

LOS ANGELES POLICE COMMISSION

*Review of Audit Division's
Complaint, Form 1.28, Investigations
Audit – Phase II, Third Quarter
Fiscal Year 2005/2006
(AD No. C05-128)*



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

ANDRÉ BIROTTE, JR.
Inspector General

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**OFFICE OF THE INSPECTOR GENERAL
REVIEW OF AUDIT DIVISION'S
COMPLAINT, FORM 1.28, INVESTIGATIONS AUDIT – PHASE II,
THIRD QUARTER, FISCAL YEAR 2005/2006**

PURPOSE

Pursuant to Consent Decree Paragraph 135, the Office of the Inspector General (OIG) reviewed Audit Division's Complaint, Form 1.28, Investigations Audit – Phase II (Audit). The Audit was completed in the third quarter of Fiscal Year 2005/2006 and received by the OIG on April 5, 2006. The OIG assessed the Audit's completeness, findings, and quality.

BACKGROUND ON AUDIT DIVISION'S AUDIT

In order to facilitate the timeliness of the audit process and the relevancy of the audit findings, Audit Division conducted its Complaint, Form 1.28, Investigations Audit in two separate phases. Phase I evaluated the various systems and controls surrounding complaint investigations. That report was issued in the second quarter of Fiscal Year 2005/2006.¹ Phase II, on the other hand, evaluated the overall quality of complaint investigations and assessed the Los Angeles Police Department's (Department) compliance with Consent Decree Paragraphs 129(b and c), 64, 74(h), 75(i, ii, iii), 77, 80(a-g), 81, 82, 84, 85, 86, 90, 91, 101, and 102. The summary table, on the next page, provides a brief description of the Audit's objectives when assessing adherence to those paragraphs and the reported results of Audit Division's assessments.

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¹ The OIG found the Complaint, Form 1.28, Investigations Audit - Phase I to be complete, of quality, and with its findings well supported.

COMPLIANCE PERCENTAGES - REPORTED BY AUDIT DIVISION²

Objective No.	CD ¶	Objective and CD ¶/Description	Compliance %
1	129(b, c)	(b) Assess the investigation for completeness of the investigation file, including whether the file contains all appropriate evidence of documentation, or, if evidence is missing, an explanation. (c) Assess the investigation for a comparison of the officer, complainant, and witness statements with the investigator's summaries thereof, where applicable.	96%
2	64	Consideration of the officer's work history in making recommendations regarding discipline or non-disciplinary action as a result of a Categorical Use of Force.	100%
3	74(h)	Evaluate the initiation of complaints for prohibition from asking or requiring the complainant to sign a waiver.	100%
4	75(i, ii, iii)	Evaluate the initiation of Complaint, Form 1.28, investigation against: (i) Any officer who allegedly fails to inform any civilian who indicates the desire to file a complaint of the means by which a complaint may be filed; (ii) Any officer who allegedly attempts to dissuade a civilian from filing a complaint; and, (iii) Any officer who is authorized to accept a complaint who allegedly refuses to do so.	98%
5	77	Evaluate the notification of Department officers arrested, criminally charged, or named as a party in any civil suit involving on-duty conduct.	100%
6	78	Evaluate the requirement to report misconduct.	98%
7	80ii(a-g)	Evaluate the conduct of Internal Affairs Group investigations for: (a) Tape recording/video taping interviews; (b) Canvassing and interviewing witnesses/complainants; (c) Prohibiting group interviews; (d) Notifying involved officers and their supervisors; (e) Interviewing all supervisors; (f) Collecting and preserving evidence; and, (g) Identifying and reporting all inconsistencies.	90% 94% 99% 100% 100% 100% 100%
8	81	Evaluate the Chain of Command investigations for: - Prohibiting group interviews; - Interviewing all supervisors; and, - Collecting and preserving evidence.	97%
9	82	Evaluate the handling of any collateral misconduct.	99%
10	84	Evaluate the use of standards (California Jury Instructions, complaint and disciplinary history, and considerations of the civilian's criminal history (where appropriate)) when making credibility determinations.	99%
11	85	Evaluate the adjudication of investigations using preponderance of evidence standard.	98%
12	86	Evaluate the investigation of the handling of withdrawn, anonymously filed, and 3 rd party complaints.	100%
13	90	Evaluate Department manager's review to identify training needs.	100%
14	91	Evaluate Department notification of the resolution to complainant.	98%
15	101	Evaluate Department referral to criminal prosecutorial authorities of all incidents involving Department officers with facts indicating criminal conduct.	100%
16	102	Evaluate Department's non-discrimination policy and motor vehicle and pedestrian stops.	100%

² Audit Division reviewed 136 complaint investigations (67 investigated by Chains of Command and 69 investigated by Internal Affairs Group). Not all of the 136 investigations were applicable when evaluating each audit objective. Greater detail on Audit Division's methodology and findings can be found in their final Audit Report.

Audit Division utilized two different samples to evaluate a total of 16 audit objectives. One sample consisted of 67 randomly selected Chain of Command (COC) investigations, and the other sample consisted of 69 randomly selected Internal Affairs Group (IAG) investigations. Both samples were taken from a population of investigations that were closed in July 2005. All Failure to Appear, Failure to Qualify, and Preventable Traffic Collision investigations were excluded from the population due to the lower risk associated with those types of complaints. The OIG found these samples to be sufficient to evaluate the Department's adherence to the Consent Decree.

REVIEW METHODOLOGY

The OIG assessed the completeness, findings, and quality of Audit Division's Audit by reviewing the final Audit Report, Audit Work Plan, Audit workpapers, and a Microsoft Access database used to compile the Audit's findings.³

On June 19, 2006, the OIG provided a draft report of this review's findings to Audit Division for discussion purposes. However, as of July 5, 2006, Audit Division was unable to meet for a discussion or respond to the results of this review.⁴

REVIEW RESULTS

COMPLETENESS

To assess the Audit's completeness, the OIG reviewed Audit Division's Audit Report and supporting workpapers to ensure applicable Consent Decree mandates were assessed and the sampled complaint investigations were selected from a complete population.

Consent Decree Mandates Assessed

Per the Department's Annual Audit Plan (Fiscal Year 2005/2006), the Audit was to assess the Department's compliance with Consent Decree Paragraphs 64, 74(h), 75, 77, 78, 80(a-g), 81, 82, 84, 85, 86, 90, 91, 101, and 102 while addressing the applicable audit mandates of Consent Decree Paragraph 129. The Audit Report issued by Audit Division reported on the Department's compliance for all of these paragraphs, except 129(d) [the adequacy of the investigation, including the application of the standards set forth in Consent Decree Paragraphs 80-86].⁵ While

³ The OIG's review of supporting workpapers was based on a randomly selected one-tail sample size calculation with a 95 percent confidence level, an expected error rate of six percent, and a plus precision of seven percent.

⁴ In order to satisfy the OIG's timeliness requirement of the Consent Decree, the OIG is required to issue its reviews within three months of receiving an audit; therefore, the OIG issued this review without receiving a response from Audit Division.

⁵ Consent Decree Paragraph 129 has four subparagraphs. Subparagraph (a) [timeliness of completing the investigations] was assessed in the Phase I Audit. Phase II assessed and provided a compliance percentage for

the OIG recognizes that many adequacy of investigation concerns were evaluated through a separate assessment of other applicable Consent Decree paragraphs, an overall adequacy of investigation assessment was not provided. The OIG noted that Audit Division's prior Phase II Audit (for Fiscal Year 2004/2005) did provide such an assessment and reported a compliance percentage for Consent Decree Paragraph 129(d). Given the usefulness of providing this type of assessment, it is recommended that Audit Division's next audit provide an assessment for Consent Decree Paragraph 129(d).

Identification of a Complete Population

Based on the OIG's review of Audit Division's sampling documentation, it appears Audit Division selected from a complete population of complaint investigations closed in July 2005.⁶

QUALITY AND FINDINGS

The OIG reviewed a sample of 26 complaint investigations (16 IAG and 10 COC) of the 136 evaluated by Audit Division and assessed the reliability of the Audit's findings. The following delineates concerns identified by the OIG's review:

Complaint Form (CF) No. 04-3088

In this complaint investigation, there were a total of 16 allegations against four officers. The allegations included improperly detaining minor girls for prostitution, discourtesy, unauthorized force and that one officer unnecessarily pointing his weapon at the minor girls. Eight of the allegations were adjudicated as "not resolved," seven of the allegations were adjudicated as "unfounded," and one allegation was adjudicated as "no misconduct." The incident took place inside and in front of a business during normal business hours.

The OIG's review of this complaint investigation identified the following concerns that were not identified/reported by Audit Division's Audit:

- *Overall Adequacy of the Investigation – Framing All Allegations and Asking All Pertinent Questions During an Interview*

The girls' mothers also alleged the Department unnecessarily photographed the girls and had them sign a prostitution contact sheet. This allegation was not framed, even though it is clear that the mothers wanted to have it investigated. In addition, on tape, one girl stated that an officer "squeezed" her arm causing her to ask him to let go a little bit. The girl stated that the officer said, "no, that's the way it goes when you kick a police van, and you're going to jail."

subparagraphs (b) [completeness of the investigation file] and (c) [comparison of the officer, complainant, and witness statements to investigator summaries]. No compliance percentage was provided for subparagraph (d).

⁶ The OIG only identified one complaint investigation (CF No. 05-1603) that was erroneously excluded from Audit Division's population of 458 complaint investigations.

The girl explained that there was something wrong with her hand and her bone pops out. However, the OIG noted that the investigator did not ask follow-up questions to research this matter further.

- *Paraphrasing of Statements - Objective No. 1*

Due to inadequate paraphrasing of statements, it appears that one allegation was inappropriately adjudicated as “unfounded” instead of “not resolved.” Specifically, an independent witness’ paraphrased statements indicated he did not see the officer inappropriately pointing his weapon at two of the minor girls. However, the witness indicated on tape that when the officer and the girls walked outside his business, he locked the door to his business and walked to the rear of his business so he could watch the incident from behind a fence. This was the same time frame this act was alleged to have occurred. Given the circumstances, the OIG believes the allegation should have been adjudicated as “not resolved.”

- *Canvassing for Witnesses – Objective No. 7*

Although the investigation indicates that the investigator canvassed the location for witnesses, there were no addresses noted in the investigative file. Also, the investigator indicated that he spoke with the employees of the business (where some of the alleged acts occurred), but all denied witnessing the incident. However, the employee names were not documented.⁷ The OIG believes additional documentation was needed to support that the area was properly and adequately canvassed for witnesses. This information is important because it allows the reviewer to assess the type and extent of canvassing performed.

- *Evaluate Department Manager's Review to Identify Training Needs - Objective No. 13*

Based on the events that transpired during this incident, the OIG believes the two officers’ tactics were a concern that should have been evaluated during the Commanding Officer’s review. Specifically, prior to contact with the girls, one officer secreted himself under a seat in the back of an unmarked van. His partner officer drove the van over to the girls to converse with them (he was attempting to conduct a prostitution investigation). The partner officer (in the driver’s seat) indicated that the girls began yelling and kicked the van because they thought they were “cops.” However, the girls indicated they began yelling and kicked the van because they thought the officer was a “pervert” who mistook them for prostitutes. The passenger officer indicated that he did not know what was being said and did not know the location of his partner officer and was unclear about what was transpiring outside of the van, but since his partner said to “get them,” he jumped out of the van with his weapon drawn. Given the lack of communication between the two officers, the OIG believes that the

⁷ The only independent witness to some of the events was the business’ owner.

officers' tactics should have been evaluated but there was no evidence that this concern was assessed during the Commanding Officer's review.

- *Notification of Resolution to Complainant – Objective No. 14*

This complaint investigation indicated that only three of the seven co-complainants (all related) received a notification letter regarding the resolution of their complaint. Also, one of the co-complainant's letter inappropriately included adjudications for two allegations (unauthorized force and discourtesy) that were not part of her complaint.

CF No. 04-2928

In this complaint investigation, a complainant and a co-complainant alleged that an undercover officer stopped them because of their ethnicity, and the co-complainant indicated an officer unnecessarily placed his knee on the co-complainant's back and inappropriately placed his gun against the co-complainant's head. The allegations were adjudicated as "unfounded."

The OIG's review of this complaint investigation identified the following concern that was not identified/reported by Audit Division's Audit:

- *Overall Adequacy of the Investigation – Framing All Allegations*

The investigator noted that the use of the high-risk prone search during this incident was questionable, but since it was not raised as an issue by the complainant, it would be best addressed as a training issue. However, the co-complainant's paraphrased statement indicated that "he felt he had been violated because he was directed to lie down in the street." The investigation indicated that the three officers at the scene, including the undercover officer, were directed to receive additional training on high-risk prone searches; however, the co-complainant's apparent "unauthorized tactics" allegation was not framed.

CF No. 04-5657

In this complaint investigation, the complainant alleged two officers were discourteous when they used profanity towards him. These allegations were adjudicated as "unfounded." The OIG's review of this complaint investigation identified the following concerns that were not identified/reported by Audit Division:

- *Paraphrasing of Statements – Objective No. 1*

In this investigation, a witness' statement was inaccurately paraphrased. Specifically, on tape, one witness stated he did not hear the officer use profanity towards the complainant, but his paraphrased statement indicated that he did hear the officer use the alleged profanity.

This inaccuracy was pertinent to the allegation and as such, the OIG believes it was a noteworthy paraphrasing error.

- *Canvassing for Witnesses – Objective No. 7*

For this investigation, it appears that a doughnut shop owner may have witnessed the incident and the complainant, on tape, mentioned two unidentified women being present during the incident, but the investigation does not indicate that attempts were made by the investigator to identify and/or interview these individuals.⁸ Although the investigation indicates that businesses in the area were canvassed for additional witnesses, there were no details on the names of people contacted or businesses canvassed. As stated above, this information is important because it allows the reviewer to assess the type and extent of canvassing performed.

CF No. 05-0024

In this complaint investigation, the complainant alleged that an officer informed his friend(s) that the complainant might be a “snitch” or an informant. The complainant felt harassed and that his life might be endangered as a result. The Acting Commanding Officer determined that the employee's actions did not rise to the level of misconduct and classified the allegation as “non-disciplinary.”

The OIG's review of this complaint investigation identified the following concern that was not identified/reported by Audit Division's Audit:

- *Overall Adequacy of Investigation – Asking All Pertinent Questions During an Interview*

It was not clear, based on the tape-recorded interview of the complainant, why the complainant felt the officer told his friend(s) that he was a “snitch” or informant. As such, the OIG believes additional questions should have been asked to the complainant to properly evaluate this allegation, especially since the complainant indicated that he felt scared and the accused officer was never interviewed. Also, although Audit Division reported agreement with the classification of the allegation as “non-disciplinary,” the OIG disagrees. Given the severity of the allegation, the OIG believes it should have been handled as a “disciplinary” complaint for a neglect of duty. If true, informing others of the possibility that a person is a “snitch” could jeopardize the safety of that individual.

⁸ Audit Division noted that the complainant mentioned there were two unidentified women present during the incident but did not believe it rose to being a reportable canvassing concern.

CF No. 04-5947

In this third-party complaint investigation, the complainant alleged that an officer unnecessarily punched her son in the stomach after he was already handcuffed. As the complaint investigation progressed, another allegation was raised for neglect of duty when the son alleged that he spoke to an unknown detective about the incident while he was inside a detention tank, and nothing was done about it. These allegations were adjudicated as “unfounded.”

The OIG's review of this complaint investigation identified the following concern that was not identified/reported by Audit Division's Audit:

- *Overall Adequacy of Investigation – Thoroughness of Investigative Steps*

The complainant provided a description of the unknown officer he spoke with about the alleged incident. In the complaint investigation narrative, the complaint investigator indicated that there was no detective matching the description given by the complainant assigned to Gang Enforcement Detail (GED) or the Gang Enforcement Team (GET). However, the OIG believes the attempt to identify the unknown officer should have been expanded to include all officers/supervisors assigned to the Area during the Watch and not limited to GED or GET.

CF No. 05-0249

In this complaint investigation, the complainant alleged the officer was discourteous to her when she was trying to get past the officers to go into her mother's burning house. The Department classified this complaint as “non-disciplinary.”

The OIG's review of this complaint investigation identified the following concern that was not identified/reported by Audit Division's Audit:

- *Notification of Resolution to Complainant – Objective No. 14*

The notification letter to the complainant regarding the resolution of her allegation was erroneously addressed to the complainant's deceased mother and sent to the decedent's address (the home that burnt down) and not to the complainant's address.⁹

Comparison to the OIG's Complaint Audit

The OIG issued its Complaint Investigations Audit for Fiscal Year 2005/2006 in December 2005. During the OIG's review of Audit Division's Audit, the OIG noted that six complaint investigations from Audit Division's sample were evaluated in the OIG's Complaint Investigations Audit. In the OIG's Audit, concerns were reported on three of the six

⁹ The OIG was unable to determine if the complainant ever received the notification letter.

investigations, but Audit Division did not note these same concerns. One of the three investigations was part of the OIG's sample used to evaluate the Audit Division's Audit (see CF No. 04-3088 referred to above). The OIG's concerns with the other two investigations are described on the next page.

CF No. 05-1681

In this complaint investigation, a complainant-inmate made allegations pertaining to his conviction in the 1990s for a Rampart murder. Specifically, the complainant alleged the accused officer subsequently became aware of the complainant's innocence, but failed to make proper notifications. The complainant was not interviewed and the allegation was adjudicated as "other judicial review."

The OIG's evaluation of this complaint investigation identified the following concerns:

- The framed allegations do not accurately reflect the information on the original complaint form, and there is no explanation for the difference. Specifically, the framed allegations were that, while on-duty, an officer falsely arrested him for murder and withheld information in his criminal case. The original complaint form indicates the officer later became aware of the complainant's innocence, but failed to make proper notifications. It is unknown whether the complainant was trying to allege the officer failed to make proper notifications of his innocence at his trial or after his conviction.
- Given the vagueness of the complainant's allegation, the OIG believes he should have been interviewed for additional clarification, but he was not.
- The accused officer's Commanding Officer adjudicated the allegation as "other judicial review." However, as the investigative file does not clarify whether the allegation could have been addressed during the complainant's trial, the use of "other judicial review" is not supported.¹⁰

CF No. 04-2663

In this complaint investigation, a complainant alleged various unknown officers have been harassing her family ever since she filed a wrongful death claim against the City and LAPD.¹¹

The OIG's evaluation of this complaint investigation identified the following concern:

- Based on the investigation, the OIG disagreed with the "unfounded" adjudication for the alleged harassment. The allegation was adjudicated as "unfounded" primarily because a

¹⁰ The OIG's Discipline Report for the first quarter of 2005 discussed issues identified with the "other judicial review" adjudication. The Department has since discontinued the use of that adjudication.

¹¹ There were several other allegations made by this complainant and her son, but the OIG only had a concern with the adjudication of one allegation.

review of Daily Field Activity Reports (DFAR) did not identify any irregular patrol activity in the complainant's area; but given that this type of activity would normally not be documented on a DFAR and the vagueness of the information provided by the complainant, "insufficient evidence to adjudicate" would have been a better adjudication.

Compliance Determination for Consent Decree Paragraph 77

Regarding Audit Division's assessment of Consent Decree Paragraph 77, the OIG believes Audit Division should have withheld a determination of compliance.¹² Specifically, Audit Division reported that "All 136 complaint investigations and all associated tape recorded statements were reviewed to evaluate compliance, and none of the investigations reviewed contained any indication of non-compliance." However, only one of the 136 investigations involved an incident that would have required notification to the Department.¹³ Thus, given only one complaint investigation was applicable, the OIG believes that Audit Division should have withheld a determination of compliance for Consent Decree Paragraph 77, as they appropriately did in their prior (Fiscal Year 2004/2005) Complaint Investigations Audit.¹⁴ Alternatively, Audit Division could have taken a supplemental sample of complaint investigations involving arrests of officers by outside law enforcement agencies, and tested for timely self-reporting.

Additional Quality Concerns

The OIG also noted the following:

- Regarding the Audit's sampling methodology, the OIG noted that Audit Division reviewed six preliminary investigations resulting from Ethics Enforcement Section complaint intake audits. Because these are not full-scope investigations and since the OIG reviews all complaint intake audits every quarter, the OIG recommends that Audit Division exclude or use replacement sampling for these types of complaint investigations in its next audit.
- Regarding the Matrix (or evaluation document) used by Audit Division to evaluate the complaint investigations, it was noted that certain questions were not included that were pertinent to assessing the overall adequacy of the investigations. Specifically, the Matrix did not evaluate whether the complainants or civilian witnesses made additional allegations that were not framed or addressed by the investigation. When the OIG conducted its Compliant Investigations Audit for Fiscal Year 2005/2006, that this anomaly was present in 10 (22

¹² Paragraph 77 requires all officers to notify, without delay, the LAPD whenever the officer is arrested or criminally charged for any conduct, or the officer is named as a party in any civil suit involving his or her conduct while on duty (or otherwise while acting in an official capacity). In addition, any officer who is named as a defendant in any civil suit that results in a temporary, preliminary, or final adjudication on the merits in favor of a plaintiff complaining of off-duty physical violence, threats of physical violence, or domestic violence by the officer is also required to notify the Department.

¹³ The accused officer notified his supervisor the same day of the incident.

¹⁴ It was also noted that the Matrix question used by Audit Division did not evaluate the timeliness of notifications made by Department employees.

percent) of the 46 investigations evaluated. Additionally, the OIG's Complaint Investigations Audit found that certain interviews were not thorough enough to properly address allegations and some allegations were improperly framed, which appeared to impact the final adjudication of the allegations. Since these areas relate to the overall adequacy of an investigation, the OIG recommends that Audit Division add additional questions to its Matrix to evaluate these areas of concern in its next audit.

- Regarding the Audit's compiled findings, the OIG reconciled Audit Division's Audit Report with the Audit's database (a verification step to ensure all significant anomalies were reported), and there were two complaint investigations where Audit Division documented concerns with the adjudication of the complaints, but did not report them. For one complaint investigation, adjudicated as "non-disciplinary – employees actions did not rise to the level of misconduct," Audit Division workpapers indicated that the auditors felt that further investigation was required and there was no rationale documented to support the final adjudication.¹⁵ For another complaint investigation, adjudicated as "non-disciplinary - employees actions could have been different," Audit Division's workpapers indicated that the auditors felt that an adjudication of "sustained" would have been more appropriate.¹⁶ In both instances, there was no documentation in Audit Division's workpapers as to the reason these concerns were not reported.
- Regarding Audit Division's assessments of Consent Decree Paragraphs 75 and 78, Audit Division based its evaluation of complaints *actually taken and processed through the system*.¹⁷ While the OIG commends Audit Division for performing this assessment on the complaints it evaluated, users of the report should recognize that the Department's "sting" audits may provide a more accurate test of these specific mandates.

¹⁵ CF No. 04-6059

¹⁶ CF No. 04-4723

¹⁷ Paragraph 75 requires the Department to initiate an investigation against any officer who allegedly fails to inform any civilian the means by which to file a complaint, allegedly attempts to dissuade a civilian from filing a complaint or allegedly refuses to accept a complaint when authorized to do so. Paragraph 78 requires that officers report, without delay, any conduct by other officers that reasonably appears to constitute (a) excessive force, (b) false arrest or filing of false charges, (c) unlawful search and seizure, (d) discrimination, (e) intentional failure to complete forms, (f) an act of retaliation for complying with Department policies, (g) intentionally providing false information in an administrative investigation or official report.

CONCLUSION

Based on the OIG's review, it appears that the Audit Division's reported compliance percentages for a majority of the Consent Decree paragraphs/subparagraphs [Paragraphs 129(b), 64, 74(h), 75, 78, 80ii(a, c, d, e, f, g), 81, 82, 84, 85, 86, 90, 101, and 102] are reliable. However, based on the concerns noted above, the OIG believes that caution should be used when placing reliability on the Audit's reported compliance percentages for Consent Decree Paragraphs 77, 80ii(b), 91, and 129(c).¹⁸ Additionally, as mentioned in the Completeness Section, the OIG believes Audit Division, in its next audit, should attempt to evaluate the overall adequacy of complaint investigations as required by Consent Decree Paragraph 129(d).

¹⁸ Although Audit Division already reported that the Department was non-compliant with Consent Decree Paragraph 80ii(b), reporting 94 percent compliance, the OIG believes that this percentage is actually lower. Audit Division reported that the Department was compliant (achieved a compliance percentage greater than 95 percent), with the remaining Consent Decree Paragraphs 77, 91, and 129(c).