

**LOS ANGELES POLICE COMMISSION**

***REVIEW OF THE DEPARTMENT'S  
NON-CATEGORICAL USE OF FORCE  
INVESTIGATIONS AUDIT,  
Fiscal Year 2008-2009***



Conducted by the

**OFFICE OF THE INSPECTOR GENERAL**

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**OFFICE OF THE INSPECTOR GENERAL  
REVIEW OF DEPARTMENT'S NON-CATEGORICAL USE OF FORCE  
INVESTIGATIONS AUDIT**

**PURPOSE**

The Office of the Inspector General (OIG) reviewed the Los Angeles Police Department's (Department) annual Non-Categorical Use of Force (NCUOF) Investigations Audit (Audit) for completeness, quality and findings. The Audit was completed by Internal Audits and Inspections Division (IAID) in the Fourth Quarter, Fiscal Year 2008/2009 and received by the OIG on June 30, 2009. At the time the OIG began its review on July 1, 2009, the Department was under the Consent-Decree (CD). The CD was subsequently terminated on July 20, 2009.

**BACKGROUND**

This was the eighth NCUOF Investigations Audit Conducted by IAID. The Audit assessed the Department's compliance with CD Paragraphs 65, 68, 69, 80(c, e & f), 82, 128, 129 (b, c and d) and 131(a, c and e), and for compliance with other policies outside of the scope of the aforementioned CD Paragraphs.

According to IAID, this Audit was conducted in accordance with generally accepted government auditing standards. Those standards require that the Audit is planned and performed to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions, based on the Audit's objectives. IAID has determined that the evidence obtained provides a reasonable basis for the findings and conclusions based on the Audit's objectives. The work was limited to those areas specified in the *Methodology* and *Detailed Findings* sections of the Audit.

The Department defines a NCUOF as an incident in which a Department employee uses a less-lethal control device or physical force to compel a person to comply with their directions, overcome resistance of a person during an arrest or detention, or defend any individual from an aggressive action by another person. The NCUOF incidents are investigated as Level I or Level II. Level I investigations are generally related to higher-risk NCUOF incidents and, unlike Level II, generally require all suspect and public witness interviews to be audio-recorded.<sup>1</sup> Additionally, their interviews must be summarized if their statements are not audio-recorded or the suspect's account of the use of force is in substantial conflict with the involved Department employee's account.<sup>2</sup> All other NCUOF investigations that do not meet Level I criteria are investigated as Level II.

Uninvolved Area supervisors investigate NCUOF incidents while the Watch Commander/Officer-In-Charge evaluates whether the amount of force was reasonable and consistent with actions reported by the involved Department employee(s), ensuring that all relevant tactical, use of force and policy issues are addressed. Based on this evaluation and the totality of the investigation, the

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<sup>1</sup> A NCUOF shall be reported and investigated as Level I under the following circumstances: an allegation of excessive force by a Department employee; the force used results in a serious injury, such as a broken bone, dislocation, or an injury requiring sutures; the injuries to the person upon whom force was used are inconsistent with the amount or type of force reported by the involved Departmental employee; and/or, accounts of the incident provided by witnesses and/or the suspect of the use of force substantially conflict with the involved employee's(s') account(s).

<sup>2</sup> Interviews of Departmental employees who are involved or considered witnesses are not required to be audio-recorded or summarized.

tactics and use of force are adjudicated by the Area Commanding Officer and the Bureau Commanding Officer. The investigation file is subsequently submitted to the Use of Force Review Division (UOFRD) for evaluation. When necessary, the UOFRD will return the investigation file to the Area Commanding Officer for additional investigation and/or clarification. Once the UOFRD has completed their evaluation, it is submitted to the UOFRD Commanding Officer for final approval.

IAID's 2008/09 NCUOF Investigations Audit identified a population of 165 NCUOF investigations that were initiated and closed between September 1, 2008 and March 31, 2009. IAID tested a total of 72 Level II and nine Level I NCUOF investigations. The Audit measured 28 objectives, with the Department meeting the 95 percent compliance standard for 21 of the objectives (the seven non-compliant objectives are bolded in Table No. 1 on Page 3). Four of the seven non-complaint objectives had compliance rates under 90% and were addressed in IAID's audit report. IAID and the OIG's comments on the four objectives are as follows:

**1. Objective No. 4(c) - Watch Commander Insight (89%)**

The compliance rate for this objective increased significantly, from 59% in 2008 to 89% in 2009. However, there were still Watch Commander Insights that, as stated in IAID's Audit, "*either lacked the specificity necessary to determine which officer actions were assessed, or did not address the applications of force used by the officers.*" This issue was also noted in IAID's 2007 NCUOF Investigations Audit. To address this audit issue, Chief of Staff Notice 2.2.6 was issued October 19, 2007, which states:

*"Due to a recent audit conducted by the Audit Division, a recommendation was made to provide additional directions for completing the Watch Commander Insight. The watch commanders are reminded that they need to evaluate the force options utilized by each officer and determine if it is reasonable based on the actions of the suspect."..... EXAMPLE: "I have reviewed the investigation and related reports and determined that the firm grip, takedown, and bodyweight used by the officer was reasonable based on the suspect's aggressive actions towards the officer....."*

IAID and the OIG interpreted this Notice to mean that each force option applied by an officer should be evaluated in that officer's Watch Commander Insight narrative, as in the aforementioned example (e.g. firm grip, takedown, and bodyweight). UOFRD management did not concur with IAID and the OIG regarding the required documentation and is seeking to clarify the ambiguity of the Chief of Staff Notice in a Special Order which is currently in draft form.

**2. Objective No. 9(e) - Photographs of Department Employee's Injuries (69%)**

The compliance rate for this objective increased one percentage point, from 68% in 2008 to 69% in 2009. IAID stated in their Audit, "*Current policy requires investigations to include photographs of all visible officer injuries, or lack thereof, if relevant to the use of force, or when a criminal filing for a crime against a peace officer will be sought. Twenty-five of the 81 investigations did not meet this standard.*" UOFRD has determined this policy to be difficult to interpret due to ambiguous language that has led to misunderstandings as to when photographs are required. UOFRD is clarifying this issue in a Special Order which is currently in draft form.

The OIG noted that in the Audit, IAID applied the standard stated above regarding the photographing of Department employees, which the OIG believes was prudent. The OIG also agrees with UOFRD that clarified policy language may lead to a better understanding of the policy requirements.

**3. Objective No. 6(a) - Review of Investigation at Area/Division and Bureau Levels (86%)**

**4. Objective No. 6(b) - Timeliness Review of the Investigation (84%)**

IAID stated in their Audit, "*For both objectives [6(a) and 6(b)], causes of findings were not systemic; but rather, isolated to one or two divisions or a bureau. The Commanding Officer, IAID, contacted the commanding officers responsible for the majority of these findings.*" The OIG had no further comments regarding these two non-compliant objectives.

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**TABLE NO. 1**

Obj No.	Description of Audit Objective and Corresponding CD ¶	No. of NCUOF Investigations & Compliance Rates - Gang Unit Officers <sup>3</sup>		No. of NCUOF Investigations & Overall Compliance Rates	
1	Completeness of Investigations (¶128)	22/22	100%	80/81	99%
2	Authenticity (¶128)				
2(a)	<i>Canned Language / Inappropriate Copy and Paste</i> (¶128)	22/22	100%	81/81	100%
2(b)	Inconsistent Information (¶128)	22/22	100%	81/81	100%
2(c)	Articulation of Legal Basis (¶128)	22/22	100%	81/81	100%
2(d)	Other Indicia that Information is Not Authentic or Correct (¶128)	22/22	100%	81/81	100%
2(e)	Investigator’s Documentation of Inconsistencies (¶128)	22/22	100%	81/81	100%
3	Underlying Action (¶128)	22/22	100%	80/81	99%
4	Supervisory Oversight (¶128)				
4(a)	At-Scene Supervision (¶128)	2/2	100%	12/13	<b>92%</b>
4(b)	Post Incident Supervisory Review (¶128)	21/22	95%	78/81	96%
4(c)	Watch Commander’s Insight (¶128)	20/22	<b>91%</b>	72/81	<b>89%</b>
4(d)	Approval of Reports by the Investigating Supervisor (¶128)	22/22	100%	79/81	98%
5	Evaluation of Investigations (¶68)				
5(a)	Analysis of Relevant Documents (¶68)	22/22	100%	81/81	100%
5(b)	Inclusion of All Witness Interviews (¶68)	21/22	95%	77/81	95%
5(c)	Required Information for Level I Cases (¶68)	3/3	100%	9/9	100%
5(d)	Required Information for Level II Cases (¶68)	19/19	100%	72/72	100%
6	Management Oversight (¶69)				
6(a)	Review of Investigation at Area/Division and Bureau Levels (¶69)	17/22	<b>77%</b>	70/81	<b>86%</b>
6(b)	Timeliness Review of the Investigation (¶69)	20/22	<b>91%</b>	68/81	<b>84%</b>
7	Review of Appropriate Evidence and Documentation (¶129b)	21/22	95%	73/81	<b>90%</b>
8	Conflict in Statements (¶129c)	22/22	100%	80/81	99%
9	Adequacy of the Investigation (¶80 c, e, and f; 129d)				
9(a)	Prohibiting Group Interviews (¶80c)	22/22	100%	79/81	98%
9(b)	Interviewing At-Scene Supervisors (¶80e)	3/3	100%	13/13	100%
9(c)	Collecting and Preserving Evidence (¶80f)	11/11	100%	34/35	97%
9(d)	Canvassing the Scene to Locate Witnesses (¶80f)	21/22	95%	74/81	<b>91%</b>
9(e)	Photographs of Department Employee’s Injuries (¶80f)	15/22	<b>68%</b>	56/81	<b>69%</b>
9(f)	Proper Classification of Investigation (¶129d)	22/22	100%	80/81	99%
10	Reporting Allegations of Misconduct (¶82)	22/22	100%	81/81	100%
11	Notifying the Department Without Delay (¶65)	22/22	100%	81/81	100%
12	Adjudication/Findings of the Force Used (¶129d)	22/22	100%	81/81	100%

**METHODOLOGY**

To assess the completeness, quality and findings of IAID’s Audit, the OIG reviewed a sub-sample of 23 of the 81 NCUOF investigations in IAID’s sample. The sample size of 23 was calculated based on a 95% confidence level, an expected error rate of 6% and a plus-precision of 7%. The 23 NCUOF investigations included all nine Level I investigations and a random sample of 14 of the 72 Level II investigations. For these 23 investigations, the OIG’s performed the same tests that IAID performed for all 28 of their objectives.

<sup>3</sup> IAID reported separate compliance rates for investigations of NCUOF incidents involving gang unit officers, as required by the CD.

## **OBJECTIVES**

The three main objectives of the OIG's review were to assess the Audit for completeness, findings and quality, with the primary sub-objectives described below:

### Completeness

- Determined if the Audit tested and reported compliance rates for CD Paragraphs 65, 68, 69, 80(c, e & f), 82, 128, and 129(b, c & d), and 131(a, c & e).
- Determined if the audit samples were selected from a complete Department-wide population of all NCUOF investigations initiated and closed between September 1, 2008 and March 31, 2009.

### Quality

- Determined if appropriate sampling methodologies and testing questions were used.
- Determined if there was evidence of adequate supervision.
- Determined if the Audit Report completely and accurately reported the audit's purpose, methodology, objectives, results, detailed findings, and status of prior recommendations.

### Findings

- Determined if findings were correctly and completely identified and reported for instances in which CD paragraph requirements were not complied with.
- Determined if reported findings represented instances in which CD paragraph requirements were not complied with.

## **RESULTS**

### Completeness

The Audit tested and reported compliance rates for CD Paragraphs 65, 68, 69, 80(c, e & f), 82, 128, and 129(b, c & d), and 131(a, c & e). The audit samples were selected from a complete Department-wide population of all NCUOF investigations initiated and closed between September 1, 2008 and March 31, 2009. Hence, the Audit met the OIG's completeness standard.

### Quality

Appropriate testing questions were used, and there was evidence of adequate supervision. The Audit Report completely and accurately reported the audit's purpose, methodology, objectives, results, detailed findings, and status of prior recommendations. Hence, the Audit met the OIG's quality standard.

### Findings

Findings were correctly and completely identified and reported for instances in which CD paragraph requirements were not complied with. The reported findings represented instances in which CD paragraph requirements were not complied with. Hence, the Audit met the OIG's findings standard.

## **OTHER MATTERS**

### **IAID's Methodology for Defining Audit Population**

To be consistent with prior IAID NCUOF Investigations Audits deemed compliant by the Federal Monitor, IAID defined its audit population as the 165 NCUOF investigations initiated and closed between September 1, 2008 and March 31, 2009. The OIG noted that on average, each NCUOF investigation in IAID's population required 107 days to complete and close. On June 9, 2009, IAID issued a supplemental audit report titled *Audit of the Non-Categorical Use of Force Investigation Process* in which it reported that on average, the Department required 308 days to complete and close a NCUOF investigation. Hence, the investigations chosen for this audit population by IAID closed in a significantly shorter time frame than the Department-wide average and thus, the reviewed investigations may not have been fully representative of the Department-wide population.

IAID management advised that for subsequent post-CD NCUOF Investigations Audits, IAID would consider revising its methodology so that the NCUOF investigations used for its audit population and related samples were closed in an average number of days more consistent with the Department-wide population of NCUOF investigations.

### ***Miranda* Admonitions**

The OIG examined the sample of NCUOF investigations in regard to the issuance of *Miranda* admonitions given to suspects during the course of the investigation. The relevant standard is addressed in the following Chief of Staff Notice:

- The Chief of Staff Notice dated July 2, 2008 (*Miranda Admonitions for Non-Categorical Use of Force Interviews of Suspects in Custody*) requires NCUOF investigating supervisors to advise NCUOF suspects of their *Miranda* rights before they are interviewed.

The OIG reviewed the nine Level I and 14 Level II NCUOF investigations for evidence that the involved suspects in the NCUOF investigations were advised of their *Miranda* rights. As a result of the OIG's review, the OIG determined that five Level II investigations lacked documentation or recorded interviews to determine whether *Miranda* admonitions were given, although in each investigation the suspect provided a statement. Based on the available documentation, the OIG was unable to determine if investigators complied with the required standard.

## **RECOMMENDATION**

Compliance with the noted Chief of Staff Notice requires the advisement of a *Miranda* admonition. To determine compliance, a suitable method of documenting the issuance of the *Miranda* admonition should be incorporated into each NCUOF investigation. The OIG recommends that the NCUOF report format be reviewed and appropriately enhanced to include *Miranda* admonition

documentation. Use of Force Review Division has reviewed the OIG recommendation and concurred.

### **MANAGEMENT'S RESPONSE**

IAID is in general agreement with the OIG's findings.

### **CONCLUSION**

The OIG's review of 23 NCUOF investigations revealed that IAID appropriately identified and reported all significant findings. IAID's report is commendable considering that each NCUOF investigation was audited for 28 objectives and covered all mandated CD paragraphs. Hence, the OIG concludes that the Audit was complete and of good quality, with findings appropriately reported.