

LOS ANGELES POLICE COMMISSION

*Review of Audit Division's
Non-Categorical Use of Force
Reports Audit
Fiscal Year 2005/2006*



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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**OFFICE OF THE INSPECTOR GENERAL
REVIEW OF AUDIT DIVISION'S
NON-CATEGORICAL USE OF FORCE REPORTS AUDIT**

PURPOSE

The Office of the Inspector General (OIG), pursuant to Consent Decree Paragraph 135, reviewed Audit Division's Non-Categorical Use of Force (NCUOF) Reports Audit (Audit). The Audit was completed in the Fourth Quarter, Fiscal Year 2005/2006 and received by the OIG on July 5, 2006. The OIG assessed the Audit's completeness, findings, and quality.

BACKGROUND ON AUDIT DIVISION'S AUDIT

Audit Division conducted its fifth NCUOF Reports Audit and assessed the Los Angeles Police Department's (Department) compliance with Consent Decree Paragraphs 65, 68, 69, 80(c, e, and f), 82, 128, 129, and 131(a, c, and e).

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 involve one or more of the following: 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 Department employee; and/or, accounts of the incident provided by witnesses and/or the subject of the use of force substantially conflict with the involved employee's(s') account. All other NCUOF investigations are classified as Level II. Level I investigations, unlike Level II, generally require all subject and public witness interviews to be tape-recorded. Additionally, their interviews must be summarized if their statements are not tape-recorded or the subject's account of the use of force is in substantial conflict with the involved Department employee's account.¹

Uninvolved Area supervisors investigate these uses of force 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 tactics and use of force are adjudicated by the Area Commanding Officer, the Bureau Commanding Officer, and the Training Group Commanding Officer. The investigation file is subsequently submitted to the Use of Force Review Division (UOFRD) for evaluation. When necessary, the UOFRD will "kickback" the investigation file to the Area Commanding Officer for additional investigation and/or clarification.

¹ Interviews of Department employees who are involved or considered witnesses are not required to be tape-recorded or summarized.

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Audit Division selected all of the NCUOF incidents that occurred in September 2005. A total of 171 Use of Force Reports were identified; however, Audit Division was only able to obtain 154 reports as the remaining 17 reports were still being reviewed and had not been closed. Audit Division indicated in its report that a supplemental review evaluating the remaining 17 reports would be completed during the First Quarter, Fiscal Year 2006/2007. Audit Division further indicated that should the supplemental audit result in a change of compliance in any audit objective, the audit findings would be adjusted and restated accordingly. This supplemental audit was already completed and the report was issued on September 28, 2006. The following table (Table No. 1) contains the compliance percentages reported by Audit Division in their Audit Report.

TABLE NO. 1 – COMPLIANCE PERCENTAGES REPORTED BY AUDIT DIVISION

Objective	CD¶	Description	Compliance Percentages		
			Overall	Non-GED	GED (CD ¶131)
1	128	Evaluation of Completeness	100%	100%	100%
2a	128	Evaluation for Canned Language	100%	100%	100%
2b	128	Evaluation for Inconsistent Information	93%	93%	89%
2c	128	Evaluation for Articulation of Legal Basis	100%	100%	100%
2d	128	Evaluation for Information Not Authentic	100%	100%	100%
3	128	Evaluation of Underlying Actions	99%	99%	94%
4a	128	Evaluation of On-Scene Supervision	88%	86%	92%
4b	128	Evaluation of Post-Incident Review	82%	81%	94%
5	68, 129a	Evaluation for Timeliness of the Investigation	100%	100%	100%
6	69	Evaluation for Timeliness of the Review	98%	98%	100%
7	129b	Evaluation for Completeness of Evidence	95%	96%	89%
8	129c	Evaluation of Investigators’ Statements	79%	78%	83%
9a	80c	Prohibiting Group Interviews	99%	99%	100%
9b	80c	Interviewing All At-Scene Supervisors	91%	86%	100%
9c	80f	Canvassing Scene, Interviewing Witnesses, Collecting and Preserving Evidence	95%	96%	94%
9d	129c	Tape Record all Level I Interviews	92%	92%	Determination Withheld ²
9e	82	Reporting Allegations of Misconduct	100%	100%	100%
9f	129d	Other Investigative Issues	98%	99%	94%

The OIG will be performing a review of Audit Division’s supplemental audit and, accordingly, the compliance percentages presented in the above table may change based on the outcome of the OIG’s review.

Greater detail on Audit Division’s methodology and findings can be found in Audit Division’s Audit Report.

² Audit Division’s selection criteria did not include a sample of Gang Enforcement Detail (GED) Level I investigations. Consequently, Audit Division was not able to make a determination of compliance for Consent Decree Paragraph 129c as it pertains to GED, which generally requires tape-recording of suspects and witnesses. Going forward, Audit Division may want to consider performing a stratification of the audit population to ensure that it contains all of the groups required to be tested in order to satisfy their stated objectives.

PRIOR RECOMMENDATIONS

The OIG made two recommendations in their prior report dated September 29, 2005. The first recommendation related to ensuring that the instructions contained on the NCUOF Report for Level II investigations be revised to clarify the requirement for documenting the lack of inconsistencies between witnessing Department and Non-Department employees statements and the details of the incident as depicted in the related reports. The OIG considers this recommendation addressed, as the TEAMS II UOF application includes a section for statement comments which is required to be completed by the Investigating Officer with information addressing consistencies (or lack thereof) between statements. The second recommendation related to ensuring that the revised Authorization to Release Medical Information Form was properly distributed to all Areas/Divisions and that all prior versions were taken out of circulation. The OIG considers this recommendation addressed, as Special Order No. 23, Authorization to Release Medical Information (Form 5.03.0), dated September 16, 2005, was distributed Department wide.

REVIEW METHODOLOGY

The OIG assessed the completeness, findings, and quality of Audit Division's Audit by reviewing the final Audit Report, Audit Work Plan, and Audit Division's Microsoft Access database (used to compile and analyze their audit results).³ The OIG randomly selected a sample of 38 NCUOF investigations, which included a total of 26 Non-GED investigations and 12 GED investigations.

On October 4, 2006, the OIG met with Audit Division management to discuss the results of this review. At that time, Audit Division management indicated agreement with nearly all of the review's findings. Instances where Audit Division disagreed with the OIG's finding are noted in the body of the report.

REVIEW RESULTS

COMPLETENESS

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

The OIG determined that the Audit sufficiently met the requirements specified in Consent Decree Paragraphs 65, 68, 69, 80(c, e, and f), 82, 128, and 129, and 131(a, c, and e). Additionally, the OIG determined that Audit Division identified a complete population, identifying 171 NCUOF incidents that occurred during the month of September 2005. As mentioned in Audit Division's Audit Report, 154 NCUOF reports were obtained for the related completed investigations. As the

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, with samples selected from the Non-GED and the GED populations.

remaining 17 investigations had not yet been completed, Audit Division chose to perform a supplemental audit of the 17 reports.⁴

FINDINGS

To assess the Audit findings, the OIG randomly selected a sample of 38 NCUOF investigations, which included a total of 26 Non-GED investigations and 12 GED investigations.⁵ The OIG performed this testwork in order to provide assurance that Audit Division adequately identified and reported all relevant issues. Based on the OIG's review, overall, Audit Division presented the audit findings in a logical manner and the narrative of the report supported all findings. Additionally, Audit Division generally identified and reported concerns relevant to the ongoing operations of the Department. However, the following additional issues were identified by the OIG that Audit Division should have identified and/or reported.

Objective No. 2b: Evaluation for Inconsistent Information (Consent Decree Paragraph 128)

For one investigation (NCUOF No. 2001798), an Internal Process Report (IPR) for a detective indicates the types of force used were firm grip and takedown, which is inconsistent with the description of the use of force documented in the Arrest Report, which indicates that he utilized only firm grip during the incident. The Arrest Report indicates, "Officer used a firm grip, with both of his hands, grabbing deft [defendant's] right arm.⁶ [The] deft stumbled and fell to the ground on the uneven pavement."

For another investigation (NCUOF No. 2001875), the Employee's Report states that "[an] officer grabbed [the suspect] by the belt around his waist and pulled him back towards him causing [the suspect] to straighten out and roll onto his stomach. With the [suspect's] back exposed [the officer] used his bodyweight to keep [the suspect] pinned to the ground." Accordingly, it appears that the officer first used miscellaneous physical force and then bodyweight. However, his IPR only indicates that he used bodyweight and omits miscellaneous physical force.⁷

Objective No. 4b: Evaluation of Post Incident Review (Consent Decree Paragraph 128)

For one investigation (NCUOF No. 2002427), an IPR's Incident Overview completed by the Watch Commander/Officer in Charge for one involved officer was referenced for four other involved officers. While the incident overview adequately addressed the relevant uses of force utilized by three of the officers during the incident, the evaluation would have been more thorough had it expressly addressed the fourth officer's firing and hitting the subject with three beanbag shotgun rounds.

⁴ It should be noted that the additional 17 reports also did not include GED Level I investigations.

⁵ Two of the GED investigations selected included three NCUOF reports, which resulted in the OIG testing 16 GED NCUOF reports.

⁶ The TEAMS II record also indicates that this Detective used firm grip and takedown.

⁷ The officer's TEAMS II record also indicates that he used only bodyweight.

Objective No. 9c: Canvassing the Scene, Interviewing Witnesses, Collecting and Preserving Evidence (Consent Decree Paragraph 129c)

For one investigation, (NCUOF No. 2002069), it appears that a witnessing officer may have been present during the use of force incident but there is no indication as to the reason this officer was not interviewed. Audit Division did not agree with this assessment because they believe the Arrest Report was ambiguous as to whether this officer witnessed the use of force. However, the OIG opined that the Arrest Report sufficiently articulated that it was reasonable to assume that this officer was a witness to the use of force.

Objective No. 9f: Other Investigative Issues (Consent Decree Paragraph 129d)

According to Special Order No. 13, 2004, verbiage indicating that statements provided by public witnesses and Department employees are consistent with events as depicted in the related reports should be included in the investigation file. The mandatory consistent statement verbiage was either lacking altogether or did not fully address both witnesses and Department employees in four NCUOF investigation files reviewed by the OIG. Audit Division reviewed for this language during their Audit but issues noted were not reported and, accordingly, were not included in their compliance percentages.

Additionally, for two investigations (NCUOF Nos. 2002069 and 2002011), there were allegations of excessive force and/or significant inconsistencies, yet the investigation was not classified as a Level I investigation. For NCUOF No. 2002069, the subject stated on a Statement Form that "I did not resist the police." However, the subject was charged with Penal Code 243c, battery on a peace officer. Therefore, it appears that there was a significant inconsistency that should have resulted in the investigation being elevated to a Level I. For NCUOF No. 2002011, the subject, on tape, made statements that appeared to allege that an officer used excessive force during the incident. Audit Division disagrees and indicated that the subject's statements may only have been a different articulation of the same version of events.⁸ However, given the ambiguity with the subject's statement, the OIG believes that the investigation should have been elevated to a Level I.

Finally, for one investigation (NCUOF No. 2001747), a sergeant who witnessed the use of a TASER subsequently investigated the use of force. This concern was addressed by the Use of Force Review Division (UOFRD) in a kickback letter to the Area Commanding Officer and training was provided to the sergeant. Audit Division inadvertently did not report this out-of-policy occurrence.⁹

⁸ The interview of the subject on tape indicated that the officer "The one that slammed me into the ground...He hit me so hard into the ground, I just said please can I just get up." She also indicated on the tape that after they had handcuffed her and had her up against the wall, "[she was] punched to the ground".

⁹ According to Special Order No. 13, 2004, a supervisor who witnessed a non-categorical use of force should not conduct the use of force investigation. The watch commander has the authority to override the policy based on an exceptional operational need; however, this exceptional need shall be documented on the IPR. In this instance, the watch commander indicated that this supervisor should not have investigated this incident because of her involvement.

QUALITY

To assess the Audit quality, the OIG evaluated the quality of both the Audit and the Audit Report.

Based on the OIG's review, the Audit was properly planned, performed, and supervised. The Audit Work Plan, which documented their methodology, indicated that Audit Division addressed all of the required Consent Decree mandates in the planning of their Audit. In addition, the Audit Report properly delineated the Audit's objectives, scope, methodology, findings, and recommendations. Additionally, the Audit Report was issued in a timely manner (within a year of Audit Division's prior audit) and used a fair and unbiased tone. Furthermore, the Audit Report presented its assessment of the Audit's objectives in a clear and concise manner.

However, in reviewing Audit Division's evaluation document (matrix) used to assess the NCUOF investigations, it was noted that it did not have a question to evaluate whether photographs of visible injuries to involved Department employees were taken, as required by Special Order No. 13, 2004. The OIG's review noted that for two investigations (NCUOF Nos. 2002028 and 2001792), the officers were injured but no photographs were taken. Audit Division indicated that they would update their matrix to adequately test for this evidence in future audits. Additionally, for future NCUOF Audits, the OIG suggests, to be consistent with their other audits (e.g., the Categorical Use of Force Audit), that Audit Division specifically include in their audit scope a separate assessment of the adequacy of each investigation reviewed and, accordingly, provide distinct compliance percentages related to this assessment.

CONCLUSION

Overall, the OIG determined that the Audit was properly planned and conducted, and the Audit results were reported in a quality manner. Although the OIG identified certain findings in addition to those reported by Audit Division, the OIG does not believe that the overall reported compliance percentages would have been significantly impacted, with the exception of Consent Decree Paragraph 129(d) (Objective 9f). As findings related to the lack of consistent statement verbiage were not reported by Audit Division, the OIG does not believe that objective's compliance rate is all-inclusive.