

LOS ANGELES POLICE COMMISSION

***REVIEW OF THE DEPARTMENT'S
CATEGORICAL USE OF FORCE
INVESTIGATIONS AUDIT
(Fiscal Year 2007/2008)***



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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PURPOSE

The Office of the Inspector General (OIG), pursuant to Consent Decree (CD) Paragraph 135, reviewed the Department's Categorical Use of Force (CUOF) Investigations Audit (Audit). The Audit was performed by Audit Division (AD) and was completed in the Fourth Quarter, Fiscal Year 2007/2008, and received by the OIG on July 1, 2008. As required, the OIG assessed the Audit's completeness, findings and quality.

BACKGROUND ON AUDIT DIVISION'S AUDIT

Audit Division conducts both a CUOF *Systems* Audit and a CUOF *Investigations* Audit due to the large number of related Consent Decree Paragraphs that are required to be evaluated on an annual basis. The CUOF *Systems* Audit evaluates various aspects of CUOF incidents and the overall investigative process, but it does not focus on the detailed investigative steps associated with individual completed investigations. The CUOF *Investigations* Audit evaluates the quality of the individual completed investigations, including recorded and transcribed interviews, collection and preservation of evidence, canvassing for witnesses, and completeness of the investigation. Additionally, the CUOF *Investigations* Audit evaluates the performance of uninvolved supervisors regarding their incident oversight and post-incident reviews.

The Consent Decree defines a CUOF as the use of deadly force (e.g., officer involved shootings (OIS), carotid restraint control holds, law enforcement related injuries resulting in hospitalization (LERI), head strikes with an impact weapon, deaths while the arrestee or detainee is in custodial care of the Los Angeles Police Department (LAPD or Department), and canine contacts resulting in hospitalization). There are approximately 120 CUOF incidents every year. At the Department's discretion, other incidents can also be investigated as a CUOF, especially when significant risk-management issues are present.

The Audit's purpose was to assess the Department's compliance with Consent Decree Paragraphs 57, 62, 80, 82, 128 and 129, which were categorized into 23 Objectives. Audit Division's selected population consisted of a randomly selected statistically valid sample of 31 CUOF investigations that had been reviewed and approved by the Commanding Officer of FID from September 1, 2007 to March 21, 2008.

The table on the following page presents the compliance rate for each of the 23 Objectives and related Consent Decree (CD) Paragraphs, with the non-compliant (less than 95%) Objectives/Paragraphs bolded.

**AUDIT DIVISION'S EVALUATION OF CONSENT DECREE (CD) COMPLIANCE BY
OBJECTIVE AND CD PARAGRAPH (¶)**

Objective No.	CD ¶	Audit Objective Title	Compliance Rate 2006/2007	Compliance Rate 2007/2008
1	57g	Criminal Investigations of CUOF	100% (27/27)	100% (31/31)
2	80a	Record Interviews	100% (27/27)	100% (31/31)
3	80b	Interview Witnesses at Convenient Sites and Times	96% (26/27)	100% (31/31)
4	80c	No Group Interviews	100% (27/27)	100% (31/31)
5	80e	Interview On-Scene Supervisors Regarding Their Conduct	96% (25/26)	97% (30/31)
6	80f(i)	Collect and Preserve Evidence	96% (26/27)	96% (26/27)*
7	80f(ii)	Canvass for Witnesses	100% (27/27)	100% (31/31)
8	80g	Inconsistencies in Statements Addressed	100% (27/27)	100% (27/27)*
9	82	Collateral Misconduct Investigations	100% (8/8)	100% (10/10)*
10	128a	Completeness of the Investigation	100% (27/27)	100% (31/31)
11	128b(i)	No Canned Language	100% (27/27)	100% (31/31)
12	128b(ii)	No Inconsistent Information	100% (27/27)	100% (31/31)
13	128b(iv)	Lack of Indicia the Information Is Not Authentic or Correct	100% (27/27)	100% (31/31)
14	128b(iii)	Articulation of the Legal Basis for the CUOF	100% (27/27)	100% (29/29)*
15	128c(i)	Underlying Action was Appropriate and Legal	100% (27/27)	100% (22/22)*
16	128c(ii)	Underlying Action Conformed with Department Procedure	100% (24/24)	97% (28/29)*
17	128d(i)	Supervisory Oversight of the Incident	88% (23/26)	87% (27/31)
18	128d(ii)	Supervisory Post-Incident Review	96% (26/27)	100% (31/31)
19	62a	Review of Supervisory Action in Seven Days	88% (14/16)	87% (27/31)
20	62b	Supervisory Conduct Considered for Performance Evaluation	79% (19/24)	84% (26/31)
21	129b	Explanation for Missing Evidence	100% (27/27)	100% (31/31)
22	129c	Comparison of Investigator Summary with Witness Statements	100% (27/27)	100% (31/31)
23	129d	Adequacy of the Investigation	81% (22/27)	100% (31/31)

Greater detail of AD's methodology and findings can be found in its Audit Report dated June 25, 2008.

* For this Objective, not all 31 CUOF investigations in AD's sample were applicable to be tested.

FOCUS POINTS

Audit Division identified three Objectives, all relating to supervisory oversight, that fell beneath the 95 percent compliance standard for CUOF investigations. For Objective No. 17, all involved officers were not separated in three incidents, and one officer was monitored by a non-sworn supervisor. For Objective No. 19, supervisory action was not reviewed in seven days in four incidents. For Objective No. 20, supervisory conduct was not considered for performance evaluations in five incidents. In AD's 2006/2007 Audit, these three Objectives similarly fell beneath the 95 percent compliance standard.

REVIEW METHODOLOGY

The OIG assessed the completeness, findings, and quality of AD's Audit, related audit plan, supporting work papers, and source documents.¹ The OIG performed a limited review of 16 completed investigations that were audited by AD.² The OIG Audit Section primarily relied on reviews of the CUOF incidents/investigations already previously performed by the OIG Use of Force Section.

On September 26, 2008, the OIG met with AD management to discuss the results of this review. At that time, AD management provided feedback and comments regarding the review's findings, most of which AD disagreed with.

REVIEW RESULTS

COMPLETENESS

To assess the completeness of the CUOF Investigations Audit, the OIG reviewed the Audit Report and supporting work papers to ensure that Consent Decree mandates were addressed and that all of the investigations fitting AD's criteria were included in the Audit.

Based on the Department's Annual Audit Plan, the Audit evaluated all required Consent Decree mandates. Regarding the audit population, AD requested from FID a complete population of 44 CUOF investigations completed from October 1, 2007, through March 31, 2008.³ Audit Division then randomly selected a statistically valid sample of 31 CUOF investigations for review.⁴

¹ The OIG Audit Section selected its sample size of 16 CUOF investigations utilizing a one-tail 95% confidence level, expected error rate of 6%, and plus precision of 7%.

² Since the OIG Use of Force Section had already previously reviewed all CUOF investigations in great detail and developed findings, the OIG Audit Section focused its review on those findings that contained higher risk-management concerns.

³ Audit Division incorrectly reported that the population was selected from the period September 1, 2007 through March 31, 2008.

⁴ Audit Division's population was selected from a sample size of 31 CUOF investigations utilizing a one-tail 95% confidence level, expected error rate of 6%, and plus precision of 4%.

FINDINGS

The OIG independently performed the same audit tests performed by AD for our randomly selected 16 investigations, and identified the following additional findings not reported by AD:

F012-07 - In-Custody Death

Incident Summary

Police officers were patrolling and stopped a vehicle with a broken rear right brake light. The officers exited their vehicle and asked for the suspect's driver's license. The suspect provided false identification. The suspect was then asked to exit his vehicle, at which time, he ran away. During the foot pursuit, the suspect fell to the ground. The officers ordered the suspect to remain on the ground, but he refused and subsequently walked towards the officers in an aggressive manner. An officer deployed the collapsible baton and utilized several baton strikes to apprehend the suspect. The suspect was handcuffed, a hobble was secured on his ankles, and then he was placed inside the police vehicle. The suspect appeared to the officers like a zombie and very disoriented. The suspect had the symptoms of being on phencyclidine (PCP), and requested that he be allowed to stick his head out of the window for more air. The suspect was then transported to the police station where he fell to the ground upon being taken out of the police vehicle. While the suspect was transported back to the area police station, the supervisory sergeant remained at the scene to conduct a non-categorical use of force investigation.

Objective No. 17 – On-Scene Supervision

After the suspect was initially taken into custody, two of the involved officers departed the scene and traveled to the area station. Shortly after arriving there, they were directed to return to the scene in order to meet with a sergeant who had remained. When they did so, the two officers were asked what role they had in the incident. The sergeant they spoke with then separated them and told them to go back to the area station with a supervisor.

According to the two officers, they drove in their own police car, by themselves, and followed a supervisor back to the Hollenbeck Station. When asked whether they had discussed the incident during their drive back to the station, the officer replied that they had not.⁵

Therefore, it appears that the two officers did not remain separated, even though they were involved in the use of force that preceded the In-Custody Death. Department policy requires the separation of officers determined to have been involved in a Categorical Use of Force, such as this one, and it appears that the lack of separation between the two officers was at odds with this policy.

⁵ Officer's Transcript Tape No. 3926245, Page 24, Line 17 to Page 27, Line 12.

F019-07 - Officer-Involved Shooting

Incident Summary

Police officers responded to a radio call of a man with a gun. The officers observed two females standing outside the described vehicle and asked them to move to the sidewalk. The vehicle's brake lights illuminated and the vehicle sped away. The suspect stopped the vehicle in the driveway of his residence. The officer saw the suspect pulling up an unknown metal object from his side, and the officer fired one round at the suspect, which missed. The suspect then ran inside his residence, and a perimeter was established. Special Weapons and Tactics officers responded to the scene, and the Crisis Negotiation Team negotiated with the suspect who was hiding in the attic of the residence. Tear gas was deployed directly into the attic. A short time later, the suspect dropped through the ceiling doorway. The officers utilized the taser device on the suspect, at which time he was subdued and handcuffed.

Objective No. 13 - Lack of Indicia the Information Is Not Authentic or Correct

During some of their interviews, FID detectives asked inappropriately leading questions. During one officer's interview, for instance, he described seeing the suspect reach toward either his jacket pocket or his waistband, produce "an unknown metal object,"⁶ and point it at another officer. While questioning the officer about the object, an FID detective asked, "And was it a shiny metal object that you saw, or was it like a – like a blue steel metal object?" The officer responded by indicating that it was a shiny silver metal object. The FID detective then asked, "When you say 'shiny silver metal,' are we talking about possibly stainless steel type of a handgun?" The officer responded, "Yes, definitely."⁷

The OIG believes that these questions risked inappropriately contaminating the officer's account. This is of particular concern, given that the suspect's possession and manipulation of a gun forms the justification for a categorical use of force, and although there is substantial testimony indicating that the suspect may indeed have possessed a gun, no gun was ultimately located.

F036-07 – Officer-Involved Shooting

Incident Summary

Police officers responded to a radio call of a possible kidnap victim. When they arrived at the residence, they heard yelling. The suspect refused to exit the residence to talk to the officers. The officers forced entry into the house. When they did so, the suspect advanced towards an officer with a metal rod. The suspect held the rod in a one-handed grip, above his head, with his arm cocked back. The officer fired two rounds at the suspect, who died on scene.

⁶ Officer's Transcript CD No. 2414, Page 32, Lines 12-17.

⁷ *Id.*, Page 33, Line 19 to Page 34, Line 4.

Objective No. 13 - Lack of Indicia the Information Is Not Authentic or Correct

During the interview with FID, the supervisory sergeant drew on a diagram to indicate the positions of the entry team officers as he observed them when entering the residence after hearing gunshots. Subsequently, FID used the same diagram during their interviews of three other witnesses, nine to eleven days later. To avoid "contaminating" a witness' account of the incident with the observations of another, the OIG would have preferred that FID had not used the sergeant's diagram in interviews of other witnesses. Force Investigation Division responded to the OIG and concurred with this finding.

Objective No. 17 – On-Scene Supervision

Two witness officers, who were not part of the entry team, were not separated and monitored after the incident, as required by Department policy and the Consent Decree. Instead, they remained at the scene until it was cleared. The officers indicated that they were admonished not to discuss the incident, and that they refrained from discussing the incident with anyone until their interview by FID detectives. The OIG believes that although these two witness officers did not see the officer-involved shooting, they played significant roles and made important observations in the aftermath of the shooting, and should have been separated and monitored.⁸ The officers entered the suspect's house after he had been shot, and they encountered the victim and directed her to exit the house. The officer also observed the suspect on the ground and attempted to determine whether he was still armed. Due to the fact that they were witnesses to the incident, and in order to maintain the integrity of the investigation as well as compliance with Department policy and the mandates of the Consent Decree Paragraph 61, the officers should have been separated and monitored.

Other Finding

The supervisory sergeant directed an officer to conduct a taped interview of the victim/witness shortly after the incident concluded, and this interview resulted in a seven-page transcribed statement. For a CUOF incident, only FID detectives should be involved in interviewing officers and witnesses.

QUALITY

The OIG evaluated both the Audit and Audit Report for quality. Based on the OIG's review, the Audit was properly planned, supervised, and executed, in that the Audit's methodology allowed for proper and complete assessment of the audit objectives pursuant to Consent Decree mandates. Additionally, the Audit Report delineated the Audit's purpose, population, time period, findings, and the status of prior audit recommendations. The Audit Report used a fair and unbiased tone, and was found to be concise. The OIG commends AD for conducting an exit conference with FID on June 18, 2008, prior to the issuance of the Audit report.

⁸ CD ¶61 states that "All involved officers and witness officers shall be separated immediately after an OIS."

CONCLUSION

Overall, the OIG found the Audit to be complete and of quality, and it appears that AD conducted a thorough analysis of the CUOF investigations it audited and their findings were supported. Although the OIG identified a few additional findings, the OIG does not believe that the overall reported compliance rates would have been significantly impacted, except for Objective No. 13, Lack of Indicia the Information Is Not Authentic or Correct, which was reported by AD as compliant at 100 percent (31/31). If the OIG's findings for the two incidents (F019-07 and F036-07) had been included, Objective No. 13 would have been out of compliance at 94 percent (29/31).