



# OAKLAND POLICE COMMISSION

## REGULAR MEETING AGENDA

July 13, 2023

5:30 PM (Open Session: 6:30 PM)

The purpose of the Oakland Police Commission is to oversee the Oakland Police Department to ensure its policies, practices, and customs conform to national standards of constitutional policing, and to oversee the Office of the Inspector General, led by the civilian Office of Inspector General for the Department, as well as the Community Police Review Agency (CPRA), led by the Executive Director of the Agency, which investigates police misconduct and recommends discipline.

**Please note that Zoom links will be to observe only.  
Public participation via Zoom is not possible currently.**



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### PUBLIC PARTICIPATION

The Oakland Police Commission welcomes public participation. During this time of transition back to in-person meetings, we are currently prohibited from implementing hybrid meetings. Please refer to the ways in which you can observe and/or participate below:

#### OBSERVE:

- To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10
- To observe the meeting by video conference, please click on this link <https://us02web.zoom.us/j/81857690509> at the noticed meeting time. Instructions on how to join a meeting by video conference are available at: <https://support.zoom.us/hc/en-us/articles/201362193>, which is a webpage entitled “Joining a Meeting”
- To listen to the meeting by phone, please call the numbers below at the noticed meeting time: Dial (for higher quality, dial a number based on your current location):

+1 669 900 9128 or +1 669 444 9171 or +1 719 359 4580 or +1 253 215 8782 or +1 346 248 7799 or +1 646 931 3860

**Webinar ID: 818 5769 0509**

After calling any of these phone numbers, if you are asked for a participant ID or code, press #. Instructions on how to join a meeting by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663>, which is a webpage entitled “Joining a Meeting By Phone.”

**Use of Zoom is limited to observing, public comment will not be taken via Zoom**

#### PROVIDE PUBLIC COMMENT IN PERSON:

- Public comment on each agenda item will be taken. Members of the public wishing to comment must fill out a speaker card for each item they wish to comment on. Speaker cards will be accepted up until Public Comment for each item begins. Please submit your cards to the Chief of Staff before being recognized by the presiding officer.
- Comments must be made on a specific agenda item covered in the meeting that the comment was submitted for, and that item must be written on the speaker card, or they will be designated open forum comments.
- Comments designated for open forum, either intentionally or due to the comments being outside of the scope of the meeting's agenda/submitted without including a written agenda item, will be limited to one comment per person.

#### E-COMMENT:

- Please email written comments to [opc@oaklandcommission.org](mailto:opc@oaklandcommission.org). E-comments must be submitted at least **24 hours** prior to the meeting with the agenda item to which it pertains. Open Forum comments are limited to one per person.



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- I. **Call to Order, Welcome, Roll Call and Determination of Quorum**  
*Chair Tyfahra Milele*  
  
**Roll Call:** Vice Chair Jordan; Commissioner Rudolph Howell; Commissioner Jesse Hsieh; Commissioner Regina Jackson; Commissioner Marsha Peterson; Alternate Commissioner Angela Jackson-Castain; Alternate Commissioner Karely Ordaz
- II. **Consider and Request Approval for Investigation Files and Records, Including Complaints for IAD #22-0395 and #22-0464.** Pursuant to Charter Section 604(f)(2) and Commission's Vote at June 22, 2023 Closed Session Commission Meeting.
  - a. Discussion
  - b. Public Comment
  - c. Action, if any
- III. **Closed Session (approximately 5:30-6:30 p.m.)**  
The Police Commission will take Public Comment on the Closed Session items.  
**THE OAKLAND POLICE COMMISSION WILL ADJOURN TO CLOSED SESSION AND WILL REPORT ON ANY FINAL DECISIONS DURING THE POLICE COMMISSION'S OPEN SESSION MEETING AGENDA.**  
  
**CONFERENCE WITH LEGAL COUNSEL –**  
**EXISTING LITIGATION (Government Code Section 54956.9(d)(1))**  
**Delphine Allen et al., v. City of Oakland, et al.**  
**N.D.Cal No, 00-cv-4599-WHO**
- IV. **Open Forum Part 1** (2 minutes per speaker, 15 minutes total)  
Members of the public wishing to address the Commission on matters that are not on tonight's agenda but are related to the Commission's work should submit a speaker card prior to this item. Comments regarding agenda items should be held until the agenda item is called for discussion. Speakers not able to address the Commission during this Open Forum will be given priority to speak during Open Forum Part 2. ***This is a recurring item.***
- V. **Thank You and Farewell to Commissioner Brenda Harbin-Forte for Service on the Oakland Police Commission from July 2020 – June 2023.**
- VI. **Negotiated Settlement Agreement (NSA) Update**  
The Court has extended NSA court oversight beyond June 30, 2023. NSA Ad Hoc Committee (Committee Chair Harbin-Forte, Commissioner Hsieh, Chair Milele) will provide a report on the NSA and invite public discussion on the top NSA priorities with respect to the Commission. ([Attachment 6](#))
  - a. Discussion
  - b. Public Comment
  - c. Action, if any



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**VII. Update from the Office of the Inspector General**

Inspector General Michelle N. Phillips will provide an update on the OIG's work. Topics discussed in the update may include project priorities under the City Charter; staffing updates; community engagement and outreach. ([Attachment 7](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**VIII. Approval for the Office of the Inspector General to Conduct a Review of Integrity of Clarence Dyer Cohen Investigation and Report Findings regarding IAD Nos. 22-0858 and 21-0862.**

The Commission will consider approval to direct the OIG to conduct a review of IAD Nos. 22-0858 and 21-0862 and report to the Commission by August 2023 any policy recommendations for changes to procedures as they relate to NSA Task 5 and appropriateness of discipline.

**IX. Follow-up on Past Commission Action: Bey Case – Noticing the Federal Monitor**

As a follow-up to items on the 3/14/19 and 4/11/19 agenda, the Commission will discuss, and may vote on, a letter that will be submitted to the Federal Monitor regarding the Bey Case. ([Attachment 9](#))

**X. Community Outreach Committee Submits "Ad Hoc Rules Proposal" for Review by Rules Committee ([Attachment 10](#))**

- a. Discussion
- b. Public Comment
- c. Action, if any

**XI. New and Revised Policies to Address Deficiencies in and Strengthen Internal Affairs Investigations**

Following up on our May 25 and June 22 Commission meetings, Deputy Chief Clifford Wong will lead a second review of policies in "Group 1" of the attachment. ([Attachment 11](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**XII. Discussion on Whether to Consider Revising Department General Order 0-4 (Informants) and Any Other Policies Related to Recent Public Reports of Allegations of Improper Witness Payments, Pursuant to Commission's Authority to Independently Review OPD Policies Under Charter Section 604(b)(6).**

Charter 604(b)(6) authorizes the Commission to "[r]eview and comment on, at its discretion, any other policies, procedures, customs, and General Orders of the Department. All such comments shall be submitted to the Chief of Police. The Chief of Police shall provide a written response to the Commission upon the Commission's request. ([Attachment 12](#))

- a. Discussion
- b. Public Comment
- c. Action, if any





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### XIII. Committee Reports

Representatives from Ad Hoc Committees will provide updates on their work.

*This is a recurring item.*

- **Staff Searches: CPRA Director, Chief of Staff, Police Chief (Commissioners Milele, Jordan, Howell)**  
The Staff Searches Ad Hoc Committee is responsible for the recruitment and hiring of staff vacancies, including the CPRA Executive Director, Commission Chief of Staff, and OPD Police Chief.
- **Community Outreach (Commissioners Howell, Jordan, Ordaz)**  
The objective of this Ad Hoc is to increase public awareness and knowledge of the Commission's work and ensure broad community voices, especially from the most marginalized, are elevated. This Ad Hoc will also oversee the community engagement and outreach of the CPRA, the IG's office and to some extent the OPD. Additionally, this Ad Hoc will work to set the guidelines for how Commission Ad Hoc's are formed and run.
- **Community Policing DGO 15-01 (Commissioners Hsieh and Howell)**  
This committee is dedicated to developing a new policy directing Oakland Police Department's role in Community Policing. This project began in earnest in July 2021 in partnership with community leaders, activists, police officers, and city staff. The ad hoc was reconstituted in May 2023 to review additional updates to the policy by OPD.
  - a. Discussion
  - b. Public Comment
  - c. Action, if any

### XIV. Approval of Meeting Minutes

The Commission will review and possibly amend or approve meeting minutes for May 25 and June 22.

*This is a recurring item.* ([Attachment 14 - Supplemental](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

### XV. Upcoming/Future Agenda Items

The Commission will engage in a working session to discuss and determine agenda items for the upcoming Commission meeting and to agree on a list of agenda items to be discussed on future agendas. *This is a recurring item.* ([Attachment 15](#))

- a. Discussion
- b. Public Comment
- c. Action, if any



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**XVI. Open Forum Part 2** (2 minutes per speaker, 15 minutes total)

Members of the public wishing to address the Commission on matters that were not on tonight's agenda but are related to the Commission's work should submit a speaker card prior to the start of this item. **Persons who spoke during Open Forum Part 1 will not be called upon to speak again without prior approval of the Commission's Chairperson. *This is a recurring item.***

**XVII. Adjournment**

**NOTICE:** In compliance with the Americans with Disabilities Act, for those requiring special assistance to access the videoconference meeting, to access written documents being discussed at the Discipline Committee meeting, or to otherwise participate at Commission meetings, please contact the Police Commission's Chief of Staff, Kelly Yun, at [kyun@oaklandca.gov](mailto:kyun@oaklandca.gov) for assistance. Notification at least 48 hours before the meeting will enable the Police Commission to make reasonable arrangements to ensure accessibility to the meeting and to provide any required accommodations, auxiliary aids, or services.

## CITY OF OAKLAND



## Oakland Police Commission

250 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

**TO:** NSA Parties**FROM:** Oakland Police Commission (OPC)  
Dr. Tyfahra Milele, Chair**SUBJECT:** Discussion Outline of  
Reform Plan to Bring the City  
of Oakland Into Sustained  
NSA Compliance**DATE:** March 30, 2023**Introduction**

This memorandum sets forth the outlines of a plan for the Oakland Police Commission (“Commission”) to reform the internal affairs investigation process of the Oakland Police Department (“OPD”) and ensure the City of Oakland is in sustained compliance with the goal of resolving the need for the Negotiated Settlement Agreement (“NSA”).

The proposals outlined in this memorandum operate on a parallel track with OPD’s own efforts to implement the recommendations made in the Reports of Investigation issued by Clarence Dyer Cohen, LLP related to IAD Numbers 22-0858 and 22-0443 (collectively, “CDC Report”). Those policies will make their way to the Police Commission under its Charter authority to approve or modify OPD policy changes, pursuant to Oakland City Charter Section 604(b)(5). In addition to OPD’s policy changes originating from the CDC Report, the Commission also has identified other policy areas for review during three public forum meetings and a formal solicitation to the public for written submissions in the month of March. Engaged stakeholders have proposed OPD policy changes, among other items, related to sworn officer use of Department-owned vehicles, the Department’s Discipline Matrix, disappearing messaging apps on cell phones, untruthfulness, coverups, failure to report, and body-worn cameras.

This plan builds on the current work by looking at deeper systemic and cultural issues, including those revealed by the major compliance incidents that were the subject of the CDC Report, and by focusing on the Commission’s unique Charter authorities to address those issues over time.

To formulate a final plan to address the issues outlined below, the Commission will identify information gaps the City and OPD can address, grapple in its public meetings with important policy questions, survey its relevant Charter and Municipal Code

authorities, and compile a final incident response plan for review by the NSA Parties and the Court.

The scope of reforms applies to all entities with authority over policing in Oakland, including the Commission itself and the entire City. Years of NSA Court transcripts warn us against artificially separating OPD from the City in implementing needed reforms.

## OUTLINE OF ISSUES AND REFORM PLAN

### A. SYSTEMIC AND STRUCTURAL ISSUES

#### 1. Issue: Transition of the Monitor's Role to Full Community Oversight

Long after the NSA was entered, the overwhelming majority of Oakland voters passed two successive ballot measures to amend the Oakland City Charter (Measure LL in 2016 and Measure S1 in 2020) to create the Commission and codify its authority to oversee the OPD “to ensure that its policies, practices, and customs conform to national standards of constitutional policing.” These ballot measures make clear that Oakland residents want Oaklanders to oversee OPD.

**Proposed Solution:** To honor the will of Oakland voters, the Commission is committed to performing the same functions as the IMT is currently doing, with the eventual goal of ensuring constitutional policing is maintained by monitoring the NSA tasks even after NSA ends. The Commission can exercise all of its Charter authority and can give direction to the two civilian oversight agencies that now report to the Commission as a result of the Charter amendments: the Community Police Review Agency (CPRA), and the Office of the Inspector General (OIG). As envisioned in the Oakland City Charter, the Commission’s exercise of its civilian oversight authority can be informed by directing the OIG to perform audits of a subset of completed IAD investigations (as the IMT is currently doing) to ensure that the public policy goals expressed in Task 5 are being met, and report the audit findings to the Commission so Commission can direct OPD to implement new or revised policies if needed.

Although the CPRA typically investigates public complaints of misconduct and recommends discipline, the Commission has authority to direct the CPRA to conduct parallel investigations of what would otherwise be solely internal affairs investigations, and report its investigation results and proposed discipline to the Commission so that the Commission can take appropriate action. The Charter provides that the CPRA “shall also investigate any other possible misconduct or failure to act of a Department sworn employee, whether or not the subject of a public complaint, as directed by the Commission.” (Oakland Charter Section 604(f)(1)).

The Commission also has authority, with City Council approval, to establish a permanent standing committee that can monitor compliance with all existing NSA tasks (not just Tasks 5 and 45) during Sustainability and in preparation for the eventual resolution of the NSA, after which the standing committee will continue its monitoring work on these same tasks. The Commission previously announced its intention to establish such a standing committee, and that plan is still in place. In short, the Commission should be allowed to exercise its Charter authority to perform the compliance work being done by the Monitor and the Independent Monitoring Team (IMT).

## **2. Issue: Untimely or Absent Notifications and Referrals to the Commission and CPRA**

Dozens of high profile IAD investigations have been handled by outside firms, yet there is no comprehensive policy that formally standardizes these referrals, governs the details of required notice to the other Charter entities in Oakland, or details the process and timeline for the City to implement discipline based on them, particularly discipline of the Police Chief or other non-union police officers. The City has been applying individual provisions of M-03, the OPD General Order for processing and investigating allegations of Department employee misconduct, which on its face does not contemplate dozens of outside referrals.

The Oakland Charter Section 604(f)(1) provides in pertinent part:

[T]he [Community Police Review] Agency shall receive, review and prioritize all public complaints concerning the alleged misconduct or failure to act of all Department sworn employees, including complaints from Department non-sworn employees.

The Agency shall not be required to investigate each public complaint it receives, beyond the initial intake procedure, but shall investigate public complaints involving uses of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, untruthfulness, and First Amendment assemblies.

The Agency shall also investigate any other possible misconduct or failure to act of a Department sworn employee, whether or not the subject of a public complaint, as directed by the Commission.

As a result of CPRA's mandate to investigate *public* complaints, IAD only sends CPRA complaints made by members of the public. Complaints that are initiated within the Department, considered "internal complaints," are not sent to CPRA for investigation.

The Commission could have referred the IAD investigations that were the subject of the CDC Report to the CPRA in early 2022 had the Commission known about the outside referral at the time the City Administrator and Office of the City Attorney referred them to Clarence Dyer Cohen, LLP. Prompt referral to the CPRA would have given its investigators enough time to fully investigate the matter in parallel with the outside investigation and not miss any state-imposed completion deadlines.

**Proposed Solution:** The internal affairs investigation policy, including any policies as part of the M-03 series and those related to referrals to outside investigations, must be reformed. In addition, a broader multi-pronged approach is needed to address the issue. The Chair of the NSA Ad Hoc Committee also serves as Chair of the CPRA Policies Ad

Hoc Committee, and is hereby proposing to fold several conceptual ideas proposed by the CPRA Director into this set of proposed solutions, as follows:

- The Commission should review the referral process for the CPRA to take up non-civilian complaints, as well as the CPRA's policies and approach for taking on complaints that are traditionally handled internally by the Department.
- The City should enter into an MOU to require it to notify the Commission Chair and CPRA in writing whenever an internal complaint is referred to an outside agency for investigation. Such notification shall include sufficient information for the Commission and CPRA to understand all allegations that need to be investigated. The City shall also provide the Commission Chair and the CPRA a copy of any contract entered into with the outside agency.
- The Commission should direct OPD to report to the Commission on a monthly basis the number of public and internal IAD complaints, to track against the CPRA's monthly reported number.
- The Commission should direct OPD to submit all internal Complaint Investigation Reports (CIRs) to the CPRA via email, within 24 hours of initiation, with detailed allegations including brief narratives sufficient for the CPRA to clearly understand the allegations and the applicable policies and provisions of OPD's Manual of Rules.
- The Commission should direct OPD to notify the CPRA via email, within 24 hours of determination, of any criminal allegations or implications that arise during the course of an administrative investigation.
- The Commission should direct OPD to notify the CPRA via email, within 24 hours of any decision being made, to have an outside entity investigate issues or allegations of police misconduct.
- The Commission should direct CPRA to document the numbers, types, and brief narratives of the internal complaints received from IAD.
- The Commission should direct CPRA to investigate mandated allegations for the internal complaints in the same manner as is done with mandated allegations for public complaints.
- The Commission should direct CPRA to investigate any mandated and non-mandated allegations against executive level supervisors ranked Captain or higher.
- The Commission should direct CPRA to determine if there is an administrative investigation that should be conducted in relation to any criminal investigation and to document the rationale for the decision.
- The Commission should direct CPRA to reopen a case and conduct an investigation if the Commission decides, based on a brief narrative of the closed internal cases, that reopening is merited.

### **3. Issue: Lack of a Clear City Administrator Protocol for Serious Incident Notifications to OPC Chair, IG, and CPRA Director**

Related to the general problem of untimely notifications is the lack of a proper protocol for alerting the OPC Chair, CPRA, and the Inspector General of an internal affairs investigation of the Chief of Police, the Assistant Chief, or any Deputy Chief. Such an investigation should be considered a “serious incident,” which is very narrowly defined in the Municipal Code. The City Administrator is responsible under the Municipal Code for developing a “protocol for notifying the Commission Chair, the Agency Director and the Inspector General of serious incidents within forty-eight (48) hours of the Chief knowing or having a reasonable suspicion that a serious incident has occurred.” (OMC 2.45.075.) The protocol also must include “a confidential status report to the Chair of the Commission, the Agency Director, and the Inspector General within ten (10) calendar days of the date on which the serious incident occurred, and a second confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within forty-five (45) calendar days of the date on which the serious incident occurred.”

**Proposed Solution:** As a medium or long-term strategy, the City Council should consider broadening the definition of “serious incident” to include any internal affairs investigation of the Chief, Assistant Chief, and Deputy Chiefs. Recommendation of this revision falls squarely within the Commission’s Charter authority in Charter Section 604(h). If such a protocol is developed while the Monitor is still in place, the City Administrator should include a notification protocol for the City to follow when the Monitor notifies the City that he or the IMT suspect a serious incident has occurred.

### **4. Issue: Lack of City, Monitor, and IMT Coordination with OPC and CPRA**

The lack of thorough and repeated Commission briefings about the Monitor’s concerns in early 2022 calls out for reform in overall approach to empowering civilian oversight. The Commission should have been brought into this matter at a far earlier stage, rather than learning about it from the Monitor’s public status reports. Without prompt and comprehensive notice about the substance of OPD compliance concerns, the Police Commission cannot know what documents to formally request (as it has Charter authority to do) to properly exercise all of its Charter authorities. Delayed notifications, in turn, prevent the Commission from promptly introducing new reforms at the same speed that fast-moving compliance incidents arise (as the Monitor does). For instance, the Commission could have promptly set about reforming investigation policies in early 2022, regardless of whether any OPD officer was ultimately sustained for discipline or dismissal. These revised policies could have already been implemented even before the CDC Report was issued.

**Proposed Solution:** In the short term, the City and OPD (and for the period of time when the Monitor is standing in the shoes of OPD) must immediately be required to provide



regular closed session briefings to the Police Commission and its direct reports on the status of compliance issues that pose a risk to the City's resolution of the NSA.

Over the medium term, the Commission and the City should coordinate to develop a recurring Commission agenda item that requests to receive all personnel documents from the City and OPD related to all its Charter authorities, consistent with Section 604(f)(2), and all three of the Department Heads under the Commission's authority should routinely recommend any confidential files and records related to the Commission's Charter authority that they believe the Commission should be requesting to successfully carry out its oversight authority.

Over the long term, the City may need to revisit Section 604(f)(2) of the Charter and determine if it is inconsistent with the purpose of civilian oversight for the Commission to be required to know about a confidential document it does not have before it can lawfully request and access that document.

## **B. CULTURAL ISSUES:**

### **1. Issue: Chain of Command Instilling a Fear of Insubordination If Subordinate Officers Speak Up**

Subordinate officers fear the prospect of insubordination, which chills their willingness to speak up, even when doing so would help keep Oakland in compliance with its reform tasks. This is a cultural issue that calls for a review of management training and a rethink of any aspects of chain of command culture that could compromise investigation integrity.

**Proposed Solution:** The Commission should review relevant aspects of OPD's management training and help its leadership conduct a rethink of any aspects of chain of command culture that could compromise investigation integrity. OPD and the City should develop an anonymous channel to report investigation integrity issues, so subordinate officers feel more comfortable that they will not face adverse actions for calling attention to compliance concerns. The Commission, the Office of the Inspector General, and the CPRA should have access to the anonymous channel reports to ensure it can properly exercise Department oversight. Establishing this anonymous channel would be consistent with Recommendation #8 in the 2021 report issued by the City's Reimagining Public Safety Task Force, which also mentions anonymous reporting (<https://cao-94612.s3.amazonaws.com/documents/Oakland-RPSTF-Report-Final-4-29-21.pdf>).

### **2. Issue: Lack of Distributed Leadership and Accountability at OPD**

Distributed leadership is a leadership model favoring the shared responsibility and accountability of multiple individuals within a workplace. Under a distributed leadership model, the CDC Report's findings about the Police Chief would have extended to the

entire leadership team, including those who had knowledge of the pertinent events. There should have been documented standards setting the expectation of accountability for every individual in the decision-making chain, as well as witnesses to the decisions, that led to the Department failures culminating in the December 23, 2021 meeting.

**Proposed Solution:** OPD and the Commission must set the expectation going forward that all participants in the chain of decision-making related to internal investigations will be held to account for any issues they observed that compromise investigation integrity and best practices. In the medium term, the Commission should consider whether to require that every level of the chain of decision-makers involved in any given investigation must sign and be responsible for the finished product.

### **3. Issue: Availability of Mental Health Services and Support for Sworn Officers**

Mental health challenges inherent to police work, if left unaddressed, lead to major compliance incidents. One investigation subject described another's symptoms to include night terrors related to job duties. Oakland's officers should get the best support and services we can offer. Untreated mental health issues on a police force have deleterious effects on individual officers, the culture of the entire police force, as well residents and community the force serves.

The City Council vested the Commission with the authority to review, comment, and propose the Department's budget for "the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues." (Oakland Municipal Code § 2.45.070(C), (D).)

**Proposed Solution:** The Commission should determine what services are offered and whether proactive outreach ensures officers feel supported in using the services. The Commission should also work to set about fostering a Department culture that rewards officers for self-care and commends them for seeking out and accepting needed services. Accepting mental health services should be standard operating procedures. The Department should explore whether there should be mandated mental health evaluations on a periodic basis. With everyone having to undergo mental health evaluations, there will be less stigma attached to seeking services voluntarily.

### **4. Issue: OPD Officer Perception of Alleged Favoritism in Discipline**

Related to Task 45, the NSA Plaintiffs tie the findings and conclusions in the CDC Report to a general perception among a supermajority of officers that OPD's discipline is not fair. One oft-cited but ambiguous quote from OPD employees is: "who you know, and to which cliques you belong, influence whether an investigation will be sustained and what level of discipline will be administered."

**Proposed Solution:** OPD needs far more granular information about the widely expressed perception of unfair discipline, including information about what OPD

employees perceive as “cliques.” The Commission currently has an Ad Hoc Committee that is tasked with investigating allegations made by the members of the Oakland Black Officers Association (OBOA) that they are subject to more severe discipline than other officers, and will continue to work with an outside investigating firm to review these claims.

## **Conclusion**

The Police Commission is designed to replace the proactive compliance work currently imposed by the Monitor and the Independent Monitoring Team, as the singular civilian oversight body with authority to make policy changes for OPD related to all NSA tasks, and the sole entity named in the City Charter that “shall oversee the Oakland Police Department.” (Charter Section 604(a)(1).)

Without committing to an exclusive list, the Commission should implement its final proposed plan using the following official actions:

- formal action by the Police Commission;
- official MOUs between the Commission, OPD, City officials, City agencies, and any other relevant Charter entities or stakeholders which will be made available to the public;
- new or revised OPD policies, procedures, training bulletins;
- recommendations pursuant to Charter Section 604(h) to the City Council to revise Sections 2.45.00 and 2.46.00 of the Municipal Code;
- seeking budget allocations to ensure and that cost savings from the transition of oversight from the Monitor and IMT are used to fully fund staff for the Commission, as well as the CPRA and the OIG, so they can all carry out their Charter obligations and maintain a proactive approach to reform; and
- recommendations to the City Council to put an additional ballot measure before the voters of Oakland.

Going forward, after the Police Commission approves a plan, implementation must, under the Charter, run through a public-facing, policy-specific ad hoc process that ensures significant input and engagement from members of the public as well as the full Commission, with all final actions to take place after the April 4 Joint Case Management Conference Statement deadline.

## Oakland Police Commission Statement

The Oakland Police Commission is pleased to respond to the Court's invitation to share our perspective on the value of a Sustainability Process and the best plan and prospects for a successful exit from the NSA.

The Police Commission was created through a 2016 ballot measure that amended our City Charter and vested in us broad authority to oversee the Oakland Police Department "to ensure that its policies, practices, and customs conform to national standards of constitutional policing."

The 2016 ballot measure, along with a subsequent ballot measure in 2020, enshrines civilian oversight to supervise the Police Department, the Office of the Inspector General (OIG), which has authority to assess the Department's performance and adherence to constitutional policing practices and audit its policies and procedures, and the Community Police Review Agency (CPRA), which has authority to investigate public complaints of misconduct against police officers and internal complaints if directed by the Commission. This model was part of City leadership's long term plan for the City of Oakland to earn resolution of the Negotiated Settlement Agreement (NSA). The Commission's bold exercise of its oversight authority, as informed by audit work of the OIG and investigatory work of the CPRA, should eventually replace the proactive compliance mandate currently imposed by the Monitor and the Independent Monitoring Team.

To earn NSA resolution, we appreciate that this Court and the Compliance Monitor/Director both expect the City of Oakland to demonstrate that it will routinely address major compliance incidents. The City can do so, first, by identifying deeper structural and cultural issues those incidents reveal and, second, by then implementing comprehensive response plans to keep its reform progress on track. The Monitor's Status Reports have routinely emphasized the proper scope of a more comprehensive response plan as integrating "broader issues of personnel, discipline, risk management, supervision, and leadership into a comprehensive management plan." The Oakland Police Commission's Charter authority positions it to support the City in developing this more comprehensive approach.

That's because the Police Commission plays a broad oversight role, both in leading the civilian oversight policymaking structure in Oakland and in supervising a civilian-led investigation agency that prioritizes the integrity of investigations into allegations against sworn officers. The Commission reforms Department policies related to all NSA tasks. We set direction for the Police Chief, the Inspector General, and the Executive Director of the CPRA. We can request reports about important police reform issues from the Chief and the City Administrator. We set the evaluation criteria for the Chief, the Inspector General, and the Executive Director of the CPRA. We hold an annual hearing on the Police Department's budget before the City Council approves it. We serve as a public forum for a highly informed community of Oakland residents and stakeholders, many of whom are organized and deeply engaged to help us set the reform agenda at our twice-monthly public meetings. Advocates for stringent police reform measures also serve as featured community participants of the Commission's policy committees, which we establish to revise the Department's

policies, procedures, and general orders. In the past year alone, the Commission has taken up close to 20 detailed policies, standard operating procedures, and general orders, ranging from the limited authorization to use military equipment to approving all of the changes the Monitor has required the City to implement, each time incorporating community involvement and perspectives without missing any deadlines imposed by state law or this Court. Far more policies and procedures and general orders are in the process of being created and revised, and we anticipate continuing to successfully take on the policymaking work required to reform OPD.

Based on our mandate from the voters of Oakland, and recent invitations of this Honorable Court, we understand that the Commission has a responsibility to fully exercise all of its Charter powers to continuously set the policing agenda and transform the Department from within, so that the constitutional policing measures mandated by the NSA will take root beyond the Sustainability Period.

In the short term, the Department has taken up the recommendations issued by the law firm of Clarence, Dyer, Cohen, LLP and started a detailed process of implementing those recommendations via new and updated policies and training materials. In addition, the Department has gone beyond those recommendations and is examining other policy and procedure changes to enhance communication between the Department and the CPRA and the Commission.

To set direction about ongoing reform efforts over the medium and long term, the Commission has established a new subcommittee of Commissioners currently led by Retired Judge Brenda-Harbin Forte as its Chair, other distinguished Commissioners of Oakland, and featured community participants of the public to lead the Commission in rendering its own determinations about what deeper structural and cultural issues were evidenced by the events described in the CDC Reports, in order to develop an appropriately comprehensive incident response reform plan for the Commission and the City to implement over the coming months. That plan is attached.

From this latest sprint of reform work, one point of perspective the Commission will share with the Court is to reemphasize the value of a near-term transition of oversight to the Commission and the civilian departments it oversees. With due respect to Clarence Dyer Cohen, LLP, recommended reforms to the Police Department and the City require an in-depth understanding of the City's Charter structure and the model of oversight it envisions, and key policymaking reform work would have been well underway by now had the Commission been read into the matter at an earlier juncture. Rather than coordinating the outside investigation with an Oakland-overseen investigation led by the CPRA, civilian oversight was siloed out of the process that resulted in the Reports of Investigation and Recommendations that Clarence Dyer Cohen LLP issued. The Commission is left to develop and implement big picture reforms on a short timeline, almost as an afterthought. We continue to recognize the work of the Independent Monitoring Team in helping the City of Oakland reform itself, and we are encouraged by the opportunity to build on the Monitor's herculean track record the Court itself emphasized. We would be remiss, though, if we did not respectfully share our perspective that the Commission

has been empowered by the voters because of widespread community sentiment that Oakland residents can set the direction of the reform work required to ensure Constitutional policing.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Orrick, Judge

DELPHINE ALLEN, et al.,

Plaintiffs,

VS.

CITY OF OAKLAND, et al.,

Defendants.

NO. C 00-04599 WHO

San Francisco, California

Tuesday, April 11, 2023

**TRANSCRIPT OF HYBRID PROCEEDINGS**

**APPEARANCES:**

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**(APPEARANCES CONTINUED ON FOLLOWING PAGE)**

REPORTED BY: Ana Dub, RDR, RMR, CRR, CCRR, CRG, CCG  
CSR No. 7445, Official U.S. Reporter

**APPEARANCES:** (CONTINUED)

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**BY: BRIGID S. MARTIN, DEPUTY CITY ATTORNEY**

For the Intervenor Oakland Police Officers Association:

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**BY: ROCKNE A. LUCIA, JR., ATTORNEY AT LAW**

Also Present:

**Mayor Sheng Thao**

**Interim City Administrator Steven Falk**

**Interim Police Chief Darren Allison**

**Dr. Tyfahra Milele (Via Zoom)**  
**Oakland Police Commission Chair**

**Retired Superior Court Judge Brenda**  
**Harbin-Forte**  
**Oakland Police Commission Ad Hoc Head**

**Michelle Phillips, Inspector General**

**Charlotte Jones**  
**Interim Executive Director**  
**Community Police Review Agency**

**Deputy Chief James Beere**

**Deputy Chief Drennon Lindsey**

**Deputy Director Kiona Suttle**

**Captain Kevin Kaney, Internal Affairs**



Tuesday - April 11, 2023

3:32 p.m.

P R O C E E D I N G S

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**THE CLERK:** And we are here in Case Number 00-4599,  
Allen, et al. vs. City of Oakland, et al.

Counsel, if you would please come forward and state your  
appearance for the record.

**MR. BURRIS:** John Burris for the plaintiff. Good  
afternoon, Your Honor.

**THE COURT:** Good afternoon.

**MR. BURRIS:** Jim?

**MR. CHANIN:** James Chanin for plaintiffs, Your Honor.

**MS. MARTIN:** Good afternoon, Your Honor. Brigid  
Martin for the City of Oakland. And I have many esteemed city  
members here with me.

I have Mayor Sheng Thao.

Interim City Administrator Steven Falk.

Interim Police Chief Darren Allison.

I also have, virtually, the Oakland Police Commission  
chair, Dr. Tyfahra Milele.

Head of the Oakland Police Commission Ad Hoc, Retired  
Superior Court Judge Brenda Harbin-Forte.

From the Office of the Inspector General, the Inspector  
General, Michelle Phillips.

The Interim Director of the Community Police Review

1 Agency, Charlotte Jones.

2 And subject matter experts from the Department, including  
3 Deputy Chief James Beere; Deputy Chief Drennon Lindsey;  
4 Deputy Director Kiona Suttle; and Internal Affairs Division  
5 Captain Kevin Kaney, who is also acting right now for  
6 Deputy Chief Clifford Wong of the Bureau of Risk Management.

7 **THE COURT:** Great. Well, thank you all for being  
8 here.

9 And do I have to -- hello, Mr. Lucia.

10 **MR. LUCIA:** Just for the record, Your Honor, Rocky  
11 Lucia for intervenor Oakland POA. Good to see you again.

12 **THE COURT:** It's good to see you.

13 I got a tip from a judge who I admire, a former judge who  
14 I admire that I hadn't let you introduce yourself. So,  
15 thank you.

16 And, Mayor Thao, I'm pleased that you're here.

17 Let me welcome everybody. And you can sit down.

18 **MS. MARTIN:** Thank you, Your Honor.

19 **THE COURT:** So my focus today, as it has been since I  
20 succeeded Judge Henderson on this matter, is how the Court can  
21 ensure that the City of Oakland achieves full compliance with  
22 the NSA, the Settlement Agreement which was negotiated 20 years  
23 ago with the plaintiffs and establishes constitutional policing  
24 in all aspects of its work.

25 So I'm going to start this afternoon with a few questions

1 for Chief Allison. Then I'm going to lay out my thinking based  
2 on the joint CMC statement and the Independent Monitor's  
3 report.

4 After that, I'm going to ask for comments from the  
5 plaintiffs, from OPOA, from the Police Commission, and then the  
6 City and the Mayor.

7 So, Chief Allison, I'm going to put you on the hot seat,  
8 as you have been a fair amount since I succeeded to  
9 Judge Henderson.

10 **CHIEF ALLISON:** Yes, Your Honor.

11 **THE COURT:** And so you've been on the force for the  
12 entire time, I think, of the Court's monitoring of OPD.

13 Since I've been the judge, I've seen impressive  
14 accomplishments, like the dramatic reduction shown by the stop  
15 data, both in terms of numbers and now even some impact on  
16 racial disparity.

17 I've seen the risk management meetings become an effective  
18 way to support constitutional policing.

19 I've seen the implementation of technology through vision  
20 and through the body-worn cameras.

21 To the same end, I've seen a lot of policies implemented  
22 to shore up the gaps in a myriad of tasks.

23 But here's the "but." I've also seen what seems to be a  
24 cultural inability of OPD to police itself, to hold itself and  
25 its officers accountable without fear or favor. And this seems

1 particularly true in cases involving OPD command staff. And  
2 it's this lack of integrity, this culture that plays favorites  
3 and protects wrongdoers that undercuts the foundations of  
4 constitutional policing. And 20 years of court supervision  
5 hasn't solved that problem, which was a major concern with  
6 the Riders more than 20 years ago.

7 So that's my preface to two questions that I have for you.  
8 The first one is: How are you and OPD addressing this cultural  
9 problem? And then the second part of that is: What can  
10 the Court do to support you in those efforts?

11 **CHIEF ALLISON:** Thank you, Your Honor.

12 As you know, as you've laid out, I've been here for a very  
13 long time. I started with the City in 1994. So I've seen the  
14 police department before the NSA, and certainly, particularly  
15 through my command experience, I've seen almost everything  
16 through the NSA, going back to even 2005. I was in the  
17 Inspector General's Office as a sergeant, later a young  
18 lieutenant. So I've certainly seen everything that you've seen  
19 and everything that you've laid out, Your Honor.

20 You know, I think when you look at organizational culture  
21 and how do you change it, you know, I think it always begins  
22 with hiring folks that are aligned with the value of the  
23 organization and values with the community. And for a long  
24 time, we didn't have a community oversight body that existed,  
25 up until just several years ago.

1 I think the first step in culture change is really trying  
2 to bring in people that you know have those institutional  
3 values, and then train those individuals through the academy,  
4 through field training to make sure that's inculcated through  
5 the organization. And that extends all the way to who you  
6 promote, putting the right people in the right places that are  
7 making the right decisions.

8 I have seen us progress over the years when it comes to  
9 the culture of the organization. I've seen great innovations,  
10 great transparency, great accountability, great community  
11 relationships and collaboration.

12 But I've also seen bad decisions, wrong decisions,  
13 missteps, and certainly have experienced several setbacks,  
14 times where we're standing in front of Judge Henderson talking  
15 about them and now yourself, Your Honor.

16 And so I always struggle with how do we hold that line.  
17 And I think from the leadership having that heart, looking at  
18 one's own heart and examining themselves and seeing that  
19 reflected in others, I think, is important.

20 So that goes back to putting the right people in the right  
21 seats to replicate that, and holding account.

22 I also think that as a business where the biggest asset  
23 are people, we know that there's going to be failures; we know  
24 that there's going to go wrong decisions; is working very  
25 closely with an independent body that can see them -- or see us

1 independently.

2 And I know over the last couple of years in particular, we  
3 have strengthened our collaboration and our work with our  
4 current oversight bodies, with the Police Commission, with the  
5 CPRA, with the IG's Office, and especially with the ability to  
6 audit us through the IG's Office ramping up over the recent  
7 months and year; that for those decisions that are wrong or  
8 made in error, that there will be that net that catches those  
9 things that get misstepped.

10 We're obviously -- all the setbacks, I feel them. It  
11 frustrates me. I would love to see us just move forward, just  
12 in best practices as an organization. And I know that we  
13 consistently raise the bar high.

14 So I think from my perspective, just really  
15 institutionalizing that culture; again, reinforcing not only  
16 the training -- and I know we've presented on Project Reset,  
17 which is a different training than we've ever done before. It  
18 talks about organizational culture. It analyzes our own  
19 culture and then highlights being change agents of that  
20 culture.

21 And so getting folks to think that way and understand the  
22 importance of it and then replicate it and get that courageous  
23 followership to be able to bring that forward is going to be a  
24 beginning of it; the policies that reinforce it; and then,  
25 obviously, putting the right leaders in the right place to hold

1 account and see it for themselves and be supportive, from the  
2 other leadership, to say, "It's okay to make decisions. It's  
3 okay to hold accountability. And it's also okay to make  
4 mistakes if they are done for the right reasons."

5 **THE COURT:** So, and you're always going to make  
6 mistakes. You have and the police department has the toughest  
7 job I can imagine doing. People are always going to mess up.

8 Not being honest about the problems that occur; trying to  
9 cover up things because it's a little easier, it seems like  
10 it's going to be an easier way of sort of alighting the  
11 problem; playing favorites with people who either have  
12 political sway or they're people that you just kind of like,  
13 that's, I think, central to what's going on. And just being  
14 able to hold people to account, it's a critical thing. And I  
15 hope and I expect that you're doing that.

16 **CHIEF ALLISON:** Sure.

17 **THE COURT:** And so that's one issue.

18 How about the second part of my question? What is it that  
19 the Court can do, that it hasn't been doing, or whether it can  
20 do anything to deal with the cultural problem that has existed  
21 from the Riders day and maybe for a lot longer than that?

22 **CHIEF ALLISON:** Well, Your Honor, I think that there's  
23 been a lot -- I mean, certainly, any tone that hasn't been set  
24 within the organization, I've always respected the Court has  
25 set the tone for those areas that we need to pay great focus

1 to.

2 And I think that maybe helping us as we get to the  
3 sustainability period. And I know we are several months into  
4 it, and we've had some advantages and some successes, and we've  
5 had certainly some setbacks.

6 Helping us focus in on the things that are remaining, the  
7 tasks that really are remaining. I know that, not to get too  
8 nuanced, but certainly the IA process, the discipline process,  
9 trying to really put all of our energy into that to set the  
10 foundation of the cultural expectations, because I do believe  
11 that the policies and the training really are going to amplify  
12 it.

13 So I think from the Court's assistance is basically  
14 putting all the inertia into those last remaining vestiges of  
15 compliance that we really need to get into to have long-lasting  
16 compliance.

17 And I think, also, I would love to see that transition  
18 over to community oversight, because I think we are at that  
19 point to where that can -- and I'm not going to speak for  
20 the Court. That's not what I'm trying to do. But since you  
21 asked about how the Court could help --

22 **THE COURT:** That's what I'm looking for.

23 **CHIEF ALLISON:** -- is that transition into that  
24 community oversight, because I think that the infrastructure is  
25 there, and just what does that now look forward to, moving



1 forward into the future beyond the NSA.

2 **THE COURT:** Okay. So are you satisfied -- I'm going  
3 to move on to a couple of other questions.

4 Are you satisfied that the policies that were recommended  
5 by the Clarence Dyer report and the systemic report, as  
6 modified by the City in the case management statement, as well  
7 as those that are going through the approval process, are going  
8 to ensure accountability and integrity in addressing officer  
9 and, especially, supervisor and leadership misconduct?

10 **CHIEF ALLISON:** Yes, Your Honor.

11 And one thing I want to emphasize is, you know, there were  
12 issues that were raised out of that report, and it ended up  
13 touching 15 policies or forms.

14 And so we went back and we dove in deep right away. We  
15 didn't wait to get it started or wait for direction. We ended  
16 up diving into those policies, and figured out one thing that  
17 stood out, not only in the public report but in recent  
18 monitoring team reports, was taking seriously those serious  
19 cases.

20 Obviously, with an organization that receives numerous  
21 complaints -- I think we closed about 1100 complaints last  
22 year -- that you can't scrutinize every single one of them.  
23 It's just humanly impossible with just the capacity.

24 But looking at the ones that are serious and holding them  
25 to a serious level is important. That's the ones -- those are

1 the ones that really impact public trust.

2 And I think the policies put in place a mechanism that  
3 balances the workflow capacity with bubbling up to the top  
4 those issues that are the highest importance that need the  
5 highest scrutiny, bringing in the higher levels of review so  
6 it's not left to just one person making all the decisions at a  
7 lower level; that it touches the executive team at a higher  
8 level where, if there are missteps at that level, then we can  
9 start the accounting process at a higher level.

10 Certainly, with the transparency piece, the better  
11 presentations at meetings and documentation of those meetings  
12 when key decisions, important decisions of discipline are made  
13 is certainly going to reinforce that piece of it.

14 And really, just, again, creating a greater sense of, if  
15 there's disagreements, it can't be hidden in the shadows  
16 anymore. It's going to be out there, whether it's going to be  
17 highlighted in an executive summary or shown in meeting notes  
18 or track changes.

19 So one thing that, to get rid of organizational cultural  
20 issues or threats to organizational cultures, you have to start  
21 shining light on shadows. You can't let things hide in the  
22 shadows. And I think these policies shine lights on areas and  
23 issues that are the right areas and issues to minimize and  
24 prevent those issues from hiding again.

25 And then, certainly, the collaboration -- which I know

1 wasn't necessarily one of the recommendations -- but the  
2 collaboration and the notification to our oversight bodies --  
3 CPRA and the Commission -- will also give what I mentioned  
4 earlier, that redundancy and that safety net for those issues  
5 that might slip through the cracks or may be the product of a  
6 wrong decision, an improper decision or a bad decision.

7 **THE COURT:** So as best you can tell, these policies,  
8 if they're in force, should solve the problem?

9 **CHIEF ALLISON:** I think it will shore up the process.  
10 I don't think a policy in and of itself solves a culture  
11 problem.

12 **THE COURT:** I couldn't agree more. That is up to the  
13 individuals who are responsible for the policy; right?

14 **CHIEF ALLISON:** That's correct. And that's where --

15 **THE COURT:** So --

16 **CHIEF ALLISON:** I'm sorry to cut you off.

17 **THE COURT:** Yeah. No, no. Go ahead.

18 **CHIEF ALLISON:** I was saying, that's where it comes to  
19 putting the right people in the right chairs to make those  
20 decisions.

21 **THE COURT:** And on that point, I think particularly in  
22 the last several years, OPD has done a good job of recruiting a  
23 more diverse force. The people that I met a few years ago when  
24 I went to the seminar over in Berkeley, the officers who were  
25 there, just very impressive people. And it's not -- I'm much

1 less concerned at this stage about the force in general than I  
2 am about the leadership making everything else work for the  
3 Department. And that's really -- that's what's got to happen.

4 Let me switch gears for a second.

5 I'm most heartened by the review and use of the stop data  
6 and the way that risk management meetings are working. I think  
7 they're at the core of whatever success OPD has had in  
8 implementing the NSA.

9 And so can you assure me that these are central to OPD's  
10 work today and on a going-forward basis?

11 **CHIEF ALLISON:** Absolutely, Your Honor.

12 The work and the outcomes of those risk management  
13 meetings, I think, does show us in a highlighted, shining star  
14 in the profession. I have a lot of counterparts -- chiefs,  
15 assistant chiefs, executives -- in other organizations that  
16 they don't do this. In fact, I asked one executive of a major  
17 police department what they do with their risk management data,  
18 and it wasn't anything; it wasn't anything stellar whatsoever.

19 And when I think back on our risk management policy and  
20 what it's -- our meetings and what it's produced, either in the  
21 forms of policy -- parole, probation, handcuffing policies --  
22 or in the form of practices and training -- recognizing  
23 supervisor promotion deficiencies in the sense of not giving  
24 them field experience, so it birthed the field training program  
25 for our sergeants -- the analysis into outliers or increase in

1 disparity. We had the report that we produced on Hispanic  
2 disparity stops. And just the intentionality and focus of  
3 issues and concerns that have driven down risk. And I can talk  
4 about ECW or Taser use that has dropped, disparities, pursuits.

5 And so I think that has to be a core staple of not only  
6 our organization, but any organization, because when you pay  
7 attention to something, it absolutely modifies or changes what  
8 you pay attention to. And so it has to be a core function, and  
9 I will commit to ensuring that that stays as part of our  
10 Department.

11 **THE COURT:** Okay. So just to let you know, I'm  
12 thinking of no longer requiring the Monitor to attend the risk  
13 management meetings. I will require that OPD provide slides  
14 and the stop data to the Monitor. And you may, of course,  
15 request the Monitor's presence or the Monitor may, at his  
16 discretion, choose to attend.

17 **CHIEF ALLISON:** Yes, Your Honor.

18 **THE COURT:** So here's my final question. The City has  
19 suggested that I narrow the scope of the Independent Monitor's  
20 work to Task 2, 5, and 45. I'm inclined to add Tasks 24 and 25  
21 to that list, simply because, at a high level, the failure of  
22 IAD and the command staff, as documented by Clarence Dyer, was  
23 about addressing officer misconduct, as is the analysis of uses  
24 of force.

25 What's your perspective on the City's suggestion and on

1 Task 24 and 25?

2 **CHIEF ALLISON:** Thank you, Your Honor.

3 I think one of the things that has been done well with  
4 Task 24 and 25, and use of force in particular, is creating  
5 capacity internal within the organization. So I've had that  
6 task for many years, as you well know, and reported out on it.  
7 And we, through intentionality, have focused on areas of  
8 concern.

9 Taking that and then replicating our own kind of internal  
10 standing on it has proven to be highly effective. It doesn't  
11 always change the potential missteps, whether it's a body-worn  
12 camera issue or maybe it's a use of force that wasn't reported  
13 properly. But the point that we're seeing is we're catching it  
14 now, and we're catching it through our own command reviews.

15 We're also catching it -- because of the speed at which  
16 we're catching it and communicating down, whether it's down  
17 through an accountability measure, NIA, or communicated down  
18 "Well, maybe it's not a misconduct issue but maybe is a  
19 training point issue," it's causing it to course-correct pretty  
20 rapidly.

21 So I think from a capacity standpoint, my intention is to  
22 keep those command reviews going; that I don't see a reason to  
23 stop them, even -- whether those tasks are monitored or not,  
24 I think we need to keep that going because it's been proven  
25 effective in not only catching the issues, but catching it

1 ourselves and training the new supervisors to catch it  
2 themselves.

3 And so from my perspective, having that capacity and,  
4 certainly, working closer with our community oversight bodies,  
5 that we can maintain those tasks.

6 **THE COURT:** Okay. All right. Thank you. You can sit  
7 down.

8 **CHIEF ALLISON:** Thank you, Your Honor.

9 **THE COURT:** All right. So let me tell you what I'm  
10 thinking, and this is what I want your input on.

11 Obviously, the City's not in full compliance with the NSA.  
12 The sustainability period is going to be extended.

13 I'm going to hold another in-person case management  
14 conference on September 26th at 3:30 to assess where we are at  
15 that time.

16 What I'm thinking of is, as of June 1st, I would reduce  
17 the scope of the Monitorship to Tasks 2, 5, 24, 25, and 45.  
18 But I also want to support the City in any reasonable way to  
19 attain compliance.

20 And so I'd like to hear from, first, the plaintiffs and  
21 then OPOA and then the Police Commission and then the City --  
22 and I shouldn't separate the Police Commission from the City --  
23 but Ms. Martin, and then the Mayor on what you think about  
24 that, as well as any other things you want to tell me.

25 So, Mr. Chanin.

1           **MR. CHANIN:** Thank you, Your Honor.

2           When I spoke to the Court on April 27th, 2022, nearly one  
3 year ago, OPD was on the verge of entering the sustainability  
4 period. I congratulated the Department.

5           But after saying no one is perfect, just like you did --  
6 and we are not looking for perfection in the sustainability  
7 period, just like you said -- I also stated what we are looking  
8 for is a department that can and will identify problems and  
9 major scandals when they occur and will not leave that job to  
10 someone else.

11          All the major scandals in the past have been discovered by  
12 someone else, either a reporter, a monitor, a member of  
13 the City Council, or the plaintiffs' attorneys, or a  
14 combination thereof. Never has it been the Oakland Police  
15 Department.

16          I further stated I am not confident that if a scandal  
17 occurs in the future, that it will be brought forward by the  
18 OPD.

19          Today should be a happy day. We should all be agreeing  
20 that the OPD has ended the NSA and that federal oversight has  
21 ended. However, I cannot agree to this proposition. We have  
22 lost another chief who, like Sean Whent, brought us to the very  
23 brink of compliance before disaster struck, in his case in the  
24 form of the sex scandal.

25          We also have no resolution to the overuse of findings of



1 unfounded, which appear to be used to avoid the allegation  
2 being discussed at risk management meetings and other areas  
3 where an officer's conduct is evaluated.

4 To end this problem, I propose that the Monitor, the OPD  
5 command staff, and the Police Commission, if they so choose,  
6 take a sample of the so-called unfounded cases and report if  
7 any of these unfounded findings should instead be sustained or  
8 not sustained and, thus, go into the risk management process.

9 I don't agree with the defendants that the Court should  
10 remove the affirmative assessment of the tasks they mentioned.

11 And I note Your Honor has left out Task 31,  
12 officer-involved shootings, and Task 34, racial profiling.  
13 They should, instead of being eliminated, remain an active task  
14 pursuant to the rules of the Negotiated Settlement Agreement.

15 I don't want to be here if, for example, there is a  
16 blatant violation of Task 34 or a questionable officer-involved  
17 shooting takes place, and then I have to get into the  
18 argument -- an argument with the City as to whether I can even  
19 talk about this in court or the Monitor can assess this.

20 I also disagree with the defendants that racial disparity  
21 in discipline of black and white officers for unintentionally  
22 failing to accept or refer complaints is acceptable somehow  
23 because the same disparity occurred previously. That's not all  
24 they said, but it is what they said.

25 I am pleased to see that the Department intends to drill

1 down on this problem. However, I still feel that looking at  
2 the disciplined officers' video would also be helpful. I want  
3 to be convinced that this discipline, which by its very nature  
4 involves substantial command staff discretion, is not a product  
5 of some sort of bias on the part of the supervisor meting out  
6 the discipline.

7 Furthermore, I want to disassociate myself from those who  
8 have said, without any evidence but unknown sources, that  
9 the Mayor was pressured by the Monitor to terminate the chief.  
10 There is no proof whatsoever that this happened. Whatever we  
11 may think of the Clarence Dyer & Cohen's personnel decisions,  
12 there is no excuse for Chief Armstrong's public comments that  
13 the Monitor, an officer of this Court, is disingenuous and only  
14 motivated by perpetuating the NSA.

15 Chief Armstrong's additional claim that the Mayor was  
16 forced by the Monitor to terminate him is, as yet, unsupported  
17 by a single named witness and, thus, reeks of sexism.

18 **THE COURT:** So, Mr. Chanin, I don't want to talk about  
19 Chief Armstrong.

20 **MR. CHANIN:** Okay.

21 **THE COURT:** I appreciate your support of the Monitor,  
22 and he has my full support.

23 I want to talk about what we're doing here, what OPD --  
24 how OPD is going to attain compliance with the NSA and  
25 constitutional policing. So let's go to that.

1           **MR. CHANIN:** Okay, Your Honor. What you can do is  
2 what you have been doing. I, of all people, know how long a  
3 process this has been: 23 years, as of December 7th, since we  
4 filed this lawsuit. But I do not think that it was not  
5 worthwhile. I think it's hard that it takes so long. No one  
6 is more frustrated than John and me. We cannot believe we're  
7 still here. Every time I hear the case called "00," et cetera,  
8 I cringe, and I don't -- I don't like it.

9           But I also think that your presence here, like  
10 Judge Henderson before you, is extremely important. You help  
11 them toe the line. You really do. And the fact that it's  
12 taken a long time is really hard to digest. It's hard for John  
13 and me to digest. It must be hard for you to digest. You have  
14 other things to do. I respect that.

15           But the fact is, there are people alive today, there are  
16 African Americans who have not been stopped by OPD because of  
17 the united efforts of plaintiffs' attorneys, the Defense in  
18 some cases, and especially the Court. You're the reason -- a  
19 big reason why the number of African Americans stopped has  
20 declined so great.

21           **THE COURT:** So, and I am in complete agreement that  
22 that has been a huge benefit, and I think the Court supervision  
23 has been a huge benefit. So I don't disagree with those  
24 things.

25           I'm trying to figure out, and what I'm most interested in,

1 the one issue that we haven't made a ton of progress in is the  
2 cultural rot that existed at the time that you brought this  
3 suit 23 years ago and that comes up again and again. And so I  
4 want to know what it is that you think is the best way of  
5 addressing this.

6 **MR. CHANIN:** Well --

7 **THE COURT:** And maybe you've just answered it. Maybe  
8 it's --

9 **MR. CHANIN:** Well, I think I did.

10 **THE COURT:** -- just we keep doing what we're doing.

11 **MR. CHANIN:** I think I did.

12 But I want to say that I don't agree that this department  
13 is filled with bad people. I recently went on a ride-along in  
14 East Oakland; and in one night, the officer dealt with fire on  
15 580, two criminals who drove up and down the street, shooting  
16 at each other, an event which ended in one of the cars crashing  
17 into a neighbor's fence and destroying most of it; two women  
18 who were so disoriented that the officer spent nearly an hour  
19 trying to calm them down. And that was just part of how the  
20 evening was spent. He got rid of me at 10 o'clock because he  
21 had so much paperwork to do.

22 This officer did an outstanding job. And I was informed  
23 that this night was more typical than not. And all the  
24 officers I met that night were courteous and trying to do their  
25 best.

1 We often discuss only the bad things. That's what lawyers  
2 do sometimes. But this officer was more typical of the Oakland  
3 police officers I've met over the years, rather than all the  
4 admittedly bad stuff I've reported and litigated over the  
5 years. So we can't lose sight of that, and I certainly don't.  
6 That's why I go on these ride-alongs.

7 I want to say something briefly about women officers, if  
8 that's okay.

9 **THE COURT:** Go ahead.

10 **MR. CHANIN:** Yeah. I think that the only thing harder  
11 than being a police officer is being a woman police officer.  
12 I've represented many women police officers, including Berkeley  
13 and Oakland and San Francisco; and I know that being a woman is  
14 a really, really hard job when you're a cop.

15 And I saw in the poll, however, that there's some good  
16 signs that certainly weren't true in the '80s and '90s when I  
17 was practicing law and represented women in federal court.

18 For example, 76 percent feel respected by their  
19 supervisors. That's something that wouldn't have been true in  
20 Alameda in the 1980s.

21 There's still bad news. Only 21 percent believe the  
22 promotion process is fair. Only 46 percent believes the agency  
23 takes claims of harassment seriously.

24 That's something you could do, frankly, is continue to  
25 monitor this, the role of women at OPD; talk about getting

1 numbers up, because I think women have a really positive role  
2 in a department. An all-male department is almost, by  
3 definition -- I'm trying to think of a word other than --

4 **THE COURT:** You don't have to go there, Mr. Chanin. I  
5 agree with whatever you were about to say.

6 **MR. CHANIN:** And I think, you know, calling for the  
7 progress they're making on hiring women, calling on the  
8 progress they're making in having women sergeants, lieutenants,  
9 and captains, that would be helpful. So there are many helpful  
10 things I think you can do, Your Honor.

11 But we do have to end sometime, and I agree with that. I  
12 just don't agree it's right now. And I don't -- I don't think  
13 that's the fault of the plaintiffs' attorneys. We were as  
14 shattered by this almost as the cops were.

15 Thank you.

16 **THE COURT:** Thank you, Mr. Chanin.

17 Mr. Burris, are you going to join in?

18 **MR. BURRIS:** Absolutely.

19 First off, I would like to thank the Court for cutting off  
20 the conversation that Mr. Chanin was making about the chief.  
21 That was a very -- that could have been a very dark spot to go  
22 to. And I appreciate the Court letting all of us know that  
23 that's not the subject of this particular hearing and so it was  
24 important not to continue that line of discussion, and I  
25 appreciate that.

1 Now, before this case started, Your Honor, 23 years ago --  
2 actually, for me it started before then -- I had written a --  
3 co-written a book at the time called *Blue vs. Black: Let's End*  
4 *the Conflict Between Cops and Minorities*. And part of the  
5 discussion that I had at the time was about the culture of  
6 policing and, secondly, about can we trust the police to police  
7 itself.

8 These were fundamental issues that sort of went to the  
9 essence of why I was -- why I do the work. It was really  
10 important because I understood that the policing component, if  
11 not checked and called into question, would have a very adverse  
12 impact on the African American communities and other  
13 communities of color, which that ultimately was borne out.

14 So I will say that as a consequence of the work that's  
15 taken place, the stop data and even Task 45, there's been some  
16 really positive things that have taken place I'm really, really  
17 pleased about.

18 And as the Court knows, I've raised these questions time  
19 and time again. And I will only say as an aside, on a project  
20 that I'm presently working on, I've had to really look at some  
21 of the other departments around the country and where they have  
22 been in terms of policing and the challenges they presented.

23 Particularly, like today we're hearing about Louisville  
24 and the courageous acts of the officers; but I can tell you  
25 that department is in bad, bad shape and African Americans in

1 that community are treated poorly. And I read the documents  
2 pertaining to them, I thought harkened back to where we started  
3 from. Now, I hope that it doesn't take Louisville 25 years to  
4 get there, but it's a long haul.

5 And so a lot of good effort has been made here to that,  
6 which we've acknowledged and I think the Court acknowledges and  
7 I think everyone acknowledges and which, I've been very, very  
8 pleased by some of the progress that has been made.

9 But I'm still troubled by the cultural issue.  
10 Undercurrent of that is the policing oneself and the leadership  
11 questions, because I don't think you can sustain yourself if  
12 the leadership isn't there.

13 And because we've had constant turnover in the last --  
14 since we've been involved here, I think that has contributed in  
15 many ways to get a consistency approach to attacking the  
16 cultural issues, because the culture is a function of the  
17 pattern and practices that exist within a department and how --  
18 what is carried on from one generation to the next and they  
19 bring those set of values.

20 And I think that, given that the numbers that we have, in  
21 many ways, if you just looked at the technical aspect of it,  
22 it's been positive. We don't have the beatings that we used to  
23 have; and certainly, we don't have -- the stop data stuff has  
24 improved; and certainly, as you know, in terms of the culture,  
25 the employment racial issues that I've raised previously around



1 officers themselves, that issue is better. It's not completely  
2 done.

3 But the question, how do you get to the cultural question,  
4 is one. And I know the Court has raised that question. It's  
5 one that I've thought about for many, many years. I know that  
6 if you don't control the cultural issues, I think, and changing  
7 the culture, I don't think sustainability can last, it can be  
8 sustained indefinitely, which is the hope, you know.

9 Rockne and I talk about our kids, just started out  
10 together, and now there are grandkids and I got great-grands.

11 But the future was always about that aspect of it and what  
12 does sustainability mean. And for me, it is not me, my  
13 generation or the next generation or the generations after  
14 that. And I don't know that we're going to get there without  
15 resolving this question of cultural change, where it's deeply  
16 embedded in the soul of the Department. And I don't have the  
17 answer to that.

18 Now, I do know that probably if you have solid, consistent  
19 leadership at the top with accountability, where people are  
20 held to answer like -- held to answer, which then we have  
21 issues that: Can that be true? Is that true? Can we count on  
22 that? Given a couple of issues that have come up more  
23 recently. Because those individuals at a time were in a  
24 position to demonstrate to all of us that what we put in place  
25 in fact sustained itself and does work. But it has not. It

1 has come up short. And so is that symbolic of what can happen,  
2 or is that an aberration or not?

3 But it is concerning. It is just very concerning.  
4 Because I think that at the end of the day, we've got to deal  
5 with the cultural issues; and a lot of that comes, I suppose,  
6 from the training, the hiring, who you hire, how you train  
7 them, and how you hold people accountable when mistakes are  
8 made, because mistakes, as the Court knows -- we all know;  
9 we've been in this business a long time -- mistakes are going  
10 to happen.

11 And it would have been a real test if when this particular  
12 case arose, that the system that was in place handled it. And  
13 the second case that has come up that we're talking about, did  
14 the system handle it? And if so, that would have been an  
15 indication of sustainability, at least at this stage.

16 So now we don't know, and I am troubled by that. And  
17 hopeful. But we can't stop or decide not to go forward.

18 But we do have to recognize that the question of culture  
19 is an ongoing process. It is not one day, two days, and you  
20 stop. It is how do you handled the problems when they  
21 developed and whether or not the culture is such that you hold  
22 people accountable from beginning to end, regardless of their  
23 station within the Department. And those are concerns that I  
24 still have, you know, now.

25 And I think that, as I looked at the list that the Court

1 indicates that they want to have continue with monitoring,  
2 certainly, they are all significant, honestly. We cannot turn  
3 a blind eye to some of the areas that have taken place.

4 Consistency of discipline is very important because how  
5 you treat your fellow officers is how you may treat the people  
6 in the community, and that's very important. If you don't  
7 treat the black officers, the women officers fair, how can we  
8 expect the people in the community to be treated fairly? So  
9 that's an important one, I think, that should be continued to  
10 be monitored.

11 The others as well. I agree with Jim that 34 is something  
12 that that's a perpetual issue that should be included because  
13 that goes to the essence of what we're about here, and it's how  
14 we treat people on the street and how people can feel safe that  
15 they will not be necessarily stopped just because of the color  
16 of their skin.

17 Now, made great progress, but we're not completely done  
18 there. The numbers are still pretty high, you know. So, but  
19 I think that progress is being made there. I just don't think  
20 we ought to take our eye off the ball in that particular area,  
21 45, 34, 2 and 5, of course, and whatever the Court thinks is  
22 appropriate.

23 But I don't want to forget that we have to deal with the  
24 question of how do we make consist efforts at effecting the  
25 culture that exists here. And at the end of the day, can we

1 trust the police to police itself?

2 Now, we're going to have other outside entities to help  
3 that down the way, but those are issues that I still have  
4 concerns about, even despite the fact that we've done --  
5 there's great work that's been done down through the years.

6 But that's my feeling about it now.

7 **THE COURT:** Well, so you told me -- the last time we  
8 saw each other was at Judge Thompson's induction ceremony.

9 **MR. BURRIS:** Oh, that's right.

10 **THE COURT:** You told me to read *When the Riders Come*  
11 *Out at Night*, which I did. I went out and I bought that. And  
12 it includes a number of reports and statements that were made  
13 by all sorts of people that are easy to document. I'm pretty  
14 sure they were accurate.

15 **MR. BURRIS:** Mm-hmm.

16 **THE COURT:** The thing that is striking to me is that  
17 the same kind of problem that existed in looking at what  
18 the Riders had done internally --

19 **MR. BURRIS:** Yeah.

20 **THE COURT:** -- is echoed by what happened recently,  
21 and we've been doing this for 20 years.

22 And so my real question is: What do you think the Court  
23 can do to assist in this besides -- I agree with what  
24 Mr. Chanin has said. I think a lot of progress has been made  
25 on a lot of issues. But the thing that you just kept saying

1 over and over again, that's what -- that's the -- I'm looking  
2 for the answer to that question. What do you think?

3 **MR. BURRIS:** Yeah. Well, obviously, the Court's  
4 involvement is important.

5 I do think that constant reporting of things, although I  
6 must admit, it may require someone more talented in another  
7 discipline to really look at those issues. I mean, I do a lot  
8 of reading around these police issues as well. I don't know  
9 that they've been solved.

10 I've asked Mr. Bob Warshaw, who has been involved in a  
11 number of these, has there been any one of his cases that he's  
12 worked on where the culture has been fundamentally changed in a  
13 different way? And he would say: No, there hasn't.

14 Sure, you can have technical violations -- technical task  
15 compliance, which we have here. We have 55 tasks, and most of  
16 those tasks -- one or two have not been -- have been in  
17 compliance. But has that solved the question of compliance?  
18 Has it solved the question of culture change? The answer to  
19 that is no. It may have an impact on it, but it hasn't changed  
20 it to the way that you feel comfortable.

21 So I don't know the answer to that, and I don't even know  
22 if it's solvable, you get down to. I mean, I've done a lot of  
23 reading. I've seen a lot of reports of different cities. And,  
24 sure, DOJ has been involved in a lot of those and they've had a  
25 lot of technical compliance, just like we have here.

1 But when the problem comes up, you still have the same  
2 question of police policing itself, the effort of covering up  
3 for one's friends. That still does happen. Or you try to --

4 One of the things we have here, we don't have the level of  
5 beatings that we used to have on the streets. That's clear.  
6 There's been real progress made from that. And I tell people  
7 all the time, the kind of cases that Jim and I used to have  
8 years ago, we don't have those cases anymore. And that's a  
9 good thing. That means there's some people out there who are  
10 not being beaten up, who should not have been beaten up.

11 But the answer to it is, I can't tell you that I have it  
12 either. And I don't know what the Court can do other than what  
13 the Court has been doing.

14 But all that really -- the question is: How do you  
15 measure the cultural change? We can certainly measure  
16 technical compliance. But how do we measure the cultural  
17 change? And that is a question that we may not be able to  
18 resolve right now, but I don't know that that means we have to  
19 stay in the process here indefinitely till that does happen.

20 **THE COURT:** It is something I'm thinking about.

21 Thank you.

22 **MR. BURRIS:** Yeah. All right. Thank you, Your Honor.

23 **THE COURT:** I appreciate it.

24 Mr. Lucia?

25 **MR. LUCIA:** Your Honor, I'm going to try to keep my

1 remarks brief, but I feel compelled to play off of what  
2 Mr. Burris just said.

3 You've always addressed us, and Judge Henderson addressed  
4 us, about cultural change. I can give you my anecdotal  
5 personal experiences with that, but I think what Mr. Burris  
6 just said and we've heard repeatedly is that they're not  
7 getting the cases they used to get.

8 And let's be specific. The cases were like the Riders  
9 cases, and those were trickling in after they filed the  
10 lawsuit. But we haven't seen those cases.

11 So at one level, when we start talking about cultural  
12 change, we can't really get in the heads of every person in the  
13 City of Oakland, law enforcement, non-law enforcement; but we  
14 can look at objectively a few things. And I think that's super  
15 important that the Court take into consideration that we don't  
16 see the types of lawsuits that they used to file. I know for a  
17 fact because our office was involved in those. We didn't  
18 defend the City, but we represented the officers. We don't see  
19 that. We hear about Louisville and places like that and  
20 Memphis. We don't see that in Oakland.

21 Our firm is privileged to represent most of the police  
22 officers in the San Francisco Bay Area. I represent the police  
23 officers in Berkeley and San Francisco and many others. And we  
24 don't see the types of cases that we see in other places,  
25 especially outside the Bay Area. That's one.

1 Two, I will tell you, I don't know about anyplace outside  
2 California. Our law firm represents cops all over the state.  
3 I don't think there's a police department in the state of  
4 California that has a structure in place to provide a formula  
5 for success. When I say "structure," I mean the NSA-created  
6 tasks. And I'm not going to get into whether you should keep  
7 control of one, two, or more. But there are tasks in place  
8 that have created and spawned a structure of accountability. I  
9 mean, there is accountability at multiple levels in this police  
10 department, far more than any other police department I have  
11 ever been involved with. Ever.

12 And so with the structure -- you've asked what can  
13 the Court do? What the Court has done here and what the  
14 parties have done is they've created a structure for  
15 accountability. And at some point, we've had -- we've come  
16 close to becoming compliant and entering the sustain- -- and  
17 then things happen.

18 Well, I think things happen because we're in the people  
19 business. That's what we do. I'm a labor attorney. I deal  
20 with people. You deal with people in this courtroom. And  
21 I think we have to just accept the fact that people will make  
22 mistakes. We are human beings.

23 But what I think you should expect, what I should expect  
24 is -- police officers are held to the highest standards,  
25 I think, in the country in terms of employees. This case is



1 evidence of that. There are cops in this country that are  
2 going to prison for not doing their job right. They've  
3 exceeded their authority. If a cop lies, they're fired.  
4 Right? If a lawyer lies, well, maybe you'll hold me in  
5 contempt and maybe I'll suffer consequences. But every cop,  
6 especially in Oakland, if they come close to lying, they're  
7 going to get fired. Every cop is held accountable for their  
8 behavior.

9 What I'm going to conclude with is this: I think we  
10 have -- I know we have a structure in place now that is far  
11 superior to any other police department. And I know from my  
12 perspective, being on the other side of all this, I think now  
13 we have a structure in the City of Oakland that we didn't have  
14 23 years ago. We've got Inspector Generals. We've got a  
15 Police Commission. We've got a CPRA. We've got a whole body  
16 of people that, as Chief Allison said, have to reflect the  
17 needs and the desires and the expectations of the community.  
18 We didn't have that before.

19 I'm used to working with civilian oversight bodies, and  
20 there's a tension between those bodies and law enforcement.  
21 But the reality is, they're here and we need to make it work.  
22 And I think that the structure in place now will make that  
23 happen.

24 No disrespect to the Court, but at some point this has to  
25 end; and when it ends, then the Mayor, the City Council,

1 the City Administrator and, ultimately, the Chief of Police  
2 have to be held accountable. By who? Not by a judge, but by  
3 the community that they oversee. People in those communities  
4 have to hold these people accountable.

5 I mean, my members, our members know, in a paramilitary  
6 organization, if you don't respect chain of command and follow  
7 the rules, there are consequences.

8 And I believe that this city is ready to take on the  
9 responsibility of moving forward, because -- I hate to say  
10 this, but in the next six to eight months, something could  
11 happen; somebody at a certain level in command staff could  
12 engage in some behavior.

13 And I'm going to conclude with this: Our office  
14 represented one of the Riders. We were involved in both of  
15 those criminal cases. I've had the pleasure and honor to  
16 represent Oakland cops for 25, 26 years. This is not the same  
17 police department. I'd love to know how many members have been  
18 hired since the start of the NSA. By far and away, the  
19 majority. This command staff, Chief Allison included, have  
20 grown up as managers with expectations changing from  
21 this Court, from the plaintiffs' lawyers, from the NSA. So  
22 ultimately, I think there has been a cultural change.

23 And you're in a very untenable position, like I am.  
24 You're a judge; I'm a lawyer. I've never walked in their  
25 shoes. Jim Chanin talked about the ride-alongs. That's the

1 reality of an Oakland cop. It's a dangerous job. They're  
2 understaffed, they've overwhelmed, and they're doing their  
3 darnedest to protect the community. And they're not doing it  
4 by circumventing people's rights. We don't have wild  
5 allegations of unconstitutional policing.

6 So I've been -- I said this probably 18 years ago. I  
7 haven't said it since. I'm going to say it now. At some point  
8 the Court needs to let the Chief be the Chief and be held  
9 accountable by those above him or her.

10 **THE COURT:** Thank you.

11 **MR. LUCIA:** You're welcome.

12 **THE COURT:** It's very rare when somebody tells a judge  
13 that he's in an untenable situation.

14 **MR. LUCIA:** I know. I know. I'm in an untenable  
15 position for even saying it. You're right.

16 **THE COURT:** I very much appreciate your very  
17 well-stated comments, Mr. Lucia.

18 So let me go to the Police Commission. And I understand  
19 that -- here we are. Please proceed.

20 **DR. MILELE:** Good afternoon, Your Honor.

21 **THE COURT:** Good afternoon. I hope you're feeling  
22 better.

23 **DR. MILELE:** No.

24 I am Dr. Tyfahra Milele, Chair of the Oakland Police  
25 Commission. Thank you for the invitation here directly from

1 the Commission.

2 Joining me and present with you is Retired Superior Court  
3 Judge Brenda Harbin-Forte, Commissioner and Chair of our Ad Hoc  
4 Committee for NSA Task 5 and 45. And Judge Harbin-Forte and I  
5 are available to answer any questions you may have after my  
6 remarks.

7 So briefly, I only have three points to make.

8 The first is that the citizens of Oakland have repeatedly  
9 voted to have citizen oversight of the Oakland Police  
10 Department centered in the Police Commission.

11 Second, at the January hearing before this Court,  
12 the Mayor of Oakland committed to providing the resources  
13 needed for effective civilian oversight; and the Police  
14 Commission, with its policymaking authority, its community  
15 police review agency, and its charter-mandated supervision of  
16 the work of the Inspector General, stands ready to assume  
17 the Monitor's role in ensuring the Oakland Police Department's  
18 accountability to the public.

19 Lastly, the work of the Monitor has been monumental, and  
20 the Commission has spent the majority of its time diligently  
21 working on the policies he has identified. However, the  
22 Commission is eager to use its valuable volunteer time focusing  
23 on the issues the community cares about most; namely, disparate  
24 enforcement of the law and racial profiling.

25 There's no question in my mind that the Commission,

1 reflecting a diversity and lived experience of the community,  
2 can and will do a more thoughtful job working on these issues.

3 We believe the Court should now allow the people and their  
4 Commission to take the lead.

5 So I'll pause there, and I or Commissioner Harbin-Forte  
6 can answer any questions if you have any.

7 **THE COURT:** I actually don't have questions of you. I  
8 appreciate your expression of readiness to take on these tasks.

9 I have, under the NSA and the agreements that brought the  
10 case to the Court in the first place, the responsibility of  
11 making sure that the NSA -- that the parties achieve full  
12 compliance with all of the tasks. There are a couple that  
13 still remain outstanding.

14 I appreciate that the Police Commission was not in  
15 existence then, is in existence now, and I am encouraged by  
16 that fact. And figuring out how to best ensure that that  
17 oversight that you discussed and that I now have continues in a  
18 way that is as effective as possible is what I'm thinking  
19 about.

20 So I very much appreciate your comments. Thank you.

21 **DR. MILELE:** Thank you.

22 **THE COURT:** All right. Ms. Martin?

23 **MS. MARTIN:** Thank you, Your Honor.

24 I appreciate Your Honor's consideration to potentially  
25 narrow the tasks that are affirmatively reviewed going forward.

1 I do think that in addition to 2, 5, and 45, if Your Honor  
2 includes Tasks 24 and 25 that involve use of force and use of  
3 force reporting, that does make the most sense. I do think  
4 that's reasonable.

5 I do think that in the City's perspective, the more narrow  
6 we can have that affirmative assessment focus be, the more  
7 resources we'll be able to use to focus where there is greater  
8 need.

9 That's not to say that we're not going to keep doing  
10 everything that we are doing to remain in compliance with the  
11 other tasks; but there is a non-negligible amount of time and  
12 resources that go toward sending document requests and other  
13 items on some of the others tasks that we could, frankly,  
14 really use any time and resources that we can get to put toward  
15 where we really need to use those resources.

16 So I appreciate that, Your Honor.

17 **THE COURT:** All right. You heard the plaintiffs  
18 suggest that 34 should be added to that mix. What's your  
19 perspective -- do you have an additional perspective besides  
20 the one you just shared?

21 **MS. MARTIN:** I think that it makes more sense for 24  
22 and 25 to be on the table rather than 34 because most of the  
23 issues that will be reviewed in 24 and 25, plus 5, which are  
24 essentially all investigations -- use of force investigations,  
25 internal affairs investigations -- those form a lot of the

1 basis of the Task 34 risk management meetings.

2 And then our stop data reports are now, quarterly, made  
3 public so all of that data and information is available.

4 And if we're still sharing slides from the risk management  
5 meeting, I feel that that would give enough information to  
6 the Monitor and to plaintiffs' counsel, assuming Jim Chanin  
7 will also be getting those slides, to know that things are  
8 still in the right place and that we're still maintaining  
9 compliance.

10 Because one of the things that I want to be clear on, to a  
11 point that Mr. Chanin made, is that none of these tasks are  
12 going away if there's not affirmative assessment. We  
13 understand that if something happens or someone notices an  
14 irregularity or there is an issue that arises, that any of  
15 these tasks could come back on the table for affirmative  
16 assessment and we could find ourselves back here on another  
17 task.

18 I am confident and optimistic, given the structures we  
19 have in place, that that won't happen. But I understand that  
20 these aren't going away. So I want to allay some concerns that  
21 I've heard from plaintiffs' counsel.

22 **THE COURT:** And just to be clear about this, we're  
23 going to be back together at the end of the September. Do you  
24 think that you're -- would you prefer to come back without  
25 having had the more direct oversight of the Monitor on Task 34

1 and just see how things have developed; or would it be helpful,  
2 in order to ensure compliance, to have the Monitor looking at  
3 34? Entirely up -- I mean, that's --

4 **MS. MARTIN:** You know, Your Honor, while we're here  
5 and we still have the benefit of Court and Monitor oversight,  
6 it makes the most sense to take some of the training wheels off  
7 while we still have some of the training wheels on and see how  
8 we do. I think the Department and the City are ready for that.

9 We still plan to present, in our filing, on Task 34. We  
10 know that's an area Your Honor is interested in. So we will  
11 continue to do that. But I think having as many training  
12 wheels off to see how it goes actually makes the most sense for  
13 the long run.

14 **THE COURT:** Okay.

15 **MS. MARTIN:** And I want to also just pick up on  
16 something that Mr. Lucia said and focus a little bit here on  
17 people because, really, at root, that is what we're talking  
18 about when we talk about culture.

19 And the Department has a number of people. It's an  
20 organization that necessarily is made up of a constantly  
21 changing body of people. And those people -- the sworn  
22 officers, the civilian Department members -- they share values  
23 and attitudes that have been so critical and continue to be so  
24 critical to this Department's undeniable progress.

25 And while we do have at times, inevitably, setbacks,



1 errors in judgment, and at those times -- which these times is  
2 what I'm talking about -- introspection and change and critical  
3 feedback are necessary.

4 And one of the ways the City has changed to address some  
5 of those issues is to provide community oversight. We have the  
6 Community Police Review Agency, the Police Commission, the  
7 Inspector General. So it's not just trying to have a cultural  
8 change from the inside, but we are trying to bring the City's  
9 culture from the outside into the Department as guideposts.

10 And I think that that is working. We are seeing progress.

11 More often than not in this Department, the officers are  
12 successful. And too often in life, we focus more on critical  
13 feedback and we don't give positive reinforcement when there  
14 are good outcomes. And the reality is that people need both.  
15 And police officers and Department employees are people, and  
16 they need positive reinforcement too.

17 And we've had a number of successes -- which, Your Honor,  
18 thank you for appreciating that and pointing them out -- in the  
19 risk management context and some of the implementations that  
20 we've brought in through the risk management context, which  
21 most notably show themselves in the reduction of racial  
22 disparities, in non-dispatched stops, and in lower level uses  
23 of force.

24 We've had success in holding officers accountable for  
25 using appropriate force and reporting that force accurately,

1 and officers are using their de-escalation techniques on a  
2 consistent basis and using force reasonably.

3 One of the reasons that it's important to talk about these  
4 successes is because they show that the people in this  
5 department are capable and willing to address any problem that  
6 they encounter and that they are committed to fairly and  
7 thoughtfully serving their community.

8 Another positive in limiting the tasks that are  
9 affirmatively reviewed going forward is that provides positive  
10 reinforcement to those officers for that good work that they  
11 are doing and continuing to do and for those sworn officers and  
12 civilian Department members who every day continually  
13 successfully uphold not only the letter of the NSA, but the  
14 spirit of the NSA as well.

15 Thank you, Your Honor.

16 **THE COURT:** All right. Thank you, Ms. Martin. I  
17 appreciate your thoughts.

18 Mayor Thao.

19 **MAYOR THAO:** Good afternoon, Your Honor. So nice to  
20 see you in person.

21 **THE COURT:** Very nice to see you. Thank you for being  
22 here.

23 **MAYOR THAO:** Absolutely. Thank you for having me.

24 You know, the last time that I was here, the last time I  
25 was able to address you, I did share my disappointment in the

1 findings that had recently taken place, and I made to you three  
2 commitments.

3 First, I promised to make sure that officers who engage in  
4 misconduct were held accountable.

5 Second, I said that the City would address systemic  
6 failures by identifying root problems.

7 And third, I said we would continue to not only fix our  
8 current system of police accountability and public safety, but  
9 to truly reimagine it, to see how we can really move forward.

10 And today I am able to say that the City is delivering on  
11 those commitments.

12 In terms of holding officers accountable, my  
13 administration and I have made some extremely -- extremely,  
14 extremely difficult decisions over the last few months as it  
15 played out in the media, of course. And navigating that  
16 process has been very difficult, but we were guided by our  
17 City's long-term interests. I always say that I will always  
18 choose Oakland first and Oakland's residents first.

19 At times we had to stare directly into the headwinds in  
20 order to stay on course, and it definitely wasn't easy,  
21 especially as a younger mayor coming into office right at the  
22 very beginning and having to make these hard decisions.

23 So while I don't take any pleasure in having to hold City  
24 employees accountable, I do take seriously the City's  
25 responsibility of upholding transparency and excellence. And

1 this is why I'm in this position. This is why I fought to make  
2 sure that I would be Oakland's next mayor. It's for that very  
3 reason: transparency and excellence.

4 And I'm proud that our team, we met the challenge head-on  
5 in regards to those difficult situations that we were put in.

6 I'm also proud to say that the Department and the City  
7 have made significant progress toward fixing the problems  
8 brought to light in the most recent investigations. And the  
9 work has truly been collaborative. The Department, under  
10 Chief Allison's stable leadership, played a central role, but  
11 it was part of a much greater whole. My office has met weekly  
12 with the police department commanders and legal advisors to  
13 ensure we were moving forward thoughtfully.

14 Likewise, our esteemed Police Commission and our esteemed  
15 Inspector General, who is here with us today, have worked  
16 closely with the Department to also provide input and guidance,  
17 as well as our valued partners with Mr. Burris and Mr. Chanin.

18 And that brings me to the third commitment we made, which  
19 was to continue to reimagine police accountability and public  
20 safety. The collaboration I've seen over the last few months,  
21 including from all the civilian partners I just mentioned, has  
22 further proved to me that Oakland is definitely on the right  
23 track.

24 I've thought a lot recently about what it means to really  
25 change organizational culture, the topic of today. And I had

1 to back up and really think about how we should really define  
2 the organization we're talking about.

3 Historically, there's been this tendency to think of  
4 police departments as their own organizations with their own  
5 cultures. But in Oakland, we've zoomed out and decided that  
6 policing must be part of a larger public safety, what I call,  
7 community safety and violence prevention system, and that our  
8 police officers have to be integrated into a much larger  
9 structure. To me, this means that the best way to continue  
10 changing the cultural at OPD is by continuing to weave the  
11 Department into the fabric of Oakland and Oakland's culture.

12 The culture of Oakland is a culture of compassion, a  
13 culture of service, and, of course, a culture of  
14 accountability. Our City is known for having leaders, both in  
15 government and in the community, who truly value the fairness  
16 and equity values.

17 Having a police department that is overseen by the  
18 community with policies that reflect community values, it is a  
19 really great start with the ultimate goal, of course, to be  
20 that it is ensuring that the Department is part of the  
21 community and that it is truly sharing the community's values.

22 And so the question becomes: How do we keep moving in  
23 that direction? In the near term, my administration is  
24 proposing to add a dedicated staff in the City Administrator's  
25 Office to be a point person in these efforts. This person will

1 provide the Chief of Police with a secondary civilian review on  
2 any major cases that haven't been investigated by our Community  
3 Police Review Agency. And they will work on helping the City  
4 move as much as of the investigative work as possible to CPRA,  
5 which has a commitment that came out of our Reimagining Public  
6 Safety workshops in 2021.

7 Another initiative my administration fully backs is  
8 the City's pledge to increase the percentage of female academy  
9 recruits to 30 percent by the year 2030. I, as a woman myself,  
10 understand that women lead a little bit differently.  
11 Increasing gender diversity at OPD has been a focus of mine and  
12 many other city leaders for years. It's been a focus of mine  
13 prior to being a mayor, prior to being a council member,  
14 you know, as a baby staffer and, prior to that, just as a  
15 citizen and resident.

16 When Oaklanders chose their public servants at the ballot  
17 box, we chose diversity. It benefits us in so many ways and  
18 helps shape our identity. We can't fully erase divisions  
19 between police services and other City services unless we erase  
20 this glaring contrast in who does the work.

21 These are obviously just a few examples of the work  
22 Oakland currently has ahead of ourselves. And with so many  
23 capable people invested in improving public safety, like the  
24 great people all here in this room, including yourself,  
25 Your Honor, we'll never stop finding areas for improvement. We

1 know that.

2 And running the Oakland Police Department involves a level  
3 of transparency, criticism, discourse, and collaboration that  
4 seems to be somewhat unique in policing. Our City has come to  
5 embrace it. It means that policing in Oakland will always be a  
6 work in progress, and it means that we have the solidarity of  
7 purpose to face new problems head-on because it's who we are  
8 now.

9 This oversight, yes, it's lasted 20 years, going on 21 or  
10 however many years; but it has changed the culture. It has  
11 changed the culture of Oakland, of how citizenries can actually  
12 hold the police department accountable, how the police  
13 department holds itself accountable.

14 As we have heard, many, including Chief Allison, has grown  
15 up in the Department under this oversight. So I believe, as I  
16 always did, that we are in a space, a unique space where we are  
17 creating a new culture for the OPD because we have people like  
18 Chief Allison and others who have come up the ranks, many who  
19 are in this room with us today who are now the trainers, who  
20 are training the trainees under this very culture.

21 And so I thank you so much for your time and for having us  
22 here, and I welcome any questions that you may have.

23 **THE COURT:** All right. Thank you, Mayor. I do not  
24 have questions for you.

25 I want to tell you that I appreciate your focus on this

1 and your action to show what kind of accountability is demanded  
2 of any civil servant.

3 **MAYOR THAO:** Yeah.

4 **THE COURT:** And particularly with the police  
5 department, I said it to your predecessor, that this is -- at  
6 the end of the day, you're the person who's on the top of the  
7 pyramid.

8 **MAYOR THAO:** That's right.

9 **THE COURT:** And leadership in this issue of culture is  
10 everything.

11 **MAYOR THAO:** Mm-hmm.

12 **THE COURT:** And it's not something that the Court --  
13 the one thing I know is that court supervision can't do very  
14 much about informing people that they need to own up to  
15 mistakes that they make, be accountable and -- because  
16 everybody makes them. But if you can't address them and then  
17 move forward, if you try to sweep them under the rug, whether  
18 the Court is supervising OPD or not won't make any difference.

19 And so it is really up to you, and the people who are in  
20 the offices that they hold within the City, and the volunteers  
21 who have formed -- who are sitting on the Commission, and the  
22 Office of the Inspector General, all of you are key to making  
23 this work far more than anything that is happening here on  
24 Golden Gate Avenue.

25 **MAYOR THAO:** Absolutely.



1           **THE COURT:** So, thank you --

2           **MAYOR THAO:** Thank you so much.

3           **THE COURT:** -- for that.

4           And I thank you all for being here.

5           I will issue an order sometime relatively soon which lays  
6 out what's going to happen over the next -- until we meet again  
7 on September 26th.

8           I am hopeful that as problems arise -- and they will --  
9 that they are dealt with transparently and with accountability.

10          And at the end of the September, I'm going to look and see  
11 where we are.

12          We went into this sustainability period without actually  
13 being fully compliant. We did it because everybody was so  
14 anxious to transfer this case into the hands of the City. That  
15 may have been -- we may have been -- well, it turns out we were  
16 premature, whether that was a good idea or not.

17          The City has never actually reached full compliance on all  
18 of the tasks, and I am hopeful, expectant that the City will be  
19 in full compliance when all of these new policies that have  
20 been recommended are implemented. And then we'll see where we  
21 are in September and what kind of further modifications we can  
22 make with respect to this.

23          So thank you all for being here, and see you in September.

24           **ALL:** Thank you, Your Honor.

25                   (Proceedings adjourned at 4:49 p.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, May 2, 2023

Ana Dub

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Ana Dub, RMR, RDR, CRR, CCRR, CRG, CCG  
CSR No. 7445, Official United States Reporter

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DELPHINE ALLEN, et al.,

Plaintiffs,

v.

CITY OF OAKLAND, et al.,

Defendants.

Case No. [00-cv-04599-WHO](#)

**ORDER EXTENDING  
SUSTAINABILITY PERIOD**

Pursuant to the Negotiated Settlement Agreement (NSA) dated January 22, 2003, I placed the City of Oakland into a sustainability period on May 12, 2022, given its “substantial compliance” with the tasks required by the NSA. Dkt. No. 1525. My Order required that the City demonstrate that it could comply with all provisions of the NSA for one year starting on June 1, 2022. *Id.* The Order also narrowed the number of NSA tasks under active monitoring by the Monitor/Compliance Director and his team (to Tasks 2, 5, 20, 24, 25, 26, 30, 31, 34, 41, and 45) and reduced the Monitoring Team’s reporting schedule, while directing the Monitor/Compliance Director to continue to provide support to the OPD’s Office of Internal Accountability (OIA) and guidance to the Police Commission. *Id.*

The City did not achieve full compliance. As explained during the October 12, 2022, January 24, 2023, and April 11, 2023, Case Management Conferences, the City was either in “deferred compliance” or “not in compliance” with Task 5: significant concerns have arisen regarding the continued inability of the OPD to police itself in a consistent, fair, and equitable way. *See* Dkt. Nos. 1557, 1578 (Not in compliance); Dkt. No. 1557 (Not in compliance); Dkt. No. 1540 (Deferred). Task 45 was initially not in compliance, then in partial compliance, and finally deferred with “no compliance finding.” Dkt, Nos. 1540, 1557, 1578. The City has remained in

1 compliance throughout the sustainability period, however, with Tasks 2, 20, 24, 25, 26, 30, 31, 34,  
2 and 41.

3 In light of the City's inability to achieve full compliance, the sustainability period will be  
4 extended. I will assess the City's compliance with the NSA at the next Case Management  
5 Conference on September 26, 2023. By that time, the City should be well on its way to  
6 implementing the recommendations of the Clarence Dyer Cohen report, as modified by the City's  
7 best judgment. Until further notice:

8 1. The Monitor/Compliance Director and his team will continue to monitor Tasks 2,  
9 5, 24, 25 and 45. While Tasks 24 and 25 have remained in compliance during the sustainability  
10 period, they are included given the close nexus between the failures of the IAD and the Command  
11 Staff as documented by the Clarence Dyer Cohen report and the use of force reporting and internal  
12 reviews covered by Tasks 24 and 25. The Monitoring Team will not be required to observe the  
13 Risk Management Meetings but may do so at its discretion. The slides prepared for those  
14 meetings and the stop data shall continue to be shared with the Monitoring Team. The  
15 Monitor/Compliance Director shall share with the Court and the Parties any concerns he might  
16 note relevant to stop data.

17 2. In addition to the Task assessments, the Monitoring Team will continue the  
18 following activities:

- 19 • Maintain regular contact with the Chief and other Department officials to discuss  
20 Department updates, personnel issues, high-profile cases, critical incidents, and other  
21 matters.
- 22 • Review and comment upon NSA-related Department policies.
- 23 • Review OIA's audit reports and provide feedback.
- 24 • Engage in other activities as the Monitor/Compliance Director deems necessary.

25 3. The Monitoring Team will conduct site visits and issue reports on a quarterly basis  
26 as before. Absent extraordinary circumstances, the Monitor/Compliance Director need not assess  
27 compliance with Tasks other than those listed above.

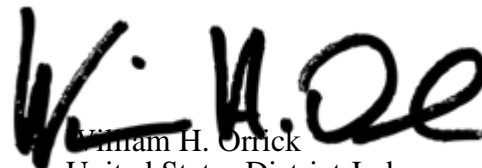
28 4. The term of the sustainability period will be assessed again at the next Case

1 Management Conference. The Monitoring Team's next site visits will occur in May and August  
2 2023. The sustainability reports will be issued in June and September 2023.

3 The Court is wrestling with the utility of its role in helping the City achieve constitutional  
4 policing after 20 years of monitoring compliance with the NSA. As discussed at the last Case  
5 Management Conference, much good work has been accomplished. Fundamental questions  
6 regarding the Oakland Police Department's ability to police itself remain. The Court appreciates  
7 the perspectives expressed by the plaintiffs, OPOA, Police Commission, the City and the Mayor at  
8 the last Case Management Conference and looks forward to the parties' constructive analysis of  
9 the remaining issues at the next Case Management Conference. As always, the Joint Case  
10 Management Conference Statement is due one week before the hearing, which shall be in person.

11 **IT IS SO ORDERED.**

12 Dated: April 18, 2023

13   
14 William H. Orrick  
15 United States District Judge  
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United States District Court  
Northern District of California

June 30, 2023

# Fourth NSA Sustainability Period Report *of the Independent Monitor for the Oakland Police Department*

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## Introduction

This is the fourth report of the Monitoring Team issued during the Negotiated Settlement Agreement (NSA) sustainability period in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California under the direction of Judge William H. Orrick.

On May 12, 2022, the Court issued an Order placing the City into a one-year sustainability period. The Court noted, “The Negotiated Settlement Agreement (NSA) the parties executed on January 22, 2003, contemplated that federal court oversight would terminate after the defendants achieved substantial compliance with all of the provisions of the NSA and maintained that compliance for a year.” As per the May 12, 2022 Order, during the sustainability period, we report to the Court on a quarterly basis; we conduct quarterly site visits; and we have appended to the Monitoring Team a member of OPD’s Office of Internal Accountability (OIA), who serves as the Department’s NSA sustainability liaison.

As with our site visits before the sustainability period, our site visits include both compliance assessments and technical assistance. We meet with Department and City officials to receive updates on OPD’s compliance with the NSA Tasks; observe the Department’s Risk Management Meeting; discuss the status of several Departmental policies; and share our observations of misconduct investigations and use of force reports.

The Court extended the sustainability period in an Order on April 18, 2023, citing “the City’s inability to achieve full compliance.” The Order set out some new provisions for the sustainability period and reduced the number of active Tasks from 11 to five. The Court noted, “The Court is wrestling with the utility of its role in helping the City achieve constitutional policing after 20 years of monitoring compliance with the NSA. As discussed at the last Case Management Conference, much good work has been accomplished. Fundamental questions regarding the Oakland Police Department’s ability to police itself remain.”

Per the April 18, 2023 Court Order, this report covers our assessments of NSA Tasks 2; 5; 24; 25; and 45.

Fourth NSA Sustainability Period Report of the Independent Monitor for the Oakland Police Department

June 30, 2023

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## *Task Assessments*

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

#### **Requirements:**

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

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

(Negotiated Settlement Agreement III. B.)

#### **Relevant Policy:**

OPD most recently revised Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 22, 2017.

#### **Commentary:**

**Task 2.1** requires that internal investigations (IAD and Division Level) – including review, approval, findings, and discipline – be completed in accordance with the timeliness standards developed by OPD. To assess this subtask, we requested a list of all internal investigations resulting in formal findings (unfounded, sustained, exonerated, or not sustained) that were approved in January, February, and March 2023. Due to the ongoing effects of the ransomware attack on the City's systems in February, the Department is currently unable to produce the report, or list, from Vision that it has provided to us in the past. Accordingly, the list that we received was generated manually by IAD and Office of Internal Accountability (OIA) personnel, and it did not include all of the information that we normally receive for this purpose. Using the list, we segregated the cases into Class I or Class II categories. If a case involved at least one alleged Class I violation, we classified it as Class I.

At least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days to be considered timely. Per DGO M-03, Class I offenses “are the most serious allegations of misconduct and, if sustained, shall result in disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution.” Class II offenses include “all minor misconduct offenses.”

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For the purposes of this assessment, we calculated the number of days between the complaint receipt date and the approval date. The complaint date is the date on which the Department first becomes aware of a complaint – whether it is lodged by a community member or internally generated. We removed from the denominator cases that were delayed due to tolling (held in abeyance in accordance with one of the provisions of Government Code Section 3304) or cases in which the Department asserted that its failure to meet the 180-day timeliness requirement resulted from delays in the Community Police Review Agency (CPRA) completing its concurrent investigations.

Of the 32 applicable Class I cases we reviewed for this assessment, 27, or 87%, were in compliance with established timelines. During our last review of Task 2, we found 88% of Class I cases in compliance with established timelines. Of the 107 applicable Class II cases we reviewed for this assessment, 102, or 95%, were in compliance with established timelines. During our last review of Task 2, we found 99% of Class II cases in compliance with established timelines.

Per DGO M-03, “In cases with a sustained finding, the discipline recommendation process shall be completed within 30 calendar days of the sustained finding.” The Department was unable to provide information about the cases in our dataset that included sustained findings to us to conduct this assessment. As a result, for this reporting period, we were unable to determine the Department’s compliance with established discipline timelines. By our next report, if we are unable to determine discipline timeliness, it may affect the Department’s compliance status with this Task.

Task 2.2 requires that IAD and OPD command staff regularly monitor compliance with these timeliness standards. The primary responsibility for monitoring compliance with timeliness standards rests with IAD, whether investigations are conducted by IAD personnel or via Division-level investigation. As part of this monitoring, the IAD Commander discusses pending deadlines for key open investigations during IAD’s weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. A Monitoring Team representative regularly attends these weekly meetings. IAD also occasionally, as needed, emails individual reminders on cases approaching due dates to investigators and their supervisors. The Department is in compliance with Task 2.2.

Task 2.3 requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards. We routinely request and receive updates on IAD staffing levels during and between our site visits.

<b>Task 2 compliance status</b>	In compliance
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## Task 5: Complaint Procedures for IAD

### Requirements:

1. *On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the person receiving the complaint. In the event that such a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant and any witnesses. This information, as well as a description of the complaint, shall immediately, or as soon as circumstances permit, be documented on a Complaint Form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a complaint. The supervisor or appropriate Area Commander notified of the complaint shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.*
2. *An on-duty supervisor shall respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest. The supervisor shall ensure the Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints by a jail inmate shall be handled in the same manner as other civilian complaints.*
3. *In each complaint investigation, OPD shall consider all relevant evidence, including circumstantial, direct and physical evidence, and make credibility determinations, if feasible. OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.*
4. *OPD shall develop provisions for the permanent retention of all notes, generated and/or received by OPD personnel in the case file.*
5. *OPD shall resolve each allegation in a complaint investigation using the “preponderance of the evidence” standard. Each allegation shall be resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure. The Department shall use the following criteria for determining the appropriate disposition:*
  - a. *Unfounded: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.*

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- 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:*

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- 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.)

### **Relevant Policy:**

There are six Departmental policies that incorporate the requirements of Task 5: Department General Order M-03, *Complaints Against Department Personnel and Procedures* (revised most recently on December 22, 2017); Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents* (revised most recently on December 7, 2009); Training Bulletin V-T.1, *Internal Investigation Procedure Manual* (revised most recently on August 23, 2018); Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility* (published June 24, 2005); Special Order 8565, *Complaints Against Department Personnel* (published May 11, 2007); and IAD Policy & Procedures Manual 21-01, *IAD General Operating Procedures* (published August 17, 2021). In addition, NSA stipulations issued on December 12, 2005 and March 13, 2007 incorporate the requirements of this Task.

### **Commentary:**

Task 5 consists of several subtasks, briefly described below. Based on OPD's compliance history with many of the subtasks, not all are being actively monitored at this time. As we have continued to advise, quality and timely investigations are essential to fulfilling the Department's obligation to complainants and officers alike.

Fourth NSA Sustainability Period Report of the Independent Monitor for the Oakland Police Department

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**Task 5.1** requires that when a citizen wishes to file a complaint, the citizen is brought to a supervisor or IAD, or a supervisor is summoned to the scene. **Task 5.2** requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay must be documented. **Task 5.3** requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint. **Task 5.4** requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander. **Task 5.5** requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD.

To assess compliance with Tasks 5.1 through 5.5, we reviewed the Daily Incident Logs (DILs) prepared by the Communications Division and forwarded to IAD each business day. The DIL form has been modified several times during our tenure to elicit “forced responses” that gather all of the information required to evaluate compliance with these Tasks. These modifications have significantly enhanced OPD’s ability to document compliance by properly filling out and distributing the logs, and compliance rates with these subtasks have been near 100% for several years. Consequently, we no longer actively assess OPD’s compliance with these subtasks, but we continue to receive both the DILs and Daily Complaint Referral Logs (used to document when Information Business Cards [IBCs] are provided to citizens in lieu of a complaint forms). We spot-check these forms regularly to verify that the quality of their completion has not diminished. OPD remains in compliance with Tasks 5.1 through and including Task 5.5.

**Task 5.6** requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. We have not actively monitored this subtask since December 2014, though we have reviewed cases applicable to this requirement in several reports since that time.

**Task 5.12** requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD. Under current policy, the Communications Division must record on the DILs complaints that are received and/or handled by on-duty supervisors, and the DILs are forwarded daily to IAD.

OPD remains in compliance with Tasks 5.6 and 5.12.

**Task 5.15** through **Task 5.19**, and **Task 5.21**, collectively address the quality of completed IAD investigations, and therefore remain the subject of our focused Task assessments. To assess compliance with these Tasks, we reviewed a sample of 12 IAD cases that were closed between January 1-March 31, 2023.

Our sample of cases consisted of investigations completed by investigators assigned to IAD, and Division-level investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding. (Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.)

Together, **Tasks 5.15** and **Task 5.16** require that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements.

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In all of the cases we reviewed, we believe that OPD gathered all relevant evidence available. As we have often found, in many of the cases video and/or audio recordings proved to be a significant factor in allowing OPD to reach an appropriate conclusion.

Investigators conducted follow-up interviews in two of the cases we reviewed. In one case, a complainant was interviewed three times. In another case, the subject officer was interviewed twice. In the remaining cases, we concur that follow-up interviews were not warranted.

OPD made credibility assessments for all involved parties in eight of the 12 cases. Five cases were approved for summary finding; and per policy, investigators are not required to assess the credibility of the involved officers and civilian employees in these instances. In three cases, including one summary finding case, the complainants were deemed not credible. In two cases, the complainant's statements were inconsistent with available body-worn camera (BWC) footage; and in the other case, the complainant's statements were inconsistent with a recorded call to OPD Dispatch. In two cases, subject officers were deemed not credible.

We disagreed with the credibility assessments in one case. Two complainants were both deemed credible. Based on the evidence in the case, and also the narrative of the credibility assessments, they should have been deemed not credible. The investigator wrote that the complainants' statements were "not accurate" and that both complainants "seemed to exaggerate and often time purposely mispresent facts."

In 10 of the 12 cases we reviewed, OPD resolved inconsistent statements. In five of these cases, BWC recordings were available and assisted in the determination. In two other cases, recorded calls to OPD Dispatch proved instrumental in reaching a definitive finding. Two cases resulted in at least one finding of not sustained. Not sustained is an acceptable finding; and by definition, it implies that inconsistencies were not resolved despite investigative efforts.

**Task 5.17** requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file. OPD personnel document the presence of investigative notes within a particular file by completing an Investigative Notes Declaration Form. OPD has a sustained history of 100% compliance with this subtask.

**Task 5.18** requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard. **Task 5.19** requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure. Our sample of 12 cases contained 39 allegations that received dispositions as follows: 11 exonerated; 16 unfounded; four not sustained; seven sustained; and one administratively closed.



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We did not disagree with the findings in any of the cases we reviewed. However, we believe that in one case, an allegation of truthfulness should have been added and sustained for the subject officer. In this case, the officer was sustained for engaging in an inappropriate relationship with a crime victim. The officer was appropriately deemed not credible based on his interviews. In the investigator's analysis of the relationship allegation, he cited and appropriately applied the preponderance of evidence standard in reaching the sustained finding. However, in his explanation for not pursuing a truthfulness allegation, the investigator appeared to apply a different, higher standard of proof. While he justified the not credible determination, and characterized certain elements of the officer's statements as "highly questionable," he indicated that the "investigation would not ever be able to *prove* Officer [] was in fact untruthful." (Italics added.) The burden of proof for a truthfulness allegation is no different than for any other allegation: preponderance of the evidence. This is often described as more likely than not, or 51%, or a slight tipping of the scales. It does not require definitive proof. The investigation, which was very thorough, contained enough documentation to meet the preponderance of the evidence standard with respect to truthfulness.

In another case we reviewed, a Division Level Investigation (DLI), the initial investigator reached one set of findings, including sustained findings for one of five involved officers for failure to accept or refer a complaint and for demeanor. The investigator's captain disagreed with some of the findings and authored an addendum to the investigation. He concurred with these sustained findings, but he disagreed with other findings reached by the investigator. He recommended that another officer be sustained for failure to accept or refer a complaint, and also recommended that several exonerated findings be changed to not sustained. It appears from the documentation we received that the Chief concurred with the captain's recommendations; yet we only received discipline documentation for the first officer referenced. After repeated requests for commensurate documentation pertaining to the second sustained officer, OPD discovered that, due to an apparent clerical error, the second officer was never notified of the sustained finding or any proposed discipline. The 3304 date has since passed, causing the Department to miss the opportunity to impose discipline if warranted based on the officer's history. OPD attributed this issue to human error, exacerbated by the continuing effects of the Citywide ransomware attack in February and its ongoing impact on Vision. While we realize that OPD relies heavily on Vision for many of its reporting processes, until that system is fully restored, it is incumbent on the Department to institute alternative measures to prevent occurrences such as this.

Additionally, at least half of the cases in our sample were missing interview and/or BWC recordings. Despite numerous attempts to obtain this documentation over more than a two-week period, most of the missing material was not provided as of this writing. While we are comfortable with our assessment of the cases based on the material at hand, in many instances, we did not have the ability to compare written summaries to actual audio or video documentation had we felt the need to do so.

**Task 5.20** requires that the IAD Commander review all "filed" cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed. A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition.

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Traditionally, as part of our review of this Task, we also reviewed cases that are tolling. OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304. While we are no longer actively assessing this subtask, we note that filed and tolling cases are reviewed with the Chief or his designee during the weekly IAD meetings and are listed by case number on the printed meeting agendas. We receive and review these agendas regularly, and a Monitoring Team member regularly attends these meetings. Additionally, we regularly receive a weekly report listing all tolled cases and all cases approaching their 3304 dates. When we have questions regarding any of the cases in the report, the IAD Commander answers them promptly.

**Task 5.21** requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, with the approval of the IAD Commander or his designee, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Five of the 12 cases we reviewed were resolved via summary finding, and each case was appropriately approved for such closure.

As we noted in our last report, there have been several investigations conducted by outside investigators retained by the City. Some of these matters are still pending; and there remain issues in the Internal Affairs Division, as well as systemic and other deficiencies, that need to be addressed. We look forward to assessing the Department's progress under the new leadership in Internal Affairs. The Department remains not in compliance with Task 5.

<b>Task 5 compliance status</b>	Not in compliance
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## Overview of Our Assessments of Tasks 24 and 25

OPD had been in compliance with Tasks 24 and 25 since 2015, and we did not actively review these Tasks. In November 2018, after we raised concerns regarding the identification, potential underreporting, and investigation of uses of force, the Court reactivated Tasks 24 and 25.

Since we resumed use of force reviews following the Court's reactivation of these Tasks, we have reviewed hundreds of investigations and provided detailed feedback on the force investigations to OPD during each of our site visits. In cases where we have had questions or concerns, OPD personnel have continued to be responsive and have provided follow-up where necessary. In some cases, OPD has provided additional information or documentation that supports its actions, and we have concurred with the Department's assessments. In others, we have identified concerns that had not been identified or addressed by supervisors who conducted the UOF investigation, or the command personnel who reviewed the investigation. In these cases, OPD executive staff have directed additional review; directed training; entered a Supervisory Note File (SNF); or initiated an Internal Affairs Division (IAD) investigation. We

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have also tracked OPD's efforts to correct identified deficiencies, which have included: the issuance of email directives from executive staff, training bulletins, and newsletters; audits; line-up training; and revisions to UOF-related policies.

In our August 2021 report, we found OPD in compliance with Task 24 for the first time since the Court reactivated these Tasks in 2018; and in April 2022, we found OPD in compliance with Task 25. We also found OPD in compliance with Tasks 24 and 25 in our first, second, and third sustainability period status reports.

To assess compliance for this report, we reviewed 31 UOF reports that occurred between December 1, 2022-February 28, 2023. We reviewed all Level 3 UOF reports (two) and a sample of Level 4 UOF reports (29). In accordance with the Order issued May 12, 2022, establishing the sustainability period, we reviewed these UOF reports with a member of OPD's Office of Internal Accountability (OIA) serving as the Department's NSA sustainability liaison. Between March 1-April 11, 2023, we reviewed three Level 2 UOF reports for which Force Review Boards (FRBs) were held. Where concerns with field reporting existed, the concerns were appropriately addressed by the Boards. We discuss only Level 3 and 4 uses of force in this assessment.

This report covers Level 3 and 4 UOF reports completed by OPD between December 1, 2022-February 28, 2023. All 31 of the cases we reviewed for this time period occurred after the publication of Special Order 9196, which clarified the use of force policy; after Special Order 9202, issued on February 27, 2020, which temporarily modified the requirements for reporting Type 32 uses of force; and after Special Order 9208, issued on April 27, 2022, which defined the finalized reporting requirements for Level 4, type 32 uses of force.

In the 31 Level 3 and 4 uses of force we reviewed, 78 officers used force on 36 different persons. There were numerous cases where multiple officers used force on a single person, and five instances where force was used on multiple persons at the same incident. We noted that there were 136 uses of force on the 36 persons. Level 4, Type 32 uses of force accounted for 60 of the total uses of force; and in 10 of the 31 cases we reviewed, only Type 32 use of force were used. As we have noted in our last two sustainability reports, an increase in the total number of uses of force is not unexpected, given the new reporting requirements for Type 32 UOF that were implemented in 2022.

During the second sustainability period, we noted some inconsistencies in the reporting of the Type 32 use of force by officers and supervisors. During our November 2022 site visit meeting, we discussed these inconsistencies with OPD and agreed on an interpretation of reporting for this type of force. After our discussion, OPD ensured that supervisors were made aware of the reporting requirements; and we have seen improved consistency in those reports we have reviewed since that time. As we requested, OPD supervisors now include on the Vision report whether any BWC was reviewed in a Type 32 use of force only incident. Area Captains continue to audit a sample of Type 32 UOF each month. In the Area Captains' reviews for incidents, they have identified and appropriately addressed concerns with use of force reporting and documentation.



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The total breakdown for the force used on the 36 persons is as follows: African Americans, 42%, a decrease from 48% in our last status report; Latinos, 42%, an increase from 28% in our last status report; whites, 13%, an increase from 8% in our last status report; and Asians or other, 17%, an increase from 16% in our last status report.

Of the 31 UOF reports we reviewed for the three-month period between December 1, 2022-February 28, 2023, we identified only one late BWC activation that had not been identified and addressed by OPD supervisors. While we have continued to observe during our reviews some instances of BWCs becoming dislodged during use of force events, limiting the availability of footage to review, those numbers have declined since OPD began issuing the new “clips” to more securely attach BWCs to both exterior vest carriers and uniforms. In February, only one incident where a BWC became dislodged was noted. During our May 2023 site visit, OPD told us that its new BWC policy is nearing completion.

We noted a few instances in our reviews where officers failed to identify themselves as police officers or used unprofessional language or profanity while dealing with members of the public. We noted one incident where we believe there may have been an unreported use of force, and one where we had concerns about the appropriateness of lowering the level of force from a Level 3 to a Level 4. Of the concerns and comments we brought forward during our May 2023 site visit, the UOF Command review group had already identified and addressed all but one. The group had also identified and addressed some additional concerns with the uses of force it reviewed.

The Deputy Chief who is responsible for the UOF Command review group also presented during our May 2023 site visit on the results of the group’s reviews, which also covered UOF reports not reviewed by our Team. The Deputy Chief noted that their reviews continued to identify some concerns with tactical issues, proper categorization of UOFs, and de-escalation techniques. The Deputy Chief also noted that they continued to identify ongoing positive trends – including improved planning and communications, more detailed UOF reports, more positive communications with the public, and sergeants and the chain of command identifying and addressing deficiencies that were found. Based on our reviews, we agree with the assessment provided. The Deputy Chief advised that he is rotating different Command officers onto the review group and finding that this is serving as good training for the command personnel who review uses of force.

In our review of UOF reports for December 1, 2022-February 28, 2023, we identified few areas of concern. In general, officers continue to appropriately use and report use of force, and supervisors and command personnel are identifying and properly addressing any concerns that are identified.

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## Task 24: Use of Force Reporting Policy

### **Requirements:**

*The policy shall require that:*

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

(Negotiated Settlement Agreement V. A.)

### **Relevant Policy:**

OPD most recently revised Departmental General Order K-4, *Reporting and Investigating the Use of Force*, on October 16, 2014. The Department issued Special Order 9208, *Level 4 Type 32 Reporting and Review*, on June 4, 2022.

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### **Commentary:**

To assess compliance with Task 24, we reviewed 31 Level 3 and 4 use of force (UOF) reports that were completed by OPD from December 1, 2022-February 28, 2023.

**Task 24.1** requires that members/employees notify their supervisor as soon as practicable following any reportable use of force or allegation of excessive use of force. In our reviews, we did not identify any instances where a notification was not properly made or was not properly documented.

**Task 24.2** requires that in every reportable use of force incident, every member/employee on the scene of the incident at the time the force was used, reports all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor. **Task 24.3** requires that OPD personnel document, on the appropriate form, every use of force and/or the drawing and intentional pointing of a firearm at another person.

In the 31 Level 3 and 4 UOF incidents we reviewed; officers used force on 36 different persons. In four of the reports, Level 4, Type 22, pointing a weapon, was the only force used. In six others, Type 22 was used in addition to another use of force. We determined that officers' pointing of their firearms was appropriate in all instances we assessed. We identified one instance where it appears a use of force was improperly reported. The UOF Command review group had already referred this case to IAD. We also identified one instance where we had concerns about a Category 3 use of force being lowered to a Category 4 use of force. Again, the Command review group had already identified this concern and forwarded the report to IAD for investigation.

**Task 24.4** requires that a supervisor respond to the scene upon notification of a Level 1, 2, or 3 use of force or an allegation of excessive use of force, unless community unrest or other conditions makes such a response impracticable. In the two Level 3 uses of force we reviewed for this subtask; a supervisor did respond to the scene as required. Though not required, supervisors also responded to 24 of the 29 Level 4 uses of force or were on scene at the time of the use of force.

**Task 24.5** specifically addresses requirements for the response and handling of Level 1 uses of force. We assess Level 1 uses of force in our regular reviews of Task 30 (Executive Force Review Boards).

**Task 24.6** requires that OPD enter all use of force data into Performance Reporting Information Metrics Environment (PRIME), which is now known as Vision. In most cases, use of force data was properly entered into Vision. However, OPD experienced technical difficulties with entering some of the use of force data; and the Department continues to work on resolving this issue.

This is our fourth assessment of UOF reporting for the sustainability period. OPD has continued to meet the overall requirements of this Task.

<b>Task 24 compliance status</b>	In compliance
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## Task 25: Use of Force Investigations and Report Responsibility

### **Requirements:**

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

1. *OPD shall develop and implement a policy for conducting and documenting use of force investigations that include, at a minimum:*
  - a. *Documentation of the incident in either an Offense or Supplemental Report from the member(s)/employee(s) using force; and/or, when necessary, a statement taken from the member(s)/employee(s) using force;*
  - b. *Separating and separately interviewing all officers who were at the scene at the time of the incident;*
  - c. *A Supplemental Report from other members/employees on the scene or a statement taken, if deemed necessary by the investigating supervisor;*
  - d. *Identification and interviews of non-Departmental witnesses;*
  - e. *Consideration of discrepancies in information obtained from members, employees and witnesses, and statements in the reports filed;*
  - f. *Whether arrest reports or use of force reports contain "boilerplate" or "pat language" (e.g., "fighting stance", "minimal force necessary to control the situation");*
  - g. *Documentation of physical evidence and/or photographs and a summary and analysis of all relevant evidence gathered during the investigation; and*
  - h. *Consideration of training/tactical issues involving the availability and practicality of other force options.*
  - i. *Supervisor's justification as to why any element of the policy was not documented; and*
2. *All supervisors shall be trained in conducting use of force investigations and such training shall be part of a supervisory training course.*
3. *Use of force investigations shall include a recommendation whether the use of force was objectively reasonable and within Department policy and training. The recommendation shall be based on the totality of the circumstances and shall consider, but is not limited to, the following factors:*
  - a. *Whether the force used was pursuant to a legitimate law-enforcement objective;*

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- b. *Whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the members/employees were attempting to achieve;*
- c. *Whether the member/employee used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts;*
- d. *Whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped;*
- 4. *Use of force reports shall be reviewed by the appropriate chain-of-review as defined by policy.*

*The type of force used, the identity of the involved members, and the report preparer shall be the determining criteria for utilizing the appropriate chain-of-review. Reviewers may include, when appropriate, the chain-of-command of the involved personnel, the appropriate Area Commander on duty at the time the incident occurred, other designated Bureau of Field Operations commanders, and as necessary, the chain-of-command of the involved personnel up to the Division Commander or Deputy Chief/Director, and the Internal Affairs Division.*

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

- a. *Make a recommendation as to whether the use of force was in or out of policy,*
- b. *Order additional investigation and investigative resources when necessary, and*
- c. *Comment on any training issue(s) when appropriate.*
- 5. *Any recommendation that the use of force did not comply with Department policy shall result in the incident being referred to the Internal Affairs Division to conduct additional investigation/analysis, if necessary.*
- 6. *Members/employees involved in a use of force incident resulting in serious injury or death and/or an officer-involved shooting, shall be separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed.*

(Negotiated Settlement Agreement V. B.)

### **Relevant Policy:**

OPD most recently revised Departmental General Order K-4, *Reporting and Investigating the Use of Force*, on October 16, 2014. The Department issued Special Order 9208, *Level 4 Type 32 Reporting and Review*, on June 4, 2022.

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### **Commentary:**

As noted above in Task 24, we reviewed 31 Level 3 and 4 use of force (UOF) reports that were completed between December 1, 2022-February 28, 2023.

**Task 25.1** requires that supervisors complete a use of force report and that certain criteria are met in the report. Subtask 25.1.f. addresses the use of “boilerplate” or “pat” language in reports. During our reviews for this report, we did not identify any patterns of officers failing to document specific information and details justifying their use of force or using “boilerplate” or “pat” language in their reports.

**Task 25.2** requires that all supervisors are trained on how to conduct use of force investigations and such training is part of a supervisory training course. OPD includes the requirement for this training in its Departmental policies. During our March 2022 site visit, we confirmed with OPD that the Department continues to require and deliver this training in the Sergeants’ Transition Course, where use of force is part of the curriculum.

The use of force and the processes in which force is documented and reviewed have been at the core of the Court’s oversight. The Department has provided numerous directives on this topic. During this and our last three sustainability reports, we have found that in general, supervisors are identifying deficiencies in officer reporting and identifying and addressing MOR violations. We also find that reviewers of the supervisors’ reports are generally identifying and addressing concerns when appropriate. OPD has also assigned a team of command officers to review some use of force reports as an ongoing quality control mechanism. We have found that this additional oversight and review has continued to identify and properly address concerns prior to our Team identifying them.

**Task 25.3** requires that use of force investigations include required recommendations. Areas of recommendation include: whether the force used was pursuant to a legitimate law enforcement objective; whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the officers were attempting to achieve; whether the officers used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts; and whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped.

In our assessment of Level 3 and 4 UOF reports for this report, we did not identify any instances where the use of force was not deescalated or stopped reasonably when resistance decreased, or any instances where we believe officers could have made additional efforts to explain to subjects being detained why the detention was occurring prior to using force. Notably, we observed several instances during this reporting period where officers used commendable patience and empathy when dealing with members of the public who were being detained.

In our review of UOF reports from the first sustainability period, we identified three Level 3-Taser deployments where we identified concerns with the use of force. As a result of our concerns, OPD initiated internal affairs investigations of two of these. In the third, OPD provided us additional detailed information on the use of force; and after further review, we concurred with their findings of in compliance. OPD conducted additional training for officers and supervisors on the use of Tasers, specifically the use of Tasers on subjects who were fleeing on foot from officers. The Department also determined that OPD would no longer allow Taser



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deployments where the subject was not struck with the probe to be lowered to a Level 4 use of force. This ensures that they receive the same level of scrutiny as those where the probe does strike the subject. Since that time, we have not identified any further concerns with the use of Tasers on fleeing subjects.

**Task 25.4** requires that use of force reports be reviewed by the appropriate chain of command and appropriate recommendations are made. In all of the cases we reviewed, the reports were reviewed as required. The Command review group also reviews a select number of uses of force for follow-up review. The combination of supervisor and command review has continued to appropriately identify and address concerns with UOF reporting. OPD continues to make strides in ensuring that the chain of command is actively involved in the review of use of force and is addressing areas of concern without the need for us to bring the concerns to their attention.

**Task 25.5** requires that any determination that a use of force did not comply with Department policy result in the incident being referred to IAD to conduct additional investigation/analysis, if necessary. We identified two uses of force where we believed additional investigation was appropriate to determine if the use of force was appropriate or properly reported. OPD had already identified these concern and referred the cases to IAD.

**Task 25.6** requires that members/employees involved in a use of force incident resulting in serious injury or death and/or officer-involved shooting 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. This Task is not assessed here, as we review and consider it as part of the Force and Executive Force Review Boards that OPD holds to examine Level 1 and 2 uses of force.

This is our fourth assessment of UOF for the sustainability period. OPD has continued to meet the overall requirements of this Task, and continues to render additional oversight and scrutiny of use of force reporting.

<b>Task 25 compliance status</b>	In compliance
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## Task 45: Consistency of Discipline Policy

### **Requirements:**

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

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

(Negotiated Settlement Agreement X. B.)

### **Relevant Policy:**

Five Departmental policies incorporate the requirements of Task 45: Departmental General Order M-03, *Complaints Against Department Personnel and Procedures* (revised most recently on December 22, 2017); Training Bulletin V-T.1 and V-T.2, *Internal Investigation Procedure Manual* (revised most recently on August 23, 2018); IAD Policy & Procedures Manual 21-01, *IAD General Operating Procedures* (published August 17, 2021); and Training Bulletin V-T, *Departmental Discipline Policy* (revised most recently on December 11, 2017).

### **Commentary:**

Since the writing of our last report, a key member of the Department's staff who was a major contributor to data-gathering and analysis left the services of the City. We look forward to the Department filling this important position.

More importantly, in our last report, we expressed our dismay that the Department had not directly responded to issues of disparities – and in fact, certain investigative outcomes illuminated the Department's failures in this regard. The Department needs to specifically address disparities in discipline and investigative outcomes.

<b>Task 45 compliance status</b>	No compliance finding
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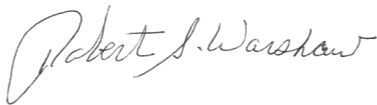
## Conclusion

The Court Order of April 18, 2023 extended the NSA sustainability period and limited the active Tasks to 2, 5, 24, 25, and 45. Prior to the April 18, 2023 Order, and since our last report, we observed two Force Review Boards (FRBs) convened by OPD. One FRB assessed the appropriateness of a canine bite on a subject wanted for a felony arrest warrant who was observed in possession of a handgun. The Board found the use of force in compliance; and the members engaged in in-depth discussions regarding the length of the bite; and whether de-escalation occurred at the earliest opportunity. The second FRB assessed the use of both a Taser and a Specialty Impact Munition (a Drag Stabilized Flexible Baton, or “bean bag”). The subject refused to leave his aunt’s residence, and was armed with a metal cane which he repeatedly waved in a threatening manner. The force was used when he attempted to break the containment of the officers and re-enter his aunt’s house. We did not disagree with either Board’s conclusions.

Additionally, for this report, we reviewed one FRB report that was completed and approved by the Chief of Police since our last report. The FRB report documented an FRB that convened on January 20, 2023, which was observed remotely by a member of the Monitoring Team. The Board assessed 12 uses force, including a canine bite. The subject receiving the bite fled from a stolen vehicle that was used in an armed robbery. We found the report to be well-written and an accurate account of the proceeding we observed. The Chief concurred with the Board’s findings without any modifications. We did not disagree with any of the findings in the reports we reviewed.

We also reviewed one completed Executive Force Review Board (EFRB) report before the entry of the April 18, 2023 Order and since we last reported on Task 30. The report documented the EFRB’s evaluation of a Taser deployment on a fleeing suspect wanted from an earlier domestic violence incident. Members of the Monitoring Team observed the Board when it convened on March 7-8, 2022. We found that the report accurately documented the proceedings. The Board found the Taser deployment out of compliance, and we did not disagree. The Chief concurred with the Board’s findings without any modifications.

Interim Chief Allison has done a commendable job in the daily operations and administration of the Department. The Department, with the support of the City structure, must continue to address and resolve issues that are still of concern.



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



## AGENDA REPORT

**TO:** Oakland Police Commission

**FROM:** Michelle N. Phillips,  
Inspector General

**SUBJECT:** Office of the Inspector General (OIG)  
Progress Report

**DATE:** July 13, 2023

### PURPOSE

The Inspector General reports to the Police Commission and members of the public. This report outlines updates from the OIG, since the Inspector General reported out on May 11, 2023. This informational report is intended to answer OIG specific questions raised at the last meeting, by members of the public and the Police Commission.

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

#### Task 42 Compliance Evaluation

The OIG conducted a compliance evaluation of the Field Training Officer (FTO) program. On Tuesday June 20, 2023, the draft compliance evaluation was submitted to Interim Chief Allison for response by August 2, 2023. The OIG will conduct an exit conference with OPD, upon receipt of their response. The OIG is also conducting a thorough review of Departmental General Order (DGO) B-08: Field Training Program and will follow up with any policy or procedural recommendations associated with this compliance evaluation.

#### Additional Task Evaluations

The OIG has begun the background and research phases of Task 34: Vehicle Stops, Field Investigations and Detentions and Task 8: Classifications of Citizen Complaints. These projects will be reflected on the OIG project work plan for Fiscal Year 2024. Given the OIG observations over the last year, we believe these two tasks will inform the OIG's work in reviewing OPD operations. Particularly, OPD's ability to assess compliance and identify systemic issues that may contribute to an internal culture that does not focus on equity, fairness, constitutional policing, and public service.

Lastly, the OIG was present at the May 2023 independent monitoring team site visit and continues to attend risk management meetings and internal affairs meetings regularly.

Police Commission Meeting  
July 13, 2023

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## **THE BEY MATTER**

Prior to the appointment of the current Inspector General, in November of 2021, the Oakland Police Commission voted to refer the Bey matter to the newly created OIG. On June 13, 2023, the OIG sent a letter via email to the Commission requesting authorization for subpoenaed documents, provided exclusively to the Inspector General, be extended to her staff.<sup>1</sup> At the June 26, 2023, Police Commission meeting the OIG received a verbal response from the Commission granting OIG staff access to the subpoenaed documents. The Inspector General has assigned a Program and Performance Auditor to assist the Inspector General in this matter. To move these projects along, the OIG will complete reports for each individual complaint. A draft report for 07-0538 is currently being reviewed and edited with the program and performance auditor under the supervision of the Inspector General.<sup>2</sup>

## **CITY COUNCIL AUDIT**

On June 26, 2023, the City Council adopted Mayor Thao's 2023-2025 "One Oakland" Budget, as amended by the Council President Fortunato-Bas's Budget Team. In its adopted iteration, the City Council put forth the following policy directive:

Direct the City Administrator or their designee (Office of the Inspector General) to conduct a **staffing study and resource analysis of the Oakland Police Department (OPD)**. This study would help to --

- a. Identify current resources
- b. Determine the number of officers needed in a particular geographic area
- c. Decide how staffing and operational resources should be allocated

Calls for service audits and resource allocation reviews are best when tied to a staffing study. If the City of Oakland's objective is to determine if police are responding to calls for service in an efficient timeframe, it is critical to first know the number of available officers, target timeframes, and how alternate resources can be used to supplement services. \$200,000 shall be allocated for this study (\$100,000 designated in the FY 2021-2023 budget and \$100,000 designated in the proposed budget amendments).

The policy directive was in response to the OIG's recommendation, provided to the City Council and Police Commission in March 2023. Prior to the adoption of the budget the OIG continued its background research in this area by seeking guidance from Dr. Jeremy Wilson, Director of the [Police Staffing Observatory](#) at Michigan State University. In the coming weeks the OIG will be

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<sup>1</sup> On November 18, 2021, the Police Commission Agendized item number 10: *Referral of Prior-Subpoenaed Records to the Inspector General*. The agenda and meeting minutes can be found on <https://www.oaklandca.gov/meeting/police-commission-special-meeting-11-18>.

<sup>2</sup> Draft report is going through quality assurance process with program and performance auditor given the Inspector General has previously been the only one contributing to this project.

working on outlining a scope for this study and moving forward with the request for proposal process.

## **OTHER OIG PROJECTS**

### **Strategic Plan**

Over the past two months the OIG conducted community forums and requested comments and feedback on its strategic plan from all stakeholders. The updated strategic plan has been finalized and is attached to this agenda item in English. The Spanish and Cantonese versions of the strategic plan will be available on the OIG website.

### **Annual Report**

The OIG is actively working on our first annual report, which we are completing in house. The OIG annual reports will align with the City of Oakland's fiscal year and is expected to be released in September 2023.

### **Project Work Plan**

The OIG is developing its Fiscal Year 2024 project work plan that will be in alignment with the strategic plan. We are soliciting feedback from stakeholders and community members with a [survey](#), that can be found in our quarterly newsletter, on the OIG website and on all social media platforms. The survey will be available for 30 days. Data will be reviewed and taken into consideration to inform the OIGs work for fiscal year 2024.

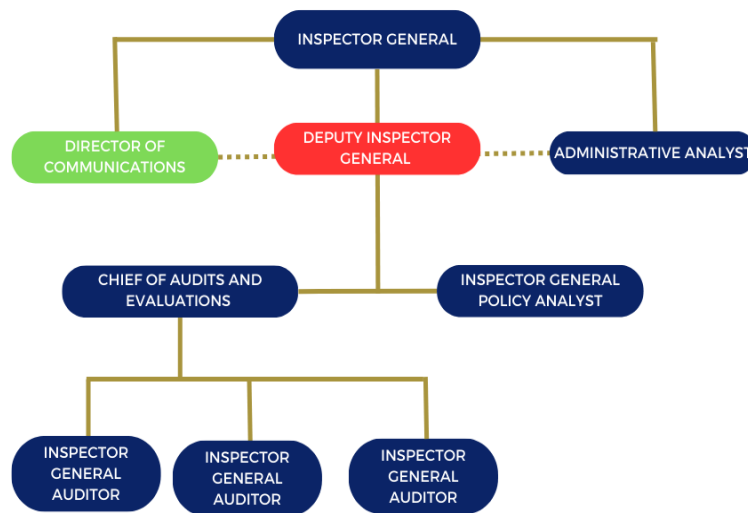
## **OIG STAFF UPDATE**

The OIG has been working closely with the City's Human Resources Department and City Administration to ensure the office is able to move forward with filling currently vacancies and replacing exempt limited duration employees with permanent full-time employees, via the civil service process. The recruitment for the Inspector General Audit Manager has closed and exam assessments are in progress.

Additionally, the OIG has two summer interns from the [Center for Youth Development through Law](#). They have been assisting with smaller projects, while learning more about civilian oversight in City government. They are also providing youth perspective on policing in Oakland, which is helping to inform the OIGs work.

With the City Council's adoption of Mayor Thao's 2023-2025 "One Oakland" Budget, as amended by the Council President Fortunato-Bas's Budget Team, the OIG is able to retain seven full time positions. While the Deputy Inspector General position remains frozen (highlighted in red), we also received a Public Information Officer II (highlighted in green). Under the City's fiscal circumstances, the OIG understands and supports the Council's budget decisions. The organizational chart, included below, reflects OIG's current available positions.

**Figure 1 OIG Org Chart July 2023**



## **OIG COMMUNITY ENGAGEMENT AND OUTREACH**

The OIG is working diligently to educate residents and community stakeholders on the importance of civilian oversight. From our engagement with Oaklanders, it is evident that there is a distinct knowledge gap around the existence and functions of our current public safety and oversight structures. Furthermore, how each of these entities can and should work together to provide optimal service to members of the public.

In terms of engagement, the OIG hosted or participated in the following activities (*partial list*):

- **Youth Safety Conference**, which was an intergenerational discussion on how the City of Oakland and community can come together to create a safe environment for the next generation.
- **OIG Strategic Planning Sessions**, to generate insight and feedback from community members prior to the finalization of the draft plan. These workshops were hosted in partnership with the Unity Council and Allen Temple Baptist Church's Public Ministry.
- **Bay View News Awards**, where Inspector General Philips provided a keynote address about the history of police accountability and its intersection with media.
- **Oakland Town Nights**, family-friendly events hosted by the Department of Violence Prevention (DVP) and credible community-based organizations.
- **Oakland Peace Summit**, hosted by Violence Prevention Coalition.

Police Commissioners  
Subject: OIG Status Report  
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Additionally, the OIG continues to engage with community via its digital channels: quarterly newsletter, social media (Facebook, LinkedIn, Twitter, and Instagram).

For questions regarding this report, please contact Michelle N. Phillips, Inspector General, at [OIG@oaklandca.gov](mailto:OIG@oaklandca.gov).

Respectfully submitted,



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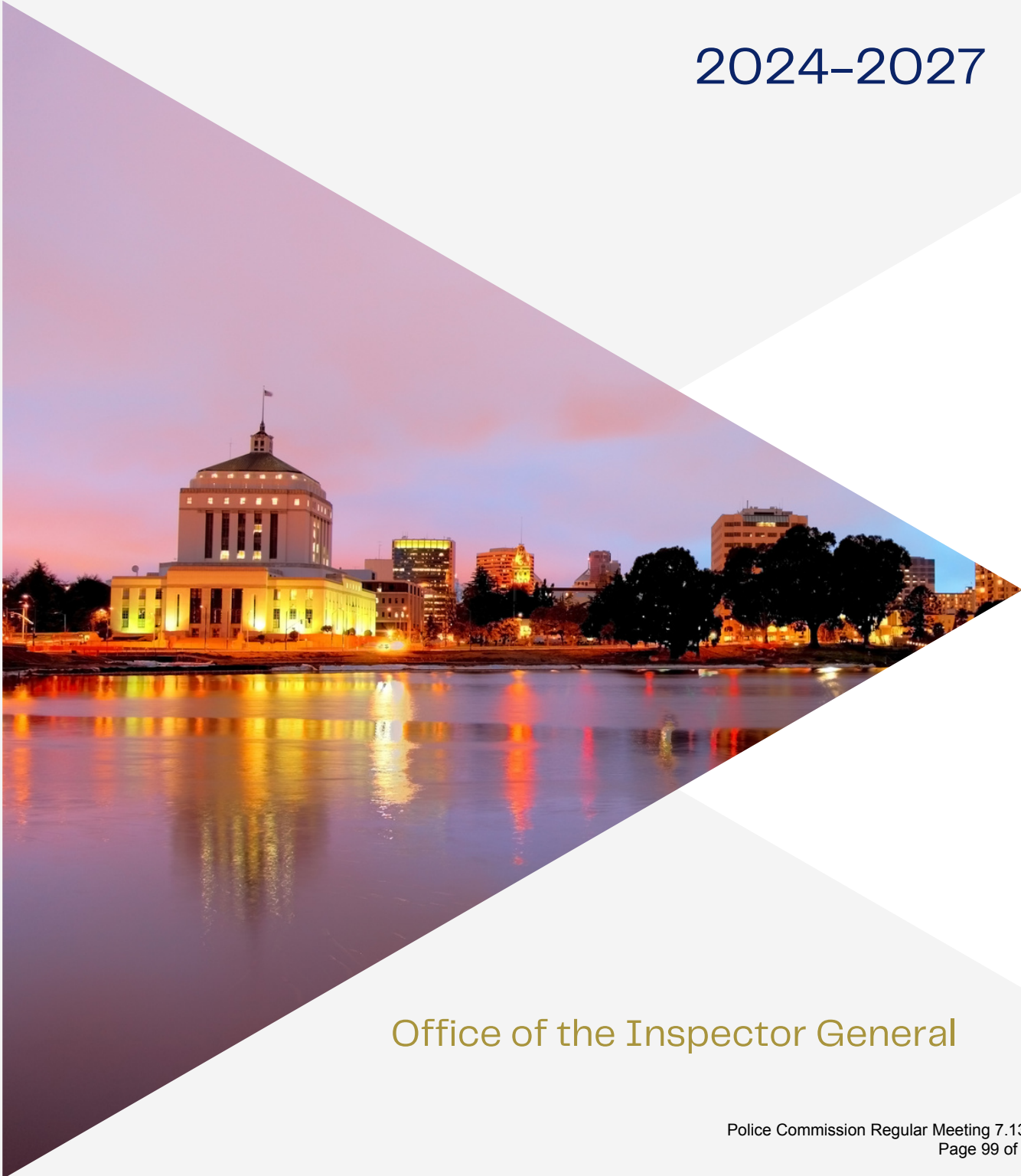
Michelle N. Phillips  
Inspector General  
Office of the Inspector General





# Strategic Plan

2024-2027



Office of the Inspector General

## A Message from the Inspector General

As the City of Oakland's newest department, it is with a great sense of responsibility and optimism that I present the Office of the Inspector General's 2024–2027 Strategic Plan. Over the past year, the Office of the Inspector General has made great headway in delivering on the public's mandate to provide effective independent civilian oversight of the Oakland Police Department. With 81% of Oakland voters approving the passage of Measure S1 in 2020, the office has a deep commitment to our mission. Which is to ensure accountability, enhance community trust, and increase transparency via fair and thorough assessments of the Oakland Police Department's compliance, with the law and departmental policies.

Oakland has a rich history of police accountability and oversight, that is deeply rooted in community activism. From the Black Panther Party to the social justice groups we see today, the Office of the Inspector General recognizes that this office is a culmination of decades of hard work and advocacy. It is for this reason that every work product, including the enclosed strategic plan, centers Oakland's incredible community members.

This Strategic Plan is organized by four high-level goals: build sustainable relationships, deliver excellence, enhance transparency, and improve innovation. Embedded within each of these goals are objectives that provide a more detailed account of how the Office of the Inspector General plans to achieve its desired impact. The office values that shape our delivery and approach are integrity, impartiality, proactivity, and objectivity.

At a time when our nation is tackling a growing call to hold police officers accountable, the Office of the Inspector General is dedicated to helping create an optimal public safety system for every Oaklander. One where community members trust that police misconduct will not be tolerated, and officers are held to the highest standards of local, state, and federal law.

Through your ongoing partnership and support, I am confident that this office will not only achieve its mission but also become a national model for civilian oversight.

Sincerely,



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





## Introduction to the Office of the Inspector General

In 2016, 83.19% of Oakland voters were in favor of Measure LL. Measure LL established the Oakland Police Commission and charged it with overseeing the Oakland Police Department's policies and procedures as they relate to constitutional policing, procedural justice, equity, and accountability. Measure LL also established the Community Police Review Agency as the independent oversight body tasked with investigating complaints of police misconduct.

In 2020, Oakland residents also voted in favor of Measure S1, with an 81.27% approval rate. Measure S1 amended Measure LL to strengthen Oakland's police reform efforts by expanding the independence, authority, and staffing of the Police Commission and Community Police Review Agency. Measure S1 also created the Office of the Inspector General as an independent, non-partisan, civilian oversight agency to ensure accountability in the Oakland Police Department and increase community trust.

The Office of the Inspector General's primary charge is overseeing the city's compliance with the Negotiated Settlement Agreement. Additionally, after the conclusion of federal oversight, the Office of the Inspector General will continue to monitor the Oakland Police Department's compliance with policies, procedures, and the law. The presence of the Office of the Inspector General is intended to further strengthen the City's ability to identify systemic issues within the Oakland Police Department and decrease instances of police misconduct, through effective civilian oversight. The Office of the Inspector General's jurisdiction also includes auditing and reviewing the Community Police Review Agency's processes, procedures, and work products for compliance with the City of Oakland Charter, Municipal Code, laws, and national best practices.

The Office of the Inspector General will drive best practices by recommending improvements to policies and training as well as engaging in collaborative initiatives that promote systemic advancements. The Office of the Inspector General will provide reports and recommendations to the Police Commission, City Council, and other action holders such as the Mayor or City Administrator when deemed necessary. Action holders have the authority to accept or reject recommendations and are responsible for ensuring the implementation of any accepted recommendation. The Office of the Inspector General will provide reports to the public, in accordance with laws, policies, and applicable memorandums of understanding.

Lastly, the Office of the Inspector General executes its responsibilities in a neutral, apolitical environment free from interference from any person, group, or organization. The Office of the Inspector General is administratively, physically, and operationally independent from the Oakland Police Department. The Inspector General, the agency head for the Office of the Inspector General, is overseen by the Oakland Police Commission.

## Mission, Vision, Values, and Purpose

The mission of the Office of the Inspector General is to be an independent, non-partisan oversight agency that will assist with increasing community trust and ensuring accountability in the Oakland Police Department. In its administration of duties, the Office of the Inspector General will implement a fair, thorough, and autonomous system of civilian oversight of law enforcement.

### Vision

The Office of the Inspector General's vision is to build trust in civilian oversight of policing through encouraging, implementing, and preserving a culture of impartiality, transparency, and accountability.

### Values



### Purpose

The purpose of the Strategic Plan is to articulate the Office of the Inspector General's long-term goals, which are organized around the office's mission, values, operations, and community stakeholders. The plan also articulates several objectives for each of these areas, strategies for achieving these objectives, and associated performance measures. The detailed performance measures are published in the Office of the Inspector General Annual Performance Report.

## Strategic Goals

The Office of the Inspector General identified four goals that align with its mission, values, and desired service outcomes. These goals will be used as a guide to create a solid and sustainable oversight foundation for the office, over the next four years.



## Audits, Inspections, Evaluations, and Reviews: Goals, Objectives, and Measures

Aligned with its core values of transparency and accountability, the Office of the Inspector General provided a brief overview of each function of the office identified to achieve its Charter mandates. Listed below are also the Office of the Inspector General's objectives, with specific measurement tools.



## Differences between Audits and Inspections, Evaluations, and Reviews

Inspections, Evaluations, and Reviews	Audits
Provide reports and recommendations to stakeholders that may provide justification for <b>procedural changes</b> or enhanced internal controls.	Provide audit reports and recommendations to stakeholders that may provide justification for <b>policy reform</b> or the need for more internal controls.
Strive to be compliant with Charter and Municipal Code mandates.	Utilize data analytics to examine large data sets during audits and pinpoint trends, anomalies, and potential risks. Analyze policies and procedures for possible gaps and policy recommendations.
Provides outcomes in a more timely manner than audits .	Make recommendations to stakeholders that leverage existing resources, tools, and technology.



## Audits

As a primary function of the Office of the Inspector General, auditing is a crucial component in ensuring transparency, and accountability. The office's audits can cover a wide range of areas, such as the internal affairs process, risk management, training, and recruitment. In conducting regular audits of the Oakland Police Department and Community Police Review Agency, we can help to ensure compliance, identify areas of improvement, and make recommendations where necessary.

The audit team can also perform special reviews for high-profile or immediate matters, as needed. The Office of Inspector General will align with its mission and values by providing comprehensive coverage and ongoing compliance audits.

Goals	Objectives	Measures
Deliver Excellence	<ul style="list-style-type: none"> <li>• Provide audit reports and recommendations to stakeholders that may provide justification for policy reform or the need for more internal controls</li> <li>• Abide by the Office of the Inspector General mission, vision and values</li> </ul>	<ul style="list-style-type: none"> <li>• Number of audits conducted</li> <li>• Number of recommendations submitted</li> <li>• Number of recommendations accepted</li> <li>• Number of recommendations implemented</li> <li>• Establish a quality assurance process for reviews of all deliverables</li> </ul>
Enhance Transparency	<ul style="list-style-type: none"> <li>• Keep stakeholders and community members informed about Office of the Inspector General completed audits</li> <li>• Inform the public and stakeholders of audits in progress</li> </ul>	<ul style="list-style-type: none"> <li>• Track number of reports made public vs. the total number of reports completed in a Fiscal Year.</li> <li>• Make audit status public on the Office of the Inspector General website</li> </ul>
Improve Innovation	<ul style="list-style-type: none"> <li>• Utilize data analytics to examine large data sets during audits and pinpoint trends, anomalies, and potential risks.</li> <li>• Make recommendations to stakeholders that leverage existing resources, tools, and technology</li> </ul>	<ul style="list-style-type: none"> <li>• Track audit trends</li> <li>• Track risk assessments</li> <li>• Track audit follow-up metrics</li> <li>• Create data visualizations and dashboards to reinforce audit data.</li> </ul>

## Inspection, Evaluations, and Reviews

The Office of the Inspector General's inspections, evaluations, and reviews are critical to the success of the Oakland Police Department and the Community Police Review Agency. By identifying areas for improvement and monitoring compliance with legal and ethical standards, the Office of the Inspector General helps to ensure that these programs are effective and efficient in serving the public.

Goals	Objectives	Measures
Deliver Excellence	<ul style="list-style-type: none"> <li>• Provide reports and recommendations to stakeholders that may provide justification for procedural changes or enhanced internal controls</li> <li>• Strive to be compliant with Charter and Municipal Code mandates</li> <li>• Provide outcomes in a timely manner</li> </ul>	<ul style="list-style-type: none"> <li>• Number of inspections, evaluations or reviews conducted</li> <li>• Number of recommendations accepted</li> <li>• Number of recommendations implemented</li> <li>• Assessment of Charter and Municipal Code compliance</li> </ul>
Enhance Transparency	<ul style="list-style-type: none"> <li>• Keep stakeholders and community members informed about Office of the Inspector General completed audits</li> <li>• Educate members of the public and action holders in progress</li> </ul>	<ul style="list-style-type: none"> <li>• Track the number of reports made public vs. the total number of reports completed in a FY</li> <li>• Make audit statuses public on the Office of the Inspector General website</li> </ul>

	Definition
Evaluations	Evaluations are formal assessments of the operation of a police program or process.
Reviews	Reviews of allegations, completed investigations, and other means help to identify high-risk areas and determine where internal controls should be strengthened.
Inspections	Inspections focus on fact-finding and analyses concerning specific issues and topics.



## Commitment to the Community

The Office of the Inspector General is committed to expanding its community through building strong partnerships. By working alongside stakeholders, the Office of the Inspector General hopes to improve external communication and encourage community engagement. Via the Office of the Inspector General's social media and website platforms, community outreach, and special projects, the office intends to increase resident's awareness of its mission and vision.

Goals	Objectives	Measures
Build Sustainable Relationships	<ul style="list-style-type: none"> <li>• Create pathways to engage with the community in a two-way dialogue</li> <li>• Engage Office of the Inspector General staff on outreach strategies and best practices to drive better outcomes</li> </ul>	<ul style="list-style-type: none"> <li>• Number of Community Outreach attended</li> <li>• Increased awareness of the Office of the Inspector General</li> </ul>
Enhance Transparency	<ul style="list-style-type: none"> <li>• Build a diverse portfolio of communication channels, including web-based and in-person events, press releases, social media, and printed material</li> <li>• Develop data analytics to communicate the work of the Office of the Inspector General, community insights and stakeholder trends</li> <li>• Continue using strategies such as social and newsletters to keep stockholders and community members informed</li> </ul>	<ul style="list-style-type: none"> <li>• Number of Community Outreach attended</li> <li>• Increased awareness of the Office of the Inspector General</li> </ul>

The Office of the Inspector General is committed to strengthening community awareness and trust. During FY2023, the Office of the Inspector General established a social media presence to actively engage Oakland community members. The Office of the Inspector General has an established social media presence on the following platforms:

## CONTACT INFORMATION

### Social Media

FACEBOOK & LINKEDIN: City of Oakland Office of the Inspector General

TWITTER & INSTAGRAM: @OaklandOIG

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Office of the Inspector General

**250 Frank H Ogawa Plaza, Suite 6306 Oakland, CA 94612**

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## CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Police Commission

April 1, 2019

Chief (Ret.) Robert S. Warshaw  
Independent Monitor and Compliance Director  
Monitoring Team, Oakland Police Department  
300 Frank Ogawa Plaza, Suite 222  
Oakland, CA 94612

The Oakland Police Commission is a City of Oakland commission established in November 2016 by the enactment of Measure LL to oversee the City of Oakland Police Department.

As part of its regular meetings, the Oakland Police Commission receives testimony from members of the public regarding the Oakland Police Department. At its public meeting on February 28, 2019, Mr. Saleem Ali Bey provided documents to members of the Oakland Police Commission, including a complaint dated July 13, 2007, filed by Mr. Bey with the Citizens' Police Review Board, which eventually became Internal Affairs Division Case No. 07-0538, and provided testimony regarding mishandling of the subsequent investigation of this complaint.

On March 14, 2019, at the request of Mr. Bey, the Oakland Police Commission voted to provide notice to the Independent Monitor appointed in *Delphine Allen, et al., vs. City of Oakland, et al.*, of Mr. Bey's complaint and to request that the Independent Monitor investigate the substance of Mr. Bey's complaint and testimony. Oakland Police Commission meetings are video recorded and Mr. Bey's testimony is available at the following address: <https://www.oaklandca.gov/boards-commissions/police-commission/meetings>.

Sincerely,

*Regina Jackson*

Regina Jackson  
Chair, Oakland Police Commission

### **Rule 8.1 Formation of Ad Hoc Committees:**

The Commission Chair shall appoint and remove members of committees in accordance with Rule 2.15 of the Commission's Rules of Order.

- When making appointments, the Chair should ensure a balanced allocation of Committee assignments so that all Commissioners handle a fair share of Commission work.

Each ad hoc committee shall have a clearly stated task and purpose.

- When forming an ad hoc committee, the Commission Chair and the Ad Hoc Chair should work together to clearly state the Committee's task and purpose.

### **Rule 8.2 Ad Hoc Chair and Chair Responsibilities:**

Every ad hoc shall have a chair.

- The chair is responsible for making sure the ad hoc completes its task and purpose in a timely manner.

Commissioners on the ad hoc shall decide amongst themselves who will chair the ad hoc.

- The chair should promote public participation and transparency in the ad hoc process.

The ad hoc committee Chair may delegate responsibilities as needed.

### **Rule 8.3 Commissioner Responsibilities:**

Commissioners on the ad hoc shall discuss and solicit the participation of Featured Community Participants to be considered members of the ad hoc committee.

Commissioners on the ad hoc shall discuss and decide on the management of Committee meetings and public hearings conducted by the committee.

- Commissioners on the ad hoc should ensure that the ad hoc committee operate on a collaborative, equitable, consensus-building model.

Commissioners should work with the members of the ad hoc committee to develop a scope of work and task list document that is shared publicly and used to track progress and prioritize items for commission members. This will ensure that ideas do not unintentionally get missed.

### **Rule 8.4 Ad Hoc Committee Meetings:**

#### **Rule 8.4.1 Schedule and Frequency:**

The ad hoc shall meet at least once per month. The ad hoc chair shall set meeting schedules after careful consideration of input from ad hoc committee members and featured community participants.

- Commissioners should consider the following factors to determine the schedule and frequency of ad hoc committee meetings: the scope of work, relevant timelines and deadlines, depth of information or complexity of the issues to be considered by the ad hoc, and the size of the ad hoc.
- Ad hoc committees should meet consistently and at a rate and frequency that allows the ad hoc to meet deadlines and to timely deliver a final product

#### **Rule 8.4.2 Meeting Facilitation:**

The meetings should be facilitated such that they permit the robust discussion of ideas relevant to the policy being drafted by the ad hoc committee.

Facilitators should ensure that ad hoc discussions are respectful, inclusive, and on topic.

Facilitators should ensure that ad hoc members genuinely engage in discussions and proposals brought to the ad hoc.

For issues that cannot reach a consensus, the commission members of the ad hoc will take a vote to resolve disputes.

- Commissioners should strive to reach consensus with the other members of the ad hoc prior to taking a vote of the commissioners to resolve disputes.

#### **Rule 8.4.3 Open and Public Meetings:**

Ad Hoc Committee meetings shall be open to the public and shall be as inclusive as possible, though ad hoc committee meetings can be closed to the public for compelling safety or legal reasons.

- There may be times that the information disseminated or discussed has confidential or sensitive material. If the material is not relevant to the purpose of the ad hoc, then steps should be taken to redact the confidential or sensitive information so that the ad hoc can obtain and review the material without derailing progress. If the material is relevant to the purpose of the ad hoc, then the commissioners should take steps to limit dissemination of the material, such as signing confidentiality agreements and non-dissemination agreements or having a closed session meeting of the ad hoc committee.

Ad hoc members must determine when and how to engage the public at large on the work of the ad hoc committee.

Ad hoc members will decide whether the public is engaged at a formative stage, as a final review of the committee's work product, or even periodically throughout the process.

Ad hoc members will also decide what modality to use, e.g., townhalls, Zoom chat, or public comments.

## **Rule 8.5 Featured Community Participants:**

### **Rule 8.5.1 Selection of Community Participants:**

Having consulted the Commission as a whole and announced the opportunity for community participation at a meeting of the Commission, the Commissioners on the ad hoc shall appoint members of the public, potentially including former Commissioners, to serve on Committees.

- When considering featured community participants to select, commissioners should consider the following factors:
  - Knowledge and expertise on the topic of the ad hoc
  - Experience with or being a member of relevant populations
  - Lived experience relevant to the topic
  - Ability to engage with Oakland community at-large

At the ad hoc committee's outset, Commissioners should decide how many FCPs will serve on the ad hoc.

- Commissioners should seek parity between the FCPs and representatives of the City or the Department.

In the event of a lack of consensus on the inclusion of specific community participants, the commissioners on the Ad Hoc will vote on the appointment of featured community participants. The Commission Chair will act as a tiebreaker if needed.

### **Rule 8.5.2 Rights and Responsibilities of Community Participants:**

Such appointees shall be referred to as Featured Community Participants (FCPs) in a particular Committee.

- All members of the ad hoc should be considered full members of the ad hoc and have the right to respectfully express concerns and thoughts freely without fear of censorship or removal.
- As stated above, the goal of the ad hoc should be to make decisions by consensus with the full input of all members. Consensus and spirited debate are facilitated by allowing all members of the ad hoc to fully engage in relevant discussion.
- Any member of the ad hoc may request items or topics to be added to the Scope of work document to be prioritized by the commissioners serving on the ad hoc.
- The ad hoc committee chair may delegate meeting facilitation duties to an FCP if need be.

Featured Community Participants are not considered “public officials” when serving on an ad hoc committee.

An ad hoc committee member can be removed, if necessary, through a vote by the commission members of the ad hoc and agreed upon by the Commission Chair.

### **Rule 8.6 Public Outreach:**

Ad Hocs shall notify the public about their meeting time, date, and location. Ad Hocs shall decide how to announce the meeting time, date, and location before their first ad hoc meeting. This is not required for initial planning meetings for the ad hoc.

- Different modalities for ad hoc committees to consider:
  - Website
  - Social Media (twitter / Facebook / Instagram / Nextdoor / etc.)
  - Flyers
  - Word of mouth
  - Tabling, events, etc.

When applicable, ad hoc committees shall have a community-centric component that allows the members of the public to vet the work product of the ad hoc, notwithstanding any issues of safety, confidentiality, or legality.

- Ad hoc committees should strongly consider recording their meetings and uploading the meetings to the Commission website.
- Ad hoc committees should strongly consider making substantive work products available on the Commission website on an ongoing basis.

### **Rule 8.7 Status Updates:**

A status update should include, at a minimum:

- Significant milestones since last report out.
- Pertinent activities since last report out.
- whether the ad hoc is recorded or not recorded
- Anticipated next steps, if known.
- Anticipated timeline, if known.
- Other things to be considered for report out:
  - notable presentations or speakers
  - notable community engagement

- notable demonstrations
- notable points of discussion, the differing views of ad hoc members, and how the ad hoc resolved any disputes or disagreements
- proposed documents (policy, RFP, flyers, etc.)
- visual aids

A status update can be given verbally.

The chair of the ad hoc or a designated commissioner should give the status update.

### **Rule 8.8 Making Recommendations to the Commission:**

A Committee shall evaluate all proposals and recommendations to be presented to the Commission for review and adoption.

- When evaluating proposals and recommendations to be presented to the Commission, Commissioners will make the effort to reach a consensus among all Committee members. This requires measuring the degree of consensus at key decision points or issues that generate a conflict.
- If full consensus cannot be reached, Commissioners will work towards a compromise.
- When assessing consensus, Commissioners should ensure that the consensus is real and not just passive acquiescence to the group.
- Commissioners should ensure that members on the ad hoc are given ample time at the presentation of the final document to express their perspectives on the matter at hand.
- Committee member's objections or reservations should be fully heard and may be recorded as a dissenting opinion (perhaps a note about what is facilitated by fully hearing objections, concerns, or reservations about key decision points).

Committee recommendations to the Commission shall include a brief written memorandum written by Commissioners that includes:

- The Committee's recommendation and the action request of the Commission.
- A summary of the impact of the recommendation if adopted.
- the Committee's reasoning in support of its recommendation.
- The relevant context for the recommendation.
- Ad Hoc Committee Commissioners should consider including the following, when relevant:
  - Highlighting the important changes to any policy
  - Including relevant information that may better help the Commission understand the Committee's reasoning
  - Relevant narratives or topics that were discussed to come to the decision
  - The dissenting opinion

### **Rule 8.9 Conclusion of Ad Hocs:**

The Ad Hoc Chair shall request the Commission Chair dissolve the ad hoc once the ad hoc committee's work has been completed.

- Ad hoc committees should consider three to five informative highlights of their work to submit to the Community Outreach ad hoc to create flyers or handouts for public dissemination.

At the time the ad hoc is dissolved, the Ad Hoc Chair shall ask to agendaize a review of the ad hoc committee's work, if appropriate. This review is intended to ensure that the policy, plan, or action proposed by the ad hoc is working as intended.



## CITY of OAKLAND | POLICE COMMISSION

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

### **New and Revised Policies to Address Deficiencies in and Strengthen Internal Affairs Investigations**

- Group One
  - **DO D-22**: Personal Relationship Disclosure Policy (new) - pg.2-9
  - **IAD P&P 23-01**: Internal Affairs Policy and Procedure Manual (revision) - pg.10-68
  - **TB V-T.01**: Internal Investigation Procedure Manual (revision) - pg.69-93
    - **Investigator Conflict/Recusal Forms** (revision) - pg.94
    - **Reviewer Conflict/Recusal Forms** (new) - pg.95
  - **BOI P&P 23-02**: CID Recusal Policy (revision) - pg.96-99
- Group Two
  - **BOI P&P 23-01**: CID Investigative Training Program (new) - pg.100-102
  - **DO M-4.1**: Criminal Investigation of Department Members and Outside Sworn Law Enforcement Personnel (revision) - pg.103-111



## **COMMAND INTENT**

This policy is designed to identify and mitigate actual and perceived conflicts of interest inherent in personal relationships between members.<sup>1</sup> The policy does so by requiring disclosure of certain personal relationships between members and providing guidance in the event actual or perceived conflicts of interest arise. These protections are intended to ensure an individual member cannot unfairly benefit, gain an advantage, or suffer a disadvantage, as compared to another, strictly due to a personal relationship.

### **A. DEFINITIONS**

#### **A - 1. Cohabitant Relationship**

Any relationship where a member shares a residence with another member. This includes non-romantic roommates.

#### **A - 2. Consensual Romantic Relationship**

Any consensual sexual or romantic relationship with another member.

#### **A - 3. Close Friendship**

A non-family, non-romantic relationship wherein the two parties are more than acquainted and who have participated together in non-departmental social events or are privy to private details in one another's personal or family lives.

Examples may include, but are not limited to, having visited one another's homes for social functions, having traveled together, or having spent more than passing time in the company of each other or each other's families.

#### **A - 4. Cronyism**

Participating in any employment decision that may contain an actual or perceived conflict of interest, such as one involving a close friend, business partner or professional, political, or commercial relationship, that would lead to preferential treatment or compromise the appearance of fairness.

#### **A - 5. Outside Business Relationship**

Members who, in addition to serving as a member of the Oakland Police Department, are also an independent contractor, compensated consultant, owner, board member, shareholder, or investor in an outside business, company, partnership, corporation, venture, or other transaction, in

<sup>1</sup> A member refers to all OPD employees, sworn or professional staff.

cooperation with another Department member, where either of the Department member's annual interest, compensation, investment, or obligation is greater than \$250.

#### **A - 6. Family Relationship**

Includes relationship by blood, adoption, marriage, domestic partnership, foster care with cohabitation, and includes parents, grandparents, great-grandparents, grandchildren, great-grandchildren, children, foster children, uncles, aunts, nephews, nieces, first cousins, second cousins, siblings and the spouses or domestic partners of each of these relatives and cohabitants. This definition includes any relationship that exists by virtue of marriage or domestic partnership, such as in-law and step relationships, which are covered to the same extent as blood relationships.

#### **A - 7. Supervising Members**

Any Department member who performs supervision of one or more subordinate members.

#### **A - 8. Supervision<sup>2</sup>**

Supervision is authority, direction, control, or influence, including being in the same chain of command, and the ability to participate in decisions about terms and conditions of employment of one or more other members.

#### **A - 9. Subordinate Members**

A Department member who is subject to the temporary or ongoing direct or indirect authority of a department supervisor.

### **B. DISCLOSURE OF PERSONAL RELATIONSHIPS<sup>3</sup>**

#### **B - 1. Personal Relationships between Supervisors and Subordinates**

Under circumstances detailed below, the Department requires disclosure of personal relationships between supervisors and subordinates. Personal relationships include the following:

- Family relationship
- Outside business relationship
- Consensual romantic relationship

<sup>2</sup> Oakland Municipal Code (OMC) Chapter 2.40 definition of "Supervision."

<sup>3</sup> These reporting requirements and prohibitions on supervision are required for all City employees and pursuant to Oakland Municipal Code (OMC) Chapter 2.40 and Administrative Instruction (AI) 72.

This reporting procedure is a separate from required recusal process during a Criminal Investigation and Internal Affairs investigation.

**B - 2. Timeline for Disclosure**

All supervising members must disclose to the Human Resources Manager their personal relationships, as defined above, with existing members no later than 30 days from the effective date of this policy, and annually thereafter.

Additionally, any subordinate member in a relationship, as defined above,, as listed in Section B-1, with a supervising member must disclose to the Human Resources Manager their personal relationships no later than 30 days from the effective date of this policy, and annually thereafter.

**B - 3. New Relationships**

As new personal relationships, as listed in B-1, arise, members must disclose said relationships to the Human Resources Manager within 30 days of their inception.

**B - 4. Penalties for Failure to, or Delay In, Disclosing Relationships**

Any member who fails to disclose, or unnecessarily delays disclosure of, a relationship, as defined above, with another Department member is subject to discipline consistent with current Manual of Rules Section 314.39 – Performance of Duty<sup>4</sup> and the discipline matrix.

**B - 5. Failure to report relationships, including cohabitant and romantic relationships involving supervision.<sup>5</sup>**

Any member who becomes involved in one of the listed relationships with a subordinate or with a supervisor and who willfully and deliberately fails to disclose their relationship as directed in this policy shall be subject to discipline.

**C. SUPERVISORS AND SUBORDINATES****C - 1. Prohibited Permanent Assignments**

<sup>4</sup> 314.39 PERFORMANCE OF DUTY – All members and employees shall perform their assigned duties and responsibilities as required or directed by law, Departmental rule, policy, or order by a competent authority. Each member and employee is accountable for the exercise of delegated authority, and shall not conceal, divert or mitigate their true culpability. - Failure to perform duties as required or directed by law, Departmental rule, policy, or order.

<sup>5</sup> OMC 2.40.050, City of Oakland Administrative Instruction (AI) 72

With limited exception<sup>6</sup>, a member at any rank shall not directly supervise a member with whom they **currently, or have previously**, possessed:

- a consensual romantic relationship,
- an outside business relationship,
- a family relationship.

Additionally, with limited exception, a member at any rank shall not directly supervise a member with whom they **currently** possess:

- a cohabitant relationship.

### **C - 2. Mitigation of the Potential for the Relationship to Affect the Workplace**

Following receipt of information establishing a prohibited supervisory assignment exists, the Department's Human Resources Manager, in consultation with the Office of the City Attorney, will work with the Deputy Chief overseeing the bureau wherein the relationship exists to make arrangements to mitigate any influence the relationship may have upon those engaged in the relationship, as well as for other members working in or around those in the relationship. Options for mitigation may include reassignment or redistribution of supervisory responsibilities.

The Chief of Police or designee may transfer either or both members to avoid actual or perceived conflicts of interest, undue emotional stress, and the potential for assertion of marital privilege provisions in the California Evidence code by affected members.

### **C - 3. Waiver**

When the Department deems it operationally important for both parties in a relationship to be assigned to the same chain of command, the Department may seek a waiver from the City Administrator. Even with an approved waiver, mitigation measures must be instituted to limit the potential for the relationship to adversely impact the members, co-workers, work product, and the Department itself.

### **C - 4. Emergency Exceptions and Responsibilities**

If emergency circumstances require the temporary assignment of members in violation of these defined prohibitions, both the supervising and subordinate members are responsible for deferring matters pertaining to the involved subordinate member to a different supervising or commanding member as soon as possible.

## **D. CRONYISM**

<sup>6</sup> As explained in section C-3 Waiver.

## **D - 1. Personnel Assignments and Promotions**

Any supervisor with decision-making authority (or influence upon the decision-making process) over promotion or assignment of personnel within the Department shall recuse themselves from any process during which a member with whom they have a relationship, as defined above, is being considered for promotion or assignment. The involved commander shall defer authority and influence over the decision and shall not participate in discussions.

## **D - 2. Third Party Reporting Requirement**

A member who becomes aware that a supervisor or subordinate has attempted to influence employment or supervisory decisions or has attempted to change the terms and conditions of employment of any individual with whom that person has a relationship, as defined above, shall report that attempt to the Internal Affairs Division, per *DGO M-03: Complaints Against Departmental Personnel or Procedures*.

## **D - 3. Penalty for Participating in or Failing to Report Cronyism**

Any member who participates in, witnesses and fails to disclose, or unnecessarily delays disclosure of cronyism in action is subject to discipline consistent with current Manual of Rules sections and discipline matrix.

# **E. PEER ASSIGNMENT RESTRICTIONS**

## **E - 1. Prohibited Permanent Assignments**

With limited exception, members of the same rank who currently possess a consensual romantic relationship, an outside business relationship, a family relationship or a cohabitation relationship are subject to the following restrictions:

- The members may not work closely<sup>7</sup> together.
- In the event both parties in the relationship are thus assigned, every reasonable effort must be made to reassign one of the members.
- Members in the above-specified relationships shall not ride in the same vehicle while conducting enforcement or investigative duties, or where they may reasonably be required to transition into conducting enforcement or investigative duties.<sup>8</sup>

## **E - 2. Members' Responsibilities**

In the event members find themselves working closely with someone with whom they have a relationship, as defined above, they shall make their circumstances known to their supervisor as soon as practical.

<sup>7</sup> "Closely" means within the same squad. (For example: District 4, B side, Swing shift, or CID – Burglary Section)

<sup>8</sup> Exceptions may include members assigned to a training activity or attending ceremonial events.

**E - 3. Supervisor Responsibility**

Upon notification of a relationship, as defined above, among their assigned squad, a supervisor shall make every reasonable effort to comply with the restrictions enumerated in E-1.

**E - 4. Emergency Exceptions and Responsibilities**

If emergency circumstances require the temporary assignment of members in violation of these defined prohibitions, the members shall notify their assigned supervisor.

The supervisor who becomes aware of the personal relationship is responsible for mitigating the actual or perceived conflict of interest and facilitating the re-assignment of one or both members for the duration of the emergency circumstance.

**F. CONFIDENTIALITY**

It is the desire of the Department to respect and uphold the privacy rights of its members. Information concerning declared personal relationships shall be treated as confidential, disclosed only on a right-to-know, need-to-know basis, and if disclosed at all, only with enough information to guarantee avoidance of an actual or perceived conflict of interest.<sup>9</sup>

**F - 1. Human Resource Manager Responsibilities**

The Department's Human Resource Manager is responsible for the collection of information concerning personal relationships between supervisor and subordinates. Such information will be preserved for the duration of the members' employment.

**F - 2. Human Resource Manager as Reference Prior to Personnel Movement**

The Department's Human Resource Manager shall be consulted by the Chief of Police, or designee, prior to personnel assignments, changes or amendments, to ensure actual or perceived conflicts are not created via such personnel movement.

**F - 3. Human Resources Manager Deconfliction Power**

The Department's Human Resource Manager shall be responsible for coordinating with the parties involved in the personal relationship in identifying and implementing alternate arrangements.

**F - 4. Secured Location**

<sup>9</sup> Example: The HR Manager may indicate to the Chief of Police a certain officer has an actual or perceived conflict of interest if transferred into an assignment, but under no circumstance should the HR manager disclose the nature of the personal relationship or the identity of the other party in said relationship.

The personal relationship disclosure form shall be kept in a secured location, accessible only by the Department's Human Resource Manager or designee.

In no case shall the record be disseminated via email, uploaded to a cloud-based server, or otherwise made susceptible to release beyond the Human Resources Manager or designee.

**F - 5. Document Retention**

Once the member has concluded their employment with the Oakland Police Department, the member's personal relationship disclosure form(s) shall be retained for five years before being destroyed.

No form shall be deleted while any request for the form is pending, including but not limited to a public records request or litigation hold request.

By order of,

Darren Allison  
Acting Chief of Police

Date Signed: \_\_\_\_\_

## APPENDIX A



**\*\*CONFIDENTIAL INFORMATION\*\***  
**PERSONAL RELATIONSHIP**  
**DISCLOSURE FORM**

In accordance with the Department General Order D-22: Personal Relationship Disclosure Policy, supervisors must complete, sign and submit this form to the Human Resource Manager no later than 30 days from the development of a personal relationship with a subordinate, and again annually. Members involved in a personal relationship with a supervisor must also complete, sign and submit this form to the Human Resource Manager no later than 30 days from the development of the personal relationship with a supervisor, and again annually.

**Member's Information**

**Name:** \_\_\_\_\_ **Title / Position:** \_\_\_\_\_  
**Department:** \_\_\_\_\_ **City of Oakland Email Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_ **Cell Phone:** \_\_\_\_\_  
**Office Location:** \_\_\_\_\_ **Supervisor's Name:** \_\_\_\_\_

<i><b>Current or Former: Consensual Romantic, Outside Business, Family Relationship</b></i>	<b>Name of Other Member</b>

Member's Signature \_\_\_\_\_

Date \_\_\_\_\_



**Oakland Police Department  
Internal Affairs Division**

**Policy 23-XX (Formerly 21-01)**

**Effective Date:  
DD MMM 23**

**Internal Affairs Policy and Procedure Manual**

**NSA Tasks: 1, 2, 3, 4, 7, 10, 13, 45**

**Index as: IAD General Operating Procedures**

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**OAKLAND POLICE DEPARTMENT INTERNAL AFFAIRS DIVISION**  
**INTERNAL AFFAIRS DIVISION MISSION STATEMENT**

The Internal Affairs Division (IAD) performs a critical function within the Oakland Police Department (OPD). Its job is to maintain the integrity and values of the OPD by conducting fair, impartial, and objective investigations of all allegations that an OPD employee has committed misconduct or that OPD policies or procedures themselves are flawed.

There is an absolute right for any community member to file a complaint if he/she feels wronged by an employee or policy of the OPD. The complaint may be written or oral, with or without use of the official IAD complaint form, which is available on the OPD website. There is no time limit to file a complaint. The IAD commits to handling all complaints fairly through procedures that are clear and transparent to all involved.

By doing its job properly, the IAD intends to build trust and respect between its two constituencies – the community and the police. Where a complaint leads to officer discipline or correction of a defective OPD policy, both the community and the police benefit. Reform, narrow or far-reaching, may occur. Even where no actual change results from a complaint, the IAD process may give the OPD insight into how it is perceived by the public and may provide an important opportunity to reach out to the community, explain a policy, bridge gaps in communication, or – at a minimum – demonstrate empathy with someone who has had a negative encounter with the OPD.

Police work is often difficult and complex. To the staff of the Internal Affairs Division, the OPD encourages you to assist those needing your help with heartfelt enthusiasm, knowing that you are fulfilling the mandate of the IAD.

## **INTERNAL AFFAIRS DIVISION**

### **INTERNAL AFFAIRS DIVISION COMMANDER**

**Rank:** Captain of Police

**Immediate Supervisor:** Deputy Chief of Police, Bureau of Risk Management<sup>1</sup>

**Immediate Subordinates:** Intake and Administrative Section Commander, Division Level Investigations Section Commander/Manager, and Investigations Section Commander

**Primary Responsibilities:** Manage all aspects of the Internal Affairs Division; to include investigations of all complaints against OPD personnel; Manage the Force Investigations Section

### ***AUTHORITIES***

#### ***Acceptance or Rejection of Advice from the OCA***

The IAD Commander is the sole authority within the Division who may decline or reject legal advice or advice regarding investigative sufficiency from the Office of the City Attorney (OCA). The IAD Commander is the sole authority within the Division who may adjust the time period for review of reports of investigation by the OCA, based on the nature, scope, complexity of the investigation, and availability and necessity of IAD and OCA staff, as set forth in TB V-T.1 subject to the time requirements under government code 3304. Internal Investigations Procedures. The IAD Commander shall confirm any adjustments for review in writing.

#### ***Authorize the viewing of Body Worn Camera (BWC) video***

The IAD commander or his designee have the authority to authorize a subject member to view their BWC video, provided it will not adversely affect the investigation, pursuant to the provisions of DGO I-15.1. The IAD Commander/designee may consult with the CPRA in its evaluation of whether allowing a subject member to review their BWC video may adversely affect the investigation. Authorization shall be documented in the Chronological Activity Log of the current database system.

#### ***Authorize the completion of an investigation with a summary finding***

The IAD Commander or his/her designee has the authority to authorize an IAD investigation to be completed as a summary finding, or other investigative format as enumerated in DGO M-3. The authorization shall be documented in the current database system.

#### ***Authority to administratively close an IAD investigation***

The IAD Commander has the authority to administratively close an IAD investigation in accordance with DGO M-03. This shall be documented in the current database system.

#### ***Authorize certain significant changes to an ROI***

Requests for significant changes to an ROI must be routed through the investigating member's assigned Captain of Police. The Captain must review and approve the content underpinning the request before submitting it to the IAD Commander to concur or dissent. In the absence of the IAD Commander, only the Bureau of Risk Management Deputy Chief, the Assistant Chief and the Chief of Police may authorize the significant changes to the ROI (IAD and Division-level

<sup>1</sup> Although the BRM DC is the IAD Captain's immediate supervisor, the IAD Captain has direct access to the Chief and is not prevented from bypassing the BRM DC and meeting directly with the Chief as necessary.

investigations): (1) removing or changing MOR violation allegations, and (2) removing members or downgrading members from subjects to witnesses.

The IAD Commander's approval or decent of such changes shall be communicated via email back to the requesting investigator and their chain of command. The communication of the approval or disapproval shall also include a reminder to the investigating member to include documentation of the decision in the ROI and a copy of the CAL and of the email in the physical case file.

## ***DUTIES AND RESPONSIBILITIES***

### ***Administer the Division***

The IAD Commander's administrative duties and responsibilities include, but may not be limited to, the following:

- Oversee the daily operation of the Division and ensure all complaints are received, processed, investigated, and reviewed in accordance with controlling state laws and Departmental policy.
- Ensure the Division's workload is monitored.
- Notify the Chief of Police of instances where complaints and/or workloads exceed staffing capability and discuss recommendations for mitigating the issue.
- Approve and monitor the Division budget, overtime, purchases, and contracts.
- Prepare, administer and forward annual performance appraisals for section commanders of the Division in accordance with the provisions of DGO B-06, Performance Appraisals; and Quarterly Personnel Assessment System (PAS) Meetings in accordance with DGO D-17, PAS Reports.
- Ensure mandated training and cross-training for IAD personnel is conducted and documented.
- Ensure all existing and new members to the IAD comply with DGO E-3.1.
- Ensure Annual Report for IAD is completed for inclusion in the Departmental Annual Report.

### ***Oversee Case Intake and Processing***

The IAD Commander ensures that cases are accepted, processed, and assigned a disposition properly by doing the following:

- Approve any DLI or IAD investigation which has been administratively closed.
- Ensure all voluntarily withdrawn cases are reviewed by the IAD Section Commander assigned to the case at the time it is withdrawn.
- Review tracking reports of all open cases, including tolled investigations.
- Review the Daily Intake Report.
- In accordance with DGO M-03, notify the Chief of Police, Assistant Chief of Police, City Administrator, and Monitoring Team of a complaint in intake that is high-profile. Examples of high-profile incidents include, but are not limited to: the arrest of any OPD member; a complaint of a serious nature as to require some form

of immediate action (e.g., emergency suspension, administrative leave, temporary reassignment, etc.); any Class 1 MOR allegation against a professional staff manager or sworn commander; or misconduct likely to generate unusual public interest (e.g., alleged criminal conduct, serious injury, death, etc.).

### ***Oversee and Review Internal Investigations***

The IAD Commander exercises oversight and command over Internal Investigations by doing the following. Additional duties and responsibilities regarding this aspect of the IAD Commander's responsibilities may arise.

- Participate directly in an internal investigation if directed by the Chief of Police.
- Review and approve/deny requests to downgrade a subject officer to a witness officer. Any such actions must be documented in the case's chronological log.
- Review all completed IAD and DLI investigations, including administrative dispositions, for appropriateness. Reviews should ensure impartiality, fairness, and thoroughness by examining, among other things, adherence to Training Bulletin V-T.1, quality of and adherence to investigative plans, correct application of the standard of proof, credibility assessments, promptness and quality of interviews (e.g., avoiding leading questions and resolving inconsistencies), and analysis of the evidence.
- Review and approve/deny requests for a Summary Finding.
- Review and approve/deny requests to view Body Worn Camera footage pursuant to DGO I-15.1.
- Review and approve/deny requests to remove, amend or change allegations during an investigation.
- Ensure that investigative timelines are adhered to pursuant to DGO M-03.
- Ensure that Skelly packets are assigned to Skelly Officers in a timely fashion.
- Coordinate with Community Police Review Agency (CPRA) Executive Director for any independent parallel investigation that goes to the Skelly process to ensure concurrences are memorialized.
- Respond to OIS/Level 1 investigations and coordinate IAD investigation.
- During Level 1 Investigation callouts, communicate with the Chief of Police, Assistant Chief of Police and Monitoring Team.
- Provide an oral report to the COP within 72 hours of Level 1 incidents (DGO K-4), and additional briefings as appropriate or directed by the COP. Assure an IAD notetaker documents the briefing and saves the notes on the IA server similar to the notetaking that occurs at IAD/OCOP Weekly Meetings.
- For IAD callouts, initiate IAD Callout Team and notify CPRA Executive Director, and, when applicable, ensure Peer Support responds to the scene per DGO B-17 Crisis Intervention Team.
- Prepare Administrative Leave Letterhead and ensure the appropriate Commander/Manager serves notice.
- For high profile cases, including any report of felony or serious misdemeanor by a

sworn officer reported under DGO M-4.1, assure that monthly briefings are conducted with the COP. Assure an IAD notetaker documents the briefing and saves the notes on the IA server similar to the notetaking that occurs at IAD/OCOP Weekly Meetings.

***Confer with Other Department and City Personnel Regarding IAD Activities***

The IAD Commander is the ultimate point of contact for other bodies within the City regarding the activities of the IAD. While it is impossible to delineate all the different communications the IAD Commander may have with internal staff, the following must be completed:

- Meet daily for Executive Staff meeting facilitated by the Chief of Police.
- Meet on a weekly basis with the Chief of Police, Executive Staff and a representative of the OCA to, at minimum, discuss the following:
  - Ongoing and completed investigations;
  - Matters of discipline and recommendations;
  - Emerging legal issues that impact internal investigations;
  - §3304 Government Code tolling cases; and
  - Other cases or issues identified by the IAD Commander;
- Create an agenda for the above weekly meetings and file these agendas to memorialize the meetings.
- Brief, at minimum, the Chief of Police, and the Assistant Chief of Police and/or the appropriate Deputy Chief(s), on complaint trends, risk management, and personnel issues as well as any actions taken.
- Review all completed cases which have a Sustained finding, along with any other cases identified by the IAD Commander, with the Chief of Police for final disposition and approval.
- Prior to case presentation to the Chief of Police, obtain review from the Deputy Chief in the investigator's chain of command for cases with recommended **sustained** findings for allegations that could result in termination (i.e., has T as a possible consequence, considering 2<sup>nd</sup> and 3<sup>rd</sup> offenses, on the Discipline Matrix which includes MORs for obedience to laws felony/serious misdemeanor and DUIs, and use of force), or allegations of violations of obedience to laws misdemeanor/infracton. <sup>2</sup>
- For cases involving **not sustained** recommended findings for allegations that could result in termination or allegations of violations of obedience to laws misdemeanor/infracton, obtain review from the Deputy Chief of the Bureau of Risk Management.
  - Deputy Chief reviews are not reinvestigations of the cases, they are intended to be a review to ensure recommended findings are supported by the evidence and that investigation policies and procedures were followed.
- Upon approval of the findings, ensure the Chief of Police signs all required documents. The Chief shall read any ROI that the Chief signs. At a minimum, the

Chief shall read and sign any ROIs involving a recommended finding of **sustained** that could result in termination, or a recommended finding of sustained for obedience to laws misdemeanor/infraction.

- Notify the Chief of Police, Assistant Chief, City Administrator, Deputy Chief(s)/Deputy Director, OPOA President, Personnel Manager, Human Resources, City Attorney's Office, Police Commission Chair, CPRA Director, Inspector General, and Monitoring Team if a member is placed on Administrative Leave.
- Notify the Chief of Police or Assistant Chief of Police whenever a member receives a Sustained finding for a Manual of Rules violation which may constitute *Brady*<sup>i</sup> information;
- Confer with the Bureau of Investigations Deputy Chief regarding the referral of complaints to or from the Criminal Investigation Division (CID) in accordance with DGO M-4.1. Referrals of criminal investigations from CID to IAD require a briefing of, and approval from, either the Chief or Assistant Chief of Police. The briefing will be an official meeting and documented by an IAD Notetaker who will follow the guidelines matching the weekly IAD/OCOP Meeting.
- Provide a monthly briefing to the City Administrator and Monitoring Team about issues pertinent to the IAD, including but not limited to active investigations of serious misconduct and pending discipline.
- Coordinate with the CPRA Executive Director on all cases which involve an independent parallel investigation.
- Ensure that public complaints that CPRA is charter-mandated to investigate are reported to the CPRA Executive Director CPRA within 24 hours of IAD intake. Notify the Executive Director of the CPRA as soon as possible, but within no more than 72 hours after learning about, any allegations of "serious incidents" as defined by OMC 2.45.075, and any allegations involving any "high profile" incidents as defined herein. Prior to entering into a contract with a third-party individual or firm to conduct an internal investigation for the Department, the IAD Commander shall report such proposal to the Executive Director of CPRA and Police Commission Chair and explain the nature of the case, subjects, and allegations.
- Ensure that any contracts between the Department and any third-party individual or firm to conduct an internal administrative investigation for the Department includes a provision mandating that the third-party share with the Executive Director of CPRA and Police Commission Chair any initiating and updated misconduct allegations, initiating and updated named subjects and witnesses, and any other relevant procedural information requested by CPRA with the understanding that CPRA will not request the type of detailed information that may compromise the integrity of CPRA's ability to conduct its own independent parallel investigation.
  - To the extent the third-party investigator is a law firm and OCA is responsible for drafting the contract, OPD will request that OCA include a similar provision in the contract.
- Ensure the Executive Director of the CPRA has access to Vision.

## **INVESTIGATIONS SECTION**

### **INVESTIGATIONS SECTION COMMANDER**

**Rank:** Lieutenant of Police  
**Immediate Supervisor:** Internal Affairs Division Commander  
**Immediate Subordinates:** Investigators (Sergeant of Police); Administrative Support (Administrative Assistant II)  
**Primary Responsibilities:** Manage all cases that are investigated within IAD; Coordinate with the Office of the City Attorney (OCA) and the Community Police Review Agency (CPRA); Manage the Force Investigations Section (FIS).

### ***DUTIES AND RESPONSIBILITIES***

#### ***Manage all IAD Investigations:***

The Investigations Section Commander is responsible for managing the investigations conducted within IAD. Effective management of IAD investigations requires taking an active role at various points in the investigation, and close supervision of the assigned IAD Investigator. Some of the duties include, but are not limited to, the following:

- Conduct an initial review of all cases received from the IAD Intake and Administrative Section Commander.
- Review investigative plans, interview questions, and interviews of witnesses with investigative staff, as needed, and in every investigation that includes the following “Serious Allegations”:
  - Allegations for which the minimum presumed discipline for a first offense is a 30-day suspension, demotion, and/or termination.
  - Allegations that require some form of immediate personnel action, such as emergency suspension, administrative leave, or temporary reassignment.
  - An allegation that an OPD employee or member committed a felony or misdemeanor.
  - An allegation involving retaliation, discrimination, or harassment in violation of Administrative Instruction 71.
  - An allegation that an OPD employee or member used his/her position for personal gain.
  - An allegation involving misconduct likely to generate unusual public interest.
  - Any other allegation that, at the discretion of the IAD Commander or Investigative Section Commander overseeing the investigation, warrants consultation with the Office of the City Attorney (OCA) prior to investigative interviews.



Ensure that the OCA is notified and involved in strategic discussions prior to all subject and witness officer interviews involving investigations of serious allegations, as defined above. See next section for guidance on consultation with OCA.

- Conduct a review of completed IAD investigations, direct appropriate revisions, and forward reviewed investigations to the IAD Commander.
- Reviews should ensure impartiality, fairness, and thoroughness by examining, among other things, adherence to Training Bulletin V-T.1, quality of and adherence to investigative plans, correct application of the standard of proof, credibility assessments, promptness and quality of interviews (e.g., avoiding leading questions and resolving inconsistencies), and analysis of the evidence.
- Consult with the IAD Investigator and advise the IAD Commander when a subject officer should be downgraded to a witness officer. The IAD Commander retains sole authority to downgrade a subject officer to a witness, and any such action taken shall be documented in writing in the Chronological Activity Log (CAL).
- In cases where the CPRA is conducting a parallel investigation, IAD needs to coordinate with the CPRA Director prior to the case presentation with the Chief or the closure of an investigation with no sustained findings to ensure that CPRA and OPD are in concurrence on the final findings.
- In cases where the complainant has voluntarily withdrawn their complaint, review the circumstances of the withdrawal to ensure Departmental policy and procedures were followed. This action shall be documented in the CAL.
- Advise the IAD Commander of any unusual incidents or other complaints likely to generate unusual public interest.
- Along with the IAD Commander, provide updates of any IAD investigations to the City Administrator as directed, including representing Internal Affairs during meetings with the CPRA.
- Review and approve in writing all requests to view BWC by members related to IAD Investigations, and forward to the IAD Commander for final approval per DGO I-15.1 Receive, review, and, if endorsed, forward requests for Summary Finding to the IAD Commander for approval.
- Consider the use of Administrative Warrants to assist in investigations if legally and strategically viable. (OCA should be consulted prior to the pursuit of any Administrative Warrant.)
- Review and approve/deny requests to amend or change allegation during an investigation (only the IAD Commander has the authority to remove an allegation).

***Office of the City Attorney (OCA) Coordination***

Due to the nature of the cases investigated by the IAD Investigations Section, and pursuant to TB V-T.1, consultation with OCA is required in investigations involving serious allegations, at the direction of the IAD Commander, or in instances where legal counsel is needed. Consultation activities include, but are not limited to, the following:

Sending investigative plans, witness and subject questions, and a completed draft (investigated

with a recommended finding) of the Report of Investigation (ROI) to the Office of the City Attorney (OCA) for legal review. Investigations will be submitted for the attorney's review at least 30 calendar days before the date on which IAD intends to present the case to the Chief of Police or his/her designee for approval. The IAD Commander has the discretion to shorten the review period based on the nature, scope, or complexity of the investigation, or the availability of IAD and OCA staff. Any authorization to reduce OCA review time must be done in writing. In either instance, IAD shall provide the OCA with an expected date for case presentation to the Chief of Police. OCA's internal policy is to complete their review within 10 calendar days of receipt.

- Ensure that substantive comments and feedback analysis from OCA are addressed, and that they remain in the draft of the Report of Investigation for review and discussion with the IAD Investigator and IAD Commander.

***Community Police Review Agency (CPRA) Coordination:***

Pursuant to The Charter of the City of Oakland, Section 604(g), in any public complaint that is investigated by both agencies, agreement or disagreement with the findings must be established between the Chief of Police and Executive Director prior to adjudication.

- In instances where the IAD Investigator and CPRA Investigator come to the same finding(s), and where those findings are other than Sustained, the IAD Investigation can be closed and processed upon receipt of written concurrence with the findings from the CPRA Executive Director.
- In instances where the IAD Investigator and CPRA Investigator come to the same finding(s), and where one or more of those findings are Sustained, the case can be scheduled for presentation to the Chief of Police upon receipt of written concurrence with the findings from the CPRA Executive Director.
  - The CPRA Executive Director and the CPRA Investigator are permitted – but not required – to attend the case presentation to the Chief of Police.
  - When the case is later presented to the Chief of Police for a discipline determination, the Executive Director's presence at that meeting shall be requested. Whether at the meeting or in some manner consistent with the Charter, agreement or disagreement between the Executive Director and the Chief of Police on the proposed discipline must be established.
- In instances where the IAD Investigator and CPRA Investigator come to different findings, the case shall be scheduled for presentation to the Chief of Police to establish agreement or disagreement between the Executive Director and the Chief of Police on the finding(s).
  - The CPRA Executive Director and the CPRA Investigator should be present at the case presentation to the Chief of Police to present their finding(s).
  - The IAD Investigator and the Investigations Section Commander shall attend the meeting to present their finding(s) to the Chief of Police.
- If, after presentation and discussion between the Chief of Police and the Executive Director, there is disagreement on either the finding(s) or proposed discipline, the case shall be submitted to a Discipline Committee pursuant to The Charter of the City of Oakland, Section 604(g)(2).

## **INTERNAL AFFAIRS INVESTIGATOR**

**Rank:** Sergeant of Police  
**Immediate Supervisor:** Investigations Section Commander  
**Immediate Subordinates:** None  
**Primary Responsibilities:** Investigate allegations of misconduct; Complete Reports of Investigation (ROI); Coordinate with the Office of the City Attorney (OCA) and the Community Police Review Agency (CPRA)

### ***DUTIES AND RESPONSIBILITIES***

Internal Affairs Investigators are responsible for completing investigations assigned to the Internal Affairs Division. The nature, scope, and investigative steps can vary between cases. However, there are tasks that are consistent throughout most investigations. These tasks include, but are not limited to, the following:

#### ***Investigate Allegations of Misconduct***

Investigators shall follow the investigative procedures enumerated in Training Bulletin V-T.1, which provides more specific details on how to conduct an Internal Affairs investigation, IAD Investigators should complete the following tasks to ensure a fair, impartial, thorough, and timely investigation:

- Upon being assigned an investigation, determine if there are any conflicts that necessitate a recusal from the investigation.
- Review all materials contained in both the case file and the electronic file in the current database system.
- Ensure all allegations of misconduct are accurately identified.
- Identify evidence at risk of spoiling, potential witnesses, potential physical evidence, relevant policies, and any additional potential Manual of Rules (MOR) violations pursuant to Training Bulletin V-T.1.
- Develop an investigative plan and discuss the plan with the Investigations Section Commander and, when needed, the Office of the City Attorney (OCA).
- Prepare for and promptly conduct fact-finding witness and subject interviews. When preparing for an interview, Investigators should determine relevant policies, practices, and trainings associated with the misconduct; key questions that need to be answered; and any gaps in timelines.
- In conducting interviews, resolve any inconsistencies and avoid exculpatory leading questions.
- If there is reasonable suspicion to believe a member is in possession of evidence or items that contain evidence (e.g., a member's personal cellular phone) of member misconduct for which a member is being administratively investigated, an investigator in an administrative investigation may demand that the member produce the evidence for use in the administrative investigation and proceedings. Any such demand for such information must be documented in writing with a recitation of facts giving rise to reasonable suspicion that the evidence sought is contained therein. Any such demand must also be reasonably tailored to the allegation(s) being investigated. Finally, any such demand must be accompanied by an admonition that the evidence and information produced may not be used against the member producing the information in a criminal proceeding but may be used against the member in an administrative proceeding.

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- The demand for evidence on a personal device must be reviewed and endorsed by the investigators first level supervisor and then approved by the IAD Commander prior to the request being made.
- Requests for significant changes to the ROI must be routed through the investigating member's assigned Lieutenant of Police. The Lieutenant must review and approve the content underpinning the request before submitting it to the IAD Commander to concur or dissent. In the absence of the IAD Commander, only the Bureau of Risk Management Deputy Chief, the Assistant Chief and the Chief of Police may authorize the significant changes to the ROI (IAD and Division-level investigations): (1) removing or changing MOR violation allegations, and (2) removing members or downgrading members from subjects to witnesses.
- The IAD Commander's approval or decent of such changes shall be communicated via email back to the requesting investigator and their chain of command. The communication of the approval or disapproval shall also include a reminder to the investigating member to include documentation of the decision in the ROI and a copy of the CAL and of the email in the physical case file.

### ***Complete a Report of Investigation (ROI)***

Once all interviews have been conducted and available evidence has been gathered, the Investigator shall prepare a Report of Investigation (ROI) for inclusion in the case file. The ROI shall follow the most recent version of the ROI template (TF-3507) or the ROI Summary Finding template (TF-3508), and shall minimally include the following:

- The issue in question (i.e. the alleged misconduct);
- The policy, procedure, or law that the alleged misconduct violated;
- An analysis of the evidence;
- An assessment of the credibility of all witnesses and subjects;
- A finding based on the preponderance of evidence;
- Express memorialization using the guidance in the ROI template of any of the following revisions: (1) removing or changing MOR violation allegations, (2) downgrading members from subjects to witnesses, (3) changing conclusions of credibility assessments, and (4) changing recommended findings;<sup>3</sup> and

Compilation of all documents and evidence relevant to the investigation along with administrative materials, including, but not limited to, a Complaint Investigation Report (CIR) with findings and a closeout letter.

Barring extenuating circumstances or extensive investigations, reasonable efforts shall be made to complete investigations within 180 days pursuant to DGO M-3.

### ***Office of the City Attorney (OCA) Coordination***

Due to the nature of the cases investigated by the IAD Investigations Section, consultation with OCA is required in investigations involving allegations enumerated in Training Bulletin V-T.1, at the direction of the IAD Commander, or in instances where legal counsel is needed. Consultation activities include, but are not limited to, the following:

<sup>3</sup> Note that IAD commander must approve any downgrade from subject to witness, and any removal of an MOR allegation. Authorization for changes must therefore be obtained, documented in writing in an email, and kept in the file and noted on the chron log.

- Sending investigative plans, witness and subject questions, and a completed draft (investigated with a recommended finding) of the Report of Investigation (ROI) to the Office of the City Attorney (OCA) for legal review. Investigations will be submitted for the attorney's review at least 30 calendar days before the date on which IAD intends to present the case to the Chief of Police or his/her designee for approval. OCA's internal policy is to complete their review within 10 calendar days of receipt.
- Ensure that substantive comments and feedback analysis from OCA are addressed, and that they remain in the draft of the Report of Investigation for review and discussion with the IAD Investigator and IAD Commander.

***Community Police Review Agency (CPRA) Coordination:***

Pursuant to The Charter of the City of Oakland, Section 604(f)(2), the CPRA has the same access to all Department files and records as the Internal Affairs Division. As such, the Department shall grant direct access to the IAD Vision database to the CPRA Director. The Department shall also make every reasonable effort to respond to the CPRA's requests for files and records within ten (10) days and the transfer of any materials to CPRA shall be documented in the Chronological Activity Log in the current case management database. When OPD and CPRA are conducting parallel investigations, coordination with CPRA should include, but is not limited to, the following:

- Provide all evidentiary materials, including recorded interviews, as requested.
- Submit or accept interview questions, depending on which agency is conducting the interview.
- Notify CPRA investigator of proposed timing for interviews and, upon request, coordinate joint agency interviews.
- Notify CPRA of any proposal to add or remove allegations and/or subject officers.

## **INVESTIGATIONS SECTION ADMINISTRATIVE SERGEANT/ANALYST**

**Rank:** Sergeant of Police/Admin Analyst II  
**Immediate Supervisor:** Internal Affairs Investigations Commander  
**Immediate Subordinates:** None  
**Primary Responsibilities:** Responsible for supporting the Investigations Section

### ***DUTIES AND RESPONSIBILITIES***

The Investigations Section Administrative Sergeant/Analyst serves as support mechanism for the daily operations in the Investigations Section. The duties are varied and include, but are not limited to, the following:

#### ***Case Tracking***

- Maintain a tracking document for all cases assigned to the Investigations Section.
- Cross reference the Community Police Review Agency (CPRA) case list and identify cases assigned to the Investigations Section that have parallel investigations with CPRA.
- Coordinate with IAD Administrative Section and retrieve all new cases assigned to the Investigations Section.

#### ***Weekly IAD Meeting Preparations***

- No later than two-days prior to the IAD meeting with the Chief of Police, prepare an agenda for the meeting, to include all cases being presented at the meeting. Distribute an electronic copy of the agenda to the appropriate stakeholders and upload a final version of agenda to the IAD server.
- No later than two-days prior to the meeting, send out an email reminder to all presenters with the meeting date, time, and location.

#### ***Weekly IAD Meeting Chief of Police Presentations***

- Serve as notetaker for the meeting. Assures each completed note document contains a disclaimer outlying that the meetings events were not verbatim but completed to the best of knowledge.
- Notetaker endorses the meetings notes and sends a PDF Copy to the IAD Commander, Investigations Section Commander, DLI Section Commander/Manager, and the Intake and Administrative Section Commander, to include uploading to the IAD server.
- Ensure all attendees sign an Attendance Roster for each individual case presented and upload the signed rosters to the IAD server.

#### ***Criminal Investigations DGO M-04.1 Meeting (OCOP, IAD, CID) and Any Other High Profile or Serious Incident Briefing to Chief***

- Serves as notetaker for any meeting where the Chief is briefed on the substance of ongoing internal investigations; similar to the procedures of the Weekly IAD Meeting.

#### ***Case Closures***

- Review closed case files to ensure all required documents are signed and in case file (e.g. CIR, ROI, Closeout Letter, etc.). Ensure that investigator has uploaded all recorded statements to the server prior to final closure.

- For cases with Sustained findings, create the pre-discipline documents. Forward the completed pre-discipline folder to the IAD Commander for signatures and distribution. Pre-discipline documents include the following:
  - Copy of signed ROI
  - Copy of signed CIR
  - Copy of CIR Index for the sustained officer
  - Last two (2) years of performance appraisals for the sustained officer
  - Memo from IAD Commander directing the pre-discipline to be completed by a specified date, typically two weeks after the sustained finding by the Chief of Police.
- Complete intent to discipline paperwork from returned pre-discipline conference. Forward completed paperwork to the IAD Commander for signatures. Task the recipient of the intent to discipline paperwork in the tasking/database system.
- For cases that qualify for a Skelly Hearing (Refer to TB V-T.04 Due Process Hearings for further information), update the IAD Skelly Tracking sheet after the IAD Chief meeting. Ensure all new Skelly-eligible cases are assigned a Skelly officer. Forward a copy of the tracking sheet to the IAD Commander, the Investigations Section Commander, and the Administrative Section Supervisor.
- Prepare Skelly Packets for qualifying cases that originate in the Investigation Section and, upon completion, forward to the Administrative Section Supervisor for review.

***Additional duties, as needed***

- Coordinate with the UOF coordinator on FRB/EFRB cases that are being investigated by IAD; and when there is a parallel CPRA investigation, also coordinate with CPRA.
- Submit requests for transcripts for investigators and monitor status of transcripts.
- Handle document requests for IAD Investigations section. All CPRA document requests shall be completed within 10 days of request. If there is a circumstance preventing the request from being completed notify the Investigations Commander of the delay.
- Complete special projects for the IAD Commander and Investigations Section Commander, as needed.
- Review the Arbitration update received by the City Attorney's Office. Update any changes on the weekly agenda.
- Complete the retaliation report and send to OCA representative for review.
- Update the Callout Schedule as needed and ensure that schedule is sent to the Patrol Desk.
- Monthly, complete a Vehicle Inspection Checklist for all Department vehicles assigned to the Investigations Section.

## **FORCE INVESTIGATION SECTION**

**Rank:** Sergeant of Police  
**Immediate Supervisor:** Investigations Section Commander  
**Immediate Subordinates:** None  
**Primary Responsibilities:** Investigation of all Level 1 force incidents, Level 1 vehicle pursuit incidents, allegations of criminal conduct by sworn members, and other incidents as directed by the IAD Commander or Chief of Police.

### ***TRAINING, SELECTION, AND ADMINISTRATION***

#### ***Selection***

The IAD Commander and the Investigations Section Commander are responsible for selecting the investigators for the Force Investigation Section (FIS). FIS investigators must be a Sergeant of Police and have prior IAD investigations experience. The following qualifications are desirable, but not required:

- At least one-year IAD investigative experience.
- Prior Criminal Investigation Division experience (preferably Homicide).
- Proficient in PowerPoint, MS Word and Adobe PDF.
- Experience completing Level 2 Use of Force investigations
- Strong working knowledge of Graham v Connor and Departmental policies associated with force.

#### ***Training***

New FIS investigators will be assigned a secondary investigator to act as a training investigator. The secondary investigator will be a senior member of the FIS team and will assist the new investigator with their investigation(s). All new investigators assigned to the FIS shall complete training in the following areas prior to or within six months of their assignment:

- Human behavior in high stress and deadly force encounters (e.g. Force Science Institute's certification course).
- Basic Investigator Course (e.g. ICI Core Investigations course)
- Interviewing (e.g. Behavior Analysis Training Institute's Cognitive Interview and Statement Analysis course).
- Officer-involved shootings (e.g. courses certified by California Commission on Peace Officer Standards and Training).
- Ongoing training provided by the Office of the City Attorney (OCA).
- Any training that will enhance the effectiveness of the investigators. This training is subject to the approval of the IAD Commander.

#### ***Standby Status of FIS Investigators***

Personnel assigned to the FIS are "standby" investigators who are entitled to "standby pay" in accordance with the provisions of the current MOU. FIS investigators are assigned a



Department take-home vehicle to use to respond to all call outs. If an investigator is going to be unavailable for callout for more than four consecutive days, their vehicle shall be returned to the Investigations Section Commander for reassignment until the investigator returns to “standby” status. Personnel from the Investigations Section may be used as “standby” investigators to supplement existing FIS personnel, or to cover for the absences of FIS personnel. The decision on case assignment will be the responsibility of an IAD Commander.

### ***Call-Out Procedures***

Upon notification of an incident designated for investigation by the FIS, the Investigations Section Commander shall contact the FIS investigators to initiate the FIS callout. All FIS members shall respond to the location designated by the Investigations Section Commander within one and a half hours from the time they are notified of the callout. The Investigations Section Commander shall determine if additional IAD Investigators are to be called out based on the incident circumstances.

## ***ROLES AND RESPONSIBILITIES***

### ***Scene Responsibilities:***

Scene management of a FIS investigation is of the utmost importance. The coordination between CID, Patrol, and CPRA is required to ensure a thorough investigation is conducted. Below are the responsibilities for the members of the FIS while on scene of an FIS investigation.

- The Investigations Section Commander shall respond to the scene and take command of the administrative investigation, and shall ensure the following:
  - Notify and brief the IAD Commander;
  - Notify and brief the Executive Director of the CPRA. Coordinate with the CPRA Director in the response of the CPRA investigator.
  - Coordinate with the CID Commander assigned to the investigation of the incident to include, but not limited to:
    - Ensure all subject and witness members are separated and sequestered
    - Conduct walkthrough of scene
    - Ensure all witnesses are identified
    - Ensure that all BWC videos have been locked down by CID or the Technology Department.
    - When appropriate, coordinate with IT unit to ensure that Field Based Reporting (FBR) reports are locked down with restricted access.
    - Ensure all subject(s) are interviewed. If there is a disagreement between the FIS and CID on which subjects should be interviewed the Assistant Chief will have the final decision.
    - The FIS Lieutenant will ensure that subject officers’ Departmental phones be taken for investigative review in conjunction with the Criminal Investigations Division (CID) commander.
  - Assess the need for additional FIS investigators to be called out.

- Monitor the follow-up investigation and ensure it is handled in accordance with this policy and other relevant policies (e.g. DO K-4).
- The assigned FIS investigator(s) shall respond to the incident scene and conduct the appropriate investigation, which shall include but is not limited the following:
  - Confer with the Criminal Investigations Division (CID) Commander and/or CID investigators regarding:
    - Scene security;
    - Crime scene processing plan;
    - Canvass for additional witnesses, as necessary;
    - Ensure that a 3D scan is completed of the incident scene; and
    - The completion of all other necessary investigative steps as outlined in DO K-4, DO J-4 and any other relevant policy.
  - Participate in a briefing and walk-through with the CID Commander and/or CID investigators.
  - Conduct a thorough review of all documents to be included in the Use of Force, Pursuit, or In-Custody Death Report packet to ensure completeness, accuracy, and quality.
  - Ensure the appropriate Offense or Supplemental Report contains the following minimum information regarding the use of force incident:
    - The original reason for police presence on the scene;
    - The circumstances that resulted in the use of force;
    - The precipitating act(s) leading to the use of force; and
    - A detailed description of the force used.
    - How or if it was deescalated/resolved
  - Obtain additional details or clarification when incomplete or inadequate reports are discovered.
  - Coordinate with the assigned Deputy District Attorney and other investigator(s), as appropriate, such as Coroner's Office.
  - Interviews
    - Monitor or review interviews of involved member(s) and witnesses by the CID investigators. IAD investigators shall not participate in the CID interviews of involved personnel.
  - Investigators shall consult with the CID Commander prior to interviewing a suspect in a homicide or serious violent felony as it relates to an administrative investigation.
  - Complete the Level 1 Incident Checklist.

***Follow-up Investigation:***

- The Investigations Section Commander shall:
  - Ensure the IAD Commander and Chief of Police are updated on the status of all FIS investigations on a weekly basis, or as deemed necessary by the IAD Commander.
  - Review all summaries of CID interviews of witnesses and coordinate with investigators to determine if a follow-up interview is required. Ensure interview summaries are forwarded to OCA for review.
  - Review witness and subject member questions. Ensure questions are forwarded to OCA for review.
  - Ensure that in the case of a subject interview of a Command level member that an equal rank Commander from IAD is the second on the interview.
  - Review pertinent witness interviews and all subject interviews for thoroughness and investigative sufficiency.
  - In the event where a Command Officer is a subject in the investigation the FIS Lieutenant or the IAD Commander shall conduct the analysis to determine a finding.
- The OCA, in conjunction with the Investigations Section Commander, will provide counsel and advice on matters involving case planning and interview schedules, and conduct legal review of FIS reports.
- The FIS Investigator shall:
  - Within the first business day after the incident, the FIS investigator shall meet with the IAD commander, Investigations Section Commander, and the OCA to conduct a briefing on the following:
    - The circumstances of the incident;
    - Use of Force/In-Custody Death Report preparation; and
    - Any concerns or issues that were observed.
  - Within 72 hours, prepare a briefing for the Chief of Police to include the following:
    - Summary of the incident
    - Identified subject members
    - Investigative timeline
    - Potential issues
  - Follow-up investigative steps
    - Establish a weekly meeting with the OCA for investigation updates.
    - Establish an investigative timeline and task tracking sheet for investigation.
    - Update the tracking sheet on a weekly basis and provide it to the Investigations Section Commander, the IAD Commander, and OCA.

- Review all interviews conducted by CID and provide a summary to the Investigations Section Commander and OCA representative for review to determine if a follow-up interview is needed.
- Draft questions for witness/subject interviews and forward for review to the Investigations Section Commander and OCA.
- Conduct interviews of all witnesses and subjects.
- Conduct a canvass of incident location.
- Coordinate with CID investigator on the status of the CID investigation and ensure that all CID investigative material are delivered to IAD.
- If required, consult with OCA on obtaining an administrative subpoena for any evidence.
- The FIS investigator shall contact the CPRA investigator assigned to the investigation to facilitate requests for the following on a regular basis:
  - Documents
  - Evidence
  - Witness/Subject questions
  - Coordination of interviews

All requests from the CPRA shall be completed within 10 Calendar days, and the transfer of any materials to CPRA shall be documented in the Chronological Activity Log in the current case management database.

***Report Preparation and Review:***

- The assigned FIS investigator shall:
  - Prepare the appropriate Level 1 Use of Force (UOF) or In-Custody Death (ICD) report specifically designated for use by the FIS investigator.
  - Assemble the appropriate report packet to contain:
    - A **copy** of the CID Follow-Up Investigation Report (336-201), if completed; **AND**
    - Items identified in the Level 1 Incident Checklist (TF-967f);
    - A printed Chronological Activity Log as entered in the IAD database;
    - The appropriate investigative checklist;
    - A **copy** of the appropriate Offense Report, if prepared; and
    - **Copies** of ancillary documents, if available (e.g., statements, Details, CAD purge, CAD audio, available medical information obtained, and photographs).
  - Ensure that required information is reported to personnel responsible for the UOF database **within 24 hours of the incident**.

- Ensure all recorded statements from involved personnel, witnesses, and the subject of the use of force, taken by IAD investigators, in a UOF/ICD investigation are included in the investigative file.
- Submit the UOF/ICD Report packet for review through the IAD chain-of-command to the IAD Commander and the OCA **within 60 days of the incident**, unless extended by the IAD Commander.
- FIS Command Review: The Investigations Section Commander shall review the UOF/ICD Report packet **within 15 calendar days** of the completion of the investigation. This includes the following:
  - Review report packet for completeness, accuracy, and quality, and return any reports that are incomplete or inadequate;
  - Ensure the report evaluates and documents, when appropriate, whether the use of force was in compliance with Departmental policy.
  - Ensure the report evaluates and documents any training, tactical, supervision, and other risk management issues; and
  - Order further investigation or additional investigative resources when necessary;
- OCA Review
  - Upon completion of the review and endorsement of the investigation by the Investigations Section Commander, forward to the OCA representative assigned to the case at least 30 days prior to the date the case is planned for presentation to the Chief or submission to an FRB or EFRB, as applicable. OCA's internal policy is generally to complete the review within 10 calendar days, or provide written notice to IAD regarding any extensions of the review time-period.
- IAD Commander Review: The IAD commander shall review the UOF/ICD Report packet within 10 calendar days of the completion of the OCA review. This included, but is not limited to, the following:
  - Ensure the report evaluates and documents, when appropriate, whether the use of force was in compliance with Departmental policy.
  - Ensure the report evaluates and documents any training, tactical, supervision, and other risk management issues; and
  - Order further investigation or additional investigative resources when necessary;
  - The IAD Commander shall notify the CPRA Executive Director of the completion of the investigation.

***Executive Force Review Board Participation:***

- The Investigations Section Commander shall:
  - Designate a presenter of the IAD UOF/ICD Report investigation and coordinate the EFRB presentation with the CID.
  - Ensure the UOF/ICD Report packet is provided to the EFRB in accordance with DGO K-4.1, Force Review Boards.
  - Ensure Officer Involved Shooting is reported to the California Department of Justice URSUS<sup>1</sup> reporting system. URSUS website link: <https://portal.doj.ca.gov/>

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<sup>1</sup> California Department of Justice Use of Force Incident Reporting (CA Assembly Bill (AB) 71 ), requires every law enforcement agency in the State of California to report all incidents of police shootings and occurrences where

an officer or civilian is seriously injured or dies as a result of a use of force. (Effective January 2016).

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## **INTAKE AND ADMINISTRATIVE SECTION**

### **INTAKE AND ADMINISTRATIVE SECTION COMMANDER**

**Rank:** Lieutenant of Police  
**Immediate Supervisor:** Internal Affairs Division Commander  
**Immediate Subordinates:** Intake Supervisor (Sergeant of Police); Administrative Support Supervisor (Police Records Supervisor)  
**Primary Responsibilities:** Administer the Intake and Administrative Sections; Manage and review the intake of all complaints against OPD personnel; Manage all records and reporting related to IAD investigations; Manage the discipline process for all IAD investigations.

### ***DUTIES AND RESPONSIBILITIES:***

#### ***Administration of the Intake and Administrative Sections***

The Intake and Administrative Section Commander is responsible for the day-to-day function of the section. This includes, but is not limited to, the following:

- Supervising section personnel.
- Managing the section's workload.
- Overseeing work assignments throughout the Section.

#### ***Manage and Review All Complaints:***

The Oakland Police Department accepts all complaints regardless of their origin, and each complaint is processed through the Intake Section. Regardless of the final disposition of a complaint, it must be reviewed by the Intake and Administrative Section Commander. The process includes, but is not limited to::

- The Intake Officer/Technician processes the complaint and makes a disposition recommendation.
- The case is then reviewed by the Intake Supervisor, who also makes a disposition recommendation and forwards it to the Intake and Administrative Section Commander for review.
- The Intake and Administrative Section Commander then reviews the case and makes the final decision of the disposition of the case, taking into consideration the following:
  - Administrative Closure: ensure that the circumstances comply with policy criteria for administrative closure, including but not limited to: service complaints, withdrawn complaints, chronic complainants, and no MOR violations.
  - Open Investigation: review the details of the complaint to ensure all allegations of misconduct are identified; assess the seriousness of the allegations and complexity of the investigation and route the case in one of two directions:



- Investigations Section: Cases involving a Class I allegation, or cases involving Class II allegations with multiple subject officers (typically more than 5), or cases that are high-profile in nature are forwarded to the Investigations Section Commander for review and assignment.
- Division Level Investigation: Cases that are not sent to the Investigations Section Commander are distributed as a Division Level Investigation (DLI).

Once the Intake and Administrative Section Commander completes their review, the Control Files are forwarded to an IAD Police Records Specialist for processing.

- This process should reasonably occur within forty-five calendar days.

### ***Records Management and Statistical Reporting:***

The Internal Affairs Division is the Custodian of Record for all IAD investigations. Additionally, IAD regularly generates reports – both standardized and ad hoc – for a variety of stakeholders including the IAD Commander, Chief of Police, Office of Inspector General (OIG), and the Monitoring Team.

- Records Management: Although this is the primary responsibility of the Administrative Support Supervisor, the Intake and Administrative Commander must ensure that records are maintained in accordance with policy and statutes. This includes, but is not limited to, on-site records, off-site records, and digital records.
- Statistical Reporting: In conjunction with the Administrative Support Supervisor, produce the following reports:
  - Biweekly Compliance Reports: On a biweekly basis, forward a standardized report to OIG with information on complaints and sustained cases during the reporting period, as well as YTD comparisons of the same. Cases that missed the 180-days timeline are also reported.
    - On a rotating schedule, the Biweekly Compliance Report contains the results of audits based on IAD-related NSA Tasks.
  - Yearly Report: Standardized report for inclusion in the yearly OPD Annual Report
  - Ad Hoc Reports: Periodic requests are made for reports based on IAD data.

### ***Discipline Process Management:***

The Administration Section is responsible for producing most documents related to the discipline process. Pre-Discipline files, Notices of Intent to discipline, and Skelly files, as well as the tracking for all discipline cases, are under the purview of the Intake and Administrative Section Commander. Most of these tasks are completed by Internal Affairs Police Records Specialists and the Administrative Support Supervisor.

## **INTAKE SUPERVISOR**

**Rank:** Sergeant of Police  
**Immediate Supervisor** Intake and Administrative Section Commander  
**Immediate Subordinates:** Police Intake Technicians; Intake Officers (Sworn); Pitchess Officer (Sworn)  
**Primary Responsibilities:** Review all new complaints processed by IAD; handle urgent matters coming from the OCOP and the field; coordinate resources for special projects by the IAD Commander; manage work schedules for Police Intake Technician and Officers

## ***DUTIES AND RESPONSIBILITIES***

### ***Reviewing Incoming Complaints:***

- The case is reviewed by the Intake Supervisor for accuracy of allegations, relevant documents and evidence. Ensure subject members are notified of the complaint.
- The Intake Officer/Technician processes the complaint and makes a disposition recommendation before forwarding to the Intake Supervisor.
- During case review the Intake Supervisor reviews for the following:
  - Informal Complaint Resolution (ICR): If the complainant elected to resolve the complaint via ICR, check the subject member's supervisory note file entries and their CIR Index to ensure the case is eligible for ICR before submitting the case to the IAD Commander. If a case is ineligible for ICR, return the case to the Intake Officer or Technician to prepare the case for Open Investigation.
  - Open Investigation: Review the complainant's statement to ensure all allegations are identified; ensure evidence and relevant policies are included. Return cases to the Intake Officer or Intake Technician for additional work if needed.
  - Administrative Closure: Review the complainant's statement to ensure there are no missed allegations of misconduct. Return cases to the Intake Officer or Intake Technician for additional work if needed.

### ***Additional Duties:***

- Review IAD Communications Daily Incident Log and IAD Communications Complaint Referral Logs (aka IBC Logs) to ensure there are no issues that need addressing (high profile, serious allegations, self-reported off duty).
- Review the IAD Communications Complaint Referral Logs to ensure entries are appropriate.
- Notify City Human Resources of any allegations in violation of Administrative Instruction (AI) 71.
- Manage cases in Intake by completing a weekly Intake Unit Report. The report is submitted to the IAD Commander.

- Ensure staffing coverage for the next week's Intake is in place.
- Ensure any upcoming Complaint Unit activations are staffed and confirmed.

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## **INTAKE ADMINISTRATIVE OFFICER**

**Rank:** Police Officer

**Immediate Supervisor:** Intake Supervisor

**Immediate Subordinates:** None

**Primary Responsibilities:** Manage the tracking and listing of several different databases where administrative benchmarks are documented

### ***DUTIES AND RESPONSIBILITIES:***

Ongoing duties include, but are not limited to, the following:

- **Track City Vehicle Collisions:** The Intake Administrative Officer (IAO) tracks City vehicle collisions involving Departmental personnel. A sustained finding is added to all city-vehicle collisions which have been determined to be preventable. The file is forwarded directly to the IAD Intake/Administrative Commander for review and pre-discipline.
- **Maintain a Chronic Complaint List:** The IAO maintains a list of persons who continually make frivolous or plainly unsubstantiated complaints.
- **Process Out of Compliance Pursuits and Uses of Force:** The IAO receives a Vehicle Pursuit packet or Use of Force packet which have been determined by the Training Division/Department Safety Committee or Force Review Board as Out of Compliance. Process the case and adds a sustained finding before forwarding to the IAD Commander for review.
- **Audit the Daily Intake Report:** The IAO audits the IAD Daily Intake Report for any external citizen complaints made against sworn members and forwards the Complaint Investigation Report (CIR) for each complaint to the Community Police Review Agency (CPRA) within one business day pursuant to the City Charter.
  - The IAO reconciles the IAD Communications Daily Incident Log with the IAD Daily Intake Report to ensure each complaint is assigned a case number and tasked to an Intake Officer or Intake Technician as a deliverable.
- **Forward Certain Complaints to CPRA:** The IAO forwards certain complaints to the CPRA as required by the City Charter.
- **Process Legal Claims forwarded by OCA:** The IAO receives copies of legal claims forwarded by the Office of the City Attorney (OCA). Legal claims are reviewed for alleged MOR violations and the IAO conducts a preliminary inquiry. Ensures data is entered in to the IAD case record.
- **Handle Special Projects as Directed:** The IAO is tasked with handling special projects by the IAD Commander, to include, but not limited to: generating reports of statistics, auditing specific IBC log entries as directed by the Intake Supervisor or Commander, or any other task directed by the IAD Commander.
- **Closing Error Records:** The IAO checks the IAD database and closes any case record opened in error.

- **Complete After-Action Reports:** The IAO completes the after-action report for any Complaint Unit activations.
- **Assist Intake Staffers:** Meet with each Intake Staffer to go over any case issues, problems, and goals.

***Monthly:***

- Audit Open Intakes for IA Admin Report.
- Ensure every case in Intake listed (without a “Date in Review”) is in the possession of the Intake staffer.
- Ensure no cases are missing from the report.
- Ensure each case in Intake listed as “In Review” is either with the Intake Sergeant or Lieutenant.
- Ensure IAD Communications Daily Incident Log Audit is up to date and properly maintained.
- Ensure Complaint Unit Activations Folder is up to date and maintained.
- Ensure Chronic Complainant Log is up to date and maintained.
- Save the Complaint Line Transfer Log to the server file.

## **INTAKE OFFICER/POLICE INTAKE TECHNICIAN**

**Rank:** Police Officer/Police Intake Technician (PIT)

**Immediate Supervisor:** Intake Supervisor

**Immediate Subordinates:** None

**Primary Responsibilities:** Assist with the function of the Physical IAD Offices; Receive and process complaints received directly through IAD; process complaints received by field personnel; prepare preliminary inquiries to be sent out for investigation.

### ***DUTIES AND RESPONSIBILITIES:***

#### ***Assist with the Function of the Physical IAD Offices:***

- Perform opening duties:
  - Review the IAD Communications Daily Incident Log.
  - Check for duplicate complaints before opening a new case.
  - Distribute the IAD Communications Daily Incident Log and IBC logs to other members of IAD Intake and the IAD Commander.
  - Transfer the 24-hour IAD Hotline from Communications Division back to IAD.
- Perform closing duties:
  - Complete the IAD Daily Intake Report and distribute to IAD Intake personnel.
  - Transfer the 24-hour IAD Hotline to Communications Division and document it on the transfer log.

#### ***Receive and Process Complaints:***

- Intake new complaints (via in-person, telephone, email, written correspondence, or any other source) and complete Preliminary Inquiries (PI) within timeline and by priority.
  - Interview the complainant(s)
  - Attempt to associate the complaint to an incident.
  - Attempt to identify the subject member(s) and witnesses.
  - Obtain all reports and documents associated to the incident.
  - Obtain all relevant recordings.
  - Ensure all allegations of misconduct are accurately identified.
  - Make a case file recommendation prior to submitting to the Intake Supervisor for review.

#### ***Process Complaints Received by Field Personnel:***

- Ensure Field Preliminary Inquiries are received in 21 days and document in CAL, with notification to Intake Sergeant if not.

***Prepare Preliminary Inquiries for Assignment:***

- Review PI for accuracy and completeness. Include evidence or policies missing from the PI packet. Make a case file recommendation before submitting the case to the Intake Supervisor for review.
- Complete additional tasks if returned by the Intake Supervisor for more work.
- Ensure that all case material is kept in the control file, saved to the server and never left in other areas or the workspace.

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## **PITCHESS OFFICER**

**Rank:** Police Officer

**Immediate Supervisor:** Intake Supervisor

**Immediate Subordinates:** None

**Primary Responsibilities:** Respond to Pitchess motion subpoenas, Brady requests, and Giglio inquiries as appropriate; ensure IAD complaint forms are available at specified locations; assist with the Intake process of complaints and completion of Skelly Packets

### ***DUTIES AND RESPONSIBILITIES:***

#### ***Responding to Pitchess Motion Subpoenas:***

Prepare court documents related to Pitchess motion subpoenas and appear in court. Pitchess Officer reviews the complaint history for all officers listed on the subpoena and determines which complaints apply, based on the categories outlined within the subpoena. If a motion is granted by the presiding judge, the documents are presented in chambers by the Pitchess Officer.

- The Pitchess Officer maintains a running log of subpoenas that have been served to IAD with details and results of the Pitchess motion court hearing.
- The Pitchess Officer notifies the officers of the motion that has been filed.
- The Pitchess Officer responds to court subpoenas in Alameda County, as well as other counties.
- The Pitchess Officer prepares and provides material ordered by the presiding judge to defense attorneys.

#### ***Responding to Brady Inquiries/Requests:***

The Pitchess Officer receives Brady inquiries from District Attorney offices requesting exculpatory information that may or may not exist within an officer's personnel folders.

- The Pitchess Officer researches the officer's complaint history and responds to the Brady requests, verifying whether exculpatory evidence exists.
- The Pitchess Officer maintains a log of Brady requests that have been received for each fiscal year.

#### ***Responding to Giglio Inquiries:***

The Pitchess Officer receives Giglio inquiries from the United States Attorney's Office requesting exculpatory and impeachment information that may or may not exist within an officer's personnel file.

- The Pitchess Officer researches the officer's complaint history and responds to the Giglio inquiry, verifying whether or not responsive information exists.
- The Pitchess Officer maintains a log of Giglio requests that have been received for each fiscal year.



***Additional Duties:***

- The Pitchess Officer is responsible for ensuring the availability of IAD complaint forms at specific locations throughout the City of Oakland that include:
  - Police Administration Building
  - Eastmont Precinct
  - High Street and Fruitvale Police substations
  - Department of Human Resources
  - CPRA Office
  - City Clerk's Officer
  - 237 East 18<sup>th</sup> Street
  - 388 9<sup>th</sup> Street
- The Pitchess officer assists with the Intake process and preliminary investigations of complaints filed as outlined in Intake Officer/Police Intake Technician responsibilities.
- The Pitchess officer assists with the preparation of Skelly packets for officers receiving discipline. The Pitchess Officer redacts certain information from the investigative complaint process of certain cases that involve a Skelly packet.
- The Pitchess Officer assists with the duties of the IAD Intake Administrative Officer when the Administrative Officer is on leave.

## **ADMINISTRATIVE SUPPORT SUPERVISOR**

**Rank:** Police Records Supervisor  
**Immediate Supervisor:** Intake and Administrative Section Commander  
**Immediate Subordinates:** Police Records Specialists  
**Primary Responsibilities:** Custodian of Record for all Internal Affairs records; IAD Database and Server Administrator; Schedule, assign, supervise and evaluate assigned staff; Interpret policies and regulations regarding release of documents; Oversee maintenance of various files, logs and reports for compliance with departmental and legal requirements; Train Police Records Specialists in correct procedures, rules and regulations to comply with state and federal laws; Compile bi-weekly, monthly, quarterly, annual statistical reports, Manage Discipline notifications, Public Records Requests, and other work performed; Interpret data and prepare additional reports as required. Assist in preparation of a section budget; control expenditures

### ***DUTIES AND RESPONSIBILITIES:***

#### ***Manage and Train IAD Administrative Staff:***

- Schedule, assign, supervise and evaluate assigned staff.
- Direct staff in providing information to the public and Department personnel on the discipline process.
- Oversee data entry and removal of data from the IAD database.
- Interpret policies and regulations regarding release of documents.
- Monitor staff's maintenance of various files, logs, and reports for compliance with departmental and legal requirements.
- Train Police Records Staff in correct procedures, rules and regulations to comply with state and federal laws.
- IAD staff must be familiar with policies and regulations regarding release of documents.

#### ***Compilation and Preparation of Reports:***

- Prepare and analyze complex reports. Conduct statistical analysis of complaints by and against the Oakland Police Department; develop graphs and charts and other special reports as needed.

#### **Biweekly Compliance Reports**

On a biweekly basis, forward a standardized report to OIG with information on complaints and sustained cases during the reporting period, as well as YTD comparisons of the same. Cases that missed the 180-days timeline are also reported.

- On a rotating schedule, the Biweekly Compliance Report contains the results of audits based on IAD-related Negotiated Settlement Agreement (NSA) Tasks.

#### **Annual Management Report for Internal Affairs Division**

This annual report is included in the yearly OPD Annual Report. The report contains the role and function of the unit, an Organizational Chart, the number authorized positions and the number of

filled positions, significant accomplishments, challenges encountered, number of civil suits filed, arrests of agency members, number of restraining orders filed against agency members.

### **IAD Case Summary Report**

This monthly report is forwarded to the Office of Inspector General (OIG). This report is a summary of all complaints with an approved finding within the period requested.

### **Subject Employee Report**

This monthly report is forwarded to the Office of Inspector General (OIG). It includes all Subject Employee Information, the status of the case, violation, all findings for discipline, and the synopsis of the complaint.

### **State of California Annual Report of Citizens' Complaints Against Peace Officers**

This report is completed annually and is forwarded to the State of California, Criminal Justice Statistics Center. The report for total complaints, non-criminal misdemeanor, felony, total racial and identifying complaints by type; race or ethnicity, nationality, gender, age, religion, gender identity or expression, sexual orientation, mental disability, and physical disability.

### **Department of Justice Fiscal Year Annual Report**

The annual report is forwarded to the Manager of the OPD Research and Planning Training Division and contains the number of instances an approved written notice was given to a peace officer within 1 year of discovery, that they may face disciplinary action after an investigation. The number of instances written notice was given to a peace officer that the department had imposed discipline. The number of times OPD provided the citizen written disclosure of the investigative results within 30 days of disposition.

### **Termination Report**

Monthly report is forwarded to the IAD Captain and is an analysis of race, job classification for individuals that have been terminated or the discipline recommendation is termination.

### **Comparison Report**

Monthly report, this eight-year comparison report chronicles complaints, the number of complaints received year to date, percentage of complaints received by quarter, number of allegations by performance of duty, Use of Force, Conduct Towards others, Department Property and Equipment, all others, Disposition of individual allegations, and discipline for sustained cases.

### **Discipline Tracking Sheet**

Weekly report, forwarded to key stakeholders including the Chief of Police, IAD Command staff and tracks individual cases in the following:

#### **○ Skelly Process**

A Skelly hearing is offered to employees when the recommended discipline is dismissal, demotion, fine, or suspension. (Refer to TB V-T.04 Due Process Hearings for further information.) The duties involved in facilitating the Skelly process include, but are not limited to, the following:

- Oversee the distribution of Skelly Hearing Material.
- Discipline – Monitoring imposed discipline.
- Direct the preparation of various disciplinary documents, including

agreements, contracts and correspondence; prepare and coordinate the preparation of documents for court filings.

- Compile and disseminate new rules and changes in the laws related to assigned work.

### ***CPRA Division/Departmental Liaison***

Requests for documents throughout the agency. (e.g. request for surveillance videos that were collected and logged as evidence, Crime Reports, photos etc.)

### ***Hiring Manager***

- Work with human resources to fill open positions
- Assist in the development of IAD case management system and applications.
  - Establish business processes and rules
    - Workflow
    - Data validation
    - User acceptance

### ***Manage Division and Section Fiscal Operations:***

- Payroll
- Accounts payable and receivable
- Purchase orders
- Review and development of fiscal policies and procedures and handling of funds.
- Review and approve invoice payment from vendors.
- Assist in preparation of a section budget; control expenditures.
- Direct the development of goals, objectives, policies and procedures; the implementation of goals, objectives, policies, procedures and work standards.
- Respond to inquiries and resolve complaints related to division matters; interpret and explain laws and procedures.
- Assign/monitor work and re-allocate work as needed.

## **INTERNAL AFFAIRS POLICE RECORDS SPECIALISTS**

**Rank:** Police Records Specialist

**Immediate Supervisor:** Administrative Support Supervisor

**Immediate Subordinates:** None

**Primary Responsibilities:** Process all IAD files, to include scanning to the server, building investigative files, and closed case processes; track discipline; compile Skelly materials; reception duties during business hours

### ***DUTIES AND RESPONSIBILITIES:***

#### ***Processing IAD Files:***

- Close cases in database.
  - Combine investigative file and the control file.
  - Update IAD database.
- Send CIR notifications to subject employees.
  - When a case comes to a finding other than sustained, advise the employee of the findings.

#### ***Additional Duties:***

- Complete documents requests from Community Police Review Agency and the Office of the City Attorney.
- Division payroll coordinator.
  - Ensure time and attendance policies are followed.
- Field Training Officers Open & Closed IAD cases report.
  - Monthly report to FTO Unit. Updates FTO coordinator of any pending IAD cases associated with Field Training Officers, both open and closed cases.
- Complete and forward vehicle inspections report to fleet coordinator.
- Store, order, and issue supplies.
- Create Requisitions and Purchase Orders.
- Scan case files and uploading CD's to server.
- Complete Public Records Requests.
- Create investigative files
  - Upon receipt of the control file copy content place in investigative folder and distribute to IAD Investigative Unit or out as a Division Level Investigation.
- Coordinate the retrieval and storage of case files with off-site storage facility.
- Perform reception duties:
  - Answer and direct telephone calls.

- Greet visitors.
- Distribute informational material and explain the complaint process to the public.
- Respond to phone requests.
- Distribute incoming mail/complaint memos/returned mail.
- Receive cases from various bureaus.
  - Note in the IAD database the case was received.
  - Forward to the IAD Administrative Assistant II.
- Contact for copy machine maintenance and statistical data requests.
- Locate and correct errors in internal data systems.
- Draft Close-Out Letters:
  - Type disclosure of the investigative results and forward to the Complainant.
- Create Pre-Discipline report folder.
  - Gather all appropriate documents and forward to the subjects Captain.
- Create City Vehicle Collision Cases file.
  - Gather all appropriate documents and forward to the subjects Captain.
- Log Recusal forms.
- Retrieve/file case files.
- Create folders for background checks.
  - Background investigators from outside agencies come to the IAD to review an individual's personnel file. IAD makes the IAD files available.
- Process certified mail/confirmation receipts.
  - ***Discipline Documents***  
Send to the representative union of the disciplined member, persons no longer employed with the City, and to the disciplined member's attorneys via certified mail.
- Update Discipline Tracking Sheet.
  - ***Discipline Tracking Sheet***  
Weekly report, forwarded to key stakeholders including the Chief of Police, IAD Command staff and tracks individual cases in the:
    - Skelly Process - A Skelly hearing is offered to employees when the recommended discipline is dismissal, demotions, fine, or suspension. This meeting affords the employee their due process right to pre-disciplinary discovery of the materials upon which the discipline is based. A *Skelly* hearing ensures that an employee is informed of the allegations, has an opportunity to refute the allegations, and has an opportunity to mitigate the

allegations or rehabilitate their standing with the employer prior to the imposition of any actual disciplinary action.

- Discipline Conference – To ensure that discipline is imposed in a fair and consistent manner. Internal investigations which result in a sustained finding are submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer convenes 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 employee's overall performance. The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.
- Prepare and forward correspondence including, Discipline Letters, Administrative Leave Letters, Skelly results, regarding discipline.
- Schedule Skelly hearings.
- Respond to questions from employees about the Skelly process.
- Copy and send Skelly CDs to all required individuals.
- Review Skelly Hearing Summary Reports for final discipline.
- Process:
  - Settlement agreements
  - Grievances and arbitration results
  - Sustained results from Executive Force Review Board and Force Review Board hearings

## **DIVISION LEVEL INVESTIGATIONS**

### **SECTION**

#### **DIVISION LEVEL INVESTIGATIONS (DLI) SECTION COMMANDER/MANAGER**

**Rank:** Lieutenant of Police/Police Services Manager  
**Immediate Supervisor:** Internal Affairs Division Commander  
**Immediate Subordinates:** Division Level Investigations (DLI) Coordinators; Division Level Investigations Section Analyst  
**Primary Responsibilities:** Review, Approve, and Forward Division Level Investigations; Coordinate review of certain cases by the chain-of-command Deputy Chief; Coordinate the presentation of DLIs to the Chief of Police; Liaison with the CPRA Executive Director on the closure of DLIs; Monitor DLI timeline compliance

#### ***DUTIES AND RESPONSIBILITIES:***

##### ***Review, Approve, and Forward Division Level Investigations***

The primary task for the DLI Section Commander/Manager is to review, approve, and forward to the Captain of IAD all DLIs. Key tasks include but are not limited to:

- Ensure that the DLI Coordinator has reviewed each Report of Investigation (ROI) for content, clarity, and investigative sufficiency.
- Ensure all allegations of misconduct are accurately identified and any additional potential Manual of Rules (MOR) violations.
- Reviews should ensure impartiality, fairness, and thoroughness by examining, among other things, adherence to Training Bulletin V-T.1, quality of and adherence to investigative plans, correct application of the standard of proof, credibility assessments, promptness and quality of interviews (e.g., avoiding leading questions and resolving inconsistencies), and analysis of the evidence.
- If there is reasonable suspicion to believe a member is in possession of evidence or items that contain evidence (e.g., a member's personal cellular phone) of member misconduct for which a member is being administratively investigated, an investigator in an administrative investigation may demand that the member produce the evidence for use in the administrative investigation and proceedings. Any such demand for such information must be documented in writing with a recitation of facts giving rise to reasonable suspicion that the evidence sought is contained therein. Any such demand must also be reasonably tailored to the allegation(s) being investigated. Finally, any such demand must be accompanied by an admonition that the evidence and information produced may not be used against the member producing the information in a criminal proceeding but may be used against the member in an administrative proceeding.
- Consider the use of Administrative Warrants to assist in investigations if legally and strategically viable. (OCA should be consulted prior to the pursuit of any Administrative Warrant.)
- Review and approve/deny requests to amend or change allegation during an investigation (only the IAD Commander has the authority to remove an allegation).
- Ensure that each ROI contains findings that are supported by evidence and analysis.



- Once reviewed, sign each ROI memorializing approval of the findings.
- Present the findings in each ROI to the IAD Commander for approval.
  - For cases with findings other than Sustained, forward the case to the DLI Section Analyst for processing to closure.
  - For cases with Sustained findings, coordinate the presentation of the case to the Chief of Police for review and approval (see below for further).
  - For cases that are also being investigated by the Community Police Review Agency (CPRA), regardless of findings, liaison with the CPRA Executive Director for concurrence and closure (see below for further).

***Coordinate and Ensure Review of Certain DLIs by the Chain-of-Command or Bureau of Risk Management Deputy Chief***

Prior to case presentation to the Chief of Police, obtain review from the Deputy Chief in the investigator's chain of command for cases with recommended **sustained** findings for allegations that could result in termination (i.e., has T as a possible consequence on the Discipline Matrix which includes MORs for obedience to laws felony/serious misdemeanor and DUIs, and use of force), or allegations of violations of obedience to laws misdemeanor/infraction. <sup>4</sup>

For cases involving **not sustained** recommended findings for allegations that could result in termination or allegations of violations of obedience to laws misdemeanor/infraction, or any Management Level Liaison (MLL) case that is initiated by notification from the District Attorney's Office or the Public Defender's Office, obtain review from the Deputy Chief of the Bureau of Risk Management.

***Coordinate the Presentation of DLIs to the Chief of Police***

DLIs that involve a Sustained finding must be presented to the Chief of Police for approval. Key tasks include but are not limited to:

- Schedule the case for presentation at the weekly IAD Meeting with the Chief of Police. This includes notifying the Investigations Section Administrative Sergeant/Analyst to include the case on the meeting agenda.
- When scheduling the case for presentation, consideration should be given to the following:
  - The 180 date
  - The 3304 date
  - The DLI Investigator's availability
  - The CPRA Executive Director and Investigator's availability (when applicable).
- Ensure the DLI Investigator is notified and available on the date and time of the meeting to present the case.
  - In instances where the DLI Investigator is not available, the reviewing DLI Coordinator should be assigned to present the case to the Chief of Police.
  - In instances where the DLI Investigator has not previously presented a case to the

Chief of Police, provide or facilitate training on the meeting format and best practices for presentation.

- In advance of the meeting, ensure the Internal Affairs Police Records Specialist has prepared a Pre-discipline packet.
- During the meeting, provide the Chief of Police with information or clarity related to the case, and support to the DLI Investigator, when needed. Upon approval of the findings, ensure the Chief of Police signs all required documents. The Chief shall read any ROI that the Chief signs. At a minimum, the Chief shall read and sign any ROIs involving a recommended finding of sustained that could result in termination (i.e., has T as a possible consequence on the Discipline Matrix, which includes MORs for obedience to laws felony/serious misdemeanor and DUIs, and use of force); or a recommended finding of sustained for obedience to laws misdemeanor/infraction.
- All track changes and versions created during the course of the DLI Coordinator's review will be saved on the IAD server.
- Ensure express memorialization using the guidance in the ROI template of any of the following revisions: (1) removing or changing MOR violation allegations, (2) downgrading members from subjects to witnesses, (3) changing conclusions of credibility assessments, and (4) changing recommended findings.<sup>5</sup>

***Liaison with the CPRA Executive Director on the Closure of DLIs***

Pursuant to The Charter of the City of Oakland, Section 604(g), in any public complaint that is investigated by both agencies, agreement or disagreement with the findings must be established between the Chief of Police and Executive Director prior to adjudication.

- In instances where the DLI Investigator and CPRA Investigator come to the same finding(s), and where those findings are other than Sustained, the DLI can be closed and processed upon receipt of written concurrence with the findings from the CPRA Executive Director.
- In instances where the DLI Investigator and CPRA Investigator come to the same finding(s), and where one or more of those findings are Sustained, the case can be scheduled for presentation to the Chief of Police upon receipt of written concurrence with the findings from the CPRA Executive Director.
  - The CPRA Executive Director and the CPRA Investigator are permitted – but not required – to attend the case presentation to the Chief of Police.
  - When the case is later presented to the Chief of Police for a discipline determination, the Executive Director's presence at that meeting is required to establish if there is agreement or disagreement between the Executive Director and the Chief of Police on the proposed discipline.
- In instances where the DLI Investigator and CPRA Investigator come to different findings, the case shall be scheduled for presentation to the Chief of Police to establish agreement or disagreement between the Executive Director and the Chief of Police on the finding(s).

<sup>5</sup> Note that IAD commander must approve any downgrade from subject to witness, and any removal of an MOR allegation. Authorization for changes must therefore be obtained, documented in writing in an email, and kept in the file and noted on the chron log.

- The CPRA Executive Director and the CPRA Investigator should be present at the case presentation to the Chief of Police to present their finding(s).
- The DLI Investigator (or a DLI Coordinator) shall attend the meeting to present their finding(s) to the Chief of Police.
- If, after presentation and discussion between the Chief of Police and the Executive director, there is disagreement on either the finding(s) or proposed discipline, the case shall be submitted to a Discipline Committee pursuant to The Charter of the City of Oakland, Section 604(g)(2).

***Monitor DLI Timeline Compliance***

DGO M-3 requires that 85% of investigations be completed within 180 days of complaint. Strategies for ensuring compliance with the 180-day timeline include, but are not limited to:

- Coordination with BFO Administration to ensure that timelines and due dates are accurately documented and communicated to the chain of command responsible for the DLI.
- Maintenance of a tracking mechanism, independent of the current database system.
- Establishing an IAD due date for cases prior to the 180-day date to allow sufficient time for review, and coordination with CPRA and presentation to the Chief of Police when needed.

## **DIVISION LEVEL INVESTIGATIONS (DLI) COORDINATOR**

**Rank:** Sergeant of Police  
**Immediate Supervisor** Division Level Investigations Section Commander  
**Immediate Subordinates:** None  
**Primary Responsibilities:** Review Division Level Investigations; Case presentation; Liaison between DLI Investigators and IAD; Liaison between CPRA Investigators and DLI Investigators and/or IAD

### ***DUTIES AND RESPONSIBILITIES:***

#### ***Review Division Level Investigations***

The primary responsibility for the DLI Coordinator is to review/edit DLI's from the field. The key tasks for reviewing a DLI are as follows:

- Upon receiving a DLI for review, check the 180 date and 3304 date and determine the urgency based on those dates. From there, start your review by completing a DLI checklist to ensure all the necessary documents are present in the case file. If they are not present, contact the DLI Investigator and acquire the documents for the file and put a hard copy in the case file. After the checklist is complete, ensure that the CIR in the case file matches the CIR in the database, and make sure the allegations investigated in the ROI/Summary Finding match the CIR in the database. If they don't match, determine why they don't match (check the Chronological Activity Log) and determine what needs to be done to make them match.
- Upon initial review of the DLI, ensure that the subject members and MOR violations are accurately reflected in the Complaint Investigation Report (CIR).
- The DLI Coordinator shall identify areas of concern, provide the Investigator with guidance on how to reach investigative sufficiency, and return it to the Investigator via their chain of command.
- Reviews should ensure impartiality, fairness, and thoroughness by examining, among other things, adherence to Training Bulletin V-T.1, quality of and adherence to investigative plans, correct application of the standard of proof, credibility assessments, promptness and quality of interviews (e.g., avoiding leading questions and resolving inconsistencies), and analysis of the evidence.
- Review and Edit the Report of Investigation (ROI) for content and clarity. Minor changes including formatting errors, writing/spelling errors, and small content deficiencies should be handled by the DLI Coordinator, who will then ensure that the Investigator concurs with the changes. DLIs requiring more substantive edits or additional investigation should be sent back to the DLI Investigator to complete. The DLI Coordinator shall identify areas of concern, ensure any additional potential MOR violations, provide the Investigator with guidance on how to reach investigative sufficiency, and return it to the Investigator via their chain of command.

- Ensure express memorialization in the ROI using the guidance in the ROI template of any of the following revisions approved by the IAD Commander: (1) removing or changing MOR violation allegations, (2) downgrading members from subjects to witnesses, (3) changing conclusions of credibility assessments, and (4) changing recommended findings.<sup>6</sup>

### ***Case Presentation:***

#### **Lieutenant presentation**

- Once a case has been reviewed/and or edited and approved by the DLI Investigator if it was edited, the case is brought to the IAD Administrative Lieutenant for presentation. The DLI Coordinator presents the case and discusses each allegation of misconduct along with the relevant evidence that led to the recommended findings. Be prepared to answer questions regarding investigative sufficiency, evidence, and credibility assessments. If the Lieutenant agrees with the recommended findings, the Lieutenant will sign both the printed copy of the ROI/Summary Finding, and the CIR and the case is ready for Captain presentation.

#### **Captain Presentation**

- Once a case has been presented to and approved by the IAD Administrative Lieutenant, the DLI Coordinator will present the case to the IAD Captain. The presentation should be the same as the presentation to the Lieutenant. If the IAD Captain agrees with the recommended findings, he/she will sign the printed copy of the ROI/Summary Finding and the CIR. If the Captain disagrees with the findings, discuss strategy to resolve disagreement.
  - For cases involving a finding other than Sustained, this is the conclusion of the presentation process and the case is ready to be closed.
  - For cases involving a sustained finding. Coordinate a Chief's presentation date with the IAD Administrative Lieutenant and the DLI Investigator for the DLI Investigator to present the case to the Chief of Police.

#### **Chief's Presentation**

- Occasionally the DLI Investigator will not be available for the case presentation of a sustained finding to the Chief. When this occurs, the DLI Coordinator who reviewed the file will present the case to the Chief.

### ***Liaison between DLI Investigators and IAD***

This primarily consists of answering questions and providing guidance to DLI Investigators while they are working on the investigation. However, it may include: facilitating requests to add, remove, or amend allegations or subject members; noticing subject members of allegations; and acting as a liaison between the DLI Investigator and the Office of the City Attorney (OCA), or the Community Police Review Agency (CPRA).

### ***Liaison between DLI Investigators and CPRA Investigators***

<sup>6</sup> Note that IAD commander must approve any downgrade from subject to witness, and any removal of an MOR allegation. Authorization for changes must therefore be obtained, documented in writing in an email, and kept in the file and noted on the chron log.

Division Level Investigations can also be under investigation by the CPRA. The DLI Coordinator may need to act as a liaison between the two agencies and/or provide information in accordance with current statutes. Pursuant to the Charter of the City of Oakland, Section 604(f)(2), the CPRA has the same access to all Department files and records as the Internal Affairs Division, and the Department shall make every reasonable effort to respond to the CPRA's requests for files and records within ten (10) days, and the transfer of any materials to CPRA shall be documented in the Chronological Activity Log in the current case management database. Coordination with CPRA may include, but is not limited to, providing all evidentiary materials as requested, including recorded interviews.

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## **DIVISION LEVEL INVESTIGATIONS SECTION ANALYST**

**Rank:** Administrative Analyst II

**Immediate Supervisor:** Division Level Investigations Section Commander

**Immediate Subordinates:** None

**Primary Responsibilities:** Track all open investigations and timelines; maintain all tolling cases; monitor DLI Section caseload

### ***DUTIES AND RESPONSIBILITIES:***

#### ***Track open investigations and timelines:***

The primary responsibility for the Administrative Analyst II is to track the timeliness of DLI case submissions and reviews by sending reminders to investigators and warnings to BFO and IAD commanders so the latter can intervene or assist when necessary to ensure a case is submitted on time to meet 180 date and 3304 deadlines.

- Track progress of all DLI cases including opening of cases, assignments to BFO personnel for investigation, due dates, tolled cases, case review, and closure of cases.
  - Crosscheck data with data in the current database system. Coordinate data with BFO 1 and 2 Administrative Sergeants. Track opening and closing of cases in IAD Investigations Section. Coordinate case details with CPRA investigators.
  - Track receipt of cases from investigators.
  - Manage DLI coordinators caseloads by assigning cases for review and noting which cases are sent back to the investigator for additional work.
  - Send reminders to investigators and their chain of command notifying them of upcoming due dates, missed due dates, missing documents, etc.
  - Produce a weekly report on DLI cases past the 180-date detailing which are tolled, which are being reviewed by the DLI coordinators, and which are still out in the field.
  - Manage tolled cases. Track commencement of tolling required paperwork, extensions, work restrictions, and conclusion of tolled cases. Query CID Captain and Medical Unit for updates on criminal case investigations and employee conditions causing cases to toll. Notify investigators when they may resume their investigations. Notify CPRA when tolling is completed.
  - Close cases in the current database system including ensuring proper CIR signatures and notification to the IAD command if the case was a CPRA case. Complete data entry in Tracking section, Chronological Log, and Tasks.
  - Occasional research for Internal Affairs Division Commanders.

## **ADDITIONAL REFERENCES**

### ***IAD Flow Charts***

Investigation Flow Chart w/CPRA: Page 45 Disciplinary Process Flow Chart w/CPRA

### ***Policies - Names:***

<u>DGO K-3</u>	Use of Force
<u>DGO K-4</u>	Reporting and Investigating the Use of Force.
<u>DGO J-4</u>	Pursuit Driving
<u>DGO K-4.1</u>	Force Review Boards
<u>TB V-T.1</u>	Internal Investigation Manual
<u>RWM U-1</u>	Use of Force Report
<u>CID P&amp;P</u>	Criminal Investigation Unit
<u>DGO M-03</u>	Complaints Against Departmental Personnel or Procedures
<u>DGO M-03.1</u>	Informal Complaint Resolution Process
<u>DGO M-03.2</u>	Community Police Review Agency (CPRA)
<u>DGO M-03.3</u>	Integrity Testing
<u>TB V-T</u>	Departmental Discipline Policy w/ Discipline Matrix Appendix
<u>TB V-T.01</u>	Internal Investigation Manual
<u>TB V-T.02</u>	Internal Investigation and Discipline Appendices
<u>TB V-T.03</u>	Reporting Misconduct
<u>TB V-T.04</u>	Due Process Hearings
<u>DGO B-02</u>	Voluntary Termination, Discharge, Unpaid Leave, Mandatory Leave
<u>DGO E-01</u>	Department Subpoena Service
<u>DGO E-02</u>	Warrant Service on Department Personnel
<u>DGO E-03</u>	Civil Action Proceedings
<u>DGO M-04</u>	Coordination of Criminal Investigations
<u>DGO M-04.1</u>	Criminal Investigations Involving Active Law Enforcement, or a Member or Employee of the Department

Oakland City Charter, Article VI  
 Oakland City Ordinance CMS (Measure LL)  
 Department Manual of Rules  
 IAD Policy and Procedures 05-01 thru 05-04  
 Communications Division Policy and Procedure C-1  
 OPOA MOU  
 City of Oakland MOU (Local 21 & 790)

### ***Forms and Booklets:***

Police Officer's Bill of Rights (POBR)  
 AI 71 Equal Opportunity/Anti-Discrimination/Non-Harassment Policy  
 City of Oakland Ethics Resource Guide  
 City of Oakland Whistleblower Ordinance  
 Your Guide to Filing a Complaint Against the Police (TF-3208)  
 Acknowledgement of Rights and Obligations Pursuant to Penal Code Section 148.6 and Notice and Releases (TF 3039a)  
 Complaint Form (TF-3039b)

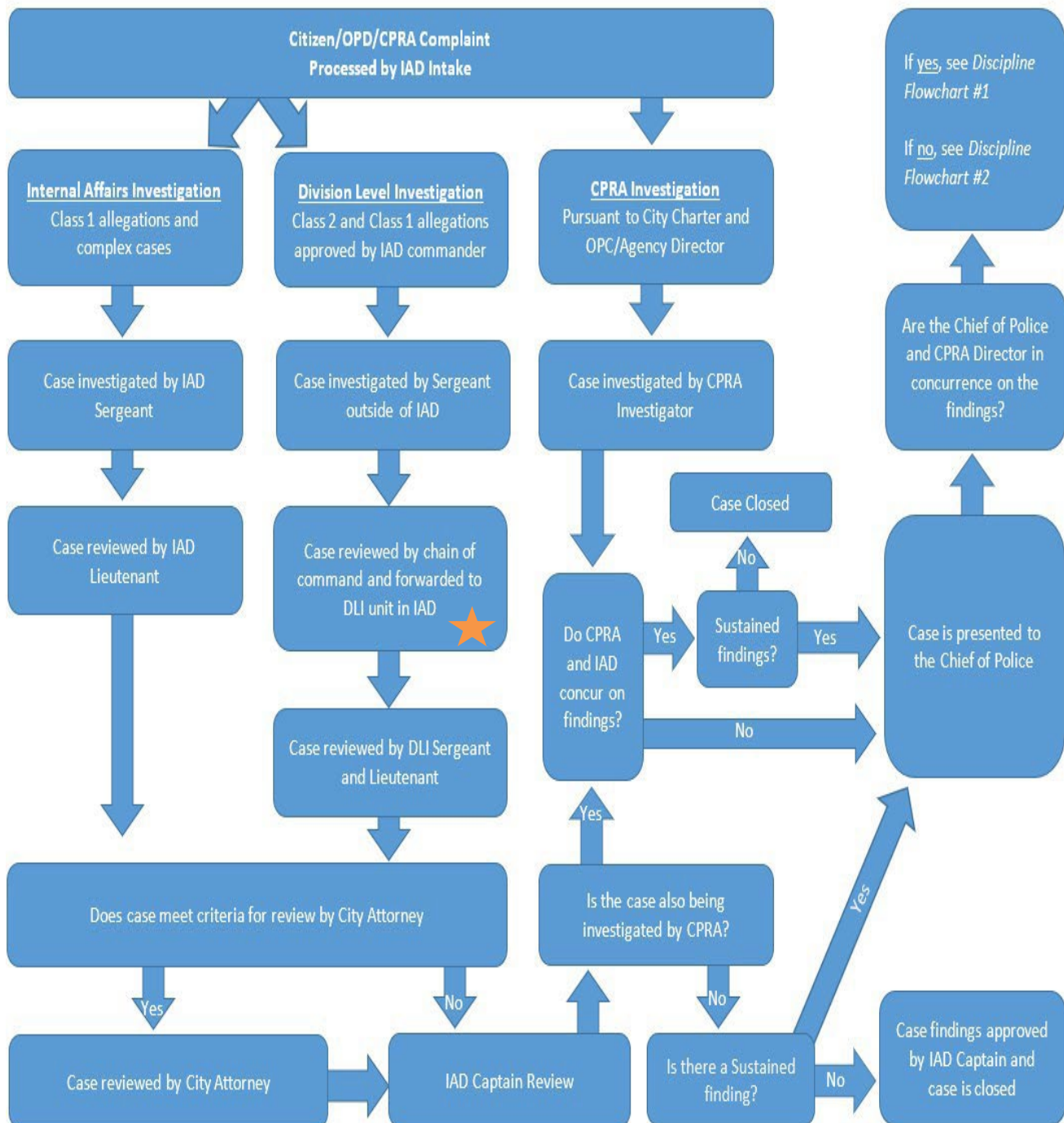


Informal Complaint Resolution and Agreement (TF-3132)  
Acknowledgement of Rights and Obligations (TF-722)  
Skelly Recommendation Template (TF 3412)  
Swanson Report (1&2)

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## FLOWCHARTS

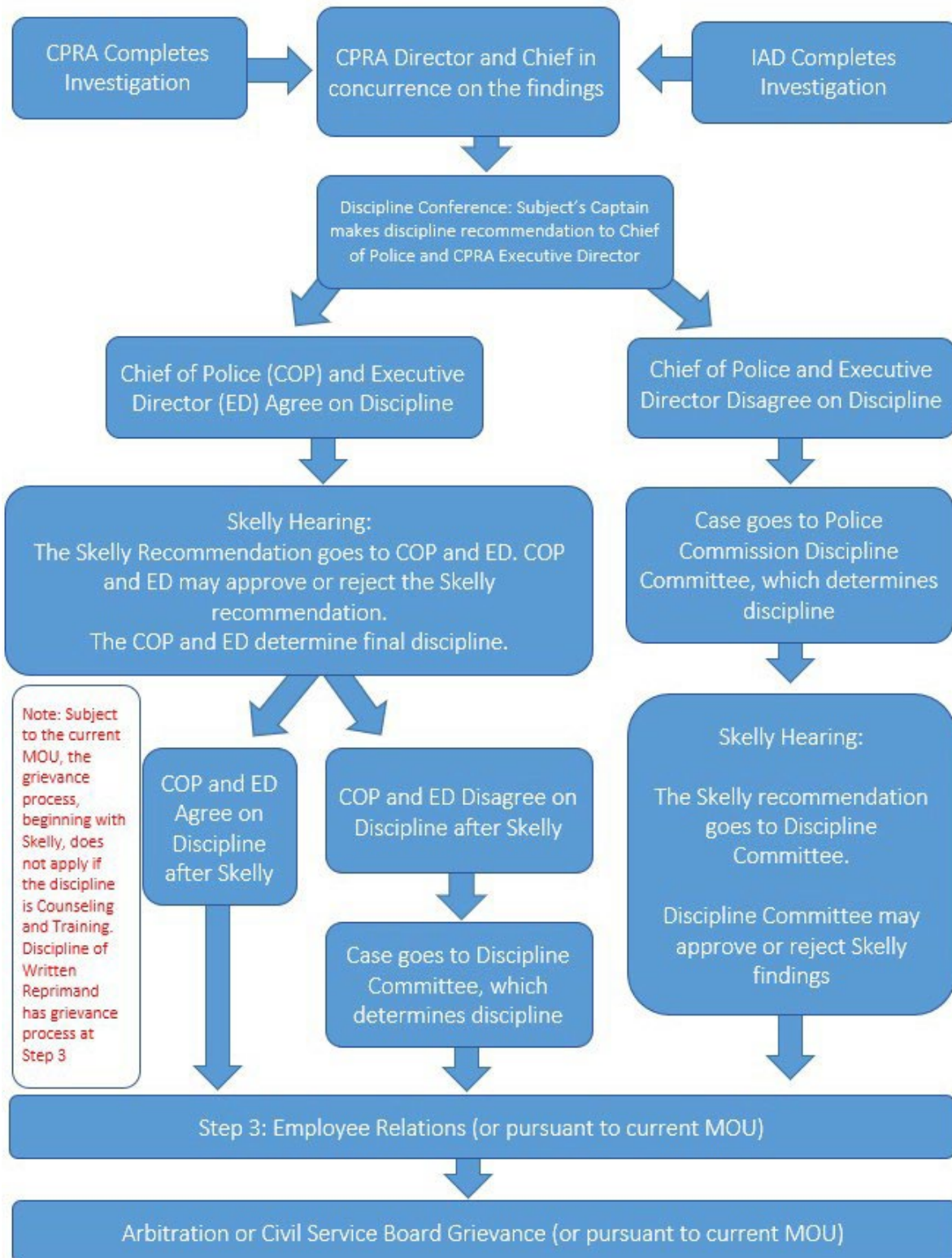
### IAD INVESTIGATIONS WORKFLOW



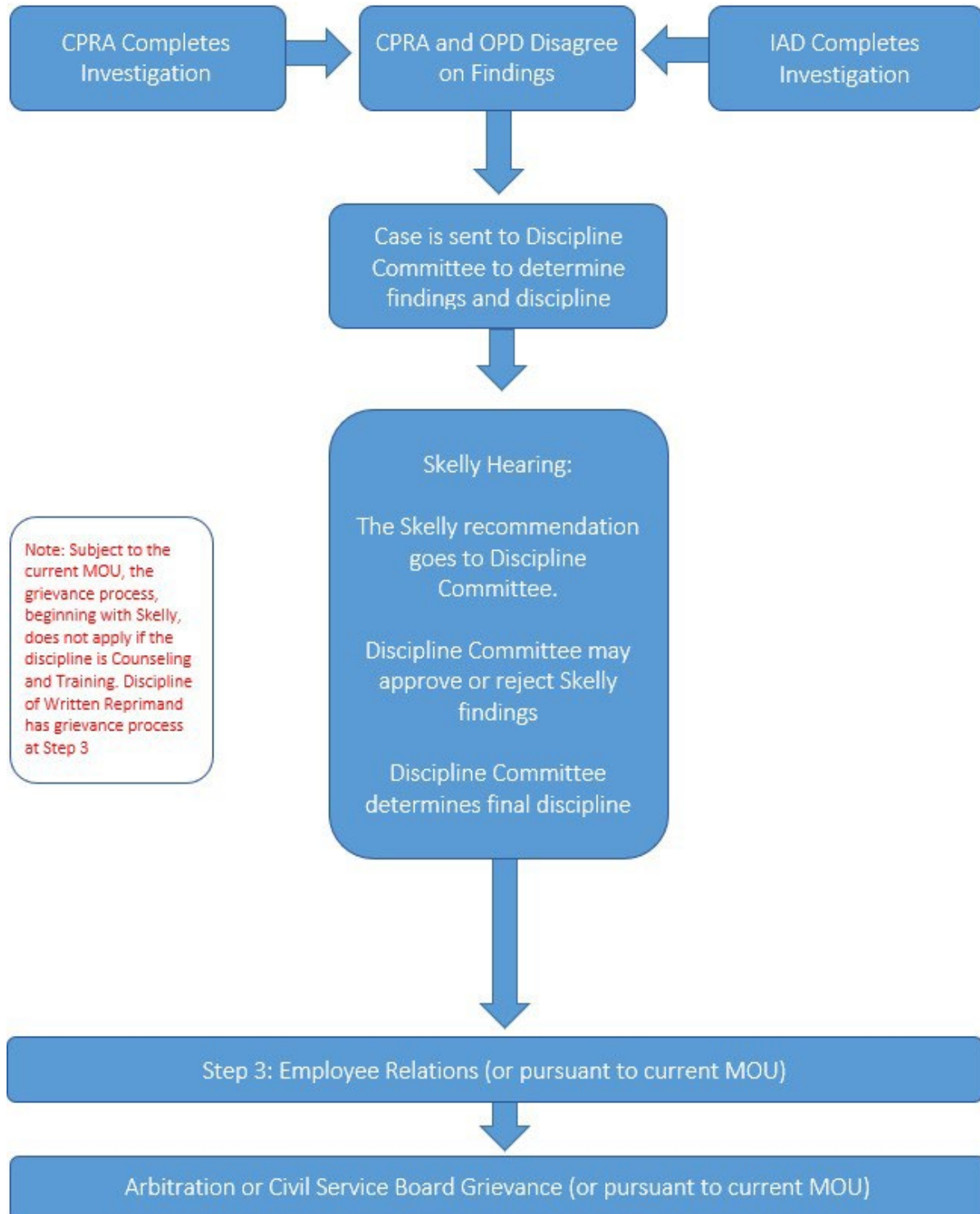
- ★ The chain of command includes the investigating sergeant's lieutenant and captain. For circumstances listed in TB V-T.01, the investigator's Deputy Chief or the Deputy Chief of the Bureau of Risk Management will also be included in the review.

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### Discipline Flowchart #1 – OPD and CPRA Agree on Findings



## Discipline Flowchart #2 – OPD and CPRA Disagree on Findings



## GLOSSARY

<b>180 Date:</b> Investigations shall be completed, reviewed, and approved by the IAD commander within 180 days of the IAD Intake Date.
<b>3304 Date:</b> Refers to Section 3304 of the Public Safety Officers Procedural Bill of Rights Act, which states that “no punitive action...shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency’s discovery by a person authorized to initiate an investigation...”. For OPD, the “3304 Start Date” for internal investigations begins on the date of the complaint, or the date a member of the Department authorized to initiate an investigation became aware – or reasonably should have been aware – of any act, omission, or other allegation of misconduct, whichever is earlier. The “3304 End Date” occurs 364 calendar days after the 3304 Start Date.
<b>Administrative Closure:</b> An administrative disposition indicating that an investigation or allegation cannot come to a normal investigative conclusion (finding). Reasons for Administrative Closure include, but are not limited to: allegations that do not rise to the level of an MOR violation; the complaint lacks specificity and 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 and/or tow. Refer to DGO M-03 for an exhaustive list of circumstances in which an Administrative Closure is authorized.
<b>Brady:</b> In <i>Brady v. Maryland</i> (1963), the United States Supreme Court held that the prosecution has an affirmative duty to disclose to the defense any “material,” “favorable” evidence whether or not the defendant has requested discovery of the evidence. Evidence is favorable if it is either exculpatory and helps the defendant, or if it is damaging to the prosecution.
<b>BWC:</b> Body Worn Camera. A device worn on the uniform of field personnel capable of recording audio and video.
<b>Bureau:</b> The first subordinate organizational unit within the Department
<b>CAL:</b> Chronological Activity Log. A VISION-generated record of user actions that provides the ability for users to create manual entries into the CAL. Examples of CAL entries include, but are not limited to: investigation updates, reviews and approvals, and workflow progress.
<b>CIR Index:</b> Complaint Investigation Report Index Log. A report, generated by VISION, which lists the entire IAD complaint history for a member of the Department. Information in this report include the case number, date of the complaint, alleged Manual of Rules violations, an abstract of the allegations, and the findings.
<b>CIR:</b> Complaint Investigation Report. An informational report, generated by VISION, which contains pertinent details of a given IAD investigation. Information in the report includes, but is not limited to: case number, complainant information, date and location of the incident, date of complaint, 180-days and 3304 dates, a summary of the complaint, and the involved (subject) personnel. At the conclusion of an IAD investigation, the findings are added to the CIR and the reviewing chain of command signs it.
<b>Closeout Letter:</b> A letter mailed by Internal Affairs to a complainant informing them of the disposition of the complaint investigation, including the allegations and the findings.
<b>CNR:</b> Complaint Notification Report. A report, generated by VISION, which is sent to subjects of an IAD investigation. Information in this report include the case number, date of

the complaint, location of incident, alleged Manual of Rules violation(s), and an abstract of the allegation(s). Unlike the Complaint Investigation Report (CIR) this report does not include confidential information such as identifying information on the complainant or other subject members. At the beginning of the investigation, this report is sent to the subject member and their chain of command to inform them of the allegations. At the conclusion of the investigation, the report is again sent to the subject member informing them of the findings.

**CPRA:** Community Police Review Agency. The investigative body of the Oakland Police Commission. Refer to DGO M-3.2 and Section 604 of the Oakland City Charter for authorities and responsibilities.

**Division:** All units directly supervised or reporting to the Chief of Police, the Assistant Chief, or a Deputy Chief of Police.

**DLI:** Division Level Investigation. A formal investigation into allegations of misconduct that is conducted outside the Internal Affairs Division. DLIs are subject to the same investigative requirements as those conducted by IAD investigators. DLIs, typically, involve only Class II allegations of misconduct; however, investigations involving Class I allegations may be sent out as a DLI upon approval of the IAD Commander.

**EFRB:** Executive Force Review Board. The EFRB is convened to analyze and assess the factual circumstances during and proximate to all: Level 1 Use of Force (UOF) incidents and investigations; In Custody Death incidents and investigations; Vehicle Pursuit Related Death incidents and investigations; or UOF incidents, investigated administratively and/or criminally by the Department or outside law enforcement agency, at the direction of the Chief of Police; and establish concluding recommendations to the Chief of Police from those circumstances.

**FBR:** Field-Based Reporting. A computerized method of writing police reports using mobile data terminals (MDT) and authorized Departmental computers.

**Findings Defined:**

- **Exonerated:** The investigation disclosed a preponderance of evidence to determine that the alleged conduct occurred, but it was in compliance with law and/or Department rules, regulations, or policies.
- **Not Sustained:** The investigation did not disclose a preponderance of evidence to determine whether the alleged conduct occurred.
- **Sustained:** The investigation disclosed a preponderance of evidence to determine that the alleged conduct did occur, and that it was in violation of law and/or Department rules, regulations, or policies.
- **Unfounded:** The investigation disclosed a preponderance of evidence to determine that the alleged conduct did not occur.

**FRB:** Force Review Board. The FRB is convened to analyze and assess the factual circumstances during and proximate to all Level 2 Use of Force (UOF) incidents and to establish concluding recommendations to the Chief of Police from those circumstances. (DGO K-4.1)

**Garrity:** In *Garrity v. New Jersey* (1967) 87 S.Ct.616, 385 U.S. 493 - Police Officers are not relegated to a watered-down version of constitutional rights and administratively coerced statements may not be used in criminal proceeding.



<b>Giglio:</b> In <i>Giglio v. United States</i> , (1972), the United States Supreme Court extended the prosecution's obligations under <i>Brady</i> to require the disclosure of not only exculpatory evidence but of impeachment evidence as well. Evidence that impeaches a government witness is an example of favorable evidence that damages the prosecution and thus, if material, it must be disclosed under <i>Brady</i> .
<b>High Profile Incidents:</b> Examples of high-profile incidents include, but are not limited to, the arrest of any OPD member; a complaint of a serious nature as to require some form of immediate action (e.g., emergency suspension, administrative leave, temporary reassignment, etc.); any Class 1 MOR allegation against a professional staff manager or sworn commander; or misconduct likely to generate unusual public interest (e.g., alleged criminal conduct, serious injury, death, etc.).
<b>IAD Commander:</b> Any Commander/Command Officer holding the rank of Lieutenant or higher that is assigned to the Internal Affairs Division.
<b>“The” IAD Commander:</b> At OPD, a Commander/Command Officer is a member of the Department holding the rank of Lieutenant or higher. References in this document to <i>the</i> IAD Commander are referring specifically to the Captain of IAD
<b>IAD Communications Daily Incident Log:</b> A daily log, maintained by the Communications Division, documenting misconduct complaints received by field personnel or Communications staff. This serves as a tracking and notification mechanism for complaints received by the Department outside of IAD.
<b>IAD Daily Intake Report:</b> A daily report generated by IAD at the close of business which captures all cases opened by IAD that day. This report includes complaints from the IAD Communications Daily Incident Log, as well as complaints received by IAD.
<b>IBC:</b> Informational Business Card. The informational Business Card is designed to be provided to community members by OPD members. The card contains all necessary information to file a complaint through OPD or the CRPA. The card has space for the issuing member to write their serial number and the incident number to ensure the citizen has the information should they request it, or later decide to file a complaint.
<b>IBC Log:</b> Informational Business Card Log (also known as the Complaint Referral Log). A daily log, maintained by the Communications Division, documenting incidents where an IBC has been issued by field personnel. The log contains information including which member issued the IBC, who the IBC was issued to, and the reason the card was issued.
<b>ICR:</b> Informal Complaint Resolution. A process that may be used to informally address service complaints or alleged acts of Class II misconduct against Departmental personnel that do not indicate a pattern of misconduct. The intent of the ICR process is to expedite the resolution of less serious types of complaints against members.
<b>Lubey Hearing:</b> An at-will member or probationary employee has no property interest in employment. However, such a member/employee suffers a deprivation of a liberty interest if the member/employee is discharged for reasons that impose stigma or that are likely to limit future employment opportunities. For that reason, a probationary member/employee who is terminated for reasons that could result in such consequences is entitled to a post-termination “name-clearing” hearing. <i>Lubey</i> Hearings are conducted in the same way as <i>Skelly</i> hearings.



(TB V-T.4)
<b>Lybarger:</b> Lybarger v. Los Angeles (1985) 40 Cal.3d 822 - Whenever potential exists for criminal charges, accused officer must be advised of Miranda plus fact that answers may be compelled and such answers are limited to scope of administrative investigation.
<b>Monitoring Team:</b> Pursuant to the Negotiated Settlement Agreement (NSA) in the case of <i>Delphine Allen, et al., vs. City of Oakland, et al.</i> , in the United States District Court for the Northern District of California, the Court appointed an Independent Monitor to oversee OPD's progress in achieving compliance with the NSA. The team consists of the Independent Monitor and their support staff.
<b>MOR:</b> Manual of Rules. A document designed to provide additional specificity to the standards of conduct embodied in the law enforcement officer's Code of Ethics and the Department's Policies and Statement of Values.
<b>Notice of Intent (letter):</b> This letter is signed by the Chief of Police informing the member that the Chief intends to impose discipline resulting from a sustained allegation of misconduct. The notice of the proposed discipline must be provided to the subject member or employee within one year of the discovery of the violation, unless qualified exemptions exist pursuant to <i>Government Code Section 3304(d)</i> .
<b>OCA:</b> Office of the City Attorney
<b>OIS:</b> Officer Involved Shooting
<b>OPOA:</b> Oakland Police Officers' Association. Labor union representing sworn members of the Oakland Police Department.
<b>Preponderance of Evidence:</b> The standard of proof in internal investigations is "preponderance of evidence" rather than the criminal standard of "beyond a reasonable doubt." Preponderance of the evidence has been described as a "slight tipping of the scales of justice" or "more than 50 percent" or "more likely than not."
<b>Pitchess:</b> A <i>Pitchess</i> motion is the procedural method established by the California Supreme Court in <i>Pitchess v. Superior Court</i> (1974), and later codified in Cal. Pen. Code §§ 832.5, 832.7, and 832.8, that allows for discovery of otherwise privileged personnel records in California. Typically, a <i>Pitchess</i> motion is brought by a criminal defendant in order to discover evidence in the arresting officer's personnel file that is relevant to the defendant's ability to defend against a criminal charge.
<b>Pre-Discipline (process):</b> Upon approval of a sustained finding in an internal investigation, unless the Chief has waived the process, the IAD shall provide a printed copy of the subject's five (5) year disciplinary history, his/her two most recent performance evaluations, the Complaint Investigation Report (CIR) and the Report of Investigation (ROI) for the current case. The documents shall be forwarded to the sustained member's Captain. Since the chain of command is more familiar with the conduct of subordinate personnel, they can provide the Chief of Police with input regarding any mitigating and/or aggravating circumstances that are

germane, along with a discipline recommendation to ensure a better-informed decision is made in determining the appropriate discipline. The sustained member's Captain shall prepare the appropriate Pre-Discipline Report (PDR) for each sustained case, and the Chief of Police or designee shall utilize the PDR in determining the appropriate discipline. **NOTE:** The Chief of Police maintains the authority to bypass the chain of command and impose discipline without a Pre-Discipline Report.

**Preliminary Inquiry:** A Preliminary Inquiry (PI) shall be completed on all complaints upon receipt by a supervisor or IAD intake personnel. The purpose of the PI is for the assigned investigator to do a preliminary investigation within 14 calendar days of receiving the complaint and come to one of four recommendations as to how the complaint should be handled: (1) Further Investigate; (2) Handle at Supervisor Level; (3) Administrative Closure; (4) Summary Finding. Further information on Preliminary Inquiries, including minimum investigative steps that must be taken, can be found in DGO M-03.

**Recusal Form:** The purpose of this form is to disclose any relationship where it is clear that the nature of the relationship could be perceived to compromise the investigative process and document the circumstances. For every IAD investigation, the investigator must fill out a Recusal Form either disclosing such a relationship, or affirmatively declaring that such a relationship does not exist, nor that the investigator was directly involved in the incident under investigation. This form must be completed prior to the start of an investigation and submitted to the investigator's first-level supervisor for review.

**ROI:** Report of Investigation. The report completed by the investigator at the conclusion of an Internal Affairs Investigation or Division Level Investigation.

**Section:** A functional unit that may be a sub-unit of a bureau or division. It may be commanded by any rank, depending on its size, the nature and importance of its function.

**Serious Incidents:** Serious Incident shall mean a Department sworn employee-involved shooting, death or serious bodily harm caused by the action and/or inaction of a Department sworn employee, in-custody death, and/or on-duty or off-duty criminal conduct of a sworn Department employee which rises to the level of a felony or serious misdemeanor.

**Serious Misdemeanor:** shall mean any misdemeanor crime that, if convicted, could preclude active law enforcement personnel, or a sworn employee of the Department, from successfully fulfilling the responsibilities of their job classification. Examples include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, purchase, ownership or possession of a firearm in violation of California Penal Code section 12021(c)(1), and those crimes where bias based on any legally protected characteristic is a motivating factor.

**Skelly Hearing:** The federal and state constitutions prohibit deprivation of life, liberty, and property without procedural due process. Courts have found that a member/employee's permanent civil service job is defined as "property." Accordingly, an employer seeking to deprive a civil service employee of pay must provide notice of the proposed discipline and an opportunity to respond at a pre-termination hearing. The hearing is not a full trial-type hearing. There is no right to representation by counsel, or to confront or cross-examine witnesses. A member/employee may instead choose to respond in writing and forego a hearing. *Skelly v. State Personnel Board* (TB V-T.4)

**Subject Officer/Member:** A member of the Department against whom allegations of misconduct are made.

**Summary Finding:** A Summary Finding is an abbreviated internal investigation in which a finding can be reached without conducting a full, formal internal investigation because the correct finding can be determined with little or minimal follow-up based on the existing documentation, evidence, statements, and crime information data (e.g., Offense Report, Use of Force Report, video or digital recordings, complainant's statement, radio purge, LRMS records).

**VISION:** The Department's personnel assessment system, which is a database that consolidates human resource and performance data for all employees to be used for monitoring employee behavior/performance. Additionally, several administrative investigations are completed within the VISION environment, including IAD and DLI investigations.

**Witness Officer/Member:** A member of the Department who witnessed, or may have witnessed, an incident in which misconduct is alleged to have occurred.

# TRAINING



# BULLETIN

Effective Date:  
DD MMM 23

Index Number: V-T.1  
Alpha Index: Internal Investigation Manual  
Internal Investigation Procedures

**“Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.”**

## PART III INTERNAL INVESTIGATION PROCEDURE MANUAL

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### REVISION RECORD

The page numbering format has been revised to facilitate updating and tracking revisions to publications contained in this policy.

When a minor revision is made to a publication, the 'Revision Number' will be indicated on the Special Order and shall be accompanied by the updated page(s). The 'Revision Date' and 'Reference Page Number(s)' shall be recorded in the appropriate box on the same line as the indicated 'Revision Number'.

When it is necessary to make a major policy or content revision, the publication shall be rewritten in its entirety. The 'Revision Number' and 'Revision Date' shall be indicated on the new Order. The 'Revision Date' shall be recorded in the appropriate box on the same line as the indicated 'Revision Number'. The term 'NEW' shall be recorded in the 'Reference Page Number(s)' box to indicate the promulgation of a new order.

Revision Number	Revision Date	Reference Page Number(s)	Revision Number	Revision Date	Reference Page Number(s)
1	26 Jun 08	NEW	16		
2	26 Mar 18	Multiple	17		
3	DD MMM 23	Multiple	18		
4			19		
5			20		
6			21		
7			22		
8			23		
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11			26		
12			27		
13			28		
14			29		
15			30		

# TRAINING



# BULLETIN

Effective Date:  
DD MMM 23

Index Number: V-T.1  
Alpha Index: Internal Investigation Manual  
Internal Investigation Procedures

**“Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.”**

## INTERNAL INVESTIGATION PROCEDURES

The purpose of this Training Bulletin is to set forth departmental policy and procedures to enable personnel to conduct an accurate, complete, and timely internal investigation. Additionally, Internal Affairs Division (IAD) investigators shall comply with the provisions of IAD Policy and Procedures Manual, 23-01.

### A. Complaints

1. Departmental General Order (DGO) M-3, COMPLAINTS AGAINST DEPARTMENTAL PERSONNEL OR PROCEDURES sets forth department policy and procedures for the following:
  - a) Value statement;
  - b) Definitions;
  - c) Receiving complaints;
  - d) Processing complaints;
  - e) Due dates and timelines;
  - f) Investigation of complaints;
  - g) Review of investigations;
  - h) Due date extensions and requests;
  - i) General policy.
2. DGO M-3.1, INFORMAL COMPLAINT RESOLUTION PROCESS sets forth departmental policy and procedures for initiating, administering, and reviewing the appropriateness and resolution of the Informal Complaint Resolution process to resolve service complaints or Class II violations that do not indicate a pattern of misconduct.

### B. Case File Management

1. A Control and Investigative File shall initially contain the following:
  - a) A completed Complaint Form (TF-3039b).
  - b) Investigative files sent for division-level investigation shall include an IAD Administrative Memorandum containing instructions and the due date.
  - c) Any offense reports and ancillary documents, when available.
  - d) A Chronological Activity Log (CAL), documenting all investigative steps and events that have been completed.

- e) Miscellaneous documents related to the investigation or related issues.
  - f) An envelope marked “CONFIDENTIAL – DO NOT COPY” for documents such as criminal history printouts or emails eligible for “Attorney/Client Privilege.”
  - g) Recusal Form (IAD Form – 13)
  - h) Investigator Notes Declaration (IAD Form – 11)
2. The IAD Administrative Section is responsible for maintaining the Control File throughout the investigation.

The investigator is responsible for maintaining the Investigative File throughout the investigation and forwarding the completed investigation to the IAD Administrative Section.

3. Additional Documents

As miscellaneous documents are accumulated throughout the investigation, they are added to the case file.

- a) Original documents, copied documents, and evidence are added and maintained in the Investigative File and include items such as:
  - 1) Photographs of the complainant, subject member, other involved personnel, witnesses, and location/scene of the incident;
  - 2) Storage media for audio/video files or documents;
  - 3) Diagrams of the scene and other locations;
  - 4) Witness list, including addresses and phone numbers;
  - 5) Medical treatment records;
  - 6) Criminal history;
  - 7) Email communications; and
  - 8) Handwritten or typed investigative notes.
- b) All documents and evidence are to be delivered to IAD with the Investigative File at the conclusion of the internal investigation and merged with the Control File.

**C. Assignment of Investigations**

The assignment of a complaint as an internal investigation or an Informal Complaint Resolution shall be performed in accordance with the provisions of DGO M-3 and DGO M-3.1.

**D. Recusal Process**

An investigator shall recuse him/herself from conducting an internal investigation if he/she was directly involved in the incident or if any of the following conditions exist between any of the involved parties which might lead to a perception of bias, such as:

- a) Family relationship;
- b) Outside business relationship;



- c) Romantic relationship;
  - d) Personal friendship;
  - e) Close work relationship (to be determined on a case-by-case basis); or
  - f) Directly involved in the incident, as defined in DGO M-3.
1. The investigator shall review the investigative file after assignment.
  2. Prior to the start of an internal investigation:
    - a) The investigator shall disclose any relationship where it is clear that the nature of the relationship could be perceived as compromising the investigative process.
      - 1) If yes, the assigned investigator shall recuse him/herself from the investigation and document the circumstances on the Recusal Form (IAD Form - 13).
      - 2) If no, the assigned investigator shall document this fact on the Recusal Form.
    - b) Upon completion of the Recusal Form, the first-level superior shall meet with the investigator to jointly review the Recusal Form.
    - c) The first-level superior shall determine whether it is clear that the nature of the relationship could be perceived to compromise the investigative process.
      - 1) If yes, the first-level superior shall approve reassignment of the investigation and document the decision on the Recusal Form.
      - 2) If no, the first-level superior shall approve the assignment and document the decision on the Recusal Form.
      - 3) The investigator's first level superior shall ensure the Recusal Form is completed and signed and forwarded to IAD prior to the start of the investigation.
      - 4) IAD shall retain the form in the Control File.

#### E. **Investigation Preparation**

Investigators shall conduct a thorough, impartial, fact-finding investigation; take recorded statements from all relevant persons; gather, preserve, and examine physical evidence; and collect other information pertinent to the investigation.

1. Investigator Responsibilities
  - a) The assigned investigator shall review the Internal Affairs Intake Checklist and ensure all items listed on the checklist are enclosed. Contact the IAD Administrative Sergeant if any item is missing.
  - b) Ensure the CAL indicates that the complainant was furnished with:
    - 1) A copy of *Your Guide to Filing a Complaint Against the Police* (TF-3208);

- 2) A copy of the Complaint form (TF-3039b); and
- 3) A copy of any statement (upon request).
- c) Ensure the complainant has been contacted to determine the nature, scope, and severity of the complaint, and to identify potential witnesses and/or evidence.
- d) Examine the allegations and identify issues.

Review the allegation(s) and documents contained in the case file and complete an analysis to confirm each allegation and identify other potential *Manual of Rules* (MOR) related issues to be addressed in the investigation, such as:

- 1) Was the complaint investigated to the extent reasonably possible to determine whether the allegation(s) could be resolved?
- 2) Was the member on duty when the alleged misconduct occurred?
- 3) Do the allegations match the complaint narrative?
- 4) Are there any *MOR* violations not identified or addressed?
- 5) Has criminal misconduct been discovered?  
  
If there is evidence of possible criminal misconduct, the investigator shall immediately or as soon as practical, make the proper notifications in accordance with the provisions of DGO-M-04.1.
- 6) What are the probable motives of any of the persons involved in the complaint or incident?
- 7) What are the likely defenses or excuses?
- 8) Are there potentially unidentified witnesses?
- 9) Are unnamed members or employees involved?
- e) Prepare a list of questions to ask persons to be interviewed based on this analysis.
- f) Plan interviews and develop investigative strategies early in the investigation by determining days off and vacation schedules of the complainant, potential witnesses, and the subject(s) of the investigation.
- g. If during the internal investigation, the investigator locates additional witnesses (obtained independently from a Lybarger statement) that may be used in a criminal proceeding, he/she shall contact the appropriate CID investigative unit and provide only follow-up contact information.
- g) Additional information obtained in civil litigation shall be incorporated into an internal investigation and provided to the Office of the City Attorney (OCA) on a case-by-case basis. Additional information obtained during an internal investigation relating to civil litigation shall be provided to the OCA on a case-by-case basis.
- h) Contact the OCA to ascertain and request depositions, as necessary.

## 2. Examination of the Scene

If the investigator determines that an examination of the scene of the alleged misconduct or other locations is required, the examination shall include the following, when appropriate:

- a) Gathering and securing any physical evidence discovered;
- b) Becoming familiar with the layout of the scene;
- c) Identifying specific locations of witnesses and members;
- d) Returning to the scene at the same time of day the incident occurred to determine:
  - 1) Lighting conditions;
  - 2) Weather;
  - 3) Traffic patterns; and
  - 4) Character of the area (business, residential, industrial, etc).
- e) Taking photographs and/or video of the scene; and
- f) Canvassing for additional witnesses
  - 1) Canvass the scene and surrounding area for additional witnesses.
  - 2) Document any contacts made even if the contact indicates they have no knowledge of the incident.

## 3. Evidence Gathering

The following resources are queried and examined for information and evidence as soon as possible after an incident resulting in an IAD call-out:

- a) Communications Division Computer Aided Dispatch (CAD) printout for the time period during which the incident occurred.
- b) Mobile Display Terminal (MDT) for car-to-car transmissions for the time period.
- c) Radio Talk Group recordings and purges.
- d) Phone bills of departmental cellular phones for the time period during which the incident occurred.
- e) Body Worn Camera.

## 4. Requests for Medical and Laboratory Records

- a) Obtain all related medical records as soon as possible in cases where the medical condition of a complainant, witness, or subject is of importance.
- b) The release of medical records requires a signed release from the patient. Seek and obtain signatures for medical releases early in the investigation to allow adequate time for receipt and analysis of the documents.
- c) Members may be ordered to take medical or laboratory examinations when:

- 1) The evidence sought is pertinent to the investigation;
  - 2) The evidence is easily degraded or destructible;
  - 3) Supervisory or command approval has been obtained;
  - 4) An attempt was made to obtain cooperation or consent;
  - 5) The procedure is medically safe, and not uncomfortable or undignified, and involves little or no bodily intrusion; or
  - 6) The appropriate warrant, if required, has been obtained.
- d) Members may be ordered to:
- 1) Be photographed; or
  - 2) Participate in a physical line-up.
- Note:** Consent is preferred but not required.
- e) Investigators conducting a physical line-up shall ensure that complainants and witnesses:
- 1) View the line-up without hearing what other witnesses or complainants are saying or discussing;
  - 2) Are instructed on how to indicate whether or not they were able to identify anyone (printed on the Line-up Card (TF-657);
  - 3) Are advised that the person sought may or may not be among those in the line-up and not to discuss the line-up with anyone else. Emphasize that it is equally important to clear a person not responsible as it is to identify the person responsible.
  - 4) The composition of the participants in a line-up (physical and or photographic) must be similar but not so similar in appearance as to confuse the viewer.
- f) Members shall not be required to submit to a strip search, and/or a test for alcohol, narcotics, or drugs, unless there is probable cause supported by specific facts.
- g) Members shall not be required to submit financial disclosure statements for examination pursuant to Government Code Section 3308 unless:
- 1) Such information is obtained or required under state law or legal procedure;
  - 2) The information tends to indicate a conflict of interest with respect to the performance of official duties;
  - 3) The information is necessary to determine whether to assign the person to a specialized unit where bribes or inducements may be offered in accordance with the provisions of Departmental General Order E-3.1,  
DEPARTMENT NOTIFICATION COMPLIANCE  
VERIFICATION.

- 4) Through a voluntary submission by the subject;
  - 5) In response to a subpoena; or
  - 6) In cooperation with another investigative unit.
- h) The examination of a member's locker or storage space owned or leased by the Department may occur under any of the following circumstances:
- 1) Pursuant to a valid search warrant, or
  - 2) In lieu of a valid search warrant, one of the following conditions must exist:
    - (a) When there has been notification that a search will be conducted;
    - (b) In the presence of the person assigned to the locker or storage space; or
    - (c) With consent of the person assigned to the locker or storage space.

## F. Interviews

### 1. Background Research

- a) Learn as much as possible about the person to be interviewed. Familiarity with detailed background information will assist in:
  - 1) Establishing facts regarding the credibility of the person being interviewed; and
  - 2) Obtaining the facts related to the investigation.
- b) It is not unusual for those being interviewed to inadvertently reveal critical information. The ability to recognize the significance of such comments and to capitalize on them often results from thorough research and familiarity with background information.
- c) Additional Information
  - 1) Prior crime and arrest reports through the Records Management System (RMS);
  - 2) Public records such as credit reports; and
  - 3) Appropriate law enforcement databases in accordance with the provisions of TB V-C.2, AUTOMATED INFORMATION SYSTEMS.

These records may have a direct impact on the interview and investigation. Background research for interviews is not considered a "Need to Know" or "Right to Know" circumstance; therefore, caution must be exercised.

### 2. Preparing for the Interview

- a) Consultation with Commander/Manager and OCA

Determine whether review of interview questions by the Commander or Manager is necessary pursuant to Section H, above. With the Commander or Manager, determine if consultation with OCA is required pursuant to Section I.

b) Location of Interview

- 1) Conduct interviews with Departmental personnel at a Departmental facility in a private and comfortable location.
- 2) Make every effort to conduct interviews with non-departmental subjects at a convenient location.

c) Order of Interviews

The order of interviews is frequently controlled by the circumstances of the investigation and the type of complaint. As a general rule, interviews should be conducted in the following order:

- 1) Complainant (Interviewed as soon as possible, usually during the intake or processing phase.);
- 2) Private person witnesses;
- 3) Employee witnesses;
- 4) Sworn witnesses;
- 5) Subject member or employee.

Maintaining this interview order (1 through 4) usually provides sufficient background information prior to the interview with the subject member.

d) Required Member Interviews

Except in cases of summary findings as provided in DGO M-03, all members who are subjects, witnesses, or were present at the scene of the alleged misconduct, shall be interviewed. All summary finding approvals shall be documented in the body of the report as well as in the CAL.

e) Scheduling

- 1) Conduct interviews in person unless circumstances prevent it. Phone interviews should be the last resort.
- 2) Determine witness and subject availability and schedule appointments for interviews in advance.
- 3) Don't rush an interview. When an interview is expected to be prolonged, plan for multiple sessions. Conducting multiple interviews will allow the investigator to address any inconsistencies or to clarify information from a previous interview.
- 4) Interviews of Departmental personnel should be conducted during their regular working hours whenever possible. Schedule interviews with private persons when convenient for the person being interviewed.

## f) Recording Interviews

- 1) All interviews shall be recorded (tape or digital), with minimal “off the record” discussions.
- 2) When going “off the record,” the interviewer shall denote the date and time and the reason for suspending the recorded interview (e.g., for human needs or a request from the representative).
- 3) If a private person (complainant or witness) refuses to allow the interview to be recorded, explain a recording is needed to preserve the accuracy and nature of the complaint. Appropriately document a refusal to record the statement and proceed with the interview and take a written statement.
- 4) Members are obligated and required to cooperate and answer questions truthfully under penalty of insubordination.
- 5) Do not combine interviews with one another on the same side of a cassette tape or on a digital recorder without indexing. Use one side of a cassette for each separate distinct interview or index each interview on a digital recorder.
- 6) Label recordings
  - (a) Immediately after using each side of a cassette or when the entire cassette tape has been used, clearly mark the cassette with the IAD case number, the date of the interview, the name of the person interviewed on each side, and the name of the primary investigator. The anti-erase tabs shall be removed from the cassette after each side is recorded.
  - (b) If a digital recorder is utilized, the audio file shall be stored and/or transferred to a recordable CD or DVD disk and labeled in the same manner as cassette tapes. Transfer of the audio file to a compact disk soon after the recording is critical to avoid data loss from computer hard drives or data chips.
- 7) Interviews shall be transcribed at the request of the subject of the investigation, the complainant, command staff, investigator, the Office of (OIG), or any authorized authority.
- 8) All recordings shall be merged into the Internal Affairs case file which shall be permanently retained.
- 9) Investigators may routinely provide a copy of the interview recording to the interviewee.
- 10) A member or his/her representative may utilize their own recording device during their interview.
- 11) Avoid conducting an interview in a location where loud background noise is present.
- 12) Test the recorder before beginning the interview and have extra batteries on hand.

3. Investigative Approach to Conducting Interviews
  - a) Conduct interviews separately.
  - b) Be respectful, courteous, and professional at all times.
  - c) Gather facts.
  - d) Be willing to accept whatever the person being interviewed has to say.
  - e) Do not make threats, intimidate, or coerce.
  - f) Ask a person being interviewed to explain inconsistencies, discrepancies and conflicts with physical evidence or other witness statements.
  
4. Representation During Interviews
  - a) Ensure that every interviewee has read and signed the AB-301, Acknowledgement of Rights and Obligations form (TF-722) because officers (members, and Reserve Officers) and police department employees have a right to representation during an interview when he/she reasonably believes that the interview will result in disciplinary action (Government Code Section 3300 et seq.).  
  
**NOTE:** Although Government Code Section 3300 et seq. applies only to sworn personnel, the City of Oakland extends these rights to all police department members.
  - b) Interviewers shall ensure that representatives do not interfere with the interview process and admonish representatives when necessary.
  
5. Defining Interview Objectives and Preparing a Question List
  - a) Before beginning an interview, have a clear understanding of the interview objectives. A typical interview will have one or more of the following objectives:
    - 1) To identify additional subjects and/or witnesses;
    - 2) To clarify allegations or information;
    - 3) To resolve any discrepancies and inconsistencies in statements or information; and
    - 4) To obtain information on motive or alibi.
  - b) A question list is a “road map” to the interview.
    - 1) Arrange questions in chronological order;
    - 2) Make the list easy to read using bullet points or short questions;
    - 3) Highlight key questions;
    - 4) Allow plenty of room to make notes or add questions in the margin;
    - 5) If present, give the secondary investigator a copy of the list for his/her use during the interview;



- 6) Check off questions as they are covered in the interview; and
- 7) Review the list before concluding the interview and ensure that all the essential questions have been covered.

c) Secondary Investigator

In the event a secondary investigator is utilized during the interview, he/she shall:

- 1) Document the answers in his/her notes;
- 2) Document the need for additional questions/follow-up;
- 3) Ensure the notes are shared with the primary investigator; and
- 4) Include the notes in the case file.

6. General Strategies for Questioning

- a) The primary investigator conducts the interview. The secondary investigator only engages in questioning as needed.
- b) Try to interview private person witnesses alone. The presence of others may make it difficult for the investigator to get to the truth of the matter. If a witness insists on having another person present during the interview, advise the other person that he/she is only an observer and is not to participate in the interview. In no case should the observer be a witness to the incident being investigated.
- c) Questions should initially be open-ended and non-leading. Use follow-up questions to obtain admissions and denials.

7. Beginning the Interview

- a) Begin the interview by stating:
  - 1) The date, time and the place of the interview;
  - 2) The name and role of each person present in the room;
  - 3) Explain the purpose of the interview;
  - 4) Advise each interviewee if they are a witness or subject officer/employee;
  - 5) Ensure that the subject or witness interviewee has read and understood the TF-722 and that the interviewee has signed and dated the form.
  - 6) For subject officers, if there is no representation present, have the interviewee acknowledge the right to representation and that the interviewee is choosing to proceed without representation.
  - 7) The interview is being recorded.
- b) Allow the person being interviewed to describe what happened in his/her own words, without interruption.

- c) When a statement is made regarding others, prompt the interviewee to identify and describe each person by name, age, height, weight, race and other physical characteristics, whenever possible.
- d) Diagrams are often useful during an interview. Allow the interviewee to draw his/her own diagram to avoid claims that a prepared diagram influenced his/her story. Have the document signed and dated by the person drawing it, and include these documents in the case file.
- e) Cover each allegation and all relevant issues with each subject and witness. The following questions may be asked during the interview, when applicable:

(Explain why or why not)

- 1) What did you observe? (Or other similar open-ended question.)
- 2) Who did it?
- 3) Who was there when it happened?
- 4) Where were you when the incident happened?
- 5) Did you see any other person who may have seen or heard what happened?
- 6) Did it (the specific allegation) happen?
- 7) Did you do it?
- 8) Could the act have occurred without your knowledge?

#### 8. Complainant Interviews

- a) Address each allegation in the original complaint during the complainant interview.
- b) Ensure the complainant has no additional allegations before the interview is concluded. Avoid leading questions. The complainant should merely be asked if he/she has anything else to add.
- c) When practical, examine any injuries and have photographs taken, even if the injury is not visible or readily apparent.
- d) Establish and document the reason for any delays in reporting the incident.
- e) Attempt to confirm existing or obtain additional witness names, addresses and telephone numbers.
- f) Determine the availability of the complainant for follow-up interviews.
- g) Attempt to establish the complainant's motive for making the complaint by asking questions such as:
  - 1) Why are you here today?
  - 2) What is your motive for making this complaint?
  - 3) What do you want done as a result of your complaint?
- h) Document when a complainant or private person witness is unavailable for an interview, fails to appear for a scheduled interview, or simply refuses to be interviewed. When attempting contact, document due diligence before eliminating the interview.
- i) At the conclusion of an interview, the complainant should be asked if he/she has

any questions or has anything to add that is pertinent to the investigation, but has not been addressed in the interview.

9. Member and Employee Witnesses Interviews

- a) Members shall be required to read and sign the Acknowledgement of Rights and Obligations Form (TF-722) prior to the interview.
- b) At the conclusion of each interview session, the member interviewed shall be ordered not to disclose any of the information discussed in the interview except to his or her representative or attorney. The investigator shall advise the person interviewed that a failure to adhere to the order may result in a separate charge of insubordination.

10. Subject Interviews

- a) Provide the member with a summary of the complaint as documented on the Complaint Investigation Report (CIR) prior to any interviews. The subject shall not be allowed to read the complaint itself or to review any witness statements prior to the interview. There is no legal requirement to provide investigative materials to the subject prior to the interview. (Pasadena Police Officers' Association v. City of Pasadena (1990) 51 Cal. 3d 564.).
- b) The investigator shall comply with the provisions of the Public Safety Officers' Procedural Bill of Rights Act, Government Code Section 3300 et seq. when interviewing officers (member, Ranger, or Reserve Officer) and Oakland Police Department members.  
  
**NOTE:** Although Government Code Section 3300 et seq. applies only to sworn personnel, the City of Oakland extends these rights to police department employees.
- c) A member who has received a Complaint Notification letter may have a representative (e.g., legal counsel, steward, friend, relative, co-worker, etc.) of their choice present at all times during any interview.  
  
There is no restriction who can be a representative except that the representative cannot be a party to the same investigation.
- d) Ensure the Acknowledgement of Rights and Obligations Form (TF-722) has been read and signed by the subject before the interview.
- e) The representative:
  - 1) May observe all aspects of the interview to ensure that the provisions of the Public Safety Officers' Procedural Bill of Rights Act are met.
  - 2) May not interfere with the interview but may raise points of objection.
- f) The interviewer shall note any objections that are not resolved and include those objections in the Report of Investigation.
- g) The interview must be conducted at a reasonable hour, either while on duty or during normal waking hours unless the seriousness of the investigation requires otherwise.
- h) The nature of the investigation, name and rank of the interviewing officer(s), and all other persons to be present during the interview must be disclosed to the person to be

interviewed prior to the interview.

- i) No more than two investigators may ask questions during the interview, and only for a reasonable period of time, taking into consideration the seriousness and complexity of the investigation.
  - j) All persons shall be allowed to attend to their physical necessities.
  - k) No one shall be subjected to offensive language, threatened with punitive action or promised a reward.
  - l) The person interviewed has the right to bring a recording device and record all aspects of the interview.
  - m) If, prior to or during the interview, it is determined that the person being interviewed may be charged with a criminal offense, the investigator shall immediately terminate the interview and make the proper notification in accordance with the provisions of DGO M-4.1.
  - n) When it appears the subject member may be charged with a criminal offense, or if the subject invokes his or her Fifth Amendment rights, the subject shall, prior to providing a statement, be informed of their constitutional rights (Miranda) and be provided a Lybarger advisement. A Lybarger advisement consists of an order requiring the officer to answer questions, the threat of discipline for non-compliance, and the promise that the statement will not be used against the officer in any criminal and/or civil proceeding.<sup>1</sup> A Miranda and Lybarger exemplar is located in Training Bulletin V-T.2, reference page IV-9.17.
- NOTE:** Civilian Members are not included as a protected class under *Lybarger*, however, the City of Oakland affords civilian employees the same protections.
- o) All subject interviews are to be concluded by asking the subject if there is anything else he/she would like to add or comment on.
11. The Office of the City Attorney shall be consulted regarding any legal issues concerning investigations or interviews.

#### G. **Command Responsibilities**

- 1. Commanders and Managers overseeing internal investigations shall review investigative plans and interview questions in cases involving any of the below allegations:
  - a) Allegations for which the minimum presumed discipline for a first offense is a 30-day suspension, demotion and/or termination;
  - b) Allegations that require some form of immediate personnel action, such as emergency suspension, administrative leave, or temporary reassignment;
  - c) Allegations that an OPD employee or member committed a felony or serious misdemeanor;
  - d)
  - e) An allegation involving retaliation;
  - f) An allegation involving discrimination or harassment which would constitute

<sup>1</sup> *Lybarger v. Los Angeles* (1985) 40 Cal.3d.822

a violation of City of Oakland Administrative Instruction 71 or DGO D-20, ANTI-DISCRIMINATION AND HARASSMENT;

- g) An allegation that an OPD member used his or her position for personal gain;
- h) An allegation involving misconduct likely to generate unusual public interest;  
or
- i) Any other allegation that, at the discretion of the Commander or Manager overseeing the internal investigation, warrants consultation with the Office of the City Attorney (OCA) prior to investigative interviews.

The Commander or Manager shall spot-check recorded interviews when any of the above allegations are part of an investigation.

2. Completed investigations shall be reviewed by the Lieutenant and Captain, consisting of:
  - a) Ensure that the Executive Summary (TF-XXXX) is completed and all information is supported by the ROI.
  - b) Grammatical review
  - c) Completeness
    - 1) All necessary interviews were completed.
    - 2) All evidence was obtained.
    - 3) All evidence was reviewed.
    - 4) All investigative steps were completed.
  - d) The evidence supports the findings.
  - e) TB V-T.01 and IAD P&P were followed.
3. For cases with recommended sustained findings for allegations that have termination within the discipline range per the Discipline Matrix or allegations of violations of obedience to laws misdemeanor/infraction, the Bureau Deputy Chief in the investigator's chain of command will also review.
  - a) These reviews will minimally consist of a review of the Report of Investigation.
  - b) Ensure that the Executive Summary (TF-XXXX) is completed and all information is supported by the ROI.
4. All changes to the ROI during the review process shall be documented through the Track Changes function in Microsoft Word. These tracked changes shall not be removed/accepted until the ROI is sent to the DLI Coordinator, who will save a copy of all Track Changes, before beginning the IAD review process. At the end of the IAD review process, a copy of the IAD Track Changes shall be saved before removing/accepting the tracked changes.
  - a) These copies which include the Patrol review Track Changes and the IAD review Track Changes shall be retained on the IAD server for a minimum of 5

years or as needed, until the conclusion of the discipline process.

#### H. **Consultation with the Office of the City Attorney**

1. **Investigative Plans and Interviews:** Department members investigating any of the allegations listed in Section G, subsection 1, above, shall consult with the OCA prior to scheduling interviews. Such consultation shall include the opportunity to review investigative plans and interview questions.  
  
If any of the allegations listed in Section G, subsection 1, are discovered after interviews have already been conducted, IAD shall confer with the OCA before scheduling additional interviews.
2. **Reports of Investigation:** Any investigation sent to the OCA for "Attorney Review" must be completed in its entirety (including a recommended finding) and shall be submitted for the attorney's review at least 30 calendar days before the date on which IAD intends to present the case to the Chief of Police or his/her designee for approval. The IAD Commander has the discretion to shorten the review period based on the nature, scope, complexity of the investigation, and available and necessary IAD and OCA staff. Any request for a shortened review period must be made in writing. In either instance, IAD shall provide the OCA with an expected date for case presentation to the Chief of Police.
3. **Deletion of OCA Comments:** If OCA staff provides comments in a draft report of the investigation, only the OCA or IAD Commander can delete such comments.
4. **Ongoing Consultation with the OCA:** Nothing in this policy shall prevent Department members from seeking advice or assistance from the Office of the City Attorney at any time during an investigation. Personnel should seek advice from the OCA as necessary during an internal investigation.

#### I. **Use of Lie Detection Screening Devices**

1. No member or private person shall be compelled to submit to an examination by a lie detection or truth verification device against his/her will.  
  
In appropriate cases, members and private persons may be offered an opportunity to submit to a lie detection screening device incident to an internal investigation. However, if a member refuses the test, no record shall exist indicating an examination was offered and declined, and no disciplinary action may be taken as a result of the refusal. Departmental policy and procedures are enumerated in DGO I-12, LIE DETECTION SCREENING DEVICE.
2. In cases where the integrity of the Department is questioned or where there is direct conflict between subject and witness statements, a polygraph or Computerized Voice Stress Analysis (CVSA) examination may be offered to a member or private person with prior approval from the IAD Commander and in accordance with the provisions of DGO I-12 and Government Code Section 3307.
3. A polygraph/CVSA may only be offered after IAD has concluded their initial interview.
4. The results of a polygraph/CVSA examination administered to a member, employee, or private person who elects to take an examination may be reflected in the investigator's report.

#### J. **Locker/Storage Space Searches**

No member may have his/her locker or other assigned storage space searched, except in his/her presence,

or with his/her consent, unless a valid search warrant has been obtained or the person has been notified that a search will be conducted. These requirements shall only apply to Departmental lockers or other storage areas that are owned or leased by the City of Oakland.<sup>2</sup>

**K. Demand for Evidence on a Personal Device**

- L. If there is reasonable suspicion to believe a member is in possession of evidence or items that contain evidence (e.g., a member's personal cellular phone) of member misconduct for which a member is being administratively investigated, an investigator in an administrative investigation may demand that the member produce the evidence for use in the administrative investigation and proceedings. Any such demand for such information must be documented in writing with a recitation of facts giving rise to reasonable suspicion that the evidence sought is contained therein. Any such demand must also be reasonably tailored to the allegation(s) being investigated. Finally, any such demand must be accompanied by an admonition that the evidence and information produced may not be used against the member producing the information in a criminal proceeding but may be used against the member in an administrative proceeding.

1. The demand for evidence on a personal device must be reviewed and endorsed by the investigators first level supervisor and then approved by the IAD Commander prior to the request being made.

**M. Administrative Dispositions**

Administrative Dispositions shall be utilized and approved by the IAD Commander in accordance with the provisions of DGO M-3. Administrative Dispositions shall be entered in the IAD Complaint Database.

**N. Summary Findings**

A Summary Finding is an abbreviated internal investigation in which a finding can be reached without conducting a formal internal investigation because a finding can be determined with no or minimal follow-up and based on the existing documentation, evidence, statements, and crime information data (e.g., Offense Report, Use of Force Report, video or digital recordings, complainant's statement, radio purge, LRMS records).

1. A Summary Finding shall not be used if the evidence supports a sustained finding.
2. A Summary Finding Memorandum shall be prepared to document when an investigator concludes there is adequate information to determine a complaint finding from any of the following:
  - a) Interviews,
  - b) Statements taken,
  - c) Evidence collected,
  - d) Available supporting documents.
3. The investigator shall consult with and receive authorization from their division

<sup>2</sup> Government Code Section 3309 Governs the search of storage space or lockers, consent, and search warrant requirements.

commander<sup>3</sup> or Bureau Chief when there is no need to conduct additional interviews or take additional statements from subject members and/or witnesses (including members of the public and members of OPD) to determine if there is a preponderance of evidence.

4. All investigators shall seek approval from an IAD Commander **BEFORE** preparing a Summary Finding Memorandum. Approval shall be documented in the body of the report as well as in the Chronological Activity Log.
5. A Summary Finding Memorandum shall be forwarded for review and approval in the same manner as a normal internal investigation enumerated in accordance with the provisions of DGO M-03.
6. Credibility assessments shall be completed for all persons interviewed. Factors to consider when assessing credibility include, but are not limited to, the following:
  - a) The demeanor of the interviewee while giving testimony and the manner in which he/she testifies;
  - b) The extent of the interviewee's capacity to perceive, to recollect, or to communicate details;
  - c) The extent of the interviewee's opportunity or location to perceive the incident;
  - d) The existence of bias, interest, or other motive;
  - e) Consistency of statements given;
  - f) Verification of facts; and
  - g) Admission of untruthfulness.

Such credibility assessment shall be performed in all Preliminary Inquiries (PIs) that have been approved for summary finding.

#### O. **Report of Investigation**

1. Investigators prepare and include a Report of Investigation (ROI) in the case file once all interviews have been conducted and available evidence has been gathered.  
**The ROI shall follow the most recent version of the ROI template (TF-3507) or the ROI Summary Finding template (TF-3508).**
2. Investigators will, with the Commander or Manager, determine if the draft Report of Investigation will be sent to the OCA for review pursuant to Section G, subsection 1.
3. Credibility assessments shall be completed for all persons interviewed to include but not be limited to the following:
  - a) The demeanor of the interviewee while giving testimony and the manner in which he/she testifies;
  - b) The extent of the interviewee's capacity to perceive, to recollect, or to communicate details;

<sup>3</sup> In OPD, "division commander" is synonymous with the rank of Captain. Watch commanders and section commanders are NOT division commanders.



- c) The extent of the interviewee's opportunity or location to perceive the incident;
- d) The existence of bias, interest, or other motive;
- e) Consistency of statements given;
- f) Verification of facts; and
- g) Admission of untruthfulness.

**P. Recommended Findings**

Once the investigation has been concluded, a recommended finding shall be made concerning each allegation, included in the Report of Investigation, and forwarded for administrative review (division-level only).

Findings are categorized as follows:

- 1. Unfounded
- 2. Exonerated
- 3. Sustained
- 4. Not Sustained

**Q. Downgrade/Removal of Subject Status**

The request to remove or downgrade a Subject to a Witness will be made via email, to the IAD Commander, with an explanation and endorsement through the investigators chain of command to include the Lieutenant and Captain. The IAD Commander's approval email shall be saved in the investigative file, documented in the Chronological Activity Log (CAL) and ROI.

In the absence of the IAD Commander, only the Bureau of Risk Management Deputy Chief, the Assistant Chief and the Chief of Police may authorize the removing members or downgrading members from subjects to witnesses.

**R. Changes in Allegations and Subject Personnel**

- 1. Discovery of Class I violations
  - a. If a division level investigator discovers an additional allegation rising to the level of a Class I violation, the investigator shall advise the IAD Commander of the circumstances surrounding the new allegation.
  - b. The IAD Commander, in consultation with the Chief of Police, determines whether the investigation will be transferred to IAD.
  - c. The investigative files are retained by the division-level investigator and not returned to IAD until directed to do so by the IAD Commander.
- 2. Personnel conducting an internal investigation shall notify IAD Commander, via email within 24 hours whenever one of the following circumstances occurs:
  - a. A member is added as a subject.
  - b. A *Manual of Rules* allegation is added.

The request to make changes to the following will be made via email, to the IAD Commander, with an explanation and endorsement through the investigators chain of command to include the Lieutenant and Captain. The IAD Commanders approval shall be documented in The Chronological Activity Log (CAL) and ROI.

3. :
  - a. removing or changing MOR violation allegations,
  - b. downgrading members from subjects to witnesses,

#### S. **Addendum for Disagreement in Findings**

After an investigator completes their IAD investigation and authors their Report of Investigation (ROI) or Summary Finding (SF), it is reviewed through their Chain of Command. This will consist of their Lieutenant, Captain, and Bureau Deputy Chief for cases with recommended findings other than sustained for allegations that include termination, if sustained, in the Discipline Matrix, any allegations of violations of obedience to laws misdemeanor/infraction, and for any sustained cases.

After chain of command approval, the case is forwarded to the DLI Section of the Internal Affairs Division for review by a DLI Coordinator, the DLI Lieutenant, and IAD Captain for final approval. All sustained cases will be presented to the Chief for final approval. Cases with only findings other than sustained will be approved by the Chief or the Chiefs designee.

Should any of the Commanders involved in the review process, including the DLI Coordinator, Captain, Deputy Chief, or Chief disagree with the original Recommended Findings the following shall occur:

1. Discuss the disagreement with the initial investigator to determine whether they agree with the reasoning and are willing to make the requested change to their investigation. If the investigator agrees to make these changes, both the investigator and the reviewing supervisor shall document in an email their concurrence on these changes and a brief explanation regarding the basis for the changes. This is to make clear whether the changes were the product of discussion and agreement by the investigator rather than the result of an order from a commanding officer. The email shall be retained in the case investigative file and noted on the CAL.
2. If the initial investigator does not agree with the reviewer's requested changes, then the reviewer shall draft an addendum documenting the disagreement(s) with any recommended findings and the basis for any disagreement.
3. Completion of an Addendum
  - a. An addendum will serve as documentation of the reasons for disagreement with the recommended finding including any supporting facts and evidence (e.g., BWC footage, policy, training, and law).
  - b. The addendum shall accompany and be part of any case review by a Deputy Chief or presentation to the Chief.
  - c. Prior to a presentation to the Chief of Police, any case file that includes an addendum shall be reviewed by the Deputy Chief for completeness and adherence to policy and law. The Deputy Chief should be prepared to support the recommended findings or the alternative finding documented in the addendum

when the case is presented to the Chief. If any reviewer has a third, different recommended finding not reflected in the ROI or addendum, that reviewer shall discuss possible changes with the reviewer that prepared the addendum and, if there remains disagreement, the reviewer should prepare an addendum documenting the reasons for their alternative recommended findings.

- d. During the presentation to the Chief, the presenter shall present to the Chief the recommended findings as well as any addenda recommending alternative findings.
4. The Chief will make the final determination on the finding(s) which shall be documented in the CIR and signed off on by the Chief.
5. A disagreement about findings will not be considered a MOR violation if the investigation and prepared ROI is thorough and based on facts. Differences in opinion can be expected periodically and should not be discouraged, as this will create discussion and result in a better overall investigation.

## **T. Administrative Review**

### **Division-Level Investigations**

The chain of review shall commence with the investigator's first-level commander/manager followed by their Captain and then directly to the IAD Commander or designee who shall review all division-level investigative files.

The Deputy Chief in the investigator's chain of command shall also review for completeness, accuracy, and adherence to policy prior to presentation to the Chief of Police any ROI:

- 1) where there is a sustained finding for allegations that have termination (considering 2<sup>nd</sup> and 3<sup>rd</sup> offenses) within the discipline range per the Discipline Matrix
- 2) where there is a sustained finding for obedience to laws misdemeanor/infraction,

### **Internal Affairs Division Investigations**

The chain of review shall include the Bureau of Risk Management Deputy Chief who shall review for completeness, accuracy, and adherence to policy prior to presentation to the Chief of Police any ROI that fits the criteria above for DLI review by Deputy Chiefs.

The BRM Deputy Chief will also review the following for all cases Department wide.

- 1) where there is a Not Sustained finding for allegations that have termination within the discipline range per the Discipline Matrix.
- 2) Any Management Level Liaison (MLL) case that is initiated by notification from the District Attorney's Office or the Public Defenders Office.

Every reviewer shall acknowledge and sign the Reviewer Recusal Form (TF-xxxx) prior to reviewing the investigative case packet.

## **U. Investigation Integrity and Confidentiality**

All internal investigations shall be conducted lawfully and in accordance with Departmental policy and prevailing laws. All investigators shall gather, analyze and include exculpatory evidence for consideration as part of the adjudication process.<sup>4</sup>

<sup>4</sup> *Penal Code Section 135.5 (enacted in 1998)* Reads any person who knowingly alters, tampers with, conceals or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming the officer, is guilty of a misdemeanor.

The contents of internal investigations are confidential by law. In state actions, the requesting authority must file a *Pitchess* motion with the court showing good cause for the release of personnel records.<sup>5</sup> At the request of the Office of the City Attorney, the court will conduct an in-camera review of the documents requested to determine what, if any, documents shall be disclosed. In federal matters, the requesting authority must submit a *Henthorn* motion establishing good cause for the disclosure of records.<sup>6</sup> The *Henthorn* process is akin to the *Pitchess* procedure referenced above.

Upon completion of the IAD investigation and issuance of a final report by IAD when the recommended finding is sustained, the subject member shall have access to the underlying data on which the report is based, including all recorded interviews, transcripts, and investigator's notes.

#### V. **Personnel File Entries**

No comment adverse to the interest of a member shall be entered in that person's personnel file unless the subject first has the opportunity to read and sign the document containing such comment. If the subject refuses to sign the document, that fact shall be noted on the document and dated by the person entering the notation. In addition to existing appeal procedures, a subject may, within 30 days, file a written response to any adverse comment entered in his/her personnel file. This right is extended to former members as well. Such written response shall be attached to the document containing the adverse comment.<sup>7</sup>

However, the Department need not comply with the aforementioned procedure if local rules provide officers with greater protections, such as an administrative appeal hearing.<sup>8</sup>

Internal investigation files and material contained therein are considered personnel files<sup>9</sup> and shall be maintained and subject to confidentiality protection provided by statute and Departmental directives.

#### W. **Feedback**

The IAD Commander or his/her designee shall provide feedback to the internal investigator regarding the quality and disposition of the investigation.

<sup>5</sup> *Pitchess v. Superior Court* 11 Cal.3d 531, 537, 538, 113 Cal.Rptr.897 Provides when a criminal defendant seeks information from a peace officer's personnel records concerning prior complaints, a motion showing good cause i.e., a plausible factual justification for disclosure must be submitted to the court.

<sup>6</sup> *US v. Henthorn* 931 F.2d 29 (2001) The Ninth Circuit held that government has a duty to make a pretrial examination of the personnel files of testifying law enforcement officers for Brady material (any evidence the government finds that tends to establish the innocence of the accused).

<sup>7</sup> *Government Code Section 3305 and 3306* Govern the entry of adverse comments and the response thereto.

<sup>8</sup> *Crupi v. City of Los Angeles* (1991) The police department was not obligated to follow rules set forth in *Government Code Sections 3306 and 3306* if local rules provided "greater protections."

<sup>9</sup> Penal Code Section 832.8, Personnel Records.



***Prior to the start of the investigation, this Recusal Form shall be completed and forwarded to:***

- ***IAD for internal administrative investigations***
- ***CID for criminal cases involving an OPD member***

**OAKLAND POLICE**  
**DEPARTMENT**  
**Investigative Recusal Form**  
TF-xxxx (02/23)

Investigator's Name (Printed)	Serial No.	First-Level Superior (Printed)	Serial No.
Case Number			

**Requirement:**

An investigator shall disclose and document in the Declaration Narrative the circumstances of any relationship where the nature of the relationship could be perceived to compromise the investigative process. Upon completion of the Recusal Form, the appropriate first-level superior shall meet with the investigator to jointly review this form. The first-level superior shall determine whether the nature of the relationship could be perceived to compromise the investigative process. Document the decision in the Review Narrative.

An investigation may be reassigned if any of the following conditions exist, such as:

- Family relationship;
- Outside business relationship;
- Romantic relationship;
- Close friendship;
- Close work relationship such that the reviewer cannot remain impartial in the assessment of the work product (to be determined on a case-by-case basis).

Declaration: I have checked the appropriate response.

- ☐ I was directly involved in the incident. (Describe in Declaration Narrative)
- ☐ I have a relationship with one or more of the involved parties which could be perceived to compromise the investigative process. (Describe in Declaration Narrative)
- ☐ I am not directly involved in the incident and do not have any relationship with any of the involved parties which could be perceived to compromise the investigative process.

Investigator's Signature	Date:
--------------------------	-------

**Declaration Narrative:**

**First-Level Superior Review:**

I have met with the investigator and made the following determination:

- ☐ Reassigned (Detail reason below) ☐ Not reassigned

**Review Narrative:**

First-Level Superior's Signature	Date:
----------------------------------	-------

**For CID Only:** The members listed below met to discuss assignment of the case to the investigator, including recusal considerations.

Meeting Date/Time:	List Names/Serial # of Meeting Attendees	BOI DC:
Captain:	Lieutenant:	Investigator (1):
		Investigator (2):



*Prior to the review of an IAD or CID investigation, this Recusal Form shall be read and signed. The form shall remain with the investigative packet.*

**OAKLAND POLICE DEPARTMENT**

Attachment 11  
**Investigation Review**

**Recusal Form**

TF-xxxx (02/23)

Case Number

**Requirement:**

All reviewing members shall disclose and document the circumstances of any personal relationship where the nature of the relationship could pose an actual or perceived conflict of interest or otherwise compromise the investigative review process. If you were involved in the incident or have a below-categorized relationship with one of the involved parties, check the appropriate box, do not review the case, and return it to the last reviewer before coordinating with your chain of command to identify an alternate. The review of an investigation may be reassigned if any of the following conditions exist between a reviewing/approving supervisor and any party in the investigation. Examples:

- Family relationship;
- Outside business relationship;
- Romantic relationship;
- Close friendship;
- Close work relationship such that the reviewer cannot remain impartial in the assessment of the work product (to be determined on a case-by-case basis).

**Reviewer's Signature & Serial #**

**Date:**

☐ I was directly involved in the incident. ☐ I have a relationship with one or more of the involved parties.

☐ I am not directly involved in the incident and do not have any relationship with any of the involved parties which could be perceived to compromise the investigative process.

**Reviewer's Signature & Serial #**

**Date:**

☐ I was directly involved in the incident. ☐ I have a relationship with one or more of the involved parties.

☐ I am not directly involved in the incident and do not have any relationship with any of the involved parties which could be perceived to compromise the investigative process.

**Reviewer's Signature & Serial #**

**Date:**

☐ I was directly involved in the incident. ☐ I have a relationship with one or more of the involved parties.

☐ I am not directly involved in the incident and do not have any relationship with any of the involved parties which could be perceived to compromise the investigative process.

**Reviewer's Signature & Serial #**

**Date:**

☐ I was directly involved in the incident. ☐ I have a relationship with one or more of the involved parties.

☐ I am not directly involved in the incident and do not have any relationship with any of the involved parties which could be perceived to compromise the investigative process.

**Reviewer's Signature & Serial #**

**Date:**

☐ I was directly involved in the incident. ☐ I have a relationship with one or more of the involved parties.

☐ I am not directly involved in the incident and do not have any relationship with any of the involved parties which could be perceived to compromise the investigative process.

**Reviewer's Signature & Serial #**

**Date:**

☐ I was directly involved in the incident. ☐ I have a relationship with one or more of the involved parties.

☐ I am not directly involved in the incident and do not have any relationship with any of the involved parties which could be perceived to compromise the investigative process.

The purpose of this document is to set forth bureau procedures for ensuring criminal investigation assignments do not compromise investigative integrity, real or perceived.

## **I. DEFINITIONS**

### **Cohabitant Relationship**

Any relationship where a member shares a residence with another member. This includes non-romantic roommates.

### **Consensual Romantic Relationship**

Any consensual sexual or romantic relationship with another member.

### **Close Friendship**

A non-family, non-romantic relationship wherein the two parties are more than acquainted and who have participated together in non-departmental social events or are privy to private details in one another's personal or family lives.

Examples may include but are not limited to having visited one another's home(s) for social functions, having traveled together, or having spent more than passing time in the company of each other or each other's families.

### **Close Work Relationship**

A non-family, non-romantic relationship wherein the two parties are more than acquainted, who have participated routinely and closely in departmental actions and are privy to private details in one another's personal or family lives.

Examples may include but are not limited to having been assigned as patrol or investigative "adam" partners within the past 5 years.

### **Family Relationship**

Includes relationship by blood, adoption, marriage, domestic partnership, foster care with cohabitation, and includes parents, grandparents, great-grandparents, grandchildren, great-grandchildren, children, foster children, uncles, aunts, nephews, nieces, first cousins, second cousins, siblings and the spouses or domestic partners of each of these relatives and cohabitants. This definition includes any relationship that exists by virtue of marriage or domestic partnership, such as in-law and step relationships, which are covered to the same extent as blood relationships.

### **Outside Business Relationship**

Members who, in addition to serving as a member of the Oakland Police Department, are also an independent contractor, compensated consultant, owner, board member, shareholder, or investor in an outside business, company, partnership, corporation, venture,

or other transaction, in cooperation with another Department member, where either of the Department member's annual interest, compensation, investment, or obligation is greater than \$250.

## II. **POLICY<sup>1</sup>**

- a. It is the responsibility of all investigators to disclose any relationship with any involved party (witness, suspect, victim, etc.) wherein the nature of the relationship could be perceived to compromise the investigative process of a criminal investigation, and to document the circumstances and to recuse oneself from participation therein.
- b. An investigation may be reassigned if any of the following conditions exist:
  - i. Family relationship;
  - ii. Outside business relationship;
  - iii. Romantic relationship;
  - iv. Close friendship;
  - v. Close work relationship (as determined on a case-by-case basis).

## III. **CRIMINAL INVESTIGATIONS OF NON-DEPARTMENTAL PERSONNEL and/or NON-SWORN LAW ENFORCEMENT SUBJECTS:**

- a. Upon initial assignment to an investigation and review of the preliminary facts of the case, assigned investigator(s) shall declare whether or not they should be recused. The investigator's declaration is accomplished by inserting the appropriate language into their case notes (or currently available case management system):
  - i. If none of the above-listed relationships exist, the investigator shall utilize the following language in their case notes:
    - a. **Non-Recusal Statement:** I am not directly involved in the incident and do not have a family, outside business, romantic, close friendship, or close work relationship with any of the involved parties which will, or could be perceived to, compromise the investigative process.
  - ii. If one or more of the above-listed relationships exist, the investigator shall:
    - 1. Select one of the following (a. or b.) to document in their case notes, along with an explanatory narrative:
      - a. **Recusal Statement:** I was directly involved in the incident. (Describe in Declaration Narrative); or
      - b. **Recusal Statement:** I have a relationship with one or more of the involved parties which could be perceived to compromise the investigative process. (Describe in Declaration Narrative)

<sup>1</sup> The section is consistent with provisions of Internal Affairs related policies on recusal.



2. The investigator shall meet with their first line commander, who shall decide whether the investigator's disclosure should result in reassigning the investigation.
  3. The commander shall memorialize the decision, in writing, by making their own entry in the case notes or otherwise attaching said decision to the record of investigation.
- b. If, at any time during an investigation, an investigator recognizes the involvement of a person with whom they have a personal relationship, as delineated above, the investigator shall update the case file with a new recusal statement and shall notify their supervisor of the potential conflict of interest before taking any further investigative action.

**IV. CRIMINAL INVESTIGATIONS OF DEPARTMENTAL PERSONNEL and/or SWORN LAW ENFORCEMENT SUBJECTS:**

- a. Upon assignment to a criminal investigation of a Department employee or a sworn law enforcement subject<sup>2</sup>, prior to participating in the investigation, *all assigned and assisting* CID investigators shall declare whether or not they should be recused.
- b. Personnel shall complete an INVESTIGATIVE RECUSAL FORM (TF-XXXX) wherein they disclose whether there is a relationship which might reasonably lead to a perception of bias, real or perceived, and shall submit the form to the first-line commander overseeing the primary investigator on the case.
- c. The first line commander shall make a decision as to whether the perception is justified and reassign the investigation, if necessary. The commander shall memorialize the decision, in writing, on the INVESTIGATIVE RECUSAL FORM (TF-XXXX) and will deliver said form to the assigned investigator.
- d. The assigned investigator shall retain the INVESTIGATIVE RECUSAL FORM(S) (TF-XXXX) in the investigative case file.
- e. It is the shared responsibility of the investigative chain of command to ensure any recused personnel do not participate in the investigation, or that their participation is mitigated so as to not directly affect or engage with the party with whom they have an identified relationship.
- f. If, at any time during an investigation, an investigator recognizes the involvement of a person with whom they have a personal relationship, as delineated above, the

<sup>2</sup> This recusal standard applies to not only cases typically categorized under DGO M-4.1, but also to Level 1 Use of Force investigations.

investigator shall update the case file with a new INVESTIGATIVE RECUSAL FORM and shall notify their supervisor of the potential conflict of interest before taking any further investigative action.

**V. RECUSAL RESPONSIBILITIES OF SUPERVISORS AND COMMANDERS OVER CRIMINAL INVESTIGATIONS**

- a. Criminal investigation case supervisors and commanders are subject to the same expectations of recusal as investigators.
- b. **Overseeing an Investigation:** At the earliest reasonable opportunity,<sup>3</sup> and in all instances prior to making any command level decisions about assignment of the investigations, the commanders and supervisors of the investigation must consider the recusal standards of the Department and shall recuse themselves from participation in the event an actual or perceived conflict exists.
- c. In the event recusals are made along the investigative chain of command, a substitute supervisor or commander should be identified and held to the same recusal consideration before being assigned to oversee the investigation.
- d. Supervisors and Commanders must fill out the INVESTIGATIVE RECUSAL FORM (TF-XXXX) and provide it to the primary investigator to maintain in the case file.
- e. **Reviewing an Investigation:** Upon completion of an investigation and submission through the chain of command, the first line supervisor is responsible for including the REVIEWER RECUSAL FORM (TF-XXXX) in the investigative file, and prior to reviewing the investigation, filling out the relevant line(s) declaring themselves to have no actual or perceived conflicts of interest with subjects or witnesses in the case.
- f. The REVIEWER RECUSAL FORM (TF-XXXX) must then be included with the investigative file and filled out appropriately by each link in the chain of command as it progresses through the review phase. Any reviewing supervisor or commander with a relationship, as delineated above, to a subject or witness shall not participate in the review process of the case.
- g. **Re-assignment of Recused Investigators:** In the event an assigned investigator discloses an actual or perceived conflict of interest with a subject or witness in the case, they are required to notify their chain of command. The chain of command, upon receipt of such disclosures, shall convene to identify a different investigator to:
  - i. Replace the recused investigator, if necessary; and
  - ii. Identify what new assignment, if any, the recused investigator may receive.

<sup>3</sup> For example, once learning the identity of the subject(s) and witness(es) in an investigation.

**Oakland Police Department  
Criminal Investigation Program (CID)  
Policy and Procedures Manual  
Policy 23-01**

**Effective Date:  
22 May 2023**

**Index as:      Investigative Training Program for Criminal Investigators**

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The purpose of this directive is to set forth policy and procedures for the CID Investigative Training Program.

Members assigned to the CID will be required to attend a series of mandated training courses within a specified timeline.

Members assigned to the Force Investigation Team (FIT) will be required to attend a series of mandated training courses within a specified timeline.

The following training courses are designed to provide members with the fundamental skills needed to conduct thorough and complete criminal investigations applicable to their specialized assignment(s). These training courses represent the minimum number of courses required of all members assigned to the CID and to specialized assignments.

If the courses listed above are not completed within the required timelines, the CID Commander shall write a memorandum to the Deputy Chief of Investigations explaining the circumstances surrounding non-compliance. The Deputy Chief of the Bureau of Investigation will ensure the training is completed and the investigator shall be reassigned to a non-investigative role until the training is completed.

- A. Investigators shall attend the following investigative courses within twelve (12) months of their transfer to the CID:
  - 1. Basic Criminal Investigation Course
  - 2. Interview and Interrogation Course
  - 3. Basic Search Warrant Course
- B. Investigators shall attend the following additional investigative courses within twenty-four (24) months of assignment to the CID:
  - 1. Advanced Criminal Investigation Course
  - 2. Electronic Surveillance Course
  - 3. Crime Scene Investigation Course
  - 4. Cognitive Bias Training Course

**BOI Policy 23-01**  
**Investigative Training Program – Criminal Investigator**

**Effective Date:**  
**22 May 2023**

- C. Investigators tasked with conducting homicide investigations shall attend the following investigative courses within twelve (12) months of assignment to the Homicide Section:
1. Homicide Investigation Course
  2. Cognitive Interviewing Course
- D. Investigators tasked with conducting Level 1 Use of Force Investigations shall complete the following courses within twelve (12) months and no more than eighteen (18) months of being assigned to the team.
1. Force Science Course (40 Hours)
  2. Officer Involved Shooting Course (40 Hours)
  3. Internal Affair Investigations Course (24 Hours),
  4. Use of Force Certification (40 Hours)
  5. Certified Use of Force (AB 392) Training (4 Hours)
  6. California DOJ SB 1506 – Investigation Procedural Guidelines:  
<https://oag.ca.gov/system/files/media/AB%201506%20Investigation%20Procedural%20Guidelines.pdf>
- E. It is recommended that investigators continue to develop as investigators and take courses that will benefit them in becoming subject matter experts in their relevant areas. Investigators shall attend at least eight (8) hours of continual development training courses every eighteen (18) months. Below are a few recommended courses for consideration.
- POST Homicide Investigation Course (80 Hours),
  - POST Internal Affair Investigations Course (24 Hours),
  - Human Performance Training Institute - Force Dynamics Course (24 Hours),
  - Crime Scene Investigation Course (24 Hours),
  - Cognitive Bias Training Course (24 Hours),
  - POST Cognitive Interviewing Course (24 Hours)
  - POST Officer Involved Shooting Course (40 Hours),

It is also recommended that investigators become members of different associations. Below are some suggested links, courses, and associations that CID investigators should consider for membership opportunities relevant to Criminal Investigator Training.

- California Homicide Investigators Association: <https://www.chia187.com/>
- California District Attorneys Association: <https://www.cdaa.org/>
- Outside Agency Training Requirements for Officer Involved Shooting (OIS) incidents

Approved by

**Drennon Lindsey**  
**Deputy Chief of Police**  
**Bureau of Investigations**

Date Signed: \_\_\_\_\_

DRAFT



## DEPARTMENTAL GENERAL ORDER

**M-04.1: Criminal Investigation of Department Members and Outside Sworn Law Enforcement Personnel**

Effective Date: XX May 23

Coordinator: Criminal Investigation Division

The purpose of this policy is to mandate and set guidelines and requirements for reporting criminal misconduct involving Department members and outside sworn law enforcement personnel as well as conducting and coordinating criminal investigations involving members of the Oakland Police Department.

**COMMAND INTENT**

It is the policy of the Oakland Police Department to investigate allegations of criminal activity involving members of the Department and sworn law enforcement personnel employed by outside agencies. For criminal misconduct that occurred in the City of Oakland, the Oakland Police Department shall investigate and prepare criminal cases for appropriate clearance or submission to a prosecutor. Additionally, the Department shall ensure that personnel are held accountable through an investigative process that is fair, timely, and thorough.

**A. DEFINITIONS****A - 1. Member**

As provided in Policy 103, a member is any person employed or appointed by the Oakland Police Department, including full-time officers, reserve officers, professional staff, and volunteers.

**A - 2. Reasonable Suspicion**

From the totality of the circumstances, there is a specific, articulable, and objective basis for suspecting criminal activity. There must be specific facts beyond the mere allegation of criminal misconduct.

**B. NOTIFICATION REQUIREMENTS****B - 1. Notification Requirements of All Members**

Notifications shall be made whether on-duty or off-duty. When any member other than the Chief of Police<sup>1</sup> has reasonable suspicion that any member of the Department is involved in a felony or misdemeanor, they shall, as soon as practical, and in all cases within 24 hours, make the following notifications via phone or email as specified in the following sections.

<sup>1</sup> The Chief of Police may become aware of criminal misconduct committed by a member of the Oakland Police Department executive team (which includes the BOI Deputy Chief and IAD Commander), CID Commander, or other Department member that may require alternate avenues of reporting and/or investigation (e.g., directly to the District Attorney) to ensure the integrity of the investigation. The timeline requirement, however, still applies.

**B-2. Members Assigned to the Internal Affairs Division**

Members assigned to the Internal Affairs Division (IAD) shall contact the IAD Commander. If the IAD Commander cannot be reached, the member shall contact an IAD Lieutenant.

**B-3. Members Assigned to the Criminal Investigations Division**

Members assigned to Criminal Investigations Division (CID) shall contact the CID Commander. If the CID Commander cannot be reached, the member shall contact the Bureau of Investigations (BOI) Deputy Chief.

**B-4. All Other Members**

All other members shall contact an on-duty Watch Commander. If an on-duty Watch Commander cannot be reached by phone, the Communications Division Supervisor shall be called at 510-777-8801 to request a return call from an on-duty Watch Commander.

**B-5. Misconduct Allegations Not Rising to the Level of Criminal Misconduct**

Allegations not rising to the level of reasonable suspicion of criminal misconduct shall be reported to IAD and administratively investigated in accordance with Departmental General Order (DGO) M-03.

**B-6. Misconduct Allegations Not Rising to the Level of Criminal Misconduct**

Allegations not rising to the level of reasonable suspicion of criminal misconduct shall be reported to IAD and administratively investigated in accordance with Departmental General Order (DGO) M-03.

**C. INITIAL RESPONSIBILITIES OF NOTIFIED PERSONNEL**

**C - 1. Watch Commander Responsibilities**

Upon awareness that any member of the Department is allegedly involved in criminal misconduct, the Watch Commander shall attempt to determine the identity of the member and the jurisdiction of the alleged criminal misconduct. The Watch Commander shall provide such information to the CID Commander and shall maintain strict confidentiality at all times.

1. Determine the identity of the member;

2. Obtain details of the alleged criminal misconduct;
  - Do not interview the subject or witness members.
  - Avoid engaging in conversations with subject members that could pose potential violations of their protected rights.
  - Do not take overt action that could interfere with, or undermine the integrity of, the investigation.
3. Determine jurisdiction of the alleged criminal misconduct;
4. Contact Communications Division to make confidential and non-specific entry onto the IAD Daily Incident Log which includes obtaining an IAD Computer Aided Dispatch (CAD) incident number;
5. Provide all obtained information via phone and email to the CID and IAD Commander;
6. Maintain a strict confidentiality at all times.<sup>2</sup>

#### **C - 2. IAD Commander and Lieutenant Responsibilities**

Upon awareness that any member of the Department is allegedly involved in criminal misconduct, the IAD Commander or IAD Lieutenant shall attempt to determine the identity of the member and the jurisdiction of the alleged criminal misconduct. The IAD Commander or IAD Lieutenant shall ensure the information is shared with the CID Commander and shall maintain strict confidentiality at all times.

1. Ensure a preliminary inquiry is initiated regardless of whether the criminal conduct occurred within Oakland;
2. Determine the necessity for an investigative callout;
3. Confer with the Bureau of Risk Management (BRM) Deputy Chief; and
4. Confer with CID Commander for all criminal matters both within the City of Oakland and outside jurisdictions.

#### **C - 3. CID Commander Responsibilities<sup>3</sup>**

Upon awareness that any member of the Department is allegedly involved in criminal misconduct, the CID Commander shall immediately:

1. Determine if the alleged criminal misconduct occurred within the City of Oakland;

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<sup>2</sup> The Watch Commander may become aware of criminal misconduct committed by a member of the Oakland Police Department executive team, CID Commander, or other Department member that may require alternate avenues of reporting and/or investigation to ensure the integrity of the investigation. The Watch Commander should remain conscientious about not notifying a known involved member in the alleged criminal misconduct.

<sup>3</sup> Additional detailed requirements for CID Commander responsibilities are codified in CID P&P 19-01.



2. Assign an investigator and direct a preliminary investigation if the alleged criminal misconduct occurred within the City of Oakland;
3. Determine the necessity for an investigative callout;
4. Confer with the Bureau of Investigations (BOI) Deputy Chief;
5. Contact the appropriate jurisdiction if the alleged criminal misconduct occurred outside the City of Oakland; and
6. Contact the Internal Affairs Division (IAD) Commander.

#### **D. RESPONSIBILITIES OF THE BOI DEPUTY CHIEF**

##### **D - 1. Initial Responsibilities**

Within 24 hours of being briefed on the alleged criminal misconduct by a member, the BOI Deputy Chief or designee shall prepare and forward a summary of the allegation(s) via email<sup>4</sup> to the Chief of Police, Assistant Chief of Police, Chief of Inspectors of the Alameda County District Attorney's Office, Office of the City Attorney, Chair of the Police Commission, Police Commission Inspector General, Executive Director of the Community Police Review Agency (CPRA), BRM Deputy Chief and IAD Commander. If the alleged criminal misconduct occurred in another jurisdiction, the BOI Deputy Chief or designee shall additionally contact the appropriate law enforcement agency and/or district attorney's office that has jurisdiction for that agency.

Notifications from the BOI Deputy Chief should include the following information, when known:

1. The date(s) of the alleged criminal activity;
2. The date of arrest, if any;
3. Whether the alleged criminal activity occurred in Oakland or in another jurisdiction;
4. The criminal investigating or reporting agency, if other than OPD;
5. A brief description of the criminal activity and/or statute(s) allegedly violated (e.g., DUI, VC 23152); and
6. The rank of the member (e.g., "officer" or "lieutenant").

Such notifications shall be made whether or not the alleged misconduct occurred during the course and scope of employment. E.g., On March 1<sup>st</sup>, 2023, OPD was notified that an OPD Lieutenant was arrested on February 28<sup>th</sup>, 2023, by ACSO for auto burglary, 459 PC in Hayward that allegedly occurred on February 25, 2023.

##### **D - 2. Post Preliminary Investigation Responsibilities**

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<sup>4</sup> The email notification shall be documented in the Investigation Action Report (IAR) and Tracking Sheet. A copy of the email shall be uploaded and kept on the CID confidential server.

The BOI Deputy Chief shall review and evaluate the preliminary investigation, and if there is reasonable suspicion of criminal misconduct involving a felony or misdemeanor, take the additional following actions:

1. Ensure the incident is logged in the tracking sheet;
2. Confer with the Chief of Police;
3. Identify the best course of action, including whether another agency is to conduct the investigation; and
4. Evaluate each circumstance as a case-by-case basis to decide whether additional notifications are required. The initial notification may be sufficient.

#### **D - 3. Criminal Investigation Responsibilities**

If the Department is going to conduct the criminal investigation, the BOI Deputy Chief shall confer with the CID Commander to discuss the proposed investigative plan which may include, but is not limited to, the following determinations:

1. If there is probable cause for an arrest;
2. Whether to assign Department investigators to conduct a criminal investigation; and
3. The need for a joint criminal investigation with an outside agency.
4. Ensure the recusal process is followed per Bureau of Investigation Policy and Procedures 23-02.

If the Department is not going to conduct the criminal investigation, the BOI Deputy Chief shall direct the CID Commander to:

1. Make a notification to the appropriate law enforcement agency and/or district attorney's office that has jurisdiction for that agency of the circumstances surrounding the criminal activity unless the initial notification comes from another law enforcement agency with jurisdiction over the alleged criminal activity. Document this notification in the Tracking Sheet;
2. Forward supporting documentation and document this forwarding in the Tracking Sheet; and
3. Act as the liaison with the outside agencies.

#### **D - 4. High Profile Case Updates**

Any criminal investigation into a Department member is considered a high-profile case and updates shall be provided to the Assistant Chief and Chief of Police at least once a month, at a routinely scheduled meeting.

Updates shall be made for officer-involved shootings and in-custody deaths. In cases including other allegations of on duty officer use of force or misconduct, a briefing is not required unless there is reasonable suspicion that such acts were committed and constitute a felony or misdemeanor. The Chief of Police can request regular high-profile updates on any case.

The meetings shall consist of a presentation of criminal investigation updates by the BOI Deputy Chief. If, as anticipated, the BRM Deputy Chief will be presenting updates for IAD high profile cases at the same routinely scheduled monthly meeting, the BOI Deputy Chief and any other CID personnel will leave the meeting prior to the BRM Deputy Chief presenting updates for IAD high profile cases.

The BOI Deputy Chief or designee is responsible for providing verbal updates relevant to the progress of the criminal process to the Assistant Chief and Chief of Police. The BOI Deputy Chief will ensure that high profile case updates are updated on the tracking sheet. The CID Commander and Deputy Chief shall ensure that any substantive directives are documented on the Investigative Action Report (IAR).

## **E. CID INTERNAL INVESTIGATIVE PROCEDURES**

### **E - 1. CID Investigation Command**

The CID Commander shall direct the criminal investigation.

### **E - 2. Fairness and Confidentiality of Investigations**

Departmental investigators shall conduct the criminal investigation in a manner consistent with Department policy and procedures and ensure the confidentiality of all investigations.

### **E - 3. Separation of CID / IAD Investigations**

The criminal investigation and administrative investigation are separate investigations. All evidence and products from the criminal investigations are available for use in the administrative IAD investigation. However, to protect members' rights, the criminal investigator shall not obtain or use information obtained by IAD.

### **E - 4. Updates on Investigation Progress**

The investigator shall update the CID Commander on a bi-weekly basis with the progress of the investigation. .

### **E - 5. Timeline for Investigations**

Criminal investigations shall be completed within 90 days unless otherwise extended up to 30 days in writing by the BOI Deputy Chief. If an extension is approved, it shall be documented in the IAR and Tracking Sheet. There is no limit on the number of extensions.

### **E - 6. Closure of Investigations**

The Chief of Police shall approve any CID investigation of member criminal misconduct prior to presentation to the District Attorney's Office. The CID Commander shall ensure such approval is documented in the IAR and the tracking Sheet.

**E - 7. Notifications of Investigation Closures**

The CID Commander shall provide email notification of the closure of the CID investigation to the Assistant Chief of Police, Chief of Police, BOI Deputy Chief, BRM Deputy Chief, Chief of Inspectors of the Alameda County District Attorney's Office, Office of the City Attorney, Chair of the Police Commission, Police Commission Inspector General, Executive Director of the Community Police Review Agency (CPRA), and IAD Commander. This email notification shall be documented in the IAR and the tracking sheet.

**F. ADDITIONAL OVERSIGHT AND REPORTING FOR CID INVESTIGATION**

**F - 1. CID Commander Oversight Responsibilities**

The CID Commander shall ensure the investigation is proceeding in accordance with Departmental policy and provide oversight, guidance, and resources necessary for the timely completion of the investigation.

**F - 2. Briefing of the BOI Deputy Chief**

The CID Commander shall brief the BOI Deputy Chief regarding the status and progress of all investigations on a bi-weekly basis.

**F - 3. Review of Investigations**

The CID Commander and BOI Deputy Chief shall review the investigation before submission to the District Attorney's Office for charging consideration.

**F - 4. Briefing of the Assistant Chief and Chief of Police**

The BOI Deputy Chief shall notify the Assistant Chief of Police and the Chief of Police on the status and resolution of all investigations every 30 days.

**F - 5. Maintenance of Secure Investigation Files**

The Records Division Manager shall maintain secure files of completed investigations involving members of the Department. These files are stored in a secured location and are only accessible by the Records Division Manager.

**G. CRIMINAL MISCONDUCT BY OUTSIDE SWORN LAW ENFORCEMENT PERSONNEL**

**G - 1. Notification Requirements of Members**

When any member has reasonable suspicion that a sworn law enforcement officer employed by another agency is involved in a felony or misdemeanor, the member shall immediately notify an on-duty Watch Commander via phone and email unless the member possesses information that reasonably suggests that the law enforcement officer's agency is already aware of the criminal activity. If an on-duty Watch Commander cannot be reached by phone, the Communications Division Supervisor shall be called at 510-777-8801 to request a return call from an on-duty Watch Commander.

## **G - 2. Watch Commander Responsibilities**

If the alleged criminal misconduct occurred within the City of Oakland, the Watch Commander shall:

1. Attempt to determine the identity of the outside sworn law enforcement officer, the details of the alleged criminal misconduct, and contact information for the reporting entity.
2. Ensure steps are taken by on-duty personnel to identify a crime scene and assess the immediate necessity to preserve it and related evidence.
3. Notify the CID Commander.

If the criminal misconduct occurred in another jurisdiction, the Watch Commander shall:

1. Attempt to determine the identity of the outside sworn law enforcement officer, the details of the alleged criminal misconduct, and contact information for the reporting entity.
2. Notify the law enforcement agency where the conduct occurred and the employing agency of the outside sworn law enforcement officer.
3. Notify the Oakland Police Department Chief of Police through the chain of command.

## **G - 3. CID Commander Responsibilities**

If the criminal misconduct occurred within the City of Oakland, the CID Commander shall:

1. Direct, or designate a CID Section Commander (Lieutenant), to oversee a preliminary criminal investigation;
2. Determine the necessity for an investigative callout;
3. Confer with the Bureau of Investigations (BOI) Deputy Chief;
4. Notify the officer's employer of any ongoing investigation or arrest;
5. Within 24 hours, provide email notification of the CID investigation to the Assistant Chief of Police, Chief of Police, BOI Deputy Chief, Chief of Inspectors of the Alameda County District Attorney's Office, and Office of the City Attorney. This email notification shall be documented in the IAR and Tracking Sheet, and a copy of the email shall be kept on the CID confidential server.

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Attachment 11  
Effective Date  
19 May 23

By order of,

Darren Allison  
Interim Chief of Police

Date Signed: \_\_\_\_\_



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Effective Date:  
06 Jun 14

Evaluation Coordinator:  
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## INFORMANTS

The purpose of this order is to establish Department policy and procedures for the control and management of informants.

### I. DEFINITIONS AND TERMINOLOGY

#### A. Informant

An Informant is a person, not a member of law enforcement, who provides law enforcement with information and/or assistance regarding suspected criminal activity.

#### B. Officer

For the purpose of this order, the term "officer" shall include all sworn and reserve officers, sergeants and commanders of the Oakland Police Department.

#### C. Managing Officer

A Managing Officer is any officer using a Managed Confidential Informant, Temporary Confidential Informant, or a Citizen Informant.

#### D. Managed Confidential Informant (MCI)

A Managed Confidential Informant is an informant who is:

1. Acting as an agent of an Oakland Police Officer;
2. Providing information and/or assistance concerning criminal activity to law enforcement in *two or more* investigations; and

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3. Assists law enforcement in exchange for financial compensation or consideration in a pending criminal case.

E. Temporary Confidential Informant (TCI)

A Temporary Confidential Informant is an informant who is:

1. Acting as an agent of an Oakland Police Officer;
2. Providing information and/or assistance concerning criminal activity to law enforcement in ***one*** investigation; and
3. Assists law enforcement in exchange for financial compensation or consideration in a pending criminal case.
4. A Citizen Informant acting as an agent of an Oakland Police Officer.

F. Citizen Informant

A Citizen Informant is an informant who is:

1. Not acting as an agent of an Oakland Police Officer;
2. Provides information and/or assistance concerning criminal activity to law enforcement in ***at least one*** investigation; and
3. Assists law enforcement for the sole purpose of reducing and/or solving criminal activity (not in exchange for compensation and/or consideration).

Example: A citizen calls 911 to report criminal activity. While the relationship between the officer and the citizen informant may be (or become) ongoing, the motivation is different than that of a Managed or Temporary Informant and there is no requirement to satisfy commitments necessary for case/monetary consideration.

G. Informant Program Coordinator (IPC)

The Intelligence Unit supervisor will serve as the Informant Program Coordinator (IPC) and shall be responsible for duties described herein.

H. Informant File

The Informant File is maintained by the IPC and contains every original form and document as provided by the informant's Managing Officer.

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The IPC is responsible for maintaining and storing original paper documents and scanned copies electronically on a secure server. This file serves as the Department's informant file source for audits and inspections.

**NOTE:** The IPC is responsible for maintaining all informant files in a secure and locked location. Due to the inherent danger to public safety when handling an informant, Managing Officers shall secure their records in the same manner.

**I. Informant Forms**

1. Informant Chronological Activity Record (ICAR) (TF-3278);
2. Informant Regulations Record (TF-3110);
3. Informant Agreement Record (TF-3276);
4. Prospective Informant Review (TF-3338);
5. Informant Personal Record (TF-3111);
6. Informant Payment Record (TF-3361);
7. Informant Accomplishment Record (TF-3362);
8. Unreliable/Undesirable Informant Notification Record (TF-3339);  
and
9. Temporary Confidential Informant Record (TF-3363)

**II. POLICY**

- A. Only sworn officers may utilize a confidential informant. All informants are assets of the Department, not of the Managing Officer.
- B. Managing Officers shall maintain relationships with an informant in an ethical and professional manner at all times. A Managing Officer shall not have any off-duty fraternization or a personal or business relationship with their MCI or TCI.
- C. Any off-duty contact by a Managing Officer with their informant shall be documented in the ICAR (TF-3278) if that contact is pertinent to an investigation.

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- D. Disclosure of the informant's identity shall be withheld until such disclosure is required by law or upon the direction of the Chief of Police.<sup>1</sup>
- E. The use of an informant under 13 years of age is prohibited.
- F. Informants between 13 and 17 years of age require an order of the court and consent of a parent/guardian.<sup>2</sup>
- G. If the informant is on Federal probation or parole, the informant's probation officer shall be contacted for the purpose of arranging approval from the federal court or the United States Parole Commission.

### III. PROCESSING INFORMANTS (Temporary, Citizen, Managed)

The Managing Officer shall verify the identity of the informant and shall evaluate the benefit and value of utilizing the person as an informant by considering the risk to the public, the informant's criminal history, circumstances of a current arrest or charges, and the informant's reliability and dependability

#### A. Temporary Confidential Informant (TCI)

- 1. The Managing officer is not required to complete an informant file for a temporary confidential informant. However, the Managing Officer is required to document the facts surrounding the informant's information and/or assistance on a Temporary Confidential Informant Record (TF-3363).
- 2. If the temporary confidential informant assists the Managing Officer in more than one investigation, the informant shall be reclassified as a managed informant. The Managing Officer is then required to complete an informant file and include the informant's Temporary Confidential Informant Record (TF-3363).

#### B. Citizen Informant

- 1. Citizen Informants are entitled to reward money and do not need to be treated as a managed informant as long as their motivation was in the interest of reducing and/or solving criminal activity. The Department regularly offers reward money for information leading to arrests of wanted individuals and/or recovery of contraband.

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<sup>1</sup> Evidence Code Section 1041 provides that an officer can refuse to identify an informant when "disclosure of the identity of the informant is against public interest because there is a necessity for preserving the confidentiality of their identity that outweighs the necessity for disclosure in the interest of justice."

<sup>2</sup> Penal Code Section 701.5

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The Department does not require an informant file in these instances. However, if the Citizen Informant receives reward money, the Managing Officer is required to document the facts surrounding the informant's information and/or assistance on a Temporary Confidential Informant Record (TF-3363).

2. If a Citizen Informant's motivation changes from solely wanting to reduce and/or solve criminal activity, the Managing Officer is required to reclassify the informant from a Citizen Informant to either a Temporary or Managed Informant and complete the applicable paperwork.

C. Managed Confidential Informants (MCI)

1. The Managing Officer shall prepare the file to include:
  - a. Informant Chronological Activity Record Log (TF-3278);
  - b. Informant Regulations Record (TF-3110);
  - c. Informant Agreement Record (TF-3276);
  - d. Prospective Informant Review Record (TF-3338);
  - e. Informant Personal Record (TF-3111);
  - f. Informant Payment Record (TF-3361);
  - g. Informant Accomplishment Record (TF-3362);
  - h. Unreliable/Undesirable Informant Notification Record (TF-3339); and
  - i. Temporary Confidential Informant Record (TF-3363)
  - j. Identity verification (e.g., CDL, CRIMS, CII) documentation in the ICAR (TF-3278);
  - k. Criminal history records (CRIMS, CII) documentation printouts;
  - l. Department of Motor Vehicles Printout; and
  - m. A current photograph of the informant.

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2. The Managing Officer shall document the preparation in the ICAR (TF-3278).
3. The Managing Officer shall forward the completed informant file to their immediate supervisor for review and approval.
4. Whether approved or disapproved, the immediate supervisor shall forward the file to the IPC within **five (5)** calendar days for final review and approval.
5. Upon approval, the IPC shall provide the Managing Officer with a new or existing Informant File Number.

**NOTE:** In the event a law enforcement response is necessary prior to the IPC's final review and approval, the MCI may be utilized with explicit and documented approval of the immediate supervisor.

D. Special Requirements

When any of the following individuals, **informing on a client**, is to be used as a managed informant, approval for use from a Deputy Chief of Police or higher rank is required after review and approval by the IPC:

1. Media personnel who meet the requirements for a press card, as specified in Oakland Municipal Code 5.70.010. The actual issuance of a press card is not required to meet the requirement;
2. Bona fide Clergy / religious practitioner;
3. Licensed Medical professional;
4. Licensed Therapist / Counselor; or
5. Licensed Attorney.

**NOTE:** The individuals listed above, when making notifications as required by current mandatory reporting laws, are not considered informants.

#### IV. DOCUMENTATION

- A. The Managing Officer shall complete all of the required informant forms and ensure the informant reads and signs the appropriate forms prior to performing services for the Department.

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All signed original forms shall be placed in the informant file and forwarded to the immediate supervisor for review and approval.

1. Informant Regulations Record (TF-3110);
  2. Informant Agreement Record (TF-3276);
  3. Temporary Confidential Informant Record (TF-3363)
- B. The Managing Officer shall have a sworn officer personally witness the MCI review, and sign the Informant Agreement Record (TF-3276) and the Informant Regulations Record (TF-3110).
- C. The Managing Officer shall ensure the informant file includes the forms listed above **and** the following:
1. Informant Chronological Activity Record Log (TF-3278);
  2. Prospective Informant Review Record (TF-3338);
  3. Informant Personal Record (TF-3111);
  4. Informant Payment Record (TF-3361);
  5. Informant Accomplishment Record (TF-3362);
  6. Unreliable/Undesirable Informant Notification Record (TF-3339);
  7. Identity verification (e.g., CDL, CRIMS, CII) documentation in the ICAR (TF-3278);
  8. Criminal history records (CRIMS, CII) documentation printouts;
  9. Department of Motor Vehicles Printout; and
  10. A current photograph of the informant.

**V. SUPERVISORY AND COMMAND RESPONSIBILITIES**

- A. Supervisory Responsibilities:
1. The Managing Officer's supervisor shall evaluate the benefit and value of utilizing the person as an informant by considering the risk to the public, the informant's criminal history, circumstances of a current arrest or charges and the informant's reliability and dependability.

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2. The supervisor shall consider the officer's ability in managing a confidential informant.
3. The Managing Officer's supervisor shall review the completed informant file to ensure all of the informant's information is complete, current, and forms are signed as required; prepare a Prospective Informant Review Record (TF-3338) indicating approval or denial; and forward the file to the IPC for final determination.
4. Review and audit monthly ICAR forms and forward to IPC for inclusion in the MCI file
5. Meet with the Managing Officer on a quarterly basis to review a current print out of Wanted Persons System (WPS), Department of Motor Vehicles (DMV), Consolidated Records Information Management System (CRIMS) and Criminal Identification and Information (CI&I) and discuss the cooperation agreement.

This meeting shall be documented in the March, June, September and December ICAR Logs (TF-3278).

6. The Managing Officer's supervisor shall forward the current copies of the WPS, DMV, CRIMS and CI&I print outs along with an ICAR log to the IPC for inclusion in the MCI file.

B. Unit Commander Responsibilities:

The Managing Officer's Unit Commander shall conduct a semi-annual review and inspection of the applicable informant files before 31 Jun and 31 Dec of each year. The Unit Commander shall complete a Semi-Annual report documenting this review and inspection and forward to the IPC.

C. IPC Responsibilities:

1. The IPC or designee shall contact the Western States Information Network (WSIN) to ascertain if the informant's standing has been identified as an "Unreliable" informant before approval of any managed confidential informant. The informant's WSIN standing shall be documented in the ICAR (TF-3278) by the IPC.
  - a. If the informant has been identified as "Unreliable" the approval for further use of the informant shall be denied.



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- b. The IPC shall email (with read receipt) the Managing Officer and the approving supervisor advising them that further use of the informant is denied. A copy of the email shall be included in the MCI file and noted on the MCI database.
2. The IPC shall maintain a database of all Confidential Informants. The database will include the following;
  - a. Confidential Informant Number;
  - b. Confidential Informant's Name;
  - c. DOB;
  - d. Managing Officer's Name;
  - e. Approving Supervisor/Commander;
  - f. Activation and Deactivation Dates.

## **VI. INFORMANT CHRONOLOGICAL ACTIVITY RECORD**

- A. The ICAR (TF-3278) is a chronological listing of an informant's activity. The ICAR shall be maintained in the informant file. The Managing Officer shall maintain a separate ICAR with associated supporting documents for each month and shall submit the ICAR and any supporting documentation to their supervisor for review at the end of each month.
- B. After reviewing the monthly ICAR and supporting documents, the supervisors shall forward all documents to the IPC for inclusion into the MCI file.
- C. The Managing Officer shall make an ICAR entry within **seven (7) calendar** days whenever any of the following occur:
  1. Pertinent investigative contacts with the MCI, to include:
    - a. Face-to-face meetings (including persons present);
    - b. Phone calls; and
    - c. Email/text messages and written correspondence.

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2. If the Managing Officer provides information from a MCI to an OPD officer or other law enforcement officer to act upon, the Managing Officer shall take the following steps:
  - a. Document in the ICAR (TF-3278) a summary of the information provided by the MCI establishing the PROBABLE CAUSE for the detention and/or arrest; and
  - b. Complete the required Departmental police report if warranted and include, at a minimum, the following information:
    - 1) A summary of the information provided by the informant;
    - 2) The informant file number;
    - 3) The Incident Number;
    - 4) The RD Number;
    - 5) Any corroborating information to support the informant's information; and
    - 6) Provide the officer(s) making the arrest/detention a copy of the completed Departmental report.
3. Any other pertinent activity that may assist the Managing Officer:
  - a. In future management of the MCI; and
  - b. In determining suitability for continued use of the MCI.

## **VII. MANAGEMENT OF ACTIVE INFORMANTS**

- A. The Managing Officer shall contact a MCI at least once every 90 days to update and maintain the informant's "active" status. The informant need not be involved with a current investigation in order to maintain their "active" status.
- B. Planned in-person contacts between the Managing Officer and informants shall occur while in the presence of at least one (1) other law enforcement officer or an officer of the court in a public place.

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- C. The Managing Officer shall not knowingly allow a MCI, who is not in the possession of a valid license, to operate a motor vehicle while engaged in an investigation.
- D. If the informant is non-English speaking, at least one (1) officer shall be proficient in the informant's language when an interview is conducted or personal contact is made.
- E. The IPC shall be notified if an informant's status is changed to inactive, unreliable, and/or undesirable.

### **VIII. PAYMENTS TO INFORMANTS**

- A. An informant may be paid for information or assistance. Whenever an informant is paid, the Managing Officer shall ensure that at least one (1) other law enforcement officer is present to witness the payment. If the informant is non-English speaking, at least one (1) officer shall be proficient in the informant's language when payment is made.
- B. The Managing Officer shall document payments to an informant and shall also document the names of persons present who witness the payment in the Informant Payment Record (TF-3361) and/or on the Informant Chronological Activity Record Log (ICAR) (TF-3278).
- C. Confidential funds provided for in the Departmental budget shall be strictly administered and accounted for in accordance with Departmental General Order F-5, UNDERCOVER EXPENDITURES.
- D. The supervisor or commander in control of an Imprest Account used to fund payments shall approve informant payments.

### **IX. DE-ACTIVATION OF AN INFORMANT**

- A. The Managing Officer shall be responsible for:
  - 1. Classifying an informant as "inactive," when appropriate; **and**
  - 2. Notifying the IPC of the change in status.
- B. The Managing Officer shall consider the following criteria in determining whether to de-activate an informant:
  - 1. The current investigation is completed;

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2. The Agreement is terminated by the informant or the Managing Officer;
3. The informant is incarcerated;
4. There is no immediate use of the informant anticipated; and
5. The informant has been identified as being "Undesirable."

C. Mandatory De-activation

The Managing Officer shall de-activate an informant:

1. When there has been no contact with the informant within 180 days;
2. Prior to the Managing Officer's separation from the Department;
3. It is discovered that the informant is deceased; or
4. If the IPC deems the informant "Unreliable" or "Undesirable."

**X. RE-ACTIVATION OF AN INFORMANT**

A prospective Managing Officer may re-activate an informant by contacting the IPC and updating the existing file with the database queries and current photo of the MCI. The informant will utilize the same informant number. An informant who has been previously declared as "Unreliable" will not be re-activated.

**XI. REPORTING UNDESIRABLE/UNRELIABLE INFORMANTS**

In the event a Managing Officer determines that an informant is unreliable or undesirable, he/she shall:

- A. Prepare an Unreliable/Undesirable Informant Notification Record (TF-3339) detailing the circumstances;
- B. Hand-deliver the Unreliable/Undesirable Informant Notification Record (TF-3339) to the IPC immediately.

**XII. INFORMANT FILE MANAGEMENT**

- A. Informant files shall not be accessed or removed from the IPC's unit without prior approval of the IPC. Approval shall be documented in the ICAR (TF-3278).

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- B. The IPC shall document access to informant files in the ICAR (TF-3278), to include the date, time and name of person accessing file.
- C. All informant files shall be maintained in a secure location under the control of the IPC.
- D. The IPC shall assign the MCI Number and the TCI Number. The format shall be Year and CI in chronological order (i.e. MCI 13-01 or TCI 13-01)
- E. The IPC shall maintain a secured drop box outside of the Intelligence Unit's office (Room 400) where officers may drop their paperwork.
- F. The IPC shall maintain hard copies of all original files for a period of five years.

### **XIII. JUDICIAL PROCESSING OF INFORMANTS**

- A. Physical Custody Phase
  - 1. Prior to releasing a person from physical custody, for the purpose of becoming an informant, a Managing Officer shall:
    - a. Notify the arresting officer, if practical; or
    - b. In the arresting officer's absence, the arresting officer's supervisor/commander.The notification shall outline the details of the potential release.
  - 2. In the event of conflicting interests regarding a release, the immediate supervisors or commanders shall consult to resolve the issue. The IPC shall have the final authority to resolve any conflicts.

**NOTE:** If an informant is released pursuant to 849(b) P.C., an arrest warrant is required to re-arrest the person for the original offense.

- B. Post-Charging

A Managing Officer shall obtain the approval from the prosecuting agency (e.g., County District Attorney's Office or U.S. Attorney) in order to use a charged case as consideration for an informant.

### **XIV. INSPECTIONS AND REPORTS**

- A. Managing Officer - Quarterly Inquiries

- 1. The Managing Officer shall conduct quarterly inquiries in:

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- a. Wanted Persons System (WPS)
    - b. Department of Motor Vehicles (DMV)
    - c. Consolidated Records Information Management System (CRIMS)
    - d. Criminal Identification and Information (CI&I)
  2. Document all inquiries in the ICAR (TF-3278). Quarterly inquiries shall be printed out and delivered to the IPC to replace the previous quarterly inquiry in the informant file.
  3. When information is discovered that may impact an informant's status, the Managing Officer shall confer with their supervisor to consider the eligibility of the informant. The supervisor shall document the conference in the ICAR (TF-3278).
  4. When a Managing Officer becomes aware of an outstanding arrest warrant for an informant, if possible, the informant shall be arrested or cited and released, if applicable.<sup>3</sup> Although the existence of an outstanding arrest warrant shall be considered in the eligibility of the informant, it does not automatically disqualify the use of the prospective informant.
- B. Managing Officer's Supervisor
1. Monthly Reviews

The Managing Officer's supervisor shall review monthly MCI ICAR's with associated supporting documents, sign the ICAR and forward the ICAR and all supporting documents to the IPC for inclusion into the MCI file.
  2. Quarterly Reviews
    - a. The Managing Officer's supervisor shall review updated Wanted Persons System (WPS), Department of Motor Vehicles (DMV), Consolidated Records Information Management System (CRIMS) and Criminal Identification and Information (CI&I) print-outs.

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<sup>3</sup> Penal Code Section 142

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- b. The Managing Officer's supervisor shall discuss the updated print-outs and the informant's progress in regards to the cooperation agreement with the Managing Officer.
- c. This meeting shall be documented in the March, June, September and December ICAR Logs (TF-3278). All documents shall be forwarded to the IPC for inclusion in the MCI file.

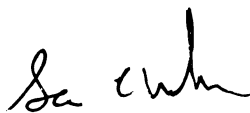
C. Intelligence Supervisor – Semiannual Review/Report

- 1. The Intelligence Supervisor shall review informant files semi-annually before 30 Jun and 31 Dec of each year to ensure the files are complete and current.
- 2. The Intelligence Supervisor shall then prepare and forward a Semi-Annual Report to the Office of Inspector General (OIG) who shall retain the report for a period of five (5) years.

D. Office of Inspector General (OIG) - Semiannual Review/Report

The OIG shall conduct a review and inspection of informant files and prepare a consolidated report for the Chief of Police before 01 Sep and 01 Mar.

By Order of



Sean Whent  
Chief of Police

Date Signed: 6-12-14

Agenda Matter	Duties/Deliverables	Additional Information/Details	Timeline for 202223	Annual vs. Incident-Based vs. Continuous Functions	Measure LL ("Charter") and Enabling Ordinance ("Ord.") Sections
Annual evaluation of Chief of Police	Conduct performance reviews of the Agency Directors and the Chief	The Commission shall determine the performance criteria for periodically evaluating the Chief and the Agency Director, and communicate those criteria to the Chief and the Agency Director one full year before conducting the evaluation.	Postponed	Annual	Ord. Section 2.45.070(G)
Annual evaluation of Inspector General	Conduct performance reviews of the Agency Directors and the Chief	The Commission shall determine the performance criteria for periodically evaluating the Chief and the Agency Director, and communicate those criteria to the Chief and the Agency Director one full year before conducting the evaluation.	Postponed	Annual	Ord. Section 2.45.070(G)
Hiring CPRA Director including public forum	Staff Searches Ad Hoc	Commission responsible for hiring of Agency Director	Anticipated Hire in Q2	Incident-based	Charter - 604(e)(4)
Annual evaluation of CPRA Director	Conduct performance reviews of the Agency Director and the Chief	The Commission shall determine the performance criteria for periodically evaluating the Chief and the Agency Director, and communicate those criteria to the Chief and the Agency Director one full year before conducting the evaluation.	Mar/Apr 2024	Annual	Ord. Section 2.45.070(G)
Annual report to the Mayor/City Council/the public	Complete Annual Report		2022 Annual Report to Commission for first review in Q2	Annual	
Hiring of Police Chief	Complete search for new Chief of Police and recommend candidates to Mayor	The Commission, with the assistance of the City Administrator, shall prepare and distribute a job announcement, and prepare a list of at least three (3) candidates and transmit the names and relevant background materials to the Mayor. The Mayor shall appoint one person from this list, or reject the list in its entirety and request a new list from the Commission.	Initiated	Incident-based	Charter - 604(b)(10)
<b>MEETINGS</b>					
Public Hearing on OPD Policies	Commission may shall determine which Department policies are subject of the hearing	Possible topic: racial disparity in policing	June 2023 meeting coupled with community roundtable and public hearing requirement	Annual	Charter Section 604(b)(2)



Two meetings per year outside City Hall - "Community Roundtables"	Agendized ten days in advance	Commission shall consider inviting to each roundtable individuals and groups familiar with the issues involved in building and maintaining trust between the Department and the community, including but not limited to representatives from the Department, members of faith-based groups, youth groups, advocacy groups, residents of neighborhoods that experience the most frequent contact with the Department and formerly incarcerated members of the community	May (Budget) and June (Racial Disparities) 2023 meeting - combine with community roundtable and public hearing requirements	Annual	Charter § 604(d)(1) and Ord. § 2.45.090
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Agenda Matter	Duties/Deliverables	Additional Information/Details	Timeline for 2022/23	Annual vs. Incident-Based vs. Continuous Functions	Measure LL ("Charter") and Enabling Ordinance ("Ord.") Sections
<b>BUDGET</b>					
Public hearing on OPD Budget	Purpose of hearing is to "determine whether budgetary allocations for the Department are aligned with the Department's policies". Develop and Approve Recommendations to City Council re Mayor's Budget	May 2023 -- Tentative release date of Mayor's proposed budget is May 1st of each year.	May 2023 meeting - coupled with community roundtable and budget public hearing	Annual	Charter Section 604(b)(7)
Propose a Commission Budget, in general	Propose staff position submission to City Administrator necessary to permit the Commission and the CPRA to fulfill its functions and duties.	Update requested by Comm. Peterson (4.13.23)	Approved March 2023 - Revisit May 2023 after release of Mayor's budget	Annual	Ord. Section 2.45.180
Review and Comment on Proposed Budget for Education and Training re: job-related stress, PTSD Signs and Symptoms, and Other Job-related Mental Health/Emotional Issues		Possibly include in general budget or OPD budget	April/May 2023	Annual	Charter § 604(d)(1) and Ord § 2.45.090
Propose a Budget for Education and Training re: job-related stress, PTSD Signs and Symptoms, and Other Job-related Mental Health/Emotional Issues		Possibly include in general budget or OPD budget	April/May 2023	Annual	Ord. § 2.45.070(C) & (D) (C) Review and comment on the education and training the Department provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing consistent with section 604(b)(6) of the Oakland City Charter. (D) Prepare and deliver to the Mayor, the City Administrator and the Chief by April 15 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection C., above.

Quarterly budget review and regular updates on the agenda		Requested by Comm. Jackson (12.8.23; 2.9.23; 2.23.23; 3.23.23; 5.11.23)		Continuous	
<b>OTHER ITEMS: for CPRA</b>					
Solicit/Consider Public Input re Quality of Interactions with CPRA and Commission			Public Forum for CPRA Director Search	Continuous	Ord. § 2.45.070(Q)
Establish Rules/Procedures re Mediation/Resolution of Complaints of Misconduct		Requested update by Comm. Harbin-Forte (4.13.23)	In Progress with CPRA	Continuous	Ord. § 2.45.070(N)
RFP for IAD transition to CPRA		Requested by CPRA	In Progress with CPRA	Incident-Based	
Review the Agency's dismissal and/or administrative closure of all complaints of misconduct involving Class I offenses			August 2023 - maybe 6 mos. into new Director's time with OPC	Continuous	Ord. Section 2.45.070(M)

Agenda Matter	Duties/Deliverables	Additional Information/Details	Timeline for 202223	Annual vs. Incident-Based vs. Continuous Functions	Measure LL ("Charter") and Enabling Ordinance ("Ord.") Sections
Provide policy guidelines to CPRA Director for determining case prioritization		Requested by Comm. Jackson (11.10.22; 4.13.23) re: Charlotte Jones' August 2022 email; Chair has asked Charlotte when she can report on it	In Progress with CPRA Policies Ad Hoc	Continuous	
Determine the number of existing CPRA staff who would work at a "street-level or ground-floor, visible office that is accessible by public transportation."			In Progress with CPRA	Incident-Based	Ord. Section 2.46.020
<b>OTHER ITEMS: for OPD</b>					
Notify Chief of required contents of Chief annual report	See enumerated list of topics		Completed	Annual	Ord. Section 2.45.070(F)
Review And Comment On Department's Practices/Policies Re: Reporting And Publishing Data On Its Activities				Continuous	Ord. § 2.45.070(P)
Revisit OPD's Grooming & Presentation policy		Requested by Comm. Gage (1.13.22)			
Report on intentions regarding Militarized Equipment			May-23		
Report on claims regarding bail and increase in crime		Requested by Comm. Hsieh & Harbin-Forte respectively (4.14.22)			
Update on OPD's Parole & Probation policy plus impact.		Requested by Comm. Jackson (2.10.22; 1.12.23)			
Approve/Modify/Revoke OPD Use of "Military Equipment" via Annual Report Process			August 2023		Ord. Section 9.65.030
Report from Chief regarding OPD's homelessness policy		Requested by Comm. Harbin-Forte (2.10.22)			
OPD annual update on impact of the missing person's policy		Requested by Comm. Jackson (8.25.22)			
Receive reports from Department via City Administrator on issues identified by the Commission				Continuous / Incident-Based	Ord. Section 2.45.070(R)

Informational report of data from MACRO, OPD, and CARES	(1) how many intakes CARES has received from OPD and MACRO; (2) a report from MACRO on their OPD referrals and the outcomes of those referrals for tracking purposes; (3) and finally, from OPD to see; the numbers of arrests that are eligible for CARES, the dispatches to MACRO and the types of cases involved, and the juvenile cases that are appropriate for juvenile prefilling diversion and the outcomes of those cases	Requested by Comm. Hsieh (2.23.23)	July 2023	Annual	
OPD presentation on police misconduct data and how OPD evaluates/addresses misconduct allegations		Requested by Jackson-Castain (3.23.23)		Continuous	
Biannual PAS update with racial demographic information		Requested by Ordaz (5.25.23)			
<b>OTHER ITEMS: for OIG</b>					
OIG Annual Report	Provide Commission OIG Annual Report		Sep-23	Annual	Ord. Section 2.45.120
Monitor/evaluate # of officers receiving training on profiling, implicit bias, deescalation, and other key topics			In Discussion	Continuous	Ord. Section 2.45.120
Develop and present a plan to the Commission to measure the performance of each element of the Department's discipline process for sworn officers			In Discussion	Continuous	Ord. Section 2.45.120
Complete all audits/reviews requested by the Mayor, City Administrator, City Council			In Discussion	Continuous	Ord. Section 2.45.120
Monitor/evaluate/make recommendations re: Recruiting and hiring sworn personnel			In Discussion	Continuous	Ord. Section 2.45.120
Monitor/evaluate/make recommendations re: OPD Policies the Commission seeks to create or modify			In Discussion	Continuous	Ord. Section 2.45.120
Monitor/evaluate/make recommendations re: OPD's risk mgmt. practices			In process	Continuous	Ord. Section 2.45.120
Advise OIG of priorities for the 52 NSA Tasks		Part of Post-NSA Standing Committee	TBD	Continuous	Ord. Section 2.45.120; Charter 604(f)(5)

Agenda Matter	Duties/Deliverables	Additional Information/Details	Timeline for 202223	Annual vs. Incident-Based vs. Continuous Functions	Measure LL ("Charter") and Enabling Ordinance ("Ord.") Sections
<b>OTHER ITEMS: for Commission</b>					
Monthly ad hoc committee report outs		Requested by Comm. Harbin-Forte 5.11.23			Ord. Section 2.45.070(O)
Maintain/update bylaws		Rules of Procedure Ad Hoc - in progress	Summer 2023	Continuous	Ord. Section 2.45.040
Request that the City Attorney submit semi-annual reports to the Commission and to City Council which shall include a listing and summary of litigation			April 27, 2023 (next October 2023)	Continuous	Ord. Section 2.45.070(I)

Mayor's Youth Commission		Requested by Comm. Jackson (8.25.22)			
Bay Area Youth EMT		Requested by Comm Harbin-Forte (8.25.22)			
Presenation by Ian Appleyard on new HR process		Requested by Comm. Jackson (11.10.22)			
Presentation on Ceasefire		Requested by Comm. Jackson (1.12.23)			
Half-day strategic planning session		Requested by Comm. Jackson-Castain (1.12.23)			
Discussion on content of future OPD reports		Requested by Comm. Jackson-Castain (1.26.23)		Continuous	
Audit compliance update		Requested by Comm. Jackson (2.9.23)			
Juvenile Miranda Policy and juvenile detention program update		Requested by Comm. Hsieh (2.9.23)			
Sideshow policy		Requested by Comm. Ordaz (5.25.23)			
Riot shields update		Requested by Comm. Ordaz (5.25.23)			