

INTRADEPARTMENTAL CORRESPONDENCE

December 15, 2015
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BPC #15-0055A

TO: The Honorable Board of Police Commissioners

FROM: Inspector General, Police Commission

SUBJECT: REVIEW OF BIASED POLICING COMPLAINTS

RECOMMENDED ACTION

REVIEW and APPROVE the Office of the Inspector General's (OIG) Review of Biased Policing Complaints.

DISCUSSION

At the Commission's direction, the OIG reviewed all Biased Policing complaints closed in 2014. For the 137 complaints that were investigated, the OIG found the investigations were generally thorough and complete. The OIG identified issues with 6 of the investigations and found that 91% did not include a required checklist. Regarding adjudications, the OIG identified concerns with 7 of the complaints.

The OIG also reviewed the files for 14 Biased Policing complaints that were resolved through the Biased Policing Complaint Mediation Pilot Program. For these cases, the OIG found that 3 files did not contain all of the required documents.

I am available to provide any information the Board may require.

E-Copy – Original Signature on File with the Police Commission

ALEXANDER A. BUSTAMANTE
Inspector General
Police Commission

Attachment

LOS ANGELES POLICE COMMISSION

REVIEW OF BIASED POLICING COMPLAINTS



Conducted by the
OFFICE OF THE INSPECTOR GENERAL

ALEXANDER A. BUSTAMANTE
Inspector General

December 15, 2015

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OFFICE OF THE INSPECTOR GENERAL

REVIEW OF BIASED POLICING COMPLAINTS

I. INTRODUCTION

The Internal Affairs Group (IAG) of the Los Angeles Police Department (Department) reports quarterly to the Board of Police Commissioners (Commission) regarding biased policing complaints. On March 24, 2015, IAG presented their report to the Commission, who then directed the Office of the Inspector General (OIG) to review the biased policing complaint investigations that closed in 2014. The OIG reviewed 137 complaints to evaluate whether the Department properly investigated and adjudicated these biased policing allegations.¹ The OIG also reviewed the 14 complaints that were resolved through the Department's Biased Policing Complaint Mediation Pilot Program.

II. INVESTIGATION ISSUES

The IAG investigates all biased policing allegations.² The IAG provides investigators with a comprehensive guide to conducting these investigations.³ For complaints with biased policing allegations, the Biased Policing Investigation Protocols (Protocols)⁴ instruct Investigating Officers (I/Os)⁵ to ask of both the accused officers and the complainant questions which are intended to elicit details regarding the nuances of bias. Additionally, policy requires that the I/O complete a seven-item Biased Policing Investigation Checklist (Checklist).⁶ The Checklist and Protocols are required to be included in the completed investigation file.

Upon reviewing the investigation files, the OIG found that generally the investigations were thorough and complete. However, the OIG noted the following issues:

- Two of the 137 (1%) investigations were completed by Area I/Os, rather than by IAG.⁷ IAG agreed that one case should have been retained, but for the second case IAG explained that there was no assertion of biased policing at the time the case was assigned to the Area.
- Two (1%) of the investigations had intake⁸ deficiencies, including A) failure to provide a summary of the incident and B) failure to ask the complainant questions regarding biased policing.⁹

¹ The IAG reported 219 Biased Policing complaints for 2014. However, the OIG previously reviewed 68 on an unrelated matter, and those reviews are not included in this report.

² Commanding Officer IAG, Internal Affairs Group Investigation Transition Plan (March 17, 2002); notice to all Commanding Officers that effective April 1, 2002, IAG would have the investigative responsibility for biased policing (then racial profiling) complaints

³ IAG, Complaint Investigations: A Guide for Supervisors, 4th Edition, Volume 2 (May 2015).

⁴ PROFESSIONAL STANDARDS BUREAU, Biased Policing Investigation Protocols, Standards of Review (January 18, 2010).

⁵ I/O is police jargon. The I/Os of IAG are all sworn officers at the rank of Detective II or higher.

⁶ Biased Policing Investigation Checklist (May 10, 2010).

⁷ CF Nos. 13-001655 and 13-001669.

- Two (3%) of the investigations lacked necessary interviews, including A) interviews of witness passengers or witness officers and B) an interview of the officer who first stopped the complainant.¹⁰
- 12 (9%) of the investigations used interrogatories in place of live interviews for officers to answer Protocol questions.¹¹ IAG advised that this practice has been stopped.
- 71 (52%) of the investigations did not include the Protocols as addenda.¹² The Checklist instructs I/Os to include the Protocols for a reviewer's reference. IAG advised that in November 2014, the Commanding Officer (CO) of IAG directed that the Protocol was no longer required to be included in each case file.
- 124 (91%) of the files did not include the Checklist.¹³ The Checklist instructs that it "shall" be included as part of the investigation file.

III. ADJUDICATION ISSUES

After IAG completes the investigation of a biased policing complaint, the completed case file is sent to the accused officer's CO. For patrol officers, the CO is generally the Patrol Captain. Based upon the evidence contained in the investigation, the CO is responsible to provide a recommended adjudication¹⁴ and penalty (if appropriate) for each allegation. The CO then forwards the recommended adjudication to the next level of review (usually, the Area Captain), up to the Bureau Commander. Each reviewer either signs agreement to the recommendation, or "militarily endorses" the complaint with recommended changes to the adjudication and/or penalty. As a final safeguard, before the complaint is completed, IAG reviews the complaint. For all biased policing complaints, the CO of IAG reviews the case and can militarily endorse. When discipline is recommended, IAG presents the case to the Chief of Police, who has the final authority on all discipline and can change or disagree with militarily endorsements, findings, adjudication, and/or penalty.

⁸ Intake is the initial contact with the complainant, where a supervisor accepting the complaint is expected to obtain detailed information.

⁹ Item A is Complaint File (CF) No.13-002639; B is CF 13-002691.

¹⁰ Item A is CF 13-000847; B is CF 13-002679.

¹¹ IAG interrogatories are written questions submitted to a witness or accused officer. *See* Appendix for CF Nos. which used interrogatories in the investigation.

¹² *See* the Appendix for the list of CFs with no Protocols as addendum.

¹³ *See* the Appendix for the list of CFs with no Checklist as addendum.

¹⁴ *See* the Appendix for the list of possible adjudication classifications, per Department Manual Volume 3 Section 820.25.

The OIG reviewed the investigation summaries in an effort to identify whether adjudications properly relied upon the evidence documented within the investigation report.¹⁵ Most adjudications were properly conducted, however, the OIG did identify issues with the adjudicator's rationale in 7 of the 137 cases (5%):

- In three of the complaints, the adjudicator cited lapsed time as evidence to support Unfounding the biased policing allegation. Specifically, the adjudicators identified that waiting four days, nine days, or seven months¹⁶ to make a complaint inferred that the complaint was less valid than if it had been made the day of the incident. The Department, however, has no policy or rule instructing what defines timely filing of a misconduct complaint, or identifying at what point a complaint is invalidated by the passage of time.
- In two cases, the adjudicator cited the fact that, during the same incident, one person of a particular ethnicity complained of biased policing while other person(s) present did not.¹⁷ In both cases, the adjudicator rationalized that the absence of the other person(s) alleging biased policing nullified the allegation of the complainant. Failure to complain is not proof that the non-complaining party did not perceive biased policing, nor does one person's conflicting perception result in per se invalidation of another's perception.
- In two cases, adjudicators used questionable characterizations of the complainant. One adjudicator referred to a complainant's "self-created claim" and "predisposition to shift the blame." In another case, an adjudicator commented that "her allegation was impulsive," and opined that the complainant "lied and admitted to doing so," although no such evidence was presented in the investigation.¹⁸ The OIG believes that adjudications should rely entirely on evidence uncovered during the investigation and avoid characterizations.

The OIG's subsequent biased policing the report will focus on the investigations performed by IAG to identify whether investigations are thorough and complete, and whether summaries accurately depict the content of interviews.

IV. STATUTE DATE ISSUES

The OIG found that in most cases, the Department met its five-month goal for completing investigations.¹⁹ The Department's policy of requiring several levels of administrative reviews

¹⁵ Due to the large number of cases, the OIG reviewers did not, except in very few cases, listen to the recorded interviews to determine if the investigation summaries accurately depicted the content of the interviews.

¹⁶ CF Nos. 13-000872, 13-000847, and 13-001195, respectively.

¹⁷ CF Nos. 13-001034, where one of two persons complained, and CF 13-001669, where one of five persons complained.

¹⁸ CF Nos. 13-000683 and 13-001504, respectively.

¹⁹ Department Manual Volume 3 Section 824, Completion of Complaint Investigation: "It is the goal of the Department to complete most complaint investigations within five months of the Complaint Form being received by Internal Affairs Group (IAG). Notwithstanding that goal, all efforts should be undertaken to ensure the entire complaint process is completed within the limitations established by state law and the City Charter."

of investigations and adjudications of biased policing allegations is generally efficient. However, the OIG identified one case where a proposed military endorsement from Unfounded to Not Resolved was not carried out due to the expiration of the statute of limitations.²⁰

V. MEDIATION CASE REVIEWS

The OIG reviewed 14 complaints resolved through the Biased Policing Complaint Mediation Pilot Program.²¹ Eleven of these files (79%) contained three documents: the initial complaint form with any attachments, an internal memorandum indicating that the officer was eligible to participate,²² and a letter thanking the complainant for participating. If the complainant decided not to participate after the mediation was scheduled, then a letter of regret was also included in the file. Of the three remaining cases, two were missing the officer eligibility memorandum and one was missing the letter thanking the complainant.²³

VI. SUSTAINED COMPLAINT RATES

As part of this review, the Commission requested the OIG to provide information about the rate of Sustained biased policing complaints, and to compare that rate to other types of misconduct complaints. To obtain this information, the OIG relied upon the information as reported in IAG's Quarterly Discipline Reports (QDR) to the Commission. Each QDR contains the sustained rates for 32 categories of complaints, and presents the rates in a table entitled, "Table I, Complaints and Allegations."²⁴ The OIG compiled data from three years of QDR, 2012-2014, and presented the data in the table on the following page.

The OIG noted that in three years, there were 1,356 biased policing allegations and none were sustained. As noted earlier (Section III), the OIG will review in depth the quality of the investigations to determine whether all available evidence is made available to adjudicators.

In compiling this information for the Commission, the OIG noted that category Unbecoming Conduct had the largest number of allegations (6637) over the three-year period. Unlike the next highest categories Discourtesy and Neglect of Duty, Unbecoming Conduct encompasses a wide variety of actions and behaviors, which may account for the high number of allegations.²⁵

²⁰ California Government Code, Section 3304(d)(1) and City of Los Angeles Charter, Section 1070(c), provide that the Department must notify a sworn officer of the intent to administer discipline within one year of learning of the alleged misconduct, with certain exceptions to the time limit.

²¹ THE LOS ANGELES POLICE DEPARTMENT, Biased Policing Complaint Mediation Program 36-Month Pilot, Implementation Plan (January 2014). See the Appendix for CF Nos. of cases with mediation files.

²² *Ibid*, Eligibility Guidelines – LAPD, page 3.

²³ Mediation documents were missing from CF Nos. 14-000283, 14-000609, 14-001804.

²⁴ This table is generally presented on pages 12-13 of the QDR.

²⁵ PROFESSIONAL STANDARDS BUREAU, Review & Evaluation Chronicles (July 2014), lists eight subcategories of misconduct under the heading Unbecoming Conduct: computer violations, crimes, encounters with other agencies, integrity, off-duty

Review of Biased Policing Complaints

Table 1: Sustained Rate for 32 Types of Complaints²⁶

Type of Complaint	No. of Allegations	No. of Sustained Allegations	Rate of Sustained (%)
Accidental Discharge	6	5	83
Alcohol Related	170	134	79
Insubordination	119	93	78
Gender Bias	29	15	52
Misleading Statements	69	28	41
Dishonesty	86	33	38
Failure to Qualify	116	44	38
Shooting Violation	8	3	37
Domestic Incident	3	1	33
Domestic Violence	269	86	32
Narcotics / Drugs	54	14	26
Preventable Traffic Collision	20	5	25
False Statements	641	156	24
Improper Remark	337	81	24
Failure to Appear	717	162	23
Sexual Misconduct	176	36	20
Off-Duty Altercation	53	9	17
Failure to Report Misconduct	42	6	14
Neglect of Duty	5134	676	13
Unbecoming Conduct	6637	607	9
Theft	336	30	9
Ethnic Remark	172	13	8
Other Policy / Rule	878	61	7
Unauthorized Tactics	840	34	4
Discourtesy	5304	120	2
Unauthorized Force	3325	26	0.8
Retaliation	304	2	0.7
Unlawful Search	1191	2	0.2
False Imprisonment	2216	1	<0.1
Biased Policing	1356	0	0
Discrimination	70	0	0
Service	104	0	0
Total	30,782	2,483	8

employment, personnel complaints, and miscellaneous. Anecdotally, the OIG has noted from many past reviews that Unbecoming Conduct has included a wide variety of alleged misconduct behavior.

²⁶ Data taken from the Department’s Quarterly Discipline Reports, Table I: Complaints and Allegations, pages 12-13, (2012-2014). The OIG calculated the Number of Sustained Allegations using the other two known quantities.

VII. RECOMMENDATIONS

The OIG found the Department's investigation, adjudication, and internal review of biased policing complaints to be generally thorough, complete, and performed in compliance with policy. Therefore, the OIG has limited recommendations:

1. The IAG should implement an internal audit plan, or coordinate with Audit Division, to ensure that required documents including Protocols, Checklists, and mediation documents are included with case files.
2. If the Department is to consider time lapse as a valid basis to evaluate the credibility of a misconduct complaint, the OIG recommends that the Department develop guidelines to guide adjudicators.
3. Review the complaint category of Unbecoming Conduct to evaluate whether the category is, or has become, overbroad.

APPENDIX

Footnote 11: CF Nos. Using Interrogatories

13-000844, 13-000857, 13-001044, 13-001364, 13-001382, 13-001472, 13-001645, 13-002208, 13-002933, 13-003224, 13-003295, 14-000184

Footnote 12: 71 CFs With No Protocols In Addenda

13-000675, 686, 708, 745, 844, 847, 895, 901, 961, 971, 1034, 1048, 1054, 1095, 1170, 1172, 1195, 1252, 1364, 1382, 1472, 1504, 1534, 1645, 1655, 1660, 1669, 1682, 1711, 1730, 1739, 1759, 1762, 1839, 1874, 1895, 1932, 1966, 2153, 2177, 2208, 2258, 2447, 2457, 2599, 2610, 2677, 2679, 2691, 2732, 2735, 2866, 3004, 3038, 3223, 3224, 3227, 3231, 3233, 3289, 3295, 3296, 3299, 3362, 3391, 3406, 3442, 3483; 14-000180, 184, 643, 1222.

Footnote 13: 124 CFs With No Checklist

13-000675, 683, 684, 686, 708, 745, 760, 787, 791, 805, 844, 847, 849, 865, 872, 891, 895, 901, 961, 968, 971, 974, 1004, 1034, 1043, 1048, 1054, 1065, 1095, 1129, 1169, 1170, 1172, 1195, 1209, 1220, 1252, 1255, 1364, 1382, 1472, 1480, 1504, 1505, 1534, 1536, 1645, 1655, 1660, 1669, 1672, 1682, 1711, 1730, 1739, 1742, 1762, 1815, 1839, 1856, 1874, 1895, 1932, 1966, 1972, 1984, 2011, 2075, 2091, 2153, 2162, 2171, 2177, 2208, 2419, 2447, 2457, 2593, 2599, 2607, 2610, 2639, 2677, 2678, 2679, 2691, 2735, 2746, 2844, 2846, 2866, 2933, 2966, 2986, 3004, 3008, 3038, 3085, 3118, 3151, 3189, 3223, 3224, 3227, 3231, 3233, 3289, 3295, 3296, 3299, 3362, 3369, 3391, 3406, 3438, 3442, 3483; 14-000167, 180, 184, 367, 416, 643, 1222, 2258.

Footnote 14: Department Policy

Vol. 3, § 820.25 CLASSIFICATION OF A DISCIPLINARY COMPLAINT.

Disciplinary allegations shall be dispositioned using **only** the following classifications, or one of the Alternate Dispositions described below:

- **Unfounded:** When the investigation indicates the act complained of did not occur;
- **Exonerated:** When the investigation indicates the act occurred but that the act was justified, lawful, and proper;
- **Not Resolved:** When the investigation discloses insufficient evidence to prove or disprove clearly the allegations made;
- **Sustained:** When the investigation discloses that the act complained of did occur and constitutes misconduct; or,
- **Sustained-No Penalty:** The investigation supports sustaining the allegation; however, “No Penalty” is the appropriate disposition. In all cases, appropriate corrective action shall be taken which may involve, but is not limited to, counseling, training or action other than formal discipline.
- **Insufficient Evidence to Adjudicate** – The investigation could not be thoroughly or properly investigated. This may be caused by a lack of cooperation by the complainant and/or witnesses, or the absence of a critical interview which was necessary to proceed with the investigation, and/or the available physical evidence or witnesses’ statements are insufficient to adjudicate the complaint.

Footnote 21: 14 CFs With Mediation Files

14-000211, 217, 220, 283, 609, 617, 788, 913, 1030, 1243, 1804