

LOS ANGELES POLICE COMMISSION

*REVIEW OF AUDIT DIVISION'S
Warrant Applications and Supporting
Affidavits Audit*



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

ANDRÉ BIROTTE, JR.
Inspector General

April 10, 2006

TABLE OF CONTENTS

REVIEW OF AUDIT DIVISION'S WARRANT APPLICATIONS AND SUPPORTING AFFIDAVITS AUDIT

		PAGE No.
<u>PURPOSE</u>		1
<u>BACKGROUND ON AUDIT DIVISION'S AUDIT</u>		1
<u>PRIOR RECOMMENDATIONS</u>		2
<u>REVIEW METHODOLOGY</u>		2
<u>REVIEW RESULTS</u>		3
	COMPLETENESS	3
	Consent Decree Mandates Addressed	3
	Identification of a Complete Population	3
	Conclusion	3
	FINDINGS AND QUALITY	4
	Quality Concerns Related to the Consent Decree	4
	Objective 1: Completeness of the Warrant Package	4
	Objective No. 2: Authenticity Review of the Warrant Application and Affidavit	4
	Objective 3: Underlying Actions of the Warrant Service Procedure	5
	Objective 4: Supervisory Oversight	6
	Objective 6: Commanding Officer's (Manager's) Analysis	7
	Quality Concerns Unrelated to the Consent Decree	7
	Property Reports	7
	Lack of Identifying Information for a Confidential Informant	7
	Pre/Post Photographs of Warrant Service	8
	Description of Property Seized	8
	Supervisor Initials on Warrant Application and Affidavit	8
	Revised Warrant Tracking Logs	9
	Conclusion	9
<u>OTHER RELATED MATTERS</u>		9
	CONTACT SHEET FOR CONFIDENTIAL INFORMANT	9
	RETENTION PERIOD FOR COMMENT SHEETS	9
	SEALED WARRANTS	10
<u>CONCLUSION</u>		10

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

PURPOSE

Pursuant to Consent Decree Paragraph 135, the Office of the Inspector General (OIG) reviewed Audit Division's Warrant Applications and Supporting Affidavits Audit (Audit). The Audit was completed in the second quarter of Fiscal Year 2005/2006 and received by the OIG on January 10, 2006. The OIG assessed the Audit's completeness, findings, and quality.¹

BACKGROUND ON AUDIT DIVISION'S AUDIT

The Warrant Applications and Supporting Affidavits Audit (Audit) was conducted by Audit Division and assessed the Los Angeles Police Department's (Department) compliance with Consent Decree Paragraphs 62, 72, 128, and 131(c).² The table below provides a brief description of the Audit's objectives when assessing adherence to those paragraphs and the results of Audit Division's assessments. The table also summarizes the compliance percentages reported by Audit Division.³

COMPLIANCE PERCENTAGES REPORTED BY AUDIT DIVISION

Objective No.	Objective Description	CD ¶	Compliance Percentage	
			Department-wide Population ⁴	GED
1	Completeness of the Warrant Package	128	98%	100%
2	Authenticity Review of the Warrant Application and Affidavit (2A, 2B, 2C, and 2D combined)	128	100%	100%
2A	Canned Language in the Warrant Application and Affidavit	128	100%	100%
2B	Inconsistent Information in the Warrant Application and Affidavit	128	100%	100%
2C	Articulation of the Legal Basis for the Applicable Action in the Warrant Application and Affidavit	128	100%	100%
2D	Other Indicia Information in the Warrant Document is Not Authentic or Correct	128	100%	100%
3	Underlying Actions of the Warrant Service (3A and 3B combined)	128	69%	89%
3A	Appropriate and Legal Warrant Service ⁵	128	73%	89%
3B	Conformance with Department (LAPD) Procedures	128	78%	100%
4	Supervisory Oversight (4A and 4B combined)	128	88%	88%
4A	Supervisory Oversight of the Applicable Incident to the Warrant Service	128	90%	88%
4B	Post-Incident Review of the Warrant Service	128	90%	94%
5	Warrant Listed on the Warrant Tracking Log	72	91%	89%
6	Commanding Officer's Analysis of the Warrant Service	62	73%	63%

¹ Audit Division issued an amended version of its Report on February 22, 2006 that revised the Audit's supervisory oversight compliance percentage because Audit Division misinterpreted the supervisor rank required to be present when Gang Impact Team detectives, as opposed to officers assigned to Gang Enforcement Details (GED) serve a warrant. The figures delineated in the table above are from Audit Division's amended Audit Report.

² To adhere to the Consent Decree Paragraph 131(c), Audit Division reported separate compliance percentages for GED.

³ Not all search warrants sampled by Audit Division were applicable to be tested against each objective.

⁴ These percentages do not include findings related to search warrants served by GED.

⁵ The anomalies identified by the Audit for this objective related to warrants not being returned to the court within ten days after issuance, as required. No illegal searches were identified by the Audit.

Greater detail on Audit Division's methodology and findings can be found in their final Audit Report.

Two different samples were used to evaluate a total of six audit objectives. One sample consisted of randomly selected Department-wide search warrants, excluding GED, and the other sample consisted of all warrants with an affiant assigned to a GED. The OIG found these samples to be sufficient to evaluate the Department's adherence to the Consent Decree.

PRIOR RECOMMENDATIONS

The OIG's review of Audit Division's prior Warrant Applications and Supporting Affidavits Audit for Fiscal Year 2004/2005 made one recommendation. The recommendation was with regard to the Department reminding supervisors to compare Property Reports and Receipts for Property Taken into Custody, reviewing warrant applications for errors and omissions, and documenting their review of warrant affidavits by placing their initials at the bottom of each page. This recommendation is considered implemented as Training Division modified its lesson plans and instruction to train supervisors in this area. These modified lesson plans were provided to the OIG.⁶

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. The database was used to compile and analyze Audit Division's findings, and supporting workpapers.⁷

(This Section Intentionally Left Blank)

⁶ Civil Rights Integrity Division provided the status of this recommendation.

⁷ 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 both the Department-wide and GED populations.

REVIEW RESULTS

COMPLETENESS

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

Consent Decree Mandates Addressed

Per the Department's Annual Audit Plan (Fiscal Year 2005/2006), the Warrant Applications and Supporting Affidavits Audit was to assess Consent Decree Paragraphs 62b, 71(a, b, c), 72, and 131(a, c, e).⁸

The Audit did not address the audit mandates specified in Paragraph 131(a) and (e) because the Audit only focused on search warrants and affidavits and as such, Audit Division could not assess the GED work product and the supervision of GEDs as a whole. The OIG agrees with Audit Division's decision. Audit Division indicated these audit mandates would be addressed in an assessment planned for the first quarter of Fiscal Year 2006/2007.

Identification of a Complete Population

Based on the OIG's review of Audit Division's sampling documentation, it appears Audit Division selected from a complete population of warrants issued in Deployment Period 7, 2005 (June 26, 2005 to July 23, 2005). However, the OIG identified one warrant (issued on July 26, 2005) that was erroneously included in Audit Division's sample.⁹

Conclusion

Overall, the Audit was complete in that it assessed all applicable Consent Decree paragraphs and the warrant samples were selected from a complete population.

(This Section Intentionally Left Blank)

⁸ Audit Division did not report separate compliance percentages for Paragraph 71 since that paragraph essentially has the same mandates specified in Paragraph 128.

⁹ DR No. 051720786

FINDINGS AND QUALITY

The OIG reviewed a sample of 36 warrant applications and supporting affidavits (24 Department-wide and 12 GED) of the 109 evaluated by Audit Division. The following delineates additional concerns identified by the OIG's review of the 36 warrants that were not identified and/or reported by Audit Division.

Quality Concerns Related to the Consent Decree

Objective 1: Completeness of the Warrant Package (Consent Decree Paragraph 128)

The OIG identified two additional concerns related to the completeness of the 36 warrant packages reviewed.

- For one warrant package, the warrant referred to an attached exhibit (Exhibit No. 5) that supported probable cause, but the exhibit was not contained within the warrant package. The affidavit indicated that the exhibit established a nexus that the suspect had the access and knowledge to steal customer data from his/her employer. Although Audit Division performed follow-up with the affiant to obtain a copy of other exhibits by fax, Exhibit No. 5 was not received and therefore should have been noted as a completeness concern.¹⁰
- For one warrant package, the affiant indicated that he would be searching for "personal paperwork, including birth certificates, social security cards, passports, and marriage certificate" in the names of three different people that a suspect may have stolen. However, the affidavit and supporting documents did not articulate the reason for searching for documents in the names of these three people. It is unknown how these three individuals were connected to this warrant and there were no related crime reports attached. Audit Division identified this matter but did not report it as a completeness concern and there was no rationale documenting their reasoning for not reporting the concern.¹¹

Objective No. 2: Authenticity Review of the Warrant Application and Affidavit (Consent Decree Paragraph 128)¹²

Audit Division reported 100 percent compliance with the authenticity review of the 109 warrant packages; however, the OIG's review of 36 identified three warrant packages with apparent authenticity concerns, as described on the next page.

¹⁰ DR No. 051719313

¹¹ DR No. 051720786

¹² These concerns would have also impacted the Audit's supervisory oversight percentages.

Inconsistent Information in the Warrant Application and Affidavit

- For one warrant package, the probable cause statement indicated twice that the reason for obtaining phone records was to help identify a homicide victim and suspects. However, a Preliminary Investigative Report that appears to have been completed by the affiant the same day as the warrant application, indicated the homicide victim's name. This seems to indicate that the homicide victim was already identified and as such, part of the probable cause for obtaining the phone records seems inconsistent. There was no evidence that Audit Division identified or attempted to resolve this apparent inconsistency.¹³
- For one warrant package, the affidavit documented that "a fifth suspect exited the location and was taken into custody." However, the supporting arrest report related to this incident made no mention of a fifth suspect. There was no evidence that Audit Division identified this inconsistency.¹⁴

Other Indicia Information in the Warrant Document is Not Authentic or Correct

- For one warrant package, the affiant signed as the reporting officer of the related arrest report; however, it does not appear that the affiant wrote the arrest report, was the arresting officer, or was even at the scene when the arrest was made. Audit Division identified this concern but did not report it and there was no rationale documenting their reason for not reporting the concern.¹⁵

Objective 3: Underlying Actions of the Warrant Service Procedure (Consent Decree Paragraph 128)

The OIG identified two of the 36 warrant packages with a concern regarding the legal basis for searching five vehicles. Also, the OIG identified four additional warrant packages that indicate the warrant was returned to the court after the required ten days.

Appropriate and Legal Warrant Service¹⁶

The OIG noted two warrant packages where vehicles were searched that were not listed in the search warrant, and there was no other document in the warrant packages that articulated the legal basis for the searches, as described below:

- For one warrant package, the affidavit listed a specific vehicle that was to be searched. However, the warrant return and the arrest report indicated that two vehicles were searched. The arrest report did not articulate a legal basis for searching the second vehicle and this

¹³ DR No. 051223234

¹⁴ DR No. 051818991

¹⁵ DR No. 051720786. Intradepartmental correspondence is being sent to the applicable Commanding Officer for appropriate action.

¹⁶ These concerns would have also impacted the Audits supervisory oversight percentages.

vehicle was not listed in the search warrant. Ammunition and a barrel cleaning rod inside of a gun case were recovered from the second vehicle.¹⁷

- For one warrant package, one search location was a car wash business. It appears that the affiant submitted an affidavit requesting to search vehicles at this location, but the affidavit signed by the magistrate redacted that request. Yet, according to the arrest report, at least four vehicles were searched and paper work/narcotics were seized from these vehicles. The arrest report did not articulate a legal basis for the search of these vehicles and as mentioned above, the affidavit signed by the magistrate did not authorize the search of any vehicles on this property. It was also noted that the Return to Search Warrant did not contain the redacted version of the approved affidavit. Since another magistrate reviewed that return and the original unredacted affidavit was attached, these concerns were likely not identified by the magistrate's review.¹⁸

There was no evidence that Audit Division identified these concerns.

Also, the Audit reported low compliance percentages for this Consent Decree mandate, not because of any identified concerns with the legality of searches, but because 27 warrants were not returned to the court within ten days.¹⁹ The OIG's review identified an additional three warrant packages where the warrants were served within the required ten day period, but were returned to the court one to nine days late.²⁰

Objective 4: Supervisory Oversight (Consent Decree Paragraph 128)

Post-Incident Review of the Warrant Service

The supervisor at the scene of the search warrant location is required to document a debriefing critique in the tactical plan. For one warrant package, the OIG was unable to determine whether a supervisor reviewed the debriefing critique because there was only a typed name on the critique and no signature. Audit Division's evaluation document did not document that the auditors noted that the name was typed, but as indicated below, they considered the typed name of a supervisor/manager an indication of review. The OIG does not believe this is sufficient to conclude a supervisor reviewed the debriefing critique and disagrees with Audit Division's rationale.²¹

¹⁷ DR No. 050316074. Intradepartmental correspondence is being sent to the applicable Commanding Officer for appropriate action.

¹⁸ DR No. 059919700. Intradepartmental correspondence is being sent to the applicable Commanding Officer for appropriate action. It was also noted that an additional vehicle was searched while impounding the vehicle for expired registration tags. The search of that vehicle was proper.

¹⁹ According to California Penal Code Section 1534, a search warrant, if executed should be served and returned to the court within ten days of issuance.

²⁰ DR Nos. 050118293, 051405023, and 040107149

²¹ DR No. 051819702

Objective 6: Commanding Officer's (Manager's) Analysis (Consent Decree Paragraph 62)

Per Department policy, warrant service/tactical plan reports are to be reviewed by the Commanding Officer to ensure that a supervisor conducted a debriefing and documented the details of the incidents on the debriefing summary report. The OIG's review identified two warrant packages where the Commanding Officer's name was typed but not signed. Audit Division's evaluation document for one warrant indicated that the typed name was an indication that the Commanding Officer reviewed the warrant service/tactical plan, but the OIG does not believe this is sufficient to conclude that a Commanding Officer reviewed the plan and disagrees with Audit Division's rationale.²²

Also, per Department Policy, a Commanding Officer shall complete a detailed analysis of a supervisor's warrant service actions on a Comment Sheet (Form 1.77). The Audit determined that 13 of 68 warrant packages did not have a completed Comment Sheet for one or more supervisors at the scene of the warrant service. Based on the OIG's sample of 36 warrant packages, an additional four warrant packages also lacked a completed Comment Sheet for a supervisor at the scene of the warrant service.²³

Quality Concerns Unrelated to the Consent Decree

Property Reports

Audit Division made a formal recommendation in its Audit Report indicating that the Department should merge the Property Report (Form 10.01) with the Receipt for Property taken into Police Custody (Form 10.10). The Audit Report indicated that several warrants were held out of compliance because the information on the Property Report did not match what was documented on the Receipt for Property taken into Police Custody, but no findings were included in the Report to support this recommendation. Based on a review of Audit Division's database, it appears that 25 warrant packages in Audit Division's sample had this type of concern. The OIG believes this information should have been reported and noted that Audit Division's prior audit reported these types of inconsistencies in an Other Related Matters section.

Lack of Identifying Information for a Confidential Informant

The OIG's sample included 12 sealed search warrant affidavits, and the sealed portion of two warrant affidavits did not contain any identifying information for the confidential informant.²⁴ Although Audit Division followed up with the affiant to obtain the confidential informant's name (to verify that he/she was Department approved), this raises a concern regarding the lack of a confidential informant number being placed in the sealed portion of the search warrant affidavits. This concern was previously identified in the OIG's review of Audit Division's Confidential Informant Audit and the OIG recommended that the Department, at a minimum, require the documentation of a confidential informant number in the sealed portion of search

²² DR Nos. 059919159 and 050800572. Audit Division's evaluation document for the second warrant did not note that the Commanding Officer's name was typed and no signature was present.

²³ DR Nos. 050118293, 051320935, 051817381, and 051818991

²⁴ DR Nos. 059919159 and 051819999

warrant affidavits. This would enable Department management and auditors to verify that all confidential informants referenced in the sealed portion of warrant affidavits are Department approved. The OIG believes that Audit Division should have raised this matter as a concern in its Audit Report.

Pre/Post Photographs of Warrant Service

According to the Search Warrant Procedures Guide, if photographs are taken, they must be kept in the case folder. The OIG noted that 17 of the 24 warrant packages (excluding 12 warrant packages that were record requests) documented that photographs were taken during the service of the warrant, but the warrant packages did not contain any photographs.²⁵ It is recognized that applicable photographs may not have been provided to Audit Division, but given that these photographs represent evidence, the OIG believes attempts should be made to verify they are being retained. Audit Division has not assessed this area in its previous audit but it is suggested that its next audit evaluate whether photographs are properly retained, if taken.

Description of Property Seized

The OIG identified one warrant package in which the Return to Search Warrant indicated that no property/evidence was seized during the service of the warrant. However, a bank statement was recovered during the service of the warrant. Also, Department Policy states that if items are seized that are not listed on the search warrant, the items shall be listed on the Property Report (inventory attachment to the Return to Search Warrant) under the heading "Seized Pursuant to the Search Warrant-Unlisted." This helps to highlight items seized that were not specified in the warrant. The OIG identified five warrant packages where property, narcotics and/or firearms were seized during the service of the warrant but were not mentioned in the warrant application. The Property Report should have referenced this evidence as noted above. According to Audit Division, its Audit did not evaluate compliance with this Department policy. However, since the OIG's review of their prior audit identified this concern and the Audit evaluated whether evidence seized was consistent with the description of the property to be seized on the search warrant, the OIG continues to believe this additional assessment should be made as part of their Audit.²⁶

Supervisor Initials on Warrant Application and Affidavit

Audit Division reported that 11 of the 109 warrant packages did not include supervisory initials on all or at least one of the pages of the affidavit. Audit Division did not hold these packages out of compliance because it is difficult to conclude that a supervisor did not review the warrant application and affidavit due to the quality of copied warrant package information. This is consistent with how Audit Division reported this testwork in its prior audit. The OIG's review identified one additional warrant package of the 36 reviewed where the only initials noted on the warrant were those of the magistrate.²⁷ Also, the OIG identified two additional warrant packages where either the initials were cut off or they were simply not clear enough to be distinguished on

²⁵ One warrant package indicated that eight photographs were taken; however, there were only six in the package.
DR No. 050721359

²⁶ DR Nos. 050514012, 050800852, 051405023, 051720786, and 059919700

²⁷ DR No. 051417501

all pages.²⁸ Finally, there were three warrants where there were initials, but the OIG was unable to verify that the initials were that of a supervisor because the initials did not match the supervisor listed on the Warrant Tracking Log as having approved the warrant.²⁹ There was no evidence that Audit Division identified these concerns for the six warrant packages.

Revised Warrant Tracking Logs

The OIG noted that Audit Division's Report included a footnote that indicated there was still confusion among the Department regarding the tracking of warrants. Audit Division erroneously stated that some of the entities were tracking their warrants by month, instead of by Deployment Period. However, in March 2005, a revised Warrant Tracking Log was issued that now tracks warrants issued by month and year and also captures the use of confidential informants.³⁰ The OIG's review of Department-wide Warrant Tracking Logs noted six Department entities were using the outdated Warrant Tracking Log, which tracked warrants by Deployment Period.

Conclusion

The OIG determined that the Audit identified several key aspects relating to Consent Decree compliance and the Audit's recommendations are supported; however, based on the totality of the quality issues noted above, the OIG believes the Audit's findings for Consent Decree Paragraphs 62 and 128 are not complete and therefore, caution should be used when placing reliance on the Audit's reported compliance percentages.

OTHER RELATED MATTERS

The OIG also identified the following matters that did not necessarily relate to the quality of Audit Division's Audit, but were still deemed reportable.

Contact Sheet for Confidential Informant

The OIG's sample consisted of 12 sealed warrants where at least one of the pages of the warrant was sealed. If the sealed warrant pages were related to the use of a confidential informant, Audit Division, as well as the OIG, reviewed the confidential informant packages. The OIG noted one confidential informant package did not have the contact sheet, but Audit Division staff indicated it was present during their review of the confidential informant package. As such, the OIG was unable to verify the contact was documented or determine the reason the contact sheet was not present in the confidential informant file.³¹

Retention Period for Comment Sheets

The OIG noted for one search warrant there were three locations served and a different supervisor at each scene of the warrant service. When Audit Division conducted its review they

²⁸ DR Nos. 051223234 and 050800572

²⁹ DR Nos. 050323814, 050212133 , 051819058

³⁰ This Notice was issued by the Planning and Research Division on March 10, 2005 and is titled Revision of Warrant Tracking Log, Form 8.17.05.

³¹ DR No. 059919159

were able to locate the Comment Sheet for all supervisors; however, when the OIG went to the Division, only one Comment Sheet could be located. A supervisor at the Division indicated that the two supervisors did not have the Comment Sheets in their files because their evaluation period was over and the Comment Sheets were destroyed after Audit Division's review. The OIG reviewed the Department's Policy regarding Comment Sheet retention and they are to be retained at the Division for two years, and then forwarded to the City Records Center. The OIG notified the supervisor of this policy and he indicated that he would follow it going forward.³²

Sealed Warrants

According to Audit Division, a couple of Areas provided the sealed portion of the warrant application to them during their Audit. After they completed their review, these portions were re-sealed. Also, during the OIG's review, it was noted that the procedures for the storage and security of the sealed portions of warrant applications were not consistent among Department entities. In some Areas, the OIG noted that the sealed pages were not stored in an envelope with tape. For one Area, the OIG found that the sealed pages were stored with the rest of the warrant package and not sealed. There was an open envelope with tape in the warrant package, but there were no sealed pages inside.³³ It is unknown whether Audit Division encountered these inconsistencies when they performed the Audit, but it is suggested that its next audit evaluate the practices of securing the sealed portion of warrant applications to ensure the information is maintained in a consistent and secure manner. In late November 2005, the Chief of Police issued a notice on the process for reviewing sealed portions of warrants during audits and indicates how they are to be re-sealed. However, the OIG is concerned that procedures for sealing confidential portions of warrant applications are not yet consistent.

CONCLUSION

Overall, the OIG found the Audit to be complete; however, as previously noted, based on the totality of the quality issues identified, it does not appear that the findings for Consent Decree Paragraphs 62 and 128 are complete.

³² DR No. 051719313

³³ DR No. 051405023. This information has now been re-sealed.