



# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Sean Whent  
Chief of Police

**SUBJECT:** Police Training, Policy, and  
Accountability

**DATE:** April 19, 2016

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City Administrator Approval

Date:

5/5/16

## RECOMMENDATION

**Staff Recommends That The City Council Accept This Informational Report With Information Regarding Internal Affairs Investigations, Police Personnel Trainings, Updates To Police Policy, And Recent Developments In Police Discipline.**

## EXECUTIVE SUMMARY

This report is responsive to a request from the Oakland Office of the City Attorney (OCA) concerning police training regarding discipline, policy, and accountability within the Oakland Police Department (OPD).

## BACKGROUND / LEGISLATIVE HISTORY

On April 16, 2015, the court-appointed attorney investigator, Ed Swanson, filed a report with the United States District Court, Northern District of California ("the Court"), resulting from a court-ordered investigation of discipline in OPD. This report ("First Swanson Report") included factual findings and recommendations regarding police discipline in Oakland. On March 21, 2016, the Second Report of the Court-Appointed Investigator in *Delphine Allen v. City of Oakland* ("Second Swanson Report") was filed with the Court.

The Second Swanson Report included 14 recommendations, primarily for the Office of the City Attorney and OPD. Included was a recommendation that:

OCA should report to City Council quarterly on recent arbitration decisions, its efforts to support the police discipline process, and recent developments in police discipline. OPD should simultaneously provide a separate quarterly report to the City Council regarding IAD [Internal Affairs Division] investigations, police personnel trainings, updates to police policy, and recent developments in police discipline. Both OPD and OCA should simultaneously provide their reports to the Mayor and City Administrator.

This report is responsive to the OPD portion of the above recommendation.

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## **ANALYSIS AND POLICY ALTERNATIVES**

### *Internal Affairs Division Investigations*

As a participant in the White House Police Data Initiative, OPD provides a number of metrics on its website on a regular basis. One of these is a quarterly report providing investigation information from the Internal Affairs Division (IAD). The most recent (First Quarter 2016) IAD Report is provided as **Attachment A**. This report provides several important pieces of information, including:

### *Police Personnel Trainings*

In 2015, OPD trained 17 OPD Commanders and Managers to serve as Skelly Officers. Thus far in 2016, 25 additional Commanders and Managers completed the Skelly training. The 25 additional Commanders and Managers trained in 2016 did not receive Skelly training in 2015. Skelly is the name of the hearing in which public employees are afforded an opportunity to respond to allegations prior to the imposition of any actual disciplinary action. A Skelly hearing provides an opportunity to refute factual allegations and mitigate the severity of the proposed discipline.

In OPD, sworn commanders and civilian managers serve as Skelly Officers, depending on whether the subject of the discipline is sworn or civilian. The 2016 Skelly training sessions are four hours long and are conducted by OPD Deputy Chief John Lois and members of the OCA. Deputy Chief Lois was promoted in large part to serve as the primary Skelly Officer and training provider for OPD in response to the First Swanson Report.

### *Updates to Police Policy*

OPD currently has a policy manual made of Departmental General Orders (DGOs). As a voluntary sustainability measure, OPD has entered into an agreement with Lexipol to migrate all OPD policies to a more robust system. The Lexipol system provides OPD with model policies that are reviewed and will eventually be approved and adopted to create a new policy manual. The Lexipol model policies are developed by a team of experts at Lexipol and incorporate federal and state law as well as best practices. Lexipol employs administrative and legal staff who maintain currency on legal mandates as well as changes in police best practices. Updates to policies are automatically generated by Lexipol to incorporate legal changes and changes in best practices.

The first step in the migration process is to review and incorporate relevant OPD policies into draft Lexipol policies. The new content reflects OPD practices and includes tasks required by the Negotiated Settlement Agreement (NSA). The draft Lexipol policies incorporate the mission, vision, and values of OPD. As of the date of this report, more than 90 percent of the 164 Lexipol model policies have been through the first step of the OPD review and approval process. Several more steps remain for nearly all Lexipol model policies before a new OPD policy manual is generated. **Attachment B** provides a chart illustrating the process.

As provided in **Attachment B**, each Lexipol model policy is initially reviewed by the Primary Working Group (PWG). The PWG is made up of members of OPD Research and Planning (including an officer who transferred from the Office of Inspector General (OIG) into Research and Planning in January 2016); the OPD Training Section; and organized labor. A subject matter expert (SME) provides input. Upon completion of the initial review, Research and

Planning staff perform a thorough analysis of the draft Lexipol policy and any existing OPD policy to:

- Identify any NSA tasks
- Ensure that any identified NSA tasks are covered by the draft Lexipol policy
- Identify differences between the draft Lexipol policy and any existing OPD policy
- Ensure that all relevant content from existing OPD policy is included or explain why it is not included

The next step in the process is to send the draft Lexipol policy to OCA and/or OIG if needed. Every policy then goes to the OPD Deputy Chief of Police most likely affected. (For example, a policy concerning training would go to the Bureau of Services Deputy Chief.) Executive Command Staff provides the next level of review and then the policy is sent to all three bargaining units for review, as needed. After any necessary bargaining unit review, the draft Lexipol policy is provided to the Chief of Police for final approval. If there are NSA tasks in the draft Lexipol policy, it is provided to the Plaintiff's Attorneys from *Delphine Allen v. City of Oakland* and the Independent Monitoring Team (IMT). The Lexipol policy is then placed into the OPD document management system and personnel are required to acknowledge electronically that they have read the new policy.

The new OPD policy manual made up of reviewed and approved Lexipol model policies is expected to go into effect beginning July 1, 2016. Additional Lexipol model policies are expected to go into effect each month until all policies are in place by January 1, 2017.

#### *Swanson Report Recommendations about Discipline*

To help with police discipline, the First Swanson Report recommended the appointment of a Civilian Manager position in IAD. The Second Swanson Report recommended that the IAD Civilian Manager develop institutional memory within IAD through the development of an IAD manual. The Second Swanson Report also recommended that "OPD should examine not only whether a supervisor knew of misconduct that he or she did not report, but also (1) whether a supervisor ordered or otherwise caused the misconduct; and (2) whether the supervisor failed to sufficiently supervise the officer accused of misconduct. OPD should consider supervisor responsibility up the chain of command as necessary. The analysis of these issues should be documented in investigation reports and force review board reports."

#### *Recent Developments in Police Discipline Resulting from the Swanson Recommendations*

Recent developments in police discipline in OPD include:

- Budget approval for an IAD Civilian Manager in the Fiscal Year 2015-17 Adopted Policy Budget.
- Appointment of the IAD Civilian Manager (filled on October 12, 2015).
- Better development of institutional memory within IAD.
- Development of a process to track and incorporate recommendations for changes to policy, training, and the discipline process.
- Greater accountability for supervisors.
- Increased transparency concerning foundation of recommended discipline.

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OPD is establishing the following process to seek recommendations concerning policy, training, and the discipline process from IAD, Skelly officers, supervisors, attorneys, and others:

- The IAD Civilian Manager will track the recommended policy and training changes and provides recommendations from IAD reports to the Research and Planning Manager (policy) and the Training Section Commander (training). The recommendations concerning the discipline process will be addressed within IAD.
- The Force Review Board Coordinator will continue to route deliverables concerning policy to the Research and Planning Manager and deliverables concerning training to the Training Section Commander.
- Skelly officers notify the Research and Planning Manager of policy recommendations and the Training Section Commander of training recommendations.

Regarding the Second Swanson Report recommendations for the OPD IAD manual, OPD has an IAD manual that the IAD Civilian Manager is facilitating revisions and updates to.

As part of the police discipline process, OPD examines whether a supervisor ordered or otherwise caused the misconduct in question. OPD is further developing the Member/Employee Accountability Section of the Report of Investigation (RoI). The revised section will include two subsections: the first will address whether any member or employee observed misconduct or was otherwise aware of it. The second subsection will address whether any supervisor ordered or caused the action which led to the violation. OPD is also developing a process for commanders to review prior discipline issues to determine if adequate supervision was provided.

The Chief of Police considers past discipline in all cases. The Chief of Police documents a foundation for imposed discipline when a disciplinary determination is made that is significantly different than discipline previously imposed for the same offense. The Chief of Police is prepared to testify at arbitration as to the basis of discipline.

### **FISCAL IMPACT**

There is no immediate fiscal impact associated with this informational report.

### **PUBLIC OUTREACH / INTEREST**

As a participant in the White House Police Data Initiative, OPD provides many metrics online on a regular basis, including information on discipline.

## COORDINATION

The Office of the City Attorney reviewed this report for form and legality.

## SUSTAINABLE OPPORTUNITIES

**Economic:** There are no economic opportunities associated with this report.

**Environmental:** There are no environmental opportunities associated with this report.

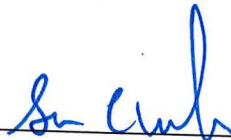
**Social Equity:** All Oakland stakeholders benefit from a police department that is more transparent, more accountable, better trained, and governed by effective policy.

## ACTION REQUESTED OF THE CITY COUNCIL

**Staff Recommends That The City Council Accept This Informational Report Providing Information Regarding IAD Investigations, Police Personnel Trainings, Updates To Police Policy, And Recent Developments In Police Discipline.**

For questions regarding this report, please contact Timothy Birch, Police Services Manager, Office of the Chief of Police, Research and Planning at (510) 238-6443.

Respectfully submitted,



Sean Whent  
Chief of Police  
Oakland Police Department

Prepared by:  
Tim Birch, Police Services Manager  
OPD, OCOP, Research and Planning

Attachments (2):

**A** – First Quarter 2016 Internal Affairs Division Report

**B** – Lexipol Policy Review Flowchart

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# Internal Affairs Division Year to Date 2016

(Reporting Period: 1 Jan 16 to 31 Mar 16)

Cases	<b>255</b>	
Allegations	<b>508</b>	(The number of individual policy violations within each case)
<b>Cases Investigated</b>		
Division Level	48	(Division Level investigations are completed by a supervisor)
Internal Affairs(IA)	80	(Internal Affairs investigations are completed by an IA investigator)
Total # of Investigations	<b>128</b>	
<b>Allegations Reviewed and Administratively Closed</b>		
These complaints include but are not limited to: Outside Agency Complaints, Complaints of No Merit and Service Complaints*		
*Example of a Service Complaint: Community member alleges the officer took too long to respond to a complaint of dogs barking, however; the officer was sent to an in progress Domestic Violence call.		
Allegations Not Investigated	<b>176</b>	
<b>Discipline</b>		
Suspension(s)	1	
Counseling and/or Training	7	
Written Reprimand(s)	1	
Termination	0	
Total Sustained Findings	<b>9</b>	
<b>Commendations and Awards</b>		
Letter(s) of Appreciation	4	
Department Commendation(s)	36	
Total Commendation and Awards	<b>40</b>	
<b>Manual of Rules Violations (MOR)</b>		
MOR	Description	# of Allegations
000.01	Service Complaint (A police practice mandated by policy or law, such as towing a vehicle; or a delay in service, such as a long wait for an officer's presence due to call for service volume)	83
000.02	No Violation of OPD Manual of Rules and/or the Law.	91
000.03	Duplicate Entry	2
285.90	Prevention of harassment, discrimination and retaliation.	1

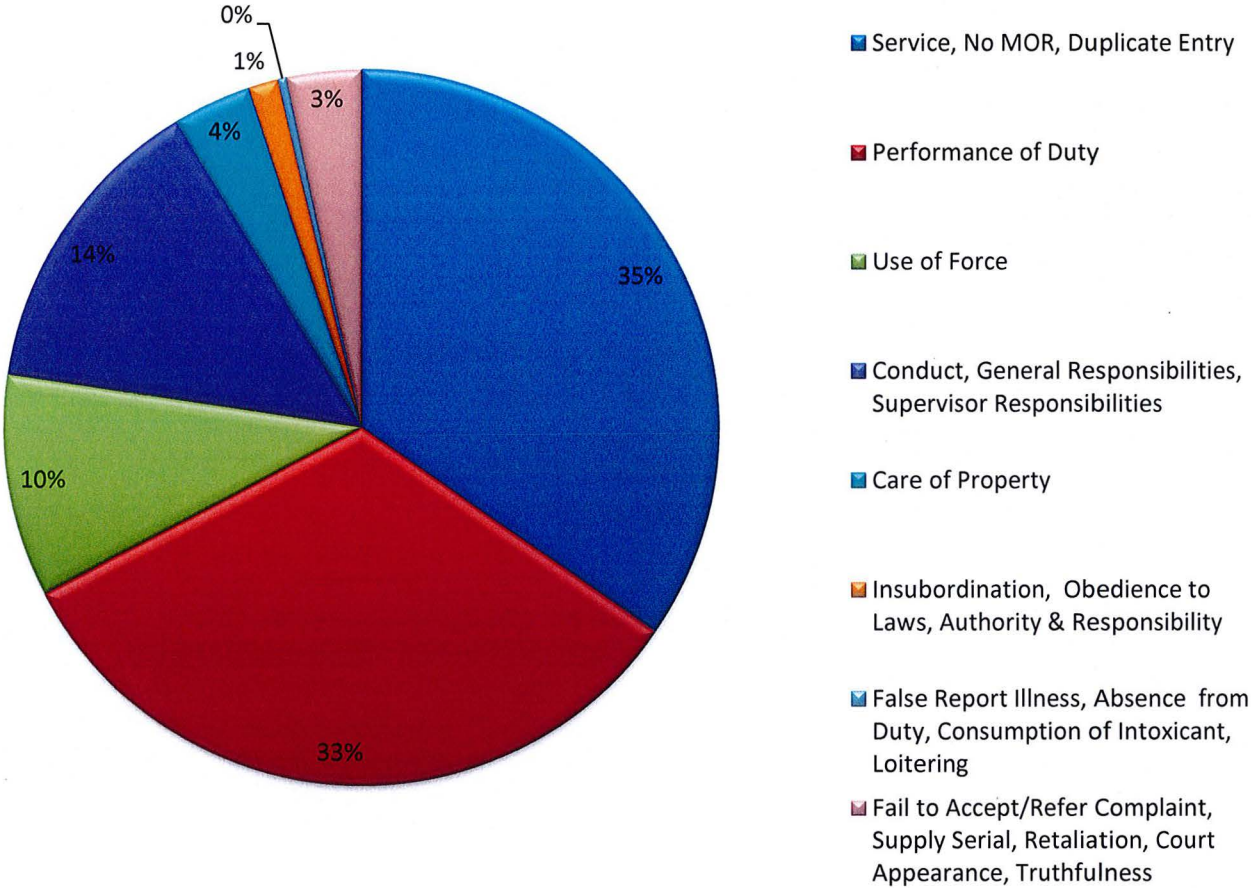
314.03	GENERAL CONDUCT – Members and employees shall conduct themselves at all times in such a manner as to reflect favorably upon themselves, the City, the Department and the police service. Whether on or off-duty, members and employees shall avoid any conduct that brings disrepute to the Department or impairs its efficient and effective operation.	3
314.04	<p>CONDUCT TOWARD OTHERS – HARASSMENT AND DISCRIMINATION –Members and employees shall treat all persons with courtesy and respect. The Department has a zero tolerance policy for harassment and discrimination against members, employees and persons on the basis of race, religion, national origin, marital status, age, sex, sexual orientation, ancestry, physical or mental disability, or medical condition. The Department prohibits conduct that violates the specified City Administrative Instruction. Any member or employee who harasses or discriminates against another member, employee, or any person, or engages in any inappropriate workplace conduct that violates City Administrative Instruction 71 shall be subject to severe disciplinary action, including discharge from the City service. Any member or employee who has knowledge that another member or employee has engaged in harassment or discrimination or inappropriate conduct that violates the specific City Administrative Instruction is strictly charged with the responsibility for reporting that conduct in accordance with the provisions of Manual of Rules Section 314.48 (Reporting Violations of Laws, Ordinances, Rules or Orders). Any member or employee who harasses or discriminates against another member, employee, or any person, or engages in any inappropriate workplace conduct that violates City Administrative Instruction 71 shall be subject to severe disciplinary action, including discharge from the City service. Any member or employee who has knowledge that another member or employee has engaged in harassment or discrimination or inappropriate conduct that violates the specific City Administrative Instruction is strictly charged with the responsibility for reporting that conduct in accordance with the provisions of Manual of Rules Section 314.48 (Reporting Violations of Laws, Ordinances, Rules or Orders).</p>	18
314.07	<p>CONDUCT TOWARD OTHERS – DEMEANOR – Members and employees shall perform their duties attentively and courteously, avoiding rude, threatening, harsh, insulting, profane, insolent or demeaning language, and they shall maintain a professional bearing regardless of provocation to do otherwise.</p> <ul style="list-style-type: none"> <li>- Members and employees shall treat superior officers, subordinates, and peers with respect. They shall be courteous and civil at all times in their relationships with one another and shall avoid any inappropriate conduct.</li> <li>- All persons, except the very youthful and those known personally by the member or employee, shall at all times be addressed by their appropriate title followed by their last name. When on duty and in the presence of others, superior officers shall be referred to by rank title.</li> <li>- Members and employees shall attend to requests from the public quickly and accurately, avoiding unnecessary referral to other parts of the Department.</li> <li>- Orders from superior to subordinate members and employees shall be given in a civil manner, without the use of profane or derogatory language.</li> </ul>	48

314.32	INSUBORDINATION-DISRESPECT – The act of ridiculing or treating with disrespect a superior officer or his/her orders whether in or out of his/her presence.	2
314.39	<p>PERFORMANCE OF DUTY – All members and employees shall perform their assigned duties and responsibilities as required or directed by law, Departmental rule, policy, or order by a competent authority. Each member and employee is accountable for the exercise of delegated authority, and shall not conceal, divert or mitigate their true culpability. Violations of performance of duty include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>- Intentional illegal search, seizure, or arrest;</li> <li>- Unintentional or improper search, seizure, or arrest;</li> <li>- Planting of evidence;</li> <li>- Failure to perform duties as required or directed by law, Departmental rule, policy, or order;</li> <li>- Improper care of the property of persons; and</li> <li>- Changing a work assignment without authority.</li> </ul>	164
314.42	OBEDIENCE TO LAWS – Members and employees shall observe and obey all laws and ordinances. A violation of this section may include, but is not limited to the following: Felony and serious misdemeanor crimes; Other misdemeanor crimes; or Driver's license status.	7
314.48	REPORTING VIOLATIONS OF LAWS, ORDINANCES, RULES OR ORDERS – Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, of a Class I violation or any Class II violation which indicates a pattern of misconduct of which they are aware, shall within 24 hours or sooner, if practical, report the offense, orally or in writing, to his/her supervisor or the Internal Affairs Division.	1
328.14	LOITERING – On-duty members and employees, and off-duty members and employees in uniform shall not enter bars, taverns or theaters except to perform a police task. Loitering and unnecessary conversation in such locations is forbidden. Eating in establishments where the primary purpose is the service of alcoholic beverages rather than food is discouraged, although not forbidden.	1
328.49	ABSENCE FROM DUTY – Every member or employee who fails to appear for duty at the date, time and place specified without the consent of competent authority is "absent without leave." Absences without leave in excess of one day shall be reported in writing to the Chief of Police.	1
342.00	DEPARTMENT PROPERTY AND EQUIPMENT – Preventable Collision	18

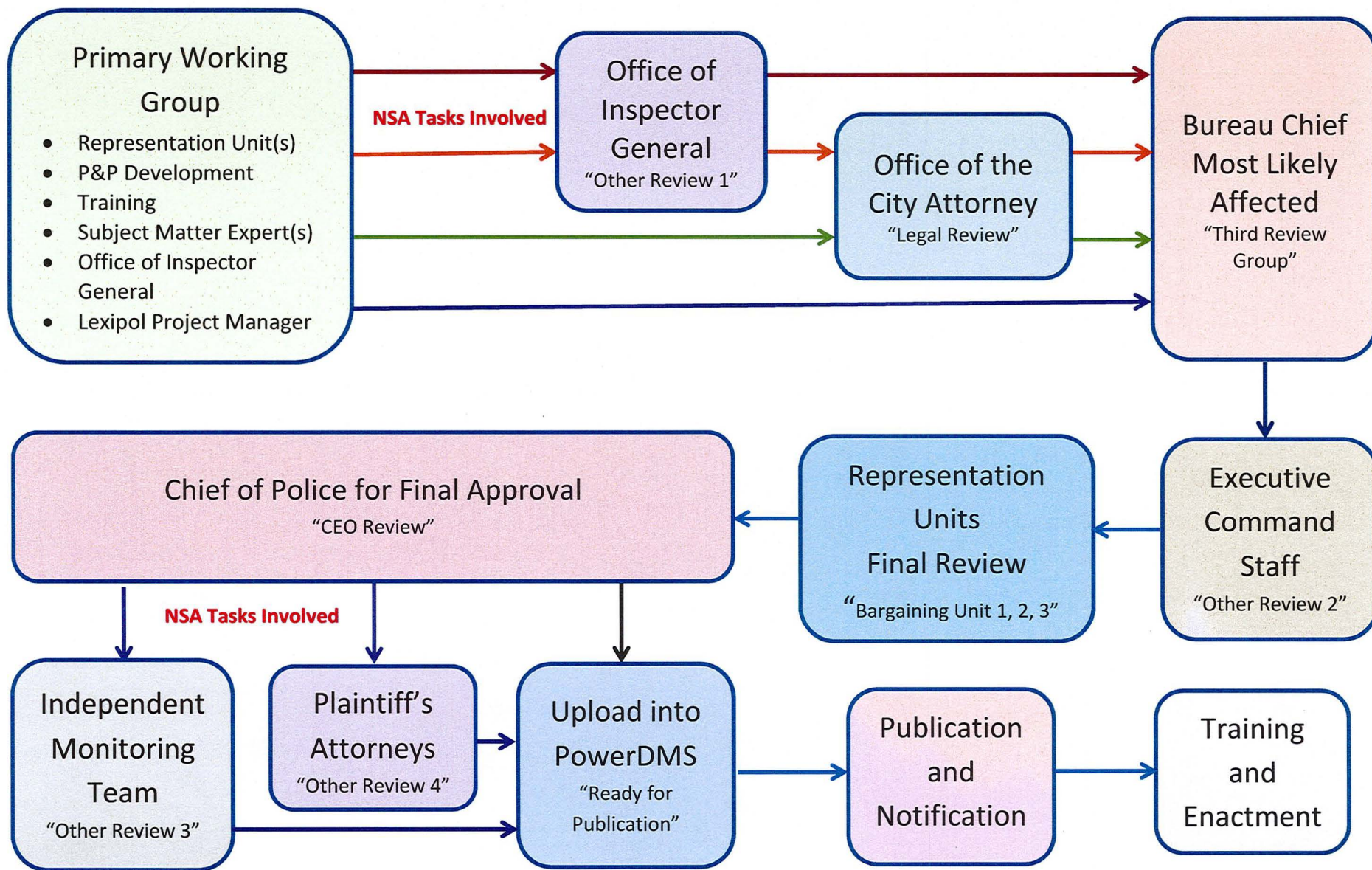


356.30	ACCESSING, VIEWING, DOWNLOADING, PROVIDING, SHARING INAPPROPRIATE MATERIAL – Members and employees shall not intentionally access, view, download, provide, or share inappropriate material while on-duty or in a police facility, except in the performance of an official police task.	1
370.27	PHYSICAL FORCE, USE OF – The use of physical force (Level 1-4) shall be restricted to circumstances specified by Departmental policies and law.	51
398.73	<p>RETALIATION – Under no circumstances shall members or employees retaliate against any other member, employee, or any other person for engaging in a protected activity. Members and employees shall not engage in any adverse action that:</p> <ul style="list-style-type: none"> <li>- Would cause a reasonable member, employee, or any other person to be deterred from engaging in a protected activity; or</li> <li>- Is based on a retaliatory motive arising out of a member, employee, or any other person engaging in a protected activity.</li> </ul> <p>Any member or employee who becomes aware of such conduct shall immediately report the misconduct to a commander/manager, and/or directly to the Internal Affairs Division.</p> <p>The presumptive penalty for violation of this section shall be termination.</p>	3
398.76	REFUSAL TO ACCEPT OR REFER COMPLAINT – Members and employees shall not refuse to accept a citizen complaint, fail to refer a citizen to the IAD (when the citizen can be reasonably understood to want to make a citizen’s complaint), fail to forward a complaint to the IAD, discourage a person from filing a complaint, and/or knowingly provide false, inaccurate, or incomplete information about the IAD process. Members and employees shall not fail to follow any of the procedures for accepting, referring, or forwarding a complaint.	4
398.77	REFUSAL TO SUPPLY NAME AND SERIAL NUMBER – Upon request, members and employees shall supply their names and serial numbers to any person who seeks such identification.	7
398.80	TRUTHFULNESS – Members and employees are required to be truthful at all times whether under oath or not, except when necessary in the performance of official duties.	2

# IAD Allegations



Updated: 04/04/16



*\*All reviewers have the ability to send documents back to the Primary Working Group for revision and clarification.*

*\*\*Content issues noted in the review/approval process will be routed back to the Primary Working Group for consideration, modification, and implementation as appropriate.*