



AGENDA REPORT

TO: Honorable Oakland
Police Commission

FROM: Michelle N. Phillips
Inspector General

SUBJECT: Office of the Inspector General
Informational Report

DATE: May 23, 2024

PURPOSE

The purpose of this informational report is to provide the Oakland Police Commission (“Commission”) and members of the public with updates from the Office of the Inspector General (“OIG”), since the Inspector General’s last presentation. In this document, the OIG provides a high-level outline of its prioritized projects and current activity. The OIG also attempts to address specific questions raised by Commissioners and community members at previous meetings. For additional context, the OIG has also included pertinent attachments that have been released since its last presentation. Through these reports, the OIG seeks to fulfill its commitment to providing transparent civilian oversight.

CITY CHARTER AND NEGOTIATED SETTLEMENT AGREEMENT (NSA, MEASURE S1 OIG)

Inspections of NSA Section III: Internal Affairs Division (IAD)

The NSA mandates that OPD is required to sustain the outlined tasks in an effort to ensure effective and long-term police reform. After reviewing NSA Section III, the OIG identified several tasks that were categorized as “inactive.” The OIG elected to conduct an updated inspection of seven tasks in Section III, to ensure continued compliance. The seven tasks are outlined in Table 1 below.

Table 1: NSA-Section III: Selected Tasks for Inspections

Task 3: IAD Integrity Tests	Task 4: Complaint Control System for IAD
Task 7: Methods for Receiving Citizen Complaints	Task 8: Classification of Citizen Complaints
Task 9: Contact of Citizen Complainant	Task 11: Summary of Citizen Complaints Provided to OPD Personnel
Task 13: Documentation of Pitchess Responses	

The OIG requested information related to the seven tasks mentioned above. Initial information was received from OPD in part on May 15, 2024.

CITY CHARTER (MEASURE S1: POLICY REVIEWS)

Policy Review of DGO N-09: Police Grants

Given recent inquiries around grants management by OPD, and the entire City of Oakland, the OIG initiated a policy review of DGO N-09: *Police Grants*. The OIG consulted in part with the City Auditor, as they were completing their audit of the City of Oakland's application to the California's Organized Retail Theft Grant Program. The OIG publicly released this report on May 7, 2024, which can be viewed on the OIG website.

Policy Review of DGO B-08: Field Training Program

The OIG's Policy Analyst and Inspector General have completed the final stages of analysis of the office's Policy Review of DGO B-08: *Field Training Program*. This project was slightly stalled due to the prioritization of other time-sensitive projects and a delay in receiving data. The project will include an analysis of the relationship between OPD's field trainers and trainee misconduct (use of force, etc.) allegations. The OIG Chief of Audits and Evaluations and Policy Analyst are currently in the review and editing process.

THE BEY MATTER (Review of IAD Cases as directed by the Commission)

In November 2021, before the appointment of the current Inspector General, the Commission voted to refer The Bey Matter to the newly established OIG. The scope of this review, as provided to the Inspector General, was to review IAD Cases 07-0538, 13-1062, and 16-0146 for relevant lessons learned and assess whether there were any policy gaps. The case review has been completed, and the final report was submitted to the Commission on February 28, 2024. Given the report's policy recommendations, the OIG requested responses from the Commission and OPD. The OIG received those responses and the public facing report was released May 17, 2024.

CITY COUNCIL POLICY DIRECTIVE-OPD STAFFING STUDY

In consultation with City Administration, the OIG selected PFM Financial Advisors, LLC ("PFM Financial") to conduct an OPD staffing study and resource analysis. The City Council unanimously approved the contract, which has been fully executed and is in its final stage of compliance review. The OIG meets bi-weekly with PFM Financial and OPD's point of contacts to ensure timely communications and that we keep our timeline milestones, within reason.

The OIG in collaboration with OPD and the Information Technology Department (ITD) are regularly providing data on an ongoing basis as requested for comprehensive analysis. The PFM team conducted a site visit on May 15, 2024, and May 16, 2024. The work of this study is ongoing.

ADDITIONAL PROJECTS

The OIG is prioritizing the annual report for fiscal year 2024 and the audit workplan for fiscal year 2025.

For questions regarding this report, please contact Michelle N. Phillips, Inspector General, at OIG@oaklandca.gov.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michelle N. Phillips".

Michelle N. Phillips
Inspector General
Office of the Inspector General

Policy Review of the Oakland Police Department's Departmental General Order M-19:

Prohibitions Regarding Racial Profiling and Other Bias-Based Policing

Tuesday, April 2, 2024



CITY OF OAKLAND
OFFICE OF THE INSPECTOR GENERAL

250 Frank H. Ogawa Plaza • Oakland, CA 94612

Table of Contents

Inspector General Phillips’s Letter	i
Executive Summary	1
Introduction	3
Objectives	5
Methodology	5
Recommendations	6
Considerations	9
Conclusion	12
Appendix: List of Acronyms	13
Attachments	14



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA

Tuesday, April 2, 2024

Dear Members of the Public,

In 2020, 81 percent of voters approved Measure S1, establishing the Office of the Inspector General (OIG). The legislation strengthened Oakland's police reform efforts, in part, by granting the OIG the authority to audit Oakland Police Department ("Department") policies, practices, and procedures during and after federal oversight.

Per Section 604(f)(5) of the Oakland City Charter, the OIG also has the authority to "*review legal claims, lawsuits, settlements, complaints, and investigations, by, against or involving the Department and the Agency to ensure that all allegations of police officer misconduct are thoroughly investigated, and to identify any systemic issues regarding Department and [Community Police Review] Agency practices and policies.*"

The OIG recently conducted a policy review of Departmental General Order (DGO) M-19: *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*. The OIG reviewed DGO M-19 to identify policy gaps and areas of improvement, as the primary document guiding the Department's commitment to providing fair, equitable, unbiased, and respectful service. From its review, the OIG identified several areas in need of improvement that could clarify the expectations and requirements of police officers in DGO M-19.

In the enclosed report, the OIG outlines its findings from the review, which led to six (6) recommendations to improve the language, definitions, timelines, and consistency of general conduct; as well as provide a clearer document that promotes greater levels of accountability. To supplement its recommendations, the OIG also offered three (3) considerations that may enhance the Department's operations. If adopted by the Oakland Police Commission ("Commission"), and successfully implemented by the Department, the OIG's recommendations and considerations should:

1. Align DGO M-19 with national standards for constitutional policing;
2. Fill existing language and policy gaps;
3. Improve consistency of DGO M-19's application; and,
4. Increase Department transparency and accountability.

In alignment with community members' calls for police services free from identity profiling and biases, the OIG has elevated its recommendations and considerations to the Commission and Department.

Respectfully,

Michelle N. Phillips, Inspector General
City of Oakland, Office of the Inspector General

Executive Summary

Since Boston established the first municipal police department in 1838¹, law enforcement agencies have been accused of racial profiling and other biased-based policing practices. While studies focused mostly on explicit racial biases,² subconscious biases, also referred to as implicit biases, were proven to impact officers' behavior and response.³ Implicit bias suggests that even well-intentioned people have subconscious prejudices that can impact their perception and behavior.

For decades, law enforcement agencies across the country have acknowledged that biased practices are detrimental to the institution of policing, as they damage community trust. This is evident in Oakland, where some marginalized communities are still reeling from past, and current, biased policing practices by officers. One of the most notable occurrences of police misconduct in Oakland occurred in 2003, during the *Delphine Allen v. City of Oakland*⁴ or "Riders Case", which resulted in the [Negotiated Settlement Agreement](#) (NSA).

The purpose of the NSA is to "provide expeditious implementation, initially, with the oversight by an outside monitoring body, of the best available practices and procedures for police management in the areas of supervision, training, and accountability mechanisms, and to enhance the ability of [the Oakland Police Department] to protect the lives, rights, dignity, and property of the community it serves."

In November 2004, the Oakland Police Department (OPD) created [Departmental General Order \(DGO\) M-19: Prohibitions Regarding Racial Profiling and Other Bias-Based Policing](#) (Attachment 1). DGO M-19 was established to reaffirm OPD's commitment to enforce laws equitably and build strong community relationships. To date, DGO M-19 has been revised twice, once in 2010 and again in 2013, via Special Orders (SOs) 9042 and 9101 (Attachment 2 and 3). Although these two SOs modified the policy's definitions and added report-writing requirements, they did not address other discrimination-related issues.

Given this significant duration of time since its last modification, the [Office of the Inspector General](#) (OIG) and members of the public agreed that DGO M-19 needed a comprehensive review. With DGO M-19 serving as OPD's procedural goalpost, as it pertains to the protection of community members' civil rights and liberties, it must be held to the highest of standards. Additionally, with OPD's difficulties achieving compliance with NSA Task 45, Consistency of Discipline Policy, it is important that DGO M-19 also guide internal accountability systems.

Overall, this policy review is intended to evaluate DGO M-19 and provide recommendations to address gaps, deficiencies, or risks. Utilizing comparable models, scholarly research, and other relevant information, the OIG identified a series of actionable recommendations to improve DGO

¹ The History of Policing in the United States by Dr. Gary Potter - https://www.academia.edu/30504361/The_History_of_Policing_in_the_United_States

² The Department of Justice's Understanding Bias: A Resource Guide - <https://www.justice.gov/file/1437326/download>

³ The Science of Justice: Race, Arrest, and Use of Force - [CPE_SoJ_Race-Arrests-UoF \(policingequity.org\)](http://CPE_SoJ_Race-Arrests-UoF_(policingequity.org))

⁴ Delphine Allen v. City of Oakland - <https://www.cand.uscourts.gov/judges/orrick-william-h-who/allen-v-city-of-oakland-case-no-c00-4599/>

M-19. Based on the content of the recommendations, insight from the City of Oakland's Homelessness Division and Department of Race and Equity (or comparable subject matter experts) should be consulted before the implementation of the enclosed recommendations. Additionally, consultation and guidance from the Office of the City Attorney, or other legal counsel, is suggested as revisions to this policy may impact OPD's Manual of Rules and Discipline Matrix.

Findings

The OIG has identified several gaps and potential risks, in OPD's DGO M-19: *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*. Consequently, DGO M-19 should clarify its vague language to ensure discrimination by race, color, gender identity, or any other protected category, does not occur. The OIG has provided six (6) policy recommendations, regarding language, definitions, timelines, and consistency, to improve general conduct and implementation of discipline. Additionally, the OIG has outlined three (3) areas for consideration that might benefit OPD's overall operations. Adjustments to these areas of consideration could have a positive effect on transparency and accountability.

Recommendations

- **Recommendation 1:** Confirm DGO M-19's language is consistent with California Penal Code Section 13519.4 (PEN § 13519.4).
- **Recommendation 2:** Insert color, gender identity or expression, as well as mental or physical disabilities, as protected characteristics, or categories.
- **Recommendation 3:** Create a glossary that defines each protected category or characteristic.
- **Recommendation 4:** Set clear timelines reporting incidents of profiling, with accountability measures in place for missed deadlines.
- **Recommendation 5:** Clarify the timeline for the supervisory audits, as required by Section XI – Supervisory Responsibilities.
- **Recommendation 6:** Verify all DGO M-19 requirements align with current OPD operating procedures.

Considerations

- **Consideration 1:** Outline the desired outcomes of DGO M-19 in Section I – Purpose.
- **Consideration 2:** Establish a specific report writing DGO or other policy document that includes SOs 9042 and 9101.

- **Consideration 3:** Review and equitably distribute the roles of the Office of Internal Accountability (formerly OPD’s Office of the Inspector General) and Racial Profiling Program Manager, found in Sections XIII and XIV respectively.

Introduction

Purpose, Authority, and Jurisdiction

In 2016, 83 percent of Oakland voters supported [Measure LL](#), establishing the [Oakland Police Commission](#) (“Commission”) to oversee OPD’s policies and procedures. The intent of the legislation was to utilize this nine-member (seven regular and two alternate members) civilian board to promote constitutional policing, procedural justice, and equity. Measure LL also created the [Community Police Review Agency](#) (“Agency”) an independent oversight body, to investigate complaints of police misconduct and recommend discipline.

In 2020, 81 percent of Oakland voters passed [Measure S1](#) to strengthen the independence of the Commission and Agency, via modification to its power, duties, and staffing. Measure S1 also created the civilian-operated OIG to be overseen by the Commission. The OIG is responsible for auditing and monitoring OPD’s compliance with policies, procedures, and the fifty-two (52) tasks outlined in the NSA, during and after federal oversight.⁵ The OIG completes these duties by identifying systemic issues within OPD and recommending further accountability measures that may decrease instances of police misconduct.

The OIG’s standards are outlined in the [Association of Inspectors General Principles and Standards for Offices of Inspectors General](#), also known as the “Green Book”.⁶ The OIG uses national best practices while conducting its audits, inspections, reviews, and evaluations. Action holders have the authority to accept or reject the OIG’s recommendations. If accepted, they also have the responsibility to ensure the implementation of recommendations.⁷ The OIG executes its duties in a neutral, non-political environment free from interference from any person, group, or organization. To ensure autonomy, the office is administratively, physically, and operationally independent from OPD.

National History

Racial and identity profiling has a long history in the United States. During the post-Reconstruction era, Southern white vigilantes utilized Black Codes and baseless laws to ensure African Americans maintained a second class citizenship.⁸ After Pearl Harbor, federal authorities forced 120,000 men, women, and children of Japanese descent into internment camps.⁹ More recently, African

⁵ Delphine Allen v. City of Oakland led to NSA, which required police reforms in several areas, including internal affairs, supervision of officers, police use of force, training, personnel practices, and community policing.

⁶ The new Green Book version will be effective in July 2024

⁷ The action holder can either be OPD or the Agency, depending on which organization is being audited or reviewed.

⁸ Black Codes and Slaves Codes by Nakia D. Parker -

<https://www.oxfordbibliographies.com/display/document/obo-9780190280024/obo-9780190280024-0083.xml>

⁹ The Japanese American Wartime Incarceration: Examining the Scope of Racial Trauma -

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6354763/>

Americans, Latinos, and others have been vocal about being subjected to unwarranted police scrutiny. The practice of racial profiling has been a thorn in police-community relations, fostering tension where trust and cooperation could feasibly prevail.¹⁰

Profiling extends beyond race as the State of California codified PEN § 13519.4(f) states in part the following:

A peace officer shall not engage in racial or identity profiling.

With PEN § 13519.4(i) stating:

Racial or identity profiling, for purposes of this section, is the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.¹¹

Oakland History

The “Riders Case” was a federal class action lawsuit, where 119 plaintiffs accused four veteran OPD officers of violating their constitutional rights. Their accounts of kidnapping, evidence planting, and excessive use of force, led to administrative and criminal investigations. The lawsuit resulted in the City of Oakland paying a \$10.5 million settlement to the plaintiffs, and the imposition of the NSA. Since its inception, the NSA has required OPD to implement a series of police reforms around internal affairs, supervision of officers, use of force, training, and more. These actions were to be overseen by an external monitoring body, which would help advance OPD’s ability to equitably protect the lives, rights, dignity, and property of Oakland’s community members.

In response to the NSA, OPD introduced DGO M-19: *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing* on November 15, 2004. DGO M-19 intended to safeguard protected classes from discriminatory police practices and showcase OPD’s commitment to holding their officers accountable. Nevertheless, since its adoption, OPD has had other settlements including:

¹⁰ Civil Rights Implications of Post-September 11 Law Enforcement Practices in New York from the New York Advisory Committee to the U.S Commission on Civil Rights - <https://www.usccr.gov/files/pubs/sac/ny0304/ny0304.pdf>

- A [\\$2 million payment](#) to 16 Asian American women in 2008, was based on sexual misconduct complaints against an OPD officer.¹²
- A nearly [\\$1 million payment](#) to a woman, in 2017, based on allegations of sexual exploitation while she was a minor.¹³

Objectives

This report includes six (6) recommendations and three (3) considerations that would strengthen the impact of DGO M-19. If adopted by the Commission, and implemented by OPD, these proposals should help accomplish the following:

1. Align DGO M-19 with national standards for constitutional policing;
2. Fill existing language and policy gaps;
3. Improve consistency of its application; and,
4. Increase OPD transparency and accountability.

Methodology

The OIG reviewed bias-based policing policies from other police departments, focusing primarily on departments in the western region of the United States, and compared their language to the text of DGO M-19. For additional context, the OIG also read dozens of governmental reports, academic publications, and recommendations from notable non-profit institutions. The OIG intentionally sought out differing perspectives regarding biased-based policing, to guarantee a detailed examination of the multiple departmental policies. The following documents and interviews were a part of this review's methodology:

- DGO M-19: *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*
- SO 9042: *New Procedures Regarding Stop Data Collection*
- SO 9101: *Revised Stop Data Collection Procedures*
- The Departmental Manual of Rules
- Administrative Instruction 71: *Anti-Discrimination Non-Harassment Policy*
- Anaheim Police Department Policy 401: *Bias-Based Policing* (2023)
- Bakersfield Police Department Policy 402: *Racial or Bias Based Profiling* (2020)
- Bay Area Rapid Transit Police Department Policy 402: *Bias-Based Policing*
- Long Beach Police Department Policy 3.49: *Fair and Bias-Free Policing* (2023)
- Los Angeles Police Department Policy 345: *Policy Prohibiting Biased Policing* (2020)
- Portland Police Department Directive 344.0: *Bias-Based Policing/Profiling Prohibited* (2020)

¹² Jane Smith Settlement Agreement approved on July 1, 2008 - <https://oakland.legistar.com/LegislationDetail.aspx?ID=747361&GUID=D54084BE-EF04-4A7F-A52E-BCCF43971BEC&Options=ID|Text|&Search=Settlement>

¹³ Claim of Jasmin Abuslin approved on May 25, 2017 - <https://oakland.legistar.com/LegislationDetail.aspx?ID=3057659&GUID=F21D4D70-AD30-4206-BAE4-47968DC7FEB7&Options=&Search=>

- Riverside Police Department Policy 401: *Racial or Bias-Based Policing* (2023)
- San Diego Police Department 401: *Bias-Based Policing* (2016)
- San Francisco Police Department DGO 5.17: *Bias-Free Policing Policy* (2020)
- San Jose Police Department Policy C 1306: *Bias Based Policing* (2021)
- Seattle Police Department Policy 5.1450: *Bias-Free Policing* (2017)
- Seattle Municipal Code Chapter 14.11: *Bias-Free Policing* (2019)
- Dozens of Scholarly Research Papers
- Governmental Reviews and Recommendations
- Interview with the Department of Race and Equity
- Interview with Americans with Disabilities Act Program Division for the City of Oakland¹⁴

Recommendations

Recommendations derived from this analysis are combinations of evidence-based practices and guidance from published research in policing, psychology, criminal justice, and economics. **The recommendations outlined in this report should not be taken as encouragement to avoid enforcing the law. Law enforcement professionals should be trained to be cognizant of biases that may lead to differential actions when encountering vulnerable groups; however, should not be discouraged from enforcing the law in a fair manner.** If a police officer finds that someone has committed a crime, they should follow proper policies, protocols, and laws to address this behavior.

Recommendation 1: Confirm DGO M-19’s language is consistent with PEN § 13519.4.

PEN § 13519.4(e) – Policy states:

“California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This Department policy explicitly prohibits racial profiling and other bias-based policing. It also states the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in making law enforcement decisions and actions.”

To address the practice of racial or identity profiling, the current version of PEN § 13519.4(e) was updated from “Racial Profiling” to read “Racial or Identity Profiling.” OPD has demonstrated the importance of this legislation as it is referenced in the current iteration of DGO M-19, however it is now outdated. Adopting language that reflects the updated version of PEN § 13519.4(e) will further showcase OPD’s commitment to prohibit bias and discriminatory profiling practices.

Additionally, DGO M-19, should also be revised to reflect the “limited circumstances” exceptions outlined above.

¹⁴ One individual is also a Commissioner on the Mayor’s Commission on Persons with Disabilities

Recommendation 2: Include color, gender identity or expression, as well as mental or physical disabilities, as protected characteristics, or categories.

PEN § 13519.4(e) – Policy states:

“Members shall not consider actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in establishing either reasonable suspicion or probable cause or when carrying out law enforcement activities EXCEPT when credible and reliable information links specific suspect descriptions to specific unlawful or suspicious activity... Members seeking one or more specific persons who have been identified or described in part by any of the above listed characteristics may rely on these characteristics in part and only in combination with other appropriate factors.”

PEN § 13519.4(e) was updated in 2015¹⁵ to include “color” as a protected characteristic and replace “gender” with “gender identity or expression” as well as “disability” with “mental or physical disability”. Consequently, the OIG recommends the following:

Recommendation 2A: The inclusion of “color” as a protected characteristic

Going beyond race-based discrimination, the inclusion of “color” as a protected characteristic will provide safeguards to individuals who may be discriminated against because of the color of their skin. Color discrimination – also known as colorism – can occur within a specific race or ethnic group. A Pew Research Center survey indicated that 59 percent of Latine¹⁶ respondents in the United States believe having lighter skin helps their ability to get ahead.¹⁷ Asian and African American communities have expressed similar sentiments about colorism in the United States. With recent research suggesting darker-skinned African Americans have a greater likelihood of being killed by police officers, these sentiments are not unfounded.¹⁸

Recommendation 2B: Replacement of “gender” with “gender identity or expression”

The replacement of “gender” with “gender identity or expression” is intended to extend gender-based protections to members of the transgender and non-binary community. The inclusion of “gender identity or expression” would not only help clarify any ambiguity around gender in DGO M-19, but also outline a community members’ civil protections.

¹⁵ PEN § 13519.4 can be reviewed at

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=13519.4

¹⁶ Latine is a gender-neutral equivalent of the term Latino. It is used in the same way as the term Latinx, but unlike Latinx the word Latine can be conjugated in Spanish. It also more closely matches existing Spanish-language practices of using the ending “-e” as a way to create gender-neutral words.

¹⁷ Latinos Say Skin Color Impacts Opportunity in America and Shapes Daily Life -

<https://www.pewresearch.org/hispanic/2021/11/04/majority-of-latinos-say-skin-color-impacts-opportunity-in-america-and-shapes-daily-life/>

¹⁸ Colorism and the Killing of Unarmed African-Americans By Police -

https://www.theneighborhoodacademy.org/editoruploads/files/Amarie_Hempfield_Final_Paper.pdf

Recommendation 2C: Replacement of “disability” with “mental or physical disability”

The replacement of “disability” with “mental or physical disability” ensures officers understand they must uphold the standards of DGO M-19, regardless of an individual’s mental or physical capacity.

Recommendation 3: Create a glossary that defines each protected category and characteristic.

As currently written, DGO M-19 does not define each protected category and characteristic. Given the diverse backgrounds of officers and Oakland’s community members, terms like “color” or “religion” may have various meanings. To maximize inclusivity and for consistency of application, everyone must share the same definition within the context of bias-based policing policies.

According to data collected by the California Department of Justice, from 2016 to 2021, OPD received 354 complaints of peace officer discrimination, with only one of them being sustained.¹⁹ This 0.28% sustained rate, far lower than the national rate of 14%, could speak to a lack of clarity around how protected categories or characteristics are defined.²⁰ The subsequent impact may also result in the hesitation to hold officers accountable, improper classification of complaints, wrongful closures of complaints, or confusion with language in the policy resulting in the inability to identify evidence and justify findings.

Recommendation 4: Set clear timelines for reporting incidents of profiling, with accountability measures in place for missed deadlines.

Section VIII – Member Responsibilities reads:

Members shall:

- A. not engage in, ignore, or condone racial profiling or other bias-based policing.*
- B. be responsible for knowing and complying with this policy.*
- C. report incidents of racial profiling as defined in this policy.*
- D. be subject to disciplinary action if deemed not in compliance with this order.*

Section VIII requires members to report instances of racial profiling but does not provide a timeline for reporting. The current language allows officers a significant amount of discretion, making it difficult to hold an officer accountable for failing to report a profiling incident. Therefore, Section VIII would greatly benefit from the insertion of a specific timeframe to report observations of potential bias-based policing. For reference, the Seattle Police Department requires all employees who witnessed or are aware of an instance of bias-based policing to report it to a supervisor prior

¹⁹ The classification and category of a complaint is determined by OPD and CPRA.

²⁰ Civilians Complaints Against Police Officers (CCAPO) - https://data-openjustice.doj.ca.gov/sites/default/files/dataset/202208/CCAPO%20Context%20Agency%20and%20Statewide%20Context_081122.pdf

to the end of their work shift.²¹ Nevertheless, the OIG does not have a recommendation on timeframe.

Recommendation 5: Clarify the timeline for the supervisory audits, as required by Section XI – Supervisory Responsibilities.

Section XI – *Supervisory Responsibilities* requires supervisors to “conduct periodic audits to ensure compliance with this order.” Periodic is not a specific timeframe which can lead to a subjective understanding of the reporting timeline. The Department should replace “periodic” audits with an explicit schedule for the audits, which can be completed monthly, quarterly, annually, biannually, or any other degree of regularity. Without a clear schedule, the Department risks both non-compliance and inconsistencies in data collection and analyses.

Recommendation 6: Verify all DGO M-19 requirements align with current OPD operating procedures.

DGO M-19 has not been comprehensively reviewed for several years, so requirements and language may contradict current operating procedures or training in subtle ways. For example, the order twice requests officers to print their name and serial number at the bottom of every Stop-Data Collection Form. However, the Stop-Data Collection Form does not appear to have a location for the officer’s name. DGO M-19 also states that “members shall complete a Field Contact Report (836-314) for each consent search conducted”. However, the Field Contact Report is formally known as a Field Interview Report within OPD. While the OIG attempted to be thorough with this review of DGO M-19, there still may be more of these subtle inconsistencies. The OIG recommends correcting the entire order to prevent future confusion, and ensure its mandates are properly followed and all members are trained appropriately on the revised policy.

Considerations

The OIG has identified three (3) considerations for DGO M-19. Adjustments to these areas of consideration could have a positive effect on transparency and accountability.

Consideration 1: Outline the desired outcomes of DGO M-19 in Section I – Purpose.

A purpose statement should outline the goals and necessity of an organization, project, policy, etc. In its current form, DGO M-19 does not exactly accomplish either of these tasks. Instead of goals it speaks to general actions – particularly a commitment to “providing service and enforcing laws in a fair and equitable manner.” However, it does not offer any clear indication of what non-biased policing is in practice, which could greatly aid desired outcomes. These goals can be as simple as reducing the number of misconduct complaints, or as complex as decreasing racial disparities in traffic stops. Nevertheless, each goal should be Specific, Measurable, Achievable, Relevant and Time-Bound (SMART). Via these SMART goals, OPD will be able to gauge the success or deficiencies of the policy.

²¹ Seattle Police Department Manual of Rules, Section 5.140: Bias-Free Policing - <https://public.powerdms.com/Sea4550/documents/2042894#:~:text=Officers%20may%20not%20use%20discernible%20comments%20concerning%20discernible%20personal%20characteristics.>

In addition to adopting SMART goals, the purpose statement should also provide a clear rationale for the existence of the policy. Currently, DGO M-19 states:

“The Department recognizes that there has been a growing national perception that law enforcement action is too often based on racial stereotypes (“racial profiling”) or other bias-based policing.”

The purpose should be transparent about OPD’s history of racial and identity profiling allegations. For example, the policy could reference the Riders Case or other events that may have contributed to a perception of biased-based policing in Oakland.

Consideration 2: Establish a specific report writing DGO or other policy document that includes SOs 9042 and 9101.

There are two SOs modifying DGO M-19 that are planned incorporations for its next revision:

- SO 9042 – *New Procedures Regarding Stop Data Collection*
- SO 9101 – *Revised Stop Data Collection Procedures*

These SOs consist largely of report-writing guidance. OPD should consider combining the two orders with other relevant information to create a separate DGO or policy. Both orders contain information that may be beneficial to M-19; however, most of the information provided in the orders focus on data collection procedures.

Information on data collection and report writing, while tangentially related to bias-based policing, is important and would be beneficial if contained in a dedicated DGO or policy. Removing reporting information, not relevant to bias-based policing, would make DGO M-19 easier to follow and comprehend. It would also align OPD’s policies with other large western jurisdictions, none of whom include data collection and reporting procedures within their anti-bias policy.

Consideration 3: Review and equitably distribute the roles of the Office of Internal Accountability (formerly OPD’s Office of the Inspector General) and Racial Profiling Program Manager, found in Sections XIII and XIV respectively.

Section XIII requires OPD’s Office of the Inspector General to conduct reviews and audits of OPD’s data collection efforts. Section XIV requires OPD’s Racial Profiling Program Manager to handle tasks related to racial profiling, including grant management, reports, and more.

However, OPD’s Office of the Inspector General has since been renamed to the Office of Internal Accountability (OIA) and OPD does not currently have a dedicated Racial Profiling Program Manager. Instead, the Racial Profiling Program Manager’s tasks are primarily assigned to the Deputy Chief of the Bureau of Risk Management. OPD should reevaluate these roles, as defined, and provide a more transparent allocation of these responsibilities. Furthermore, OPD should also eliminate any tasks that are no longer relevant or required.

Conclusion

Oakland's community members deserve to receive police services free from bias and discrimination. DGO M-19: *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing* must guide OPD officers, including supervisors, on equitably upholding their departmental policies and the law. A clear and consistent interpretation of the policy will assist in decreasing bias externally while interacting with community members, and internally when reviewing bias-based policing complaints. After an extensive review of this important DGO, the OIG has identified several areas of deficiency and risk. As a result, the OIG has proposed six (6) actionable recommendations to revise and update DGO M-19, and three (3) items to consider. The OIG recognizes that revisions to this DGO could impact the manual of rules, disciplinary matrix, training bulletins, and curriculum.

The OIG submitted these recommendations and considerations to the Commission and Department for review, response, and possible action. Enclosed within this document are the Commission and Department's official responses (Attachments 4 and 5). For this review, the OIG has also elected to respond to the Commission and Department's responses (Attachment 6).

APPENDIX

List of Acronyms

Agency	Community Police Review Agency
Commission	Oakland Police Commission
DGO	Departmental General Order
NSA	Negotiated Settlement Agreement
OIA	Office of Internal Accountability
OIG	Office of the Inspector General
OPD	Oakland Police Department
PEN	California Penal Code
SO	Special Order

ATTACHMENTS

ATTACHMENT 1

Departmental General Order M-19:
*Prohibitions Regarding Racial Profiling and
Other Bias-Based Policing*



DEPARTMENTAL
GENERAL
ORDER

New Order
Effective Date
15 Nov 04

M-19

Index as:

Bias-Based Policing
Prohibitions Regarding Racial Profiling
and Other Bias-Based Policing
Racial Profiling

**PROHIBITIONS REGARDING RACIAL PROFILING AND
OTHER BIAS-BASED POLICING**

I. PURPOSE

- A. The purpose of this policy is to reaffirm the Oakland Police Department's commitment to providing service and enforcing laws in a fair and equitable manner, and to establish a relationship with the community based on trust and respect. Whenever our practices are, or are perceived to be, biased, unfair, or disrespectful, we lose public trust and support and diminish our effectiveness.
- B. The Department recognizes that there has been a growing national perception that law enforcement action is too often based on racial stereotypes ("racial profiling") or other bias-based policing – whether it is against African Americans, Latinos, Asians, Middle Easterners, South Asians, or any other race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability. In Oakland, there is concern within our communities that some members may engage in this behavior. Whether individual members agree or not, we, as an organization, must recognize that this concern exists and be responsive to it.
- C. California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This Department policy explicitly prohibits racial profiling and other bias-based policing. It also states the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in making law enforcement decisions and actions.

II. DEFINITION OF RACIAL PROFILING

The use of race, ethnicity, or national origin in determining reasonable suspicion, probable cause or the focus or scope of any police action that directly or indirectly imposes on the freedoms or free movement of any person, unless the use of race, ethnicity, or national origin is used as part of a specific suspect description.

III. POLICY

- A. Investigative detentions, traffic stops, arrests, searches and property seizures by officers shall be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution.
- B. Members shall articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, pedestrian, bicycle, or vehicle stops, arrests, non-consensual searches and property seizures.
- C. Members shall not consider actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in establishing either reasonable suspicion or probable cause or when carrying out law enforcement activities EXCEPT when credible and reliable information links specific suspect descriptions to specific unlawful or suspicious activity.

Members seeking one or more specific persons who have been identified or described in part by any of the above listed characteristics may rely on these characteristics in part and only in combination with other appropriate factors.

IV. CONSENT SEARCHES

- A. A consent search refers to searches conducted not based on probable cause, incident to arrest or pursuant to a search warrant, but based on permission granted from the person being searched.
- B. Consent searches are permissible law enforcement tools; however, their use shall not be:

1. Arbitrary. In other words, the request to conduct a consent search must be reasonable and members should be able to articulate the suspicion that formed the basis for the request.
 2. Based on actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability.
- C. Members shall complete a Field Contact Report (836-314) for each consent search conducted articulating the reason for the search.
- D. Pursuant to Report Writing Manual Insert R-2, members shall complete a Stop-Data Collection Form (Scantron) for each consent search conducted.
- E. Members shall advise individuals of their right to refuse a consent search.

V. CONDUCTING STOPS

In conducting pedestrian, bicycle, or vehicle stops, members shall:

- A. be courteous, respectful, polite and professional.
- B. explain the reason for the stop while asking for identification, unless impractical.
- C. identify yourself.
- D. ensure the length of the detention is no longer than necessary to take appropriate action for the known or suspected offense, and explain the reason for any delays.
- E. answer questions the person may have regarding the stop and explain the disposition of the stop.
- F. apologize for the inconvenience when appropriate.
- G. if asked, provide the procedures for filing a complaint about police services or conduct outlined in DGO M-3 COMPLAINTS AGAINST DEPARTMENTAL PERSONNEL OR PROCEDURES.

VI. EXAMPLES OF RACIAL PROFILING

A. Examples of racial profiling include but are not limited to the following:

1. Example #1

While on patrol an officer observes a black male driving a new, expensive Mercedes Benz in a low-income neighborhood. The vehicle is not listed on the “hot sheet” nor is it entered in the Stolen Vehicle System (SVS). The officer decides to stop the vehicle to further investigate because he feels the car may be stolen because it appears too expensive for the driver and the neighborhood.

Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possess a specific model of vehicle is prohibited.

In this particular example, the officer had neither reasonable suspicion nor probable cause to detain the vehicle. Absent additional information or observations that would lead a “reasonable” officer to believe the vehicle was stolen, such as a smashed window or signs that the vehicle was hot-wired, the officer’s stop constitutes racial profiling.

2. Example #2

An officer is assigned to a predominately “white” residential neighborhood. While on patrol, the officer observes a Hispanic male driving a truck late at night. The officer knows most of the residents in the area and does not recognize the Hispanic driver. Recently there have been burglaries in that area. Based on the fact that there have been burglaries in the area, and the driver is Hispanic and the residents in the area are white, the officer stops the vehicle to further investigate.

Detaining the driver of a vehicle based on the determination a person of that race, ethnicity or national origin does not belong in a particular part of town constitutes racial profiling and is prohibited.

In this particular example, the officer’s knowledge of the residents and the driver’s race, even though the race differs from most of the residents in that area, does not provide reasonable suspicion. The

fact that there have been burglaries in the area may raise an officer's suspicion to vehicles driving late at night; however, even when this information is considered with the other factors discussed, it is an insufficient basis for a detention.

VII. STOP-DATA COLLECTION

Pursuant to Department Report Writing Manual Insert R-2, members shall:

- A. complete a Stop-Data Collection Form for every vehicle, walking, and bicycle stop conducted during their shift. Members shall also complete a Stop-Data Collection Form for every consent search conducted.
- B. print his/her name and serial number at the bottom of every Stop-Data Collection Form completed.
- C. submit completed Stop-Data Collection forms to their assigned supervisor or, in the absence of the assigned supervisor, an available field sergeant or Watch Commander for review and approval.
- D. deposit all completed (and approved) forms in the report writing receptacle at the end of their shift.

VIII. MEMBER RESPONSIBILITIES

Members shall:

- A. not engage in, ignore, or condone racial profiling or other bias-based policing.
- B. be responsible for knowing and complying with this policy.
- C. report incidents of racial profiling as defined in this policy.
- D. be subject to disciplinary action if deemed not in compliance with this order.

IX. COMPLAINTS

Complaints of racial profiling and other bias-based policing against members shall be:

- A. considered complaints of discrimination (Class 1 violation as defined in DGO M-3) and, as such, immediately forwarded to the Internal Affairs Department.
- B. immediately referred to the member's supervisor, or if the officer's supervisor is not available, to the Watch Commander.

X. TRAINING

- A. Pursuant to California Penal Code Section 13519.4, each member shall:
 - 1. attend POST racial profiling training; and
 - 2. complete an approved refresher course every five (5) years, or sooner if deemed necessary, in order to keep current with changing racial and cultural trends.
- B. The Racial Profiling Program Manager shall ensure line-up training on racial profiling and this policy is provided to sworn personnel at least once annually. This training may also be provided to non-sworn personnel.

XI. SUPERVISORY RESPONSIBILITIES

Supervisors shall:

- A. not engage in, ignore, or condone racial profiling or other bias-based policing.
- B. be responsible for knowing and complying with this policy.
- C. ensure that subordinates under their command know and understand the content and application of this policy.
- D. periodically monitor subordinates under their supervision to ensure compliance with this policy.
- E. review all forms submitted by members to ensure the forms are completed in accordance with this order and Report Writing Manual Insert R-2.

- F. print his/her name and serial number in the appropriate boxes signifying the form has been reviewed and approved, and return the form to the appropriate member.
- G. conduct periodic audits to ensure compliance with this order.

Supervisors and commanders who fail to comply with this order shall be subject to disciplinary action.

If it is determined that members assigned to a supervisor and/or commander failed to comply with this order and the supervisor and/or commander knew of said violation, or should have reasonably known, the supervisors and/or commander shall be subject to disciplinary action.

XII. BUREAU OF FIELD OPERATIONS

The Bureau of Field Operations (BFO) is responsible for data collection processing. Accordingly, BFO shall:

- A. ensure Stop-Data Collection Forms are available in the Patrol Line-up Room.
- B. enter the Stop-Data Collection Forms into the SCANTRON system within five working days of receipt.
- C. retain completed and scanned forms for period of not less than three years unless otherwise instructed by the Chief of Police.
- D. conduct periodic audits to ensure members comply with the provisions of this order and RWM Insert R-2.

XIII. OFFICE OF INSPECTOR GENERAL (OIG)

Pursuant to the provisions of DGO N-12, Departmental Audits and Inspections, the OIG shall conduct annual reviews and audits of the Department's data collection efforts to ensure compliance with the Settlement Agreement. The OIG shall report all findings to the Chief of Police and the Program Manager.

XIV. RACIAL PROFILING PROGRAM MANAGER

A. The Racial Profiling Program Manager is responsible for the following:

1. Racial profiling grant management;
2. Coordination of stop-data collection and analysis;
3. Completion of all reports pertaining to racial profiling; and
4. Coordination with the OIG to ensure compliance with the Settlement Agreement.

B. The Racial Profiling Program Manager shall:

1. 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.
2. periodically meet with the Oakland Racial Profiling Task Force, which is comprised of representatives of the following organizations:
 - a. Oakland Police Officers' Association (OPOA);
 - b. Citizens' Police Review Board (CPRB);
 - c. American Civil Liberties Union (ACLU);
 - d. National Association for the Advancement of Colored People (NAACP); and
 - e. People United for a Better Oakland (PUEBLO).

By order of

Richard L. Word
Chief of Police

Date Signed: 26 Oct 04

ATTACHMENT 2

Special Order 9042:
New Procedures Regarding Stop Data Collection

OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

SPECIAL ORDER NO. 9042

TO: All Personnel

SUBJECT: New Procedures Regarding Stop Data Collection

EFFECTIVE DATE: 11 Jun 10

TERMINATION: Upon Revision of DGO M-19, RACIAL PROFILING
(Rev. 15 Nov 04) and RWM Insert R-2, COMPLETING THE
STOP DATA COLLECTION FORM (Rev. 15 Jan 10)

The purpose of this order is to revise Department policy and procedure to ensure that all investigative police encounters with the public are properly documented and that required information is collected and entered into the Field Based Reporting (FBR) and Computer Aided Dispatch (CAD) systems. The provisions of this Special Order apply to all members including the Traffic Section, Crime Reduction Teams and Violence Suppression Teams.

Effective immediately, Department General Order M-19, RACIAL PROFILING and RWM Insert R-2 are revised as indicated.

New DGO M-19, Part II, B

II. DEFINITION OF RACIAL PROFILING

B. Investigative Encounter

An investigative encounter is any police encounter with a member of the public when the officer contacts a person to confirm or dispel a suspicion that the person may be involved in criminal activity. This includes detentions, vehicle stops, walking stops and consensual encounters (contacts).

Revised DGO M-19, Part III, A and RWM Insert R-2, Introduction

III. POLICY

A. When FBR Stop Data is Collected

Members shall complete an electronic **FBR 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. The nature of the contact and the intent of the member is relevant in the determination to complete an FC and Stop Data Collection Form (in FBR). When in doubt, members should complete an FC and Stop Data Form.

1. The following non-discretionary arrests do not require collection of stop data. The purpose of collecting data is to examine discretionary police encounters with the public. Non-discretionary arrests are limited to arrests where:
 - a The member receives the arrest from private person (citizen's arrest);
 - b The member receives the arrest from a member of a law enforcement agency (BART, ACSO, Parole, etc.);
 - c Arrests where the officer is directed to the arrested person by a credible witness, complainant, or other person who is on the scene of the arrest;
 - d Arrests where the officer is directed to the arrested person by the Communications Section or a law enforcement officer AND the physical description, location (example: proximity to crime scene or last known location), timeliness and criminal activity sufficiently and reasonably identifies the arrestee to the exclusion of anyone else;

- e Self-initiated arrests where the arrested person is known to the arresting officer and known to be wanted for a specific offense. Persons are “known” based on photographs, previous encounters, biological data and physical descriptions sufficiently identifying the arrestee, or the arrestee self-identified;
 - f Arrests resulting from an arrestee’s unsolicited surrender; and
 - g Arrests incident to a search warrant service.
2. Mere contact with a person does not require the completion of a form. (e.g., an officer contacts a person to exchange greetings or provide assistance answering questions.)
 3. Members shall document the reason(s) whenever, following an arrest, stop data is not collected, in the Consolidated Arrest Report (CAR).

IV. New DGO M-19, Part III, D-K

- D. Members shall complete all Field Contact (FC) Reports in FBR by the end of the reporting member’s shift via the MDT or desk top computer. Hard copy or paper FCs are no longer authorized, except when the FBR system is not operating, in which case paper FCs and paper Stop Data forms shall be completed and submitted to a supervisor for review and delayed data entry by office staff if the system is not operational by the end of the reporting member’s shift.
- E. Members shall complete an FBR Field Contact Report for each investigative encounter and consent search not resulting in an arrest documenting the reason for the encounter or search. Each FBR Field Contact Report shall also contain the Computer Aided Dispatch (CAD) incident number and RD number if one is assigned.
- F. The collection of Stop Data information attached to the Notice to Appear (NTA) is no longer required. However, the citation number from the NTA shall be entered into the RD Number field in the FBR Stop Data Collection Form. Members shall enter the number “0” at the beginning of the RD number field when a citation number is entered.

NOTE: If a "0" is not entered, the FBR system will not accept the citation number which requires an eight character entry.

- G. Members shall enter the entire CAD incident number into the FBR Stop Data Collection Form.
- H. Members shall advise the Communication Section of any investigative encounter in the field including a detention, arrest, or a consensual encounter to confirm or dispel a suspicion that the person may be involved in criminal activity. This requirement includes all walking stops, car stops, bicycle stops and consensual encounters 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.
- I. Members conducting any investigative encounter shall provide the Communications Section via the radio with the reason for the encounter at the initiation of the encounter (red light violation, 11500, 459 suspect, truant, 5150, 647f, loitering, etc).
- J. Members shall document **ALL** investigative encounters in the Data Driven Approaches to Crime and Traffic Safety (DDACTS) Activity Summary Report (TF3220) in the "Self- Initiated Activity Record" including the CAD incident number, and, if applicable, the RD number. Self-initiated activity shall be identified by adding the letters "SI" in the "Type" column of the list.
- K. Any member failing to comply with this order shall be subject to disciplinary action.

XI. SUPERVISORY AND COMMANDER RESPONSIBILITIES

New DGO M-19, Part XI, H-O

Supervisors shall:

- H. Ensure the appropriate report (CAR, FBR FC, FBR SDF, citation, Assignment Report, and when FBR is not operating, paper SDF and paper FC) is completed for every investigative encounter listed on the DDACTS Activity Summary Report (TF-3220) and that, when required, an FBR Stop Data Form is completed, prior to the reporting member's shift ends.

- I. Review and approve all FBR Stop Data Collection Forms to ensure information fields are filled out correctly.
- J. Ensure Field Contact Reports completed in the FBR system include the CAD incident number or RD number, and there is a corresponding completed FBR Stop Data Collection Form.
- K. Review all handwritten SDF and handwritten Field Contact Reports prior to the end of his or her tour of duty to ensure information fields are filled out correctly (in the event FBR is not operational).
- L. Review and approve all DDACTS Activity Summary Reports (TF-3220) to ensure information fields are filled out completely (including CAD incident and RD numbers) and shall legibly write in his/her serial number on the first page directly above the word "AREA" to document that the Activity Summary Report was reviewed and is legible and complete.

Supervisors and commanders shall:

- M. Comply and ensure subordinate personnel comply with the provisions of this order.
- N. Be subject to disciplinary action for failure to comply with this order.
- O. Be subject to disciplinary action if it is determined that members assigned to a supervisor and/or commander failed to comply with this order and the supervisor and/or commander knew of said violation, or should have reasonably known.

By order of

Anthony W. Batts
Chief of Police

Date Signed: _____

ATTACHMENT 3

Special Order 9101:
Revised Stop Data Collection Procedures

OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

SPECIAL ORDER NO. 9101

TO: All Personnel

SUBJECT: Revised Stop Data Collection Procedures

EFFECTIVE DATE: 1 Mar 13

TERMINATION: Upon Revision of DGO M-19, RACIAL PROFILING
(Rev. 15 Nov 04)

The purpose of this Special Order is to revise Department policy and procedure on Stop Data collection.

Department General Order M-19, RACIAL PROFILING is revised as indicated.

Revised DGO M-19, Part II, III, and IV

II. DEFINITIONS

A. Racial Profiling

The use of race, ethnicity, or national origin in determining reasonable suspicion, probable cause or the focus or scope of any police action that directly or indirectly imposes on the freedoms or free movement of any person, unless the use of race, ethnicity, or national origin is used as part of a specific suspect description.

B. Consensual Encounter

A police encounter in which officers do not exert any authority, use any force, and the subject voluntary agrees to stop and answer questions or otherwise assist officers in their investigation. Because these encounters are, by definition, consensual, a subject may refuse to talk with officers, refuse to identify themselves, or otherwise refuse to cooperate.

C. Detention

A detention is a temporary seizure of a person to determine if the person seized is involved in criminal activity. The seizure must be supported by a reasonable suspicion to believe criminal activity may be afoot and the person seized is possibly involved with that criminal activity. Unlike consensual encounters, a person subject to a detention is not free to leave.

OAKLAND POLICE DEPARTMENT
Special Order 9101

D. Arrest

An arrest must be based on probable cause and requires physical force or, where that is absent, submission to the assertion of authority by a peace officer.

III. POLICY

A. A separate Field Interview/Stop Data Report (FI/SDR) is required for all self-initiated encounters involving person(s) subject to a(n):

- i. Detention;
- ii. Arrest; or
- iii. Encounters resulting in a search or request to search.

Self-initiated encounters are encounters that are not related to any radio dispatched call for service, citizen flag-down, or encounters conducted pursuant to the service of a search warrant. For the purpose of this policy, a radio dispatched call for service is any CAD-initiated service call by a citizen to Oakland Police Communications.

B. An FI or Crime Report shall be completed on all radio dispatched encounters involving person(s) subject to a(n):

- i. Detention; or
- ii. Arrest

For radio dispatched encounters, officers may complete a single FI or Crime Report documenting all persons subject to these encounters. When the FI form is opened, officers shall select "No" under the "Stop Data Required" field and enter "Dispatched" or "Citizen Flag-Down" under the "Reason for No Stop Data" field. Officers shall also enter "NSDF" as one of the CAD disposition codes.

C. For all encounters directed by another officer, it is the responsibility of the officer executing the encounter to complete an FI or Crime Report, and, if applicable a SDR.

D. For planned operations, the operations commander, with the approval of his or her Deputy Chief of Police, may temporarily suspend FI/SDR requirements. The operations commander shall document the temporary suspension in the operations plan.

E. An FI or Crime Report, and, if applicable, an SDR is not needed for a passenger(s) of a vehicle who is merely detained for officer safety reasons and the interaction is

OAKLAND POLICE DEPARTMENT
Special Order 9101

not intrusive. However, asking the passenger(s) if he/she is on parole or probation; asking if he/she has a criminal history; or asking if he/she has anything illegal on their person requires the completion of an FI/Stop Data Report. Merely asking for identification does not require the completion of an SDR.

- F. An FI or Crime Report, and, if applicable, an SDR is not needed for a person(s) subject of a self-initiated consensual encounter. However, asking if he/she is on parole or probation; asking if he/she has a criminal history; or asking if he/she has anything illegal on their person requires the completion of an FI/Stop Data Report. If the consensual encounter is elevated to a detention or arrest, officers shall complete an SDR. Merely asking for identification does not require the completion of an SDR.
- G. Officers shall document in their FI or Crime Report:
- i. The reason for encounter, and, if necessary,
 - ii. The reasonable suspicion or probable cause for the stop.

By order of

Howard Jordan
Chief of Police

Date Signed: _____

ATTACHMENT 4

Oakland Police Commission's Official Response

CITY OF OAKLAND



POLICE COMMISSION

250 FRANK H. OGAWA PLAZA, SUITE 6302 • OAKLAND, CALIFORNIA 94612

March 25, 2024

Ms. Michelle Phillips
Office of the Inspector General
250 Frank Ogawa Plaza, Suite 6306
Oakland, California 94612

Re: Oakland Police Commission's Response to OIG Policy Review DGOM-19

Greetings IG Phillips,

The OPC provided timely comments, to which the OIG responded. Therefore, we agree to concur and proceed with OPD's response.

Best regards,

Marsha Carpenter Peterson

Chair Peterson
Marsha Carpenter Peterson
Chair, Oakland Police Commission
250 Frank Ogawa Plaza
Oakland, CA 94612
MPeterson@oaklandcommission.org

ATTACHMENT 5

Oakland Police Department's Official Response



INTER OFFICE MEMORANDUM

TO: Office of the Inspector General **FROM:** Chief Darren Allison
Oakland Police Department

SUBJECT: Plan for Implementation of **DATE:** 25 Mar 24
Recommendations from the
Review of Departmental
General Order M-19:
Prohibitions Regarding Racial
Profiling and Other Bias-Based
Policing

Chief of Police Approval

Date:

3/26/24

The purpose of this memorandum is to outline the Oakland Police Department's (OPD) plan to implement the changes recommended by the Office of the Inspector General (OIG) following the review of the Departmental General Order M-19: *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*. This document serves as a commitment to enhance our policies and practices, strengthening community trust and ensuring equitable enforcement of laws.

We aim to build a foundation for equitable and just law enforcement that respects the dignity and rights of all individuals, free from biases. This commitment is a critical step toward healing and progress, ensuring that our law enforcement practices reflect the values of fairness, justice, and respect for all members of our community.

Recommendation 1: Align DGO M-19's Language with California Penal Code Section 13519.4 (PEN § 13519.4)

Plan: The OPD will review and revise the language in DGO M-19 to ensure full consistency with PEN § 13519.4, focusing on explicit prohibitions against racial or identity profiling. This will involve collaborating with legal counsel to update all references and ensure they reflect current legal standards.

Recommendation 2: Include Additional Protected Characteristics

Plan:

- 2A: The OPD will amend DGO M-19 to include "color" as a protected characteristic, acknowledging the nuanced differences between race and color and their impacts on policing.
- 2B: The OPD will replace "gender" with "gender identity or expression" in DGO M-19, extending protections to encompass all gender identities and expressions.
- 2C: The OPD will specify "mental or physical disability" to ensure comprehensive protection against bias-based policing practices.

Recommendation 3: Create a Glossary for Protected Categories

Plan: The OPD will develop a comprehensive glossary defining each protected category and characteristic mentioned in DGO M-19. This glossary will be included in the order and used in training materials to ensure a common understanding among all personnel.

Recommendation 4: Set Clear Timelines for Reporting Incidents of Profiling

Plan: The OPD will establish specific timelines for reporting profiling incidents, incorporating accountability measures for adherence. This will be documented within DGO M-19 and included in training sessions to ensure all members know these requirements.

Recommendation 5: Clarify the Timeline for Supervisory Audits

Plan: The OPD will define a clear, regular schedule for supervisory audits to ensure compliance with DGO M-19 and remove the ambiguity of "periodic" audits. This schedule will be communicated and trained to all supervisors and commanders.

Recommendation 6: Ensure DGO M-19 Requirements Align with Current Operating Procedures

Plan: The OPD will comprehensively review DGO M-19 and current operating procedures to identify and rectify discrepancies or outdated practices. This review will also involve consultation with members to ensure practicality and effectiveness.

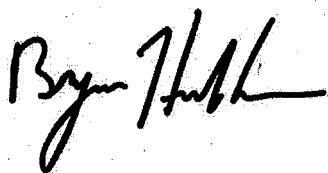
Implementation and Oversight

The Bureau of Risk Management, in conjunction with the Training Division and other relevant stakeholders, will oversee the implementation of these recommendations. This will include developing a cultural accountability statement in the policy, creating new training modules, updating existing procedures, and establishing a monitoring mechanism to ensure compliance with and effectiveness of the changes. Regular reports will be provided to the Office of the Inspector General to maintain transparency and accountability.

Conclusion:

The Oakland Police Department is fully committed to implementing the recommendations provided by the Office of the Inspector General. We understand the importance of continuous improvement in our policies and practices to uphold the rights and dignity of the community we serve. This plan represents our dedication to taking meaningful steps toward eliminating racial profiling and bias-based policing within our department.

Prepared by:



Bryan Hubbard
Lieutenant of Police
Office of Internal Accountability

ATTACHMENT 6

Office of the Inspector General's Follow-Up Response



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA

Tuesday, April 2, 2024

Chair Peterson & Interim Chief Allison,

Thank you for responding to the Office of the Inspector General's (OIG's) Policy Review of Departmental General Order (DGO) M-19: *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*.

As key action holders in the adoption and implementation of the OIG's policy recommendations, we appreciate your continued support in enhancing the practices and procedures of the Oakland Police Department ("Department").

The OIG would like to particularly note the Department going beyond the six (6) recommendations provided and committing to establish a cultural accountability statement as well as new training modules. Noting that their Bureau of Risk Management, in conjunction with the Training Division, Commission, and other key stakeholders, will oversee their implementation of these recommendations, the OIG looks forward to receiving the Department's regular updates.

Sincerely,

Michelle N. Phillips, Inspector General
City of Oakland, Office of the Inspector General



Follow the #OaklandOIG on social media:



Search **@OaklandOIG** on Instagram & Twitter,
“City of Oakland, Office of the Inspector General” on LinkedIn & Facebook



Newsletter

Scan the QR code to sign-up for the OIG mailing list or visit
tinyurl.com/OIGMailingList.



Email oig@oaklandca.gov



Call (510) 238-2088



Visit <https://www.oaklandca.gov/departments/inspector-general>

Policy Review of Departmental General Order N-09: Police Grants

Tuesday, May 7, 2024



CITY OF OAKLAND
OFFICE OF THE INSPECTOR GENERAL

250 Frank H. Ogawa Plaza • Oakland, CA 94612
Michelle N. Phillips, Inspector General



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA

Tuesday, May 7, 2024

Dear Members of the Public,

The Office of the Inspector General (OIG), was created by legislation in 2020 to strengthen Oakland's police reform efforts, in part, granting the OIG the authority to audit, monitor and review, Oakland Police Department ("Department") policies, practices, and procedures during and after federal oversight. This oversight includes the OIG reviewing current policies and procedures in an effort to identify potential areas of improvement, gaps, or deficiencies.

After media outlets reported that the City of Oakland did not submit its application for the State of California's [Organized Retail Theft Prevention Grant Program](#) (ORTPGP) in September 2023, the OIG self-initiated this review. The purpose of the policy review of Departmental General Order (DGO) N-09: *Police Grants* is to identify potential Department specific recommendations that could clarify the policy and strengthen accountability. The OIG policy review is intended to supplement the City Auditor Office's performance audit of the incident, as this policy review is Department specific. Following its comprehensive review of DGO N-09, the Office of the Inspector General (OIG) identified certain deficiencies, and recommends the Department establish a Grants Management Policies and Procedures (P&P) Manual that includes the following:

1. Specific roles and responsibilities of the Command Staff, Grants Administrator, Grants Project Manager, and Subject Matter Expert in the grant application process.
2. Create a clear process and timeline for the appointment of the Grant Project Manager(s) and Subject Matter Expert(s).
3. Create internal deadlines for key milestones in the grant submission process, that is in advance of any official deadlines.

The OIG suggests the Department consider the following items related to the enclosed recommendations:

1. In consultation with the appropriate stakeholders, assign a Deputy Chief or Deputy Director as the Grant Project Director.
2. Within the Grants Management P&P manual, include processes for the identification and application of grants.

Purpose of DGO N-09: Police Grants

The purpose of DGO N-09 is to set forth Departmental policy and procedures regarding grant applications and awards, and responsibilities for program and fiscal control.



Background

In California, there is a widespread sentiment that crime is rapidly rising, especially retail theft. A 2022 poll conducted by the University of California Berkeley¹ suggested a majority of registered California voters believed crime increased between 2021 and 2022. With almost a third of non-violent crimes going unreported to law enforcement agencies, per the Bureau of Justice Statistics (BJS) estimates, there is limited data to analyze.² Nevertheless, in the year examined the BJS data suggests an upward trend in after-hours commercial theft in the State of California. The data also notes that California's Commercial burglary³ is up 15%, since 2014.⁴ As a result, the California Budget Act of 2022 set aside \$85 million in competitive grant funding for anti-theft measures, which was later increased to more than \$242 million.⁵ This funding was available on a competitive basis, with 117 law enforcement agencies in California applying and ultimately 38 being awarded funding. The ORTPGP Request for Proposal was released on April 14, 2023.⁶ In April 2023, the City of Oakland expressed interest in applying for the ORTPGP, as outlined in emails obtained via the Freedom of Information Act.

Methodology

To get a better understanding of the City of Oakland's grant requirements, the OIG reviewed Administrative Instruction 1050 (AI 1050): *Managing Grant Funds Project*. It should be noted that AI 1050 appears to not have been updated since 2001. The OIG also attempted to identify law enforcement specific grants management policies for jurisdictions in California, particularly those awarded ORTPGP funds. After conducting its research, the OIG was only able to find policies for two of the 38 grant awardees: Los Angeles County Sheriff's Department (LASD) and Sacramento County Sheriff's Department (SCSD). The OIG also identified two additional law enforcement agencies with policies pertinent to its review: Seattle Police Department (SPD) and Atlanta Police Department (APD). In summary, the documents reviewed are the following:

- SPD Policy 1.050 – Grants
- APD Standard Operating Procedure 6070 – Grants Management
- LCSD Manual of Policy and Procedures Volume 2 Chapter 7 – Administrative and Training Division

¹ DiCamillo, M. (2022). *Release #2022-01: Festering problems plaguing the state are weighing down Newsom's standing with voters, as concerns about Covid recede* (Berkeley IGS Poll). Berkeley Institute of Governmental Studies. <https://escholarship.org/uc/item/6ft4h17c>

²Thompson, A., & Tapp, S. N. (2023). *Criminal Victimization, 2022*. US Department of Justice.

³ California Penal Code Section 459.5 defines commercial burglary as entering a commercial establishment before or after business hours with the intent of committing larceny.

⁴ Lofstrom, M. (2024, January 25). *Testimony: Retail Theft in California*. Public Policy Institute of California. <https://www.ppic.org/blog/testimony-retail-theft-in-california/>

⁵ Budget Act of 2022., Senate Bill 154, California Senate (2022). https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB154

⁶ *Organized Retail Theft Prevention RFP*. (2023, April 14). <https://www.bscc.ca.gov/wp-content/uploads/Organized-Retail-Theft-Prevention-Request-for-Proposal-Instruction-Packet.-Final.pdf>



- SCSD General Order 1-26 – Grant Funding

Policy Review and Methodology Limitations

The OIG does not have jurisdiction to review any other city departments that were involved in ORTPGP process. This policy review and analysis focuses exclusively on the DGO N-09, which was established in 2007. While it does not appear DGO N-09 has been updated since then, the Department may have incorporated procedures or practices that were not codified in this policy. The OIG conducted this review at the same time the City Auditor’s Office conducted its performance audit. [City Auditor’s full performance audit](#) of the ORTPGP, which was publicly released April 30, 2024, yielded several findings and recommendations.

Additionally, the OIG discovered there were limited grants management policies specific to a law enforcement agencies. However, there are several citywide grants management policies that govern a centralized procedure.

Finally, the OIG did not conduct any detailed interviews during this review as the focus was to analyze the written policy and identify any gaps.

Recommendations and Consideration

With its limited scope, the OIG identified three recommendations and two considerations. The OIG believes these recommendations are best implemented via the creation of a Grants Management P&P Manual.

Recommendation 1: Specify the roles and responsibilities of the Command Staff, Grants Administrator, Grants Project Manager, and Subject Matter Expert in the grant application process.

Greater clarity is needed regarding the delegation of roles when submitting a grant application. Several designations are referenced within DGO N-09, but it is unclear what tasks or duties those positions are responsible for during the grant’s application process. The absence of clear guidelines and internal controls leaves subjectivity in the process and could limit culpability.

Recommendation 2: Create a clear process and timeline for the appointment of a Grants Project Manager(s) and Subject Matter Expert(s).

Defined roles will have a limited impact if the Department is does not provide timelines for the appointment of Grants Project Managers and Subject Matter Expert. In its review, the OIG found that it took nearly a month to appoint a Grants Project Manager for the ORTPGP application. Additionally, it took another two weeks from that appointment to select a Subject Matter Expert. By establishing appointment timelines (i.e., a Grant Project Manager must be selected within a week of the command structure’s expressed desire to apply for the grant) the Department can



ensure that the Grants Project Manager and Subject Matter Expert are present from the initiation of the grant's application process. With these individuals primarily responsible for the completion of the grant, it is imperative that they are involved in every step of the process.

Recommendation 3: Create internal deadlines for key milestones in the grant submission process, that is in advance of any official deadlines.

While the lack of defined roles and delays in appointments may hinder the grants application process, even a flawless policy risks failure at the hands of unexpected events. To mitigate unforeseen circumstances, in future grant opportunities, the OIG recommends the Department institute internal deadlines for grant submissions. By applying for grants earlier, the Department may be able to correct any errors that may exist at submission prior the grant's final deadline.

Consideration 1: In consultation with the appropriate stakeholders, assign a Deputy Chief or Deputy Director as the Grant Project Director.

To help support the operations of the Department, the Chief of Police has a command staff that can fulfill important functions in their absence. Grants management can be a tedious endeavor with several deadlines, administrative responsibilities, and deliverables as well as milestones. A Deputy Chief or Deputy Director could have the ability to monitor the process more closely with the assistance of the Department's Fiscal Services Division Manager.

Consideration 2: Within the Grants Management P&P Manual, be sure to include processes for the identification and application of grants.

Grants are highly diverse, with each grantor having their own process for grants outreach and application. No singular process is sufficient in terms of identifying and applying for all grants for which the Department may be eligible. However, there are likely several major grantors that regularly release grants that the Department has interest in. The inclusion of processes for the identification of and application to grants from these major funders within a new grants management P&P may be beneficial.

Conclusion

The OIG's policy review of DGO N-09 yielded the following recommendations:

1. Specify the roles of the Command Staff, Grants Coordinator, Grants Project Manager, and Subject Matter Expert in the grant's application process.
2. The creation of a clear process and timeline for the appointment of a Grants Project Manager(s) and Subject Matter Expert(s).
3. The creation of an internal grant submission deadline in advance of any formal grant submission deadline.



The OIG suggests the Department also consider:

1. In consultation with the appropriate stakeholders, assign a Deputy Chief or Deputy Director as the Grant Project Director.
2. Within the Grants Management P&P Manual, include processes for the identification and application of grants.

The grants process is long and arduous, with many potential failure points. A clear and thorough policy is a tool to minimize missteps. Several City of Oakland staff members within the Oakland Police Department and Economic and Workforce Development Department worked diligently on the ORTPGP application, following relevant policies along the way, but unfortunately failed to submit the application prior to its closing date, and so missed the opportunity to be considered for the ORTPGP grant. The OIG hopes that the enclosed recommendations will help optimize the City of Oakland's ability to secure public safety grants as we move the city forward.

Sincerely,

Michelle N. Phillips, Inspector General
City of Oakland, Office of the Inspector General

**OAKLAND POLICE
DEPARTMENT'S RESPONSE**



MEMORANDUM

TO: Michelle Phillips
Inspector General
Office of the Inspector General

FROM: Darren Allison
Interim Chief of Police
Oakland Police Department

SUBJECT: Policy Review of Departmental
General Order N-09: Police Grants

DATE: April 30, 2024

The purpose of this memorandum is to respond to the Office of Inspector General's (OIG) recommendation to establish a Grants Management Policies and Procedures (P&P) Manual with clearly delineated roles and responsibilities, a clear process and timeline for appointing employees to key positions that impact the grant process and implementing internal deadlines for important milestones in the grant submission process.

EXECUTIVE SUMMARY

This memo details the Department's response to the OIG's report on the policy review of Departmental General Order (DGO) N-09: Police Grants and the recommendations outlined in the report.

BACKGROUND

In September 2023, media outlets reported that the City of Oakland did not submit its application for the State of California's Organized Retail Theft Prevention Grant Program (ORTPGP). As a result of the missed opportunity and to supplement a performance audit conducted by the City Auditor's Office, the OIG reviewed DGO N-09: Police Grants for potential OPD-specific findings and policy recommendations.

ANALYSIS

DGO N-09: Police Grants, which establishes departmental policy and procedures regarding grant applications, awards, and responsibilities for program and fiscal control, was last updated in September 2007. This policy outlines the process for staff assigned to the Fiscal Services Division and respective commanders/managers to complete the grant application process. However, the policy does not accurately reflect changes to the grant process that have occurred since 2007 or accurately define the roles of those involved in the grant preparation process, including the Grants Coordinator and Subject Matter Experts (SMEs).

OPD recognizes the importance of clearly defining and codifying the specific roles and responsibilities of each person involved in preparing and submitting grants. Given the evolution of technology and roles within OPD since DGO N-09 was last updated and recognizing that some of the processes outlined in the policy are outdated, OPD agrees that updating the policy

is a priority and concurs with the recommendations outlined in the report, which include the following:

1. Specific roles and responsibilities of the Command Staff, Grants Administrator, Grants Project Manager, and Subject Matter Expert in the grant application process.
2. A clear process and timeline for the appointment of the Grant Project Manager(s) and Subject Matter Expert(s).
3. Internal deadlines for key milestones in the grant submission process before official deadlines.

In addition to specific recommendations, the OIG has suggested the following for OPD's consideration:

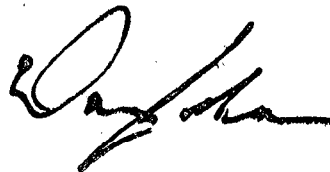
1. In consultation with the appropriate stakeholders, assign a Deputy Chief or Deputy Director as the Grant Project Director.
2. Within the Grants Management P&P manual, include processes for the identification and application of grants.

The Department agrees that a high-ranking departmental representative should serve as the Grant Project Director. However, it believes this role can be filled by a Captain or above, or a professional staff equivalent, not exclusively by a member of the Executive Team. Captains and senior managers are responsible for overseeing divisions, developing and executing organizational strategies, and offering guidance for their respective areas of control. Given the authority granted to Captains and professional staff managers, the Department believes they are sufficiently equipped to fulfill the role of Grant Project Director.

The Department agrees that the Grants Management P&P Manual should include processes for identifying and applying for grants. This update will be included in the manual.

The Fiscal Services Division Manager will collaborate with the Policy and Publications (P&P) Unit to revise DGO N-09. However, given the current workload and priorities, this policy update must be prioritized among the 50 other policies currently in process. It is estimated that it will take approximately six months to one year to complete this policy.

For questions regarding this report, please contact Deputy Director Kiona Suttle, Bureau of Services, at ksuttle@oaklandca.gov.



Darren Allison, Interim Chief of Police
Oakland Police Department

Reviewed by:
LaRajia Marshall, Fiscal Services Division
Manager
OPD, Bureau of Services

Prepared by:
Kiona Suttle, Deputy Director
OPD, Bureau of Services



Follow the #OaklandOIG on social media:



Search **@OaklandOIG** on Instagram & Twitter,
“City of Oakland, Office of the Inspector General” on LinkedIn & Facebook



Newsletter

Scan the QR code to sign-up for the OIG mailing list or visit
tinyurl.com/OIGMailingList.



Email oig@oaklandca.gov



Call (510) 238-2088



Visit <https://www.oaklandca.gov/departments/inspector-general>

Review of Internal Affairs Division Cases 07-0538, 13-1062, and 16-0146: Policy Recommendations Derived From The Bey Matter

Friday, May 17, 2024



CITY OF OAKLAND
OFFICE OF THE INSPECTOR GENERAL

250 Frank H. Ogawa Plaza • Oakland, CA 94612
Michelle N. Phillips, Inspector General



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA

Thursday, May 17, 2024

Dear Members of the Public,

In 2020, 81 percent of voters approved Measure S1, establishing the Office of the Inspector General (OIG). The legislation strengthened Oakland’s police reform efforts, in part, by granting the OIG the authority to audit Oakland Police Department (“Department”) policies, practices, and procedures during and after federal oversight.

Per Section 604(f)(5) of the Oakland City Charter, the OIG also has the authority to “*review legal claims, lawsuits, settlements, complaints, and investigations, by, against or involving the Department and the Agency to ensure that all allegations of police officer misconduct are thoroughly investigated, and to identify any systemic issues regarding Department and [Community Police Review] Agency practices and policies.*”

The OIG recently conducted a review of Internal Affairs Cases 07-0538, 13-1062, and 16-0146 at the direction of the Oakland Police Commission (“Commission”).

According to records and open-source data reviewed for this report, Your Black Muslim Bakery (YBMB) was opened in Oakland, California in 1971. In 2002, YBMB named a new Chief Executive Officer (CEO) after the founder became ill and subsequently passed away. In February 2004, the CEO went missing in Oakland. Several months later their remains were found in the King Estates neighborhood. Per reviewed documents, the death was ruled a homicide, prompting the Oakland Police Department’s (OPD) Criminal Investigations Division (CID) to open an investigation.

In June 2005, a family member and YBMB colleague of the CEO reported that they were the victim of a violent crime, initiating another CID investigation. After the incidents, the victim and a member of his family consistently contacted OPD to receive updates on the criminal cases. The two criminal investigations remain open as of this report.

The victim and member of his family became complainants, having filed multiple administrative complaints against members of OPD for allegedly violating department policies and the law. OPD’s Internal Affairs Division (IAD), the Community Police Review Board (CPRB) – now the Community Police Review Agency (“Agency”) – and California’s Department of Justice (DOJ) have conducted preliminary inquiries or full investigations into most of the complainants’ allegations. Some complaints were classified as service complaints and administratively closed. The complainants continue to voice their concerns, which include a stance that OPD and the CPRB/Agency have not conducted fair and thorough investigations.



Before the appointment of the Inspector General, the Commission voted for the OIG to review IAD Cases 07-0538, 13-1062, and 16-0146 which were filed by the complainants. The scope of the review, as communicated to the Inspector General, included assessing those IAD cases for policy gaps or deficiencies, noting lessons learned, and providing recommendations where appropriate. Since the OIG does not have jurisdictional authority to complete independent investigations, there were no additional interviews or fact-finding during this review. The information contained in this report is based solely on an independent review of how IAD handled the administrative complaints associated with Cases 07-0538, 13-1062, and 16-0146, particularly as they relate to possible policy reform.

SCOPE

The scope of this review is limited to IAD Cases 07-0538, 13-1062, and 16-0146. In January 2022, the Inspector General was instructed by the Commission to review the IAD cases for possible policy reform. After a review of relevant DGOs, policies, and procedures, the OIG focused on those with the largest impact. The selected policies and procedures were reviewed to identify any policy gaps or deficiencies.

METHODOLOGY

The OIG was provided access to documents the Commission subpoenaed for the Knox & Ross independent legal analysis. . During the initial review of the documents, the Inspector General identified certain information gaps, and as a result requested additional documents from OPD, the Agency, and the Commission. The OIG reviewed the following documents and information:

- IAD Case Information for 07-0538, 13-1062, and 16-0146
 - Citizen Complaint Forms
 - Documentary Evidence
 - Audio Recordings of Interviews
 - Email and Letter Correspondence
 - Reports of Investigation
 - Chronology Logs
- IAD Case Information for 07-0553 and 20-0218
- Departmental General Orders
 - Past and Current Iterations
- OPD Internal Affairs Policy and Procedure Manual
 - Past and Current Iterations
- OPD Criminal Investigation Division Policy and Procedure Manual
 - Past and Current Iterations
- Knox & Ross’s Initial Report (May 2021)
- Knox & Ross Supplemental Report (July 2021)
- CPRB Report(s) associated with 13-1062



In addition to the above information, the OIG received legal guidance from Oakland’s City Attorney’s Office, regarding relevant mandates of the:

- City Charter;
- Municipal Code; and,
- Peace Officer Bill of Rights.

LIMITATIONS

At the onset of this review, the Commission voted to provide the Inspector General access to the subpoenaed documents. This distinction was limiting, as the motion was specific to the Inspector General position *and not* the entire Office of the Inspector General. Strictly adhering to the law and instructions provided by the Commission’s counsel, the Inspector General did not designate the review to OIG staff for well over a year. The Inspector General requested to expand that distinction to include the OIG staff for several months. At the June 22, 2023, Commission meeting, the Inspector General was authorized to share the subpoenaed documents with OIG staff. The initial distinction significantly delayed the progress of this review.

Further delay to this review occurred based on the documents subpoenaed for the Knox and Ross review and the resulting reports. The documents that were administratively subpoenaed by the Commission and previously shared with Knox & Ross were for a different scope of work; however, the Inspector General deemed some of them pertinent to its review and had to make requests for them. Additionally, the Inspector General also requested the two final reports provided to the Commission by Knox & Ross as they were referenced in the documents and appeared to be germane to the review. Initially, this request was denied by the Commission’s counsel, citing “attorney-client privilege”. Eventually, the Inspector General was given access to review the reports after a special Commission meeting held on June 2, 2022.

Additionally, it should also be noted that the reviewed IAD Cases were filed many years ago. The OIG experienced some challenges acquiring the versions of CID’s homicide and felony investigation policies that were in effect from 2007 to 2013. OPD policies that were in place during the time of the complaints were no longer in place at the time of this review. Also, some archived policies were not available for review as there were retained in hard copies an unable to be located.

Lastly, the OIG’s work on this project was impacted by the 2023 Citywide ransomware attack, which further delayed this project.

CONCLUSION

After an extensive review of documents associated with the complaints, the OIG identified areas of improvement in some of OPD’s CID Policies and Departmental General Orders (DGOs). From this effort, the OIG recommends the policy and procedural shifts included in Table 1.



Table 1: OIG’s proposed recommendations after reviewing relevant IAD cases and corresponding policies.

Relevant or Proposed Policy:	Recommendation:
CID Policy 15-01: Homicide Unit Call-Out Criteria and Unit Investigations	Explore potential policy revisions to improve communications with the designated next of kin for homicide victims.
CID Policy 13-03: Felony Assault Unit Call-Out Criteria and Unit Investigations	Explore potential policy revisions to improve communications with the victim or designated next of kin for felony assault victims.
DGO M-3: Complaints Against Departmental Personnel or Procedures (Service Complaints)	Update DGO M-3 to include a notification to the complainant when their service complaint is administratively closed.
DGO M-3.1: Informal Complaint Resolution (ICR)	Reconcile the language in DGO M-3.1 Section II, G. 1 with the language in Section III, A. 1. B., and [Negotiated Settlement Agreement] Task 4 Section III, D. to clarify the necessity for complainant consent to utilize the ICR process.
DGO M-3: Complaints Against Departmental Personnel or Procedures (Duplicate Complaints)	Insert a clear definition of what accounts for a “duplicate” complaint, including who determines its duplication, the process for handling such complaints, and the procedure for complainant notification.
DGO M-19: Prohibitions Against Racial Profiling and other Biased Based Policing	Implement effective and timely revisions to DGO M-19, as recommended previously by the OIG.
Proposed Closure Documentation Policy	Establish and codify a policy that requires IAD to provide case closure justification documents to the Agency for misconduct complaints (which misconduct complaints should be determined in consultation with stakeholders).



ACKNOWLEDGEMENTS

The OIG team wants to express its appreciation to the City Attorney's Office, Police Department, and complainants for their cooperation during this review. The OIG would also like to thank the Oakland City Council, Oakland Police Commission, and complainants for their patience as the OIG conducted this review. The OIG remains committed to improving practices and policies through impartial assessments and transparency in its work.

All audits, reviews, evaluations, and inspections are conducted independently. Findings and recommendations are based on information received and reviewed. The OIG requests stakeholder responses in accordance with policy based on reports contents.

Respectfully,

Michelle N. Phillips, Inspector General
City of Oakland, Office of the Inspector General

Attachments:

1. Acronym List & Definitions
2. Oakland Police Department's Response
3. Oakland Police Commission's Response

Acronym and Definition List

ACRONYM LIST

Agency	Community Police Review Agency
Commission	Oakland Police Commission
CID	Criminal Investigation Division
CIR	Complaint Investigation Report
CPRB	Community Police Review Board
DGO	Departmental General Order
DOJ	Department of Justice
FAU	Felony Assault Unit
IAD	Internal Affairs Division
IAR	Investigative Action Report
ICR	Informal Complaint Resolution
MOR	Manual of Rules
NSA	Negotiated Settlement Agreement
OIG	Office of the Inspector General
OPD	Oakland Police Department

DEFINITIONS LIST

<p>Administrative Closure</p>	<p>An administrative disposition indicates that an investigation or allegation cannot come to a normal investigative conclusion (finding). Reasons for administrative closure include but are not limited to:</p> <ul style="list-style-type: none"> • allegations that do not rise to the level of a Manual of Rules violation; • the complaint lacks specificity; • the complainant is unwilling or unable to provide further clarification necessary to investigate the complaint; • the subject is not employed by OPD at the time of the incident; or, • the complaint is limited to a California Vehicle Code citation or tow.
<p>Administrative Subpoena</p>	<p>An administrative summons or subpoena is a judicially enforceable demand for records issued by a government authority which is authorized by some other provision of law to issue such process; administrative process is governed by the Act. 12 U.S.C. § 3405.</p>
<p>Investigative Action Report</p>	<p>These reports document significant investigative steps taken on an assigned case or on cases that an investigator is assigned to assist.</p>
<p>Informal Complaint Resolution</p>	<p>A method of addressing Class II misconduct complaints, against Departmental personnel, that do not indicate a pattern of misconduct. The process is detailed in DGO M-3.1, INFORMAL COMPLAINT RESOLUTION PROCESS and involves a supervisor, commander, manager, or investigator resolving a complaint by addressing and resolving the issues with the complainant and the member or employee.</p>
<p>Service Complaint</p>	<p>A complaint from any source regarding an inadequate policy, procedure, practice, service level, or legal standard or statute required of the Department that would not result in discipline. Service complaints shall be assigned an IAD case number and documented in the IAD database. A service complaint is not an allegation of misconduct.</p>



Oakland Police Department's Response



MEMORANDUM

TO: Office of the Inspector General
FROM: Acting Assistant Chief of Police A. Tedesco
DATE: 3 May 24

SUBJECT: Response to “Review of Internal Affairs Division Cases – Policy Recommendations Derived from The Bey Matter

The purpose of this memorandum is to respond to the Office of Inspector General's (OIG) recommendations, as outlined below.

Executive Summary

The Oakland Police Department (OPD) acknowledges the recommendations made by the OIG following their review of several Internal Affairs Division (IAD) cases and related criminal investigations, including those surrounding the deaths of [REDACTED]. The OIG assessed IAD's handling of these cases to identify policy gaps or deficiencies and has provided recommendations to improve the fairness and thoroughness of future investigations.

The OIG's review highlighted areas where OPD can enhance its Criminal Investigations Division (CID) Policies and Departmental General Orders (DGOs). OPD is committed to continuously improving its policies and procedures to uphold the highest transparency, fairness, and accountability standards.

Our Department remains dedicated to refining our practices to build trust within the community and ensure that our processes meet community expectations and legal requirements. We will carefully consider the recommendations and work towards implementing changes that reinforce our commitment to delivering justice effectively and impartially.

1. Recommendation: DGO Policy M-3 Recommendation: Update DGO M-3 to include a notification to the complainant when their service complaint is administratively closed.

Response: The OPD will establish a standard letter for administratively closed cases that address a range of complaints, including cases that do not warrant a formal investigation or are without merit. The Department regrets any service that fails to meet expectations and will continue to use complaints to improve its policies, procedures, and practices.

2. Recommendation DGO M-3.1: Reconcile the language in DGO M-3.1 Section II, G. 1 with the language in Section III, A. 1. B., and NSA Task 4 Section III, D. to clarify the necessity for complainant consent to utilize the ICR process.

Response: OPD agrees that the current language aligns with NSA requirements and policy regarding the informal complaint resolution process (ICR), documenting the receipt and

resolution of complaints. An IAD Commander determines the suitability of the ICR process, ensuring complainants are not unduly influenced.

- 3. Recommendation: DGO M-3 - Insert a clear definition of what accounts for a “duplicate” complaint, including who determines its duplication, the process for handling such complaints, and the procedure for complainant notification.**

Response: A duplicate complaint will be defined as a prior investigation that reviewed identical allegations or behavior scope, excluding new allegations not covered in the previous investigation or new evidence as per GC 3304(g).

- 4. Recommendation: Implement effective and timely revisions to DGO M-19 as recommended previously by the OIG.**

Response: The Department is actively engaged in ongoing efforts to revise DGO M-19, led by entities outside the IAD. The Department remains committed to contributing to this process and ensuring that the revisions adhere to the OIG's recommendations and uphold the standards necessary to meet the needs of our community effectively.

- 5. Recommendation: Closure Documentation Policy Recommendation: Establish and codify a policy that requires IAD to provide case closure justification documents to the Agency for misconduct complaints (which misconduct complaints should be determined in consultation with stakeholders).**

Response: The Department ensures that all complaints received by the IAD are sent to the Community Police Review Agency (CPRA) for review. Before closing any case, IAD verifies if CPRA is investigating and seeks concurrence before closure. We are committed to properly codifying this practice in our policies to reinforce our dedication to transparency, accountability, and thorough oversight.

- 6. Recommendation: CID Policy 15-01 - Explore potential policy revisions to improve communications with the designated next of kin for homicide victims.**

Response: OPD acknowledges the importance of consistent and clear communication with homicide victims' next of kin. The current policy needs comprehensive guidance, and OPD is committed to revising it to include notification criteria and the type of information that can be shared. In 2020, the OPD hired a Victim Specialist to comply with Government Code 13692. This specialist fulfills the Victim of Crime Liaison role, reporting to the Criminal Investigation Division Commander.

OPD issued a Training Bulletin (TB II) on Victim Services on August 30, 2023. Departmental General Order O-07 is being updated to include the Victim Services Unit, Liaison, Assistance, and Compensation Program.

- 7. Recommendation: CID Policy 13-03 - Explore potential policy revisions to improve communications with the victim or designated next of kin for felony assault victims.**

Response: OPD agrees that this policy should be updated to reflect best practices and to ensure comprehensive communication standards. We are committed to exploring revisions that will enhance the quality of our communications with victims or their designated representatives. The Department will carefully review the existing policy and collaborate with relevant stakeholders to incorporate changes that will improve our service and accountability in these sensitive situations.



Trevelyan Jones
Assistant Chief of Police
Oakland Police Department

Oakland Police Commission's Response



CITY OF OAKLAND | POLICE COMMISSION

250 FRANK H. OGAWA PLAZA, SUITE 6302 • OAKLAND, CA 94612

May 10, 2024

Via Electronic Mail

Michelle N. Phillips
Inspector General
Office of the Inspector General
oig@oaklandca.gov

***Re: Review of Internal Affairs Division Cases, 07-538, 13-1062, and 16-0146
Policy Recommendations Derived From the Bey Matter***

On behalf of the Oakland Police Commission, I write to once again thank you and the staff of the Office of the Inspector General (OIG) for the thoughtful and comprehensive analysis of the above-referenced Oakland Police Department Internal Affairs Divisions (IAD) Cases.

As you are aware, we had the opportunity to speak about the Commission's recent response to the report and policy recommendations. You have advised that the Commission's request to add CPRA training as an additional consideration exceeds the scope of the Commission's initial request for review of IAD complaints. Although the training concern is valid, the request will be pursued through other appropriate channels. Accordingly, the Commission retracts its initial response, and upon further review and consultation with IG Phillips, the Commission is in concurrence with OPD's response.

Again, we thank you for your effort in developing recommendations from your examination of these critical IAD cases.

Sincerely,

Marsha Peterson

Marsha Peterson
Chair, Oakland Police Commission



Follow the #OaklandOIG on social media:



Search **@OaklandOIG** on Instagram & Twitter,
“City of Oakland, Office of the Inspector General” on LinkedIn & Facebook



Newsletter

Scan the QR code to sign-up for the OIG mailing list or visit
tinyurl.com/OIGMailingList.



Email oig@oaklandca.gov



Call (510) 238-2088



Visit <https://www.oaklandca.gov/departments/inspector-general>