



CITY OF OAKLAND

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OAKLAND

2016 JAN 28 PM 4:17

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Sean C. Whent
Chief of Police

SUBJECT: Use of Force Supplemental Report

DATE: January 28, 2016

City Administrator Approval

Date:

1/28/16

RECOMMENDATION

Staff Recommends That The City Council Accept this Supplemental Report Providing Recent Oakland Police Department Informational Bulletins Related To Training In and Reporting The Use Of Force,

REASON FOR SUPPLEMENTAL OR REPLACEMENT

The Public Safety Committee on January 26, 2016 requested that the informational report on "Training In and reporting the Use" be accepted and forwarded to the full City Council with additional information. The Public Safety Committee asked that the Oakland Police Department (OPD) provide bulletins issued within the last year related to the Training In and Reporting of the use of Force.

Two bulletins are attached to this report: A) "Force Review Boards Information Updates/Findings," dated April 4, 2015; and B) dated January 28, 2016.

Item: _____
City Council
February 02, 2016

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Accept this Supplemental Report Providing 2015 Oakland Police Department Informational Bulletins Related To Training In and Reporting The Use Of Force

For questions regarding this report, please contact Tim Birch, Police Services Manager I, at 238-6443.

Respectfully submitted,



Sean C. Whent
Chief of Police
Oakland Police Department

Prepared by:

Bruce Stoffmacher, Legislation Manager
OCOP, Research and Planning

Attachments (2)

- A: OPD Information Bulletin dated April 4, 2015
- B: OPD Information Bulletin date January 28, 2016



INFORMATION BULLETIN

OAKLAND POLICE DEPARTMENT

"Information Bulletins shall be used to set forth information, notices, or announcements regarding topics of general interest. Such bulletins shall not constitute official policy. Information Bulletins expire two years from the date of publication unless revised, canceled, or superseded sooner. Members shall retain them until expiration."

Force Review Boards Information Updates/Findings

Purpose of the Bulletin

Force Review Boards (FRB) and Executive Force Review Boards (EFRB) are convened to review and evaluate the factual circumstances surrounding force incidents and associated use of force investigations, in-custody death investigations, and vehicle pursuit-related deaths.

Responsibilities include:

1. Determine whether the force was in compliance with Departmental policies and procedures; and
2. Identify any policy revision, training, tactical, or other issues related to the use of force.

The Training Section will publish overall findings, and when appropriate, training points subsequent to any FRB and EFRB hearings. The intent of these updates is to illustrate to the membership how our force policies, applications, documentation and overall reviews are impacting our ability to provide the best police service possible.

Fourth Quarter 2014 – Force Review Board Findings

The FRB reviewed three incidents consisting of the following actual use of force*:

- One (1) – Strike to the Head -(Type 9)
- Two (2) – Impact weapon with contact (Type 12)**
- One (1) – Electronic Control Weapon (Type 11)
- One (1) Weaponless Defense Technique (Type 16)
- Four (4) – Pointing of Firearm (Type 22)

* Some cases had more than one type of force used and more than one member using force.

** This case included the use of force at the direction of a Command officer (not included in the number count)

All uses of force were deemed **in compliance** with policy.

REMINDERS / TRAINING POINTS

During the hearings, several discussion points were raised; some were items that warrant correction or performance improvement, but others were incidents in which members took extra steps to enhance their effectiveness during the event in question. Collectively, these discussion points, listed below, are being considered for inclusion in policy and serve as excellent examples and reminders for all personnel:

1. Members are reminded to stage medical units when dealing with a subject threatening to harm themselves or others.
2. Members are reminded that when an officer recognizes a gun, it is important for that discovery to be immediately communicated with other officers on scene.
3. Members are reminded, when setting a perimeter on a residence; to ensure the perimeter is large enough to keep uninvolved persons from entering the area but not so large that it cannot be secured with the personnel on the scene. Supervisors are reminded to check perimeters to ensure they are sufficient for the incident, adjust them as necessary, and/or call for additional resources.
4. Members are reminded that, although laughing at the conclusion of a high stress incident is a valid way to relieve stress; their conduct could be misinterpreted as unprofessional or uncaring to involved or uninvolved parties.
5. Members are reminded to consider all appropriate charges when arresting suspects. In one incident there was a long struggle and fight, which resulted in injuries to officers. In this case, it would have been appropriate to include the charges of 148 (a) PC, at a minimum, in conjunction with the original charges that led to the arrest. When determining the reasonableness of force in a significant case such as this, the suspect's active resistance and/or attempt to evade arrest by flight are important to document and include as a charge if the elements are satisfied.
6. Members are reminded that when stopping a vehicle where there is reasonable suspicion or probable cause to believe an occupant is armed, officers need to make sure they conduct a safe high-risk stop, considering the distance of their vehicle and available cover.
7. Members are reminded that not all strikes should be considered "distraction strikes." Strikes as a technique to overcome resistance and affect arrest, and not as a distraction technique, may be considered "strikes."
8. Supervisors are reminded to interview witnesses separately and allow for a witness to freely recount the event without any leading questions or comments.
9. Supervisors are reminded to include an analysis of Departmental policy and the law when determining if the force was reasonable and in compliance.
10. Supervisors are reminded to conduct an analysis of all the force options deployed, not just the most severe. For example, if there is an ECW deployment (Type 11) and an intentional pointing of a firearm (Type 22), the supervisor must investigate and provide an analysis for both.
11. Supervisors are reminded not to speculate when presenting to the FRB.
12. Supervisors and commanders must consider drafting an operations plan and after-action report for any operation, however small, which includes multiple squads.
13. Commanders are reminded that, when reviewing the use of force investigation, they need to make certain they follow up with any recommended training they propose.
14. Incident Commanders are reminded that they should not place themselves in dual roles at an incident scene. Incident Commander should task out assignments, such as negotiation, checking criminal histories, etc. to subordinates so they can focus on command and control of the incident.

15. Use of force investigators are reminded that all use of force investigations need to include an analysis using the three-prong test in *Graham v. Connor* (severity of the alleged crime at issue; immediacy of the threat; and whether the suspect is actively resisting or attempting to evade arrest by flight).
16. Use of force investigations are reminded that they need to include discrepancies and, if allegations of misconduct, a preliminary investigation of the allegation in the report.
17. Use of force investigators are reminded that, when PDRD issues arises during the force investigation, they must conduct proper follow-up in an attempt to resolve the issue.
18. During an incident involving a subject threatening to kill himself with a firearm and attempting to cause officers to shoot him, the Board recognized that all members on the scene remained calm and professional throughout the entire incident. Additionally the Board recognized that officers could have used force on one of the subject's family members, however the officers used good tactics and calm communication to de-escalate the situation with the family member.



INFORMATION BULLETIN

OAKLAND POLICE DEPARTMENT

Date: 28 JAN 16

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Responsibilities include:

1. Determine whether the force was in compliance with Departmental policies and procedures; and
2. Identify any policy revision, training, tactical, or other issues related to the use of force.

The Training Section will publish overall findings, and when appropriate, training points subsequent to any FRB and EFRB hearings. The intent of these updates is to illustrate to the membership how our force policies, applications, documentation and overall reviews are impacting our ability to provide the best police service possible.

Fourth Quarter 2015 – Force Review Board Findings

The FRB reviewed four incidents consisting of the following actual use of force*:

- Three (3) – Strike to the Head (Type 9)
- One (1) – Police Canine Bite (Type 14)
- Two (2) Weaponless Defense Technique Other (Type 15-16)
- Four (4) – Pointing of Firearm (Type 22)

* Some cases had more than one type of force used and more than one member using force.

All uses of force were deemed **in compliance** with policy.

REMINDERS / TRAINING POINTS

During the hearings, several discussion points were raised; some were items that warrant correction or performance improvement, but others were incidents in which members took extra steps to enhance their effectiveness during the event in question. Collectively, these discussion points, listed below, are being considered for inclusion in policy and serve as excellent examples and reminders for all personnel:

1. Members are reminded of the importance of maintaining proper tactics when contacting a possibly armed suspect. Officers should consider placing subjects in a position of disadvantage prior to physical contact (i.e. high risk walking stop).
2. Members are reminded that when officers are responding to a call for service where a subject is possibly armed, if exigent circumstances do not exist, a coordinated plan should be discussed and executed prior to making contact with the subject.
3. Members are reminded when wearing the long sleeve uniform shirt to keep the sleeves rolled down. The sleeves will assist in minimizing the minor scrapes, scratches and cuts when involved in a physical altercation.
4. Members are reminded that they need to ensure they evaluate the threat presented by pursuing a subject fleeing from a vehicle that is still occupied.
5. Members are reminded when conducting a traffic stop on a vehicle with more occupants in the vehicle than available officers, the stop should be delayed if possible until another unit can provide cover to match the number of occupants in the vehicle.
6. Members working in specialized units are reminded when working on radio channels without a Dispatcher they should ensure a plan is in place to have the channel patched with a channel that does have a Dispatcher, if circumstances call for it.
7. Members are reminded of the importance of maintaining proper tactics when searching with a PSD (Police Service Dog). When entering an area that has not been cleared, officers should consider using hushed voices as to not alert the suspect(s) of tactics and officers' location.
8. Members are reminded they should always use cover and concealment. Officers should not expose themselves simply because the PSD has not alerted on an area.
9. Members are reminded as an alternative to exposing themselves in an area where there was no cover or concealment. If the PSD (Police Service Dog) is alerting on the location of a subject, the handler should consider calling the PSD back and have another officer issue commands to the subject to come out of the hiding location. If members believe the subject has been located and refuses to cooperate members should consider issuing another warning announcement regarding a possible PSD bite.
10. Members and supervisors are reminded to request a copy of the medical screening report while at the jail to further document a subject's injuries or lack thereof.
11. Members are reminded to consider calling OFD to respond with heavy equipment and tools to assist with expediting rescue of individuals.
12. Supervisors are reminded of the importance of obtaining pictures whenever possible of the subject for proper documentation of any injuries. If pictures cannot be obtained, injuries or lack of injuries should be documented using the PDRD.
13. Supervisors are reminded to conduct an analysis of all the force options deployed, not just the most severe. For example, if there is a Police Canine Bite (Type 14) and an intentional pointing of a firearm (Type 22), the supervisor must investigate and provide an analysis for both.

14. Supervisors are reminded that they should respond as soon as possible to a call for service where a subject is possibly armed. If the supervisors are unable to immediately respond, they should be ensuring a proper response plan is made and/or a sufficient number of officers are responding depending up the circumstances.
15. Commanders are reminded to ensure the UOF report is completed thoroughly and contains all necessary evaluations to substantiate the use of force or find the use of force out of compliance.
16. Commanders are reminded for every incident each use of force shall be investigated by the assigned investigator. If a use of force is not investigated it should be sent back investigator for completion.
17. Use of force investigators are reminded when referencing specific parts of video or audio recordings they need to place a time mark reference in their report.
18. Use of force investigators are reminded to use the established protocol of contacting the Training Section's Commander for determination of the appropriate SME (Subject Matter Expert). The investigator should not use an SME that was involved in the incident.
19. Use of force investigators are reminded when addressing any discrepancies within a use of force report, the investigator shall, if the discrepancy is unresolved, explain if the discrepancy had any effect on the outcome of the use of force.
20. Use of force investigators are reminded that all use of force investigations need to include an analysis using the three-prong test in *Graham v. Connor* (severity of the alleged crime at issue; immediacy of the threat; and whether the suspect is actively resisting or attempting to evade arrest by flight) for each use of force.
21. Use of force investigators are reminded to address in their report if the injuries sustained by the subject are consistent with the reported use of force, evidence and statements.