameda County Narcotics Task Force (ACNTF); Crime Reduction Teams (CRTs); Drug Enforcement Agency Task Force (DEATF); Fugitive Unit; Internal Affairs Division (IAD); Intelligence Unit (Intel); Office of Inspector General (OIG); Special Duty Units (SDU); and the Tactical Enforcement Task Force (TETF); or an assignment that may tend to indicate a conflict of interest with respect to the performance of official duties; or in a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered; report same to Chief of Police, through his/her chain of command (and are held accountable if they do not).

To assess Task 39, we queried the IAD database to identify any IAD cases that were approved between January 1, and June 30, 2013, that involved potential MoR 314.42 (Obedience to Laws and Regulations) or 314.28 (Notification) violations. This query yielded 24 cases; we found that only three of these applied to this Task.

The first case involved a complaint that an officer failed to report to OPD that he was being sued civilly in response to an incident at the police agency where he worked previously. Further investigation by IAD yielded no information about any such lawsuit. As a result, OPD closed the investigation. We found this case to be in compliance with Task 39.

The second case involved a complaint that an officer, according to the case's chronological log, "was intoxicated and acted unprofessional when contacted by another police agency." In this case, the other local police department contacted OPD; the involved officer did not report this incident to the Department. The investigation noted, "Pursuant to DGO E-3.1 (Department Notification Compliance Verification), [the involved officer] was not required to make any notification to the Department... During both [related] incidents, the [other police agency] chose not to arrest [the involved officer] for public intoxication nor did they make notifications of their contact to anyone at the OPD." We found this case to be in compliance with Task 39.

In the third case, which we also reviewed for Tasks 28/29, OPD opened an investigation after an officer emailed her chain of command that she had been arrested for a DUI. We found this case to be in compliance with Task 39.



As part of our assessment, we also requested from the Department the Statement of Compliance Forms and Financial Summary Reports for persons currently serving, as of January 2013, in the specialized units (or their functional equivalents, given recent reorganization) listed above. OPD provided forms for approximately 90% of the members and employees currently assigned to these units. We reviewed the forms, which are prepared by sergeants assigned to the Integrity Testing Unit, and found them to be complete. A few of the members and employees disclosed issues such as foreclosures on their Financial Summary Reports. During our next site visit, we will discuss with Department officials how, if at all, OPD monitors these members and employees.

We will conduct another assessment of this Task in a future reporting period.

## Appendix C

### *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
AWS	Automated Warrant System
BART	Bay Area Rapid Transit
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
CORPUS	Criminal Oriented Records Production Unified System
CPRB	Citizens' Police Review Board
CPT	Continued Professional Training
CRIMS	Consolidated Records Information Management System
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
LEWI	Law Enforcement Warrants Inquiry 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
PDRD	Portable Digital Recording Device
POST	Peace Officer Standards and Training
RMM	Risk Management Memorandum
RWM	Report Writing Manual
SDF	Stop Data Form
SME	Subject matter expert
SO	Special Order
TB	Training Bulletin
UOF	Use of force