

LOS ANGELES POLICE COMMISSION

NON-CATEGORICAL USE OF FORCE AUDIT



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

NICOLE C. BERSHON
Inspector General

December 16, 2010

OFFICE OF THE INSPECTOR GENERAL NON-CATEGORICAL USE OF FORCE AUDIT

PURPOSE

The Office of the Inspector General (OIG), pursuant to its Audit and Review Plan, has completed its annual Non-Categorical Use of Force (NCUOF) Audit (Audit), with an emphasis on NCUOF incidents with TASER usage.¹ The primary purpose of the Audit was to assess compliance with Department policies governing the usage and investigation/adjudication of NCUOF incidents involving TASER usage.

BACKGROUND

According to Department Manual Section 4/245.05, a reportable NCUOF is defined as an incident in which an officer uses a less-lethal control device or physical force to compel a person (hereafter referred to as “subject”) to comply with officer direction, to overcome resistance by a subject during an arrest/detention, or to defend any individual from an aggressive action by the subject.² However, if this force results in the subject’s death or admission to a medical facility, then the incident is reported and investigated as a Categorical Use of Force (CUOF).³

Non-reportable uses of force include the use of general grips and joint locks to compel the subject to comply with an officer’s direction, and any force used to reasonably overcome passive resistance due to physical disability, mental illness, intoxication, or muscle rigidity of the subject, which does not result in a complained-of or visible injury. In addition, discharges of less-lethal projectile weapons that do not make contact are also non-reportable use of force incidents.

Non-Categorical Use of Force investigations are classified into two categories, Level I and II. Level I investigations involve one or more of the following: (1) an allegation of unauthorized force made by a public witness or subject; (2) a force option that results in a serious injury, such as a broken bone, dislocation, or an injury requiring sutures, but which does not result in admittance to a hospital; (3) injuries to the subject that are inconsistent with the amount or type of force reported by the involved officer(s); and/or (4) when the accounts of the incident provided by the subject and/or witnesses of the use of force substantially conflict with the officers’ accounts of the incident. All other NCUOF investigations are classified as Level II. Level I investigations, unlike Level II, require that all subject and public witness interviews be audio-recorded, unless impractical or the interviewee refuses to be recorded.

¹ A TASER is an electronic control device that uses electrical current to disrupt voluntary control of muscles (the name is an acronym for the “Thomas A. Swift Electronic Rifle”).

² Less-lethal weapons, such as a bean bag shotgun or TASER, are not designed to kill or cause serious injury if used correctly.

³ Special Order No. 28, 2010, updated the definition of CUOFs as incidents involving the use of lethal force, such as intentional officer-involved shootings, unintentional firearm discharges, all carotid restraint control holds, all uses of force resulting in an injury requiring hospitalization, all unintentional (inadvertent or accidental) head strikes with an impact weapon involving serious bodily injury, all intentional head strikes, all other uses of force resulting in death, all deaths while the arrestee or detainee is in the custodial care of the LAPD, or any canine contact which results in hospitalization. All CUOFs are investigated by the Department’s Force Investigation Division.

There are three types of adjudications for NCUOF investigations: (1) in policy, requiring no action – meaning that the officer’s actions were within policy and no further action is required; (2) in policy, requiring non-disciplinary action – meaning that the force used by the officer was within policy, but the officer may benefit from training; and (3) out of policy with administrative disapproval – meaning that the officer violated Department policy.

The OIG applied Department Manual Sections 4/246.10 and 4/246.30 related to TASER Guidelines, and Use of Force Tactics Directive No. 1, February 2010, as the standards for evaluating TASER usage in the cases which comprised the Audit’s sample. Detailed background information for TASER usage is further delineated in the Objective D section of this report.

METHODOLOGY AND SCOPE

The Audit was limited to NCUOF investigations with TASER usage. The Audit was intended to provide an assessment of Department-wide adherence to policy, focusing on the following four objectives: (A) Involved Officer Responsibility, (B) Investigating Supervisor Responsibility, (C) Watch Commander Responsibility, and (D) TASER Usage. The OIG utilized a testing matrix with 52 questions to address the pertinent sections of Department policy for each of the four audit objectives.

To identify the population, the OIG used the UOFRD System, TEAMS II, COGNOS reporting system, and ran a report of NCUOF incidents with TASER as a force option which closed from April 21, 2009, to April 21, 2010. In order to obtain a sufficiently large audit population, the OIG identified a 12-month period as necessary to provide 13 Level I TASER use investigations. An equal number (13) of randomly selected Level II TASER use investigations were added to create a sample population of 26 NCUOF investigations, similar to the sample size of prior OIG NCUOF Audits.

Each of the investigation packages included: (1) NCUOF Case Detail printout – entitled the R19 report, (2) related arrest/crime/employee reports, (3) all attachments to the NCUOF investigation, including photographs, and (4) all related audio-recorded interviews.

The OIG conducted this Audit in accordance with generally accepted government auditing standards. These standards pertain to the auditor’s professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. Also, these standards require that the Audit is adequately planned, performed, and supervised, and that sufficient, competent, and relevant evidence is obtained to provide a reasonable basis for the findings and conclusions.

A weighted average compliance rate was calculated for each objective. For example, if an objective had 10 test questions and each question was applicable to each of the 26 NCUOFs in the audit sample, then there were a total of 260 (10x26) individual tests conducted. If 8 of these 260 tests indicated non-compliance issues, then the weighted average compliance rate for the objective would be 97% ((260-8)/260)).

SUMMARY OF RESULTS

<i>Objectives and Summary of Results</i>	<i>Compliance Rate</i>
A. Involved Officer Responsibility	
Objective A1: Determine if the involved officer had the legal/constitutional right to contact/detain/arrest and use force on the subject.	100%
Objective A2: Determine if the involved officer acted in accordance with Department Manual Section 4/245.10. ⁴	99%
B. Investigating Supervisor Responsibility	
Objective B1: Determine if the investigating supervisor acted in accordance with Department Manual Section 4/245.10.	100%
Objective B2: Determine if the investigating supervisor conducted and documented interviews in accordance with Department Manual Section 4/245.12. ⁵	95%
Objective B3: Determine if the investigating supervisor conducted interviews in accordance with Department requirements.	93%
Objective B4: Determine if the investigating supervisor documented injuries in accordance with Department Manual Section 4/245.12.	99%
Objective B5: Determine if the investigating supervisor documented photographs in accordance with Department Manual Section 4/245.12.	90%
C. Watch Commander Responsibility	
Objective C: Determine if the watch commander reviewing the NCUOF investigation acted in accordance with Department Manual Section 4/245.10.	96%
D. TASER Usage	
Objective D: Determine if the use of the TASER in the NCUOF incident was in accordance with Use of Force Tactics Directive No. 1, February 2010. ⁶	98%

⁴ Department Manual Section 4/245.10, "Employee's Responsibility," delineates the steps that an officer who becomes involved in a reportable NCUOF incident shall follow.

⁵ Department Manual Section 4/245.12 states that the investigating supervisor is required to either audio- record or provide a written summary of the subject and all public witness interviews.

⁶ This Directive provides TASER usage guidelines to officers regarding the optimal distance, target areas, use of verbal warning, and other pertinent information.

As the preceding table indicates, all the nine objectives/sub-objectives had weighted average compliance rates of from 90 to 100%, indicating that Department policies and procedures were generally being complied with. However, the OIG did note that 14 NCUOF investigations had some non-compliance issues.⁷ Furthermore, the OIG had significant issues with three NCUOF investigations which UOFRD also identified (see details provided under each objective).⁸ A brief summary of the compliance issues found in those investigations is as follows:

2008622

- Objective A2 – The arrest report did not include all the pertinent details to the investigation leaving out why the officers left their cover position when they confronted the subject.
- Objective B3 – A public witness alleged that the subject was struck on the head with an officer's baton. The investigating supervisor did not ask follow-up questions during the audio-recorded interview. The investigating supervisor did not include the description of the officer who applied the alleged baton strike in the NCUOF investigation. Additionally, the investigating supervisor's summarized statement was different from the audio-recorded witness statement.
- Objective B5 – A photograph which would have been pertinent to the investigation was not taken of a public witness's vantage point.

2008213

- Objective B3 – The subject invoked his Miranda Rights, but was still questioned about the incident.

2008599

- Objective B3 – There is no evidence that the subject was read his Miranda Rights, even though there is evidence that he was questioned about the incident in the NCUOF investigation.

DETAILED RESULTS BY OBJECTIVE

A. Involved Officer Responsibility

Objective A1: Determine if the involved officer had the legal/constitutional right to contact/detain/arrest and use force on the subject.

Background

Police officers are legally allowed to contact individuals based on: (1) a consensual encounter, (2) reasonable suspicion, or (3) probable cause.

Consensual Encounter - A consensual encounter includes only those situations where the conduct of the police would lead a reasonable person to believe he/she is free to leave or terminate the encounter. The officer must not restrain or exert any authority over the person.

⁷ NCUOF Nos. 2008622, 2006554, 2007556, 2007818, 2008823, 2008566, 2008213, 2008599, 2007989, 2008778, 2008908, 2009416, 2007078, 2009099.

⁸ 2008622, 2008213, 2008599.622

Reasonable Suspicion - Reasonable suspicion is the minimum level of suspicion required to lawfully detain a subject against his/her will. A detention is valid if an officer has a reasonable suspicion that: (1) something relating to crime has just happened, is happening, or is about to happen, and (2) the person the officer detains is connected with the crime.

Probable Cause - Probable cause to arrest is defined as a set of facts that would cause a reasonable person to form an honest and strong belief that the person to be arrested has committed a crime. A lawful arrest must be based upon probable cause, which requires only a fair probability that the person committed a crime.⁹

Matrix Test Questions

1. Did the officer(s) articulate in the arrest/crime/employee report the reason for the contact/detention/arrest and use of force?
2. Was the contact/detention/arrest valid in relation to the policy and/or laws that govern it?
3. Was the use of force to: (1) compel a person to comply with the officer’s direction, (2) overcome resistance of a person during an arrest or a detention, or (3) defend any individual from an aggressive action by another person?

Testing Results

The Department was 100% compliant with this objective pertaining to involved officers having the legal and constitutional right to contact/detain/arrest and use force on the involved subject.

Objective	Matrix Question No.	No. of Applicable NCUOFs	No. of Compliant NCUOFs	No. of Non-Compliant NCUOFs	Weighted Avg. Compliance Rate
A1	Q1	26	26	0	
	Q2	26	26	0	
	Q3	26	26	0	
Totals		78	78	0	100%

⁹ References: California Peace Officers Legal Sourcebook (CPOLS) references the following to establish this criterion: (Mendenhall, 446 U.S. 544, 554 (1980); Bennett, 68 Cal.App.4th 396, 402 (1998) ; Rodriguez, 21 Cal.App.4th 232, 238 (1993); and (Castaneda, 35 Cal.App.4th 1222, 1227 (1995); Lopez, 212 Cal.App.3d 289 (1989) ; Ross, 217 Cal.App.3d 879, 884 (1990); Christopher B., 219 Cal.App.3d 455 (1990) ;Hughes, 27 Cal.4th 287, 327 (2002); Manuel G., 16 Cal.4th 805, 821 (1997)); and (Sokolow; 490 U.S. 1, 7-8 (1989) ; Tony C., 21 Cal.3d 888, 893 (1978) ; Twilley, 222 F.3d 1092, 1095 (9th Cir. 2000) ; Limon, 17 Cal.App.4th 524, 532 (1993)); and (Moore 128 S.Ct. 1598, 1604 (2008)); and also the “Lawful Contacts” card issued by the Department to all officers.

Objective A2: Determine if the involved officer acted in accordance with Department Manual Section 4/245.10.

Background

According to Department Manual Section 4/245.10, “Employee's Responsibility,” an officer who becomes involved in a reportable NCUOF incident shall: (1) notify a supervisor without delay; (2) report the full details of the use of force incident in the related Department Arrest Report, Crime Report, or Employee’s Report; and (3) document the name of the investigating supervisor in the related report.

Matrix Test Questions

1. Did the officer notify a supervisor without delay?
2. Did the officer report the full details of the use of force incident in the related report?
3. Did the officer document the name of the investigating supervisor in the related report?

Testing Results

The Department was 99% compliant with this objective pertaining to involved officers acting in accordance with Department Manual Section 4/245.10.

Objective	Matrix Question No.	No. of Applicable NCUOFs	No. of Compliant NCUOFs	No. of Non-Compliant NCUOFs	Weighted Avg. Compliance Rate
A2	Q1	26	26	0	
	Q2	26	25	1	
	Q3	<u>26</u>	<u>26</u>	<u>0</u>	
Totals		78	77	1	99%

Details for Non-Compliant NCUOF

Q2 - NCUOF 2008622: The Arrest Report did not include all the pertinent details, leaving out specific details as to why the officers left their cover position when they confronted the subject during the related incident. Use of Force Review Division (UOFRD) identified missing details and returned the report for further investigation and requested that the investigating supervisor complete a Follow-up Investigation (Form 3.14).

B. Investigating Supervisor Responsibility

Objective B1: Determine if the investigating supervisor acted in accordance with Department Manual Section 4/245.10.

Background

According to Department Manual Section 4/245.10, when a NCUOF incident occurs an uninvolved supervisor from the officer's command is assigned to conduct the NCUOF investigation. A supervisor who witnessed the NCUOF incident should not conduct the investigation. The investigating supervisor should classify the NCUOF incident as either Level I or II. Generally, the initial NCUOF investigation report should be submitted by the investigating supervisor's end of watch. However, complex Level I investigations may require additional time not to exceed two calendar days following the incident.

Matrix Test Questions

1. Did the investigating supervisor respond and conduct an on-scene investigation?
2. Was the investigating supervisor uninvolved in the NCUOF incident?
3. Did the investigating supervisor classify the NCUOF incident as either Level I or II?
4. Did the investigating supervisor document the investigation in the Use of Force System?
5. Did the investigating supervisor forward the completed NCUOF report and all related reports to the watch commander or officer-in-charge within two calendar days?

Testing Results

The Department was 100% compliant with this objective pertaining to investigating supervisors acting in accordance with Department Manual Section 4/245.10.

Objective	Matrix Question No.	No. of Applicable NCUOFs	No. of Compliant NCUOFs	No. of Non-Compliant NCUOFs	Weighted Avg. Compliance Rate
B1	Q1	26	26	0	
	Q2	26	26	0	
	Q3	26	26	0	
	Q4	26	26	0	
	Q5	26	26	0	
Totals		130	130	0	100%

Objective B2: Determine if the investigating supervisor conducted and documented interviews in accordance with Department Manual Section 4/245.12.

Background

According to Department Manual Section 4/245.12, the investigating supervisor is required to provide either audio recordings or written summaries of interviews of the subject and all public witnesses.¹⁰ If an audio recording is not practical or an individual refuses to be audio-recorded, the person should still be listed in the investigation along with an explanation as to why his/her interview was not audio-recorded. The investigating supervisor is not required to audio-record the interviews of officers who are involved or considered witnesses in the NCUOF. The related Crime Report, Arrest Report, and/or Form 15.07.00, serves as documentation of the involved officer(s) statement.¹¹ The investigating supervisor is required to note whether statements provided by witnessing officers and public witnesses were consistent with related reports. Therefore a brief sentence stating that the officers/public witness statements were consistent with the related reports is included in the NCUOF investigation summary portion of the NCUOF report.

Matrix Test Questions

1. Did the investigating supervisor canvass the scene to locate witnesses?
2. Did the investigating supervisor audio-record interviews of the subject and public witnesses?
3. Did the investigating supervisor provide brief statements of the involved subjects(s) or public witnesses who either refused to be audio-recorded or were not recorded for another reason?
4. Did the investigating supervisor note whether statements provided by witnessing officers and public witnesses were consistent with related reports?
5. Did the investigating supervisor document any inconsistencies from interviews?

¹⁰ The summarized (paraphrased) statement is a brief written summary of the information provided during the interview and is only required if the interview is not audio-recorded.

¹¹ The interviews of officers for an NCUOF investigation shall not be audio-recorded. However, if there are interviews of officers for a related complaint investigation, those interviews shall be audio-recorded.

Testing Results

The Department was 95% compliant with this objective pertaining to investigating supervisors conducting and documenting interviews in accordance with Department Manual Section 4/245.12.

Objective	Matrix Question No.	No. of Applicable NCUOFs	No. of Compliant NCUOFs	No. of Non-Compliant NCUOFs	Weighted Avg. Compliance Rate
B2	Q1	26	25	1	
	Q2	13	11	2	
	Q3	12	11	1	
	Q4	13	13	0	
	Q5	13	13	0	
Totals		77	73	4	95%

Details for Non-Compliant NCUOFs

Q1 - NCUOF 2006554: The investigating supervisor did not document detailed canvassing information, including the times, locations, and individual results. The UOF report only indicates “Yes” as the answer to the question regarding the scene being canvassed for witnesses. The UOFRD identified this issue, but because of the long time lapse since the incident, re-canvassing was not done and would have been futile. The original investigating supervisor for this investigation was unavailable at the time that UOFRD requested details regarding canvassing. Therefore, UOFRD did not receive an answer to address the scope of the area canvassed for witnesses nor was a reason provided as to why no witnesses were found.

Q2 - NCUOF 2007556: The investigating supervisor did not audio-record the interviews of three public witnesses.

Q2 - NCUOF 2007818: The investigating supervisor audio-recorded the interview of the subject, but the related tape was lost. The UOFRD identified this issue.

Q3 - NCUOF 2007556: The investigating supervisor documented two UOF incidents on the same NCUOF report; the first UOF occurred at one location where there were no non Department witnesses. The mentally ill subject became aggressive in the hospital, which resulted in the second UOF on the same day. The hospital security guard and nurse who were present during the second UOF were interviewed. The investigation contained verbiage for these two individuals that their statements were consistent with related reports. However, the investigating supervisor indicated in the battery report that these two individuals did not actually observe the use of force as it was being applied. Hence, “consistent statements” verbiage was inappropriate for these two individuals who did not witness the use of force.

Objective B3: Determine if the investigating supervisor conducted interviews in accordance with Department requirements.

Background

According to Special Order No. 13, entitled, “Non-Categorical Use of Force Reporting – Revised,” dated May 26, 2004, supervisors investigating a NCUOF Level I incident shall audio-record statements of the subject and all public witnesses. Audio-recorded interviews should be conducted in accordance with Department guidelines established in, “Complaint Investigations: A Guide for Supervisors.” If audio recording is not practical or an interviewee refuses, a documented explanation is required.

Also 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.

Additionally, the Chief of Staff Notice dated May 12, 2009, (*Clarification of Miranda Procedures during Non-Categorical Use of Force Interviews of Suspects in Custody*) requires that an in-custody suspect with a resulting NCUOF incident who refuses to waive Miranda Rights should not be interviewed. Furthermore, if a suspect unequivocally invokes the right to remain silent, the NCUOF investigation interview shall immediately cease.

Matrix Test Questions

1. Does the interview appear to be at a time and place convenient to the interviewee?
2. Was the interviewee interviewed separately?
3. If the interviewee was the subject of the use of force or a public witness, was the tone of the interviewer neutral and professional (not hostile or condescending)?
4. Based on the interviewee’s answers to previous questions, were all necessary logical follow-up questions asked?
5. Is the summarized statement complete in that it includes all relevant, pertinent points?
6. Does the interviewee’s summarized statement include all the alleged uses of force?
7. Is the summarized statement accurate in that it correctly and fairly reflects the interviewee’s points?
8. Is the audio recording complete/whole, with no gaps or cuts?
9. If the interviewee was arrested, was he/she read the Miranda Rights admonition?
10. Was a brief summarized statement of the subject and/or public witness prepared when the interview was not audio-recorded or when their account of the use of force was in substantial conflict with related reports?

Testing Results

The Department was 93% compliant with this objective pertaining to investigating supervisors conducting interviews in accordance with Department requirements.

Objective	Matrix Question No.	No. of Applicable NCUOFs	No. of Compliant NCUOFs	No. of Non-Compliant NCUOFs	Weighted Avg. Compliance Rate
B3	Q1	9	9	0	
	Q2	10	9	1	
	Q3	6	6	0	
	Q4	7	6	1	
	Q5	9	8	1	
	Q6	8	8	0	
	Q7	9	8	1	
	Q8	9	8	1	
	Q9	26	24	2	
	Q10	<u>9</u>	<u>9</u>	<u>0</u>	
Totals		102	95	7	93%

Details for Non-Compliant NCUOFs

(Note: The details below are based on the OIG’s listening to the audio-recorded interviews and the OIG’s review of the related summarized statements of these interviews.)

Q2 - NCUOF 2008823: The investigating supervisor interviewed the subject in the presence of his girlfriend, but there was no indication that the subject requested his girlfriend’s presence.¹²

Q4 - NCUOF 2008622: A public witness reported that the subject was struck on the head with an officer’s baton, which was not one of the reported force options applied. However, the investigating supervisor did not ask any follow-up questions regarding this allegation during the audio-recorded interview. The UOFRD identified this issue and during their review initiated a complaint to further investigate this allegation, which was ultimately adjudicated as Unfounded.¹³ Force Investigation Division was also notified of this alleged baton head strike, and they advised they would *not* investigate this incident as a CUOF.

Q5 - NCUOF 2008622: The investigating supervisor did not include all pertinent details provided during a public witness interview including the description of the involved officer.¹⁴

Q7 - NCUOF 2008622: The investigating supervisor’s summarized statement differed from the account provided by a public witness, in that the summarized statement reflects that the witness’s “view was obstructed by [a] fence and officers.” However, the witness did not indicate that his view was obstructed during his tape-recorded interview.¹⁵

¹² Tape No. 476302.

¹³ Tape No. 479001, CF No. 09-004993.

¹⁴ Tape No. 479001, CF No. 09-004993.

¹⁵ Tape No. 479001.

Details for Non-Compliant NCUOFs continued

Q8 - NCUOF 2008566: The investigating supervisor's audio recording of the subject was not complete. The audio recording began without introduction and in the middle of the interview.¹⁶

Q9 - NCUOF 2008213: The subject invoked his Miranda Rights, but was still questioned about the incident. The UOFRD identified this issue during their review and communicated it to the Area via a badge note.¹⁷ No further information regarding the action taken by the Area is indicated in the investigation.

Q9 - NCUOF 2008599: The NCUOF report states that the subject's account of the incident was consistent with the officer descriptions in related reports, which implies that the subject was questioned about the NCUOF incident. However, there is no evidence that the subject was read his Miranda Rights, as was required in NCUOF investigations (per Chief of Staff Notices dated July 2, 2008, and May 12, 2009).

Objective B4: Determine if the investigating supervisor documented injuries in accordance with Department Manual Section 4/245.12.

Background

According to Department Manual Section 4/245.12, the investigating supervisor shall document all visible or complained-of injuries, and any medical treatment provided. Each subject receiving medical treatment shall be asked to sign an Authorization to Release Medical Information form. If the subject refuses, the appropriate box shall be checked on the NCUOF report. If the subject is unable to sign the Authorization to Release Medical Information form, the investigating supervisor is required to document the circumstances in the NCUOF report.

Matrix Test Questions

1. Did the investigating supervisor document all visible and complained-of injuries?
2. Did the investigating supervisor attempt to obtain a signed Authorization to Release Medical Information form if the subject received medical treatment?
3. Did the investigating supervisor attempt to collect injury information based on personal observations and/or statements from the subject, the involved officer(s), and the non-medical witness(es)?
4. Did the investigating supervisor document medical treatment information in the NCUOF report and indicate the source of the information?
5. Did the investigating supervisor ask the subject how he/she was injured, if applicable, and document the response?

¹⁶ Tape No. 439159.

¹⁷ Tape Nos. 436657 and 436656.

Testing Results

The Department was 99% compliant with this objective pertaining to investigating supervisors documenting injuries in accordance with Department Manual Section 4/245.12.

Objective	Matrix Question No.	No. of Applicable NCUOFs	No. of Compliant NCUOFs	No. of Non-Compliant NCUOFs	Weighted Avg. Compliance Rate
B4	Q1	24	24	0	
	Q2	26	25	1	
	Q3	26	26	0	
	Q4	25	25	0	
	Q5	13	13	0	
Totals		114	113	1	99%

Details for Non-Compliant NCUOF

Q2 - NCUOF 2006554: The investigating supervisor documented in the NCUOF report that the subject was treated at a jail dispensary, so no Authorization to Release Medical Information form was generated. However, Special Order No. 23, 2005, “Authorization to Release Medical Information,” states that this form shall be used to obtain authorization for the release of any medical records for any subject who receives medical treatment at a Department or private medical facility. The UOFRD identified this error.

Objective B5: Determine if the investigating supervisor documented photographs in accordance with Department Manual Section 4/245.12.

Background

According to Department Manual Section 4/245.12, the investigating supervisor should take photographs in all NCUOF investigations.¹⁸ If a photograph is impractical because the subject of the use of force refuses to be photographed, a documented explanation is required.

Department policy provides that if practical, photographs shall be taken: (1) of visible injuries, or the lack thereof, incurred by the subject or involved officer(s), if relevant to the use of force; (2) when a criminal filing for a crime against a peace officer will be sought (e.g., 148 or 243 PC, etc.); and (3) of the vantage point of a witness when potentially useful to resolve conflicting statements regarding the use of force.

¹⁸ Photographs taken with a digital camera by sworn field employees will suffice for Level II investigations. Photographs taken by Scientific Investigation Division (SID) photographers are preferred for Level I investigations. Also, photographs of private body parts, if relevant, shall be taken by SID photographers.

Matrix Test Questions

1. Did the investigating supervisor (or SID) take photographs of the subject’s visible injuries?
2. Did the investigating supervisor (or SID) take photographs of the officers’ visible injuries?
3. Did the investigating supervisor (or SID) take photographs of the incident scene?
4. Did the investigating supervisor (or SID) take photographs of the vantage point of witnesses if relevant to investigation?

Testing Results

The Department was 90% compliant with this objective pertaining to investigating supervisors documenting photographs in accordance with Manual Section 4/245.12.

Objective	Matrix Question No.	No. of Applicable NCUOFs	No. of Compliant NCUOFs	No. of Non-Compliant NCUOFs	Weighted Avg. Compliance Rate
B5	Q1	25	22	3	
	Q2	21	20	1	
	Q3	26	24	2	
	Q4	<u>9</u>	<u>7</u>	<u>2</u>	
Totals		81	73	8	90%

Details for Non-Compliant NCUOFs

Q1/Q3 - NCUOF 2006554: According to the NCUOF report, the investigating supervisor directed officers on scene to take photographs of the subject’s visible injury and the incident scene, but photographs were not taken. This issue was identified by the watch commander and the investigating supervisor was trained. The training was documented on a Comment Sheet.

Q1/Q2 - NCUOF 2007989: The investigating supervisor did not request SID to take a photograph of the subject’s groin, which was the contact point for the drive stun use of the TASER.¹⁹ Also, there was no photograph taken of an involved officer’s "sprained right hand with skin discoloration and swelling present."

Q1/Q3/Q4 - NCUOF 2008778: All photographs taken of the subject for this investigation were erased. This issue was identified by UOFRD.

Q4 - NCUOF 2008622: A photograph was not taken of a public witness’s vantage point. This would have been pertinent, because the investigating supervisor stated that the witness’s view was obstructed by a fence, but the witness did not state this during the interview.

¹⁹ Use of Force Tactics Directive No. 1, dated February 2010, states in the “Optimum Target Areas” subsection, that areas to “avoid using the stun feature on [are] the head, face, throat, and groin.”

C. Watch Commander Responsibility

Objective C: Determine if the watch commander reviewing the NCUOF investigation acted in accordance with Department Manual Section 4/245.10.

Background

According to Department Manual Section 4/245.10, a watch commander reviewing a NCUOF investigation shall document his/her insight in the NCUOF report after reviewing the investigation. A watch commander must also approve the NCUOF investigation and any related reports. The supervisor approving the NCUOF investigation may be different from the watch commander who reviewed and approved the related report(s). Usually, the officer’s chain of command will conduct and approve the NCUOF investigation.

Matrix Test Questions

1. Did the watch commander document his/her insight?
2. Did the watch commander sign the NCUOF investigation?
3. Did the watch commander, not the investigating supervisor, sign the related reports?

Testing Results

The Department was 96% compliant with this objective pertaining to watch commanders reviewing NCUOF investigations in accordance with Department Manual Section 4/245.10.

Objective	Matrix Question No.	No. of Applicable NCUOFs	No. of Compliant NCUOFs	No. of Non-Compliant NCUOFs	Weighted Avg. Compliance Rate
C1	Q1	26	26	0	
	Q2	26	26	0	
	Q3	<u>26</u>	<u>23</u>	<u>3</u>	
Totals		78	75	3	96%

Details for Non-Compliant NCUOFs

Q3 - NCUOF 2006554 and 2007556: The investigating supervisor, instead of the watch commander, approved the related Arrest Report. The UOFRD identified this issue during their review process. This information was documented in the chronological log of the NCUOF report.

Q3 - NCUOF 2008908: The investigating supervisor, instead of the watch commander, signed a follow-up supplement to the Arrest Report. The UOFRD identified this issue during their review; no further information was given as to what corrective action if any was taken.

D. TASER Usage

Objective D: Determine if the use of the TASER in the NCUOF incident was in accordance with Use of Force Tactics Directive No. 1, February 2010.

Background

According to Department Manual Section 4/573, less-lethal control devices, including a TASER, are used to reduce the number of altercation-related injuries to officers and subjects. A TASER may be used to control a subject who is: (1) violent or potentially violent, (2) a potential threat to self or others, or (3) armed with weapons other than firearms, when an officer believes that deadly force does not appear to be reasonable. Also, a TASER may be used if the officers' attempts to subdue the subject with other tactics have been or will likely be ineffective in the situation, or if there is a reasonable belief that it will be unsafe for officers to approach within contact range of the subject.

The TASER is only to be used by personnel who have completed the Department's TASER training program. Currently, TASER use is taught to officers during recruit academy training. TASER training is two hours in duration and consists of instruction on the correct use, carrying, loading, unloading, and manipulation of the X-26 TASER. In addition, there is a TASER transition course which is provided to officers in the field when the Department modifies any aspect of the TASER (e.g., when an officer obtains a new TASER model). The Department currently uses two TASER models: X-26 and M-26. Both models have the capacity to activate direct stun and drive stun.

The TASER's direct stun is activated by pulling a trigger similar to a firearm. Two barbed probes are propelled out of the TASER. The probes are designed to penetrate the subject's skin/clothes, allowing an electrical surge to override the subject's nervous system. As a result of the electrical surge, the subject being tased will usually experience a loss of control and fall either forward or backward. The optimum target areas for the direct stun are the back and navel.²⁰

The TASER's drive stun is used by pressing the TASER directly against the subject at the time of deployment. The drive stun can be used without a cartridge but can also be used in combination with direct stun. The optimum target areas for the drive stun are the forearm, outside of thigh, and calf muscle.

The Department's Use of Force Tactics Directive No. 1, February 2010, states that a verbal warning shall be given to a subject before a TASER is utilized. The command should be to the effect of "drop the weapon" or "stop what you are doing" followed by "we may use the TASER, which may cause you serious injury." The warning is not required when an officer is attacked and must respond to the subject's actions.

Additionally, Department Manual Section 4/246.10 provides instruction on the verbal warning requirements as it relates to the NCUOF investigation. This information is to be documented in

²⁰ Prior to this Directive, the upper chest was also an optimum target area.

the NCUOF investigation by providing the name of the employee giving the warning and what was said verbatim. Likewise, in cases where a warning was required but not given, supervisors shall provide an explanation in the NCUOF investigation. If no warning was required, no documentation is necessary.

Matrix Test Questions

1. Was the TASER deployed for a reason identified in Use of Force Tactics Directive No. 1, February 2010?
2. Were the officers’ attempts to subdue the subject with other tactics ineffective in the incident related to the NCUOF?
3. Was there a reasonable belief that it would be unsafe for officers to approach within contact range of the subject?
4. Were the optimum target areas hit by the TASER? (An audit exception would require evidence of specific intent to hit other areas.)
5. Did the TASER make contact with the subject’s clothing and/or skin?
6. Was the subject examined by medical personnel when contacts made?
7. Did the subject lose consciousness? If so was an ambulance required?
8. Was the verbal warning appropriately given?
9. Was the verbal warning documented in the NCUOF investigation?
10. Was the subject seriously injured as a result of the TASER Usage?

Testing Results

The Department was 98% compliant with this objective pertaining to officers using the TASER in accordance with Use of Force Tactics Directive No. 1, February 2010.

Objective	Matrix Question No.	No. of Applicable NCUOFs	No. of Compliant NCUOFs	No. of Non-Compliant NCUOFs	Weighted Avg. Compliance Rate
D1	Q1	26	26	0	
	Q2	24	23	1	
	Q3	26	26	0	
	Q4	25	24	1	
	Q5	26	26	0	
	Q6	25	25	0	
	Q7	12	12	0	
	Q8	26	23	3	
	Q9	17	17	0	
Totals		207	202	5	98%

Details for Non-Compliant NCUOFs

Q2 - NCUOF 2009416: The involved officer tased the subject seven times prior to the TASER being effective. The officer's chain of command in the written adjudication stated that since the TASER was not effective after multiple applications, it would have been better to transition to a different force option. The involved officers were both trained in regards to this matter, and the training was documented on a Comment Sheet.

Q4 - NCUOF 2007989: The subject was tased three to four times before the officers used other force options to attempt to subdue the subject. When the other force options proved to be ineffective, the officer tased the subject in the groin area, which is not an approved target area. This issue was identified by the involved officer's chain of command, and the involved officer was trained as a result.

Q8 –NCUOF 2007078: According to the investigation, the involved officer did not have time to give a verbal warning because after numerous commands were given, the subject began to slowly walk backwards towards the front door of his residence. However, the OIG disagrees, noting that the officers were *not* being attacked and the subject was moving away from them. Furthermore, the partner officer had time to yell the words "TASER, TASER" at the primary officer.

Q8 –NCUOF 2008823: According to the investigation, a verbal warning was not given because "due to the sudden and aggressive actions of the subject, it became apparent that an assault was imminent upon a third party." However, the investigation also states that the officer involved had time to order the subject to stop fighting and conduct a "spark check," to show the TASER was charged.

Q8 –NCUOF 2099099: According to the Arrest Report, the officers responded to a "Code Tom Request," which is a radio call specifically requesting a patrol unit with a TASER. When the officers arrived, they observed the subject swinging a belt and they began giving the subject verbal commands to "drop the belt on the ground, turn around and get on your knees." The subject was yelling back at the officers at that point. The primary officer obtained the TASER from the police vehicle and then advised the supervisor at scene that he was TASER equipped. Both officers began giving the subject verbal commands, but no TASER warning. When the officers got closer to the subject, he swung the belt in their direction and the supervisor began giving the subject commands from his police vehicle. The supervisor finally gave the officers the command to deploy the TASER. The officer's chain of command determined that the officer had time to give the verbal warning but did not, so training was given.

OTHER RELATED MATTERS

Use of TASER when the subject is in danger of falling, which could result in death or serious bodily injury

Background

The Use of Force Tactics Directive No. 1, February 2010, procedures section states: “Generally, officers should avoid deploying the TASER when the subject is in control of a motor vehicle; in danger of falling which could result in death or serious bodily injury; near flammable or combustible fumes; near a pool, lake or similar body of water; or known to be pregnant or have a pacemaker.”

For this portion of the Audit, the OIG tested the sample for the aforementioned procedural guideline by focusing on the result of the injury caused by the TASER usage. In order for the OIG to report the NCUOF investigation as non-compliant, the injury had to meet the California Penal Code Section (f)(4), definition of serious bodily injury.²¹

Testing Results

The Department followed this procedural guideline 100% of the time (in all 26 NCUOF incidents) in not deploying the TASER when the subject was in danger of falling, which could have resulted in death or serious bodily injury. Note that this audit test was not included under Objective D, as it involves a procedural guideline, not a requirement.

Photographing Involved Officers *Without* Visible Injuries

Management of UOFRD advised that current policy is ambiguous regarding when, and the extent to which, officers involved in a NCUOF incident *without* visible injuries should be photographed. Department Manual 4/245.12 states that in NCUOF investigations, photographs shall be taken of “visible injuries – *or the lack thereof* – incurred by the involved Department employee(s) if relevant to the use of force, or when a criminal filing for a crime against a peace officer (e.g., 148 or 243 PC, etc.) will be sought.”

The ambiguity concerns determining what is “relevant” to photograph. For example, photographing a visible injury is straightforward; the injury which can be seen is the subject of the photography. But it is less clear what to photograph when the subject is absent (i.e., determining what to photograph when no there is no injury to see).

The OIG concurs that this current policy is ambiguous, especially in NCUOF incidents involving multiple involved officers *without* visible injuries. The OIG agrees with UOFRD management’s interpretation that the current wording creates situations when photographs would be needlessly taken (creating potential photograph storage issues), or the Department could be found out of

²¹ California Penal Code Section 243(f)(4) partially defines serious bodily injury as the loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, or serious disfigurement.

compliance with policy when acting on a practical basis. The UOFRD management advised that the current policy has been subject to Department review and discussion, and that a proposed revision is pending final approval.

RECOMMENDATION

The OIG recommends that the Department report back on the status of any proposed policy revisions concerning the photographing of Department employees involved in NCUOF incidents *without* visible injuries.

RESPONSE OF UOFRD MANAGEMENT

Management of UOFRD agreed with the Audit findings as reported in this Audit.

CONCLUSION

The OIG has completed its NCUOF Audit, with an emphasis on NCUOF incidents with TASER usage. All the nine audit objectives/sub-objectives had weighted average compliance rates of from 90 to 100%, indicating that Department policies and procedures were generally being complied with. However, the OIG did note that three NCUOFs had some significant non-compliance issues.