

LOS ANGELES POLICE COMMISSION

*ANNUAL REVIEW OF
DEPARTMENT'S
RETALIATION POLICY*

2007



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

ANDRÉ BIROTTE, JR.
Inspector General

February 2007

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February 12, 2007

I. Introduction

Paragraph 92 of the Consent Decree (Paragraph 92)¹ requires the Police Commission (Commission) to review the Department's anti-retaliation policy on an annual basis. In compliance with this requirement, the Office of the Inspector General (OIG) began issuing an annual report on the Department's Retaliation Policy in 2004. On February 12, 2004, the OIG submitted to the Commission its "Review of the Department's Retaliation Policy" (First Report). On February 11, 2005, the OIG submitted its "Annual Retaliation Policy Review Conducted by the Office of the Inspector General" (Second Report). On February 10, 2006, the OIG again submitted its "Annual Retaliation Policy Review Conducted by the Office of the Inspector General" (Third Report).

The First Report contained 12 recommendations that the OIG believed would assist the Department in handling complaints of retaliation as well as addressing and remediating problems in the workplace that might lead to perceptions of retaliation. The Second Report contained an additional four such recommendations. In both reports, the retaliation policy itself was reviewed, as well as the effectiveness of Department supervisors in addressing and preventing retaliation.

The Third Report focused on an analysis of the Department's New Retaliation Policy (New Policy), which was implemented in July 2005, and discussed the general implementation process of the New Policy in its initial stages.

In past years the OIG has chosen to conduct such evaluations by reviewing completed retaliation investigations, which under Paragraph 93 of the Consent Decree, are to be conducted by Internal Affairs Group (IAG). As noted in prior reports, the OIG believes that conducting such case reviews is a meaningful way of evaluating the effectiveness of the Department's retaliation policy, given that such case reviews can provide a snapshot into how the policy is being implemented.

¹ Paragraph 92 provides:

The City and the Department shall prohibit retaliation in any form against any employee for reporting possible misconduct by any other employee of the LAPD. Within six months of the effective date of this Agreement and annually thereafter, the Police Commission shall review the Department's anti-retaliation policy and its implementation and make modifications as appropriate to protect officers from reprisals for reporting misconduct. The Commission's review of such policy and its implementation shall consider the discipline imposed for retaliation and supervisors' performance in addressing and preventing retaliation.

In this Fourth Report (this Report), the OIG has reviewed the four cases initiated after the implementation of the New Policy which were closed in time for us to review for purposes of this Report.²

The New Policy is outlined in Special Order Nos. 15³ and 16 of 2005. As it relates to employee-on-employee retaliation, the Policy provides that no employee shall “target another employee in response to such employee engaging in any protected activity”⁴ Special Order No. 15 defines prohibited activity to include:

- Refusing to provide or intentionally delaying response to a request for assistance or back-up;
- Creating a dangerous working environment;
- Ostracizing employees for participating in an investigation; and/or
- Spreading rumors impugning the character or reputation of a complainant or an accused.

As it relates to retaliation by a Department supervisor or manager against a subordinate employee, the New Policy outlined in Special Order No. 16 provides as follows: “Retaliation is defined as an **adverse employment action** taken against an employee for engaging in protected activity.” (Emphasis added.)

The New Policy states that an adverse employment action may be “an action that would cause a reasonable employee to be deterred from engaging in a protected activity or an action in direct response to an employee engaging in a protected activity.” Under the New Policy, examples of an adverse employment action include:

1. Negative performance evaluations;
2. Negative Employee Comment Sheets;
3. Imposition of discipline;
4. Denial of paygrade advancement;
5. Denial of coveted assignment or promotional opportunity; and
6. Change of assignment.

Under the New Policy, protected activities include:

1. Opposing, reporting, or participating in any claim, lawsuit, or investigation concerning unlawful discrimination or sexual harassment;
2. Filing a grievance or participating in any unfair labor complaint;

² Given the amount of time needed to order, review, and write about these cases, we imposed a population cut-off date of any such retaliation cases which were closed by the end of the Third Quarter of 2006, or September 30, 2006.

³ The New Policy is comprised of two parts: retaliation by fellow employees (employee-on-employee) and managerial retaliation involving adverse employment actions against subordinate employees.

⁴ Protected activity is outlined in Special Order No. 16, as discussed above.

3. Taking advantage of any labor right or benefit such as using sick or family leave, seeking compensation for overtime worked, or filing an objectively valid work-related claim for damages;
4. Reporting misconduct of another Department or City employee to the OIG, or any Department or governmental entity; or
5. Supporting, assisting or cooperating in a misconduct investigation.

The New Policy was designed to more clearly parallel current retaliation law.

II. Methodology

A. Selection of Population

Since the New Policy was implemented on July 15, 2005, which fell within the Third Quarter of 2005,⁵ the OIG reviewed cases initiated after the New Policy was implemented and closed by the end of the Third Quarter of 2006. Using this time frame to obtain our population, OIG staff utilized the Department's Complaint Information System (CIS)⁶ to generate a list of all cases in which there was at least one allegation of retaliation and which were closed during the time period selected, regardless of adjudication. There were four such cases. Because of the small number of cases, the OIG reviewed all four complaint investigations.

B. Evaluation of Investigations and Review of Tape-Recorded Interviews

The OIG conducted an in-depth review of all four investigations. In conducting this review, a matrix⁷ was utilized by the first and second level reviewers. This matrix contained 40 questions designed to evaluate the quality, completeness, and findings of a completed retaliation complaint investigation, including whether: the rationale was supported by the evidence, necessary investigative steps were taken, and whether any inconsistencies were resolved. The matrix also included targeted questions assessing whether the investigation revealed the existence of workplace issues that could have led to the perception of retaliation and whether the adjudicator recognized such issues and recommended any remedial steps.

⁵ The Third Quarter runs from July 1 to September 30.

⁶ The Department's new Complaint Management System (CMS), one of the four systems that comprises TEAMS II, was implemented on November 10, 2006, after the close of the Third Quarter. CMS combines information from several pre-existing Department tracking systems, including CIS.

⁷ In one of the four investigations included in our population, CF No. 06-0106, the complainant had called the OIG and requested a case review in May 2006. At that time, the standard matrix utilized by the OIG to assess the quality, completeness, and findings of the underlying investigation when a complainant requests a case review of a closed Department complaint was utilized, which does not focus solely on the narrower issues of retaliation. However, in preparing for this Report, any additional questions not covered by the original matrix were separately answered.

The OIG reviewed all available⁸ interview tapes with respect to each of the four closed cases. In reviewing the taped interviews in these cases, the OIG utilized a separate tape matrix containing 17 questions designed to evaluate whether: (1) the interviews were properly paraphrased to include all relevant testimony; (2) all allegations raised by the complainant were properly formed; (3) any additional allegations raised during the interviews were addressed in the completed investigation; (4) the interviews themselves were conducted properly (e.g., whether the interviewer used inappropriate or leading questions, or adopted a hostile or inappropriate tone with the witness); and (5) logical follow-up questions were asked by the interviewer. For two of the investigations, no secondary level review was conducted for the tape reviews.⁹

C. Review of Litigation Matters

In preparing this report, the OIG was informed by staff from the Department's Risk Management Group (RMG) that none of the four retaliation cases had related litigation.

III. Findings

The OIG found that in three of the four cases, the investigators did not thoroughly document their investigations, fully resolve significant inconsistencies, interview all available witnesses, or address all potential allegations in the retaliation investigations. In one case, CF No. 05-4438, we believe these investigative deficiencies impacted the ultimate adjudication of the complaint as we do not believe the investigation contained sufficient information to justify its "Unfounded" adjudication. The results of our review of all four cases are described in more detail below.

CF No. 05-4438

A. Factual Summary

This investigation involved a Police Officer III (Accused) and a Police Officer II (Complainant).¹⁰ The Complainant was assigned to a field unit, and the Accused was assigned to the front desk of the same area. The Complainant and his/her partners received a radio call from Communications Division (CD) to perform a "welfare check." While in the process of responding to the call, the Complainant initiated an unrelated traffic stop that involved several known gang members. Unbeknownst to the Complainant, both incidents were disposed of by the Area Command Center (ACC), a

⁸ In one complaint, CF No. 06-1829, it appears that at least eight interviews were conducted. The investigation notes that one of the interviews was tape-recorded, but no corresponding tape number was provided. There was no indication as to whether the other seven interviews were similarly tape-recorded. Accordingly, we reviewed no tapes in connection with this case.

⁹ Secondary level reviews were only conducted for those investigations where the first level review revealed significant inconsistencies between paraphrased witness statements and the statements contained in the tape-recorded interviews.

¹⁰ The Police Officer II will be referred to as "Complainant" for purposes of this discussion. Although this complaint was technically "Department-initiated," the facts would not have come to the Department's attention but-for the underlying personal animosity between these two involved parties.

piece of equipment that provides an alternative method of dispatching and/or closing out communications calls. Normally, a computer or a Mobile Digital Terminal (MDT), not the ACC, is used to "dispo" a call. The investigation revealed that not all Department employees are properly trained to use the ACC.

When the Complainant and his/her partners attempted to dispose of the traffic call through their MDT, they discovered that the status of the call showed "clear," rather than "at scene." An unidentified CD employee later relayed that the ACC had been utilized to clear both the welfare check call and the traffic stop. The Complainant did not know who was assigned to the ACC at the Area and contacted a supervisor (Initial Supervisor) for more information.¹¹

The investigation revealed that the Accused was the individual responsible for working the ACC and who disposed of the calls. The Complainant believed the Accused's actions could be characterized as retaliation for a prior incident involving the Accused and the Complainant's paramour (Paramour), also a Department employee. That incident related to alleged misconduct reported by the Paramour against another employee (Terminated Employee), after which the Accused and the Terminated Employee, who were friends, allegedly vandalized the Complainant's and Paramour's residence.

According to the Complainant's paraphrased statement, it was possible that the Accused's actions with respect to the disposition of the calls could have been a mistake, but the Complainant also believed the Accused's actions were inappropriate and created an officer safety issue for the Complainant.

According to the Accused's paraphrased statement, the Accused received a phone call from the welfare check subject's son, the "PR" (PR). The PR had contacted his father, stated that everything was "fine," and informed the Accused that the call for the welfare check should be cancelled. The Accused decided to dispose of the call through the ACC because there was "heavy radio traffic." According to the ACC, the Complainant's unit was assigned to the welfare check, but the Accused claimed not to have known that the Complainant was assigned to this particular unit until after the Accused had cancelled the call. Per the Accused's paraphrased statement, the Accused recalled disposing of only the welfare check call. The Accused did not recall disposing of the traffic call.

Although not included in the paraphrased statements, during the Accused's tape-recorded interview, the Accused claimed not to have known which particular unit was assigned to the welfare check call until the Accused did a "unit history" and saw that it was the Complainant's unit. The Accused also claimed not to have known at that time that the Complainant was assigned to that specific unit.

¹¹ The Investigating Officer (I/O) determined that the Initial Supervisor did not need to be interviewed "because the investigation revealed that he/she could not provide any pertinent information in regard to the allegations." (Investigation at 5). As discussed further below, we believe this conclusion was unsupported.

Three allegations were framed against the Accused: two for retaliating against the Complainant by cancelling the two calls, and a third for compromising the safety of the Complainant and his partners by clearing them from the traffic stop call.

The first two allegations were adjudicated as “Unfounded.” The adjudicator relied on the notion that there was not sufficient evidence in the investigation to “indicate that [the Accused’s] actions were intentional or that [the Accused] was retaliating against [the Complainant].” In addition, the adjudicator believed there was sufficient evidence “to lead to the conclusion that [the Accused] cleared the unit’s status through error, by not being sufficiently adept with the operation of the ACC.”

However, as discussed further below, we believe the adjudicator did not sufficiently consider the possibility that the past incident between these parties could have provided an incentive for the Accused to retaliate against the Complainant.

The third allegation was adjudicated as “Non-Disciplinary – Employee’s Actions Do Not Rise to the Level of Misconduct – Counseling.” This was based on the adjudicator’s position that the Accused was not properly trained on the ACC:

[I]t is evident that [the Accused] did not use the machine properly. The ACC and its operating system is a relic, and the system commands defy logic. Although it was designed before the modern computer, the ACC is functional when operated by a trained employee that is familiar with its unique manners. [The Accused] was not trained in the use of the ACC

Again, as detailed below, we believe the possibility that the Accused’s actions were the result of a retaliatory motive were too quickly dismissed in favor of the more simple explanation that the Accused was merely not trained in using the ACC.

However, before outlining our concerns about the investigation, we believe it is important to begin by commending the superior supervisor (Reporting Supervisor) for bringing this complaint to the captain’s attention as soon as he/she became aware of its potentially retaliatory nature. We believe this demonstrates an understanding and appreciation of the sometimes complex issues surrounding retaliation. We were also pleased to see the Letter of Transmittal (LOT) contained a recommendation that “Watch Commanders [shall] ensure that only qualified and trained employee[s] [sic] use the ACC.”

B. Investigative Deficiencies

1. Lack of Understanding of Department’s Retaliation Policy

Most troubling to us was that the Investigating Officer (I/O) did not appear to understand the Department’s policy against retaliation. When queried by the Accused’s attorney about the specific nature of what the Accused was being charged with, it appeared to us that the I/O did not appreciate how the canceling of the Complainant’s calls, which could

have jeopardized the Accused's safety, could be considered retaliatory, in light of the Paramour's prior participation in a complaint investigation involving the Accused.

The Accused's attorney asked, "How did the Department see [the allegations] as retaliation?" The I/O replied, "because it was brought up to [the Area Captain], and [the Accused] believed he was under protected activity when this happened." The attorney asked again, "What is the retaliation?" And the I/O said, "It's from a prior incident" The attorney asked whether the captain articulated what the retaliation was, other than the Accused's disposing of the calls. The I/O said, "Not to my knowledge, no." Finally, the attorney inquires, "Is there some type of harm that the dispo'ing of the calls occurred to [the Accused] as a result of my client's actions?" The I/O replied, "No not to my knowledge, no."

We believe this dialogue demonstrated the I/O's lack of familiarity with Special Order No. 15. Had the I/O been more familiar with the Department's definition of employee-on-employee retaliation, the I/O could have explained how the Accused's actions could have created a dangerous work environment and how that is prohibited if it is done in response to an employee's engaging in protected activity. Specifically, the Accused's actions in clearing the Complainant's unit from the call placed the Accused and his/her partners in a potentially dangerous situation because in the event they needed back-up or pressed the "help" button on their ASTRO radio, there could have been a delay in locating them if they did not or were unable to provide their location to CD.

2. Interview of Witnesses

The I/O did not interview a number of potentially valuable witnesses, most significantly, the PR of the welfare check call. We believe it would have been beneficial to interview him, as he allegedly directed the Accused to cancel the request for a welfare check. In addition, the Department should have considered interviewing the Complainant's partners to the extent they could have provided more insight surrounding the circumstances of the two calls and whether they similarly felt their safety had been comprised.

Another significant interview omission was that of the Initial Supervisor. We believe the I/O's dismissal of the need for this interview was not supported by the investigation. Indeed, the Reporting Supervisor, who brought this issue to the attention of the captain, indicated in his/her statement that he/she first learned of the cancelling of the welfare call and the personal history between the parties by speaking with the Initial Supervisor, who, in turn, was the first person to speak with the Complainant. If the I/O went to the trouble of interviewing the Reporting Supervisor, who was one level removed from the information provided by the Complainant, why not also interview the Initial Supervisor, who received the information directly from the Complainant? Ultimately, we believe the I/O should have interviewed all potential witnesses who had information about the Accused's actions before any retaliatory motive on the part of the Accused could be summarily dismissed.

3. Follow-Up Questions and Resolving Inconsistencies

The I/O did not ask sufficiently-probing questions in several of the interviews. For instance, when the Accused raised the possibility that another employee may have been working the desk along with him/her on the date in question, the I/O failed to follow-up with any further attempt to identify this employee. At a minimum, the I/O could have retrieved a call sheet from that day to determine whether another employee had been assigned to the desk with the Accused and who could have shed light on the Accused's actions that day. Even the Accused's lawyer suggested the I/O should have done this in advance of the interview.

In addition, the I/O did not ask what other means, if any, the Accused used to notify the Complainant that he/she was cancelling the welfare check call (such as sending him/her an MDT message). Further, the I/O did not follow-up on the Accused's claim that the "air" was busy or attempt to independently verify this information by obtaining printouts or tape-recordings from CD of all calls made during the pertinent time and date. Moreover, the I/O did not inquire as to why the Accused went to the trouble of assessing the history of the Complainant's unit before cancelling the call if the Accused was not going to notify the Complainant first.¹²

In addition, the I/O seemed to accept at face value the Accused's claim that he/she did not recall disposing the traffic stop call, without any follow-up. When the Accused stated, "I was just trying to cancel *them*" in response to whether he/she generated a radio call on the welfare check issue, the I/O did not follow-up by asking what the Accused meant by "them"¹³ instead of "it."

When asked by the I/O, "Did you know that [the unit] was on a traffic stop . . . ?", the Accused stated, "No, I was just trying to get this call dispo'd." When asked, "Did you ever dispo the traffic stop?" the response was, "Not that I, um, remember, but if it was right around, if they were on, if this was interrupted? Is that what happened? Was this call interrupted and then, by a traffic stop?" The I/O stated, "Yes." The Accused said in response, "Yeah, I probably did." The I/O then allowed the Accused's attorney to re-state the question¹⁴ to the Accused, "But you didn't know that you did that?" The Accused replied, "No, I wasn't, that wasn't my intent, but obviously I did." However, the Accused's paraphrased statement provides the simpler explanation that the Accused did not recall disposing the traffic stop and did not intend to dispose of it.

¹² We are troubled that the I/O accepted at face value the Accused's claim that he/she did not know the Complainant was assigned to the involved unit until subsequently informed by a supervisor. It is our understanding that the Accused may have had access to work/call sheets that would have listed which officers were assigned to which units and that such sheets can also be generated by the ACC. However, this possibility was never raised by the I/O.

¹³ According to the Reporting Supervisor, a complaint was not initiated until it was subsequently learned that the Accused had cancelled more than one call.

¹⁴ Indeed, throughout the interview the Accused's attorney re-phrased and re-directed questions to his client's benefit with no protest or objection by the I/O.

4. Other Investigatory Concerns

The language in the rationale section of the LOT is overly conclusory. The adjudicator states, “[The Complainant] would have had to accept that [his/her partners] were also being placed in danger even though [the Accused] would have had no reason to harm them.” This statement is not only conclusory but also not supported by the investigation, especially since the Complainant’s partners were not interviewed to see if they felt endangered by the Accused’s actions. It also assumes that the Accused had no possible retaliatory motives, which, as described above, we believe was not the case.

5. Conclusion

Ultimately, there was simply not enough information to support or refute the allegations in the investigation or determine conclusively whether there was any retaliatory intent on behalf of the Accused. At a minimum, we believe the I/O was ill-prepared for the Accused’s interview, including not gathering important information prior to the interview or asking logical follow-up questions.

CF No. 06-0106

A. Factual Summary

The complainant was a former civilian Department employee. In the course of his/her employment with the Department, the complainant was exposed to metal dust and debris. The complainant had access to shower facilities in the building where he/she worked, which the complainant shared with the Department’s Dive Team. The complainant did not believe this arrangement complied with the California Occupational Safety and Health Act, which requires that employers in the construction industry provide washing facilities to employees for general sanitation.¹⁵

The complainant wrote a letter to his/her supervisor, claiming that he/she was not provided with a facility to shower or change into clean clothes and was exposed to a variety of contaminants, carcinogens, and hazardous substances that were dangerous to his/her health. The complainant then requested that, since there was an existing shower located at his/her work location, the Department should upgrade the shower facility and add an adjoining changing room.¹⁶

After the complainant submitted the letter to his/her supervisor, a Departmental efficiency audit was conducted as part of a process to identify potential savings and streamline work functions. The audit uncovered that approximately 60 percent of the

¹⁵ The law required a minimum of one washing station for “each twenty employees or fraction thereof.” There was no requirement that someone in the complainant’s position, or welders specifically, be provided with separate facilities.

¹⁶ Although the complainant admitted that he/she had shower facilities, the investigation revealed he/she apparently wanted a shower and changing facility solely dedicated to him/herself, without having to share with other Department employees.

requests for work completed by the complainant originated from the Motor Transport Division (MTD). As a result, a decision was made to consolidate the complainant's position with MTD. The complainant was transferred to MTD, which was located on a separate floor at the same location, soon after he/she wrote the letter. The complainant believed he/she was transferred in retaliation for bringing this issue to his/her supervisor's attention and filed a complaint to this effect.

The complaint was adjudicated as "Non-Disciplinary – Employee's Actions Did Not Rise to the Level of Misconduct" based on the following rationale:

The decision to transfer . . . the [complainant's] position . . . to Motor Transport Division (MTD), was clearly based on operational needs. The Commanding Officer of [the complainant's Division] and the former Commanding Officer of MTD, [], conducted an operations efficiency audit and determined that because the majority of [complaint's] work being performed was required by MTD, it would be more efficient and cost effective for the position . . . to be transferred . . . to MTD. . . . There is nothing that indicates the transfer was in any way retaliatory in nature.

LOT at 3.

B. Investigative Deficiencies

At the outset, though we believe that the non-retaliatory basis for the decision to transfer the complainant's position to another division was clearly documented in the investigation, we are still concerned that the I/O's overall handling of the investigation may have left the complainant with the impression that his/her concerns were not taken seriously nor properly investigated.

1. Interviewing Techniques and Demeanor

First, according to the tape-recording, the I/O adopted what seemed to us a dismissive tone in his interview of the complainant and, at times, appeared to unnecessarily challenge the complainant. On the whole, it appears that the I/O did not convey that the Department would take the complaint seriously. Some examples are as follows:

- The I/O asked the complainant in a somewhat confrontational tone, "What are you trying to accomplish by filing this complaint?"
- The I/O commented at various times in the interview, "If I were in your shoes, I probably would have embraced that idea [of being transferred]." "We just spent four hours here. Believe me, this is my job. I don't have a problem with it. But you're making a really poor assumption about my work ethic and who I am here" "That doesn't make any sense to me at all"; and "I asked you three times about this."

Second, the I/O utilized inappropriately leading and suggestive questioning techniques in other interviews, including:

- asking a witness, “[The complainant] alleges that because of issues [the complainant] raised regarding safety, [he/she] was transferred over to Motor Transport. The investigation revealed that the decision to move the position or job description from one location to another may not have been accurate or consistent with this perception, is that correct?”; and
- asking another witness, “The decision to move the [complainant’s] position to Motor Transport was in response to a Department need?” to which the witness responded, “It was in the best interest of the Department.”

2. Lack of Follow-up Questioning

The complainant made a statement in his/her interview that could have been construed as an additional allegation. Although we do not believe this statement would likely have been sustained, based on the balance of the investigation, and the inability of the complainant to provide much in the way of specific detail, the fact that it was not addressed by the I/O could reinforce the perception that the complainant’s other concerns were not taken as seriously as they could have been. This potential allegation contained in the complainant’s tape-recorded interview statement was that the complainant alleged a “pattern of harassing/abusive behavior by supervisors.” The I/O should have asked additional follow-up questions to further clarify this statement.

C. Conclusion

Again, the OIG believes a reasonable, non-retaliatory basis for the transfer of the complainant’s position was clearly documented in the investigation. However, our concern is that the way the I/O treated the complainant left the complainant with the impression that his/her complaint was not being handled appropriately. As a side note, the complainant subsequently contacted the OIG, indicating that he was unhappy with the Department’s Non-Disciplinary adjudication and requesting a case review of the investigation by the OIG.

CF No. 06-1829

A. Factual Summary

The complainant was a civilian supervisor who alleged in a prior complaint investigation (CF No. 05-3228) that his/her supervisor created a hostile work environment. That earlier complaint alleged that the accused was rude to the complainant in front of his/her subordinates, was uncommunicative with the complainant regarding daily operational functions, which contributed toward a hostile work environment, inappropriately discussed another Department employee’s medical status, and was rude to the complainant while discussing the complainant’s sick time usage.

Almost a year later, an opportunity to work overtime was offered to non-supervisory employees in the involved unit. The complainant was not selected to work the overtime

shift. At this time, the prior hostile work environment complaint was still pending. The complainant alleged that not being selected to work the overtime shift was in retaliation for filing the prior hostile work environment complaint. The later retaliation allegation resulted in the initiation of CF No. 06-1829.

The Department "Unfounded" the retaliation allegation in CF No. 06-1829 under the rationale that these opportunities were being offered to non-supervisors, and it would have been more expensive to fill the overtime shifts with supervisors rather than non-supervisors. The adjudicator stated, "If there had not been sufficient response from the [non-supervisory employees], then the overtime may have been offered to supervisors The complainant did not receive the initial e-mail [regarding an opportunity to work overtime] because there are no [non-supervisory employees] assigned to [his/her] unit. There is no evidence that would lead one to believe that [the accused] was purposefully or specifically leaving [the complainant] out of [his/her] first inquiry." (LOT at 1).

The complainant sent an e-mail subsequent to filing the complaint indicating an intent to withdraw the complaint. The contents of the e-mail are, in part, as follows:

I spoke with [the accused] and after making several excuses for [his/her] actions, [he/she] came to see for [himself/herself] that [he/she] did not consider me as [sic] [he/she] could have and apologized, that is a first. I have accepted [his/her] apology and gave [him/her] my word to move forward. It is my hope that we will build a professional working relationship and be an example to others.

Addenda 1.

The I/O notes also suggest that the complainant intended to withdraw the complaint:

[The complainant] requested . . . some time to decide whether or not [he/she] had been the subject of misconduct. [The complainant] . . . stated that [he/she] had reacted emotionally to the incident and had been able to regain [his/her] composure[.] [The complainant] was unsure that retaliation had actually occurred.

Investigator's Note 1.

The same I/O Note also states, "On April 12, 2006, [the complainant] sent [the I/O] an electronic mail further suggesting that [his/her] allegation against [the accused] was unfounded." Although not cited by the adjudicator, this should have been mentioned in the LOT, as the complainant's intent to withdraw [his/her] complaint appears to have significantly contributed to the resolution of the complaint.

B. Investigative Deficiencies

1. Interview of Complainant/Witnesses

Although the adjudication arguably could have been supported by independent evidence, given the delicate and sensitive nature of these complaints, and the possibility that they can ultimately result in litigation, we believe the I/O should have interviewed the complainant after his/her e-mail was received to inquire as to whether the initial emotional reaction, as described, was genuine, whether the complainant's decision not to pursue the complaint was made independently, and whether any Department employee improperly pressured the complainant to withdraw the complaint.

Again, not all witnesses were interviewed. At a minimum, the I/O should have interviewed the accused employee. There is no documentation in the file that would explain why the accused was not interviewed. Such an interview would have shed light upon the accused employee's intent with respect to whether there was any malice that contributed to the decision not to send the e-mail offering the overtime opportunity to the complainant. This issue, in particular, needed more thorough explanation given that the accused apparently told the complainant, when he/she inquired about the e-mail offering the overtime opportunity, that the accused did not know why the complainant had not received the e-mail. Assuming the accused knew that the e-mail was only sent to non-supervisors, and that the complainant did not supervise any employees at the time, it is unclear why the accused would have then suggested that the complainant should have been provided with this overtime opportunity.

2. Documenting Tape Numbers

The interviews themselves were mostly listed in I/O notes, without references to specific tape-numbers. There were at least seven additional interviews, at least four of which appear to be listed in I/O notes, yet none of these interviews appear to have been tape-recorded. The lack of tape numbers prevented the OIG from ordering and listening to these tapes.

C. Conclusion

On a positive note, the OIG was encouraged to see that training was recommended for all involved supervisors with detailed guidelines to follow when attempting to assign overtime. Moreover, though CF No. 05-3228 was ultimately "Unfounded," previous issues identified as training concerns in this earlier complaint were addressed by referring both involved parties to the Behavioral Sciences Section for resolution of their personal issues. The OIG was pleased to see that attempts were made to mediate the interpersonal conflict between the complainant and the accused.¹⁷

¹⁷ Ultimately, however, the complainant refused to participate in this mediation process without representation, and the mediation apparently never transpired.

CF No. 05-3674

A. Factual Summary

The complainant in this case was transferred and demoted from a supervisory position to a non-supervisory one. Over a three-year period, the complainant received multiple negative Comment Cards, Notices to Correct Deficiencies (NTC), and unsatisfactory Performance Evaluations, which resulted in the rare occurrence¹⁸ of the Department's implementation of an Area Liability Incident Response Training (ALIRT) Package.¹⁹ The captain of the involved division made a recommendation to downgrade the complainant, which was approved and implemented by the Department.

The complainant reported to two supervisors (Supervisor Nos. 1 and 2). These supervisors directed the complainant on numerous occasions to follow their directions, complete work assignments, and consult with them to meet deadlines. The complainant's failure to follow these directions were thoroughly documented.

The complainant claimed to have engaged in protected activity by filing two prior complaints: one involving a performance evaluation he/she believed to be unfair, and another because Supervisor No. 1 did not nominate the complainant to attend the Sherman Block Supervisory Leadership Institute. The complainant believed his/her subsequent transfer and downgrade were in retaliation for these previous complaints.²⁰

This one allegation of retaliation was adjudicated as "Unfounded." The rationale relied on the documents included within the investigation, which pointed to myriad supervisory and work-performance issues with respect to the complainant. Moreover, the complainant provided no evidence or support to indicate that the Department's decision to transfer/demote the complainant was the product of anything other than the complainant's clearly documented work performance issues, as the complainant did not make him/herself available for a formal interview by WIU.

¹⁸ It is our understanding that an ALIRT package is compiled when Department supervisors overseeing a particular employee, particularly a supervisory employee, feel it is necessary to document the employee's deficiencies in anticipation of a potential demotion or downgrade. The package is also utilized in anticipation of subsequent litigation by the involved employee.

¹⁹ OIG staff reviewed the ALIRT package at the involved division. The ALIRT package consisted of all the documents contained in the complaint file, including the negative Comment Cards, Performance Evaluations, and NTCs, as well as the employee's responses thereto. It also contained all e-mail correspondence between the complainant and his/her Commanding Officers (CO). The ALIRT package presented an extremely detailed and thorough evaluation of the complainant's professional conduct and performance over several years.

²⁰ This allegation was brought to the attention of the OIG, who had been telephonically contacted by the complainant. As a result, the OIG prepared the face sheet listing Supervisor No. 1 as an accused.

B. Investigative Deficiencies

Overall, though we believed the quality of the investigation was sufficient, we noted some minor investigative deficiencies which we felt would have further enhanced the overall quality of the investigation. To begin with, as a precautionary measure, the I/O should have considered interviewing the captain who ultimately recommended the complainant's demotion and transfer to substantiate the accused's claim that the complainant's work performance issues justified this extreme decision, though, again, these performance issues were well-documented throughout the complaint.

Moreover, the I/O should have considered interviewing Supervisor Nos. 1 and 2 in a way that would have solicited greater detail with respect to their professional relationships with the complainant. It is of some concern that the interviews with the supervisors were so short (approximately five minutes each) and involved general questions about whether they retaliated against the complainant. There were no probing, detailed questions about specific incidents or problems that the complainant alleged to have encountered (as detailed in his/her employee responses included in the investigation) while they supervised the complainant. However, this omission may have been explained by the fact that the complainant had failed to provide further information/corroboration for his/her retaliation allegation, other than the initial cursory complaint made to the OIG.

C. Conclusion

Overall, we believe CF No. 05-3674 was the best quality investigation of the four reviewed.

IV. Retaliation – Moving Forward

Based on our comprehensive review of retaliation cases over the past several years, in combination with our review of the four cases noted above, the OIG has developed a unique understanding and perspective about what it would take for the Department to further enhance its handling of all retaliation investigations. We have some basic impressions and thoughts which we believe could assist the Department in moving forward into a new direction with respect to how retaliation cases are handled.

A. Centralizing Retaliation Investigations

We believe that there should be a centralized, dedicated unit or cadre of personnel with specialized skills and training that should be assigned sole responsibility for investigating all retaliation investigations. In March of 2005, the Department created (WIU), a special unit operating under Professional Standards Bureau (PSB), dedicated to handling complaints by Department employees involving retaliation or other workplace concerns. WIU arose out of the Department's recognition of the need for such a specialized unit.²¹

²¹ However, given that we only reviewed one WIU case (CF No. 05-3674) in this Report, we believe it would be premature to judge the success of WIU.

We believe centralization provides a much-needed, single point of contact for all retaliation cases. It can also assist in developing a cadre of subject-matter experts.

Moreover, we think a centralized unit can assist in developing a collaborative relationship between I/Os and adjudicators at critical stages of the investigation. Ideally, throughout the course of the investigation, there should be a periodic, interactive dialogue between the person conducting the investigation and the person who will be adjudicating it. The existence of a centralized unit can assist in ensuring such dialogues occur.

Centralization can also allow appropriate follow-up by the CO when workplace issues have been identified.²² Presently, WIU includes a section in their investigations entitled "Management Awareness." This section describes what remedial steps are recommended for the CO with respect to any identified workplace concerns. It also touches on key areas of utmost importance to workplace investigation issues – steps taken to stabilize the work environment, temporary re-assignment of key employees, and management's role in prevention of workplace environment issues at supervisor meetings. The OIG commends WIU for including such recommendations, though there should be a similar required section in the LOT to describe what remedial steps actually have been taken by the CO/Command specifically in response to the investigator's assessment. We believe centralizing retaliation cases can assist in this process by allowing for a more interactive and informed dialogue between the CO and the investigator.

B. Training and Procedures

At a minimum, if assigning every retaliation case to one centralized unit is not feasible,²³ we recommend that all investigators who may ultimately be assigned retaliation complaints receive specialized and application-based training. Given the sensitive and complex nature of these cases, their propensity to negatively impact the workplace if not properly and expeditiously addressed, and the possibility that such cases can result in litigation, we believe the Department should ensure that all investigators assigned to handle retaliation cases have specialized training.²⁴

²² Recommendation #1 in the OIG's First Report provided in relevant part:

Whenever a retaliation complaint is made, a specific Department entity . . . should be assigned to conduct an immediate workplace evaluation That evaluation should:

- Determine if appropriate proactive measures have been taken by the commanding officer and supervisors to prevent the matter from escalating; and,
- Identify any remedial action necessary to address workplace issues. This evaluation should be conducted regardless of the ultimate outcome of the complaint investigation.

²³ We understand that WIU does not currently handle every case where retaliation is alleged.

²⁴ We would also suggest that a designated Department "subject matter expert" review completed retaliation investigations prior to adjudication to ensure that they have been properly conducted and all relevant issues addressed.

As described in Section III of this Report, our review revealed that there may not be adequate training to those who investigate retaliation cases.

The OIG reviewed two Power-Point presentations²⁵ used by WIU when conducting training for various Department entities, which we believe outline the relevant issues in retaliation cases and which underscore the Department's ongoing efforts to achieve best practices in this area. Some of the areas highlighted by these presentations include:

- Not perpetuating so-called "Myths of Workplace Misconduct." Such myths are that behavioral problems can be ignored because supervisors believe employees' personalities cannot be changed, behavioral problems cannot be documented as easily as performance issues, and since behavioral issues do not seem to directly affect work performance, employees must learn to live with difficult people. The presentation stresses that behavioral problems can lead to more serious problems and should not be ignored, but must be addressed as early as possible.
- Nurturing a culture of workplace respect, which is accomplished through encouraging positive organizational values and vision, strong leadership, preventative programs, resolution strategies and resources (such as education and counseling), and accountability.
- Setting an appropriate tone in the workplace in terms of expectations, implementing systems and controls; ensuring employees possess relevant skills, training, and experience; proper timing when taking corrective action; identifying environmental issues; looking for disparate accountability amongst employees; and monitoring and debriefing key players when potential problems arise.
- The subtle differences between retaliation (where an employee must establish a causal link between protected activity and an adverse employment action), hostile work environment (where harassment must be severe or pervasive, and based on a protected classification), and discrimination (disparate treatment must be based on race, gender, age, religion, or sexual orientation).

The Department also utilizes a checklist for investigators to follow when conducting all retaliation cases. The checklist recommends identifying the following: the alleged offense and specific issues that support or refute the offense; victims, complainants, and witnesses; the relationship and history of the involved parties; dates, times, and locations of the specific offenses; demeanor/reaction of the complainants/witnesses to the offense; management awareness and corrective action, if any; evidence and documentation that could support or refute the offense; verbal or written communication between the parties; and any damages resulting from the alleged misconduct.

²⁵ The first power-point presentation dated October 25, 2006, is entitled, "Investigating Complaints – Workplace Misconduct," and the second, dated December 4, 2006, is entitled "Managing Employee Conflict – Workplace Misconduct."

In 2006, WIU conducted training sessions for the following entities: Command Staff, Internal Affairs School, Internal Affairs Group (IAG)/PSB personnel, Command College, Central Traffic Division, and Ombuds Assessment Unit. WIU continues to respond to training requests by individual units.

The OIG believes these written materials and training efforts²⁶ are a good start in ensuring that retaliation cases are handled appropriately.

C. Retaliation Advisory Committee

As indicated previously, retaliation cases are sensitive and complex by nature and have a propensity to negatively impact the workplace if not properly and expeditiously addressed. We believe such cases warrant review and input at the highest levels of the Department.

Therefore, the Department may wish to consider implementation of a Risk Management Executive Committee (RMEC)-like advisory committee, or even assign RMEC itself, to oversee retaliation cases (limited only to those cases where actual workplace issues have been identified).²⁷ The I/O assigned to the case and the CO of the involved command²⁸ could make presentations to the committee prior to the final adjudication of the complaint. The idea would be to have a discussion of the underlying issues and a collaborative evaluation of various remedial options to address any workplace concerns raised by the investigation prior to its adjudication. The CO could also brief the committee as to any remedial action taken to date and the intended disposition of the case. Ideally, the prospect of ultimately being required to brief Department Command Staff should have a positive impact on how both I/Os and COs would handle these types of cases, beginning at the earliest stages of the investigation.

We feel that this RMEC-type reporting mechanism will go a long way toward addressing problems among employees in many retaliation cases that can fester and grow if not confronted in a timely and remedial manner. In addition, since these issues are so often personality-driven, we believe conflict resolution in a consultative manner with a range of Command Staff can only enhance the Department's ability to properly remediate workplace concerns.

²⁶ We also suggest that all investigators handling retaliation investigations seek outside training opportunities. For example, the OIG is aware that there is a two-day course on retaliation and discrimination provided by the Equal Employment Opportunity Commission (EEOC). In addition, the OIG has been made aware of specialized training classes provided by various law firms who routinely litigate and/or advise both private and public sector clients on these matters and who may be of assistance.

²⁷ RMEC reviews, processes, and makes recommendations to the Chief of Police regarding Department-wide risk and liability issues. Membership is comprised of COs from the following Bureaus: Consent Decree (Chair); TEAMS II Development; each of the four geographic Bureaus; Risk Management Group; Employee Relations Group; Behavioral Science Services; Professional Standards Bureau or when unavailable, the CO of IAG; Administrative and Technical Services Bureau; and the concerned employee's Bureau CO, if not already in attendance. Present as observers include representatives from the Office of the City Attorney and the Office of the Inspector General.

²⁸ If the CO was an accused, then his/her CO would make the presentation to the Committee.

V. Status of Past OIG Recommendations Regarding the Department's Retaliation Policy

Attached is an Appendix containing the status of previous recommendations made by the OIG in our prior retaliation reports. As described in greater detail in the Appendix, the OIG believes that several of the recommendations made in the past may no longer be necessary, given that practices put in place by the Department have resolved many of the issues regarding referral to outside entities or not treating serious retaliation cases with appropriate attention and respect.

VI. Conclusion

Prior to July 2005, when the New Policy was created and implemented, we had significant concerns regarding the Department's efforts to address concerns relating to the Department's anti-retaliation policy. The OIG believes that with the implementation of the New Policy, increased retaliation training, an emphasis on reporting acts of retaliation by all employees, and having those with specialized training investigate retaliation complaints, the Department has made great strides to address the OIG's previous concerns.

As for the policy itself, the OIG believes there has not been enough time or a sufficient number of completed investigations to fully evaluate its effectiveness and, thus, the OIG reserves judgment for future reports. In the meantime, the OIG is especially pleased with the Department's overall increased awareness of the myriad issues relating to retaliation by placing an emphasis on the proper identification and investigation of retaliation (including providing retaliation training to all Department supervisors, as well as addressing and remediating workplace concerns).

Essential to the Department's future success in handling retaliation cases is support from the highest levels of the Department. Such support needs to occur not only with respect to assigning adequate and properly trained staff to investigate retaliation complaints, but also in dealing with sensitive employee information in a discreet and respectful manner, and taking appropriate remedial measures at critical junctures throughout the investigation.

Moreover, we would like to see enhanced accountability and ownership of retaliation issues by managers and Commanding Officers and, particularly, proactive efforts to take remedial action when workplace issues arise.

Accordingly, the OIG makes the following recommendations:

- 1) The Department should consider having a centralized entity or unit handle all retaliation complaint investigations, including allocating sufficient resources, and providing essential training to this unit.

- 2) If it is not feasible to have a centralized unit handle all retaliation cases, at a minimum, all investigators who handle retaliation complaints should be provided with specialized training, so as to ensure that the quality of these investigations is consistent throughout the Department.
- 3) The Department should consider implementing a RMEC-type structure to enhance accountability, broaden the reporting and decision-making processes, and increase the Department's effectiveness in addressing workplace concerns.

APPENDIX

In its First and Second Reports, the OIG made a number of recommendations aimed at enhancing the effectiveness of the Department's anti-retaliation policy. In all, 12 recommendations were made in the First Report and four recommendations were made in the Second Report. The Department's Civil Rights Integrity Division (CRID) is responsible for tracking the progress of the Department's response to these recommendations. We have met with their CO who agrees with our assessment as to the merits of the outstanding recommendations.

A. Stale/Potentially Unnecessary Recommendations

The recommendations that can be categorized as "stale," or no longer necessary, are as follows (Recommendation Nos. 1-12 were made in the OIG's First Report, and Recommendation Nos. 13-16 were made in the Second Report):

- Recommendation 4: The Department's Annual Retaliation Report should include findings of workplace evaluations along with the status of each recommendation.

It is our understanding that what the Department considers to be its Annual Retaliation Report is simply a tracking of the recommendations from prior OIG reports. Given the increasing number of retaliation cases the Department investigates every year, we believe this recommendation may be considered stale. Instead, an emphasis should be placed on including the results of workplace evaluations in the underlying investigation as well as what steps were taken to address the findings therein.

- Recommendation No. 12: Prior to referring retaliation cases to the Ombuds Office or the Police Commission Discrimination Unit, PSB should forward the complaint to the OIG along with thorough documentation justifying the referral so that the OIG can ensure that all issues have been addressed, and that the referral is appropriate.

The OIG is satisfied that the referral to our office is not necessary as long as IAG/WIU continues to properly identify and assume investigative responsibility for workplace complaints that involve potential misconduct, as opposed to mere interpersonal conflicts.

- Recommendation 13 (#1 in the Second Report): The Department should re-evaluate the use of the Non-Disciplinary classification to close retaliation complaint investigations with related litigation solely because the litigation is settled or dismissed unless a properly completed investigation reveals that the case properly qualified for Non-Disciplinary classification.

It has been the OIG's experience that the Department continues to investigate litigation-related complaints, and they are no longer simply closing out retaliation cases when the related litigation has settled. Instead, more thorough investigations

are being conducted. In the Third Report, the OIG discussed this recommendation as “delayed,” but as noted, the Department may want to re-visit this recommendation, as it may no longer be necessary.

- Recommendation 14 (#2 in the Second Report): The Department and Police Commission Discrimination Unit (PCDU) should collectively re-evaluate PCDU's current policy of not sharing its investigations with the Professional Standards Bureau (PSB), including analyzing whether this policy is both legally sound and consistent with Consent Decree paragraphs 93(b)(ii) and (x).

This recommendation is stale because PCDU is no longer conducting discrimination investigations. Rather, they are being handled by IAG.

- Recommendation 16 (#4 in the Second Report): The Department should work with the OIG to develop protocols for the referral of retaliation cases to Ombuds, which should include mechanisms to ensure preliminary investigations are properly conducted and documented and that all interested parties, including PSB, the Ombuds, and the OIG, are aware of the justification for the referral.

We believe this recommendation is no longer necessary because WIU and/or other IAG entities are now conducting most retaliation investigations. It has been our experience that matters identified as involving pure personality conflicts, as opposed to actual allegations of misconduct, may still be referred to the Ombuds. However, it appears to us that IAG/WIU investigators now possess an increased understanding of the complex issues related to retaliation cases and workplace issues and are properly identifying those cases that have the potential for involving retaliation or other potential misconduct. It is our belief that, currently, referral to the Ombuds occurs only after an in-depth assessment has been made that no potential misconduct exists.

B. Update on Remaining Recommendations

With respect to the remaining recommendations that have been fully or partially implemented by the Department in the past, the OIG stated in the Third Report that, “any evaluation of the effectiveness of the implementation at this time would be premature.”

Given that the OIG was only able to review four retaliation investigations that closed in the time period since the New Policy was implemented for this Report, we believe a true analysis of how these recommendations are being implemented continues to be premature. However, the OIG can state anecdotally that the remainder of the recommendations have generally been completed or are being tracked and/or addressed effectively. Those additional recommendations are as follows:

- Recommendation 1: Whenever a retaliation complaint is made, a specific Department entity – whether the Ombuds Office or some other unit – should be

assigned to conduct an immediate workplace evaluation to provide enhanced oversight of the subject work environment. That evaluation should:

- Recommend whether the accuser and accused should be separated while the matter is being investigated;
- If separation is recommended, identify the person(s) who should be moved and whether assignment to different watches or a different command is appropriate;
- Determine if appropriate proactive measures have been taken by the commanding officer and supervisors to prevent the matter from escalating; and, evaluation should be conducted regardless of the ultimate outcome of the complaint investigation.

We believe that WIU is currently attempting to do this in some cases but that if a RMEC-like committee is instituted to handle these cases, these issues will be addressed by the involved CO in anticipation of briefing the committee.

- Recommendation No. 2: The results of a workplace evaluation and the actions taken in response to it should be documented at that time as well as in the subsequent LOT for the complaint.
- Recommendation No. 3: Every LOT adjudicating a retaliation complaint must also address the measures taken, if any, at the time the complaint was made to prevent the situation from escalating. Those actions must be evaluated regardless of the complaint's outcome.
- Recommendation No. 5: Any subsequent disciplinary action initiated by a supervisor towards an employee who has accused him/her of retaliation should be reviewed in consultation with a superior or commanding officer and/or the outside environmental assessment unit in an effort to ensure that such subsequent disciplinary action does not appear to be retaliatory.

These recommendations can be satisfied if COs are held to the requirement that they document their remedial actions in their LOTs (which may have already been presented to a RMEC-like committee, if one is instituted). Moreover, if investigators are encouraged to take a "holistic/expansive" view of the complaint and continue to monitor subsequent developments with the complaint, Recommendation No. 5 can also be addressed in the LOT.

- Recommendation 6: Formal retaliation training should be provided to every Department manager and supervisor stressing their responsibility to proactively prevent retaliation or the appearance thereof and addressing it when it occurs. Such training should include:
 - The importance of ensuring that disciplinary and other actions are enforced equally, even if an employee is considered to be an "underperformer" or "troublemaker."

- A supervisor's obligation to prevent and/or address derogatory references or other inappropriate actions against an employee who has either filed a claim or initiated litigation against the Department and/or Department employees.
- The importance of ensuring fair and objective employee evaluations on an ongoing basis to avoid the appearance of retaliation.

In November 2005, the Department unveiled its revised retaliation training, complete with a training outline and training bulletin.

- Recommendation 7: Command officers must hold supervisors accountable for preventing and addressing retaliation, including formal documentation of supervisory performance in preventing and addressing retaliation. Command officers who fail to do so must similarly be disciplined.

This recommendation is being addressed, in part, in employee performance evaluations.²⁹ The OIG will revisit to this recommendation in future reports when a larger universe of cases can be analyzed to evaluate whether supervisors accused in sustained cases are being properly disciplined and whether cases are otherwise being properly adjudicated.

- Recommendation 8: The Department should institute a formal "debriefing" process after each large settlement or jury award to determine what lessons can be learned and what, if any, preventative measures should be implemented to avoid similar issues in the future.

We have been informed that Risk Management Group command staff regularly meet with the Chief of Police to discuss such settlements and other significant legal developments, as well as what, if any, remedial measures should be adopted to prevent similar recurrences in the future. Such "debriefings," including evaluating the need for any remedial action as a result of such awards or settlements, could also be discussed at the RMEC-like committee.

- Recommendation 9: A copy of every retaliation claim for damages, lawsuit, and complaint filed with another agency should be forwarded to PSB and a personnel complaint initiated.

²⁹ The Department revised their performance evaluations for supervisors, via two Special Orders, in 2003. Both include provisions regarding fostering a positive work environment. The guidelines for lieutenants and below state that a supervisor should "[understand] the obligation and importance of maintaining a positive work environment; [prevent] retaliation, discrimination, intimidation, coercion and harassment; [encourage] discussion and resolution of subjects of concern to and between employees; is sensitive to and addresses workplace conflicts in a timely manner and demonstrates conflict resolution skills." The guidelines for captains and above provide, "Does the employee understand the obligation and importance of maintaining a positive work environment that is free from invidious discrimination, retaliatory action, intimidation, coercion, and harassment, and manage the command accordingly? How well does this employee inspire subordinate employees to ensure they actively participate in creating a positive work environment? Is this employee sensitive to workplace conflicts and does he/she address them in a timely manner, demonstrating conflict resolution skills?"

This recommendation has been fully implemented.

- Recommendation 10: PSB should investigate every retaliation claim for damages, lawsuit, and complaint filed with another agency that includes an allegation of retaliation, regardless of any action the other agency might take with respect to the case.

This recommendation has been fully implemented.

- Recommendation 11: In complaints where PSB's investigation reveals no misconduct but that a referral to Ombuds or PCDU would be appropriate, such claims should be formally closed out by PSB prior to the referral to Ombuds or PCDU.

This recommendation is currently being implemented. This recommendation arose out of a concern that cases were extending beyond the statute date after being referred to outside entities such as the Ombuds. PSB has since implemented systems to track the statute of all cases, including those originally involving workplace concerns.

- Recommendation 15 (#3 in the Second Report): The Department should ensure that both CO's and I/O's who investigate and adjudicate complaints are properly trained and educated as to the application of various tolling procedures to the cases they investigate. Such training should include when tolling would begin, and in what circumstances it would end, as well as underscoring the need to communicate with other entities such and RMG to ensure that PSB is timely notified of both the filing and dismissal of Claims for Damages and lawsuits so that personnel complaints can be promptly initiated, and the Statute of Limitations . . . for such complaints properly calculated.

This recommendation has been implemented.

The OIG will continue to track the progress of its recommendations from past reports and will work with CRID to evaluate the best methods to continue implementing any outstanding recommendations.