

CITY OF OAKLAND

# INTER OFFICE MEMORANDUM

**TO:** Office of Internal Accountability (OIA), Risk Analysis Unit (RAU)      **FROM:** Deputy Chief Clifford Wong  
Bureau of Risk Management (BRM)

**SUBJECT:** Supplemental Report Examining Failure to Accept or Refer Complaints      **DATE:** September 18, 2023

Chief of Police Approval

Date:

9/20/23

The purpose of this memorandum is to respond to the recently published Risk Analysis Unit’s Inspection of Failure to Accept or Refer a Complaint MOR Violations. The review produced several findings and four recommendations. The recommendations were intended to aid the Department with improving equity within findings and disciplinary outcomes. Below is the Department’s response to the Risk Analysis Unit’s recommendations.

### Finding #1

Many determinations of finding for FTARC require, by current policy, an assessment of whether the subject was “unsure” if someone wanted to make a complaint and therefore should have asked “clarifying questions.” This standard assigns the investigator the unenviable task of having to judge the subject’s certainty about a situation at the time it occurred, but through the lens of hindsight. This is an area of opinion and discretionary judgement, which may lead to biased outcomes.

### Recommendation #1

Section III.A.7 of Department General Order M-03 (“unsure” and clarifying questions”) should be revisited and addressed in order to limit the opportunity for judgement, discretion and bias to play as central a role as it has done in 2022.

### Department Response #1

The Department understands the finding and is proposing revisions to Department General Order M-03.

Current policy requires that employees ask two “clarifying questions” when the employee is “unsure” whether a person wishes to make a complaint.

- i. Do you want to speak with a supervisor?
- ii. Do you want to file a complaint?

An affirmative answer to either question elicits the same response by a member, which is to summon a supervisor to the scene. Yet, in 2022 officers were sustained for violations of the Manual of Rules for not asking *both* clarifying questions to every subject, regardless of how either question was answered. This was an inflexible standard prone to logical fallacies.

For example, a subject affirmed they wished to speak with a supervisor. The member summoned the supervisor. Under the 2022 policy, the member was then required to ask whether the subject wanted to file a complaint. Yet, the answer to the second question was largely irrelevant. An affirmative answer to the second question would yield the summoning of a supervisor, which was already occurring per the first question. A negative answer to the second question required no further action be taken by the member, and the supervisor was already summoned. In this scenario, there was no reason to ask the second question, yet a member would be considered Sustained for failing to ask it, regardless of its unproductivity.

The Department proposes the following changes to M-03: Section III.A.7, with the aim to reduce investigator discretion and improve equitable and consistent application of policy mandates.

7. *If a person expresses specific, articulable dissatisfaction with an aspect of police service to a member, but does not request to file a complaint or to speak with a supervisor, the member or employee shall:*
- a. *Not discourage or deter citizens from exercising their right to complain to the Department or the CPRA;*
  - b. *Ask the person if they would like to speak to a supervisor.*
  - c. *Provide the citizen with an OPD Informational Business Card and/or Complaint Form (TF-3208) with his/her name, serial number and CAD Incident Number;*
  - d. *Enter a CAD notation to the call;*
  - e. *Use the Radio Disposition Code of “IBC” (Informational Business Card); and*
  - f. *Call the Communications Section Supervisor with the date of the referral, incident number and brief description of the incident to be added to the Complaint Referral Log (TF-3367) within 24 hours of the referral.*

---

### **Finding #2**

Eleven of the nineteen cases resulting in at least one of the 45 FTARC Sustained findings were sustained while relying on subjective argumentation, some of which included language not otherwise standardized via training or policy. Some investigations declared a subject “should have” comported themselves in a particular manner, perhaps not one prescribed by policy, but one which seemed reasonable in the investigator’s estimation.

### **Recommendation #2**

The Department should consider quality control training for commanders reviewing IAD investigations or DLIs to ensure consistent quality, content, and lack of subjective argumentation unless specifically called for.

## **Department Response #2**

The Department, through the Training Section, will offer IAD investigation review standards and training for all Commanders (Lieutenants, Captains, Deputy Chiefs, Assistant Chief and Chief of Police) annually during at least one of the quarterly Command Retreat Seminars. The Training Section will develop the program over the course of the next few months and will be ready for deployment in the fourth quarter 2023. A similar training will also be developed for investigators.

---

## **Finding #3**

There are inconsistent sustained rates for FTARC between those investigated as DLIs and those investigated as IAD investigations, a dynamic that is complicated by the role and actions of the DLI Coordinator Unit within the Internal Affairs Division.

## **Recommendation #3**

The Department should consider requiring the DLI Coordinator Unit show their work, documenting recommendations or changes to investigations emanating from the Unit in a transparent manner, whether via chron log or other means.

## **Department Response #3**

Pursuant to changes already underway in aforementioned policies responsive to the Clarence Dyer Cohen LLC report (Training Bulletin V-T.01 and IAD P&P 23-01) the Department will immediately institute the practice of the DLI Coordinators creating an accessible and transparent paper trail of its involvement in instigating substantive changes to findings during the production phase of internal affairs investigative work products. Per those policies, substantive changes (changes to findings, subject employees, or credibility assessments) instigated by the DLI Coordinators will have to be approved via the IAD Commander. After implementation of the policies, the Department will continually assess the need for additional requirements.

---

## **Finding #4**

A single Sergeant of Police investigated 49% of all FTARC allegations in the Department in 2022 (55/112). Removing this sergeant's own internally generated allegations, the sergeant would have investigated 19% (21/112) of all 2022 FTARC allegations.

## **Recommendation #4**

The Department should consider the manner in which allegations of FTARC are added to investigations and explore a checks and balances approach to adding such allegations on any given case to any given subject.

## **Department Response #4**

The Department concurs with the recommendation. The revised policy requires the requestor of the change to acquire approval via their personal chain of command for *removing or changing* a MOR allegation but does not expressly require additional approval for adding an MOR violation. While there have been several drafts of Training Bulletin V-T.01, the version approved by the Police Commission and currently under review by the Unions (meet and confer) does not explicitly require approval for the *addition* of internally discovered allegations. This is a change the Department will address either before finalizing the policy or in a subsequent Special Order. The Department agrees that having an additional layer of review for adding self-discovered allegations will improve consistency.

At this time, the Department intends to add only a requirement for supervisory approval of added MORs that cannot be handled via an SNF. While FTARC allegations cannot be handled via a supervisory notes file (SNF) entry, there are many Class II MOR allegations that can be handled via SNF when internally discovered during the investigation.

Currently, investigators are required to document the allegation and explanation for the SNF, including a lack of any prior pattern, in the report of investigation which is reviewed by the chain of command. Should the chain of command or IAD have a concern with how the allegation was handled, they will address any concerns during the review process. However, because FTARC allegations cannot be handled via SNF, requiring supervisor approval to add MOR allegations will always apply to self-discovered FTARC allegations.

Thus, the Department through this policy change expects to achieve not only a more consistent application of its complaint policy and consistent treatment of FTARC misconduct allegations, but consistent treatment for other types of frequently self-discovered allegations as well.

---

**Finding #5**

Differing recommended findings or recommended discipline by investigators, the chain of command, CPRA, and others are not currently tracked by the Department in an analyzable manner. This area is one wherein discussion, negotiation, and compromise may occur and one wherein judgement by a singular deciding figure (the Chief of Police) often holds as final. It is an important facet of any future analysis of internal affairs matters.

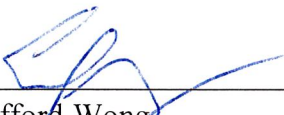
**Recommendation #5**

The Department should consider tracking differing recommended findings and differing recommended disciplines between investigators, the chain of command, CPRA, and others in an accessible and analyzable manner, perhaps via VISION.

**Department Response #5**

The Department will immediately require that differences between OPD investigators, chains of command, CPRA, or other outside investigative bodies, on recommended findings and recommendations for discipline be documented in the chronological log for each instance wherein said differences arise.

Respectfully,



---

Clifford Wong  
Deputy Chief of Police