

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

AGENDA REPORT

2011 DEC 20 PM 12:32

TO: Office of the City Administrator
ATTN: Deanna J. Santana
FROM: Citizens' Police Review Board
DATE: January 10, 2012

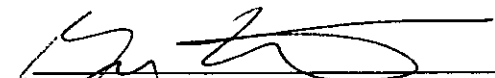
RE: CPRB Policy and Training Recommendations Report – November 2011

CPRB staff prepared this report summarizing the Board's recommended changes to Oakland Police Department policies and training. These recommendations cover the period January – November 2011.

Oakland City Council Ordinance No. 12454 C.M.S. provides that the CPRB may recommend OPD policy changes in a quarterly written report. We have not produced such a report in recent years, but hope to do so at least twice annually in the future.

The Board reviewed this report on November 17, 2011 and voted to send it to the Public Safety Committee for presentation as an information item.

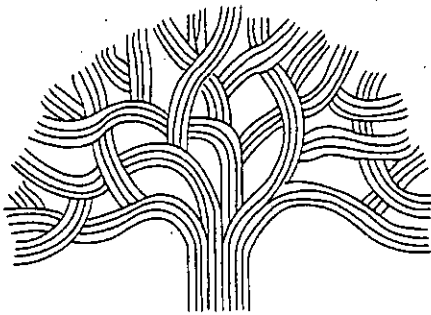
Respectfully submitted,


Ryan Hunter, Policy Analyst
for Patrick Caceres,
Assistant to the City Administrator
Citizens' Police Review Board

APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE:


Office of the City Administrator

Item: _____
Public Safety Committee
January 10, 2012



Policy and Training Recommendations

November 2011

Ryan Hunter, Policy Analyst

Citizens' Police Review Board

City of Oakland

Office of the City Administrator

One Frank H. Ogawa Plaza * 11th Floor * Oakland, CA 94612
Phone 510-238-3159 * Fax 510-238-7084 * TTY 510-238-2007



CONTENTS

Executive Summary 3

Criteria 4

Policy Recommendations..... 5

Policy Recommendation 1: Maintain Updated Community Resource Lists 5

Policy Recommendation 2: Define what constitutes a "Pattern of Misconduct" 7

Policy Recommendation 3 Align Policy on Animal Shootings with ASPCA Guidelines 10

Policy Recommendation 4 Require Validation of Probation Data in Case of Conflict..... 12

Training Recommendations 14

Training Recommendation 1 Retrain Officers to Recognize Hate Crimes 14



EXECUTIVE SUMMARY

This report outlines the CPRB's high-priority policy and training recommendations from January through October 2011. It was approved by the Citizens' Police Review Board on November 17, 2011. OPD Departmental General Order M.3-2 provides that the Citizens' Police Review Board may identify failures of departmental policy or training, and Oakland City Council Ordinance 12454 provides that the CPRB may recommend OPD policy changes on a quarterly basis.

POLICY RECOMMENDATIONS:

1. Maintain updated community resource lists
Officers have been handing out literature for an organization that has not existed since 2004. While not a serious problem, it may be addressed quickly and easily. Handing out such obsolete information is an embarrassment to the department and does not serve the community.
Recommended action: Replace old pamphlets with those from SEEDS Community Resolution Center. Update the TF 3083 Resource Guide. Mention the changes at line-up training.
OPD response: Adopted in full.
2. Define what constitutes a "pattern of misconduct"
Internal Affairs policy prohibits the use of the informal complaint resolution (ICR) process to resolve allegations of officers whose records indicate a "pattern of misconduct," but that pattern is never defined. In one case, an IAD investigator used an ICR to close a case against an officer whose record included eight similar complaints in five years, two of which were sustained. The allegation was the third rudeness complaint against the officer in that calendar year.
Recommended action: Amend DGO M-3.1 to provide a quantitative definition of a "pattern of misconduct."
OPD response: Not adopted. Further review pending.
3. Align OPD policy on dog shootings with ASPCA recommendations
Officers should expect to encounter dogs in most Oakland homes. While the department has conducted training on this issue, a formal policy is necessary to ensure officers may be held accountable for behavior toward pets in the future.
Recommended action: Adopt a Training Bulletin on the Use of Force Against Animals.
OPD response: Not adopted. Pending.
4. Require validation of CORPUS data
OPD officers used bad data from the CORPUS system to conduct an illegal probation search. Other local law enforcement agencies regard CORPUS as unreliable and require verification with a secondary system. However, the subject officer in the case said, "The Department has never said anything about CORPUS being unreliable."
Recommended action: Adopt a Training Bulletin on the verification of parole status based on the Alameda County Sheriff's Department Training Bulletin 07-13. Discuss at line-up training.
OPD response: Adopted in part.



TRAINING RECOMMENDATIONS:

5. Retrain officers to recognize hate crimes

Officers displayed a consistent lack of understanding about what constitutes a hate crime. The failure to adequately deal with hate crimes negatively impacts whole communities and undermines trust in the Department.

Recommended action: Require officers to review relevant policies and take an examination. Give training at line-ups. Consider inclusion at next in-service training.

OPD response: Adopted in full.

CRITERIA

Proposed CPRB policy and training recommendations were evaluated based on three criteria:

- **Frequency of problem:** Does the problematic behavior or situation occur often or infrequently?
- **Ease of implementation:** Will CPRB's recommended action be easy or challenging for OPD to implement?
- **Severity of problem's negative impact:** How bad is it when the problem behavior or situation occurs?
Considerations include the impact on both individual citizens and public trust of the police department.

Based on those criteria, CPRB staff identified five policy and training recommendations to be of the highest importance. They are summarized in the table below:

Policy	Type	Frequency of problem	Ease of implementation	Severity of problem's negative impact	Total criteria score ¹
Retrain officers on hate crimes	Training	MEDIUM	MEDIUM	VERY HIGH	8
Maintain updated community resource lists	Policy	HIGH	HIGH	LOW	7
Define a "pattern of misconduct" in DGO M-3.1	Policy	HIGH	MEDIUM	MEDIUM	7
Align policy on shooting dogs with ASPCA guidelines	Policy	HIGH	LOW	MEDIUM-HIGH	6.5
Require validation of CORPUS data	Policy	MEDIUM	MEDIUM	MEDIUM	6

¹ This column provides a crude rating of the recommendations based on the three criteria, giving the criteria equal weight. The total score is a sum of the three criteria, based on the following numbers: VERY LOW = 0, LOW = 1, MEDIUM = 2, HIGH = 3, VERY HIGH = 4. The score represents a guideline and does not strictly determine priority ranking.



POLICY RECOMMENDATIONS

**POLICY RECOMMENDATION 1:
MAINTAIN UPDATED COMMUNITY RESOURCE LISTS**

COMPLAINT INFORMATION

Case: 10-1192 (Aldana, F.)
Board approval date: March 10, 2011
Relevant OPD policies: TF 3083: Resource Guide Support Services
OPD adoption status: Agreed to in full, implemented in part

SUMMARY OF RECOMMENDATION:

In case 10-1192, officers handed out a six-years-out-of-date pamphlet for a community mediation organization. Officers should stop distributing the pamphlet on Conciliation Forums of Oakland as the organization no longer exists and the phone number has been disconnected. Officers should instead obtain and distribute literature from SEEDS Community Resolution Center or a similar organization and update OPD's Resource Guide.

APPLICATION OF CRITERIA:

Frequency: **HIGH**
Officers have presumably been handing out the pamphlet on Conciliation Forums of Oakland to many citizens involved in private disputes.

Ease of implementation: **HIGH**
Replacing the pamphlet does not involve significant changes to OPD policy or procedure. The services offered by Conciliation Forums of Oakland are currently offered by SEEDS Community Resolution Center in Berkeley. Staff need only get new literature from SEEDS, distribute it to officers, and ask that they discard the outdated material. Updating the resource guide should take no more than one or two man-hours.

Severity of negative consequences: **LOW**
Distributing outdated information obviously does not put citizens in any physical danger or infringe on their rights. However, OPD misses the opportunity to help residents resolve disputes peacefully and informally, and the community's trust in OPD erodes when the department distributes outdated and useless resource materials.

RECOMMENDED STEPS:

1. Obtain and distribute pamphlets from SEEDS Community Resolution Center; ask officers to discard outdated material.
Conciliation Forums of Oakland merged with SEEDS Community Resolution Center in Berkeley in 2004. That means that at the time OPD officers handed out the CFO pamphlet in the Aldana case, it was six years out of date. SEEDS continues to offer mediation services and may be reached at 510-548-2377.
2. Update OPD lists of community resources.
The form "TF 3083: Resource Guide Support Services" in the Departmental Form Index includes



Citizens' Police Review Board

"Conciliation Forums of Oakland" and has apparently not been updated since 2000. Since then, Conciliation Forums of Oakland and likely other listed resource organizations have ceased to function. Additionally, many other organizations likely have begun providing new local services in the past 11 years. If this outdated resource sheet is still used, it should be revised; if not, it should be removed from the OPD Document Library. OPD staff should identify and update any other out-of-date community resource lists used by officers.

3. Note changes and distribute new material at line-up training.

OPD RESPONSE

Adopted in full

The Office of the Inspector General (OIG) confirmed that no copies of the pamphlet are available to officers at the Police Administration Building or the Eastmont Substation. OPD will plan on drafting a new pamphlet if it is needed.

OPD Sgt. Paul Hara agreed to delete TF-3083, as it is no longer in use.



**POLICY RECOMMENDATION 2:
DEFINE WHAT CONSTITUTES A "PATTERN OF MISCONDUCT"**

COMPLAINT INFORMATION

Case: 10-1728 (Roberts, D.)
Board approval date: Nov. 17, 2011 (pending)
Relevant OPD policies: DGO M-3.1 – Informal Complaint Resolution Process; Negotiated Settlement Agreement Task 4
OPD adoption status: Not adopted. Further review pending.

SUMMARY OF RECOMMENDATION:

The Internal Affairs Division (IAD) resolves several hundred citizen complaints each year through an informal complaint resolution (ICR) process. A case may not be closed via ICR if "the subject's complaint history indicates a pattern of misconduct involving any Class II offenses." Case #10-1728 was approved for ICR by IAD despite the subject officer's record, which included eight similar complaints in the past five years, two of which were sustained, and two similar complaints in the same calendar year. OPD policy does not define what constitutes a "pattern of misconduct."

OPD should amend DGO M-3.1 ("Informal Complaint Resolution Process") to define what constitutes a "pattern of misconduct," using language similar to this:

Any of the following indicate a pattern of misconduct and preclude the use of an ICR to resolve the complaint:

- Any sustained finding for a similar allegation within the past five years.
- Three or more complaints (counting the current allegation) for similar allegations in the past 12 months, regardless of finding, provided the complaints involved separate incidents and were made by three or more different complainants.
- Six or more complaints (counting the current allegation) for similar allegations within the past 36 months, regardless of finding, provided the complaints involved separate incidents and were made by six or more separate complainants.

APPLICATION OF CRITERIA:

Frequency: **HIGH**

IAD uses the ICR process to close several hundred citizen complaints per year.

Ease of implementation: **MEDIUM**

The change requires a change to a DGO and brief training for IAD investigators. Creating a clear definition for a "pattern of misconduct" will result in some cases that were previously closed by ICR requiring a full investigation. However, the number of such cases in a year will likely be marginal.

Severity of negative consequences: **MEDIUM-HIGH**

The negative consequences of improperly using an ICR in a case are indirect: the department fails to recognize



when an officer is creating an ongoing problem. That officer will tend to generate additional citizen complaints. The result is poorer service overall and a missed opportunity for the department to address a personnel problem.

Additionally, DGO M-3.1 was developed in response to the NSA's requirement in Task 4 that IAD develop a policy on informal complaint resolution. The phrase "pattern of misconduct" is taken directly from Task 4 of the NSA. CPRB believes that the failure to identify a pattern of misconduct in a meaningful way jeopardizes the city's compliance with Task 4.

RECOMMENDED STEPS:

1. Revise DGO M-3.1 to quantitatively define what kind of allegations constitute a pattern of misconduct CPRB staff can work with the department to determine an exact definition of a "pattern of misconduct." The current version of DGO M-3.1 is effective November 10, 2008, and the policy has an automatic annual revision cycle.
2. Train IAD staff on policy revision

OPD RESPONSE

Not adopted, pending further review. The Office of the Inspector General will conduct an audit of NSA Task 4 in January to determine how frequently complaints are improperly identified for ICR based on a "pattern of misconduct." Task 4 was most recently audited by the Independent Monitoring Team in 2008.

CPRB agrees with the need for an OIG audit of ICRs and requests that each of the following matters related to Task 4 be addressed in the audit:

1. Task 4.2
 - a. Are complainants being clearly and fully advised of both the ICR process and the formal complaint process in a way that they should reasonably be able to understand? (i.e., do complainants understand that they may ask for a full investigation and that agreeing to an ICR will close their case and cannot result in officer discipline?) Particular attention should be paid to recordings of ICRs initiated in the field (rather than by an IAD investigator).
 - b. Are ICR cases resolved in the way promised to the complainant? (E.g., if the investigator promises that the officer's supervisor will speak to him, does that conversation actually happen?)
 - c. How often are allegations of MOR violations classified as service complaints rather than as alleged misconduct?
2. Task 4.4
 - a. Does IAD open formal investigations when the ICR process fails to resolve a complaint? Is the complainant notified of his right to initiate the formal complaint process if he is unhappy with the ICR? How does IAD determine that an ICR was completed successfully and that a complainant does not wish to pursue a formal investigation?
 - b. How often and under what circumstances are complaints closed by "forced ICR"? How is the "forced ICR" permissible under Task 4.4?
3. Task 4.5
 - a. Do officers, particularly field supervisors, improperly influence complaints to consent to the ICR process?
4. Task 4.10



Citizens' Police Review Board

- a. Are ICRs used only in cases where officers do not exhibit a pattern of misconduct? What standard is used by IAD investigators to determine whether an officer has exhibited a "pattern of misconduct" under DGO M-3.1? Is that subjective standard applied consistently across investigators? How often do investigators disqualify a case from ICR based on the subject officer's pattern of misconduct?
- b. Are ICRs only used for service complaints and Class II allegations? Are the allegations in cases closed by ICR correctly categorized as Class II? Are any of the Class II allegations of a serious enough nature to warrant a full investigation?



POLICY RECOMMENDATION 3

ALIGN POLICY ON ANIMAL SHOOTINGS WITH ASPCA GUIDELINES

COMPLAINT INFORMATION

Case: 10-1414 (Hallock, M.)

Board approval date: July 14, 2011

Relevant OPD policies: DGO A-5, B.2

OPD adoption status: Not adopted. Pending.

SUMMARY OF RECOMMENDATION:

In case #10-1414, officers responding to a burglar alarm at an Oakland home shot and killed the homeowners' pet dog, which was twelve years old and arthritic. Officers informed the family of the shooting by leaving a short note on the door. The incident received significant media attention.

CPRB recommends that OPD make the following changes:

1. When speaking with callers/alarm companies about dispatches that will involve an officer being dispatched to a home, OPD dispatchers should ask if there is a dog in the home, whenever possible.
2. All OPD officers should be trained to assume that all homes have a dog, and to plan in advance how to react if they encounter one.
3. OPD should replace its current policy regarding shootings of animals with that recommended by the ASPCA:
"Police officers shall not discharge their firearms at a dog or other animal except to protect themselves or another person from physical injury and when they have exhausted other reasonable means to eliminate the threat. If a decision is made that the animal must be killed, the officer must make every effort to insure that the discharge of his weapon is done as safely as possible. The officer should also try to kill the animal in a humane way to keep the animal from undue suffering or escape."
4. OPD should develop and promote a "force continuum" response for dogs, along the lines of that developed by the ASPCA:
 - Respond with friendly, calming or distracted behaviors
 - Respond with dominant or threatening behaviors
 - Use sonic/electronic repellents if available
 - Use water or chemical repellents
 - Use physical repellents (open baton), barrier or capture
 - Use chemical immobilization, if available
 - Use physical contact—bite stick, baton, stun gun/Taser
 - Use lethal force
5. When the circumstances of the incident and officer priorities allow, officers who injure a household pet should attempt to transport the animal in their patrol car to receive veterinary care.
6. Officers should use care to contact people in a courteous manner, with either a telephone call or a personal visit, when a household pet is killed.

APPLICATION OF CRITERIA:



Frequency: HIGH

As many as a third of households have pets. Officers frequently encounter dogs when entering a property. Officer interactions with animals have been the topic of several CPRB complaints and the subject of increasing scrutiny from media and groups like the ASPCA.

Ease of implementation: LOW

OPD has no current policy on officer interaction with animals; a new one would have to be added. Officer training on this topic is likely complex enough to require more time than is available in line-up training.

Severity of negative consequences: MEDIUM-HIGH

In the CPRB case at issue, officers were called to the Hallock residence by a burglar alarm, to protect the home. The family came home to find a 12-year-old arthritic dog killed by OPD. Losing a beloved pet is devastating for a family. Moreover, such incidents have terrible public relations implications for the department and dramatically erode public trust in law enforcement.

RECOMMENDED STEPS:

In response to the incident in this case, OPD worked with the ASPCA to develop a training video on officers' interactions with dogs and other household pets. While the CPRB applauds the department's training effort in this matter, the guidelines must be codified as official department policy to hold officers accountable for responsible behavior in the future.

1. Develop a new Training Bulletin on Use of Force Against Animals.

OPD currently has no written policy on how officers should interact with household animals. The only tangentially relevant department policy currently is DGO A-4, but that order is specific to animal control (i.e., animals that are the subject of complaints), not household animals. Without a written policy on officer behavior when dealing with household pets, officers cannot be held responsible for their behavior toward pets in the future. The Department issued an informational bulletin in 2007 on "Responding to Aggressive/Vicious Dogs and Animals." A similar bulletin was issued again on 2 December 2010. This bulletin contains many of the changes recommended by the CPRB but does not carry the weight of official department policy. It could be used as the basis for a Training Bulletin or a new version of DGO A-4. It must be revised to reflect ASPCA guidelines as appropriate.

OPD RESPONSE

Not adopted, pending further review. All OPD personnel were trained on interactions with animals and how to deal with vicious dogs, including visits to the animal shelter for at least some officers. OPD is rewriting DGO A-5, the animal control policy. Some of the CPRB proposed language may be included in that policy.



POLICY RECOMMENDATION 4
REQUIRE VALIDATION OF PROBATION DATA IN CASE OF CONFLICT

COMPLAINT INFORMATION

Case: 10-1284 (Robinson, Q.)
Board approval date: Approved August 2011 by City Administrator.
Relevant OPD policies: None identified
OPD adoption status: Adopted in part.

SUMMARY OF RECOMMENDATION

In case #10-1284, two OPD officers conducted an illegal probation search based on a citizen who was no longer on probation. The officers consulted two databases (CORPUS and CRIMS), which displayed different information about the citizen's probation status.

OPD should adopt a policy similar to that used by the Alameda County Sheriff's Department: if the criminal history check system (such as CRIMS) shows the information was validated by the court, the information shall be considered reliable by the officer before conducting a probation search. If the information is not validated by the court, other databases must be checked, or further investigation must be made to determine a person's probation status prior to conducting a probation search.

APPLICATION OF CRITERIA:

Frequency: MEDIUM

Clear information on how often CRIMS data and CORPUS data significantly conflict is not available. Information is probably consistent in most circumstances. However, the problem has arisen frequently enough that the Alameda County District Attorney's office has decided not to use CORPUS data, and the Alameda County Sheriff's office has implemented policies to address conflicts.

Ease of Implementation: MEDIUM

The CPRB recommendation should result in a new Training Bulletin, similar to what the sheriff's office has put together. This change would require training for all officers; however, the training could be brief. Officers will have to take slightly more time in the future doing background work for probation searches; however, in most cases the extra work would be of minimal duration.

Severity of negative consequences: MEDIUM

The use of bad records in justifying searches does not result in physical harm, but it does result in a violation of an individual's Fourth Amendment rights.

RECOMMENDED STEPS:

1. Issue a new Training Bulletin instructing officers to double-check probation status when using a system that is not court-validated.
2. Design and implement line-up training instructing officers not to perform probation searches based solely on CORPUS information.



In the course of the CPRB investigation, the investigator found that other law enforcement agencies were aware of the limitations of CORPUS data and took steps to verify that information against other systems. CRIMS is a more reliable system, because it requires a "validation tag" that confirms the probation status against the court docket.

The Alameda County District Attorney's office stated that they will not charge cases based solely on CORPUS data, having found it to be unreliable. The Alameda County Sheriff's Department Training Bulletin 07-13 requires sheriffs to check probation status on both CORPUS and CRIMS and to pull the actual court docket in the case of an inconsistency. OPD could base its Training Bulletin off the one used by the Sheriff's Department.

CPRB staff also spoke with the Alameda County Probation Department. Probation officers are directed not to conduct searches based solely on CORPUS data, but to check multiple databases. The Probation Department's Information Technology office is in the process of replacing the entire CORPUS database, due to the known issues with its reliability.

In his interview with IAD, one of the subject officers stated, "The Department has never said anything regarding CORPUS being unreliable." Training is necessary so that no officer may use this excuse in the future.

OPD RESPONSE

Adopted in part.

OPD issued Training Bulletin I-O.4, "Legal Aspects of Searching Persons on Parole or Probation." The TB identifies that there have been discrepancies in probation status between AWS, CORPUS, and CRIMS, instructs officers to rely on CRIMS in cases of inconsistency, and requires officers to document in their report how parole status was verified.

However, the policy stops short of plainly stating that CORPUS probation data is not reliable (enough so that multiple other local departments will not rely on it for conducting searches or charging cases).

As of December 1, 2011, the Department has not trained officers on this policy. The CPRB believes officer training is the most important part of this recommendation. The bottom line is that patrol officers need to know that they risk conducting an illegal search if they rely on CORPUS data.



TRAINING RECOMMENDATIONS

TRAINING RECOMMENDATION 1

RETRAIN OFFICERS TO RECOGNIZE HATE CRIMES

COMPLAINT INFORMATION

Case: 10-1192 (Aldana, F.)

Board approval date: March 10, 2011

Relevant OPD policies: DGO M-13, TB IV-K

OPD adoption status: Agreed to in full, implemented in part

SUMMARY OF RECOMMENDATION:

In their testimony before the Board on case #10-1192, none of the officers could adequately articulate OPD's policy on hate crimes. Given the inflammatory nature of hate crimes and the department's commitment to prioritizing their investigation, officers should be re-trained on department policies that constitute a hate crime.

APPLICATION OF CRITERIA:

Frequency: **MEDIUM**

According to a report from the California Attorney General², Oakland had 15 hate crime incidents in 2010. However, in the Aldana case, officers failed to articulate that a racially-motivated act of vandalism was a hate crime. In reality, therefore, the official tally of hate crimes in Oakland is likely underreported.

Ease of implementation: **MEDIUM**

The recommendation does not change departmental policy, therefore, supplemental training should be sufficient. However, the training should be robust enough that all officers can adequately articulate OPD policies on hate crimes and know the importance of implementing them consistently.

Severity of negative consequences: **VERY HIGH**

From OPD Departmental General Order M-13: "Hate or bias crimes deserve special attention because they are likely to deter victims from exercising and enjoying lawfully guaranteed rights through fear, intimidation, threats or violence. Such acts frequently recur and escalate, and they may lead to counter violence." If an individual is the victim of a hate crime, but OPD officers fail to treat the incident as such, it not only impacts the victim's potential future safety and his trust of OPD, but the safety and trust of the entire protected class of persons. For the police to build trust with Oakland communities that are victims of discrimination, officers must be vigorous in their response to possible hate crimes.

RECOMMENDED STEPS:

1. Require officers to review DGO M-13 and TB IV-K and complete an online examination.
2. Remind officers at daily line-ups of the importance of properly identifying and thoroughly investigating possible hate crimes.

² Harris, Kamala. "Hate Crime in California 2010." California Department of Justice. Online at <http://www.scribd.com/doc/62129653/Hate-Crime-in-California-2010-Report>. Accessed 19 September 2011.



3. Consider including retraining on hate crimes at the next in-service training.

Departmental General Order M-13 also says, "It is the policy of the Department that any incident believed to be a hate or bias crime shall be regarded as serious and given priority attention." All officers must be able to identify possible hate crimes and take appropriate steps to ensure the security of victims and their communities.

OPD RESPONSE

Agreed to in full, implemented in part.

The OIG was supportive of requiring officers to review the hate crime policy and take a test through Power DMS (recommendation #1 above).

A summary of what constitutes a hate crime was included in the weekly line-up training on October 15 (recommendation #2 above).