

Oakland Police Department Negotiated Settlement Agreement - Compliance Status and Task Requirements

Task	Out of Compliance	Accountability
2	Timeliness with Internal Affairs Division (IAD) Investigations	Acting Captain Lau
30	Executive Force Review Board	Assistance Chief Allison
5	Complaint Procedures for IAD (Deferred)	Acting Captain Lau

Task	Partial Compliance	Accountability
24	Use of Force Reporting Policy	Assistant Chief Allison / DC Holmgren
25	Use of Force Investigation and Report Responsibilities	Assistant Chief Allison / DC Holmgren
34	Vehicle Stops, Field Investigation and Detentions	DC Armstrong / Captain Bolton
45	Consistency of Discipline	DC Lindsey / Acting Captain Lau

Task	In Compliance Deferred	Accountability
41	Use of Personnel Assessment System (VISION) and Risk Management (In Compliance)	Deputy Director Gleason

Task	Out of Compliance	Requirements for Task Completion
2	Timeliness with Internal Affair Division (IAD) Investigations	<p>Requirements: <i>Fairness to complainants, members/employees and the public requires that internal investigations be completed in a timely fashion.</i></p> <ol style="list-style-type: none"> <i>1. On or before December 1, 2003, OPD shall develop policies regarding timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.</i> <i>2. Compliance with these timeliness standards shall be regularly monitored by IAD command and the Department's command staff. If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.</i> <p><i>(Negotiated Settlement Agreement III. B.)</i></p>
5	Complaint Procedures for IAD	<p>Requirements:</p> <ol style="list-style-type: none"> <i>1. On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the person receiving the complaint. In the event that such a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant and any witnesses. This information, as well as a description of the complaint, shall immediately, or as soon as circumstances permit, be documented on a Complaint Form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a complaint. The supervisor or appropriate Area Commander notified of the complaint shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.</i> <i>2. An on-duty supervisor shall respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest. The supervisor shall ensure the</i>

Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints by a jail inmate shall be handled in the same manner as other civilian complaints.

3. In each complaint investigation, OPD shall consider all relevant evidence, including circumstantial, direct and physical evidence, and make credibility determinations, if feasible. OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.

5. OPD shall resolve each allegation in a complaint investigation using the "preponderance of the evidence" standard. Each allegation shall be resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure. The Department shall use the following criteria for determining the appropriate disposition:

a. Unfounded: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.

b. Sustained: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.

c. Exonerated: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accord with law and with all Oakland Police Department rules, regulations, or policies.

d. Not Sustained: The investigation did not disclose sufficient evidence to determine whether or not the alleged conduct occurred.

e. Administrative Closure: The investigation indicates a service complaint, not involving an MOR violation, was resolved without conducting an internal investigation; OR

f. To conclude an internal investigation when it has been determined that the investigation cannot proceed to a normal investigative conclusion due to circumstances to include but not limited to the following:

1) Complainant wishes to withdraw the complaint and the IAD Commander has determined there is no further reason to continue the investigation and to ensure Departmental policy and procedure has been followed;

2) Complaint lacks specificity and complainant refuses or is unable to provide further clarification necessary to investigate the complaint;

3) Subject not employed by OPD at the time of the incident; or

4) If the subject is no longer employed by OPD, the IAD Commander shall determine whether an internal investigation shall be conducted.

5) Complainant fails to articulate an act or failure to act, that, if true, would be an MOR violation; or

6) Complaints limited to California Vehicle Code citations and resulting tows, where there is no allegation of misconduct, shall be referred to the appropriate competent authorities (i.e., Traffic Court and Tow Hearing Officer).

g. Administrative Closures shall be approved by the IAD Commander and entered in the IAD Complaint Database.

6. The disposition category of "Filed" is hereby redefined and shall be included under Administrative Dispositions as follows:

a. An investigation that cannot be presently completed. A filed investigation is not a final disposition, but an indication that a case is pending further developments that will allow completion of the investigation.

b. The IAD Commander shall review all filed cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed and may direct the closure or continuation of the investigation.

7. Any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions.

(Negotiated Settlement Agreement III. E.)

30	Executive Force Review board	<p>Requirements:</p> <p>1. An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.</p> <p>2. OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS. (Negotiated Settlement Agreement V. G.)</p>
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Task	Partial Compliance	Requirements for Completion
24	Use of Force Reporting Policy	<p>Requirements:</p> <p><i>The policy shall require that:</i></p> <p>1. <i>Members/employees notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force.</i></p> <p>2. <i>In every investigated use of force incident, every member/employee using force, and every member/employee on the scene of the incident at the time the force was used, shall report all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor.</i></p> <p>3. <i>OPD personnel document, on the appropriate form, any use of force and/or the drawing and intentional pointing of a firearm at another person.</i></p> <p>4. <i>A supervisor respond to the scene upon notification of an investigated use of force or an allegation of excessive use of force, unless community unrest or other conditions makes this impracticable.</i></p> <p>5. <i>OPD notify:</i></p> <p>a. <i>The Alameda County District Attorney's Office immediately or as soon as circumstances permit, following a use of lethal force resulting in death or injury likely to result in death.</i></p>

		<p>b. <i>The City Attorney’s Office as soon as circumstances permit following the use of lethal force resulting in death or serious injury. At the discretion of the City Attorney’s Office, a Deputy City Attorney shall respond to the scene. The Deputy City Attorney shall serve only in an advisory capacity and shall communicate only with the incident commander or his/her designee.</i></p> <p>c. <i>Departmental investigators regarding officer-involved shootings, in accordance with the provisions of Section V, paragraph H, of this Agreement.</i></p> <p>6. <i>OPD enter data regarding use of force into OPD’s Personnel Assessment System (PAS).</i></p> <p style="text-align: center;">(Negotiated Settlement Agreement V. A.)</p>
25	Use of Force Investigation and Report Responsibilities	<p>Requirements:</p> <p><i>An on-scene supervisor is responsible for completing an investigated use of force report in accordance with the provisions of Departmental General Order K-4, “Reporting and Investigating the Use of Force.”</i></p> <p>1. <i>OPD shall develop and implement a policy for conducting and documenting use of force investigations that include, at a minimum:</i></p> <p>a. <i>Documentation of the incident in either an Offense or Supplemental Report from the member(s)/employee(s) using force; and/or, when necessary, a statement taken from the member(s)/employee(s) using force;</i></p> <p>b. <i>Separating and separately interviewing all officers who were at the scene at the time of the incident;</i></p> <p>c. <i>A Supplemental Report from other members/employees on the scene or a statement taken, if deemed necessary by the investigating supervisor;</i></p> <p>d. <i>Identification and interviews of non-Departmental witnesses;</i></p> <p>e. <i>Consideration of discrepancies in information obtained from members, employees and witnesses, and statements in the reports filed;</i></p> <p>f. <i>Whether arrest reports or use of force reports contain “boilerplate” or “pat language” (e.g., “fighting stance”, “minimal force necessary to control the situation”);</i></p> <p>g. <i>Documentation of physical evidence and/or photographs and a summary</i></p>

*and analysis of all relevant evidence gathered during the investigation;
and*

h. Consideration of training/tactical issues involving the availability and practicality of other force options.

i. Supervisor's justification as to why any element of the policy was not documented; and

2. All supervisors shall be trained in conducting use of force investigations and such training shall be part of a supervisory training course.

3. Use of force investigations shall include a recommendation whether the use of force was objectively reasonable and within Department policy and training. The recommendation shall be based on the totality of the circumstances and shall consider, but is not limited to, the following factors:

a. Whether the force used was pursuant to a legitimate law-enforcement objective;

b. Whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the members/employees were attempting to achieve;

c. Whether the member/employee used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts;

d. Whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped;

4. use of force reports shall be reviewed by the appropriate chain-of-review as defined by policy.

The type of force used, the identity of the involved members, and the report preparer shall be the determining criteria for utilizing the appropriate chain-of-review.

Reviewers may include, when appropriate, the chain-of-command of the involved personnel, the appropriate Area Commander on duty at the time the incident occurred, other designated Bureau of Field Operations commanders, and as necessary, the chain-of-command of the involved personnel up to the Division Commander or Deputy Chief/Director, and the Internal Affairs Division.

Reviewers for Level 1-3 use of force investigations shall:

a. Make a recommendation as to whether the use of force was in or out of policy,

		<p><i>b. Order additional investigation and investigative resources when necessary, and</i></p> <p><i>c. Comment on any training issue(s) when appropriate.</i></p> <p><i>5. Any recommendation that the use of force did not comply with Department policy shall result in the incident being referred to the Internal Affairs Division to conduct additional investigation/analysis, if necessary.</i></p> <p><i>6. Members/employees involved in a use of force incident resulting in serious injury or death and/or an officer-involved shooting, shall be separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed.</i></p> <p><i>a. (Negotiated Settlement Agreement V. B.)</i></p>
34	Vehicle Stops, Field Investigation and Detentions	<p>Requirements:</p> <p><i>1. OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:</i></p> <p><i>a. Time, date and location;</i></p> <p><i>b. Identification of the initiating member or employee commencing after the first year of data collection;</i></p> <p><i>c. Reason for stop;</i></p> <p><i>d. Apparent race or ethnicity, and gender of individual(s) stopped;</i></p> <p><i>e. Outcome of stop (arrest, no arrest);</i></p> <p><i>f. Whether a search was conducted, and outcome of search;</i></p> <p><i>g. Offense categories (felony, misdemeanor or infraction).</i></p> <p><i>2. This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.</i></p> <p><i>3. The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to “Promoting Cooperative Strategies to Prevent Racial Profiling.”</i></p> <p><i>(Negotiated Settlement Agreement VI. B.)</i></p> <p><i>“The Negotiated Settlement Agreement’s requirements regarding stop data have become an integral part of the analysis and remediation of risk as described in Task 41.” IMT Report #69</i></p>

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Consistency of
Discipline

Requirements:

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

1. The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.

2. The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.

3. All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.

4. The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.

(Negotiated Settlement Agreement X. B.)

Task	Deferred	IMT Report	Next Steps to Compliance
5	Complaint Procedures for IAD	<p>Pawlik Shooting and General Concerns</p> <p>(Not assessed in the 69th IMT report. The task was deferred while out of compliance for 15-0771.)</p>	<ul style="list-style-type: none"> ● Last Site Visit – August - Pending 70th IMT report.
41	Use of Personnel Assessment System (VISION) and Risk Management	<p>VISION and Pending RMM Dashboards.</p> <p>(The Task was deferred while in compliance.)</p> <p>“The Department continues to make progress on Vision, its new risk management database. As expected, the implementation of Vision several months ago was largely successful. The database now forms the basis for risk management analyses across the Area Commands and the Department-level Risk Management Meetings. As expected, however, important work continues so the utility of the system can be ensured.” IMT Report #69</p>	<ul style="list-style-type: none"> ● Full Implementation Risk Management Dashboards and Training <ul style="list-style-type: none"> ○ Soft Dashboard released to the Captains (Command Retreat Training September 14) ○ Dashboard Training Collaboration with Dr. Klofas (IMT), Prof. Monin of Stanford. ● Conduct Risk Management Meetings with Task 34 STOP data under guidance of IMT.