

LOS ANGELES POLICE COMMISSION

REVIEW OF THE DEPARTMENT'S WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS AUDIT



Conducted by

OFFICE OF THE INSPECTOR GENERAL

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**OFFICE OF THE INSPECTOR GENERAL
REVIEW OF THE DEPARTMENT'S
WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS AUDIT**

PURPOSE

The Office of the Inspector General (OIG), pursuant to Consent Decree (CD) Paragraph 135, reviewed the Los Angeles Police Department's (Department) Warrant Applications and Supporting Affidavits Audit (Audit). The Audit was completed in the second quarter of Fiscal Year 2007/2008 and received by the OIG on December 28, 2007. This review assessed the completeness, findings, and quality of the Department's Audit.

BACKGROUND ON THE DEPARTMENT'S AUDIT

The Audit, conducted by Audit Division, assessed the Department's compliance with CD Paragraphs 62(b), 71(a, b and c), 72, 128 and 131(a, c, and e).¹ Audit Division used two different samples. One sample consisted of 72 stratified and randomly selected Department-wide search and/or arrest warrants (warrants), excluding Gang Enforcement Detail (GED), and the other sample consisted of all 11 warrants with an affiant assigned to a gang unit (GED).

Audit Division's Audit reported that the Department achieved at least 95 percent compliance for three of the 15 objectives² evaluated, a decrease from Audit Division's prior year's audit in which four objectives achieved at least 95 percent compliance.³ Of the 12 objectives evaluated that did not meet at least 95 percent compliance, findings for seven objectives (i.e., Objective Nos. 1, 2(d), 3(a), 4(a), 4(c), 5(a), and 6) were determined by Audit Division to be administrative in nature and therefore, a "lower risk." The findings for the remaining five objectives (i.e., Objective Nos. 2(b), 4(b), 5(b), 5(c), and 7) were classified as "moderate to high risk" because they involved aspects of Department supervision and management.

The table on the next page provides a brief description of the Audit's objectives to assess the Department's adherence to CD mandates and the results of Audit Division's Audit.⁴ Greater detail on Audit Division's methodology and findings can be found in their final Audit Report.

¹ To adhere to CD Paragraph 131(c), Audit Division reported separate compliance percentages for Gang Enforcement Details.

² Although Audit Division's report had objectives and sub-objectives, for purposes of this report, sub-objectives are referred to as objectives.

³ Audit Division issued their Audit Report on December 28, 2007 and subsequently met with the commanding officer of the Office of Operations on January 9, 2008 to discuss the Audit's findings. Audit Division management agreed that they should have mentioned in their Audit Report that due to time constraints they were unable to meet with either the commanding officer of the Office of Operations or the commanding officers of the four geographic bureaus prior to the issuance of their Audit Report. However, they indicated that they have recently implemented a process to ensure that attempts are made to meet with the entity that was audited prior to the issuance of CD-related audit reports.

⁴ Not all warrants in Audit Division's sample were applicable to be evaluated for each audit objective.

**AUDIT DIVISION'S REPORTED COMPLIANCE PERCENTAGES BY OBJECTIVE
AND COMPARATIVE ANALYSIS TO THE PRIOR YEAR'S AUDIT**

Obj. No.	CD ¶	OBJECTIVE DESCRIPTION	2006 / 2007 DEPARTMENT COMPLIANCE		2007 / 2008 DEPARTMENT COMPLIANCE	
			Compliant Packages / Evaluated Packages	Compliance Percentage ⁵	Compliant Packages/ Evaluated Packages	Compliance Percentage ⁵
1	71(a)/128(a)	Completeness	89/97	92%	74/83	89%
2	71(a)/128(b)	Authenticity				
		2(a) - No Evidence of Canned Language	89/97	92%	83/83	100%
		2(b) - No Evidence of Inconsistent Information	74/97	76%	66/83	80%
		2(c) - Articulation of Legal Basis	97/97	100%	83/83	100%
		2(d) - Other Indicia that Information is Not Authentic or Correct	70/97	72%	66/83	80%
3	71(b)/128(c)	Underlying Actions Appropriate and Legal				
		3(a) - Articulation of Justification for Night Service	26/30	87%	17/19	89%
		3(b) - Warrant Service at Correct Time	75/75	100%	50/51	98%
4	71(b)/128(c)	Conformance with LAPD Procedures				
		4(a) - Warrant Served within the Required Time	95/97	98%	72/83	87%
		4(b) - No Evidence of Improper Use of Confidential Informants	16/16	100%	3/5	60% ⁶
		4(c) - Warrant Executed in the Appropriate Order for Warrant Service	66/75	88%	40/46	87%
5	71(c)/128(d)	Supervisory Oversight				
		5(a) - Application/Affidavit	91/97	94%	70/83	84%
		5(b) - Applicable Incident	66/75	88%	43/46	93%
		5(c) - Post-Incident Review	68/75	91%	18/46	39% ⁷
6	72	Completeness of the Warrant Tracking Log	66/97	68%	74/83	89%
7	62(b)	Commanding Officer's Analysis of the Supervisor's Response to the Warrant Service	33/75	44%	12/46	26% ⁸

⁵ Percentages that are **bolded** did not meet the CD compliance standard of 95 percent or higher.

⁶ The Audit tested five warrant packages that referenced the use of a confidential informant, as compared to the prior year's audit that tested 16 packages. Two warrant packages did not meet compliance with the CD mandate as one lacked documentation regarding the reliability of the confidential informant and the other did not have the associated contact information updated in the confidential informant's package as required.

⁷ The commanding officer is required to document the appropriateness of the supervisor's actions related to the warrant service within the Warrant Service/Tactical Plan. A majority of the Audit's findings for this objective were attributable to commanding officers not addressing the appropriateness of the supervisor's actions.

⁸ The commanding officer is also required to document the appropriateness of the supervisor's actions on a Comment Sheet to be considered in the supervisor's annual performance evaluation. A majority of the Audit's findings for this objective were attributable to commanding officers not adequately documenting their analysis of a supervisor's actions to the warrant service on a Comment Sheet.

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 Microsoft Access database ("work papers") used by Audit Division to document their review of the warrants. The OIG also reviewed a sample of 31 warrants (22 non-GED and nine GED) of the 83 (72 Non-GED and 11 GED) evaluated by Audit Division.⁹

On April 2, 2008, the OIG met with Audit Division and discussed most of the concerns mentioned in this report.¹⁰ At that time, Audit Division management indicated that they disagreed with our concerns. Subsequent to this meeting, while evaluating the reasons for their disagreements, additional concerns were identified that were not able to be fully discussed with Audit Division management due to time constraints.

REVIEW RESULTS

COMPLETENESS

To assess the Audit's completeness, the OIG reviewed Audit Division's Audit Report and supporting workpapers to ensure applicable CD mandates were addressed and to verify that the sampled warrants were selected from a complete population. Based on the OIG's review, the Audit assessed all necessary CD paragraphs that pertain to warrants. Additionally, based on a review of Audit Division work papers, the Audit's samples were taken from a complete population of warrants issued during July 2007. Audit Division identified 38 Department entities that have historically prepared and served warrants, of which 28 entities issued a total of 151 non-GED and 11 GED warrants in July 2007. Audit Division used two different statistically valid samples to evaluate a total of 15 objectives. One sample consisted of 72 non-GED warrants, randomly selected from each entity and the other sample consisted of all 11 warrants with an affiant assigned to a GED. The OIG found these samples to be sufficient to evaluate the Department's adherence to the CD.

FINDINGS/QUALITY

To assess the Audit's reported findings and overall quality, the OIG reviewed the Audit's work papers and evaluated a sample of 31 (of the 83) warrant packages.¹¹ The OIG also reviewed the Audit Report to ensure the associated findings were properly presented.

⁹ The OIG reviewed a smaller sample of warrants evaluated by Audit Division. Our sample 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 both the non-GED and GED warrants.

¹⁰ The issuance of this report was extended from March 28, 2008 to enable the OIG to meet with Audit Division management to discuss the general concerns we identified in our review of their Audit.

¹¹ A warrant package may include crime reports, arrest reports, follow-up reports, property reports, receipt for property reports, pre/post warrant photographs, and warrant service/tactical plan reports.

Based on the OIG's review, Audit Division did a good job evaluating the warrant packages. We did not identify any additional concerns that should have been reported in their Audit Report, agreed with a majority of the findings presented in the Report, and found the Report to be written in a logical and concise manner. The Audit Report also offered insightful recommendations for the Department to consider. That being said, the OIG did identify concerns with some of the findings presented within the Audit Report. Specifically, we identified a few reported findings that were, in the view of the OIG, inconsequential and minor, and based on Audit Division's responses to our concerns, we believe there were possibly additional findings (in warrant packages the OIG did not review) that were considered non-compliant with CD mandates that should not have been. It appears based on the Audit and discussions with Audit Division, that deviations from Department policy within the warrant packages were reported, regardless of how inconsequential and minor. Even though generally Audit Division classified these types of deviations as "low risk," there still should have been an evaluation of the individual finding and if it was inconsequential and minor, the OIG does not believe that it should have been used as a basis to find the Department non-compliant with the CD. We also identified instances in which Audit Division held the Department to a standard not clearly established by Department policy. Additionally, we identified findings that were reported for two objectives that should have been reported under other objectives due to the relevant CD mandate being more closely related to the testwork that was performed. Finally, we believe that the Audit Report should have provided additional details in connection with certain findings for users (i.e., officers, supervisors, and commanding officers) of the Report to better understand the types of mistakes identified in the Audit and facilitate improved performance on a practical level. Each of these concerns are delineated below:

Inconsequential and Minor Findings Resulting in Non-Compliant Assessments with the CD

- ***Objective No. 1 – CD ¶71(a)/128(a) (Completeness)***

For one warrant package,¹² Audit Division reported that a receipt for property report was not completed; however, the OIG believes this finding was inconsequential and minor and thus, should not have been reported as non-complaint with this objective/CD mandate. In this instance, the search warrant allowed an officer to obtain samples of saliva from a suspect, who was a minor at the time of the warrant and in custody at juvenile hall when the warrant was prepared. The search warrant was served when the suspect returned home. The officer obtained a swab from the mouth of the suspect to be used as deoxyribonucleic acid (DNA) evidence, and the officer completed a Property Report. However, because the officer did not provide a Receipt for Property Taken Into Custody, Form 10.10.00, to the suspect for the saliva swab, Audit Division reported the finding as non-compliant.

However, Department policy states that "It is not necessary to issue Form 10.10.00 for blood and urine samples and biological smear specimens from an arrestee or the victim of a crime, nor is it necessary to include these items on a Form 10.10.00 used to list other property taken from an arrestee or victim." Although the suspect was no longer an arrestee (as specified in Department policy), a receipt for property report is primarily given to enable the property owner to reclaim property and/or to notify them of the property that was taken. In this case, there was

¹² Warrant No. 5063.

no intent of the Department to return the swab of saliva nor was there a reasonable expectation that the suspect would receive the swab of saliva back, if requested.

- **Objective No. 3(a) – CD ¶ 71(b)/128(c) (Articulation of Justification for Night Service)**

For two warrant packages,¹³ Audit Division determined that there was no explicit articulation for a night service request and the warrant packages were reported as non-compliant for this objective/CD mandate. However, the OIG believes that the warrant affidavits provided enough articulation to support the reason night service was requested. Specifically, one search warrant¹⁴ was prepared because a female (victim) alleged a family member (suspect) had repeatedly drugged, sexually assaulted, and raped her.¹⁵ According to the warrant affidavit, the victim stated that she could no longer take the abuse and told the suspect that she was leaving. The suspect allegedly became angry and beat and raped the victim. The victim moved out of the residence and filed a battery report against the suspect, leaving out the information about being drugged, sexually assaulted, and raped. About a month later, the suspect contacted a friend of the victim, and this friend informed the victim that the suspect stated the police had sent some type of report to his residence. The following evening, the victim went to the Area police station to report the additional crimes and at that time, she indicated that she was “fearful that he [would] destroy evidence” related to the crimes. The search warrant was prepared and approved by a magistrate that same evening around 2200 hours (10 p.m.) and then served. At that time, the suspect was also arrested for sexual abuse on a minor.

Audit Division found this warrant package non-compliant with this objective/CD mandate because the warrant affidavit did not explicitly articulate the reason night service was requested.¹⁶ However, given that the detective checked a box on the warrant affidavit that indicated he was requesting night service and the warrant affidavit included a statement that he also believed “the investigation [would] be compromised and evidence may be destroyed if it’s not immediately recovered from the suspect’s residence,” and that the warrant was obtained and served the same evening the victim reported the crime, the OIG believes this warrant affidavit sufficiently articulated the reason night service was requested and therefore, the warrant package was compliant with this objective/CD mandate.

Because there was one additional warrant package¹⁷ (of the 19 served at night) that was also found non-compliant with this objective/CD mandate, the OIG reviewed it as well. Based on that review, we also believe the warrant affidavit adequately articulated the reason for the night service request and therefore, the warrant package was also compliant with this objective/CD mandate. For this warrant package, the affiant checked a box on the warrant affidavit that indicated he was requesting night service and a magistrate approved the night service. The warrant affidavit indicated that the affiant was conducting a prostitution investigation of a “gentlemen’s” club and the affiant was requesting to search the main dance floor, private lap dance booths, and couches for condoms; search all bathrooms inside the location that could be

¹³ Warrant Nos. 55493 and 55456.

¹⁴ Warrant No. 55493.

¹⁵ When the alleged drugging, sexual assaults and rapes occurred, the victim was a minor. At the time she reported the crime, she was an adult.

¹⁶ In *People v. Lopez* (1985), 173 Cal.App.3d 125, 138, the specific articulation of nighttime service is not required.

¹⁷ The warrant (Warrant No. 55456) was not part of our original sample of 31 warrant packages.

used to possibly engage in sexual activities or alcohol and narcotics use; and, search dressing rooms and lockers used by dancers and club staff and any associated purses, luggage, and work-out bags for condoms, lubricants, and sexual stimulants. The affiant requested to search many more areas for items, and a magistrate approved the warrant and authorized the night service. Although the affiant did not explicitly state, "I am requesting a night service approval because..." in the OIG's opinion, the reason he checked the box requesting night service was sufficiently articulated within the warrant affidavit. Specifically, the warrant affidavit referenced six occasions in which members of a vice unit, in an undercover capacity, entered the establishment during evening to early morning hours and received multiple solicitations for prostitution. The associated complaint applications documented these solicitations in detail and were attached to the warrant affidavit. As the applications indicated that five of the eight solicitation incidents occurred between 2200 hours (10 p.m.) to 0100 hours (1 a.m.), the warrant affidavit supports that the violations occurred primarily during nighttime hours and thus, the OIG believes the reason the night service was requested was sufficiently articulated.¹⁸

Audit Division acknowledged in their Audit Report that since the magistrate authorized the night service for these two warrants, the service was legal but they felt "justification for the night service request was not articulated." We disagree and believe the warrant packages were compliant with this objective/CD mandate and the Department actually achieved 100 percent compliance with the CD mandate.¹⁹

- ***Objective No. 5(a) – CD ¶ 71(c)/128(d) (Supervisory Oversight of the Warrant Application/Affidavit)***

For one warrant package,²⁰ Audit Division reported it as non-compliant with this objective/CD mandate due to an inconsequential and minor inconsistency. Specifically, the warrant affidavit was approved by a lieutenant, who was the officer in charge and the supervisor at scene according to the Warrant Service/Tactical Plan. However, another supervisor, a detective, was listed as the *approving supervisor* of the warrant affidavit on the Warrant Tracking Log. While Audit Division is technically correct that the supervisor listed as the approving supervisor on the Warrant Tracking Log did not correspond with the actual approver, the lieutenant has chain-of-command authority over the detective. Additionally, both the lieutenant and detective were present at the scene and waiting for the warrant to be signed by a magistrate to search the residence, so the inconsistency appeared very inconsequential and minor. Given the circumstances, we believe the warrant package was compliant with this objective/CD mandate.

Additionally, the OIG identified a warrant package²¹ in which Audit Division indicated that a supervisor did not initial the first page of the warrant affidavit; however, because it appeared that there was a partial initial on the page, the OIG requested the Area police station to pull their copy of the warrant affidavit. Their copy contained the supervisor's full initial. It appeared that when Audit Division made a copy of the warrant package at the Area police station, part of the

¹⁸ According to the warrant package, the warrant was served at 2200 hours (10 p.m.).

¹⁹ The concern with the reported finding was identified subsequent to the April 2, 2008 meeting with Audit Division. Due to time constraints, our concern with this warrant package being assessed non-compliant with the objective/CD mandate was not able to be fully discussed with Audit Division management.

²⁰ Warrant No. 07SR164.

²¹ Warrant No. 07V204.

initial was not copied. As supervisor initials of some warrant affidavits could have been either cut off or lightened during the copying process, it is suggested for future audits that Audit Division attempt to confirm that the warrant affidavit pages maintained at the Area police station indeed lack the required initials to ensure that findings for this type of issue are valid.²²

Standards Not Clearly Established by Department Policy Used to Assess Non-Compliance with the CD

- ***Objective No. 5(b) – CD Paragraph 71(c)/128(d) (Supervisory Oversight of the Applicable Incident)***

For this objective, Audit Division identified three findings and reported a compliance percentage of 93 percent (43 of 46 warrant packages). In reviewing their work papers, it was noted that one finding was due to an on-scene supervisor, during the service of a warrant, also being the affiant to the warrant.²³ However, Department policy does not require this type of separation. The OIG identified this same concern during our review of Audit Division's prior year's audit and recommended that the Department clarify this area, but we did not report the warrant package as being a non-compliant with this CD mandate, given the absence of existing policy. As of January 10, 2008, the Department responded to our recommendation and indicated that the fact that an affiant is a supervisor should not automatically preclude that individual from being the on-scene supervisor during the warrant service and therefore, it should remain the discretion of a commanding officer. Since Department policy does not require the separation and the Area commanding officer was aware that the affiant was the on-scene supervisor, we believe the warrant package is compliant with this objective/CD mandate and the Department is actually 97 percent (44 of 46 warrant packages) compliant.²⁴

- ***Objective No. 5(c) – CD ¶ 71(c)/128(d) (Post-Incident Supervisory Oversight)***

Department policy requires commanding officers to document in the Warrant Service/Tactical Plan Report an evaluation of the warrant service operation within seven working days of a warrant's execution to ensure the following matters are addressed:

- The circumstances surrounding the presence of a supervisor during the service of the warrant; and,
- Whether the supervisor's actions during the service of the warrant were appropriate.

The commanding officer must then complete a detailed analysis of the performance of the supervisor on a Comment Sheet.

A majority of Audit Division's reported findings for Objective Nos. 5(c) and 7 (Commanding Officer's Analysis of the Supervisor's Response) related to commanding officers not complying with this policy. However, the policy lacks clarity as to the amount of detail that is expected to

²² Audit Division indicated that because the OIG obtained the warrant affidavit page after their Audit Report was issued, it is unknown whether the supervisor's initial was actually present when they copied the warrant package.

²³ Warrant No. 070222.

²⁴ The concern with the reported finding was identified subsequent to the April 2, 2008 meeting with Audit Division. Due to time constraints, our concern with this warrant package being assessed non-compliant with the objective/CD mandate was not able to be fully discussed with Audit Division management.

be documented by commanding officers. Although the Audit Report indicated that “sufficient policies and procedures exist relative to supervisor review and commanding officer oversight,” the reported compliance percentages for these objectives (39 percent and 26 percent) suggest otherwise. While the OIG agreed with Audit Division that certain evaluations and Comment Sheets prepared by commanding officers lacked specificity, this appeared to be the result of lack of clarity as to what is expected, not necessarily negligence on the part of commanding officers. Because of the lack of clarity with the Department policy, the OIG had difficulty confirming whether certain findings related to commanding officer evaluation of the warrant service operation were actually non-compliant.²⁵ When the OIG discussed this concern with Audit Division, they informed us that since Civil Rights Integrity Division has been working to provide additional clarification to commanding officers, they did not believe they needed to mention the lack of clarity with Department policy related to this area. The OIG confirmed with Civil Rights Integrity Division that they have already drafted a notice (expected to be issued in the very near future) which will provide the necessary clarification.

Findings Reported For the Incorrect Objective

- ***Objective No. 2(d) – CD ¶ 71(a)/128(b) (Other Indicia that Information Is Not Authentic or Correct)***

For this objective/CD mandate, Audit Division reported that 80 percent (66 of the 83) of the warrant packages were compliant. Most of the non-compliant findings related to (1) the affiant's name not being printed on the second portion of the warrant application, and (2) one or more of the search warrant boxes on the Property Report not including certain search warrant information (i.e., date, name of the judge, court number, and checked boxes for “All Items” or “Only Item Nos.” seized).²⁶ However, the OIG disagrees that these findings should have been used to evaluate this objective/CD mandate, as the absence of this information did not challenge the overall authenticity or correctness of the warrant packages. Although Audit Division reported these findings as being “administrative in nature,” this objective relates to a very significant CD mandate and thus, administrative findings that do not directly relate to the authenticity or correctness of a warrant package should not have been used to assess the Department's efforts to adhere to this particular CD mandate. In our review of Audit Division's prior year's audit, we also reported a concern with using these same types of findings to assess adherence to this objective/CD mandate. Audit Division management indicated that they considered our concern but disagreed that these findings should have been reported under a different objective as they believed the omitted information related to “other indicia that information is not correct” in the warrant packages. However, we continue to believe that these types of findings should not be used to assess this very significant CD

²⁵ Because Department policy requires commanding officers to document a “detailed” analysis of the performance of the supervisor on a Comment Sheet, this area was easier to assess. But, clarification still appears warranted as there could be different interpretations on what is considered a “detailed” analysis. Two commanding officers of Area police stations sent intradepartmental correspondence to the commanding officer of the Office of Operations that provided explanations/responses to the Audit's reported findings and any associated actions taken. Their responses to findings related to this area indicated they were also unclear as to the extent of documentation that is expected by Department policy.

²⁶ It should be noted that the date, name of judge, and court number are already documented on the warrant applications.

mandate. Instead, they should have been used to assess supervisory oversight. Therefore, the compliance percentage should have been 98 (81 of 83 warrant packages) for this objective.²⁷

- **Objective No. 5(c) – CD ¶ 71(c)/128(d) (Post-Incident Supervisory Oversight)**

Audit Division's prior year's audit found 91 percent compliance for this objective/CD mandate; however, this year's Audit reported 39 percent (18/46 compliant).²⁸ The majority of the non-compliant findings for this objective/CD mandate were attributable to concerns with a commanding officer's evaluation of the appropriateness of a supervisor's actions during the service of the warrant. However, Objective No. 7 (CD Paragraph 62) more closely relates to a commanding officer's evaluation of a supervisor. That CD mandate requires "managers [commanding officers]²⁹ [to] analyze the circumstances surrounding the presence or absence of a supervisor at... (b) the service of a search warrant. In each case, [1] such analysis shall occur within one week of the occurrence of the incident or service to determine if the supervisor's response to the incident or service was appropriate. [2] Such supervisory conduct shall be taken into account in each supervisor's annual personnel performance evaluation." Objective No. 5(c) (CD Paragraph 71(c)) appears to relate more to supervisory oversight by "line-supervision" (e.g., Detective IIIs, Sergeant IIs, and Lieutenants). That portion of the CD paragraph requires a supervisor to review the execution of the officer's plan. The OIG believes this requirement also relates to whether a supervisor conducted a debriefing and whether the debriefing summary prepared by the supervisor documented information required by Department policy.³⁰ Although the Audit evaluated whether a supervisor completed a debriefing summary for Objective No. 5(c), it did not include an assessment of whether a supervisor documented the information that was required by Department policy. The OIG believes Audit Division's next Warrant Applications and Supporting Affidavits Audit should include this type of assessment to evaluate oversight by "line-supervision." In the meantime, as with the Department policy related to the commanding officer and what is expected to be provided in their evaluation of the appropriateness of a supervisor's actions during the service of a warrant and the associated Comment Sheet, the OIG believes that the Department should clarify the extent of documentation "line-supervisors" are expected to provide within a debriefing summary. Currently, Department policy requires a supervisor to document supervisory oversight before, during and after the service of a warrant with no additional guidance provided. As some debriefing summaries were very brief and general and some were very detailed, the extent of documentation that is required should be clarified.

As stated above, the OIG believes that a majority of findings reported for Objective No. 2(d) should have been reported for Objective No. 5(c), and part of the evaluation used to assess Objective No. 5(c) more closely related to Objective No. 7. That being said, the CD

²⁷ Warrant Nos. 55390, 55402, 55492, 5063, COM 080607-01, COM 071907-01, 07V200, 07V206, 55557, 55561, 070220, 070251, 070222, 55462, and 55475.

²⁸ There were 46 search warrant packages evaluated of which 18 met the standards and 28 did not.

²⁹ The CD defines a manager as being a supervisor the rank of a captain or higher. Within the Department, individuals in these types of high-ranked positions are considered "commanding officers."

³⁰ Department policy requires a supervisor to document confirmation that he/she met with personnel involved in the warrant service no later than the next working day after the warrant service and that the supervisor documents pre/post search conditions, the presence/absence of photos, audio and/or video tapes, supervisory oversight before, during and after service of the warrant, and the date/time/location of the debriefing and the issues discussed.

compliance percentage for Objective No. 5(c) would still have been below the 95 percent, but presumably higher than 39 percent.

Lack of Detail on Individual Findings

The OIG also noted that the Audit Report's Addenda lacked specificity as to the Audit's individual findings. For example, for Objective No. 2(b) (No Evidence of Inconsistent Information), the findings were described in a similar, repetitive manner, without providing any additional details. To illustrate, "*Evidence seized was inconsistent with evidence sought*" was stated six times; "*Not all evidence seized was listed on both the Property Report and Receipt for Property Taken Into Custody Form*" was stated six times; and "*Information documented on the Return was not consistent with information documented in affidavit*" was stated seven times. Providing additional information as to the type of property that was incorrectly seized or omitted/inconsistent on a Property Report and/or the Receipt for Property Taken Into Custody Form would allow users (e.g., officers and supervisors) of the Audit Report to better understand the types of mistakes identified in the Audit and improve performance on a practical level.

Furthermore, as mentioned above, for both Objective Nos. 5(c) and 7, the Addenda did not provide sufficient details as to the reason Audit Division determined that certain evaluations and Comment Sheets prepared by commanding officers were non-compliant with the associated CD mandates. Specifically, for Objective No. 5(c), a majority of the findings indicated, "*The appropriateness of the supervisor's response was not addressed by the commanding officer.*" For Objective No. 7, a majority of the findings indicated, "*The Comment Sheet did not adequately address the commanding officer's analysis of the supervisor's response to the warrant service.*" No additional detail was provided. For commanding officers to utilize Audit Division's Audit Report as a practical tool to understand what is expected to be compliant with the CD and improve future performance, the provision of additional details could prove beneficial.

In summary, the OIG believes that a brief but more detailed description for these types of findings would enhance the overall usefulness of the Audit Report.

CONCLUSION

Based on the OIG's review, the Audit assessed all CD mandates specified in the Department's Annual Audit Plan and Audit Division selected the Audit's samples from a complete population. Audit Division did a good job evaluating the warrant packages. We did not identify any additional concerns that should have been reported in their Audit Report, agreed with a majority of the findings presented in the Report, and found the Report to be written in a logical and concise manner. The Audit Report also offered insightful recommendations for the Department to consider. In Audit Division's prior year's audit, the OIG identified concerns with warrant packages that were not identified; so, there was improvement in Audit Division's evaluation of warrant packages. However, for Audit Division's current Audit, we identified some concerns with the reported findings.

Specifically, it appears, regardless of how inconsequential and minor a finding, it was used to assess non-compliance with the CD if it did not adhere to Department policy. Based on Audit Division's responses to our concerns, we believe there were possibly additional findings (in warrant packages the OIG did not review) that were considered non-compliant with CD mandates that should not have been. Even though generally Audit Division classified these types of deviations as "low risk," there still should have been an evaluation of whether the finding was inconsequential and minor. If the finding fell into this category, the OIG does not believe that it should have been used to find the Department non-compliant with the CD.

Additionally, the OIG believes that Audit Division should have explained the primary reason for the very low compliance percentages reported for Objective Nos. 5(c) (39 percent) and 7 (26 percent). As Department policy lacks clarity as to the extent of documentation commanding officers are expected to provide when evaluating supervision of a warrant service and preparing the related Comment Sheet, this area should have been highlighted for readers of the Audit Report to understand that the very low compliance percentages were not necessarily due to negligence on the part of commanding officers. Rather, it appeared they were likely due to different interpretations as to the amount and type of information expected to be documented.

Furthermore, we believe the findings reported for two objectives (Objective Nos. 2(d) and 5(c)) should have been reported under other objectives due to the relevant CD mandate being more closely related to the testwork that was performed.

Finally, we believe that the Audit Report should have provided additional details in connection with certain findings to assist the users (i.e., officers, supervisors, and commanding officers) of the Report to better understand the types of mistakes identified in the Audit and facilitate improved performance on a practical level.

Ultimately, we question the reliability of the reported compliance percentages for Objective Nos. 2(d), 3(a), 5(b), and 5(c). Although Audit Division reported that the Department achieved compliance (at least 95 percent) with three of the 15 objectives/CD mandates, the OIG believes that the Department actually achieved compliance with six of the 15 objectives/CD mandates. Given the low number of objectives that were reported as achieving compliance with the CD (at least 95 percent), the OIG recalculated the compliance percentages for three objectives (Objective Nos. 2(d), 3(a), and 5(b)) in which we believed the Department achieved compliance. The Audit Report had classified two of the objectives as "low risk" and one objective as "moderate to high risk."

Regardless of the concerns expressed in this report, it is important to note that over the past few years, Audit Division has consistently performed its CD audits in a quality manner. Although Audit Division disagreed with the concerns presented in this report, at times, reasonable minds can and do differ. However, we fully delineated our concerns in the hopes that Audit Division will take them into consideration when conducting their next audit.

PRIOR RECOMMENDATIONS

The OIG's review of Audit Division's prior Warrant Applications and Supporting Affidavits Audit for Fiscal Year 2006/2007 made six recommendations. There were two recommendations directed to Audit Division and four recommendations directed to the Department. Five of the six recommendations are considered implemented.

The OIG made two recommendations to Audit Division that are considered implemented. Specifically, the OIG recommended that Audit Division evaluate whether the Areas are properly maintaining the security of sealed portions of search warrants; and, to determine whether photographs taken at a search warrant service are properly retained in the warrant package. *The OIG considers these recommendations implemented as both areas were assessed during Audit Division's current Warrant Applications and Supporting Affidavits Audit.*

The OIG also made three recommendations to the Department that are considered implemented, as follows:

- (1) Clarify whether a name can be typed for documenting a supervisor's review.
The OIG considers this recommendation implemented as commanding officers are now required to sign the Warrant Service/Tactical Plan Report.
- (2) Clarify whether or not the affiant and the supervisor at the scene of the service of the warrant could be the same person.
The OIG considers this recommendation implemented as the Department determined that the affiant and a supervisor could be the same person.
- (3) Require another higher level supervisor to document the review of the debriefing summary.
The OIG considers this recommendation implemented as the Department determined that the commanding officer is already required to sign and date the Warrant Service/Tactical Plan Report.

For the fourth recommendation, the Department reported to the Police Commission, through Intradepartmental Correspondence (dated January 10, 2008), that the recommendation was not feasible to implement. Specifically, the OIG recommended that the Department re-evaluate whether it should provide official guidance on the amount of confidential informant information that should be placed in the sealed portion of a search warrant and affidavit (i.e., the Confidential Informant Number).³¹ The Department indicated that the courts do not require the Confidential Informant Number to be delineated and the inclusion of the number would increase the likelihood of the confidential informant being identified. It was further stated that "once the Confidential Informant Number is seen twice or more in separate search warrant affidavits, it would be possible for a suspect to use the number to connect the events and actions of persons involved in several events and deduce the identity of the confidential informant."

³¹ The Department assigns each confidential informant a number so that references to his/her name are not required.

In reviewing the Department's rationale to not implement this recommendation, it appears that there was a misinterpretation of the OIG recommendation. We did not recommend that Confidential Informant Numbers should be referenced in the public version of a search warrant affidavit, only the sealed portion. For the past two years, the OIG has noted that for a majority of the sealed portions of the warrant affidavits, a Confidential Informant Number is referenced, but for a few, it was not. Referencing a Confidential Informant Number, in the sealed portion of the warrant affidavit, would help ensure that Department supervisors, management, and auditors are able to verify that all confidential informants referenced in the sealed portion of warrant affidavits are Department approved (as required by Department policy). This information would also provide a documented audit trail in case there is a question about the authenticity of information provided in a warrant affidavit. Therefore, the OIG re-states this recommendation.

CURRENT RECOMMENDATION

It is recommended that the Department require associated Confidential Informant Numbers to be documented in the sealed portion of a search warrant and affidavit.